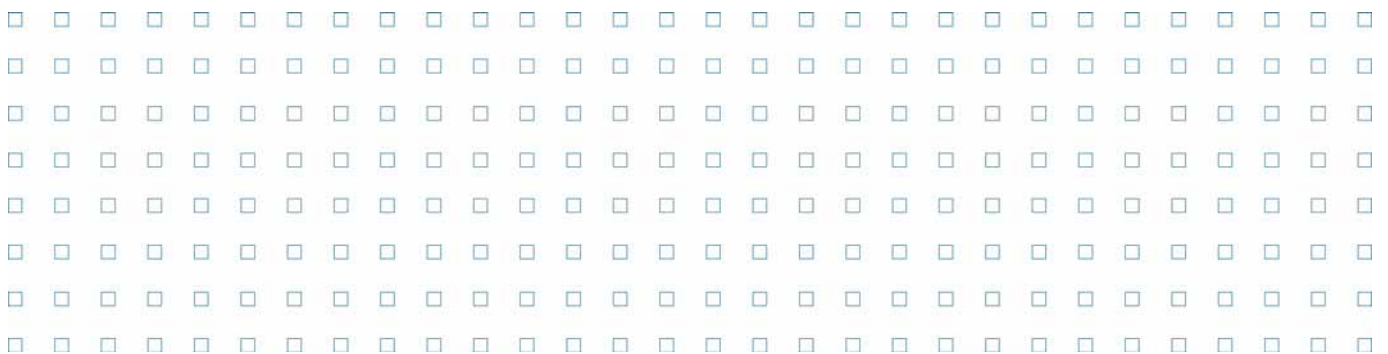




# Study of Legal Advice at Local Level

June 2009







Ministry of  
**JUSTICE**

## **Study of Legal Advice at Local Level**

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## Foreword



Last December, I announced a study of the provision of legal advice at the local level to gather and examine existing evidence around local advice issues. This was partly in response to concerns about the impact of the legal aid reforms on the advice sector but also as a result of the expected growth in the demand for advice in the recession and changing trends in the funding of advice services.

At any time, but particularly now in difficult economic times, the provision of social welfare law is of prime importance. Legal advice, in the fields of housing, debt, and welfare benefits, can solve people's legal problems, with the result that their lives and lives of their families are improved. It can literally change people's lives.

I am proud that we have increased the level of legal aid spend in this field over the last few years. In resource terms, spending on civil legal aid (excluding immigration) has increased by 30% since 2004/05 (from £608m to £791m in 08/09). I am delighted that a further £13 million extra money was put in 08/09 to increase debt advice, that the free legal and housing duty solicitor scheme was expanded to cover 112 County Courts across England and Wales and that the number of calls to the Community Legal Advice phone service shot up to more than 500,000 a year. I was particularly pleased to raise the eligibility level for civil legal aid by 5%, increasing the number of clients who can be helped by a potential 750,000.

Over the last few months, officials in the Ministry of Justice have been working to identify and analyse the available evidence on advice provision across England and Wales. We have been doing this both at a national level and through 'snap shot' visits to get a better picture of local advice issues. These visits have covered Hull, East Riding, Cumbria, Cornwall, Bristol, Portsmouth, Norwich, Manchester, Wandsworth, Camden, Plymouth, Tyne and Wear and Wales.

I am very grateful to the people in the areas visited who took time out of their very busy jobs to talk with my officials – local advice providers, both private practice solicitors and Not for Profit advisers, and the key funders of advice such as local authorities and central government departments. The visits were invaluable in helping us to understand what is happening on the ground. My officials have not only gathered a wealth of useful information and insight, but have been hugely

impressed by the passion and commitment that people in all parts of the advice sector give to solving the problems of their clients. Anyone who sees social welfare lawyers at work cannot fail to be impressed by their sense of service, and their sense of absolute determination to see justice done, usually for the most disadvantaged. They are often brilliant lawyers, who have made a crucial decision to forego more lucrative remuneration for the satisfaction of helping people. There are also many outstanding volunteers who have the same commitment and are very skilled in sorting out legal problems. Our society owes a great deal to them all.

The study has also been informed and directed by the Local Legal Advice Study Steering Group, comprising representatives of the key advice provider groups and the other main Government funders of advice services. I would warmly like to thank all those individuals and organisations who have helped with this important piece of work.

The study has enabled us to develop a more complete picture of the issues affecting local advice provision, and the level of information available. From this we have been able to identify the key issues which need further work, and to develop a plan of action for tackling them. Any changes will need to be achieved from within the current budget but I believe that there is scope to improve the way that we work with advice providers. Our shared aim is to ensure that we have a sustainable advice sector that puts the needs of the client at the centre of the service.

The ability of government to work with citizens and practitioners in the assessment and development of its policies is central to good administration. That is why the Ministry of Justice carried out this study of the provision of legal advice at a local level. With the help of those who work in this sector, we looked carefully at the early effects of substantial reform in the advice field. The result is a series of recommendations, some involving further work. We intend to publish an implementation report based on those recommendations in September.

A handwritten signature in black ink that reads "Willy Bach". The signature is written in a cursive style and is positioned above a horizontal line.

**WILLY BACH**

**Parliamentary Under Secretary Of State**

## Introduction

### Origins

The study was initiated in response to concerns about the impact of recent changes to the funding of legal advice, and about the likelihood that the recession will significantly increase the need for legal advice. The study was announced by Lord Bach in a Written Ministerial Statement on 4<sup>th</sup> December 2008. A copy is attached as [Annex A](#).

### Scope

Terms of reference for the Study, agreed with the Steering Group (see below) are at [Annex B](#). It was not within the remit of the Study to examine or to reconsider existing policy on legal aid funding, or to make proposals for changes. It will be for colleagues in the Ministry of Justice and Legal Services Commission, subject to Ministers' views, to identify what steps should be taken, including in policy development, in the light of the findings of the Study. The core aim of the study has been to identify what the key problems were and what evidence there was of their prevalence and impact. We do, however, make some recommendations for further work.

### Methodology

The study benefited from the support and assistance of a Steering Group including representatives of the main advice providers, of other interested Government Departments and of the legal profession. A list of Steering Group members is at [Annex C](#). With the help of the Steering Group, Terms of Reference for the study were established, and these are at [Annex B](#).

In the short timeframe of the Study, it was not feasible to instigate any detailed new surveys of providers, as there was insufficient time to achieve the standards required to be credible. Nor would it have been possible to research user need in depth, or to attempt any analysis of latent and unmet demand.

As well as meeting with Steering Group members and other interested parties, the Project Team carried out a series of "snapshot visits" to a range of areas across England and Wales. These are detailed in [Annex D](#). In each area we aimed to meet with advice providers – ideally a Law Centre, a Citizens Advice Bureau, a member of Advice UK and a firm of solicitors – and with relevant personnel from the local authority

and, where appropriate, a commercial advice provider. We asked the providers we met and the local authority to tell us what had changed in their area in recent years, and what the impact of this had been. As well as a wealth of information and anecdote, providers gave us a great deal of information about their finances and about their clients. Whilst this is, of course, not in any sense definitive, we have included it below where it appears illustrative of the issues identified.

We have taken the issues raised by those we met in the snapshot visits and by members of the steering group and attempted to identify evidence that either verifies or challenges those perceptions. This is particularly the case for the work we have done on fixed fees. It is fair to say, however, that a lot of the data that would have helped us in this task is not readily available at national level. As with all data collection, we will need in future to balance the need for more information to improve our understanding against the potential burden on providers and the resources required to collect it.

## Conclusions and Recommendations

As proposed in the Written Ministerial Statement, the study examined four areas:

- The impact of the recession and the demand for civil legal advice.
- The impact of civil legal advice fixed fees on local providers – financially and in terms of the type of work they are taking on.
- The initial experience of Community Legal Advice Centres, including the impact on other providers in the area.
- Trends in funding from sources other than the Community Legal Service, including local authority funding, national lottery funding, charities, central government departments, and others.

Our conclusions and the resulting recommendations are as follows:

### Recession

- The recession is clearly increasing the demand for legal advice. This is particularly the case in the “social welfare” categories of law (debt, housing and welfare benefits) and some family law areas. It is vital that people are able easily to access help at the earliest possible stage, to avoid the building up of a “cluster” of legal problems.
- This increase in demand is widely recognised, and steps are being taken – particularly by Central Government and by some local authorities – to meet it. We noted in particular the wide ranging recognition of the role advice providers can play in tackling the

impacts of debt, unemployment and housing problems which may arise as a result of the recession.

- We were told that there had been an increased number of “newly indebted” or people whose debts had ceased (or were likely to cease) to be serviceable. Although there is little unequivocal quantitative data to show whether this is the case, anecdotal evidence indicates that a higher proportion of this group will seek help in less “public” ways – by telephone or on the internet – rather than approaching an advice centre.
- There is, of course, always a need for accessible and effective legal advice, but the increased need as a result of the economic downturn was very evident, and has affected our findings.

### **Fixed fees**

- The Unified Contract, and the system of fixed fees it introduced, were brought in with the aim of achieving value for the taxpayer and helping more people within the limited legal aid budget.
- The LSC recently published its report of a Review of Phase 1 Fee Schemes. This looked at an agreed range of potential impacts, on the basis of data from the first year of operation of the scheme. The review found no evidence that the concerns expressed by providers and representative bodies had been realised. There had been an increase in the number of New Matter Starts, no negative impact on client diversity or on provider diversity, and the fees paid generally exceeded profit costs in all categories and regions. It is accepted, however, that it is too early to take a definitive view on the impact as the data cannot yet capture information from the full range of longer and more complex cases.
- The aim is to increase “one stop” provision of all levels of advice in the range of social welfare categories to all those in need within a specific geographic area. The fixed fee system allows “exceptional” cases – those taking at least three times as long as the standard period allowed for by the fixed fee – to be charged at an hourly rate; but otherwise the scheme does not make provision for providers with a case mix focused on more complex cases (or clients who are more difficult to assist). The fixed fee scheme therefore does not readily support the approach strongly advocated by some providers in both the not for profit [nfp] sector (often referred to as the “third sector”) and private practice: an “ecology of provision”, where some organisations specialise in more difficult and longer cases, whilst others deal with shorter, less complex ones.



- The levels of fixed fees were set on the basis of an average of the 2005/6 claim figure for solicitors and not for profit providers across the country. No allowance was made for London weighting, or for any additional costs of providing advice in a rural area (where travel may be an intrinsic part of the service), or to particularly “hard to serve” clients. It was recognised that the amounts paid would reduce the incomes of a significant number of providers, but believed that there was sufficient provision to allow those who did not wish to operate under them to leave the market without reducing access for those in need of legal advice. The fixed fee system should allow providers to benefit from a “swings and roundabouts” effect, as long as they have a case mix where longer and more complex cases are offset by sufficient shorter and simpler ones. The providers who appeared to be having the greatest difficulty with the system were those who dealt mainly or exclusively with longer and more complex cases.

**We recommend that further work should be done to consider the role of providers who focus on more complex cases or “difficult” clients, including monitoring the level of claims for “exceptional” cases and the success of such claims.**

- The system of fixed fees is said by some providers to be incentivising behaviours which are not in the best interests of vulnerable clients – cherry-picking of the easier cases, and inappropriately allocating cases to relatively inexperienced and/or untrained staff (“paralegalisation” or “juniorisation”). Although both of these practices were reported to us by providers (either as approaches they themselves were taking, or of which they suspected others), there is little hard data to show whether or not they are being adopted. Such evidence as there is could be read in a variety of ways, both positive and negative: for example, a reduction in the average time a case takes could reflect increased efficiency and pragmatism in case-closing, rather than a higher proportion of less complex cases. Cherry-picking or inappropriate “paralegalisation” are both contrary to the provisions of the Unified Contract, and the LSC, through the data collected on Key Performance Indicators [KPIs], aims to identify any significant changes to the profile of activity by providers, and take action at local level.

**We recommend that consideration be given to developing a monitoring system to identify the impact of these incentives on services to clients, including examining the extent to which existing research could illuminate this.**

- Many providers told us that the payment system was causing them cashflow problems. Some of these will be a result of the change from payment in advance to payment in arrears. Recognising the pressure this would place on nfp providers, the LSC put transition arrangements in place. However, we are told that this assumed that cases would be closed within a relatively short time, and that providers’ incomes would not – overall – reduce. For providers with a caseload of lengthy cases, the transition arrangements do not appear to have been fully effective. Although the LSC are making great efforts to monitor providers’ financial situation, the constraints of the scheme, and the LSC’s appropriate concern to avoid financial risk, limit the assistance they can provide.
- The Standard Monthly Payment [SMP] system should ensure that providers are able to cover costs, but the relative inflexibility of this system has been a cause for concern for some providers. Even where monthly bills are at the steady rate which the SMP assumes, the monthly payment system has created intense cash flow pressures for many providers.

- The need to carry the cost of disbursements throughout the life of a case is a particular concern, since this is a direct, and difficult to predict cost. Many of the providers we spoke to appeared to be cross-subsidising their legal aid work in some way – whether from reserves or from other funding.
- In the light of the current economic climate, the LSC has implemented some changes to the financial aspect of the scheme, following discussions with representative bodies. These are described in detail in Chapter 2. They add some flexibility to monthly payments and, combined with faster processing of bill applications and payments, mean that 98% of new applications are being processed within 10 days. There is also a one-off exercise to allow private practitioners to submit disbursement claims for immigration and asylum cases outside the normal billing rules.

**We recommend that further work be done to understand the basis of the financial impacts of elements of the fixed fee scheme (in particular the Standard Monthly Payment process; the payment of disbursements; the valuation of Work in Progress) on providers.**

- One aspect of the change to fixed fees has been a stronger focus on the core unit of measurement: New Matter Starts [NMS]. The LSC monitors the overall number of New Matter Starts, as a way of measuring the impact of the fixed fee scheme. The Review of Phase 1 (see above) found that New Matter Starts had increased by 1.84%, and interpreted this as “a sign that providers are adapting positively to the changes”. However, we were told by many providers that the necessity clearly to divide work into different categories, and the need to garner the maximum number of fees per client and achieve the required level of NMS, meant that they were opening an increased number of NMS per client. There is, at present, no data on this at national level, nor on the number of clients helped.
- An increase in the number of NMS also creates additional administrative burdens for providers. Many were concerned at the level and detail of reporting which the LSC requires, which was felt to be disproportionate to a fixed fee system. The LSC has already made efforts to reduce the administrative burden, including undertaking the development of “e-forms”.

**We recommend that, as a matter of urgency, the LSC works with providers and the Office of the Third Sector further to examine its reporting requirements, particularly in line with the Government’s commitment to reduce the bureaucratic burden on the voluntary sector, and the desirability of harmonising with other voluntary sector funders.**

- For many providers, the fixed fee scheme has meant radical changes to their administration systems, including information technology, and to the way they approach their caseload. Great efforts have been made to achieve this without disrupting the service provided to clients, and the attitude of those we met was almost universally willing and positive.

**We recommend that the Ministry of Justice discusses with other funders and relevant Government departments whether funding aimed at increasing administrative, management and financial resources in the voluntary sector might be specifically targeted at nfp providers of legal advice.**

- The increased emphasis on funding case by case has thrown into sharp relief the narrow focus of legal aid. Many providers, particularly in the not for profit sector, carry out a range of other activity, including second tier support to community organisations, facilitating and managing pro bono activity and preventative or educational work. The system of fixed fees clearly makes no provision for this type of activity, and providers are concerned that this indicates a lack of recognition of its importance to the wider community. However, it is appropriate that legal aid funding should be targeted at help with legal problems, and the wider needs of the community should be met with other funding.

**We recommend that, in light of the complementary nature of this work, the Ministry of Justice should consider discussing with other relevant Departments and other funders how to ensure that this type of work is funded and encouraged across the country.**

### **Community Legal Advice Centres/Networks**

- The concept of a Community Legal Advice Centre or Network [CLAC/N] is to co-ordinate local authority and LSC funding in order to provide “easily accessible face-to-face services (from early advice to legal representation) to address the combinations of problems people experience”. It should be noted that only five CLACs have been established so far, and that these have only been in operation for a short time. It is too early to draw any firm conclusions – whether positive or negative – about the impact of CLACs. Where CLACs have been established, they appear to be working well, and customer satisfaction ratings are good.

- Whilst there are wide variations between the different CLACs which currently exist, they do appear to demonstrate that the model can be an effective way of structuring case mix and associated costs appropriately to the fixed fee scheme. The addition of private sector skills and infrastructure to an advice delivery partnership can result in an efficient business model which allows advisers to concentrate on advising, whilst administration is carried out by specialist administrators.
- Some concerns about the CLAC model have been expressed: first, there is a risk that co-ordinating the two major streams of funding in an area will lead to further fragmentation of the other funding streams (from trusts and foundations, the lottery etc.). The original description of the CLAC/N approach was to integrate LSC, local authority and “other funding”. In recent work, and in the CLACs in place so far, the focus appears to have narrowed.

**We recommend that the LSC should take steps to monitor the impact of the establishment of a CLAC or a CLAN on other funding streams in the area, and should aim to involve other existing funders of local advice in plans for a CLAC or a CLAN wherever possible.**

- Second, whilst the establishment of a CLAC should ensure that existing gaps in supply are filled, the reduction of funding to non-CLAC providers may reduce access in areas which previously had a range of different suppliers. Although this was a concern in areas where a CLAC or CLAN had been mooted, but not implemented, there is, so far, no firm evidence to show whether this is happening in CLAC areas.

**We recommend that the LSC monitors the impact of the establishment of CLACs on local advice providers, including the potential for future competition in the area.**

- One of the issues with the creation of CLACs is the different responsibilities and constraints on local authorities and the LSC. Where a local authority has a good knowledge of local communities’ needs, and of existing advice provision, and uses this to shape the CLAC/N in its area this could ensure a CLAC/N which avoided many of the concerns expressed to us by providers and local authorities. It is not clear how much scope local authorities have felt they had (or wanted) to shape the CLAC/N in this way.

**We recommend that action be taken to encourage and support local authorities in shaping local CLAC/Ns.**

### Other funding

- Most of the not for profit providers we spoke with, and the majority on whom data is available, have multiple sources of funding. As well as the local authority and the LSC, providers are supported by trusts and foundations and the Big Lottery Fund. As funders increasingly move to contracts and commissioning, rather than grants, providers are less and less able to cross-subsidise work for one funder from other funding. This exacerbates the difficulty of supporting social policy, second tier and preventative work (see above), none of which are funded with legal aid. It also makes it difficult for providers to carry work in progress (see recommendation above).
- Another concomitant of multiple funders is the burden of administration which different reporting and monitoring systems create. We were repeatedly told that the fixed fee system creates a significant additional burden for both not for profit organisations and solicitors' firms (see recommendation above).
- We have attempted to identify levels and trends in other sources of funding, but this has not proved possible at an aggregate level. Although some data is available on local authority funding, it is not reliable. Trust and foundation funding is likely to be reduced in the recession, and there is said to be increasing competition for such funding as public funding becomes harder to obtain.

### Next Steps

The responsibilities of the Steering Group – as reflected in the Terms of Reference at [Annex B](#) – include advising on next steps following completion of this report. Implementation of the recommendations above will therefore be discussed with the Steering Group, and an action plan prepared with their input by the end of September 2009.

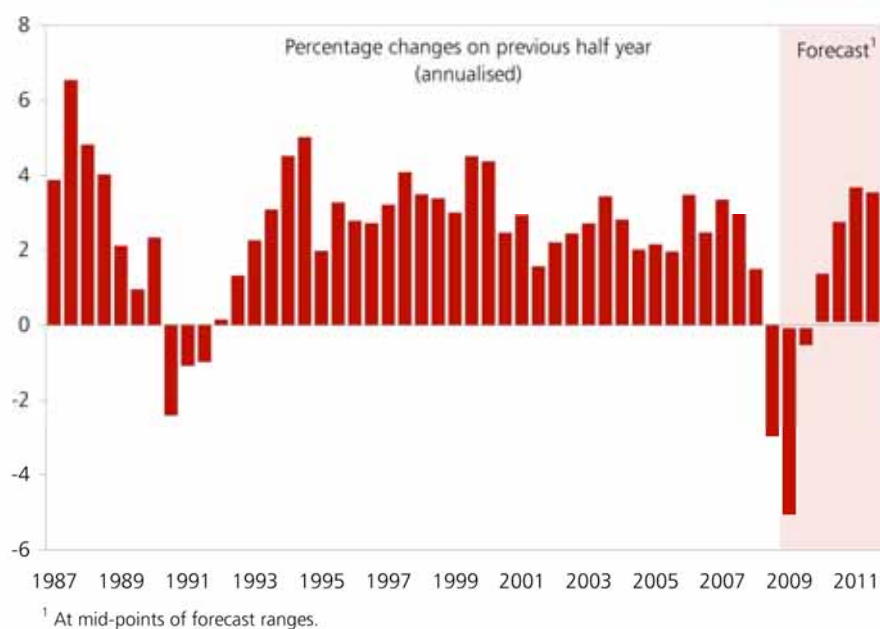
## Chapter 1: Impact of the Recession

### The U.K. Economy

#### GDP Growth

The economy was classified as being in a recession in January 2009.

As credit conditions tightened and global commodity prices squeezed real incomes, growth slowed progressively.



Source: Budget 2009: the economy and public finances – Supplementary material

In the third quarter of 2008 the economy contracted by 0.7% and the fourth quarter saw a sharp 1.6% drop. The first quarter of 2009 saw a further contraction of GDP of 1.9%. This reflects the intensification of the global financial crisis causing a loss of confidence and a further reduction in the availability of credit. Overall GDP growth slowed from 3% in 2007 to 0.75% in 2008.

The forecast in the budget report is underpinned by the assumption that G20 authorities deliver on policy commitments and that they are effective so that the world economy is forecast to grow 2.5% in 2010, picking up a further 4.25% in 2011. The effects of lower commodity prices and depreciation of sterling will also support demand. The forecast is based on the judgement that the effects of macroeconomic stimulus increasingly take hold, driving recovery in demand and output in the UK and globally.

The budget 2009 economic forecast is for a contraction of 3.5%, which is worse than the 1% contraction cast in the Pre-Budget Report. GDP is forecast to contract sharply in the first half of 2009, to stabilise in the second half of the year and to pick up progressively through 2010 and 2011 as credit conditions normalise and the effects of significant macroeconomic policy stimulus and the depreciation of sterling take hold.

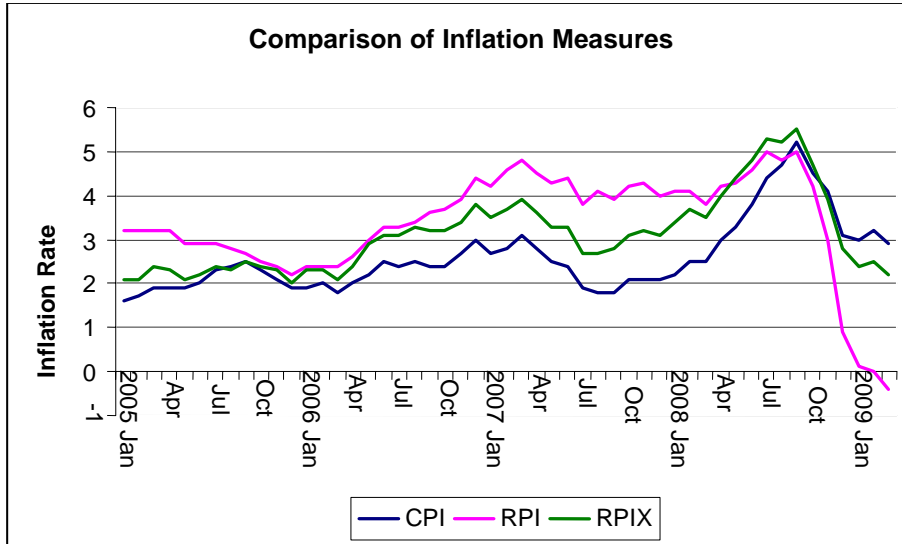
### **Inflation**

The two measures used for inflation are the Consumer Price Index [CPI] and the Retail Price Index [RPI].

CPI: The consumer price index reflects the spending of all UK residents and foreign visitors.

The Bank of England's monetary policy objective is to deliver price stability – low inflation – and, subject to that, to support the Government's economic objectives including those for growth and employment. Price stability is defined by the Government's CPI inflation target of 2%. CPI peaked at 5.2% in September 2008. As commodity price pressures have reversed, inflation has eased in line with the Pre-Budget Forecast. CPI annual inflation was 3.2% in February, up from 3% in January and 2.9% in March.

RPI: The retail price index reflects the average spending patterns of the majority of households. Two classes are excluded however – pensioners and those on high incomes (as these cohorts' spending patterns are different). Since it includes mortgage interest payments, changes in the interest rates affect the RPI. The Government uses it for the uprating of pensions, benefits and index-linked gilts. It is commonly used in private contracts for the uprating of maintenance payments and housing rents. It is also used for wage bargaining. The RPI excludes mortgage interest.



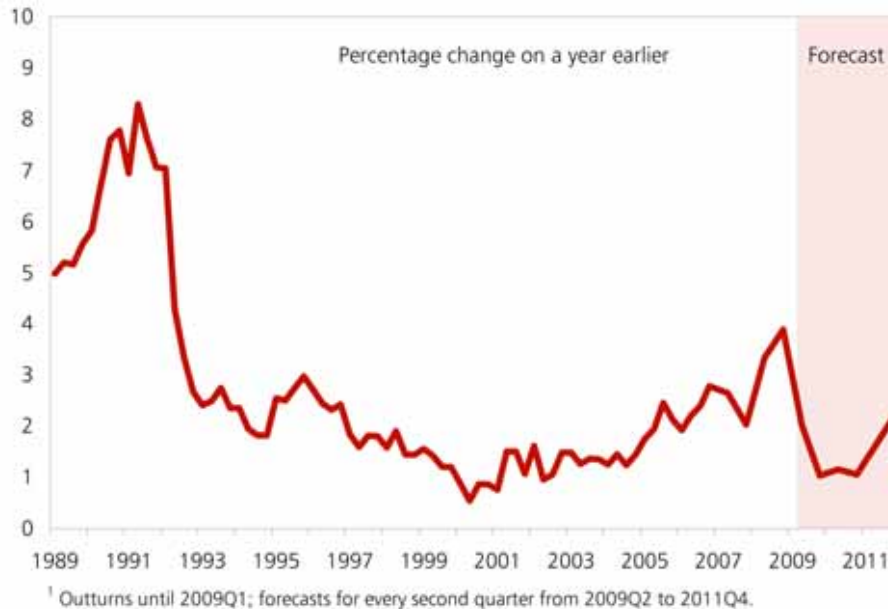
Source: Office for National Statistics 2009

Looking at the trend of the three measures of inflation from the period beginning 2005 to March 2009, it can be seen that they generally move in the same direction.

RPIX has generally been lower than RPI due to a significant amount of individuals' incomes being spent on mortgage interest payments. From May 2008, however RPIX is higher than RPI, reflecting falling mortgage rates. RPI inflation slowed to -0.4 per cent in March, down from 0 per cent in February.

The main factors affecting the CPI also affected the RPI. Additionally, there was a large downward pressure from housing with the main effect coming from mortgage interest payments, which are excluded from the CPI. RPIX inflation was 2.5 per cent in February, up from 2.4 per cent in January.

## CPI Forecast



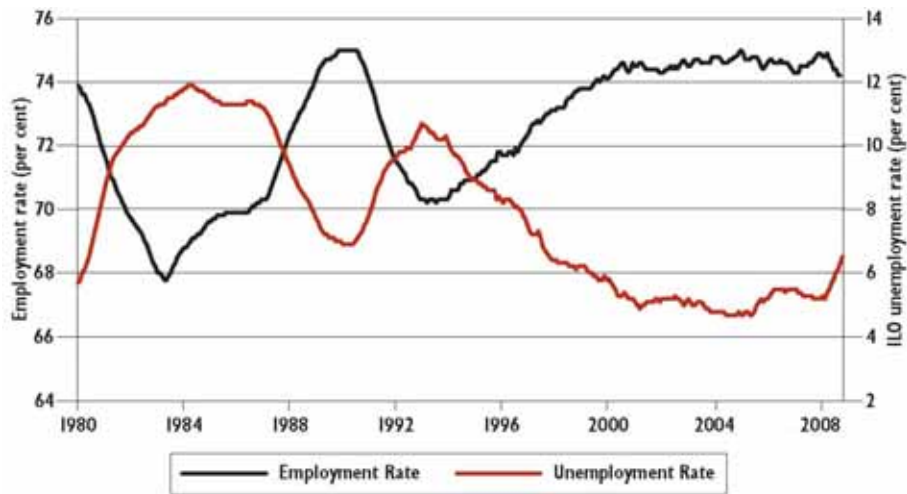
Source: Budget 2009: the economy and public finances – Supplementary material – Page 23

CPI is forecast to continue to ease through 2009, moving well below target by the end of the year, and to remain below target during 2010. The downward pressure on inflation is countered by monetary policy support taking further hold. It is forecast to return to target in 2011 as the lagged effects of monetary policy easing are assumed to have their maximum impact.

RPI is subjected to the same pressures as CPI inflation but RPI will have additional downward pressures during 2009. This will be due to the further declines in house prices and the lagged feed-through from Bank Rate to mortgage rates which will put downward pressure on the measures of housing depreciation and mortgage interest payments included in the RPI. As a result of this RPI inflation is forecast to fall further to -3% by September of this year but back to zero in 2010 as these pressures recede.

## Unemployment

The ONS publishes two different measures of people who want to work but do not have a job, Labour Force Survey measurement of unemployment and the Claimant Count. The unemployment rate was 6.7% for the three months to February 2009, up 0.6% over the previous quarter and up 1.5% the year. The number of unemployed individuals has increased by 177,000 over the quarter, by 486,000 over the year and has now reached 2.1 million.



Source: Labour Force Survey, ONS

Source: Budget Report 2009

The count of claimants of unemployment related benefits, known as the claimant count, is based on administrative records of people claiming these benefits. Since 1996, this has been the number of people claiming job seeker's allowance (JSA). The claimant count was 1.46 million in March 2009. It is up 73,700 over the previous month and up 672,100 over the year.

The unemployment rate may be considered to be the best indicator of unemployment because it measures the proportion of the economically active population that are unemployed and so therefore it takes into account the change in population as well as the change in unemployment. The Claimant Count only takes account of individuals eligible for jobseeker's allowance and not every individual who is unemployed claims this allowance.

The most recent data result in a projection of the UK claimant unemployment rising from levels of 1.39 million to 2.09 million at the end of 2009, and to 2.44 million at the end of 2010. Those claiming JSA are, of course, eligible for legal aid.

There were 462,000 job vacancies in the three months to March 2009, down 68,000 over the previous quarter and down 230,000 over the year. This is the lowest figure since comparable records began in 2001. Most sectors have shown falls in vacancies over the quarter with the largest falls occurring in distribution, hotels and restaurants (down 26,000) and finance and business services (down 19,000).

### **Comparison between this recession and the last recession (1990–92)**

The current recession is a global phenomenon where there has been a synchronised downturn in global demand and output whereas the previous recession was restricted to several developed countries. Low consumer and investor confidence is a common factor in both recessions but significantly worse during the current recession due in part to the tightening of credit conditions.<sup>1</sup>

During the previous recession, the interest rate climbed up to 14.88% in October 1989,<sup>2</sup> approximately a year before the economy was officially in recession and throughout most of the following two years it stayed at double figures. Interest rates were increased partly to reduce inflationary pressure (RPI was at 10% in Q4 1990)<sup>3</sup> and partly to protect the value of the Pound Sterling, as the UK was part of the Exchange Rate Mechanism.

The recession of 1990–92 was characterised by house price collapse, high inflation, high interest rates and high unemployment, due to varying factors. The current recession is characterised by house price collapse, uncertainty, and high unemployment, low inflation, historically low interest rates and a fundamental change in access to credit.

Comparing interest rates and inflation rates from both time periods, we can see that the recessions differ fundamentally and thus cannot be compared directly. During the 1990–92 recession everyone was in some way affected due to the high level of interest and inflation, which are not significant in this recession. Unemployed individuals with loans, mortgages and other debt obligations are now increasingly being affected as they are unable to meet their repayments each month. There were 27,000 repossessions in 2007, 40,000 in 2008 and the Council of Mortgage Lenders [CML] has forecast a total of 75,000 for 2009, though expects to revise that down.<sup>4</sup> The CML believes that unemployment is one of the “underlying causes of financial activity” in the current period, whereas low interest rates mean that those who are in employment are generally finding it easier to service debt.<sup>5</sup>

Young people have been hit particularly hard by the effects of the recession, in part because a higher proportion of that group are looking for employment relative to other cohorts. Unemployment rates among

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<sup>1</sup> Bank of England Inflation Report, February 2009

<sup>2</sup> Office for National Statistics data

<sup>3</sup> Office for National Statistics data

<sup>4</sup> Reported in the Guardian 15<sup>th</sup> May 2009

<sup>5</sup> Source: <http://www.cml.org.uk/cml/media/press/1999>

young people have picked up more sharply since the start of 2008 than those of other age groups. Reduced employment is likely to push down household spending, as the incomes of those made unemployed falls sharply. This exacerbates the downturn and reduces inflationary pressure.

The effects of the current recession which are of particular relevance to the demand for legal advice are unemployment increasing, total salaries decreasing and the individuals' ability to access credit to cover debt obligations changing.

With regard to conditions in the economy, it is the lack of availability of finance that has been the problem, although the low interest rates are easing the burden for some consumers and firms (those on variable rates). Lending to individuals has reduced substantially from the average of the past 10 years, and unemployment is rising in the UK.

### **The impact on civil legal advice**

The recession will have a range of impacts on advice providers apart from an increase in demand for their services. The likely impact on voluntary sector funding is considered in [Chapter 4](#). In addition, those organisations, particularly private practice solicitors, who may need to borrow from banks or other lenders, are likely to find loans more difficult to secure.

Organisations who benefit from volunteering told us that, while rising unemployment has increased the numbers applying to volunteer, it has made their tenure less certain, as any offer of a paid job is likely to be accepted in the current climate. Organisations facilitating "pro bono" activity by private practice lawyers are also experiencing two conflicting forces: on the one hand, there is an increase in unemployed lawyers wishing to do pro bono work, on the other those practising in "recession-relevant" areas of law – such as employment – are too busy with paid work to work pro bono. The facilitative organisations themselves face the same problems – of increased demand and reduced funding – as other voluntary sector organisations.

The impacts of the current economic situation on the demand for legal advice are already being experienced by providers, although longer term these impacts may vary in their duration and impact on the different categories of civil law. Most obviously, the recession has resulted in an increase in the number of people who meet the threshold for legal aid eligibility. There is no indication when the numbers will recover or whether we might see further increases in unemployment. Several reports have stated that unemployment will continue to increase.

We can hypothesise that various categories of legal advice are likely to experience increased demand as a result of the recession. We cannot say how extensive the increase will be or how much it may be offset by factors that stunt demand growth.

As a recent paper by Pleasence and Balmer<sup>6</sup> points out, it has been found in previous years<sup>7</sup> that unemployment is associated with a higher likelihood of experiencing rights-related problems – 55% of unemployed respondents to the 2004 English and Welsh Civil and Social Justice Survey reported one or more rights problems, compared to 39% of the remainder of respondents of working age. Unemployment was found to be associated with problems concerning employment, welfare benefits, money, housing, neighbours and domestic violence. However, the paper notes that unemployment (as a continuous state) and becoming unemployed (as a life changing event) are different in their effects. The paper concludes: “A major implication of our findings is that the current recession will lead, through escalating job losses, to a substantial increase in the prevalence and incidence of rights problems, in demand for related legal services and, as social welfare and family related rights problems are central to increased problem prevalence and incidence, in demand for legal aid services”.

### **Evidence of the impact of the recession on demand so far**

The existing Community Legal Advice [CLA] telephone service is experiencing unprecedented demand and is currently receiving over 2,300 calls a day. Increases in calls relating to specific categories of law (comparing statistics for October 08–March 09 with April 08–September 08) are as follows:

debt	up 39 per cent
employment	up 33 per cent
housing	up 14 per cent
welfare benefits	up 47 per cent

In December, Citizens Advice released new figures which showed that more people are seeking advice about redundancy, applying for jobs and claiming Job Seekers Allowance. Since April 2008, Citizens Advice Bureaux [CABx] in England and Wales have seen daily enquiries relating to redundancy increase by 125% across the service (from under 200 per working day in April to 425 per day in November). Daily enquiries to CABx from people looking for guidance on Job Seekers

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<sup>6</sup> The Audacity of Justice: Recession, Redundancy, Rights and Legal Aid, LSRC and UCL

<sup>7</sup> Causes of Action: Civil Law and Social Justice: Pascoe Pleasance with Nigel Balmer and Alexy Buck; LSC 2006

Allowance have increased by 66% (from under 280 in April to over 450 in November).

During the Autumn of 2008, CABx also found that more people were seeking advice on how to manage mortgage and secured loan arrears and fuel debts as money became tighter. They saw 35% more mortgage and secured loan arrears problems in the 12 months to October 2008, compared with the previous 12 months, with 77,324 new enquiries since October 2007.

The figures for July to September 2008 (Q2 2008/9) showed a 51% increase in new mortgage and secured loan enquiries and a 10% increase in fuel debts compared to the same period last year (Q2 2007/8). CABx have continued to see increases in the numbers of these types of problems.

### **Additional funding**

Among the ways in which the current recession differs from that experienced at the beginning of the 1990s is the extent to which government, at national and at local level, is taking steps to counter its impact on the public. This includes the LSC and various central Government Departments making available significant additional funding for legal advice services, as set out in [Chapter 4](#) below. The Ministry of Justice [MoJ] also announced in April 2009 that it was increasing the eligibility limits for civil legal aid by 5%, making up to 750,000 additional people eligible for funded help.

### **A “new” client group**

During the “snapshot visits” carried out for this Study, we were told that many of the new clients being seen in recent months were not eligible for legal aid: they were small businessmen, self-employed or still employed (but concerned about potential unemployment and/or being asked to work shortened hours) and many were homeowners at the time they were seeking advice. This is not the conventional client base of the legal advice sector. Self-employed people were said to be particularly vulnerable to the impact of the recession, as they have had to get mortgages in the sub-prime market.

with the small business people ... the whole family is involved with the business, it's their whole life set up and running a small business and it's being taken away from them. It's not because they are bad people, it's not because they've failed. (*advice centre*)

Clients were also said to be suffering from the impact of a hardening in lenders' attitudes which made them unwilling either to provide further

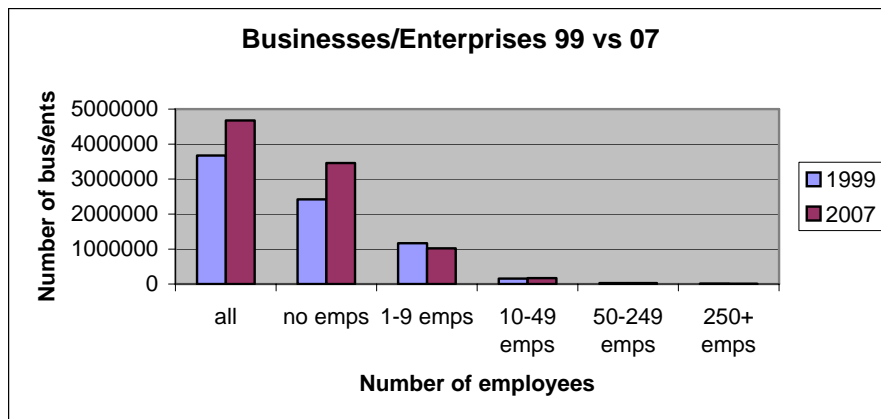
loans, or to maintain existing ones. We were told that even those in this group who are not being pursued by lenders were “anxious”, and seeking advice on their rights in the event circumstances change, increasing the pressure on the advice sector.

There is a hell of a lot of ‘what am I going to do if’ questions being asked. (*local authority*)

In order to assess the likely impact of this, we examined the small business and self-employed sector, and indicators of its current state.

### Self-employed and small businesses

Recent years have seen a significant increase in the number of small businesses, particularly those with no employees (sole proprietorships and partnerships comprising only the self-employed owner-manager, or companies comprising only an employee director). At the start of 2007 enterprises with no employees had an estimated combined turnover of £222 billion.<sup>8</sup> The chart below shows the numbers of businesses with different volumes of employees in 1999 and 2007. As the table below shows, the construction industry is one of those with a particularly high proportion of businesses with no employees.<sup>9</sup>



BERR Statistical Press Release URN 08/92 30 July 2008

UK Businesses	Size (number of employees) (=100%)	Size (number of employees)		
		None <sup>1</sup>	1-49	50-249
	4,679,080	74.0	25.3	0.6
Agriculture, Hunting and Forestry; Fishing	168,495	61.5	38.4	0.1
Mining and Quarrying; Electricity, Gas and	13,025	90.8	7.8	0.8

<sup>8</sup> BERR Statistical Press Release URN 08/92 30 July 2008

<sup>9</sup> BERR Enterprise Directorate Analytical Unit – UK Industry Summary

Water Supply					
Manufacturing	348,250	69.2	28.4	2.0	0.5
Construction	978,065	85.4	14.4	0.2	0.0
Wholesale and Retail Trade; Repairs	562,030	55.9	43.1	0.8	0.2
Hotels and Restaurants	149,765	22.4	76.0	1.4	0.2
Transport, Storage and Communication	297,550	84.5	14.9	0.5	0.1
Financial Intermediation	67,275	70.0	28.5	1.1	0.5
Real Estate, Renting and Business Activities	1,130,890	72.5	26.9	0.5	0.1
Education	162,540	91.3	8.4	0.2	0.1
Health and Social work	273,570	80.2	18.9	0.8	0.1
Other Community, Social and Personal	527,625	82.5	17.2	0.2	0.1

Overall, there were 4,607 compulsory liquidations and creditors' voluntary liquidations in England and Wales in the fourth quarter of 2008 (on a seasonally adjusted basis). This was an increase of 11.9% on the previous quarter, and an increase of 51.6% on the same period a year earlier. In the twelve months ending Q4 2008, approximately 1 in 150 active companies went into liquidation, compared to the previous quarter, when 1 in every 165 of active companies went into liquidation. Also in the fourth quarter of 2008, there were 29,444 individual insolvencies (on a seasonally adjusted basis), an increase of 8.2% on the previous quarter, and 18.5% up on the same period a year earlier. This was made up of 19,100 bankruptcies, and 10,344 Individual Voluntary Arrangements.<sup>10</sup>

This data shows that it is entirely credible that a significant element in the increase in clients being experienced by the advice sector is the self-employed, particularly (as we were told) those working in the construction sector. However, this is not a large enough group to create the level of additional demand which we were told of and which data from CABx demonstrates. We therefore looked at factors which might be affecting the financial position of the wider public, and leading to a possible need for legal advice.

### **Wider population**

Household expenditure in the UK increased by more than two and one half times between 1971 and 2007. At the same time, total household debt increased more than threefold between 1987 and 2007, but since household disposable income also increased (adjusted for inflation,

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<sup>10</sup> The Insolvency Series Statistics Release: Insolvencies in the Fourth Quarter 2008

by more than 160% between 1971 and 2007), debt as a proportion of household disposable income increased only slightly – from 84.4% to 94.4% – over this period. At the same time, in 2006/7 around a quarter of households in the UK had no savings.<sup>11</sup> With no savings and high outgoings, it is possible that increasing numbers of people are finding their levels of debt “unserviceable”, or are concerned that they may become unable to service them. This will particularly affect those who, previously, were relatively “comfortable”, with significant disposable income, and felt confident about taking on debt.

Advice providers, particularly those dealing with debt problems, told us they were starting to see a different client group, more likely to be (or recently to have been) in “white collar” employment and more likely to own their own home. A similar story emerges from Consumer Credit Counselling Service [CCCS] data. In March CCCS’ research showed that in 2008 12% of its clients had net household income above £30,000 (against 8.7% in 2007) and 47.4% were homeowners (against 42.6% in 2007). Homeowners who approached CCCS owed on average 83% more than those in rented accommodation.<sup>12</sup> The vast majority of CCCS client debts are on credit cards and personal loans, with the average client owing over £14,000 on each of these.

National Debtline data also shows distinct differences between callers in January 2008 and those in January 2009. There was a marked increase – from 10.9% to 15.31% in the proportion of those calling who were unemployed. In terms of the debts with which callers were dealing, the “top two” types of debt increased slightly in prominence: bank/building society loans/overdrafts (from 69.06% to 71.05%), Credit/charge/store cards (68.72% to 69.96%). The number of callers in difficulties with their “first mortgage” increased from 9.43% to 12.11%. These figures, and anecdotal information, indicate that the influx of newly indebted (and “worried well”) clients may be as a result of an increase in levels of credit card debt, and higher mortgages, both accrued during the period of relative financial comfort referred to above. These factors are therefore examined in more detail below.

Credit cards: There was a fourteenfold increase in the value of payments by debit card between 1991 and 2007<sup>13</sup> while the value of automated payments (including Direct Debits) increased nearly threefold over the period. The value of payments by credit card and store card slowly increased between 1991 and 2003, then stabilised. In 2003 67m credit cards were in circulation in the UK, more than half

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<sup>11</sup> Social Trends 39: 2009 edition

<sup>12</sup> Reported in the Guardian 18 March 2009

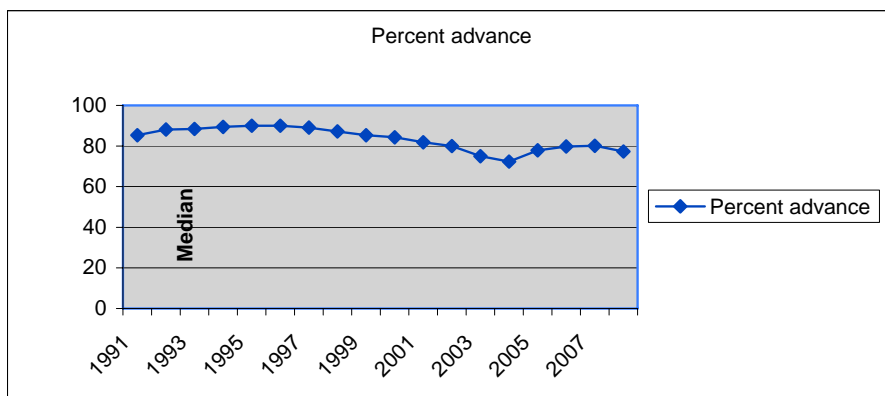
<sup>13</sup> Social Trends 39: 2009 edition

the credit cards in Europe.<sup>14</sup> By 2007 more than nine in 10 adults aged 16 and over in Great Britain had at least one plastic card. In 2008 in the U.K. debts of more than £50 billion had been run up on credit cards.<sup>15</sup> Data collected between August and September 2006 showed that 19% of adults sampled had an average credit card debt of £2,284, whilst 16% had an unsecured personal loan averaging £7,751.<sup>16</sup>

**Mortgages:** In the period since the recession of 1991/92 the proportion of the population of the UK who are owner occupiers has stayed roughly stable, at around 68% (after rising to 70/71% from 2000–2005). The total percentage buying their home with a mortgage was 43% in 1992, but had fallen to 37.3% by 2008 (with the commensurate increase in the proportion owning outright). The percentage of people living in private rented accommodation has risen during the same period from 9% in 1992 to 13.9% in 2008, whilst “social renters” fell from 22.8% of the population to 17.7%.<sup>17</sup>

As Bank of England analysts put it,<sup>18</sup> during the past decade “Strong competition in new mortgage lending drove mortgage interest spreads progressively lower, and mortgages became available to a wider range of borrowers, including those with limited or no deposits”.

These products formed only a small part of the market, however, and, overall, both Loan to Value and Income Multiples showed only a small rise.



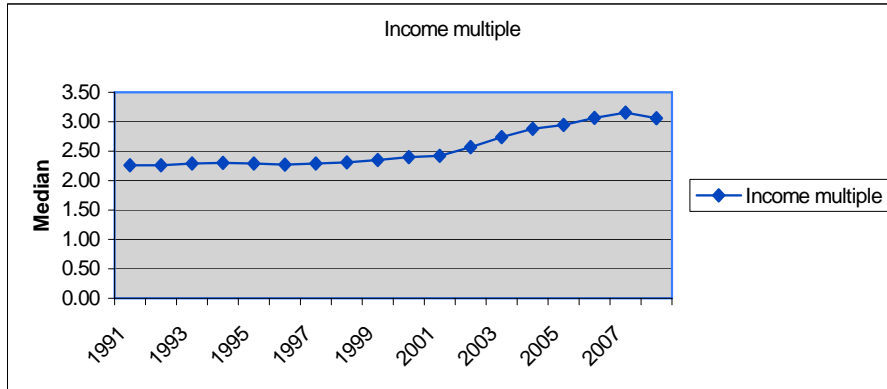
<sup>14</sup> Reported in the Guardian 3 November 2004

<sup>15</sup> Reported in the Sunday Times July 13 2008

<sup>16</sup> Social Trends 38: 2008 edition

<sup>17</sup> DCLG Survey of English Housing Preliminary Report: 2007–08

<sup>18</sup> Trends in Lending, April 2009



At the end of 2008, around 182,600 mortgages (1.57% of the total) had accumulated arrears equivalent to 2.5% or more of the outstanding balance, compared to 1.08% at the end of 2007.<sup>19</sup> Despite this, mortgage possession actions in the courts fell significantly between 2007 and 2008. The seasonally adjusted total of claims issued in the fourth quarter of 2008 (26,008) was 29% lower than in the fourth quarter of 2007, and 32% lower than in the third quarter of 2008. Landlord possession claims also reduced, though less sharply. The seasonally adjusted total of 36,118 was 3% lower than in the fourth quarter of 2007, and 2% lower than in the third quarter of 2008.<sup>20</sup>

As at February 2009, according to YouGov research<sup>21</sup> about a quarter of British households – roughly 6 million – reported that they were struggling to keep up with their bills, or were actually falling behind. Based on a range of research sources and an informal poll of some large lenders, the Council of Mortgage Lenders argue that there is “a clear correlation between disruptive experiences and the extent to which households struggle with their bills and commitments”.

<sup>19</sup> CML Arrears and Possessions in 2008

<sup>20</sup> Ministry of Justice Statistics Bulletin 20 February 2009

<sup>21</sup> Quoted in CML News and Views Issue no. 7, 7 April 2009

**Table 1 Reasons for mortgage arrears**

Reason (%)	1995/96	1998/99	2001/02	2003/04	2005/06
<i>Loss of income</i>					
Lost earnings through sickness/injury	12	15	22	20	19
Self-employed income reduced	22	22	15	13	18
Unemployed	38	34	30	27	25
Lost overtime or reduced hours of work	11	8	11	8	7
Worked same hours for less pay	7	2	4	4	3
<i>Household changes</i>					
Spouse/partner left/died	14	18	21	19	19
Other contributor to mortgage left	6	4	7	5	5
Contributor became pregnant/new baby	8	6	6	3	3
<i>Increases in expenditure</i>					
Increase in mortgage payments	14	16	13	8	8
Increase in other payments	17	16	16	12	14
<i>Other</i>					
	18	16	16	22	24
Total number of households reporting arrears		252,000	166,000	95,000	105,000

Notes:

(1) With the exception of 1995/96, the figures are three-year moving averages.

(2) Columns total to more than 100 as respondents can cite more than one reason.

Source: Survey of English Housing

The three primary events underpinning difficulties keeping up mortgage payments appear to be: loss of income (whether through becoming unemployed or through illness); a change of household (e.g. the arrival of a child); or an increase in spending (e.g. replacing major household items, or car or property repairs). These “debt drivers” strongly echo and expand on the drivers of demand for advice services identified by Pleasence and Balmer (see above). This examination appears to support the anecdotal information from providers about the appearance of a “new” client group for advice services.

At the present moment ... I am seeing a different type of individual and these are mainly the middle and upper income bracket individuals who possibly if they had the resources they could get a solicitor and deal with the problem. Now because of the economic situation, recession or credit crunch or whatever they cannot afford it and they are coming to us. (*advice centre*)

...so we've got, you know, somebody who has never looked at benefits before now needed to look at benefits. Thought they had saved, money in the bank, safe as houses. Like I say it's a completely different group of people than would be [our] traditional ... clients. (*advice centre*)

Although many of the “new client group” are attending advice centres, often during “walk in” sessions, we were told by some providers that the “new” group – and some existing groups, particularly young people –

preferred to access advice through other modes, such as by telephone or via the internet. The past few years have seen huge growth in the availability of advice via these methods, responding to the increased usage of them by the public for a range of day-to-day activities.

By 2007, 89% of households had a telephone, and 78% a mobile 'phone, including 60% of households in the lowest income group.<sup>22</sup> The number of households with access to the internet rose in 2008 to over 16 million (65%). In 2006 almost six in ten (59%) internet users went online every day or almost every day. Of adults under 70 years of age who had a degree or equivalent qualification, 93% had access to the internet at home.<sup>23</sup>

### **Ways of accessing advice**

Recent years have seen an expansion and broadening of the ways in which citizens are able to access help from advice services. Many agencies have initiated or strengthened their telephone advice provision and some have established e-mail, web chat and other interactive services. In some cases the rate of expansion has been rapid.

The Community Legal Advice [CLA] telephone service was established as recently as 2004 but now deals with more than 500,000 calls per year. The number of people accessing webchats with the youth helpline Get Connected went from 35 in 2006 to 5151 in 2008. However, development has tended to be piecemeal, due partly to the instability of funding for many third sector organisations. For example, Citizens Advice does not currently have a national telephone service, although it is rolling out a national "virtual call centre" which will commence operation for Wales in September 2009, and for the rest of England in September 2010.

On-line advice tools are also largely in their infancy, largely due to the high entry costs of developing such products. Organisations such as Citizens Advice ("Adviceguide") and Money Advice Trust have developed useful on-line tools. However, the fragmented way in which advice is funded, and a general lack of co-ordination, risk duplication of efforts, poor use of resources and confusion for would-be clients.

The management consultancy firm AT Kearney runs an annual survey comparing the views of citizens on public services with the managers of those services. The latest version demonstrates the continuing discrepancy between how citizens say that they want to access services and how those services are actually provided.

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<sup>22</sup> Expenditure and Food Survey, Office for National Statistics

<sup>23</sup> National Statistics Omnibus Survey



	<b>Citizens stated preferred communication channel</b>	<b>How services are actually provided</b>
Face to face	13%	47%
Telephone	59%	45%
Post	20%	30%
e-mail or on-line	16%	25%

N.B. Respondents were able to choose several options, so totals are over 100%.

It should be noted that this refers to **all** public services, and, of course, that citizens' stated preferences may not be how they would act in practice (particularly if a high quality service is available in a channel that would not be their first choice). That said, the implication of this survey is that the provision of services (including legal advice) face to face may not be the preferred option for all clients, if a choice is available. Alternative channels may also be more cost-effective: one significant provider of advice estimates that the average saving of providing advice by telephone rather than face to face is in the region of 60 per cent.

A key issue here is that there is relatively little customer insight research examining people's preferences and current provision covering the advice sector. While some organisations have a relatively sophisticated suite of customer insight research (Money Advice Trust for example), many have little or no evidence on which to act.

The primary source of evidence to track changes in the way people access advice services is the Civil and Social Justice Survey conducted by the Legal Services Research Centre. This survey is currently conducted on a rolling quarterly basis and involves interviewing several thousand people per year about civil justice problems they have faced and action taken to resolve them. The 2007 survey comprised interviews of 3,658 people. Our analysis is based on data contained in the surveys conducted in 2004, 2006 and 2007.<sup>24</sup>

In each of the three surveys more than 50 per cent of the respondents who had sought help to resolve their civil justice problems made their first attempt by phone (see Table 1). The second most popular mode of access was face to face, with more than 35 per cent of respondents seeking advice in this way in each of the years of the survey. However the proportion seeking advice in person dropped by more than 10 per cent in the 2007 survey. It is not yet clear whether this is a one-off decrease or part of an ongoing trend.

It is also important to bear in mind the effect of capacity of the different modes of contact on advice-seeking behaviour. For example, as stated above, Citizens Advice does not currently have a national telephone service. Instead some (but not all) bureaux offer their own telephone advice service. Citizens Advice estimate that due to capacity issues as many as 85 per cent of calls to bureaux go unanswered. This may cause some callers to give up trying to resolve their problem and to others using a different mode of contact (for example face-to-face). The converse may apply. A lengthy queue at a face-to-face advice provider may lead users to contact a service primarily based on telephone and e-mail.

The number of people who make initial contact by post or by e-mail/internet, remains relatively low (4.5 per cent and 2.5 per cent respectively in 2007). However in each case there has been a significant increase over the proportions reported in 2004 – 55 per cent and 38 per cent respectively.

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<sup>24</sup> There was no published survey for 2005 as the survey was conducted initially on a periodic rather than a rolling basis.

The relatively low levels of people making contact by e-mail or internet may seem surprising. However significant civil justice problems disproportionately affect vulnerable people and those in lower socio-economic groups and among this section of the public more than 48 per cent do not have regular access to the internet. National Debtline report that hits on their website increased only marginally (from 22 million to 23 million) between 2005 and 2007 but the number of e-mail enquiries answered increased from 4,775 to 7,971 between 2005 and 2008. By comparison National Debtline answered 171,647 telephone calls in 2008.

Many organisations have developed on-line modes of access relatively recently and so the effects may not yet have filtered through to the Civil and Social Justice Survey. For example we understand that in December 2008, for the first time, ParentLine Plus received more requests for webchat than 'traditional' voice calls, and that Relate report good uptake of their recently established webchat service. Uptake of on-line services often varies significantly between demographic groups. Members of the Youth Helpline Network commonly receive significant volumes of request for help by webchat or by SMS (mobile phone texting). Get Connected (a key youth gateway helpline) recognise that young people are beginning to prefer to contact them through new channels. Calls still constitute 92% of demand for the helpline, email, 2% and webchat 7%. The mode of contact and the nature of the issue are also closely associated; for example, contact regarding self-harm constitutes just 3% of calls to the helpline, but 20% of webchats. People making contact in respect of issues concerning mental health, suicide and sexual abuse also factor much higher in webchats and emails than calls. Anecdotally, several youth organisations have said that young people tend to discuss such issues far more quickly in a web chat or e-mail exchange than in a phone conversation.

The LSRC survey also showed that the initial method used to attempt resolution of a legal problem varied significantly between different problem types (see Table 2). Most respondents attempting to resolve problems concerning immigration (75 per cent), actions against the police (67 per cent), homelessness (66 per cent) and mental health (57 per cent) did so in person. By contrast, relatively few respondents made their first contact in person to resolve problems relating to domestic violence, neighbours, children or divorce; instead, most made their first contact by phone (67, 64, 62 and 61 per cent respectively). The numbers of people making their first contact by e-mail or letter are too low to allow statistically significant analyses of this nature.

Mode of contact	% of respondents who made their first attempt to resolve their problem using this mode of contact – 2004 survey	% of respondents who made their first attempt to resolve their problem using this mode of contact – 2006 survey	% of respondents who made their first attempt to resolve their problem using this mode of contact – 2007 survey
By telephone	52.0	51.2	52.4
In person	39.6	39.0	35.3
By post	2.9	3.7	4.5
By e-mail / internet	1.8	2.0	2.5
Through someone else	2.1	3.8	5.1

Table 1: Initial mode of contact with adviser<sup>25</sup>

Description	In Person		By telephone		By post		Other	
	No.	%	No.	%	No.	%	No.	%
Discrimination	18	43	21	50	0	0	3	7
Consumer	72	34	115	54	9	4	15	7
Employment	62	41	71	46	5	3	16	10
Neighbours	45	26	112	64	4	2	15	8
Housing (own)	19	31	31	50	3	5	9	14
Housing (rent)	30	44	33	48	2	3	4	6
Homelessness	23	66	10	29	2	5	0	0
Money/debt	49	34	73	50	13	9	10	7
Welfare benefits	33	41	44	54	3	4	1	1
Divorce	24	33	44	61	1	2	3	4
Relationship breakdown	23	31	40	55	5	7	5	7
Dom. Violence	9	30	20	67	0	0	1	3
Children	16	34	29	62	1	2	1	2
Personal injury	58	45	56	43	5	4	10	8
Medical Negligence	16	47	13	38	2	6	3	9
Mental health	4	57	3	43	0	0	0	0
Immigration	6	75	1	13	0	0	1	12
Police	10	67	4	27	1	7	0	0
	517	37%	720	52%	56	4%	97	7%

Table 2: Mode of first contact by problem<sup>26</sup>

<sup>25</sup> Source: Legal Services Research Centre: Report of Civil and Social Justice Survey 2004, 2006 and 2007

<sup>26</sup> Source: Data from the Legal Services Research Centre: Civil and Social Justice Survey. Bespoke analysis

## Summary

The current recession is already having an impact on both the volume and the nature of demand for legal advice. This increase in demand, and the role of advice in reducing the recession's impact on individuals, is widely recognised at national and, in some areas, at local government level. Significant additional funding has been made available to support this additional burden, including additional funding from the LSC. At the same time, the eligibility limits for legal aid have been increased by 5%, which will increase the number of people who can access legal aid-funded advice.

Many of those seeking legal advice as a result of the recession are not in the advice sector's "conventional client group". We were told that a high proportion were self-employed, or small business owners. This may be the first group to experience problems, but it seems likely that others who have accrued high levels of credit – including large mortgages – may find levels of debt unmanageable and seek help with this and related problems. In light of the high proportion of the population with access to telephones (including mobile 'phones) and/or the internet, this may provide an effective (and cost-effective) alternative route for the provision of legal advice to this "new" group of clients.

## Chapter 2: The Impact of Civil Legal Advice Fixed Fees

### History

Legal aid was established in 1949 through the Legal Aid and Advice Act – this year we are celebrating its 60<sup>th</sup> anniversary. The act comprises two parts: criminal legal aid and civil legal aid, and was developed to ensure that vulnerable and disadvantaged people can have access to justice even if they are unable to pay for it. Since 1949, millions of people have benefited from advice, support and representation made available by the act.<sup>27</sup>

Legal aid can change people's lives. A lack of access to reliable legal advice can be a factor that contributes to the creation of social exclusion. The government has prioritised the tackling of the issue of social exclusion because of the huge costs to individuals and society and the impact it has on public spending and competitiveness of the economy. Early intervention with good advice for problems that arise can prevent the involvement of courts and can reduce hardship for a large number of people.<sup>28</sup>

Responsibility for the administration of legal aid has changed over time.<sup>29</sup>

- 1925 – 1988: The Law Society (ended with the Legal Aid Act 1988)
- 1988 – 1999: The Legal Aid Board (a non-departmental public body)
- 1999: Access to Justice Act created the Legal Services Commission (a non-departmental public body)
- 2000 – Present: The Legal Services Commission (LSC)

### Reform of legal aid

The main reason for reform was the continuing and unsustainable increase in legal aid expenditure. The paper 'A Fairer Deal for Legal Aid'<sup>30</sup> analysed the development of legal aid services and outlined the

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<sup>27</sup> A Fairer Deal for Legal Aid – Department for Constitutional Affairs, 2005

<sup>28</sup> A Pathway out of Social Exclusion – Lord Chancellors Department & Law Centres Federation, 2001

<sup>29</sup> A Fairer Deal for Legal Aid – Department for Constitutional Affairs, 2005

<sup>30</sup> A Fairer Deal for Legal Aid – Department for Constitutional Affairs, 2005

Government's proposals to reform the provision of legal aid in England and Wales.

There were two key factors that were significant in contributing to the increase in legal aid expenditure. In 1960, the government concluded that the blanket fixed-fee system in place from 1949 to 1960<sup>31</sup> was not fairly rewarding lawyers for their work, leading to an input-based procurement regime being introduced that paid hourly rates. The Government also decided that legal aid should be paid by taxpayers at national level instead of by local funds (i.e. ratepayers); this was to be accomplished through the Legal Aid Fund for magistrate's courts, and by the Home Office for higher courts.

The effects of these changes were dramatic. The proportion of defendants receiving legal aid in jury trials (Crown Court) increased from 39% in 1962 to 79% in 1966. In magistrates' courts, there was a four-fold increase in those receiving legal aid, from 0.3% to 1.2% in 1964. The costs and volumes of funding free legal help for magistrates' courts also grew. Costs increased from £6.8m in 1966–67, £115m in 1982–83 to more than £324m in 2004–05.<sup>32</sup> Despite administrative changes, expenditure on civil and family legal aid rose 19% from 1992–93 to 1997–98, this was matched by a 31% decrease in full civil legal aid cases started each year.

Later data gives further evidence of spiralling costs of legal aid, from £1.5bn in 1997 to over £2bn. There was a disproportionate growth in expenditure: criminal legal aid expenditure increased by 37% but civil legal aid decreased by 24%. There was also evidence that there had been a bias towards court-based outcomes and insufficient emphasis on resolving problems without the involvement of the courts. The spread of funding was not responding quickly enough to meet demand due to a small number of expensive cases.

The majority of expenditure was on lawyers' services, with the Legal Aid Board determining where the money was spent. Due to the framework, funding could not be denied to any firm that was undertaking any quantity of criminal defence work. Funding this number of firms was inefficient, placing a large administrative burden on the Board. Various attempts were made to restrict the number of firms carrying out work each year, whilst the Legal Aid Board administered the funding, but they were unsuccessful.

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<sup>31</sup> Implemented as part of the Legal Aid and Advice Act 1949, which followed on from the Rushcliffe Committee report in 1945

<sup>32</sup> In real terms, 2005 prices

After the LSC took over the administrative role from the Legal Aid Board in April 2000, legal aid expenditure continued to rise but there were two areas that showed particularly rapid growth during the period 1997–98 to 2004–05: child-care and related proceedings and asylum. Legal aid for asylum cases rose due to the increasing number of people applying for asylum and the urgency with which their applications needed to be dealt with. Costs for this started to decline as the government started to control the number of asylum cases.

Expenditure on civil and family justice (excluding asylum spend) declined by 24% in the same period, 1997–98 to 2004–05, but at the same time, the number of people receiving representation and help declined by 39% and 45% respectively. It could be concluded that if the number of people being helped and represented has declined faster than the expenditure on these cases, then the average cost per case has increased significantly. The reduction in spend can also be partly explained by the removal of funding for categories such as personal injury, as part of the Access to Justice Act 1999.

Since 2000/01 alternative types of provider have been funded, in particular “not for profit” providers such as Law Centres or Citizens Advice Bureaux, and, increasingly, advice provision via the telephone and internet. The latter have been vital in addressing the issue of advice provision in some parts of the country where it is difficult to ensure the availability of face to face help.

‘A Fairer Deal for Legal Aid’ highlighted a number of areas which the Government’s long-term strategy for legal aid needed to modernise. There was a need to rebalance expenditure between civil and criminal legal aid and to address the problems with the then current system (the report was published in 2005). The critical element was the way in which the government procured legal aid services.

Lord Carter’s review of legal aid procurement detailed a system that would achieve the maximum value for money, whilst also ensuring quality and fairness.<sup>33</sup> Prior to Carter’s review there had been various attempts to improve efficiency but they were unsuccessful in halting the increase in legal aid spending. England and Wales have the highest legal aid expenditure per capita of anywhere in the world, with total legal aid expenditure increasing to £2 billion in 2006 from £1.5 billion in 1997. Making a comparison between developed countries, our expenditure is approximately £38 per head of the population compared to between £3 and £4 in France and Germany. Countries with similar

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<sup>33</sup> Legal Aid: A Market-based approach to reform – Lord Carter’s Review, 2006

legal systems, like New Zealand and the Republic of Ireland, spend around £8 per head.<sup>34</sup>

## Recent reforms

### Lord Carter's Review

The Government asked Lord Carter to devise a system of legal aid procurement that would deliver the following objectives:

- Good quality legal advice and representation for clients;
- A sustainable, effective and efficient supplier base;
- Value for money for the taxpayer; and
- A contribution to the efficient, speedy and proportionate operation of the criminal justice system.<sup>35</sup>

The reform was necessary due to the scale of the continuing rise in expenditure, not as a result of wastefulness (either individually or collectively) but due to a systemic weakness in the way in which legal aid services were procured and the inefficiencies associated with them.

Lord Carter concluded that the best way to achieve the objectives was a legal aid system based on best value competition with quality, capacity and price as the main criteria. To address the issue of quality, he proposed that there should be a minimum standard of quality for all practitioners.

A market-based system was argued to be more efficient to run than an administratively based system as there would be an incentive for greater efficiency amongst providers, with negotiating and bureaucracy costs being amongst the efficiency savings. He believed that this type of system also offered the best long-term guarantees for a stable and sustainable legal aid system, and with practitioners making a reasonable return on their investment, new entrants would be attracted to enter the market.

### Transition Period

Lord Carter proposed a system of fixed and graduated fees to manage the transitional period to full market competition. This managed transition period would, he suggested, be used to sustain and promote a diverse and sustainable supplier base, enabling clients to be confident in the quality of service they receive and still offer a choice of legal

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<sup>34</sup> Civil Bid Rounds for 2010 Contracts: A consultation - Legal Services Commission, 2008

<sup>35</sup> Legal Aid Reform: the Way Ahead – Department for Constitutional Affairs, 2006

representation. A reformed system should pay fair market prices to sustain a pool of suppliers that deliver predictable volumes of good quality and efficient legal services to all eligible clients.<sup>36</sup>

The aim of the procurement system is to ensure value for money, without compromising quality and access to legal advice.

Pricing and payment systems should:

- Optimise the most efficient allocation and provision of good quality work amongst the profitable independent firms that make up the pool of suppliers.
- Redistribute payments towards provision of productive services and away from travel and waiting.
- Produce simplicity and transparency in the system and reduce transaction costs.

The new fee structure has been implemented to control the increases in costs to legal aid (in the context of an overspend of £130 million) and to contain legal aid expenditure within a finite budget, potentially creating better value for money.

It has also allowed the LSC to “level the playing field”, removing some of the potential bias in past funding formulas. It is intended to provide a more open and responsive market where risks are shared between provider and purchaser, efficient providers are rewarded and inefficient providers are pushed to either change or exit the market. There is also the element of predictability of payment that encourages a focus on the work required and ultimately impacts on efficiency.

The intention has always been for fixed fees to be part of a managed transition towards competitive pricing in the legal advice market, which was discussed by Lord Carter in his review. The current fixed fee scheme is therefore an interim stage. This staged approach is intended to allow providers an opportunity to adjust to the new structure, by continuing to deliver and to improve upon their service, so that when best value tendering is rolled out they will be able to compete with other service providers for contracts.

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<sup>36</sup> Legal Aid: A Market-based approach to reform – Lord Carter’s Review, 2006

### **The current fixed fee structure**

The (then) Department for Constitutional Affairs and the LSC produced the report 'Legal Aid Reform: the Way Ahead' as the response to Lord Carter's independent review of how legal aid services are purchased. The formal intentions for the development of civil legal aid services were set out by the LSC in 2006 in the Community Legal Service Strategy.

The current scheme of fixed fees took effect on 1 October 2007 replacing the General Civil Contract and Family Mediation Contract. It should be noted that these fees only cover Controlled Work (see below), and do not cover the majority of Certificated/Licensed work (see below), which is still paid under hourly rates and forms the majority of civil spend.

The former contract paid an hourly rate of compensation without restriction on the number of hours that could be claimed per case, which did not incentivise suppliers to be efficient. The current contract is phase one of a managed progression towards best value tendering, with the second phase planned to be introduced in 2010 following the consultation which closed on 23 January 2009.<sup>37</sup>

From the provider perspective the scheme replaced Tailored Fixed Fees. The major differences were:

- Instead of paying a tailored fixed fee based on a provider's individual average case costs, a standard fee is now applied to all providers (solicitors and nfps). In the past each nfp agency had their own hourly rate – which was calculated by negotiating a salary scale for the caseworker and adding elements for supervision, management, running costs and VAT if applicable. These fees are based on the historic costs of reported cases for solicitor and nfp providers.
- The scheme changed some of the original incentives for nfps by paying for cases closed as opposed to time spent.
- The fee covers profit costs (including travel and waiting) and counsel's fees, although disbursements are not included and are therefore paid separately.
- "Tolerance" cases are paid under a different (lower) fee structure.
- Under the current structure there is one Unified Contract for each legal aid provider, instead of the former process of a contract per office, reducing some administrative burden.

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<sup>37</sup> Civil Bid Rounds for 2010 Contracts: A consultation - Legal Services Commission, 2008

It was decided that national rather than regional fees would be used as the broad range of costs within regions means that the fees based on the LSC regional boundaries could not truly reflect local conditions. In some categories there are a smaller number of providers, meaning that one large provider – who may for example have low costs, could distort the averages.

In addition, Level 1 work (which allowed nfps to undertake 10% of cases for clients whose legal aid eligibility was not assessed) was removed. This allowance was withdrawn because the LSC and the Ministry of Justice considered funding needed to focus on eligible clients and specialist advice. The funds allowed for this were not taken out of the system – the costs of this work were included for the purpose of calculating the fixed fees. Removal of Level 1 has particularly impacted on the provision of telephone advice by providers, who can now only help those who provide evidence of eligibility. (For the LSC's own telephone Community Legal Advice service [CLA] the initial eligibility test is applied by the operator prior to any referral.)

... before we didn't even open up the simple cases, to be honest, we just dealt with them as one off advice at level 1, because what is the point of opening a file, opening it on the system,... confirming everything in writing, going through all of this admin when in fact a simple phone call would sort it out or with level 1 it was a simple half an hour face to face. We are now opening those as cases. They are now new matters started. (*advice centre*)

There are several different 'levels of service' funded through the Community Legal Service:

- **Legal Help** – In the majority of civil legally aided cases, clients will initially receive legal advice and assistance under this level of service. Legal Help is a level of funding classed as 'Controlled Work', where funding is granted by the lawyer without needing to refer to the LSC. The LSC's 'control' of this process is that, under their contract with the LSC, the provider organisations have a fixed number of cases that they can start in this way (New Matter Starts (NMS)) in any category of law. The Civil Office Schedule is issued to all LSC contracted providers to allow the LSC a certain degree of control over the NMS allocation (prior to the Unified Contract introduction, NfP's were allocated hours rather than NMS under the Civil Office Schedule).
- **Help at Court** – This is a level of service permitting the lawyer to represent the client in a court or (in scope) tribunal on a relatively informal basis, for instance to argue that a possession order should

not be enforced immediately, rather than to argue a substantive legal point.

- **Legal Representation** – This level of service is generally used to represent a client at court. Legal Representation can be provided in two ways, Controlled Legal Representation and Certificated / Licensed Work.
  - *Controlled Legal Representation* – Legal Representation before the Mental Health Review Tribunal (soon to be part of the First-tier Tribunal) and before Immigration Tribunals (and certain High Court immigration appeals) is provided as Controlled Legal Representation. It is therefore subject to the provisions of Controlled Work.
  - *Certificated / Licensed Work* – Most Legal Representation is provided under Licensed Work. Under this form of funding, there is no limit under the Contract to the number of cases that can be undertaken. However, the lawyer must obtain a license, in the form of a public funding certificate, usually by application to the LSC, in order to undertake a particular case.

Disbursement costs remain exactly the same as before the introduction of the fee schemes and fall outside the fixed fees.

The revised fees and the categories covered as of 1 July 2008 are as follows:

Category	Under SQM		Tolerance	
	Fixed Fee	Exceptional Threshold	Fixed Fee	Exceptional Threshold
Actions Against the Police	£266	£798	£154	£462
Clinical Negligence	£217	£651		
Community Care	£296	£888	£179	£537
Consumer General Contract	£177	£531	£149	£447
Debt	£200	£600	£123	£369
Education	£302	£906	£152	£456
Employment	£230	£690	£150	£450
Housing	£174	£522	£138	£414
Miscellaneous	£88	£264		
Personal Injury	£208	£624		
Public Law	£288	£864	£207	£621
Welfare Benefits	£167	£501	£136	£408

This is an uplift of 2% across all categories from the fees used the year before.

	<b>Stage 1 Legal Help</b>	<b>Stage 2a Controlled Legal Representation</b>	<b>Stage 2b Controlled Legal Representation</b>
Asylum Graduated Fee	£459	£252	£630
Immigration Graduated Fee	£260	£252	£504

#### Additional payments for immigration and asylum cases

Representation at the Home Office Interview (Asylum and Immigration cases within scope)	£296
Representation at oral Case Management Review Hearing	£184
Representation at telephone Case Management Review Hearing	£100
Representation at substantive AIT hearing	Asylum £336 Immigration £263
Additional hearing: part heard or relist	Asylum £179 Immigration £179
All disbursements (interpreters & translators, expert reports, travel expenses)	Separate payments outside of Graduated Fee Scheme, subject to cost thresholds

#### Mental Health

<b>Basic Fees</b>	<b>Value</b>
Non-Mental Health Review Tribunal [MHRT]	£281
Level 1 (MHRT)	£143
Level 2 (MHRT)	£357
Level 3 (MHRT)	£327

<b>Additional Fees</b>	<b>Value</b>
Adjourned Hearing Fee	£130
Remote Travel Payment Level 1 (MHRT)	£77
Remote Travel Payment Non-MHRT Level 2 (MHRT) Level 3 (MHRT)	£153

As stated above, the fees apply to any cases started on or after 1 October, 2007 (with the exception of cases under the Mental Health Scheme which began on 1 January 2008), all cases that started prior to this date continued to be paid for under the pre-transitional scheme. Under the current structure there are only 2 tiers of fees, the fixed fee and the exceptional fee (which is calculated as a case valued at least three times the fixed fee). Current solicitor hourly rates are used to calculate whether a case is considered exceptional or not (with London providers using the London hourly rates).

Exceptional cases undergo more scrutiny by the LSC with all exceptional cases subject to assessment. When the cases are submitted as exceptional the provider is initially paid the Standard Fee, while the costs are being assessed by the LSC, and then credited with any balance deemed appropriate by the LSC. 85% of exceptional cases claimed so far have been paid in full; in 10% of applications the client was not eligible for legal aid, and no claim should have been made; the remaining applications are either paid at the fixed fee level, or have been rejected because the case started prior to introduction of the fixed fee scheme.

In order to control the volume of cases claimed, agencies were issued in September 2007 with a Civil Office Schedule detailing the number of New Matter Starts (NMS) over an 18-month period ending 31 March 2009 that were allocated to the agency. Agencies must use a minimum specified percentage of these Matter Starts within a given contract year. Agencies were also issued with a maximum number of cases that the LSC would pay for. The NMS allocations were guaranteed until 30 March 2008, and agencies were told that the numbers would not be lowered if the agency performed below 85% usage between 1 October 2007 and 30 March 2008.

There is a separate fee for tolerance work and the fee for these cases will be based on the average costs of these cases; meaning that in some categories it will mean that tolerance fees are more than 15% below other cases and in some categories less.

The focus of the current study is on the existing fixed fee scheme, and the impact it has had or is having on the availability and provision of local legal advice. Whilst a consultation on Civil Bid Rounds for 2010 contracts has recently closed, the proposals in that consultation paper have not been included as part of the study.



## The impact of the fixed fee scheme

The intended benefits of the current fixed fee scheme are that it:

- Enables the budget for community legal advice to be controlled more effectively
- Create better value for money by rewarding outputs (cases closed) rather than inputs (hours spent)
- Rewards efficient providers and forces inefficient providers either to change or to exit the market
- Creates an incentive to get to the heart of a case and resolve it quickly, rather than allowing cases to “drag on”.

Fixed and graduated fees revolve around the concept of ‘swings and roundabouts’ – where an expensive case is balanced, over the long run, by a case that is relatively cheaper than the fixed fee.<sup>38</sup> For fixed and graduated fees to encourage efficiency, providers have to consider their overall caseload, rather than looking at how the fee applies in a particular case.

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<sup>38</sup> Legal Aid Reform: the Way Ahead – Department for Constitutional Affairs, 2006

Providers are expected to take on a range of cases reflecting the needs within their community and not to specialise in different sub categories. Providers are also encouraged to develop services across different categories of civil and family law; and by holding the Specialist Quality Mark [SQM] firms are agreeing to deal with a range of cases. If providers focus on particular categories of law or levels of expertise, it reduces the potential for the ‘swings and roundabouts’ effect of cheaper cases compensating for more expensive ones. During our “snapshot visits”, a range of providers told us they saw their organisation as part of an “ecology of provision” which the fixed fee scheme did not cater for.

it is not the very exceptionally long cases, it is not the fact that we do a lot of very exceptionally long cases, it is the fact that we do an awful lot of quite long cases and that we have had a relationship with other advice agencies in the area but they all do the quite short cases or middle of the road cases and refer the more complex ones to us (*advice centre*)

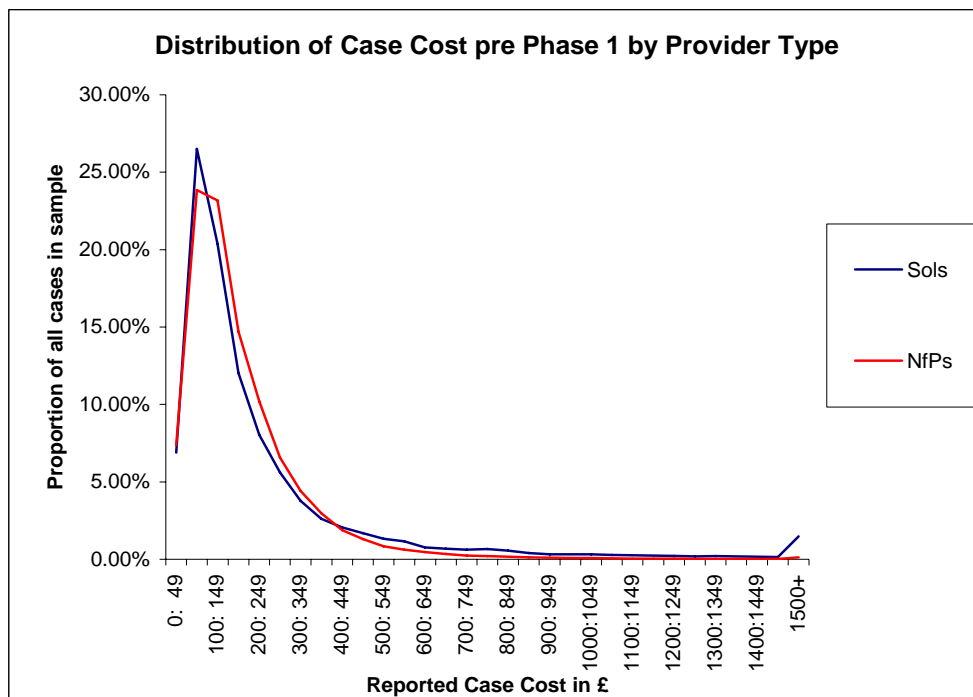
The concept of an “ecology of legal advice provision” is of a specified, recognised and linked group of providers, between them covering the full range of types and levels of legal advice needed, but each specialising in a particular level (from information through to representation) and/or particular category of law (e.g. debt, housing). Clearly, where each organisation is undertaking a different level and type of work, the “swings and roundabouts” concept – where shorter simpler cases offset longer more complex ones – is less likely to function effectively.

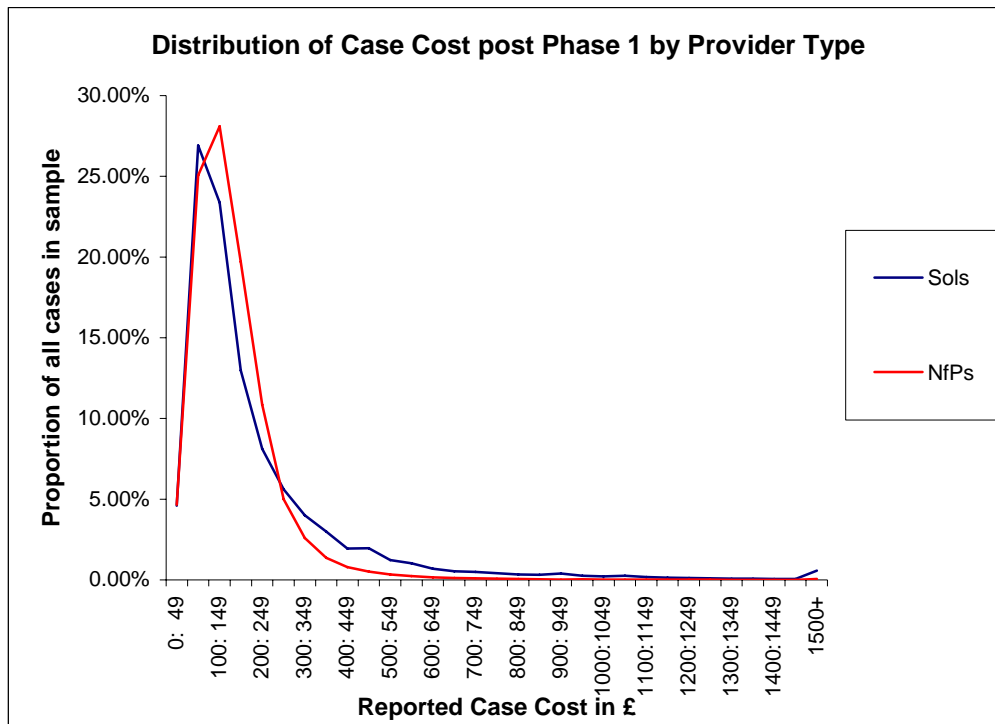
Attempts to monitor the impact of the fixed fee system are hampered by the inaccuracy of some of the data submitted. We were told that some of those reporting time spent on cases in both Law Centres and Citizens Advice Bureaux did not feel it was worth recording the precise time spent on a case, since, unless it reached the “exceptional” level, it would “only be paid at the fixed fee anyway”. The LSC are aware that providers are not claiming all their potential exceptional cases to be assessed and paid as there is a gap between what is being reported on LSC Online and actual file submissions. CABx have been urged in internal communications to continue recording timings accurately. Citizens Advice, via CAB Legal, argue that proper time recording is vital because:

- You need to be able to tell whether overall the contract is covering its costs or not
- You can monitor your performance against the ‘fixed fee margin’ key performance indicator (over a period, actual claims must not be less than 80% of the value of the fixed fees)
- You can identify cases defined as ‘exceptional’ by the LSC and be sure that you will get credited with the full value as recorded
- You can compare performance between different caseworkers accurately.

(issue 55, June 2008)

Using the data available, with the above caveat, the Legal Services Commission looked at the distribution of case costs – for solicitors and for nfps, “pre” fixed fees (cases started between 1<sup>st</sup> August 2006 and 30<sup>th</sup> September 2007 which were billed by the end of September 2007) and “post” fixed fees (cases started between 1<sup>st</sup> October 2007 and 30<sup>th</sup> November 2008, and billed by the end of November 2008). From the time periods it will be clear that this data only includes cases which were closed and billed within 14 months of their start date.





As the charts above show, there does not appear to have been a significant change to the distribution of case costs since the implementation of the fixed fee system, and a high proportion of cases fall below the level of the fixed fee.

**We recommend that further work should be done to consider the role of providers who focus on more complex cases or “difficult” client groups, including monitoring the level of claims for “exceptional” cases and the success of such claims.**

The aim of the fixed fee regime to increase the efficiency of providers has been realised in many areas. Providers have made great efforts – sometimes through reorganisation – to respond to the incentives to become more efficient. Where this has succeeded, the results seem to have been very positive.

it was hard to close clients, they became more dependent on us and you had a sort of co dependency could build up between the advisor and the client, that has pretty much been put to bed. We make it clear to them that we have advised you on all these issues, we cannot advise you under the LSC contract for another 6 months, you know, so that has helped.... that will empower them to take a bit more control so there have been some benefits. (*advice centre*)

We did note, however, only a limited focus on “back office” efficiency and financial expertise in the providers we spoke to. This is likely to be a result of the necessity for nfp providers of maintaining attention on the core business, leaving little time (and little priority) for administrative functions, and of the dearth of funding specifically targeting administration, increasing financial skills or improvements to information technology. For example, although providers in various areas talked about sharing “client facing” functions – particularly reception/triage – there was no suggestion of local providers sharing administrative or financial resources. A greater focus on improving “back office” efficiency – even, potentially, considering outsourcing some functions, could reduce costs significantly. According to Cass Business School’s Centre for Charitable Giving and Philanthropy, voluntary sector organisations with an annual income of £1m to £10m could conserve 40% of office costs by outsourcing.<sup>39</sup>

we have been looking at the LEAN management and we have had people in and we have been trying to trace through old processes, tighten them up, reduce waste and do all those type of things and we have been doing that for the last year and I think that it has started to have some impact you know and we have been a lot clearer with staff and we are managing that through appraisals and IFM’s and that type of thing and I think that is a good way to go. (*advice centre*)

**We recommend that the Ministry of Justice discusses with other funders and relevant Government departments whether funding aimed at increasing administrative, management and financial resources in the voluntary sector might be specifically targeted at nfp providers of legal advice.**

## Providers’ Concerns

### Perverse incentives

Providers we spoke to were almost unanimous in pointing out that the fixed fee scheme creates “perverse incentives”. This is, of course, true of any system. However, these particular incentives may warrant further consideration in view of their potential to impact on the numbers and types of clients assisted under legal aid. These concerns were raised in response to the consultations prior to implementation of the fixed fee scheme, but experience of working under the Unified Contract does not appear to have allayed them for providers.

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<sup>39</sup> Reported in Charities Aid Foundation Press Release 1 April 2009

Primary among the behaviours which providers believed the “perverse incentives” may encourage are cherry-picking; paralegalisation (or juniorisation); and case- (or cluster-) splitting.

**Cherry-picking:** The practice described to us as “cherry picking” is the creation of an imbalance in the case mix in order to take advantage of the “swings and roundabouts” system. “Cherry pickers” are those providers who only (or to an inappropriate extent) focus their efforts on less complex cases, and/or clients who will be “easier” (and thus quicker) to deal with, and refuse to take forward cases which appear likely to be more complex, or which involve clients who don’t speak English, who have chaotic lifestyles, or who suffer from mental health problems or learning disabilities.

The intention of the fixed fee scheme (as explained above) is that the cost of more complex cases (or more “difficult” clients) should be offset by the “quicker” cases (as shown in the charts above). Although we were not presented with any robust evidence, some providers told us that their organisation had started to “cherry pick”, others said that, although they did not yet do so, they felt that this was the route they were being forced down.

I can see why they’re trying to do it because no-one wants to pay a lawyer for extending the lengthy cases, I can see where that comes from but we get paid as much for doing a debt case that’s got two debtors in as for doing a debt case which has twenty debtors ..., so if we were a commercial organisation we would turn away the twenty-debtor cases because they are just too complex (*advice centre*)

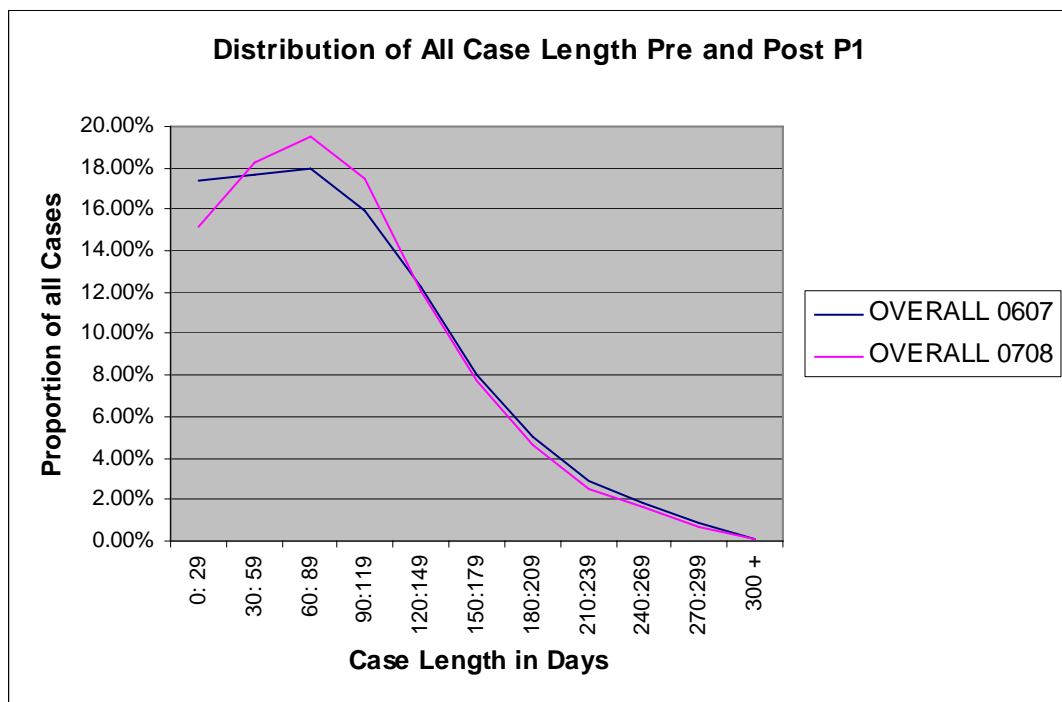
We have around 18–20 clients enquiring a week for services and are unable to help as it doesn’t work for us, and they aren’t going to find that advice anywhere else. (*private practice solicitors*)

There are two aspects of this which are cause for concern. First, if more complex cases are not dealt with effectively at the earliest possible stage, they are likely to grow more urgent, and to cost more (in legal aid funding, as well as in other costs to the public purse and to the individual involved) when they are finally resolved. For example, someone with a complicated landlord/tenant dispute who is turned away from a legal advice provider may end up only receiving assistance “at the door of the court” from a housing advice duty desk. Second, many of the clients who are more “difficult” to deal with are among the most vulnerable in society, and those who, in principle, should be given priority for publicly funded assistance.

A variant on the “cherry picking” theme is “early closing” – adopting the approach to a case which ensures it is dealt with quickly, rather than the one which offers the best outcome for the client in the long run.

One measure which may indicate possible cherry-picking would be an increase in the proportion of shorter cases – measured in terms of hours worked on the case by the adviser, or in terms of the “case costs”, or in terms of the length of time from opening to closing the case. Case length has been looked at using each of these definitions.

The Legal Services Commission “distribution of case cost” data is shown in the charts above, and there does not appear to have been any significant change. The LSC also looked, in the context of the Review of Phase 1 of Fixed Fees, at case length in terms of time open, and found that, on the basis of the then available data, case lengths had remained broadly similar to those pre-introduction of the fee schemes.

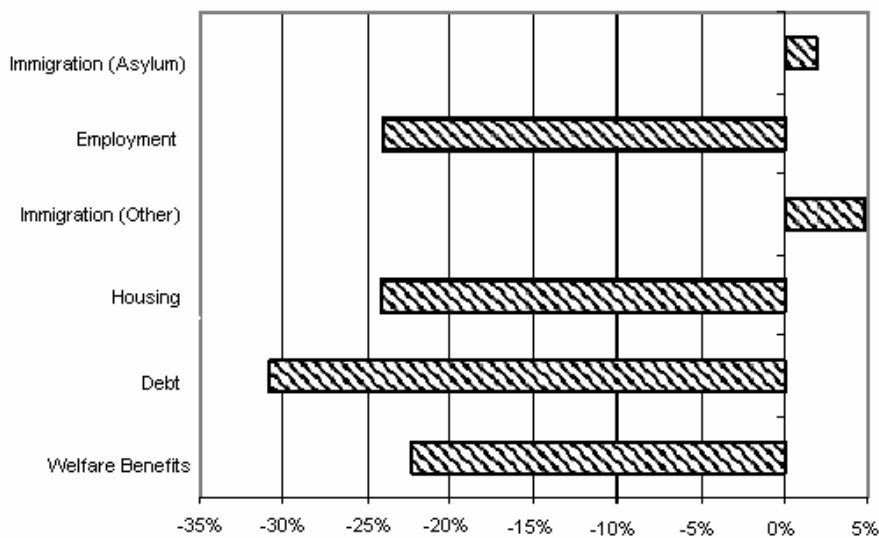


“Pre” and “Post” Phase 1 of the fixed fee scheme (P1) are defined as in the chart earlier in this chapter, and longer-running cases are therefore not covered.

Case Length in Days*	OVERALL 06-07	OVERALL 07-08
0: 29	17.36%	15.17%
30: 59	17.72%	18.27%
60: 89	17.97%	19.53%
90:119	15.95%	17.44%
120:149	12.23%	12.11%
150:179	8.04%	7.73%
180:209	4.98%	4.68%
210:239	2.94%	2.56%
240:269	1.88%	1.67%
270:299	0.83%	0.70%
300 +	0.10%	0.13%

The only evidence of a change in case lengths is analysis of information from law centres, carried out for the Law Centres Federation by the New Economics Foundation [nef]. This looked at case length in terms of the time spent on the case by advisers and found “a large fall in average time spent per case” across all principal case types except immigration.

**Percentage change in average time spent per case (by type) 2006/07 – Apr-Dec 08**



As nef points out, it is impossible to tell what is causing this fall, which could be a result of increased efficiency in the delivery of case work, or greater pragmatism in closing cases, as well as potentially a result of “cherry-picking” cases which can be closed quickly.

**Paralegalisation:** Providers told us that, in order to keep the costs of cases within (or below) the fixed fee, work was increasingly being done by less experienced and more junior staff and/or volunteers. There are risks and benefits in this. The risk is that more complex problems will be missed or misunderstood or dealt with less competently due to the lack of experience or expertise of the person dealing with them. The benefit, however, may be that in many cases, work is being dealt with at a more appropriate level, so that costs are controlled and better understood, and there is better value for taxpayers’ money.

It could be argued that many of the cases previously dealt with by senior (and expensive) staff could perfectly adequately have been managed at a lower level, and that the Unified Contract has simply ensured that providers target their resources more effectively. The key issue is whether cases are being allocated to people competent to manage them. The Legal Services Commission has firm supervision requirements which aim to ensure that cases are dealt with effectively at every level of an organisation, as well as the “peer review” system to assure overall quality.

The LSC, through the data collected on Key Performance Indicators [KPIs], aims to identify any significant changes to the profile of activity by providers. This data should show up changes which might be attributable to cherry picking, early closing or paralegalisation, and this can then be further explored by the local Relationship Manager. Where data point to this type of activity as a possibility, the LSC may carry out on-site audits and require more detailed reports on case mix, timings etc. Activities such as cherry-picking would be contrary to the contract terms and conditions, and sanctions are therefore available for them. KPI data is monitored centrally, and managed consistently, but there does not appear to be data at national level which would identify whether providers are cherry-picking, early closing or using more junior staff inappropriately.

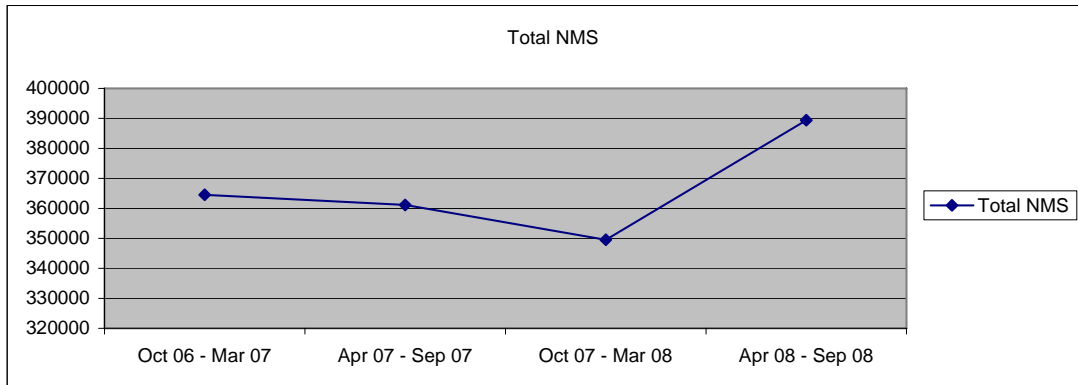
**We recommend that consideration be given to developing a monitoring system specifically to identify the impact of these incentives on services to clients, including examining the extent to which existing research could illuminate this.**

**Cluster-splitting:** The requirement to handle a certain number of New Matter Starts and the low levels of the fixed fees are, we were told, encouraging providers to “split” cases in a way they had not previously done. We are calling this practice “cluster-splitting” – the division of the assistance to a single client into multiple New Matter Starts in different categories of law – to distinguish it from what the LSC describes as “case-splitting” – where multiple New Matter Starts in the same category of law are claimed for a single client.

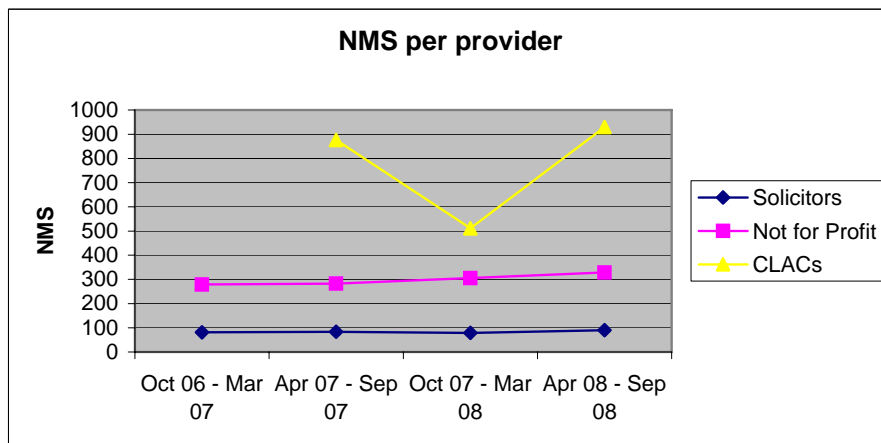
As with the other possible results of the fixed fee system, there are both negative and positive potential effects of cluster-splitting. On the one hand, this should ensure that data on the number of claims in each category of law is more accurate than hitherto, and help providers better to understand their cost drivers. It should also ensure that each problem is dealt with by someone (within the boundaries of the provider) with relevant expertise. On the other hand, providers felt (some strongly) that this militated against the “holistic” approach they had previously adopted. There is also a risk that numbers of NMS per client will be significantly inflated by this. As the total number of NMS is capped, this could reduce the number of people who can be given legal assistance.

Whilst the LSC collects a significant amount of data on the numbers of New Matter Starts, no connection is made – at this stage – to a particular client. Prior to the implementation of the Unified Contract, such connection was, in any event, impossible, as there was no robust way of identifying individual clients. The introduction of the Unique Client Number (UCN) makes it possible, in principle, to identify how many “billed cases” (theoretically the end result of a New Matter Start) in different categories of law are allocated to each UCN. This analysis is, however, not yet carried out, and the data, as currently held, does not allow it. Since UCNs have been brought in since the introduction of fixed fees, it would, in any event, be difficult to find a robust basis for comparison.

Information is available on the number of New Matter Starts reported during different time periods. Between October 2006 – March 2007 and April 2008 – September 2008, total reported NMS grew from 364,548 to 389,389, an increase of almost 7%.



The NMS reported by different types of provider, divided by the numbers of each provider type reporting NMS during these periods gives a crude estimate of the number of NMS per provider:



As the chart above shows, whilst there has been a gradual increase in the NMS reported both by Not for Profit organisations and by solicitors, this is not sufficiently marked to be taken as demonstrating cluster-splitting.

### Financial Impact

As fixed fees were based on the average costs for cases billed to the LSC, it was clear that some organisations would increase their income, and some reduce their income, depending on their existing levels of costs and case mix. The application of economic theory suggests that the firms whose income reduced may be willing to stay in the market for a set period of time under the perception that they will be better off under competitive pricing, where they will be able to find a “market clearing” level. For these firms, a delay in the implementation of competitive pricing may alter their perception that the prices imposed are temporary, and they may choose to exit the market, decreasing its

diversity and competitiveness and potentially resulting in a market structure where the remaining firms have a degree of market power. This impact may be more likely in areas where a Community Legal Advice Centre [CLAC] has been established, an issue covered further in [Chapter 3](#).

The implementation of the Unified Contract was a significant change to funding patterns for Not For Profit (nfp) providers, who had previously received payment three months ahead. The impact on their cashflow of changing to the Standard Monthly Payment is illustrated in the table below:

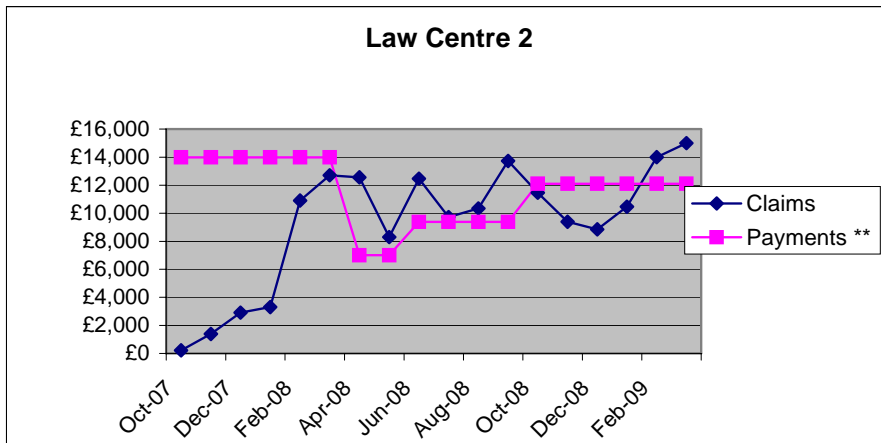
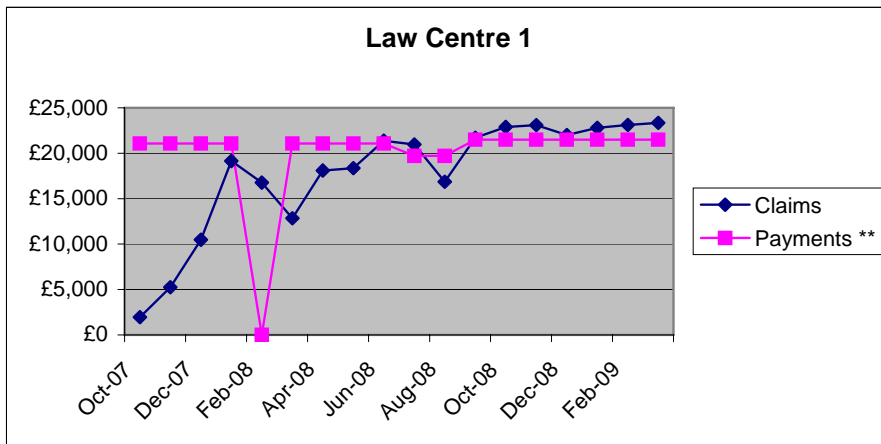
Illustrative impact on average available cash balances prior and subsequent to implementation of unified contract

<b>Prior to Unified Contract</b>													Total
Month	1	2	3	4	5	6	7	8	9	10	11	12	
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Cash inflow	1,000	0	0	1,000	0	0	1,000	0	0	1,00	0	0	4,000
Cash outflow	-333	-333	-333	-333	-333	-333	-333	-333	-333	-333	-333	-333	-4,000
Net cash flow	667	-333	-333	667	-333	-333	667	-333	-333	667	-333	-333	0
Cumulative cash position	667	333	0	667	333	0	667	333	0	667	333	0	
<b>Average cash position over the year</b>	<b>333</b>	<b>A</b>											
<b>Following full implementation of Unified Contract</b>													
Cash inflow	333	333	333	333	333	333	333	333	333	333	333	333	4,000
Cash outflow	-333	-333	-333	-333	-333	-333	-333	-333	-333	-333	-333	-333	-4,000
Net cash flow	0	0	0	0	0	0	0	0	0	0	0	0	0
Cumulative cash position	0	0	0	0	0	0	0	0	0	0	0	0	
<b>Average cash position over the year</b>	<b>0</b>	<b>B</b>											
<b>Shortfall in average cash position</b>	<b>333</b>	<b>A minus B</b>											

Source: Social Welfare Law Coalition Briefing Paper, 9<sup>th</sup> March 2009

There was a further impact of the change for nfps to a system where cases could only be billed once they were closed. Payments under the previous (TFF) scheme were made during the life of the case, and cases opened before 1<sup>st</sup> October 2007 were therefore already part paid. Cases starting after 1<sup>st</sup> October could not be billed until they closed. The likelihood thus was that there would be a significant drop in billing for many nfp providers (particularly those focusing on more complex, longer claims) during the early months after implementation of the Unified Contract.

Since the Standard Monthly Payment is based on the average of previous months' billing, there is a "lag" effect before it catches up with a change in billing rate. Whilst the LSC allowed nfp providers to receive a rate of SMP well above their billing rate (initially up to 3 x) the effect was that providers ended up "in debt" to the LSC, and subsequent SMPs had to be reduced to recover the debt. The charts below show the billing and payment rates of two law centres during this time.



Once cases started after October 2007 have begun to close at a steady rate, assuming the workload has a degree of stability, the Standard Monthly Payment should ensure that the costs of providing the service are covered in advance. However, the aspect of cost which is most unpredictable, and thus difficult to allow for in the SMP, is disbursements. The fact that disbursements in most types of case are not reimbursed until the case closes means some providers feel they are "subsidising the public purse" to the tune of many thousands of pounds. This cross-subsidy is only possible where alternative sources of funding can be found – whether (for nfps) from other funders, from reserves of capital or loans, or from other LSC funding.

We make a fair living from publicly funded work – you can do it. We have a wide range of work. The majority is at certificated level (e.g. family care proceedings) or housing referrals at specialist level, of which the vast majority will be at certificated level. And we keep advocacy in house so that we can claim the advocacy fee.  
*(private practice solicitors)*

In light of the current economic climate, the LSC has implemented some changes to the financial aspects of the scheme following discussions with representative bodies. This includes:

- Amending the reconciliation [SMP] banding from 90 to 110% to 90 to 105% in January 2009 payments onwards. Whilst this does mean the LSC will be making more interventions to monthly payments, any increased activity will relate to increases in payments only;
- In addition to the SMP re-banding, the LSC are now making additional weekly payments for non-contracted work as of April 2009;
- The LSC has recently improved the speed at which they process civil bill applications and payments and this, combined with the weekly payment runs, means that with 98% of new applications are processed within 10 days;
- A one-off exercise in Immigration and Asylum cases opened prior to 1st October 2007 to submit disbursement claims (to include counsels fees) outside the normal billing rules (conditions apply). All submissions must be made by 20 August 2009 (i.e. the date by which the July 2009 CMRF submission is made electronically). As NfP providers continue to submit monthly Work-In-Progress (CWRP) report forms for pre October 2007 matters, for which credit is given when reconciling these contracts, this claiming guidance will not apply to NFP providers.

The LSC are currently considering what revised billing arrangements they could put in place in the 2010 contract for asylum and mental health to enable providers to claim both their costs and disbursements at specific points in a case.

There is a wider issue of the level of Work in Progress which providers (in both nfp and private sector) are carrying and, where appropriate, paying tax on. With the time and resources available to us, it has not proved possible fully to bottom out to the extent to which this is: an impact of the fixed fee scheme or of Standard Monthly Payments; attributable to disbursements; a result of previous administration problems at the LSC (exacerbated by problems with the LSC's online reporting system); a result of transitional administration problems at providers; and/or a function of the valuation of Work in Progress in the legal advice field.

**We recommend that the further work be done to understand the basis of the financial impacts of elements of the fixed fee scheme (in particular the Standard Monthly Payment process; the payment of disbursements; the valuation of Work in Progress) on providers.**

#### **Administrative burden**

Many of the organisations we interviewed during the “snapshot visits” – both in the nfp sector and in private practice – told us that implementation of the fixed fee scheme had increased their administrative burden. They felt that the reporting requirements per case were disproportionate to the fixed fee they would receive.

I guess it is quite easy to say there have been problems but until you actually see how long that is taking – it has gone from the administrator doing a couple of hours a month on LSC reporting to one day a week and nobody is paying us for that increased administrative burden. We are having to absorb that. (*advice centre*)

It's an over complicated system... we understand it, it's not like we don't know what it's about. I don't know if you're getting a message “oh well we set up these seminars but then they don't come and they just bleat about it”... it's certainly not what we do. We went to the seminars, we understand it and then we bleat about it because it's really complicated. (*advice centre*)

**We recommend that, as a matter of urgency, the LSC works with providers and the Office of the Third Sector further to examine its reporting requirements, particularly in line with the Government's commitment to reduce the bureaucratic burden on the voluntary sector, and the desirability of harmonising with other voluntary sector funders.**

### **Other work**

Providers of legal advice services also carry out a range of other activity in their communities. This can include identifying and publicising local issues (e.g. problems with the payment of housing benefit), providing “second tier” and other support to community organisations who may encounter legal problems (either of their own or of their clients), carrying out preventative or educational work within their communities to reduce the number of people encountering legal problems, and facilitating and managing providers of “pro bono” services. The latter activities are usually based on a relationship built up between a private practice solicitors’ firm and a local advice provider, and involve lawyers from the firm providing an advice clinic in the evenings on the advice provider’s premises. None of these activities is covered by the fixed fee. The purpose of the fee (and of legal aid) is to help people who are unable to pay privately to deal with legal problems when they arise. On this basis, all the above activities are rightly and properly outwith its scope. Nevertheless, they form an important part of the activities of many of the nfp organisations providing legal advice services, and may provide direct benefits in terms of reducing both social exclusion more generally, and the incidence of legal problems.

**We recommend that, in light of the complementary nature of this work, the Ministry of Justice should consider discussing with other relevant Departments and other funders how to ensure that this type of work is funded and encouraged across the country.**

## Chapter 3: Community Legal Advice Centres / Networks

The intention is that both Community Legal Advice Centres [CLACs] and Community Legal Advice Networks [CLANs] should be established. To date, five CLACs have been set up, and there are a number of areas where plans to establish a CLAC or CLAN are being developed (listed later in this chapter). The CLAC model was the focus of some of our snapshot visits (full visits to Gateshead, Hull, Portsmouth and a visit to the Leicester CLAC itself). CLACs were also the topic of some of the issues raised with us by providers during other visits. This chapter will therefore primarily examine the CLAC concept, experience so far, and the risks which providers and local authorities we spoke with are concerned about. The details of the five established CLACs are shown in the table below:

Area	Provider	Sub Contractors	Opening Date	Length of Contract	Categories of Law
Gateshead	Gateshead Community Legal Advice Centre (Comprising Gateshead CAB)	Ben Hoare Bell David Gray & Co Swinburne & Jackson	12/04/2007	3 Years	SWL <sup>40</sup> Family Mental Health
Derby	Access to Law (A2L)	Citizens Advice & Law Centre Derbyshire Housing Aid Moody & Woolley Smith Partnership	01/04/2008	3 Years	SWL Family Immigration
Leicester	A4E	Howells	01/04/2008	3 Years	SWL Family
Portsmouth	You Trust (formerly the Southern Focus Trust)	Portsmouth CAB	01/04/2008	3 Years	SWL Family
Hull	A4E	Howells	20/10/2008	3 Years	SWL Family Immigration

<sup>40</sup> SWL or Social Welfare Law comprises the following five categories of law: community care, employment, debt, housing, welfare benefits

## Background

### The start of joined up working and CLSPs

Community Legal Service Partnerships [CLSPs] were introduced as ‘the first nationally co-ordinated attempt to develop a more seamless service’.<sup>41</sup> Prior to their introduction the funding of advice services was largely ad hoc with a lack of co-ordination between funders or between suppliers.<sup>42</sup>

It was envisaged that CLSPs would identify gaps in advice provision and ensure that local provision was responsive to identified local need. However, the government’s independent review of the Community Legal Service identified the variation across CLSPs’ efforts and abilities to respond to local legal needs and over half of the providers who responded to their questionnaire stated that they did not believe their CLSP had been effective in improving access to justice for the public. In fact, in areas where CLSPs made a real difference in informing local service development participation and direction was said to be led by the most active local providers. This approach would be difficult to justify in relation to current procurement practice.

In spite of the opportunity that CLSPs had to make service provision more responsive to local need, many proved not to increase access to advice for clients. Indeed, the Citizens Advice report *Geography of Advice* identified “advice deserts” opening up during the time the LSC facilitated CLSPs. Their report points to “the growth of advice deserts in various parts of the country and major geographical inconsistencies in service provision”.

The government’s review of the Community Legal Service [CLS] made recommendations including the need to develop a strategy for the CLS and the development of “the most effective means by which the aims of the CLS can be translated into good service provision at the local level, taking into account local needs. This implies that needs analysis, development of service provision, and funding streams should be interrelated.”

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<sup>41</sup> *The Independent Review of the Community Legal Service*, Department for Constitutional Affairs. 2004

<sup>42</sup> *ibid*

## Introduction of CLACs/CLANs

The CLAC and CLAN concepts were first fully set out in the Legal Service Commission's strategy paper 'Making Legal Rights a Reality', published in March 2006. The paper describes how, "working jointly with local authorities and other funders", the LSC intended to develop "a jointly-funded single entity that provides the whole bundle of core social welfare law services". Such Centres were to be "clearly identifiable as a CLS service" and "readily accessible to the community". The key factors were that this would be a single contract (with provision for sub-contracting) which would be the focus for LSC funding of social welfare law provision in an area, as well as the majority (if not the entirety) of local authority funding for advice and assistance on social welfare law issues.

The CLAC concept is the logical extension of the integrated services model. CLACs and CLANs are intended to provide the full range (in terms of levels of help, and categories of social welfare law) of assistance, in order to tackle the problems identified by various research studies,<sup>43</sup> which conclude that advice seekers:

- often experience problems in clusters, for example: a debt problem is often accompanied by a housing problem and a welfare benefit problem.
- in many cases are unaware of local services and therefore take action much less often.
- tend to use the same advice seeking strategies, so will go the advice provider they went to before. If this provider only offers advice in one or two categories, they are less likely to be able to help the client with all their problems.
- suffer from 'referral fatigue': the more times a person is referred from provider to provider the less likely they are to attend and to get the advice they need.
- choose their adviser based on where they or their family / household have previously sought advice. Where this is an individual category or niche provider it will almost inevitably be the wrong provider although where it is an integrated service, the likelihood of it being the right provider is increased.

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<sup>43</sup> Paths to Justice (England, Genn 1999); Civil and Social Justice Survey (Pleasance et al, 2004, Pleasance et al 2006)



The problems of “clustering” and “referral fatigue” are believed to be attributable to, or exacerbated by, the fragmented nature of advice services, including the split between “generalist” advice and “specialist” advice, and the failure of advice providers to refer clients effectively. Since the publication of the CLS Strategy providers have been actively encouraged to deliver work across all five social welfare law [SWL] categories. However only 26 out of 898 (2.9%) current SWL providers deliver advice across all five SWL categories (this includes the five Community Legal Advice Centres opened so far), whereas 654 (72.8%) offer only one or two categories.<sup>44</sup> There are a range of other “gaps in supply” which wider implementation of the CLAC or CLAN concept may help to fill.

### Existing CLACs

Only one of the five areas where CLACs have opened so far previously had LSC funded provision across all five Social Welfare Law Categories (Derby), and none had a single provider offering all five categories of law.

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<sup>44</sup> Based on Legal Services Commission contracting data

Pre-CLAC coverage					
Area	Community Care	Debt	Employment	Housing	Welfare Benefits
Gateshead	0	0	1	1	1
Leicester	0	2	1	3	1
Portsmouth	0	2	0	5	2
Derby	1	2	1	1	2
Hull	0	1	1	2	1

Even at this early stage, CLACs appear to be increasing access to advice. The table below shows the number of SWL cases started in the five CLAC areas in 06/07, 07/08 and 08/09. Gateshead CLAC opened at the beginning of 07/08, Leicester Portsmouth and Derby opened at the beginning of 08/09 and Hull opened in October 08. The table shows clear increases in acts of assistance where a CLAC opens.

	Social Welfare Law New Matters Started			Increase post CLAC**
	2006/07	2007/08	2008/09*	
Gateshead	1309	1951	1998	49.05%
Leicester	987	1315	1947	61.52%
Portsmouth	1908	1845	2122	25.47%
Derby	1838	2005	2215	20.52%
Hull	1063	1013	1207	N/A***

\* 2008/09 figures are up to February 2009 only

\*\* End of year projections used for 08/09 for Leicester, Portsmouth & Derby comparisons

\*\*\* As Hull has only been operational since October 2008, no year end comparisons can be made

Local authorities in some non-CLAC areas also appeared very attracted to the idea of directing – through a CLAC specification – the activities, and opening hours, of advice providers they funded.

I think in X [non-CLAC area] you've got to be extremely robust to get to the advice centre, you've got to find it, you've got to find out when it's open, you've got to go down in the morning often 2 hours before it opens, you've got to queue, usually in the rain and you've got to wait for that golden ticket and you've got to be in the door before that time or the door will close. (*local authority in non-CLAC area*)

Customer feedback on CLACs indicates that they are responding very effectively to the needs of their customers. For example: 94% of the clients surveyed by Leicester CLAC felt that the service they had received was either “very good” or “excellent”, with the remaining 6% rating the service as “good”.

Recent research for the Council on Social Action looked at what people value in legal advice services. The results, shown in the table below, seem to echo many of the remarks made by clients of one CLAC on the Customer Feedback Forms:

*"Gave me all the information I needed and helped me to solve my problem. Gave me good advice and helped me decide exactly what to do"*

*"Because I was helped every step of the way and treated nicely and understandingly which due to my mental health problems must also have needed a lot of patience, [the adviser] took the time to phone me to remind me of meetings etc. and could not be faulted at all"*

*"I think that these centres are a very good thing to help people who don't understand things"*

*"Absolutely professional, understanding took a lot of stress away from me"*

*"Without the expertise shown and given to me to fill forms in – I could never have gone forward to a successful outcome – many thanks"*

*"Friendly – available to all. Service – invaluable advice in 'easy-to-understand' terms"*

## Client “values” in priority order

AC	Advisor Competencies	AA	Advisor Attitudes	O	Office
AC	1.				Advisors are knowledgeable and appropriately qualified to provide advice to clients
AC	2.				Advisors provide high quality advice and effective guidance
AA	3.				Advisors communicate effectively with clients and take care to explain the issues clearly and honestly
AA	4.				Advisors take the time to understand client situations and problems
AC	5.				Advisors are experienced in dealing with client issues
AC	6.				Advisors are effective problem-solvers able to handle a wide range of situations
AC	7.				Advisors are careful to maintain client confidentiality at all times
AC	8.				Advisors work hard and try their best at all times to meet client need promptly
AA	9.				Advisors listen closely, patiently and with empathy to their clients
AA	10.				Advisors are approachable and friendly and make clients welcome
AA	11.				Advisors are helpful and supportive of clients
AC	12.				Advisors are well organised, well prepared and efficient when meeting clients
AA	13.				Advisors are trustworthy and non-judgemental
O	14.				The office provides a high level of service through friendly staff
AA	15.				Advisors are understanding of client situations and issues and remain calm at all times
O	16.				The office has meeting spaces that ensure client confidentiality
AA	17.				Advisors are fair and treat all clients with the same consideration
O	18.				The office staff are open and friendly and treat clients with respect both in person and over the phone
O	19.				The office is conveniently located and easily accessible
AC	20.				Advisors use a wide range of resources and people to meet client needs
O	21.				The office has convenient opening times
AA	22.				Advisors are positive, caring and encouraging
O	23.				The office is organised and staffed so as to minimise waiting time
O	24.				The office is welcoming, tidy and comfortable
O	25.				The office provides a comprehensive set of information pamphlets and leaflets
O	26.				The office has a good computer network and other resources
O	27.				The office has good facilities e.g. drinks, internet, toilets, public phone

Taken from research carried out for the Council on Social Action (CoSA) by Group 8 Education. To be published in: CoSA (forthcoming) Humanising Public Services: a focus on legal aid. London: Community Links

The following is a list of local authority areas where active discussions were held with the local authority about jointly commissioning a Community Legal Advice service (Centre or Network) that would be operational before April 2010:

- Barking and Dagenham
- Cardiff, the Vale of Glamorgan and Bridgend
- East Riding of Yorkshire
- Gloucestershire
- Manchester
- Stockport
- Sunderland
- Wakefield
- West Sussex

In some of these areas discussions have not yet had a firm result and it will not be possible jointly to commission a service to the original timetable. However, in the majority of the areas listed, consultations have taken or are taking place and tender documents are being prepared or finalised. Interestingly, several of these – East Riding, Gloucestershire and West Sussex – will be CLANs (Community Legal Advice Networks) – bringing together “a consortium of providers supplying complementary services”. This model may provide options more attractive to those who favour an “ecology of provision” than the more focused CLAC.

The policy to create CLACs and CLANs has had significant impacts well beyond the areas where CLACs exist. In some of the areas where the decision has been taken not (or not yet) to establish a CLAC or CLAN, the “threat” seems to have had a positive effect. Local providers and local authorities in non-CLAC areas told us that they were establishing more formal referral networks, holding conferences to discuss local provision etc. – taking steps to achieve many of the perceived benefits of a CLAC. These activities did not appear explicitly to involve the Legal Services Commission, although many of the providers involved received significant amounts of legal aid funding.

## Providers' Concerns

The differences between existing CLACs demonstrate the flexibility of the CLAC concept, and the model and the method of implementation are still under development. Although it is too early to form any firm conclusions about the impact of CLACs, it may be helpful to examine some of the concerns expressed by providers and local authorities in non-CLAC areas.

### Lengthy set up times

There are differences between local authority and legal aid funding which can make it difficult to agree the details of joint commissioning, and underpin the long lead times between the announcement of the intention to establish a CLAC and the issue of tender documents. The LSC estimates an average 12 months from initial discussions (of which advice providers may be aware) to putting the new service in place. During this period of discussion and negotiation, areas can suffer from “planning blight”, with advice providers uncertain what the future holds for them.

The tensions which cause this derive in part from the fact that the LSC's statutory objectives under the Access to Justice Act are narrow and confined to the procurement of a limited range of specialist legal advice and advocacy services – those types of help prescribed within the

scope of the legal aid funding code. Local authorities' objectives are wider and embrace the concept of community well being, so that local authorities' commissioning functions have to reflect indicators which capture local priorities. Although there are clear benefits from pooling these two sources of funding, allowing them to be deployed more strategically, devising tender specifications which adequately capture both sets of objectives and which comply with both organisations' procedures can be a major challenge. Perhaps as a result, there are significant variations in the approaches adopted to targets. For example, the "cost per case" for generalist advice varies widely between the different CLACs (local authority spend divided by target number of cases at this level) – ranging from £33.25 in Hull (£244,000 and 7338 cases) to £41.67 in Leicester (£250,000 and 6000 cases). This may also reflect the fact that each local authority funds different things, e.g. some include funding for social policy work or specialist advice outwith the scope of legal aid (such as tribunal representation), whilst others only fund generalist level advice.

**We recommend that action be taken to encourage and support local authorities in shaping local CLAC/Ns.**

### **Hard to reach groups**

One of the oft-quoted benefits of working with and through the voluntary sector is the sector's ability to connect to "hard to reach" [HTR] groups – including the socially excluded, newly immigrated and minority ethnic communities, and young people. Insofar as such groups are "hard to reach" due to their unwillingness to approach "formal" or conventional service providers, local providers and local authorities we spoke with in non-CLAC areas are concerned that HTR groups may be less likely to access services through a CLAC than through a provider who is able specifically to target services at them, and provide them in a way, and in an environment, with which they feel comfortable.

The other thing that we felt was at risk [from potential CLAC] was the links that the key advice agencies, the main advice agencies have with the community agencies, which means that people can go to a small community agency that they feel comfortable with and get a good level of advice because the people there are often trained by local advice agencies. (*local authority in a non-CLAC area*)

The LSC has aimed to overcome the difficulty of reaching different communities via a single contract by including this as a requirement in the CLAC specifications and through regular monitoring, but it is not yet possible to assess how successful this has been.

### Non CLAC/N providers and other funding

The scale of CLAC contracts and the way in which they are intended to focus all the LSC expenditure on social welfare law on a single provider risks creating a monopoly of provision in an area. In addition, clients may have no access to help where a conflict of interest arises.

The table below shows the number of providers with LSC contracts for the delivery of social welfare law in the existing CLAC areas before and after establishment of the CLAC.

	SWL Providers	
	Pre CLAC	Current (not including CLAC)
Gateshead	2	1
Derby	5	2
Leicester	5	5
Portsmouth	4	2
Hull	4	4

It should be noted that this table reflects the situation only a relatively short time after the opening of each of the CLACs (see table at the start of this chapter). It does not, of course, include providers supported by other funders, including those funded by the local authority, nor those providers whom the LSC fund to provide help in other categories of law.

Where current providers have not been part of a successful tender, TUPE has applied to the CLACs, and many staff have continued to provide services, but through the CLAC.

Concerns were expressed in non-CLAC areas that the advent of a CLAC would not only impact on those providers who were unsuccessful in the tendering process, but would also reduce the inflow into the area of funding from other sources. Many providers are recipients of funding from trusts and foundations, as well as other public funding, much of it leveraged on the basis of a funding stream from the LSC or local authority. Although the original description of CLACs refers to “other funding”, other funders of legal advice – including PCTs – are not (or not yet) involved in existing CLACs, although they may be continuing to fund other local providers who refer cases to and from the CLAC.

The other added value that we try and share with the advice services is we fund x amount, and the services then bring in additional amounts from other funders... that other money then comes into the city, it is helpful... it is on the back of Council funding. I really don't think it would happen if it was a big organisation called X Advice. Funds, the trusts and the lottery would not look at it in the same way as a focused local project. (*local authority in a non-CLAC area*)

The LSC is increasingly exploring opportunities for working with other funders in order to reduce this risk. In Wales this has involved the Welsh Assembly Government. In England it includes the Financial Inclusion Fund, the National Offender Management Service, the Equalities and Human Rights Commission and the Big Lottery. We understand that some of these relationships may result in the development of a CLAC or CLAN, although others may see joint commissioning or partnership arrangements outside of the CLAC/N model because they are addressing different service needs.

**We recommend that the LSC monitors the impact of the establishment of a CLAC or CLAN on local advice provision more widely, including the potential for future competition in the area.**

**We recommend that the LSC should take steps to monitor the impact of the establishment of a CLAC or CLAN on other funding streams in the area, and should aim to involve other existing funders of local advice in plans for a CLAC or CLAN wherever possible.**

### **Pro bono activity**

Where a CLAC is run by a private company, some private firms supporting pro bono activity by their staff are, apparently, unwilling to countenance pro bono activity "benefiting" another private firm. Whilst it is unlikely that the contracting firm would benefit financially from pro bono work, they would receive credit for this expansion of their activities. In view of the tight margins on which CLACs are, of necessity, run, it is also difficult to see how they could provide the resources necessary to manage and supervise external staff working pro bono.

### **Alternative solutions**

A CLAC is a response to a particular set of problems – lack of provision of the legal services which the people in an area need, and a lack of effective referral arrangements between providers. In the areas where CLACs have been established, including Portsmouth, which previously lacked LSC funded providers offering employment advice, this approach appears to be working well. However, it may not be the only

means of achieving the same ends. The Welsh Assembly Government has commissioned a feasibility study to establish whether there could be an alternative advice services commissioning model for local authority and Assembly Government funding that would meet the aims of *Making Legal Rights a Reality in Wales* “without compromising the future of third sector providers”. A key element of the work will be to establish how a workable and robust referral model can practically and fully integrate the LSC’s contracted services with those commissioned by local authorities and the Assembly Government.

In the Tyne and Wear area we saw how different local authorities are addressing the advice needs of their local communities in different ways. Gateshead, in partnership with the LSC, established the first CLAC. The CLAC works closely with private practitioners in the provision of some categories of advice, including housing and community care. In South Tyneside, the local authority has continued to support a successful Community Legal Services Partnership. And in Sunderland, after a period where there was an emphasis on in-house provision, the local authority has let a number of contracts to advice providers, each covering a particular area of the City. It has not ruled out a CLAC or CLAN in the future.

## Research

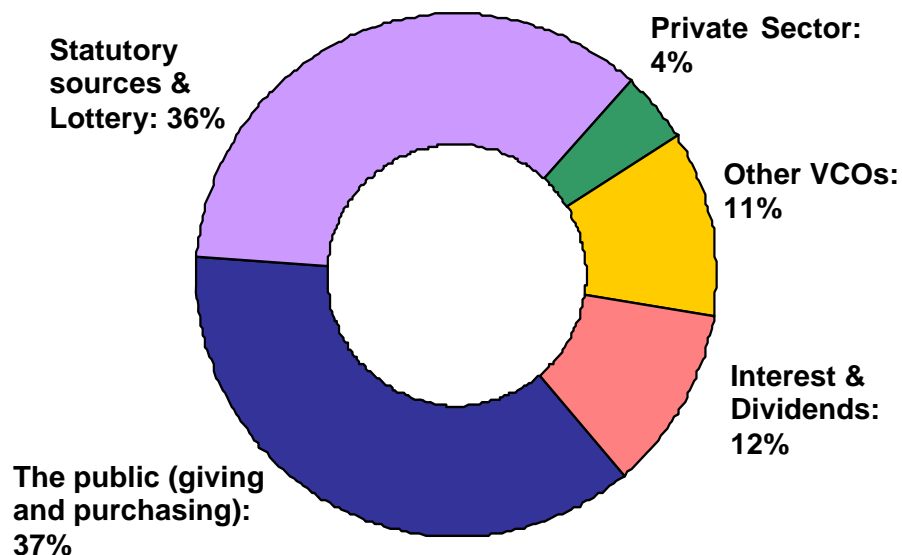
It is very early days to draw firm conclusions about the impact of CLACs – though, as the data above shows, in the five areas where they have been established they are already having a distinct impact. Two major pieces of relevant research are being carried out – one commissioned by the Local Government Association [LGA] and one by the Legal Services Research Centre [LSRC]. The LGA, in partnership with the IDeA, has commissioned Tribal Consulting to conduct research exploring the implications for local government of recent changes in the way the LSC funds legal advice, through CLACs and CLANs. This research is due to report in June and should provide information on the risks, dilemmas and opportunities experienced by local government and lessons that might be learnt.

The LSRC is responsible for a research project on CLACs and CLANS which consists of an outcome and a process study. The process study has been externally commissioned. There are both qualitative and quantitative elements in both research studies, which are due to report at the end of 2009. It will be more fruitful to consider the pros and cons of the CLAC model when these have reported. At the same time, the next few months should see the establishment of a range of Community Legal Advice Networks, which will demonstrate how this model works “on the ground”.

## Chapter 4: Other Sources of Funding

### Funding sources

Most organisations in the voluntary sector, including those providing legal advice, rely on a range of different sources of funding. The diagram below shows the income sources of the sector as a whole:

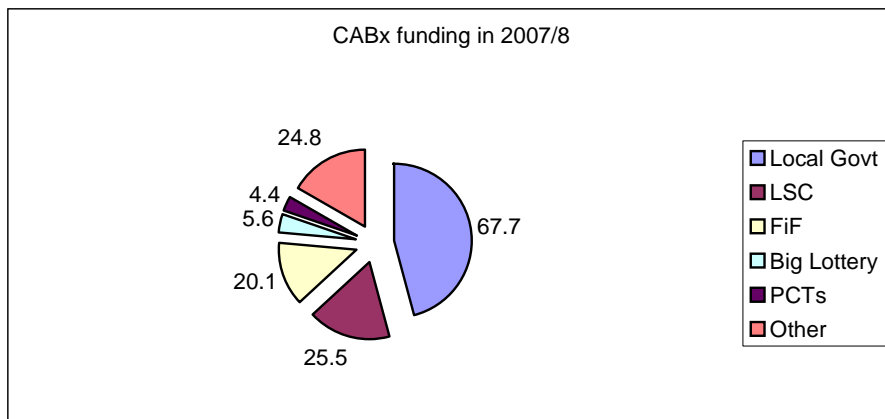


Source: NCVO Research Team: "The potential impact of a downturn on the voluntary and community sector"

In 2007/08 Citizens Advice Bureaux [CABx], the only advice providers on which data is collected at national level, received a total of over £148m of funding. The largest funders by value were local government (£67.7m), the Legal Services Commission (£25.5m) the Department of Trade and Industry (now BERR) via the Financial Inclusion Fund (£20.1m) and the Big Lottery Fund (£5.6m). Primary Care Trusts were responsible for £4.4m of bureaux' funding. These figures do not show the huge variation between CABx in different areas. For example, funding by local authorities – overall 46% – forms only 18% of total funding for bureaux in the North East.

More detailed information on funding other than that from Central Government is difficult to collect and what exists may not be reliable. The LGA's analysis of local authority funding of legal advice (on the

basis of Best Value Performance Indicator reports) is attached at Annex E. It gives a good indication of the wide range of funding inputs, and shows that (subject to the caveats contained in the paper) spending reported by “lower tier” authorities in 2007/8 appeared similar to that in 2005/6, whilst reported spending by “upper and single tier” authorities increased by 6% over the same period.



## Grants vs contracts

Traditionally, voluntary sector organisations received grant funding, which was relatively unrestricted. This gave them a degree of freedom to decide where resources should be allocated to achieve their outcomes. Increasingly, funders – particularly local authorities – are moving to more directive approaches. According to the NCVO’s UK Civil Society Almanac,<sup>45</sup> at the turn of the century £4.6bn of the total £8.4bn of charities’ statutory income consisted of grants. In the year to March 2007, the figures were £4.2bn out of total funding of £12bn. This trend has also affected CABx: in 2007/8 only a third of bureaux received their local government funding through grants. 61% of bureaux had service level agreements, and 3% had been through a commissioning process with their local government funder. Where the majority of an advice provider’s funders fund through commissioning or contracting, it becomes more difficult for the organisation to “cross subsidise” work in progress or any shortfall in LSC funding, or to cover any work not specifically supported. Often this will include social policy work, “second tier” support to other organisations and preventative / educational activity in communities.

<sup>45</sup> Quoted in Third Sector Editorial: Control is behind the shift to contracts; 24 February 2009

## Fragmentation

Arguably, much of the fragmentation of the advice sector – and of the wider voluntary sector – can be attributed to the fragmentation of its funding. There is a very wide range of different funders, ranging from Government Departments and public bodies to a variety of trusts and foundations, as well as the Big Lottery Fund. In its annual report for 2007/8 Citizens Advice thanks 46 separate “donors” (including eight Government Departments and 12 Public bodies) for their financial support for its work. Local nfp providers we visited appeared to have around 6–10 separate funding streams, many with very specific remits (e.g. funding from the Macmillan Cancer Support to provide advice to people suffering from cancer and their families).

Nevertheless, almost invariably the most important funders were the LSC and the local authority. These two bodies tended to be seen as providing the funding for core activities and overheads, on the back of which other activities (and their funding streams) could be carried out. There may be benefits to involving other funders of local advice services in the creation of CLACs or CLANs, and to monitoring the impact of their funding, which could support organisations which – having been unsuccessful in bidding to become a CLAC/N – lose LSC and local authority funding. This loss of other funding streams, and the services they support for local people, was one of the main concerns of local authorities we interviewed who had decided against the establishment of a CLAC/N (see recommendations in [Chapter 3](#)).

## Bureaucracy

Where different approaches are taken by different funders – contracting vs grant making; outcome-focused vs input focused and, of course, different levels of funding per case – these can be complementary or conflicting; and different funders often impose different monitoring/reporting requirements, thus increasing bureaucracy. Many of the providers we visited told us that the reporting requirements for fixed fees were creating an additional administrative burden, particularly as the approach taken differed from that of their other funders (see recommendation in [Chapter 2](#)).

Outcomes delivered by Big Lottery Fund Advice Plus programme funded projects:

- People in greatest need have better access to legal advice services that help them to avoid or overcome disadvantage and improve their lives.
- People in greatest need receive timely, accurate and effective legal advice that is quality assured and joined up with other services, so they are better equipped to deal with their problems and improve their lives.
- People in greatest need avoid disadvantage because commonly encountered legal problems are identified and prevented.

*Source: Big Lottery Fund website*

## Recession

Many voluntary sector organisations – including those we interviewed – are reporting a decline in certain income streams. However, the responses to an Association of Charitable Foundations poll<sup>46</sup> showed that nearly half its members did not intend to make cuts to their grant budgets. Eighty percent of ACF members did not expect their income to increase in 2009, but two thirds said it would rise in the longer term. Existing grants would not be affected by changes to the financial position of trusts and foundations, but many may change the way they make grants in the medium term, handing grants out in several smaller instalments, rather than a lump sum at the beginning of a project. This would impact on the cash flow and flexibility of supported organisations

Northern Rock Foundation, a large independent grantmaker operating in North East England, invested over £4.2m between 2003 and 2007 in civil advice organisations to provide advice on debt and welfare issues. Following the nationalisation of Northern Rock in 2008, the overall grants budget was reduced by over 50% (from £22m in 2007 to £11m in 2008). This means fewer grants and less funding for the advice sector, although the Trustees have continued to prioritise supporting targeted welfare benefits advice and take-up campaigns for older people.

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<sup>46</sup> Third Sector: Trusts and Foundations, 3 March 2009



At the same time, according to statistics collated by YouGovStone on behalf of the Social Investment Consultancy, 60 per cent of business leaders predict a cut in their firm's charitable giving. On average, the respondents expected the cut to be around 34 per cent – £500 million of the estimated £1.4 billion total.<sup>47</sup>

The NCVO Review found that during the previous recession many voluntary sector organisations experienced a cut in funding from local and central Government. If this is borne out, there will be increased competition for funding from trusts and foundations. On the other hand, as noted in [Chapter 1](#), planning for the recession at central Government level and in some local authorities, has involved providing additional funding for the advice sector, which should to an extent offset any cuts necessitated through reductions in public spending. Details of additional funding committed by Central Government are below. Although local authorities are cutting costs, including cutting jobs, some are increasing their advice sector spend, or taking other steps to help nfps to deal with additional demand. In London these include rolling over contracts for an extra year, to reduce the administrative burden and distractions of a bid round; setting up a Strategic Partner Programme to provide stable and core funding for third sector partners; providing “match funding” to

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<sup>47</sup> Reported in Charities Aid Foundation Press Release, 23 March 2009

advice providers and encouraging local trusts to co-fund; linking existing advice provision to Council services – including Council web pages – to increase accessibility and awareness; and increasing the flexibility of grant payment timing in order to help organisations encountering cash flow problems.

### **Additional Funding for Advice**

In the Pre-Budget Report in November 2008, the Government announced an additional £10 million for Citizens Advice Bureaux until March 2010 to allow bureaux to extend their opening hours by at least 5 hours per week to meet the anticipated extra demand. At least 83% of bureaux across England and Wales will receive funding up to March 2010, delivering an additional estimated 163,186 hours of advice to 573,261 clients.

This measure builds on the existing work of the Financial Inclusion Fund. Through this fund, the Department for Business, Enterprise and Regulatory Reform (BERR) spends £28m per annum on free face to face debt advice for financially excluded clients facing severe debt problems. This scheme has given help to over 193,500 clients to the end of 2008 since its launch in summer 2006 and has led to the recruitment of 500 extra debt advisors.

BERR funding of the Money Advice Trust, which operates National Debtline and Business Debtline, in 2008/09 was budgeted as £1m while MoJ funding amounted to £750,000. The service offers free, independent advice to citizens and businesses facing debt problems. In the Pre-Budget Report in November the Government announced extra funding of £5.85m over the period to the end of March 2011 to be routed through BERR. The additional funding is expected to result in assistance for up to an extra 70,000 people per year once the requisite staff are recruited and trained. The additional staff are expected to begin taking calls in August 2009.

To put these figures into context, total income for Money Advice Trust for the calendar year 2008 amounted to £6.5 million. The National Debtline service dealt with 171,647 calls during the year and answered 7,971 e-mails (compared with figures of 146,572 and 6,152 respectively for the previous year).

Towards the end of last year, the LSC made up to £13m available to advice providers to fund extra debt, housing, employment and family cases in response to the economic climate and the increased demand for advice. So far this has resulted in at least 21,500 extra cases being taken up by providers to increase their capacity.

The LSC also funds the Housing Possession Court Duty Scheme, providing vital free advice and representation in 112 courts for those facing repossession. On average, more than 2800 people in England and Wales who were at risk of losing their home benefited from free legal advice and representation in court as a result of this scheme in every month in 2008. The Department for Communities and Local Government (DCLG) fund a similar service in up to 60 other courts across England, ensuring good overall coverage of the scheme.

DCLG have set up a Mortgage Rescue scheme for vulnerable households where local authorities step in to help them stay in their homes. This was officially launched across the country on 16 January 2009 and households can apply through their local authority. Alongside this, the new Homeowners Mortgage Support scheme will enable households that experience a significant loss of income to defer a proportion of the interest due on their mortgage for up to two years, temporarily reducing their monthly payments to a more manageable level.

On 6 April 2009, the MoJ increased the eligibility limits for civil legal aid by 5 per cent in order help those most in need in the current economic climate. The effect of the change will be to increase the number of people financially eligible for civil legal aid. Up to 750,000 additional people could become eligible for help and representation.

Further, the Community Legal Advice (CLA) telephone service, operated by the LSC, helped more than 330,000 people in 2008/09, an increase of more than 20 per cent on the previous year. This service offers help with a wide range of issues affecting people during the economic downturn such as debt, welfare benefits, housing and employment. From April 2009, opening hours have been extended to include 9am to 12.30 on a Saturday and will be extended further to cover until 8pm Monday to Friday from 1<sup>st</sup> July.

In July 2009 a new CLA Family service will be launched which will help a further 25,000 people a year with family law problems. The existing CLA telephone service is experiencing unprecedented demand and is currently receiving over 2,300 calls a day. CLA have increased the numbers of staff available at the front line to field calls and additional capacity will be available from 1<sup>st</sup> May. They have also conducted a recent tender to increase capacity for specialist level telephone advice by nearly 40 per cent, creating 80 new jobs.

The Office of the Third Sector (OTS) announced in February 2009 new measures to support third sector organisations during the recession in 'Real help for communities: volunteers, charities and social enterprises'. This £42.5m package of measures includes a £15.5m Targeted Support Fund to help organisations facing increased demand for their services in the fifty areas of England that are most at risk of increased deprivation during the recession. A further £16.5m modernisation fund will also be made available to help organisations identify their own development needs and support collaboration and merger within the sector.

The OTS met advice organisations and the LSC in March to discuss the workings of the programme. As a direct result of feedback received, the OTS has taken the following actions in regards to the Targeted Support Fund:

- Raised the eligibility turnover threshold of organisations to take account of the need for a small cohort of paid staff
- Included a clause in the eligibility that states organisations must be able to prove they have appropriate qualifications, accreditations and insurance to provide the services this money would fund
- Organisations must be existing service providers, with at least 18 months proven track record.

These funding streams will be available from the end of April/early May 2009.

## Annex A: Written Ministerial Statement (HoL)

### Ministry of Justice

#### Legal advice at local level – gathering evidence on current funding and provision

##### **The Parliamentary Under Secretary of State, Ministry of Justice, Lord Bach:**

Legal aid is one of the fundamental elements underpinning the justice system and an important way of helping poorer members of the community. It enables access to justice for those who cannot afford to pay for legal advice and representation. The Government aims to get the best value for money from the provision of these services, so that as many people as possible can be helped using the available resources.

The value of legal aid contracts that have been awarded to the Not for Profit sector by the Legal Services Commission has increased from almost £48 million in 2002/03 to £80 million last year. This has enabled the sector to provide legal aid to an increasing number of people and last year over 250,000 of the 800,000 acts of advice and assistance were delivered by Not for Profit agencies.

The need for legal advice in areas like housing and debt will inevitably increase in these difficult economic times and the Government wants to be sure that the best use of existing resources is being made.

We need to bring together the evidence about the issues facing the advice sector on the ground. I have asked my officials, therefore, to lead a short study which will gather evidence about the following:

- The impact of the recession and the demand for civil legal advice.
- The impact of civil legal advice fixed fees on local providers – financially and in terms of the type of work they are taking on.
- The initial experience of Community Legal Advice Centres, including the impact on other providers in the area.
- Trends in funding from sources other than the Community Legal Service, including local authority funding, national lottery funding, charities, central government departments, and others.

Our study will complement other work that is taking place – for example, the Legal Services Commission’s review of civil fixed fees, which is due to report early next year and the Legal Services Research Centre’s ongoing research and evaluation of CLACs. The aim of our study will be to identify, bring together, and analyse the available evidence across England and Wales. This will improve our understanding of how legal advice is delivered and funded at the local level and establish what further information we may need to inform future decisions.

The study team will work closely with advice providers, local authorities and other funders of advice to establish the evidence. I intend to set up a steering group for the project, which will include representatives from outside government, which I will chair.

The initial study will report in March and copies of the report will be laid in both libraries.

## Annex B: Steering Group Terms of Reference and Scope of Study

The overall aim of this study is to identify, bring together and analyse the available evidence on the funding and provision of legal services at local level.

### **The steering group will:**

- Advise the project team on what it considers to be the key issues for exploration.
- Assist the project team in identifying and collating the information required to illuminate these issues.
- Assess and where appropriate challenge the emerging findings.
- Agree the final report before it goes formally to Ministers.
- Advise on next steps following the completion of the report.

The steering group will meet once a month, towards the end of each month.

Membership of the steering group will be published on the Ministry of Justice web site, along with these terms of reference.

### **The study will examine:**

- The impact of the recession and the demand for civil legal advice.
- The impact of civil legal advice fixed fees on local providers – financially and in terms of the type of work they are taking on.
- The initial experience of Community Legal Advice Centres, including the impact on other providers in the area.
- Trends in funding other than the Community Legal Service, including local authority funding, national lottery funding, charities, central government departments, and others.

**The study will not:**

- Review all the recent legal aid reforms, which were outlined in *Legal Aid Reform: The Way Ahead* in 2006.
- Make proposals for changes to the current reforms. Following the report it will be for the Government, in consultation with key partners, to decide whether any further analysis or any changes to existing arrangements are needed.
- Instigate any detailed new surveys of providers in this three month period, as there will not be time to do this to the standards required to be credible research. We will of course be drawing on evidence that provider groups already have and will need to ask for data on funding.
- Research user need in depth – in particular we cannot in the time get into analysis of latent and unmet demand. We can however, draw on existing material about this.

## Annex C: Legal Advice at Local Level Study: Steering Group Members

**Chair:** Lord Bach (Parliamentary Under Secretary of State, MoJ)

John Sills (Head of Civil and Family Legal Aid Strategy, MoJ)

Melissa Morse (Project Leader, LALL Study, MoJ)

Derek Hill (Interim Policy Director, Legal Services Commission)

Sir Jeremy Beecham (Vice Chairman, Local Government Association)

Carol Storer (Chief Executive, Legal Aid Practitioners Group)

Stephen Hewitt (Legal Aid Practitioners Group)

Alice Snelling (Policy Advisor, Office of the Third Sector)

Debbie Edwards (Home & Legal Team, HM Treasury)

Catriona Cardiff (HM Treasury)

Steve Hynes (Director, Legal Action Group)

Nick Woolf (Chair, Law Centres Federation)

Julie Bishop (Chief Executive, Law Centres Federation)

Ruth Hayes (Vice Chair, Law Centres Federation)

Phil Jew (Head of Policy and Campaigns, Advice UK)

Douglas Robinson (Assistant Director, BERR)

Richard Jenner (Director, Advice Services Alliance)

Richard Miller (Head of Legal Aid, Law Society)

Suzanne Kochanowski (Department for Communities and Local Government)

Alan Scott (Unite)

Lynne Schofield (Welsh Assembly Government)

Fran Targett (Chair of Wales Independent Advice Providers Forum)

Osama Rahman (Chief Economist, MoJ)

David Harker (Chief Executive, Citizens Advice)

Elizabeth Ladimeji (Citizens Advice)

Rebecca Hilsenrath (Chief Executive, Law Works)

Rebecca Wilkie (Director, Bar Pro Bono Unit)

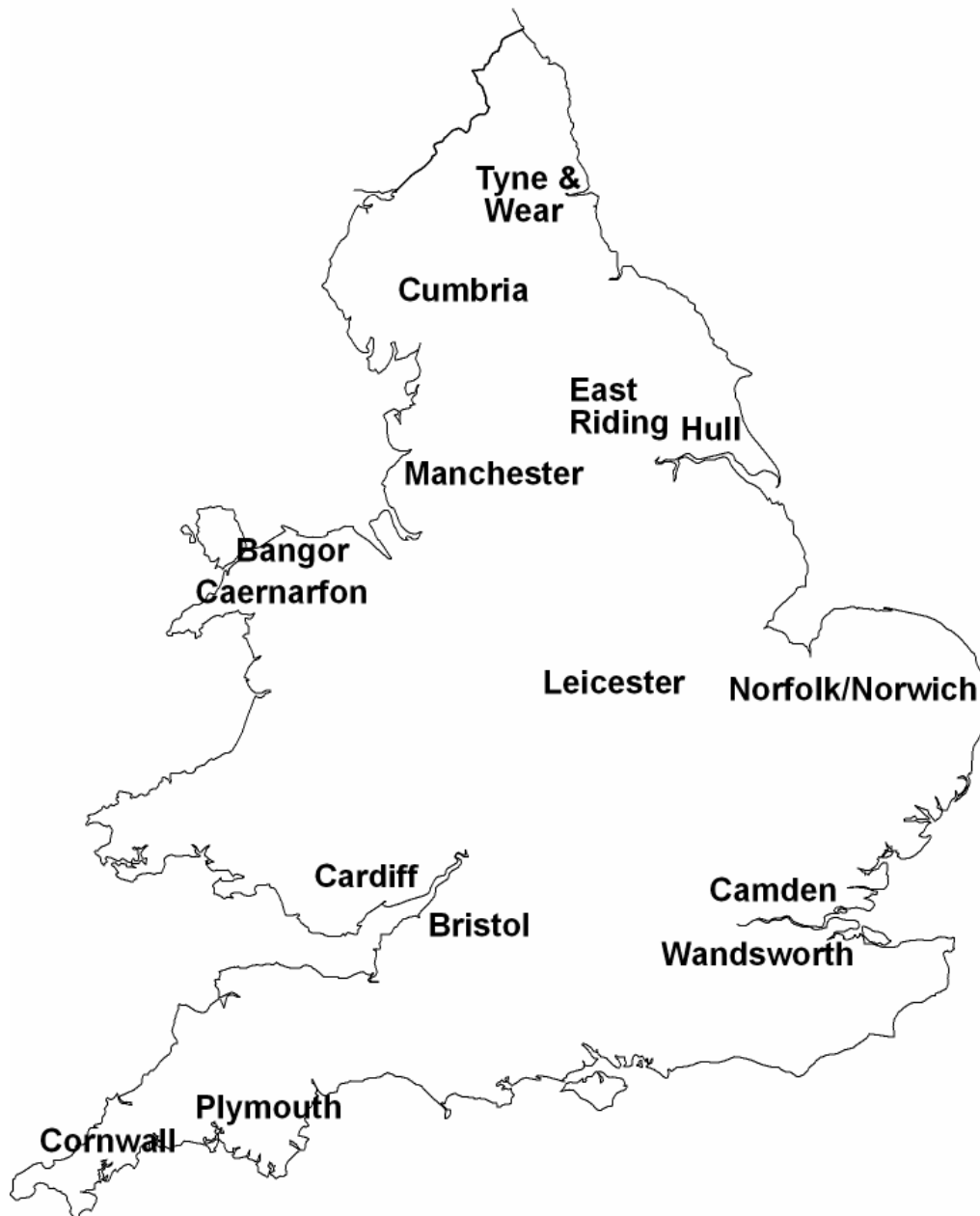
## Annex D: LALL Snapshot Visit Schedule, 24 February – 27 March 2009

<b>Date of Visit</b>	<b>Place</b>	<b>Organisations visited</b>
24 February	East Riding	<ol style="list-style-type: none"> <li>1. Heptonstalls Solicitors</li> <li>2. Boothferry CAB</li> <li>3. East Riding of Yorkshire County Council</li> <li>4. East Riding Voluntary Action Services</li> </ol>
25 February	Hull	<ol style="list-style-type: none"> <li>5. Hull County Council</li> <li>6. Hull CLAC – a4e</li> <li>7. Hull CAB</li> <li>8. Age Concern</li> </ol>
2 March	Portsmouth	<ol style="list-style-type: none"> <li>9. Portsmouth CLAC</li> <li>10. Portsmouth CAB</li> <li>11. Portsmouth City Council</li> <li>12. Roberts Day Care Centre</li> <li>13. Warner Goodman LLP</li> </ol>
2 March	Cornwall	<ol style="list-style-type: none"> <li>14. SHARE</li> <li>15. Redruth CAB</li> <li>16. Nalders Solicitors</li> <li>17. Cornwall County Council</li> </ol>
3 March	Bristol	<ol style="list-style-type: none"> <li>18. Bristol CAB &amp; South Bristol Advice Services</li> <li>19. Bristol City Council</li> <li>20. Avon and Bristol Law Centre</li> <li>21. Bristol Debt Advice Centre</li> </ol>

<b>Date of Visit</b>	<b>Place</b>	<b>Organisations visited</b>
4 March	Plymouth	22. Plymouth CAB 23. Plymouth City Council 24. Devon Law Centre 25. Plymouth Shelter 26. Trobridges Law
4 March	Tyne & Wear	27. David Gray Solicitors 28. Newcastle Shelter 29. Gateshead Metropolitan Council 30. Gateshead CLAC 31. Gateshead CAB, Blyth Valley CAB, Berwick Upon Tweed CAB, Alnwick & District CAB, West Northumberland CAB, Washington CAB, DAWN Advice Northumberland 32. LSC North Region
5 March	Tyne & Wear	33. Ben Hoare Bell Solicitors, Sunderland 34. Sunderland City Council 35. South Tyneside CLSP & Welfare Rights Service 36. Newcastle Law Centre
6 March	Wandsworth	37. South West London Law Centre 38. Tooting & Balham CAB 39. Threshold 40. Fisher Meredith 41. (later) Wandsworth Council

<b>Date of Visit</b>	<b>Place</b>	<b>Organisations visited</b>
9 March	Cumbria	42. Burnetts Solicitors 43. Cumbria Community Law Centre 44. Allerdale CAB 45. Cumbria County Council 46. Kendal CAB 47. Ulverston CAB
10 March	Manchester	48. Manchester CAB 49. Manchester City Council 50. Youth Support Service 51. Manchester Advice 52. Platt Halpern Solicitors 53. Wythenshawe Law Centre, North Manchester Law Centre, South Manchester Law Centre
12 March	Norfolk/Norwich	54. Norfolk Community Law Services Ltd 55. Norfolk County Council 56. Norwich CAB 57. Norfolk Family Law Consultancy
13 March	Camden	58. Mary Ward Centre 59. Camden Law Centre 60. Age Concern 61. London Borough of Camden 62. Hodge Jones & Allen Ian Greenidge
26 March	North Wales Caernarfon	63. Caernarfon CAB 64. North Wales Local Authority
	North Wales Bangor	65. Julie Burton Law 66. Disablement Welfare Rights
27 March	South Wales Cardiff	67. Cardiff CAB 68. AdviceUK 69. Roy Morgan Solicitors 70. Cardiff Law Centre

# LALL Snapshot Visit Schedule



## Annex E: Local Authorities' Expenditure on Third Sector Legal and Advice Services – Feasibility Exercise

### Introduction

Data on local authority expenditure on third sector legal and advice services was previously collected in BVPIs as BV226 a, b and c. BV226a collects “*Total amount spent by the local authority on advice and guidance services provided by external organisations (current financial year)*”. The latest information for this BVPI was collected in 2007/8 and is available on the audit commission website at <http://www.audit-commission.gov.uk>. This data is the most up to date data authorities could provide since the financial year 2008/9 is not yet complete. There are however a number of caveats and issues with this data, as discussed below, which mean that it should not be used as a definitive measure of spend, but rather as a broad estimate.

There has been discussion about conducting a survey of local authorities to update this data. To investigate whether this was feasible 7 local authorities were contacted by telephone. From these discussions and discussion with the Audit Commission we feel that a new survey would be unlikely to produce data that was more reliable or more up to date than the 2007/8 BVPI data and therefore should not be conducted.

The following sections outline further information about BV266, the data from the 2007/8 BVPIs, and the outcome of telephone discussions with authorities about conducting a survey.

### Caveats and Issues with BV226a data

The data held by the Audit Commission gives local authorities' spend on external organisations for the financial year 2007/8. The data is comprehensive with a response from 355 out of 388 authorities in England (covering all types of authorities). However, there are a number of problems with this data. In the description of the indicator the Audit Commission states “*A number of authorities have expressed concern about the potentially onerous requirements placed on them by BV226. The Department of Constitutional Affairs have confirmed that they are not expecting any more than broad cost estimates in respect of this indicator*”.

Discussions with the Audit Commission have revealed further concerns about the reliability of this data:

- The data for BV 226 has always been based broadly on estimates from local authorities due to the difficulties most authorities had in coming up with an accurate figure. It was optional for local authorities to return a figure as the AC received many queries from authorities stating that they were struggling to even give an estimate
- Because of these difficulties the Audit Commission made the decision in conjunction with CLG that the data would not be used in any assessments, or audited etc but would still be collected and published should it be of use to local authorities. The published data purposely hasn't been quartiled for the above reasons.
- There are a number of anomalies in the data, some of which are obviously wrong such as authorities reporting zero spend and authorities reporting figures that look to be in £1000's rather than pounds, and the Audit Commission did chase the authorities for correct versions but since it was optional did not get responses on all occasions.
- It must also be noted that authorities weren't always clear about what they should include in the figure. The feasibility exercise phone calls discussed below, for example, revealed that authorities were unable to tease out spend on legal and advice services from third sector organisations where the organisation offered other services as well. The way authorities dealt with these issues and what they included is likely to be inconsistent, but given the complexity of this area this is not surprising.
- Both the LGA and Audit Commission therefore feel that we should be extremely cautious in the use of the data and feel it is too unreliable for any meaningful analysis, particularly if that analysis leads to important policy decisions being made.

However, whilst this data has its problems, due to the nature of the data in question it is questionable that conducting a further survey would produce anything better. A survey of local authorities is likely to get a response rate considerably lower than the 91% achieved by the Audit Commission on BV226a, so the coverage of any data from the survey would be less than that of BV226. It is also likely that authorities responding to a survey at this point in time would be likely to submit their BVPI response as more up to date data is not yet available. We feel that additional data collection would be a considerable burden to authorities and would be unlikely to produce anything more reliable than the BVPI data.

### Authority returns for key areas

<b>CLAC/CLAN AREAS</b>	<b>2007/8 BV 226a</b>	<b>2006/7 BV 226a</b>	<b>2005/6 BV 226a</b>
Gateshead	2,978,320	2,722,993	2,349,858
Kingston Upon Hull	971,874	972,000	2.3
Portsmouth	300,227	364,337	397,337
East Riding	339,106	340,615	309,067
<b>Urban</b>			
Manchester	1,507,000	1,508,000	1,478,134
Plymouth			
Sunderland			
Bristol	2,355,841	2,074,026	2,120,088
<b>Rural</b>			
Northumberland	148,242	137,197	242,692
Cornwall	899,006	329,103	226,000
Norfolk	471,339	460,291	452,579
Norwich	232,605	227,440	226,405
<b>London</b>			
Wandsworth	<i>1,159</i>	<i>1,232</i>	<i>1,063</i>
Camden	3,051,523	3,000,409	3,119,655

Note: those in italics are those where it is unclear what denomination the figure is in. Authorities were asked to give data in £, however for those in green it is unclear whether this is the case. Blanks indicate no responses as this indicator was not compulsory.

### Analysis of the data from the 3 years to 2007/8 of BV226a

With the caveats and issues discussed above in mind some very brief analysis was conducted of BV226a data. To improve the reliability of the data, the data from the audit commission was cleaned using the following steps:

- Zero spend was removed
- Data that should be in pounds, but was presented in thousands of pounds was corrected, by comparing spend from previous years to check this was the case
- Outliers that seemed particularly unclear were removed

After cleaning 355 responses remained, although it must be noted that these figures are estimates.

### Analysis of returns BV226a for all authorities

Analysis was conducted for lower tier and single/upper tier authorities separately. It was not possible to get a figure for total spend of all authorities as there was not data from every authority, and it would be impossible to gross up from the data the AC have published.

The average spend of lower tier authorities on advice and guidance services provided by external organisations in 2007/8 was £166,418, and ranged between £13,520 and £1,944,949. Average spend had increased by 1% from the previous year.

<b>Lower tier</b>	<b>2007/8 BV 226a</b>	<b>2006/7 BV 226a</b>	<b>2005/6 BV 226a</b>
Average spend (£)	166,418	164,555	166,017
% change from previous year	+1%	-1%	
Min (£)	13,520	13,520	13,520
Max (£)	1,944,949	1,936,032	1,604,785
Base (238 authorities)	227	224	217

The average spend of upper and single tier authorities on advice and guidance services provided by external organisations in 2007/8 was £927,799, and ranged between £40,362 and £9,200,000. Average spend had increased by 5% from the previous year.

<b>Upper and single tier</b>	<b>2007/8 BV 226a</b>	<b>2006/7 BV 226a</b>	<b>2005/6 BV 226a</b>
Average spend (£)	927,799	879,745	816,759
% change from previous year	+5%	+8%	
Min (£)	40,362	44,700	35,000
Max (£)	9,200,000	9,200,000	9,200,000
Base (150 authorities)	128	130	126

The maximum spend figure for upper and single tier authorities was £9.2m for Coventry. Since this is an outlier and does not change over time it was removed. Excluding Coventry, the average spend of upper and single tier authorities on advice and guidance services provided by external organisations in 2007/8 was £862,664, and ranged between £40,362 and £7,513,869. Average spend had increased by 6% from the previous year.

Upper and single tier	2007/8 BV 226a	2006/7 BV 226a	2005/6 BV 226a
Average spend (£)	862,664	815,247	749,693
% change from previous year	+6%	+9%	
Min (£)	40,362	44,700	35,000
Max (£)	7,513,869	4,559,417	3,956,573
Base (150 authorities)	127	129	125

### Feasibility exercise

Prior to completing a survey of local authorities to update this information a short feasibility exercise was conducted. 7 authorities were contacted ensuring a range of type and region.

### Shire County in South West

This authority does map spend, however they would be a year behind in the figures they could give. Speaking about other authorities they have contact with, the officer named a couple she was aware had conducted similar mapping exercises, but thought a number would not have.

### Met District in West Midlands

This authority felt they would be able to give a figure for spend that is administered through the voluntary sector team, but third sector organisations might tender through other parts of the council and this wouldn't necessarily be included.

### District in South East

This authority felt that the information wouldn't be there, since it is very difficult to tease out what spend is for what types of service. Broad spend might be possible, but not easy.

### Unitary in Yorkshire and Humber

This authority felt that they had contacts in place from having completed the BVPI exercise previously, so to gather similar data would be possible, however this would have the same caveats as the BVPI data.

### **District in South West**

This authority commented that collecting the data for the BVPI was very time consuming and difficult. Grants provided to advice organisations, e.g. CAB are easy to quantify, but it is difficult to tease out anything more specific e.g. advice services given amongst other services by a third sector organisation. An easier question might be to list types of organisations and ask for expenditure, but it will all be fairly approximate if specific service areas are mentioned. The detail in the BVPIs was what made it hard i.e. quality marked etc.

### **Unitary in North East**

This authority felt some parts of the BVPI were easier than others. Grants to advice organisations are easy and contracts, but trading standards was problematic. Getting this data could be fairly easy as long as the definitions are precise and don't require detailed data breakdown.

### **District in the South East**

This authority commented that when they filled in the BVPIs they only gave data for 5 or 6 core organisations and those working for the quality mark, as it was difficult to know who to include since it could be argued that lots of organisations offer legal and advice services. Therefore if we were to ask again now the quality mark has been disbanded it might be difficult to know who to include. They don't collect this now so it would be tricky, but if they could see a good purpose to doing it they would make the effort. It would need to be very clear who to include.

### **Conclusion**

Whilst a survey would be feasible, there are a number of issues to bear in mind:

- Whilst authorities commented it would be possible, they felt it would be a large amount of work to do properly, therefore consideration needs to be made of the usefulness of the data against the burden to authorities.
- Any expenditure on organisations that have a broader remit than just advice services can't be included
- Data is likely to be of the same reliability as the BVPI data
- Data would not yet be available for 2008/9
- Any requests for data should be around broad, but carefully defined areas i.e. ask for grants to advice organisations or contracts for advice services

- It is likely that the response rate to a further survey would be considerably lower than that for BVPIs.

**Definitions: BVPI 226 a, b, c**

This BVPI was amended in 2005/6. Previously it was BV 177.

**BV 177:** percentage of authority expenditure (whether in-house or external) on legal and advice services which is spent on services that have been awarded the Quality Mark and meet legal needs identified in the Community Legal Service Partnership strategic plan.

This has now been split into parts a (external orgs), b (% with quality mark) and c (internal services)

**BV 226a:** Total amount spent by the local authority on advice and guidance services provided by external organisations (current financial year)

**BV 226b:** Percentage of monies spent on advice and guidance service provision that was given to organisations holding the CLS Quality Mark at 'General Help' level and above (current financial year)

**BV 226c:** Total amount spent on Advice and Guidance in the areas of housing, welfare benefits and consumer matters which is provided directly by the authority to the public (previous financial year)



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