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# **Summary: Training and regulating providers of publicly funded legal advice**

– a case study of civil provision

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# **Summary: Training and regulating providers of publicly funded legal advice schemes**

**– a case study of civil provision**

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## Main report

A copy of the main report on which this summary is based is available at:  
<http://eprints.hud.ac.uk/4129/>

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The views expressed are those of the author and are not necessarily shared by the Ministry of Justice (nor do they represent Government policy).

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## Key findings

This research explores the impact of the various systems of training and regulation on perceptions of the quality of the civil legal advice given to clients. It considers the 'for profit' legal advice sector (e.g. solicitors) and the 'not for profit' sector (e.g. Citizens Advice Bureaux).

### Findings:

- Both sectors stressed the significance of non-economic values, such as commitment to social justice or to their client base, in their commitment to providing the service.
- Our respondents were largely unanimous in identifying the fact that the nature of publicly funded legal advice work, and the specific clientele in need of this advice, demanded special skills and knowledge, and equally therefore, specialised training.
- There are concerns that current training provision will not ensure a sufficient supply of appropriately knowledgeable and skilled advisors to meet identified need.
- All of the organisations included in the study were subject to multiple regulation.
- Contracts together with the accompanying mechanisms of audit and inspection was seen as a powerful means of influencing individual and organisational behaviour in both sectors.
- The quality of advice networks in local areas was heavily dependent on relationships between tiers of advice within an organisation, and between organisations, which were based on trust and confidence. These relationships were the foundation of effective referral and signposting.



## Summary

This research explores the issues involved in balancing quality and accessibility to legal advice for civil matters. Using 64 interviews and observational data, it explores the impact of the various systems of training and regulation on perceptions of the quality of their legal advice given to clients. It considers differences between the 'for profit' legal advice sector (e.g. solicitors) and the 'not for profit' sector (e.g. Citizens Advice Bureaux). The research is based on a detailed case study in the north of England in 2005.

## Training

Policy initiatives in publicly funded legal advice over the past decade have signalled a move towards a systematic view of generalist advisors as gateways for those with complex legal problems to be able to access specialist advice. Specialists work on individual cases, ensure organisations are keep up to date with technical details in rapidly changing areas of law and policy, and train and improve skills of other advisors.

Both sectors stressed the significance of non-economic values, such as commitment to social justice or to their client base, in their commitment to providing the service. These qualities, they said, had been instilled most significantly by either prior commitment, or by their vocational training.

Our respondents were largely unanimous in identifying the fact that the nature of publicly funded legal advice work, and the specific clientele in need of this advice, demanded special skills and knowledge, and equally therefore, specialised training. The skills and knowledge concerned involved technical knowledge of the specific areas of welfare type law, procedural knowledge of the courts and tribunal system, 'local' contextual knowledge about the way in which different agencies functioned and contextual knowledge of the difficulties experienced by particular client groups.

There are concerns that current training provision will not ensure a sufficient supply of appropriately knowledgeable and skilled advisors to meet identified need.

## Regulation

All of the organisations included in the study were subject to multiple regulation.

Respondents in both 'for profit' (FP) and 'not for profit' (NFP) sectors were unequivocal in their support of the effect of the Specialist Quality Mark (SQM, a mandatory requirement for those with a contract for specialist advice) on their Legal Services Commission (LSC) contracted work. These benefits were most keenly felt by managers in the NFP sector, where the discipline of the market had not applied, and where some funding agencies had weak systems for demanding accountability.

Respondents perceived aspects of contractual regulation as harmful to some degree. They were ambivalent about the process of contract compliance auditing. Respondents in both the FP and NFP sectors felt that too great a degree of risk had been transferred to them as contractors. Furthermore, the NFP sector felt that the exclusion of activities which had traditionally been a key part of their work had an adverse impact on their mission.

Some of the reservations expressed about the operation of contracts have been answered by subsequent developments. However, organisations, particularly those with small infrastructural support need more training and advice than they currently receive when managing the demands of complex contractual regimes.

## Conclusion

Our observations, and the responses of informants, indicated that the quality of advice networks in local areas was heavily dependent on relationships between tiers of advice within an organisation, and between organisations, which were based on trust and confidence. These relationships were the foundation of effective referral and signposting. These findings are relevant to the development of Community Legal Advice Centres and Networks (CLACs and CLANs).

# 1. Introduction and rationale for the research

The availability of free or affordable legal advice has been held to be central to the task of achieving a fair and just legal system. In addition advice has a central role to play in meeting the government's objective of combating social exclusion. It achieves this through the empowerment of excluded groups and individuals (Buck *et al.*, 2005), through increasing the material resources available to communities (Stein, 2004) and by providing a counter balance to discretionary decision-making by the State (DCA/LCF, 2001; DCA/LCF 2004). However, the quality of publicly funded advice is as important as its availability. This draws our attention to a dilemma. Highly trained and regulated advisors can raise the cost of provision and reduce accessibility. On the other hand, reducing standards in regulation and training may diminish quality unacceptably. This report explores the issues involved in balancing quality and accessibility, particularly in relation to the mix of advice provision created by the Access to Justice Act (AJA) 1999. This Act radically extended the contribution of the NFP advice sector (agencies like Citizens Advice Bureaux (CABx)) to publicly funded legal advice provision. This development mirrors the expanded role of the 'Third Sector' more generally<sup>1</sup> (Kendall & Knapp, 2001; Blackmore, 2004).

This summary reports a project based on a systematic and extensive review of academic literature on regulation and training, an analysis of relevant policy documents, and field research in the form of a detailed case study in the north of England. The field research used interview and observational data gathered in 2005 and 2006 to identify the impact of the various systems of training and regulation on advisors' perceptions of the quality of their advice to clients. Whilst criminal defence is an important aspect of legal aid provision, this research was solely concerned with advice on civil matters. A more detailed description of the methodology is provided below.

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<sup>1</sup> Excluding Law Centres, around 400 NFP agencies have contracts with the LSC to provide legal advice and assistance to eligible clients. The largest provider is Citizen's Advice, with approximately 200 Bureaux participating (of which around 80 employ solicitors). Shelter has 40 or so offices with contracts to provide housing advice. The residue is spread between a number of different specialist advice agencies. Overall the NFP sector contractors start around 115,000 cases annually, 22% of the total acts of assistance (House of Commons Select Committee for Constitutional Affairs (HoC, SCCA, 2004, we 48, p. 6). In 2004-5 the NFP sector were awarded 942 out of a total of 6,242 contracts. Between 2003-4 and 2004-5 the number of contracts awarded to the NFP sector rose by 11.3%, while the number of contracts awarded to solicitors' firms declined by 9.9% (HoC, SCCA, 2004, we 49, p. 10).

## 2. Publicly funded legal advice

There are currently the following key sources of advice on civil law issues:

- the private client route, where the person seeking advice consults a solicitor and pays the full cost of advice and representation from the onset of proceedings;
- provision of advice by a solicitor working in the FP sector where advice and possibly representation is partially or wholly funded by legal aid;
- provision of advice by a solicitor or other specialist advisor in a law centre;
- access to free advice from a NFP agency, where the general or specialist advice may be supported by one of a number of funding streams, including legal aid.

The first two routes are supplied by solicitors' private firms, the FP sector. The significant involvement by the NFP advice sector in the delivery of publicly funded legal advice (Moorhead *et al.*, 2001, p. 1) was initiated in 1997 with the contracting pilots for Advice and Assistance services. Previously these services had been provided solely by the solicitors working in the FP sector or in law centres under the Green Form<sup>2</sup> and ABWOR (Assistance by way of representation)<sup>3</sup> schemes. The two sectors appear at first sight to be characterised by a number of fundamental differences. The highly trained, highly regulated FP sector contrasts with a relatively lightly regulated NFP sector which has few formal barriers to entry. The business orientation of the private firm contrasts with the social mission of the NFP sector and the specific technical focus of the FP sector contrasts with the holistic approach of the NFP sector.

However, the distinctions between the two sectors have probably been overstated. Suppliers in both sectors providing publicly funded advice have been subjected to the discipline of the quality management regimes. Firstly, through the Legal Aid Franchising Quality Assurance Scheme (LAFQAS) and then by its successor, the Quality Mark (QM). Nevertheless, this dual-sector provision continues to raise questions. What kind of training

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<sup>2</sup> Under the Legal Aid Act (LAA) 1988, Part III, the provision of general legal advice by a solicitor, writing letters, negotiating, preparing a case in writing for a tribunal, undertaken to a maximum of two hours' work (three hours for divorce and separation petitions), could be funded as legal advice and assistance, subject to eligibility rules, and this was known as the Green Form Scheme.

<sup>3</sup> ABWOR represented an extension to the Green Form scheme, under which solicitors could prepare a case and represent clients in civil proceedings in magistrates' courts and in front of mental health tribunals, subject to financial eligibility and the tests of legal merit and reasonableness specified in the LAA 1988, s. 125(2).

is most appropriate to prepare advisors to provide an appropriate quality of advice to clients? How should advisors be regulated in order to deter them from offering unnecessary or inappropriate advice? Is the advice system organised in such a way as to maximise the social benefit: for example, do advisors take into account the needs of those in the queue for services, as well as those with whom they are face to face? Will the application of contracting and quality assurance models based on an economic interpretation of human agency undermine the ethical foundation of publicly funded legal advice? Is there a tension between the regulatory goal of achieving Value for Money (VFM) and training models in both the FP and NFP sectors which are based on achieving the best result for the client?

In the case of publicly funded legal advice, the issue is further complicated by the fact that the stakeholders include not only the client and the legal advisor, but also the State, which is a monopoly purchaser of these services, and the taxpayer supplying the funds for the purchase. In the following section we will explore the key functions of training and regulation, and the complexity of reconciling the aims of regulation and training with the complexities of delivering services on the ground.

### **3. Training and regulation of legal advice providers – purpose and function**

Broadly, both training and regulation are designed to influence the conduct of day-to-day transactions. Some forms of regulation and training function at a distance from the day-to-day transactions. Initial training, for example is expected to influence behaviour taking place many years after the training, often in very different circumstances. In contrast, professional disciplinary proceedings are only brought into play when some breach of expected behaviour has already taken place.

Training and regulation in the legal advice sector also seeks to address the power imbalances that result from what economists describe as ‘information asymmetry’. Information asymmetry is where clients with a limited knowledge of an area of expertise have to judge the quality or price of a good or service offered by those with a great deal of expertise. The risks presented by information asymmetry range from the possibility of fraudulent price inflation to the incompetent delivery of the service. In the case of publicly funded legal advice, an example of the former might be inflating costs by an exaggerated reporting of the time spent on a matter. An example of the latter might be failing to correctly identify legal options available to a client in a specific situation.

One important feature of this section is to identify the way in which the weaknesses of traditional modes of professional training and regulation have led to the increasing use of contract management techniques in public services in general, and legal advice provision in particular.

#### **3.1 Functions of training**

The provision of legal advice is a complex activity. Any training regime which prepares advisors for the role has to fulfil a range of related functions:

- It must provide the advisors with the necessary underpinning knowledge to enable them to be able to identify a legal problem. This knowledge needs to be set in the context of the body of principles and law to which it relates, and find a procedural path by which to progress the matter. Much of this knowledge can be, and is, taught in education or training settings away from the workplace (Boud & Walker, 1998; Edwards, 1997).

- This underpinning knowledge of the law must be supplemented by a working knowledge of the context in which the law is applied. This involves understanding the working practices of a range of government agencies, courts and tribunals, as well as other key actors in civil society, such as lending institutions like banks (in the case of debt advice) or private landlords (in the case of housing advice). However, in the area of publicly funded legal advice, it will also involve knowledge of the cultural context from which marginalised clients come (Sanderson & Sommerlad, 2002). At an obvious level a successful advisor will need to understand the way their client uses language. At a more subtle level, they will need to understand for example the reasons why a claimant for Disability Living Allowance has overstated their capacity to cope, and therefore been refused.
- These sets of knowledge must be combined with both general and specific skill sets. Most obviously, an advisor needs good communication skills in order to elicit the nature of a legal problem and explain clearly to a client what are the options for action (National Consumer Council, 1989), or alternatively, to explain to a disturbed client that no legal remedies are available to them. Communicating with disadvantaged or disturbed clients is underpinned by the capacity of the advisor to empathise with the client's situation (Stein, 2004). However, advisors with large caseloads and subject to complex and often time-limited procedures also need considerable organisational skills to manage their files.
- The bundles of skills and knowledge cited above, when realised in a workplace setting, are generally described as competence, or competencies. However, in addition to the competence to provide advice to recognised standards, the advisor needs an enduring set of values, or professionalism, that motivates them to behave ethically and to carry out their work with commitment (Moorhead, 2004, pp. 181-2). Elements of this can be communicated in a formal educational setting through introduction to professional practice rules and codes, but most commonly these values are inculcated through socialisation in the workplace.
- Clearly, initial training for an advisor prior to entry to the role cannot maintain its relevance in a world where the law and the context in which it is applied is changing with increasing rapidity. Therefore a system of training must be capable of refreshing values and maintaining competence over time.

- Finally, a system of training which is fit for purpose must be capable of ensuring a sufficient supply of appropriately knowledgeable and skilled advisors to meet identified need.<sup>4</sup>

The problems of ensuring quality of advice through either regulated training or complaints systems has led to the development of regulation of performance of the advisor role.

### 3.2 Functions of regulation

The term regulation is generally used to describe the application of rules, enforceable through some form of legal or administrative procedure, to an aspect of civil society. Most commonly, regulation is used to circumscribe a position of monopoly or near-monopoly in the provision of goods and services. Economists would argue that the absence of a free market could enable suppliers to inflate price or reduce the quality of services to the detriment of consumers (Rickman *et al.*, 1999).

In the case of legal advice provided through legal aid, there has been an extended debate. On the one hand, commentators have argued that suppliers artificially inflate costs by taking on unmeritworthy matters, or undertaking more work on the case than could be justified in the client's, or the public interest (Moorhead, 1998; Kemp *et al.*, 2005). On the other hand, other commentators argue that the effort to restrain cost in an adversarial system can create a bias against the interests of the legally aided client.<sup>5</sup> Regulation of legal aid is therefore important not just in acting as a restraint on the greedy and unscrupulous, but also in establishing a standard for the extent and quality of work that can be funded by the taxpayer. In addition to this economic role, regulation also fulfils the following functions:

- It provides the framework of behaviour within which actors must operate (for example Solicitors' Practice Rules, Solicitors Regulation Authority, 2007) and this framework acts to socialise them into ethical behaviour.
- It prevents entry into the market of actors unqualified to give advice.
- It provides for sanctions against those who are not discouraged from inappropriate behaviour, the most extreme of which is to prevent them from practising.

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<sup>4</sup> Concerns about the supply of legal aid lawyers is long standing: see for example Sommerlad (2001); Moorhead (2004).

<sup>5</sup> See for example the response to the Carter Review of the London Criminal Courts Solicitors Association (<http://www.lccsa.org.uk/index2.asp?ItemID=2784&pcid=3&cid=6&mid=75&incid=53&archive=yes>).

- It provides a means of ensuring that firms and agencies that supply legal aid will make the investment in the training necessary to ensure that the quality of advice given is appropriately high.

In recent years attention has focused on whether the use of regulation to achieve these objectives may result in regulated organisations bearing costs disproportionate to the benefits obtained (Bolton, 2002). These costs may be economic, in the sense of requiring additional labour to service inspection or audit requirements, or non-economic, in the sense of distorting the role or function of the organisation. In the case of NFP advice giving organisations, they may feel that some essential part of their mission has to be surrendered in order to meet regulatory requirements. The Better Regulation Task Force and its successor body, the Better Regulation Commission, have therefore established principles designed to reduce regulation to the minimum necessary to meet broader objectives (BRTF, 2004; 2005a, 2005b).

### **3.3 Training and regulation: related functions and impact**

There are functional links between regimes of regulation and training. Both attempt to specify behaviours and dispositions which they wish to encourage, but frequently have to be satisfied with specifying proxies (passing examinations or satisfying paper-based audits) for these behaviours and dispositions. Thereby they risk displacing the intended outcome with conformity to the proxy demands. The complex cultural systems that drive the behaviour that training and regulation try to influence are sensitive but unpredictable, as some of our later discussion of the impact of regulation will demonstrate. 'Light touch' systems of audit, or systems of training which are detached from functional roles, carry the risk of accommodating incompetent or cost-inflating behaviour. 'Heavy touch' audit systems and highly functional training regimes risk obliterating the 'value-added' cultures of commitment and client-centredness which appear to be the basis for much of the 'quality' in the sector (Bolton, 2002).

One of the features of legal advice is the fact that its practitioners vary widely in terms of their background and training, and the type and extent of regulation to which they are subject. Training for the FP practitioner is lengthy and highly regulated, as are the conditions of practice in the FP sector. In contrast, for the NFP advisor there may be substantial training and mentorship, and high expectations regarding commitment to the organisation's culture and values, but these are not subject to rigorous formal regulation. The costs associated with the high levels of regulation required in FP sector may make

these advisors appear to be prohibitively expensive. On the other hand, the low levels of regulation in the NFP sector may appear to carry corresponding risks.

The following table identifies some of the key risks and benefits associated with different forms and levels of regulated entry to the occupation of legal advisor. It identifies the way in which regulation can focus on controlling entry to the field by prescribing the qualifying route for offering legal advice in depth and detail. In the case of qualified solicitors, the length and complexity of the 'pre-service' qualification process creates a high entry barrier to the licence to offer legal advice. The resulting bottleneck in the supply of solicitors, and the 'information asymmetry' between solicitors and clients gives practitioners qualified by this route considerable market power. Consequently, this power needs to be counterbalanced by strong regulatory sanctions to prevent abuse. On the other hand, weak regulation of entry standards, or 'low entry barriers' may encourage committed advisors with good practical competence to join the workforce. The effects of low entry barriers need to be mitigated by systematic on-the-job (or 'in-service) training and supervision to ensure competence. The risks in the top row of the table can be seen as largely associated with the FP sector, where the education and training has been associated with market advantage, while the risks in the bottom row are more associated with the fact that the entry route to the NFP sector is often through volunteering. However, it should be remembered that the NFP sector may sometimes employ qualified solicitors, while the FP sector is increasingly dependent on clerical staff with little or no legal training to fulfil the role of advisor.

**Table 3.1: Risks and benefits of regulation<sup>6</sup>**

<b>Regulated entry barriers</b>	<b>Effects</b>	<b>Risks</b>	<b>Training model</b>	<b>Performance regulation issues</b>
Regulated Training with High Entry Barriers (e.g. solicitors)	Filters available labour supply.  Provides proxy guarantee for initial knowledge and competence but can't guarantee later performance.	Expertise may not be matched to occupational requirements.  'Information Asymmetry'.  'Supplier induced demand'  'Cherry-picking' – choosing to do only the work which brings in most profit.  Qualification period restricts labour supply and likelihood of incurring debt deters candidates without resources.	Funded by the State and the individual.  Pre-employment.  Education partitioned between academic theoretical and vocational training.  Continuing Professional Development (CPD) required for updating expertise.	Regulation of performance needs to be strong  Regulating the standard of publicly funded service through contracts and quality assurance needs to be pitched to keep costs of supplying service at 'competence plus' (just better than competent but not 'de luxe') level.
Regulated Training With Low Entry Barriers (e.g. occupations not requiring formal qualifications pre-entry, but achievement of competence-based occupational standards in employment)	Less restricted access to available labour.	Problems maintaining competence.  Competence-based standards may not capture knowledge and values base which underpins performance in role.  Qualification requirements may deter volunteers from entering the field.	In-service  Competence/standards based on role but with generic currency.  Functional orientation.  Individual funding unlikely, organisational support unreliable.	The skills base of the workforce may be eroded by workforce turnover. This model may therefore require enhanced monitoring of performance.
Unregulated training No Formal Entry Barriers	Unrestricted access to available labour.	Client focus may lead advisor to ignore needs of potential clients that the service doesn't currently reach. 'Holistic' values may inflate costs (advisor commitment to client may inflate time spent on problems). 'Ownership' of clients can lead to reluctance to refer clients on. Performance monitoring may be variable.	Either extended traineeship OR recruitment of experienced labour with in-service training.  Functional orientation.  Strong emphasis on organisational culture and loyalty.	If turnover increases, recruitment and training costs become a problem for NFP agencies, and stronger performance management regimes may be required.

<sup>6</sup> This table was developed by the authors following an extensive review of relevant literature on regulation in general, and regulation of the legal profession in particular. The works consulted include Ashby (1997), Baldwin *et al.* (2003), BRTF (2005a), Black (2002), Bolton (2002), Chittenden *et al.* (2002), Clementi (2004), Frontier Economics (2003), Hampton (2005), Hood (1999), Mandelkern Group (1995), Moorhead (2001), National Audit Office (2005), Office of Public Sector Reform (2003).

The following sections provide a brief account of the research and the picture they provide of the actual impact of current systems of training and regulation on the quality of legal advice provision, as perceived by practitioners.

## 4. Methodology

The field research was designed to investigate the impact of training and regulation on delivering, and managing the delivery of, legal advice and representation. It was based primarily on the qualitative methods of interview and observation, undertaken with a limited number of FP firms and NFP agencies in a region of Northern England. The region included small towns, big cities and rural areas. The firms included some highly specialised legal aid firms, and some medium sized practices with contracts for advice in several specialist areas. NFP agencies included CABx, two housing advice agencies, a Women's Centre and a Law Centre. We interviewed advisors, and observed advice sessions in the specialisms of Housing, Family, Child Care, Community Care, Immigration, Employment, Civil Litigation, Welfare Benefits, Debt, Personal Injury and Domestic Violence. In each organisation, we interviewed the Director or Senior Partner; the LSC contract manager where that position was not held by a senior partner; persons in the training partner or manager role where that person was not also the contract manager; and at least one supervisor and one supervisee. In addition, we interviewed senior members of national organisations in the FP and NFP fields with special responsibility for training or regulation, managers and development workers from the regional LSC office and a commercial trainer.

While we planned to obtain a balance of advice specialisms in both the FP and NFP sectors in our sample, this proved difficult. Contracts for some specialisms were quite rare, and the organisation with the contract was not always willing to co-operate. As a result some specialisms such as housing and family, were over-represented, and other common specialisms, such as debt advice, were under-represented.

A total of 64 respondents were interviewed, several more than once. The distribution of respondents between the NFP and FP sectors, and between the different levels of each sector, is represented in the table below.

**Table 4.1: Respondents by sector and status**

<b>Respondent Category</b>	<b>FP Sector</b>	<b>NFP Sector</b>	<b>Other</b>	<b>TOTAL</b>
Senior Partner/Director	10	7		17
Non-partner contract manager Training Manager	3	3		6
Supervisor	2	4		6
Supervisees	10	8		18
Trainees/volunteers	2	2		5
Training Organisations	2	6		8
Committee members		1		1
LSC personnel			4	4
<b>TOTAL</b>	<b>29</b>	<b>31</b>	<b>4</b>	<b>64</b>

The fieldwork for the study was conducted between June 2004 and December 2005

## 5. Comparing training in the 'for profit' and 'not for profit' sectors: prospects for change?

In this section we provide a comparative analysis of the formal structure of training for the two sectors, both in terms of initial training and provision for Continuing Professional Development (CPD). We then explore the issues that arise from our research into the way that this training provision functions in practice. We draw attention to the significance of work-based learning and mentoring in legal advice work, and the opportunities that might be afforded by a greater investment in this form of training.

The table below summarises the training routes typically available for advisors in the FP and NFP sectors, and identifies the type of regulation which applies to some of these routes.<sup>7</sup>

**Table 5.1: Training routes for legal advisors in the FP and NFP sectors**

Type of advisor	Initial training and providers	CPD & providers	Assessment	Type of regulation
FP Solicitor	Minimum 3 year qualifying degree <b>or</b> degree + Postgraduate Diploma (PGDip).  One year Legal Practice Certificate (LPC).  Two year training contract.	CPD through mandatory annual points-based system. Qualifying CPD approved by Law Society. Providers include Higher Education Institutions (HEIs), private training companies, voluntary and community organisations (VCOs).	Initial training traditional academic assessment, vocational training includes skills element, CPD on attendance basis.	Qualifying law degrees and PG Dips require Law Society approval.  LPC approved and monitored by Law Society.  Training contract monitored by Law Society.
FP paralegal	Some paralegals receive only on the job training.  Others have partial legal training, <b>or</b> ILEX (Institute of Legal Executives membership) – Level 3 + 2 years + 5 years supervised employment, <b>or</b> qualifying law degree + 1-2 years + supervised employment.	ILEX recognised providers: post-compulsory education sector.		ILEX approved providers.
NFP (CABx) general rota worker	CAB Certificate in Generalist Advice Work.		Focus on learning through case studies, extended work shadowing, reflective practice and mentoring.	Citizens Advice audit quality of advice, and bureaux conform to requirements of membership of national network.  Citizens Advice Training accredited through the Open College Network (OCN).

<sup>7</sup> The table is based on a review by the authors of a range of the material available on training routes for legal advisors, including Citizen's Advice (1999; 2002), Cooper (2006), Law Society (2005; 2005a).

Type of advisor	Initial training and providers	CPD & providers	Assessment	Type of regulation
NFP CABx specialist advisor	As above plus 2 years' experience and specialist training.	A range of Providers depending on the specialism (e.g. Shelter, Child Poverty Action Group).		Informal monitoring by the local management.
Other NFP	Specialist advisors normally expected to have 2 years previous experience.	As above		

There are some highly significant contrasts between the two sectors. The most obvious is that demand for employment in the FP sector as a whole, in spite of the high level of investment in terms of both time and money required to qualify (which in turn results from its highly regulated training requirements) is still buoyant. State, individuals and firms jointly provide the investment. The state provides support for initial undergraduate qualifications. The individual is obliged to fund vocational training unless they can obtain sponsorship. Firms themselves invest in the training contract in the form of training and supervision, and also generally support employees' CPD.

The NFP sector is dependent on volunteers, and specialist advisors who often graduate from the ranks of volunteers. Entry barriers are low and investment in training is dependent on the nature of the funding regime that supports the organisation. A national organisation with a high profile and historically stable funding, like Citizens Advice, can support extensive initial training even for volunteer staff. More specialised or local organisations that may depend on annually renewable or project specific funds, may find it harder to support training, and may be more inclined to 'poach' staff trained by other agencies. Respondents from the NFP sector argued that it was virtually impossible to obtain funding that covered the full economic cost of commissioning new staff, or managing normal staff turnover and training costs.

However, FP firms participating in the research stressed the difficulty of obtaining recruits for legal aid work, and the problems of maintaining training and supervision standards without cross subsidy from non-legally aided work.

*What I would like to see in the contract is an allowance for specialist workers to be able to train up volunteers and so on, because at the moment there is this huge jump between being a volunteer advisor and becoming a skilled case worker which often means working for the LSC and if you don't have a mentor who can give you the time and the training to do it, then you never reach that and that's why there's a huge deficit of advice specialist case workers. We are all just chasing the same few case workers. (Contract Manager, NFP sector agency)*

The fact that this is a national problem in the FP sector has been recognised by the introduction of the Legal Service Commission's Training Grants Scheme.

Both sectors stressed the significance of non-economic values, such as commitment to social justice or to their client base, in their service provision. These qualities, they argued, had been instilled most significantly by either the prior commitment of advisors, or by their vocational training. A number of those working in the FP sector had begun their careers in NFP agencies, most commonly the CAB, and trained as solicitors or paralegals in order to enhance their expertise. Managers in each sector identified the increasing difficulty of identifying this level of commitment in new entrants to the field. It was felt that increasingly entrants had a more instrumental view of the work as a stepping stone to much high status positions elsewhere.

*What we are finding now is that that type, those people who have a degree of enthusiasm and who wanted to change things, and really don't mind putting their heads above the parapet they are taking the career decision, which is - at 2 years qualified - why on earth would I want to earn £25K with [X] when I could be earning £45K doing insolvency? (Senior Partner, FP firm, Care specialist)*

## 5.1 How does current provision measure up to requirements?

As discussed earlier fit for purpose training should:

- provide necessary underpinning knowledge to enable them to be able to identify and respond to a legal problem;
- provide a working knowledge of the context in which the law is applied;
- provide general and specific skill sets in communication and organisational skills for example;
- provide an enduring set of values, or professionalism, that motivates them to behave ethically and to carry out their work with commitment;
- ensure the refreshing values and maintaining competence over time; and
- ensure a sufficient supply of appropriately knowledgeable and skilled advisors to meet identified need.

This section explores the views of respondents on the fitness for purpose of existing systems of training. In particular, issues arose relating to the efficacy of initial training; the threshold

level of knowledge and expertise required to offer legal advice at generalist and specialist levels; the balance between technical legal skills ('hard skills') and interpersonal skills ('soft skills'); the relationship between skills and values and the variable quality of the supervision at the trainee stage of learning.

Policy initiatives in publicly funded legal advice over the past decade have signalled a move away from reliance on the general advisor, whether this is a high street solicitor in general practice, or a general rota advice worker at a CAB. There has been a move towards a systematic view of generalist advisors as gateways for those with complex legal problems to be able to access specialist advice. Evidence suggests that advice from specialists who dedicate a significant proportion of their time to their specialism is more likely to be of high quality, and to produce better outcomes than advice from generalists (Moorhead et al. 2003). Specialists have a wider role than simply working on individual cases. They also represent the means by which FP firms and NFP agencies keep up to date with technical details in rapidly changing areas of law and policy, particularly welfare law. Moreover, they represent a valuable resource in terms of their capacity to train and improve skills of other advisors. This aspect of their role may be seen as particularly significant in terms of the relationship between the generalist advisor, whether they be a paralegal in a FP firm or a volunteer general rota worker in a CAB, and the 'second tier' of advice. The generalist advisor must have sufficient expertise to know when to refer a client onwards for specialist advice, and the principal source of this expertise is likely to be the agency's own specialists.

In terms of underpinning knowledge of the law and competencies, respondents in the FP sector regarded their initial training and the current provisions for CPD as a necessary but not sufficient guarantee of competence, as is noted in this evaluation by a Senior Partner in the FP sector of mandatory CPD.

*It is there – it has to be good, anything that makes you do it, but I'd hope you'd be doing more than just CPD. Because it is not enough just to do CPD – it is not enough you could score all your points and still know nothing. Continuous Professional Development is something that everyone should be striving to achieve the whole of the time, you should always be striving, you should always be looking, there's something on the net every day about something happening. CPD I suspect that some of my staff see it as a day out when they go to some of these CPD things. They come back and they've got the points but you're not tested: nobody knows whether you've taken it in or if you've even been listening.*

A further issue identified as significant is the distinction between the theoretical character of initial training on the one hand and, on the other, the procedural, interpersonal and case management skills required of the successful practitioner, particularly in legal aid work:

*You get taught about interviewing techniques, but you can never translate that into practice. You can go ahead with your interview like it tells you in the textbook using a series of open and closed questions – but in practice it doesn't go on like that. (NFP sector trainee solicitor, Law Centre)*

The most effective means of acquiring this skills/knowledge mix was identified as well-mentored work-based learning. However, delivery of good quality experiential training of this type was uneven. Some supervising practitioners were not confident about their skills, whilst others identified the costs of supervision in terms of the sacrifice of fee-earner time as being unsustainable in the medium term.

The quality of supervision during the training contract period reported in the FP sector was variable. Respondents' retrospective accounts of their training contracts<sup>8</sup> varied. Some had benefited from the close scrutiny and 'open door' support of committed principals who believed in the value of supervision, as exemplified by this comment by a recently qualified civil litigation specialist in the FP sector:

*It's so much more organised (than my old firm) and the file reviews cover everything – they've taken the guidance from the LSC and applied it to all files. If anything is not satisfactory, there's advice why not and a date by when it has to be rectified – there's also a box 'Is the legal advice satisfactory?'*

Others had either been asked to take on responsibility for complex cases and for difficult representation work and therefore felt 'thrown in at the deep end'.

*I was interviewing at the end of the first week. I would have liked to have sat in more, to have seen a variety of cases – a training plan with set cases, a selection so I would have got a spread and so I could have seen exactly what had happened where and why and diagnose what was going to happen – it's all been a bit haphazard. (NFP trainee solicitor, law centre)*

A further group had experienced limited autonomy or variety in their experience, and therefore felt they had lacked the opportunity to build up their case handling skills. Although the Law Society formally regulates the training contract, the auditing and inspection of this stage of vocational training was regarded as weak.

The LSC's Specialist Quality Mark (SQM) requires that those involved in delivering publicly funded advice should receive regular and systematic supervision by practitioners who themselves undertake a specified minimum of hours in the specialism. This mandatory

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<sup>8</sup> Only two trainees in the FP sector were interviewed during the research. Most of the participating firms took trainees only occasionally if at all, citing the difficulties of obtaining 'suitable' personnel or cost issues.

requirement was seen as a positive benefit, though respondents identified the quality of supervision as more important than the quantity or formal regularity.

Our respondents were largely unanimous in identifying the fact that the nature of publicly funded legal advice work, and the specific clientele in need of this advice, demanded special skills and knowledge and, equally therefore, specialised training. The skills and knowledge concerned involved:

- technical knowledge of the specific areas of law (such as housing, debt, employment, welfare benefits and mental health amongst other specified by the Community Legal Service (CLS));
- procedural knowledge about how to progress matters with other parties and through the courts and tribunal system, or other appropriate agencies to which the client might be referred;
- quite specific 'local' contextual knowledge about the way in which different agencies functioned; and
- contextual knowledge of the difficulties experienced by particular client groups (for example those with mental health problems, clients with second language issues or simply clients with disorganised lives and habits).

This knowledge needs to be complemented by complex interpersonal skills which enable the advisor to elicit a clear summary of the legal problem, and to communicate options for action to individuals who may themselves have both a very poor understanding of legal processes and requirements and mental health problems. As we will note below, legal aid practice also carries with it a complex set of procedural and bureaucratic requirements representing a specialised body of knowledge in themselves.

In the FP sector initial training was felt to address inadequately the demands of this kind of work, and, further, the Legal Practice Certificate (LPC) was regarded as too heavily biased in favour of commercial practice. The 'skills' element of the LPC tended to be based on transactions with clients with a 'normal' profile, and could not replicate some of the complex social situations in which legal aid practitioners found themselves. In spite of the cogent arguments against a 'legal aid' LPC, the fitness for purpose of the training is an issue which needs to be addressed. Similarly the adequacy of the training in terms of preparation for sustaining a contract with the LSC is another issue which has received insufficient attention.

Respondents commented on the importance of the environment in which work-based learning took place. They identified the relationships which could be established between specialists working in the same firm, or even the same field as highly significant. Open plan offices, open door policies, and electronic communication were all cited as significant influences on developing and maintaining skills in the FP sector, and where trainees expressed anxiety about their skills base, this was associated with what were felt to be inadequate channels of communication with other specialists. These responses tend to support theories of occupational learning which draw on Lave and Wenger's writing on communities of practice:<sup>9</sup> (1991).

*We're a small outfit, and it's daily supervision, it's hourly supervision you know, by the minute the shout comes from next door 'What do I do with this?' No I don't think I supervise them any differently. I'm more aware that they have more needs, but that's – I find it difficult to distinguish between people because we're a block. We're all in an office not much bigger than two of these rooms, so it's a bit close. (Senior Partner and supervisor, FP sector)*

In the NFP agencies training was generally available, although it could not be funded in the breadth and depth that respondents thought desirable. Contemporaneous with this research, a major workforce development project in the Legal Advice area was being undertaken, the NOS4Advice Project.<sup>10</sup> This project explored the workforce needs of the sector and developed a set of Occupational Standards to enhance skill and qualification levels, as well as labour mobility, in the sector. However, the proposal to introduce vehicles for occupational standards (such as Foundation degrees) faces the same obstacle that our respondents identified: namely the lack of dedicated funding for training.

There are concerns that current training provision will not ensure a sufficient supply of appropriately knowledgeable and skilled advisors to meet identified need. As noted above, both solicitors' firms and a range of the participating NFP agencies expressed anxiety about the future labour supply in advice work. This is based on the age profile of the current workforce, and the difficulties they were experiencing recruiting appropriately qualified and experienced staff (see also the findings from the Legal Advice Sector Workforce Survey: Smith & Tam, 2007). Both sectors required at least two years' previous training or experience before appointment (and clearly in the FP sector the bar is set much higher for solicitors). The pool of labour with this experience, and which is willing to enter the sector,

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<sup>9</sup> A theory which identifies the collective basis of learning grounded in everyday interaction in practical situations. Over time this interactive learning results in 'communities of practice' with a shared repertoire of resources, practices routines and language. The benefits associated with this kind of self-organising system are argued to be the commitment of members, greater than that which can be assumed in formal individually based learning.

<sup>10</sup> <http://www.nos4advice.org.uk/>

was assumed to be shrinking (Williams & Goriely, 2003). For the NFP sector, the pool of volunteer advisors from which the specialist advisors were recruited was seen to be shrinking:

*Nowadays the labour market is very tight and there just aren't that many people available and those that are tend to have problems themselves – for instance they may be lone parents. So the volunteer base is shrinking. I think this is made worse in some agencies – for instance Citizen's Advice set stringent training requirements, which is good but it is also a resource issue for agencies and volunteers because it takes too long to get onto a course and complete it. (NFP contract manager)*

*I'll give you an example in \* actually. We had a post that four years ago we had 60 applicants for and now we've actually had about three goes at filling it, we've sort of two or three applicants each time. So certainly the number of job applicants we get is a lot less than sort of five or ten years ago. So I reckon we probably suffer from this problem of like an ageing work force. (NFP Agency Manager)*

For solicitors the level of the salaries for legal aid work, which were regarded as low given the debts accumulated by trainees in the course of qualification, was identified as a primary cause of recruitment difficulties.

## **5.2 Training for quality: potential changes to initial and continuing training in the legal advice sector**

The discussion in this section concentrates on the optimal characteristics for successful training. The nature of training for the legal profession and for the advice sector are dependent on policy decisions outside the scope of this research, not least the way the profession will respond to the reform of legal services. The discussion needs to be read in the light of differing views in the two sectors about the degree of training necessary for the work. FP specialists in publicly funded work, including those who had graduated to the solicitor's profession from a background in NFP advice work, were of the view that NFP advisors without legal training find it difficult to deal with some matters beyond a certain level, and that they struggled to fulfil the advocate's role in court proceedings. Respondents who expressed this view also felt unease about the extent to which contracting with the NFP sector for some areas of work might prejudice just outcomes, as in this comment on NFP agencies representing mental health cases at tribunal proceedings.

*You know sometimes they just can't argue that point through. Again some of them can, but it's annoying when they just dump somebody, and that's what annoys me because a lawyer can't dump them, we have to go, and they come up and say 'well we can't attend because we've got other things on, we can't attend because so and so's going away and we can't find anybody else'. Well can you just imagine going before a District Judge and saying that — 'oh I'm sorry I can't do it today, I've got another case on'. (Senior Partner, FP sector)*

Correspondingly, the respondents in the NFP sector expressed the view that the technical expertise of solicitors, and their efficiency in the interview process, might be achieved at the expense of appreciating the complex and interlinked nature of the legal problems experienced by poor clients. Bearing these caveats in mind, the evidence of our research suggests that:

- A minimum of two years' closely supervised work-based learning is required to develop and sustain competence in advice and representation work in either sector. The quality of the supervision should be such as to ensure a balance between tight quality control, and learning through responsible autonomy.
- Lowering entry requirements might increase the supply, but also risks compromising quality of advice. An alternative approach would be to increase the financial support for training for organisations and individuals.

There has been an increasing recognition that while a minority of complex legal problems require specialist advice (Moorhead & Robinson, 2006), the majority of problems may only require help from advisors with a more general level of knowledge and expertise. The task of ensuring that cases flow to the level of expertise most appropriate to their complexity is itself a complex one. Consequently, although it might be uneconomic to train general help workers to high levels of specialism they need to be trained sufficiently to fulfil their vital role in signposting and referral.

- Our research identified the significance of the functioning of effective learning and support networks in good quality FP firms and NFP agencies. Further research into the way in which these networks are developed and maintained within and between organisation is recommended.
- Many of the projected policy developments in the field, such as Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs), depend on relationships of trust and confidence within and between suppliers of legal advice, particularly with regard to the issue of matching client and level of specialist advice. Further research into which kind of environment most encourages these relations of trust and confidence would provide a valuable resource in support of the construction of local webs of advice.

## 6. Regulation for legal advice provision

### 6.1 Patterns of regulation in the FP and NFP sectors

The legal advice sector is subject to multiple regulation, with different regulators and regulatory systems being distinguished in terms of the source of their authority, and the form and function of the regulatory system. Regulatory systems can be seen as occupying a continuum: at one end are the highly formal requirements of statutory regulators, such as the Office of the Immigration Services Commissioner (OISC). At a mid-point on the continuum is the regulatory authority delegated to the professional bodies (the Law Society and the Bar Council) that can enforce requirements imposed by statute together with their own codes of practice. Finally, at the other end of the continuum lie the audit and inspection processes which are integral to many commissions and contracts in the public sector. Other informal modes of regulation include the membership schemes which are run by national VCOs in the NFP sector in order to assure quality in their local counterparts. Examples of the various kinds of regulator are given in the table below.

**Table 6.1: Types of regulator in the legal advice sector**

Type of regulation	Examples	Function
Statutory	<ul style="list-style-type: none"> <li>• Financial Services Authority (Financial Services Act 1986).</li> <li>• Office of the Legal Services Ombudsman (Courts and Legal Services Act 1990).</li> <li>• Office of the Legal Services Complaints Commissioner.</li> <li>• Office of the Immigration Services Commissioner (Immigration and Asylum Act 1999).</li> <li>• Charity Commission.</li> </ul>	May police complaints against a profession or a specific kind of activity (such as offering financial or immigration advice).
Professional Regulators	<ul style="list-style-type: none"> <li>• Law Society.</li> <li>• Bar Council.</li> </ul>	These bodies derive their authority from statute, but oversee professional standards largely autonomously. Have the right to withdraw licence to practise.
Quasi-regulators	<ul style="list-style-type: none"> <li>• Citizens Advice.</li> <li>• ISO 9000.</li> <li>• Investors in People.</li> <li>• Charter Mark.</li> <li>• Excel.</li> <li>• Lawnet.</li> <li>• Quality Mark (QM).</li> </ul>	'Badged' schemes which accompany national memberships such as Citizens Advice, or which accredit conformity to sets of published criteria, such as IIP or Charter Mark.

Type of regulation	Examples	Function
Contractual regulators	<ul style="list-style-type: none"> <li>• Legal Services Commission.</li> <li>• (QM, and Specialist Quality Mark – SQM).</li> </ul>	<p>This form of regulation is becoming increasingly common as the extent of contracting and commissioning in public services increases. The regulator is generally the purchaser of services which are defined in a contract or service level agreement (Alcock et al, 2004). Where an audit reveals a compliance failure, the contract may specify a range of penalties including termination. The Civil Contract defines the scope of the legal advice with which this report is concerned.</p> <p>In the case of publicly funded legal advice, all contractors are required to meet the standards of the Quality Mark Scheme, which defines tight standards for the management of organisations and the conduct of advice transactions.</p> <p>For many NFP agencies this form of regulation has replaced the fairly loose oversight and reporting requirements which used to accompany project based funding from organisations like Local Authorities and Primary Care Trusts.</p>

All of the organisations included in the study were subject to multiple forms of regulation, but in the case of some, the actual impact was limited. This was due to the fact that procedures for oversight were remote from day-to-day practice, and were seen to lack rigour with high thresholds for failure. With the exception of the oversight of the Charity Commission, the NFP sector was less likely to be subject to formal regulation, particularly of the statutory kind applying to all practising solicitors.

## 6.2 How does current provision measure up to requirements?

All of the forms of regulation identified above share the intended function of influencing advisors so that they internalise those values and rules crucial to managing relationships with clients, managing organisations which provide legal advice, and maintaining the relevant expertise of the advice workforce. Regulatory systems such as professional disciplinary procedures, which are only brought to bear after a problem has occurred, may derive their effectiveness not from strong enforcement systems, but from the severity of possible sanctions, and their congruence with the values inculcated in training. However, professional self-regulation was seen as relatively ineffective against an unscrupulous practitioner:

*if you are an ethical firm that is well regulated yourself - I'm talking now specifically about Rule 15 and things like that - and if you apply it rigorously and conscientiously and kill these things off, as I think we do, in all but the more meritorious of them, it begs the question of why you need anything beyond it, but that of course involves saying 'what about the firms that don't apply Rule 15 skilfully?' I mean what I've learned over the years is this - if a complaint comes in you've failed in any event, haven't you?*

Self-regulation is less likely to be effective in regulating day-to-day behaviour and attitudes than those systems, such as contract compliance and audit, where the scrutiny of the way in which advisors work is regular and detailed. On the other hand, contractualism, together with its accompanying mechanisms of audit and inspection was seen as a powerful means of influencing individual and organisational behaviour. This influential process, which has been described as ‘colonisation’ (Power, 1997; 2003), could be perceived to have both beneficial and harmful effects.

### 6.3 Positive effects of contractual regulation

Respondents in both FP and NFP sectors were unequivocal in their support of the effect of the SQM, (a mandatory requirement for those with a contract for specialist advice) on their LSC contracted work. The rigour of their audit and inspection procedures was widely commented on, and the ‘educational audits’ which were a feature of the initial stages of developing a contractual relationship were highly regarded. Furthermore, compliance with SQM had a ‘ripple effect’ on organisations. In particular, the enhancement of their systems of case management produced benefits for clients who were not eligible for legal aid, as a senior partner of one of our respondent firms argued:

*I think it's transformed our firm. We were reasonably well managed but, in general terms, we think it's been all to the good. It's made us have standard files; it's meant that papers are in place, that proper notes are kept. Generally speaking, although it was traumatic to begin with for us all just to simply make sure we were ready, it's been a real benefit to the firm, and I think it's been a real benefit to clients, and we strive to keep to the standards.*  
(Senior Partner, FP Sector)

The benefits referred to by respondents included the following:

- The improvement of management systems
- Business planning
- Supervision of case workers
- The management of case work, in particular
- Maintenance of accurate client records
- Closure of cases
- Applying merits tests to cases

Although both sectors reported benefits, these were most keenly felt by managers in the NFP sector, where the discipline of the market had not applied, and where some funding agencies had weak systems for demanding accountability.

*Caseworkers in general I think tend to be fairly slapdash and keep details about their client in their head. LSC makes you put it all down on paper. Then if you are run over by a bus someone can carry on ... when I do my file reviews I can see what they've done, and when they've done it, and how much time it's taken, and, yes, I think it makes them look at their work in a different way. (Contract Manager, NFP sector)*

However, the advent of Best Value, Service Level Agreements and Local Area Agreements were reported as having led to a more general cultural shift in the NFP sector.

## **6.4 Perceptions of contractual regulation as harmful**

Respondents at all levels of FP and NFP organisations perceived aspects of contractual regulation as harmful to some degree. Some of these criticisms concerned the amount of resource which was tied up in meeting the demands of audit and contract management, rather than being devoted to front line provision.

*You could be arguing that in partner time it's 30 to 40 thousand and we've now got to fulfil everything ... we have two people doing the legal aid bills, we're going to have a new practice manager costing us approximately £40,000 a year, and an assistant at £23,000 a year. Now admittedly again, that's for the whole firm, but disproportionately a lot of it is because of what's required by the LSC. So it costs you a lot to get – and that is why firms are seriously looking at their commitment to the different levels. I mean we believe in legal aid but you've got to be so light on your feet now and well managed to be able to really make it pay. (Senior Partner FP Sector)*

Advisors stated that the amount of their time spent meeting the demands of inspection, reporting and audit, rather than delivering front line services meant that the experience of compliance auditing for SQM and the LSC contract had become the most significant influence on their day-to-day practice. It is important to note that compliance auditing was concerned with two distinct aspects of firms' and agencies' work. Contract compliance auditing concerned the extent to which an organisation met the terms of their contract, for example whether a FP firm met its commitments in terms of the number of matter starts, or whether a NFP agency met its commitment in terms of hours. A performance which either fell below, or exceeded the terms of the contract by more than a certain margin of tolerance was regarded by the LSC as symptomatic of problems with the supplier. Quality standards auditing was concerned with performance in terms of standards of organisational management and client care.

The process of conducting an audit requires the auditor to make judgements about whether the standards necessary for compliance have been met. In some cases this may involve a simple 'tick box' judgement (whether a firm has achieved the required number of matter starts, or whether a matter has been appropriately closed). In other cases the judgement may be more complex (in what amount of time should it be possible to conduct an initial interview with a mentally ill client?) and may involve a degree of discretion on the part of the auditor. A cause of tension between auditors and auditees is the fact that the two sides may not necessarily share an understanding of the level of evidence necessary to support, for example, a claim for extra time for an interview due to special circumstances such as a client's language difficulties. These tensions were exacerbated by advisors' lack of understanding about what could be claimed:

*I started here in the September and in the December was our first audit and things seemed to go okay and then the following December we had another audit and both \* and I were down on the contracted hours and they were cutting my hours down to 850 I think it was, and at the second audit in September these women sat there and said 'we've noticed that on ....' and I think they took a sample of 25 or so files '... on none of these files – you're not claiming time for writing up from your rough notes. You can claim up to 12 minutes a side. Well why wasn't that pointed out 12 months ago?' (NFP specialist case worker)*

A consistent theme of the responses was that those responsible for auditing the contract were frustrated by the failure of advisors to provide simple evidence for claims. On the other hand, those being audited complained of the pedantic and inflexible approach of auditors, and questioned the extent to which audit judgements were underpinned by appropriate expertise. Some respondents complained that different auditors or contract managers<sup>11</sup> appeared to have different expectations and standards of judgement, and argued that this lack of consistency provided a poor environment for the development of a relationship of trust between the LSC and its contractors.

## **6.5 Issues in contract compliance audit**

Respondents were ambivalent about the process of contract compliance auditing, the process whereby their performance was judged according to under- or over-performance on the contract. Specifically, the FP sector felt that the gap between legal aid and the private client rate caused internal tensions in mixed practices, as a consequence of the cross-

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<sup>11</sup> The Matrix Report on the CLS identified a similar problem of consistency, 'the differing levels of flexibility the regional offices are willing to offer, particularly around managing contracts, have been problematic for national provider organisations' (Matrix, 2004, p. 21).

subsidy involved. To an extent therefore, some responses which were critical of the audit process were also concerned with the way in which the actual terms of the contract affected their organisation and their work.

One of the purposes of developing highly specified contracts in the public sector is to reduce risk for the taxpayer, thereby enhancing VFM. Respondents in both the FP and NFP sector felt that too great a degree of risk had been transferred to them as contractors. They cited the example of necessary overheads, particularly those associated with staff turnover, training and supervision, which they argued were not met by the LSC's funding model. Their views reflected the findings of the Association of Chief Executives of Voluntary Organisations' (AVECO) Commission of Enquiry into funding for the voluntary sector (AVECO, 2004; Brookes & Copps, 2004).

The NFP sector felt that the exclusion of activities which had traditionally been a key part of their work had an adverse impact on their mission. A prime example was the role of CAB advisors in representing clients at administrative tribunals, a role excluded from the Civil Contract, but one which was seen as central by the advisors themselves, because of the evidence that represented claimants were substantially more successful in the appeal process. Respondents from the NFP sector also drew attention to the impact of 'ring-fencing' LSC funded specialist advisors so that their activity was limited to fulfilling the hours on the LSC contract. Such advisors were regarded as a valuable resource in terms of providing support to first tier advisors (such as volunteer general rota advisors at CABx), and as a training resource.

*My ideal would be that there were two people - one maybe with other funding and one with LSC funding - doing exactly the same job, picking up cases that were - didn't matter whether they qualified or not – so long as between the two of us we did sort of one LSC contract's worth, and then we'd both have the flexibility to do that like going off on training courses or running training courses for the volunteers. (Specialist Advisor, NFP sector)*

Restricting the links between the tiers of advice was regarded as dysfunctional in terms of the importance of signposting and referring clients appropriately, a key policy objective at the time of the research.

Another aspect of contract compliance which was perceived by the NFP sector in particular to be problematic was the auditing of time standards. These standards define the length of time defined by the contract as appropriate for the fulfilment of standard procedures, such as conducting an interview, or writing a letter to a client. Respondents in the NFP sector in

particular, who often lacked the kind of administrative support more common in the FP sector, argued that case management and client contact processes would take them far longer than the standard time allowance. It was their view that the result was that in order to meet their targets, they would have to work in their own time, in effect subsidising the LSC contract, either from one of the other funding streams, or through their own, effectively 'pro bono' efforts. Rigorous time standards auditing by the LSC would often lead to funds being clawed back. Respondents felt this approach undermined the relationship of trust necessary to make the contract work effectively, and could also have severe effects on the NFP agencies' financial planning. The conflict between the educational and financial control aspects of audit can lead firms and NFP agencies to feel on the receiving end of conflicting messages about the nature of the partnership in which they are involved.

*I thought it was always a partnership, but you now learn that when there's a slight problem or disagreement it's not really a partnership, you know – 'this is what you have to do and if you don't do it we'll terminate your contract', or 'we'll vary your contract'. You'd have expected a bit more of a partnership exercise to overcome or help us over some of the problems that they've actually identified.*

## 6.6 Issues in quality audit

As noted above, responses to the SQM audit process were largely positive, though doubts were expressed concerning the amount of time that preparation for audit took in addition to the actual audit. The major concern was the extent to which the SQM audit used compliance on procedural issues as proxies for the quality of advice offered. Senior managers at the regional LSC office provided convincing arguments in support of the view that there was a tangible relationship between good case management and quality of advice. However, critics argue that the emphasis on objective measures can result in a devaluation of the immeasurable aspects of work in favour of the measurable (Raine & Willson, 1993; Knights & McCabe, 1997; Power, 1997, p. 13). It is the 'soft skills' which are least easily measured by Quality Assurance regimes that are often regarded as the special expertise of the NFP sector. This may account for the wariness with which the sector approaches quality: several of our informants argued that the LSC approach failed to recognise the added value in important aspects of their work. One example is the social policy work which is a key aspect of the mission of Citizens Advice and Age Concern.

There is therefore a question mark over the 'fitness for purpose' of quality audits. Formal compliance with contracts or with quality standards does not guarantee the quality of advice and neither does non-compliance necessarily signal that inappropriate advice is being offered in an agency where there are issues with compliance.

## **6.7 Regulating for quality: potential changes to regulatory processes in the legal advice sector**

The discussion in the preceding sections has indicated that the processes through which contracts are specified and audited have the capacity to affect the internal organisation of NFP agencies in unanticipated ways. Short-term benefits in terms of cost reduction may be counter-balanced by longer-term adverse effects on an organisation's capacity to respond to need. Such unintended consequences may reduce the benefits to the public to be derived from the contract (Bolton, 2002; BRTF, 2005a). Full Cost Recovery should be a feature of contracts with NFP suppliers, and should include an appropriate proportion of the overhead costs necessary to maintain the organisation and the level of expertise which enabled it to win the contract in the first place.

Regulatory Impact Assessments (RIAs) are now a routine undertaking in both the private and public sector worlds. The use of RIAs to evaluate the impact of LSC contractual terms on contracted organisations could usefully include the analysis of the impact of contractual requirements on the wider mission and organisational functioning of both FP firms and NFP agencies. The issues addressed below should be embraced in any RIA of the sector.

Some of the reservations expressed about the operation of contractualism have been answered by subsequent developments. The time standards auditing regime was recognised as a resource intensive process, and towards the end of the period during which the study took place the introduction of a standard fee regime, obviating the necessity for time standards auditing, was already planned. Some of the difficulties experienced by contractors with the LSC, in particular those from the NFP sector, were the consequence of the complexity of the contract and the regime of key performance indicators and auditing. Organisations, particularly those with small infrastructure support need more training and advice than they currently receive when managing the demands of complex contractual regimes.

Our study confirmed other research which identified doubts about the reliability and objectivity of the decisions made in drawing up, compliance auditing, and managing contracts. (Moorhead, 2004, p. 183). Where contract compliance audit is a feature of contract with suppliers of legal advice, there may be a need to address this perception.

The potentially corrosive impact of perceptions that the contract is distorting an important aspect of their mission (for example, the CABx' commitment to universalism, the view of

welfare rights advisors that advocacy was a key part of their role, the key value held by most NFP agencies that they dealt with ‘whole problems’) needs addressing – possibly through RIA

Our observations, and the responses of informants, indicated that the quality of advice networks in local areas was heavily dependent on relationships between tiers of advice within an organisation, and between organisations, which were based on trust and confidence. These relationships were the foundation of effective referral and signposting. These findings are relevant to the development of CLACs and CLANs. Where cultures of sharing and communication between organisations in an area do not exist, a punitive approach to audit and contract management is unlikely to bring them about. A preferable approach is to sponsor the development of infrastructural support in terms of resources and training, and networking capacity.

Further, an educational approach to audit, which sees performance management in terms of improving supplier performance as the primary objective, rather than as an opportunity to withdraw those who are non-compliant from the market is more likely to support the development of relationships of trust and confidence between the LSC and suppliers. This is particularly true in the NFP sector, where suppliers have had a longer journey to make in order to meet the demands of contracting.

## 7. Conclusion

In this concluding chapter, we will briefly summarise some of the key findings arising from our research, and relate them to the essential policy aims which we take to be at the heart of systems of training and regulation. We will then explore some potential avenues for developing the relationship between regulation and training and some of the current systems in use. We will also identify areas where we think that further research would be beneficial.

Regulation provides a powerful means of influencing the behaviour of advisors, and in general has positive effects in obliging them to internalise values and rules relating to managing relationships with clients, managing organisations which provide legal advice and maintaining the relevant expertise of the advice workforce. Regulation can also be the only means of ensuring that individuals and organisations make the necessary investment in training: restricting rights to practice in such a way as to provide this incentive runs the risk, however, of constricting the labour supply and inflating its price. The delicate balance to be struck in this equation is illustrated in part by the contrast in regulation and training regimes in the FP and NFP sector: in the FP sector, which still has a high demand from potential entrants, there is heavy regulation and high investment in initial training and CPD, whilst in the NFP sector, which is dependent on volunteers, and specialist advisors who often graduate from the ranks of volunteers, entry barriers are low, and investment in training is patchy, and subject to financial pressure from funding bodies. These bodies are on the whole reluctant to meet the full economic cost of providing a workforce for the projects they fund or the services they purchase.

There has been an increasing recognition that a minority of complex legal problems require specialist advice, while the majority of problems may only require help from advisors with a more general level of knowledge and expertise. Striking the balance between the needs of specialist advisors and generalist advisors is complex, as our research demonstrates. Specialists have a wider role than simply working on cases: they provide advice agencies with the means of keeping abreast of technical details in rapidly changing areas of law and policy, and they represent a valuable resource in terms of their capacity to train and improve skills of other advisors. Strictly drawn contracts which attempt to focus on case work may have a harmful effect on the firm or advice agency as a whole. Similarly, although it is wasteful to train general help workers to high levels of specialism they need to be trained sufficiently to fulfil their vital role in signposting and referral.

The issue of training resources becomes even more significant when considering the views of our respondents in relationship to staff turnover and future labour supply. In both the FP and NFP sectors anxiety was expressed about the increasing turnover of staff, the age profile of the workforce, the commitment of applicants, and the attrition seen as likely to result from the increasing debt burden on the young workforce and the downward pressure on salaries. Both sectors required at least two years' previous training or experience before appointment (and clearly in the FP sector the bar is set much higher for solicitors), and the pool of labour with this experience, and which is willing to enter the sector, was assumed to be shrinking. Lowering entry requirements might increase the supply, but also risks compromising quality of advice. An alternative approach would be to incentivise training for organisations and individuals.

Our respondents were largely unanimous in identifying the fact that the nature of publicly funded legal advice work, and the specific clientele in need of this advice, demanded special skills and knowledge, and equally therefore, specialised training. In the NFP agencies that we studied, such training was generally available, although it could not be funded in the breadth and depth that respondents thought desirable. In the FP sector however, initial training was felt to address inadequately the demands of this kind of work, and the initial training provided by the LPC was regarded as too heavily biased in favour of commercial practice. In spite of the cogent arguments against a 'legal aid' LPC, the fitness for purpose of the training is an issue which needs to be addressed. Similarly the adequacy of the training in terms of preparation for sustaining a contract with the LSC is an issue which has received insufficient attention. The functioning of these effective learning and support networks in good quality FP firms and NFP agencies was not the original focus of our research, but is a phenomenon which merits further investigation. Similarly, the extent to which the costs of operating a contract are fully met could not be determined on the basis of our sample. It is nevertheless a key aspect of the willingness of agencies to continue in the field effectively as providers of a quality service. Finally, many of the projected policy developments in the field, such as CLACs and CLANs, depend on relationships of trust and confidence within and between suppliers of legal advice, particularly with regard to the issue of matching client and level of specialist advice. Further research into which kind of environment most encourages these relations of trust and confidence would provide a valuable resource in support of the construction of local webs of advice.

Our results have reinforced the many other studies which have suggested that training and formal retrospective regulation of the kind represented by discipline and complaints procedures are necessary, but not sufficient conditions for guaranteeing effective and

competent performance in the publicly funded legal advice sector. The profound impact of contractual regulation, as represented by the operation of the Civil Contract by the LSC, was recognised by all our respondents, as were the positive benefits in terms of agency and firm organisation, case management procedures, client care and public confidence. Some of the reservations expressed about the operation of contractualism (in particular over the time standards auditing characteristic of the audit regime in place at the time of the study) were the result of poor understanding of the accounting processes. This in itself provides some cause for concern, and reflects a view that organisations need more support than they currently receive in ensuring that their staff are trained in the demands of complex contractual requirements. Of equal concern is the perception on the part of some respondents that audit judgements and contracting decisions were not always driven by reliable and objective criteria. In order for the relationship of trust between the LSC and its providers to be maintained, these perceptions need to be addressed.

The reason that contractual regulation is so effective in transforming advisor behaviour is the extent to which it penetrates all levels of an organisation. Whilst other public sector funding bodies may be catching up with the LSC through the introduction of measures such as Service Level Agreements, our respondents identified the LSC as exercising what seemed to many of them an influence over their work disproportionate to the amount of financial support they received. As we have noted above, this influence was appreciated as positive in many respects. However, some effects were not viewed in such a positive light, and agencies could perceive the contractual relationship as distorting an important aspect of their mission (for example the CABs commitment to universalism, the view of welfare rights advisors that advocacy was a key part of their role, the key value held by most NFP agencies that they dealt with 'whole problems'). The potentially corrosive impact of such perceptions may need to be addressed, together with the way in which the terms of a contract may have ripple effects on the internal organisation of some agencies (isolating specialist workers). We would recommend that the LSC consider some form of RIA in relation to the impact of the Civil Contract and Funding Code on the NFP sector.

A final point concerns the limitations of even such a powerful tool as contractual regulation. In spite of the increasing sophistication of the tools with which the LSC can measure performance (such as Quality Profiles and peer review of files), and the strength of the sanction of terminating a contract, it is our observation that formal compliance does not guarantee the quality of advice and neither does non-compliance necessarily signal bad advice. The Category One firms which we studied, and the compliant NFP agencies, appeared to us to share the characteristic of a strong service ethic, and powerful cultures

where quality was maintained through the capacity of the organisation to learn and adapt internally by the use of effective mentoring, role modelling, fluent informal communication systems and the sharing of expertise. At its best, this approach also functioned **between** organisations in the way intended by the original Community Legal Service Partnerships, to provide the local networks of advice that are also the objective of CLACs and CLANs. Where these cultures do not exist, however, a punitive approach to audit and contract management is unlikely to bring them about, and we would recommend the development of, firstly, infrastructural support in terms of resources and training, and secondly a more gradual educational approach to audit, which sees performance management in terms of improving supplier performance as the primary objective, rather than threatening to withdraw those who are non-compliant from the market. We observed a high level of value commitment in the sector which contributes to the 'added value' which recipients of publicly funded legal advice often receive. Our respondents (as one might expect them to) expressed the view that poor quality suppliers had, by and large, been eliminated from the market place but that there was a risk that the persistent downward pressure on costs, and a decline in trust and confidence in the relationship between the LSC and its suppliers, might have an adverse long-term impact on the ability of the sector to fulfil its ambition to meet legal need.

## 7.1 Key recommendations

- 1 Workers need to be trained sufficiently to fulfil their vital role in signposting and referral for further advice.
- 2 Incentivise training for organisations and individuals rather than lowering the entry requirement.
- 3 Organisations, particularly those with small infrastructure support and training need more support on managing the demands of complex contractual regimes.
- 4 Perception on the part of some respondents that audit judgements and contracting decisions were not always driven by reliable and objective criteria need to be addressed.
- 5 Perceived corrosive impact of contractual relationships needs to be addressed, together with the way in which the terms of a contract may have ripple effects on the internal organisation of some agencies.
- 6 To improve local advice networks, we recommend: firstly resource and training support to improve a culture of sharing and networking, and second: approach to audit which encourages improving supplier performance, rather than withdrawal of non-compliant organisations from the market.

## 7.2 Further research

- 1 The functioning of effective learning and support networks in good quality FP firms and NFP agencies was a phenomenon which our research design was not fully able to illuminate. This is an area we would recommend as being suitable for further research.
- 2 Research into which kind of environment most encourages trust and confidence within and between suppliers of legal advice would provide a valuable resource in support of the construction of local webs of advice.



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**Summary: Training and regulating providers of publicly funded legal advice  
– a case study of civil provision**

This report summaries research that explored the impact of various systems of training and regulation on perceptions of the quality of civil legal advice given to clients. It considered the 'for profit' legal section (e.g. solicitors) and the 'not for profit' sector (e.g. Citizen Advice Bureaux). It was based on a 64 interviews and observational data in 2005. This was drawn together as a detailed case study in the north of England.

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