

**Establishing an Alternative Advice Services  
Commissioning Model for Wales**  
*draft Report*



## Contents

		Page
1.	Foreword	3
2.	Executive Summary	5
3.	Summary of Consultation Responses – Major Themes	8
4.	Summary of Consultation Responses – Individual Questions	13
5.	Findings and Recommendations	36

<b>Appendix A</b>	<b>List of Respondents &amp; Acknowledgements</b>
<b>Appendix B</b>	<b>Summary of Consultation Responses by Respondents</b>
<b>Appendix C</b>	<b>Commissioning for Public Benefit, new economics foundation</b>
<b>Appendix D</b>	<b>Sustainable Commissioning Mock Tender Application Form</b>

## Foreword

In March 2009, DG Legal was commissioned to conduct a study to establish the feasibility of an alternative advice services commissioning model for Wales that would meet the aims of “Making Legal Rights a Reality in Wales” without compromising the future of third sector providers.

Prior to this study, the Welsh Assembly Government and the Legal Services Commission (LSC) had for some time, been engaged in discussions with the aim of improving the provision and quality of advice in Wales. A policy document known as “Making Legal Rights a Reality in Wales” which set out a joint strategy was published in September 2007. A key element of the joint strategy was the concept of joint commissioning of legal advice services by the LSC and local authorities.

The Welsh Assembly Government, however, recognised that concerns had been increasing about the possible loss of investment in third sector organisations and their potential closure as a result of the proposed new joint commissioning arrangements. Therefore, towards the end of 2008, the Minister for Social Justice and Local Government held a round of discussions with the key agencies to see if there was another way forward. This resulted in the feasibility study being commissioned.

Specifically, we were asked to establish if there is a viable, legal alternative to the jointly commissioned Community Legal Advice Network (CLAN) model, taking into account current procurement law and regulation. If we considered that there was an alternative model, we were asked to develop detailed proposals for such a model and identify the most effective model in terms of local authority funding (sole authority; cross-authority). We were also asked to consider appropriate governance and reporting arrangements.

In view of the fact that the proposed CLAN was to be implemented in the county areas of Bridgend, Cardiff and the Vale of Glamorgan, we focussed on this area. However, we also considered other parts of Wales, particularly North East and North West Wales as the requirement was for our findings and recommendations to be flexible enough to be relevant to other potential commissioning areas in Wales.

The Welsh Assembly Government wanted us to consider the views of a wide variety of stakeholders. We believed that the best way of ensuring that we could consider as many views as possible was to write a consultation paper and invite interested parties to respond with their views. We also discussed potential models at events in North East, North West, and South Wales and visited a number of councils, a Law Centre, advice agencies, Citizens Advice Bureaux and solicitors across Wales.

We received 42 formal written responses to our consultation paper. While our decision to carry out a consultation process added to the demands on the time of interested parties and also to the time it took to complete this report, we are pleased that we did so given that the responses received have significantly influenced our findings and recommendations.

There was some confusion amongst a small number of organisations about the primary objective of this study. This seemed to revolve around what was meant by the phrase 'without compromising the future of third sector providers.' Some organisations, in both the private and third sectors, thought that this might mean offering unconditional protection towards the third sector. This is not the case, nor was it the intention of the Welsh Assembly Government, in the commissioning of this study. Irrespective of legal considerations, we believe that precluding the private sector from bidding to provide advice services in a competitive tendering scenario is not in the best interests of clients. Our experience over the past thirteen years is that there are excellent advisors working in Citizens Advice Bureaux, Law Centres, private law firms and other advice agencies. Similarly, there are some organisations across all sectors where performance could be improved. Our priority was to identify a model(s) which seeks to meet the brief and, importantly, to improve the quality of services provided to clients.

It is imperative that the interests of clients must be at the forefront of any legal advice model. It was made implicit by the Welsh Assembly Government in commissioning this study that any proposed model would need to address the acknowledged weaknesses in the advice services currently being provided across Wales for the public to properly benefit.

Another minor source of confusion is over CLANs and Community Legal Advice Centres (CLACs). In terminology used by the Legal Services Commission (LSC), there has been some debate about the difference between a CLAN, a CLAC and also a CLAs (a Community Legal Advice service). Initially, the terms frequently used by the LSC were CLANs and CLACs. As the CLAN and CLAC models have been developed over successive tender specifications, there has become very little difference between the two titles. Originally, a CLAN was seen as a network of providers providing services at a number of locations but not necessarily acting as a single legal entity. A CLAC, on the other hand, may be seen to be mainly based at one location and operated by a single legal entity. The LSC's current procurement model is for a single legal entity irrespective of whether it is called a CLAN or a CLAC. Rather than using the different terms, the LSC now generally uses the one term - Community Legal Advice service (CLAs). For simplicity and consistency, this paper will also refer to the LSC model as a CLAs.

I wish to place on record our sincere thanks for the time and assistance that so many individuals and organisations have contributed towards this study. It is obvious that very many organisations and individuals are passionate about the delivery of legal advice to local communities in Wales. I particularly wish to thank Susan Steed and her colleagues at new economics foundation (nef) who gave so much time and assistance in helping to explain and illustrate the Sustainable Commissioning model. We have also appended to this report, at **Appendix A**, a list of those who have assisted us with this study and those who responded to the consultation.

**David Gilmore**  
**Consultant, DG Legal**  
October 2009

## Executive Summary

We agree with a significant number of respondents to our consultation that one prescribed model would not be suitable for all commissioning areas in Wales. Different regions in Wales have different needs and priorities. When choosing an appropriate model, each region must take into account a number of factors including, arguably, the views of local authorities, an analysis of needs, the existing advice provision and the funding priorities of local authorities and other funders.

By way of an example, if a local authority is satisfied with the existing advice provision in its area, it may not be convinced of the benefits of pooling its monies with the LSC to jointly commission a CLAs on the basis that some of the existing popular providers may not be part of a winning tender. Similarly, it is the prerogative of a local authority to decide if it wishes to work with neighbouring local authorities in order to jointly commission an advice service.

With an eye on the future, it is likely that local authorities will continue to fund advice agencies in a number of different ways. Some will continue with grant funding without conditions, some will include conditions, some will move to a form of grant commissioning and others will be interested in jointly commissioning advice service with the LSC. In view of this, in addition to our recommendations, we have decided to offer comments and findings on each of these funding approaches.

The most striking theme to emerge from our consultation process was the extent of support for the Sustainable Commissioning model from both advice providers and local authorities. Where joint commissioning of advice services takes place, respondents universally prefer this model over the CLAs model. The key difference between the Sustainable Commissioning model and the CLAs model is that bidders have much more say in how they propose to deliver the service. So, rather than bidding against a tight 'top down' specification, bidders explain what they will do to meet the objectives of the funders. This 'bottom up' approach allows for flexibility and creativity in delivering services to meet the needs of local people. This paper examines this model in some detail and recommends that this approach is piloted in either north or south Wales.

There is a second alternative which we also recommend piloting. This is the joint service level agreement model. In this arrangement, funders work together to jointly agree a series of objectives but funding is not pooled. An example of this could be funders agreeing a system of case outcome reports in order to reduce duplication of reporting. This approach would require a much closer working relationship, resulting in a more joined up service, which we believe would work in the interests of the clients. In many ways, this model can be seen as the middle ground between the status quo and joint commissioning. For those local authorities that wish to forge a close working relationship with the LSC but do not yet wish to commit to pooling resources, this may be an ideal stepping stone.

If the recommendation to pilot the above models is accepted, consultation with the local authorities and other interested parties would need to take place in North and South Wales to ascertain where the pilots should be located.

In this paper, we have provided a summary of the major themes which arose from the consultation paper together with a more detailed analysis of responses to the individual questions.

We also present our findings and recommendations. By way of a summary, our primary recommendations are set out below. The basis for these recommendations is explained in Section 5.

### **1. Stand Alone Grant Funding**

Where local authorities decide to continue to provide grants to third sector organisations, we recommend that they do so via a set of grant conditions as opposed to Service Level Agreements.

We recommend that the Welsh Assembly Government, the LSC and/or local authorities consider instructing a solicitor to draft a template set of grant conditions for optional use by local authorities. Solace, Welsh Local Government Association Representative Groups and local authorities should be consulted upon before the content is agreed.

### **2. Sustainable Commissioning**

We recommend that the Welsh Assembly Government, the LSC and local authorities enter into negotiations to pilot the Sustainable Commissioning model.

This model could work where the successful bidder is a consortium of providers or be awarded only to a single legal entity. The model could also theoretically be adapted so as to be possible to award contracts to multiple bidders. For a larger geographical area, for example say North Wales, it may be preferable to split the advice service contract into two or more geographically-defined contracts.

We also recommend that the Welsh Assembly Government, LSC and/or relevant local authorities take steps to monitor the impact of the establishment of a Sustainable Commissioning Model on other funding streams in the area, and involve other existing funders of local advice in plans for a Sustainable Commissioning Model wherever possible. The impact of the establishment of a Sustainable Commissioning Model on local advice providers, including the potential for future competition in the area should also be monitored.

### **3. Joint Service Level Agreements**

Where funders decide not to enter or to postpone arrangements for jointly commissioned advice services, we recommend that funders should seek to improve the effectiveness of their funding by agreeing upon a set of conditions which may be known as a joint Service Level Agreement or joint funding conditions.

#### **4. Geographic Clusters**

We are unable to recommend any particular established regional model.

We recommend that further work is done by the LSC and each of the 22 local authorities in Wales to establish which neighbouring authorities would be suitable partners and to identify advice service requirements in the various regions. The representative groups should also be consulted to ensure that providers' views are taken into account.

This exercise should be prioritised in areas where there are significant gaps in service provision and also in areas where a joint commissioning pilot may take place.

#### **5. Referral Systems**

If a joint SLA approach is piloted and funders agree that an electronic referral system should be made mandatory, then a system should be procured, including the cost of training, technical support and monitoring. Suitably adapted existing systems and new software would be eligible for consideration.

#### **6. Quality Standard**

Funders in Wales should require, as a condition of funding, that any organisation in receipt of public money should hold and maintain accreditation against an appropriate recognised quality assurance standard such as the Quality Mark.

#### **7. Logo**

If the Sustainable Commissioning funding model is piloted and a successful organisation, or group of providers, is successful in winning the tender, then we recommend the adoption of a shared logo in order for clients to clearly understand clearly who is providing the service.

We do not recommend using such a logo for use with the joint SLA model, at least in the short term.

## Summary of Consultation Responses – Major Themes

We will address the major themes flowing from the consultation first and then give an analysis of the responses to the individual questions.

We received responses from 42 respondents in total, which have been analysed to determine the key themes emerging.

From comments made in the majority of the responses, it was clear that respondents welcomed the opportunity to comment on the future provision of advice services in Wales and to provide their views about the construction of an effective advice services commissioning model.

Several different types of organisation responded to our consultation:

- i. 6 Local Authorities
- ii. 3 Local Authority Welfare Rights Units
- iii. 2 Consultants/Independents
- iv. 19 NfP Agencies
- v. 2 Solicitors Firms
- vi. 10 Representative Bodies/Umbrella Groups

### Funding Models

Around two thirds of all the respondents said that they generally agreed with the merits of the various funding models summarised in the paper.

In many cases however, respondents felt that the paper had over-stated particular disadvantages.

A number of respondents commented in some depth on the Sustainable Commissioning model. Where comments were made on this model, they were largely positive.

#### *Preference for Funding Model*

19% of all respondents (11% being local authorities and the remaining 7% NfP agencies) expressly indicated that there would need to be an in-depth 'Needs Analysis' or "...*local service provisions modelling exercise*" carried out in the different regions before making a final decision on appropriate models.

However, notwithstanding those reservations, 79% of all respondents felt comfortable with expressing a preference or an ultimate preference for one model over another. Of those respondents who expressly indicated a preference for a particular model, 61% (20 respondents) preferred the Sustainable Commissioning model outlined in the paper.

Just over 68% of NfP agencies favoured Sustainable Commissioning. However, it was interesting that potential funders also favoured the concept of sustainable commissioning

with 5 of the 6 (83%) councils who responded expressing an ultimate preference for the model.

60% of the representative bodies chose not to express a preference for any model. Many of these bodies or umbrella groups were responding on behalf of members based across the whole of Wales and, due to the complexities of the geography and culture, did not feel that a single national funding model would be appropriate. Others felt that of greater importance were the views and preferences of their members who would be directly affected by any funding changes, and that they would generally support the majority decision.

In order of popularity, the next preferences across all the respondents were grant funding with the use of Service Level Agreements (SLAs), joint SLAs, and then grant commissioning. Only one respondent favoured the CLAs model over and above the other funding models identified in the paper.

### *Locality*

Many respondents expressly stated that they did not feel that a *'one size fits all'* model would be appropriate and in particular, that a model suitable for an urban area would not necessarily be suitable for rural communities in Wales.

Interestingly however, Sustainable Commissioning was the more popular preference of respondents based in both South and North Wales. All respondents from North West Wales expressed a preference for this model with the number of respondents being split equally between local authorities and NfP agencies. Of those respondents in North East Wales who chose to commit to a particular model, 60% (all local authorities) expressed this as an ultimate preference. In South Wales, a total of 12 respondents (63%) preferred Sustainable Commissioning. The vast majority of these respondents (11) were NfP agencies with the other respondent being a welfare rights unit.

### **Geographic Clusters**

Just over half of all respondents (22) disagreed with the LSC's Regional Model. 68% of these respondents were NfP agencies, 18% were representative bodies, 9% were welfare rights units and the other 5% being from the solicitor sector.

A further 38% (16) of all respondents did not provide an answer or felt that they had insufficient knowledge of the geography of Wales to comment definitively. These included all the responding local authorities, 16% of all responding NfP agencies, 40% of responding representative bodies with the remainder split equally between solicitors, welfare rights units and consultants.

Common reasons put forward by respondents for disagreeing with this model were differences between rural and urban communities, cross-boundary issues including a need for flexible working across boundaries or the model's perceived artificiality.

References were made by some respondents to the delineation of the boundaries of the Local Health Boards across Wales.

24% (10) of all respondents preferred a model based on Local Authority boundaries. These included 32% of all responding NfP agencies, 67% of welfare rights units together with one firm of solicitors and one representative body.

None of the respondents felt that the National Model would be preferable.

### **Improving Access to Specialist Advice**

Of the three options outlined in the paper, significantly more respondents preferred increasing the fixed fee over best value tendering and commissioning or CLAs tendering. However, the majority of respondents (a total of 69% - split between NfP agencies (26%), representative bodies (19%), local authorities (12%), welfare rights units (7%) and solicitors (5)) did not express an opinion either way or felt that none of the three outlined options were appropriate.

Many respondents, especially those operating in a rural area, indicated that the focus needed to be on the provision of outreach services including home visits, surgeries and the use of telephone and internet where appropriate. Others felt that effective joint working amongst providers and funders was imperative to create a seamless or “*holistic*” service.

Others raised issues included the possibility for specific allocated funding for the development of future services to meet identified shortages of supply and a perceived need to focus on the identification and resolution of recurring problems to reduce the need for access to specialist advice.

### **Referral Systems**

67% of all respondents favoured the introduction of a mandatory referral system. These included all responding local authorities and consultants, 63% of all NfP agencies, 60% of all representative bodies plus one solicitor and a welfare rights unit. The remaining respondents were split equally between expressly rejecting such a system and choosing not to express a preference.

Many respondents raised issues about the funding and maintenance of such a system with some respondents calling for a systems coordinator to ensure the effective running of the system and accurate reporting. Issues were also raised about the need for maintaining client confidentiality and around data protection.

If such a referral system were to be put in place, the majority of respondents felt that it should be an entirely electronic system (69%) or a system based partly on paper and partly electronic (12%). These included all responding local authorities and consultants, 89% of NfP agencies, 80% of representative bodies and 34% of welfare rights units. Common reasons put forward by respondents were that such a system would be easier to administer and would result in useable statistics.

No real alternatives were put forward by respondents, although 5% of respondents considered that it might be preferable to implement a simpler electronic system based on the exchange of emails.

### **Quality Standards**

57% of all respondents (24) felt that a quality standard should be made mandatory. These respondents included all responding consultants, 79% of all responding NfP agencies, 40% of representative bodies, 17% of responding local authorities plus with a similar indication from a firm of solicitors and a welfare rights unit. This is in comparison to 26% (11) of respondents who expressly rejected this concept. The remaining 17% (7) did not express a preference either way.

Nine of the eleven respondents who rejected the concept of a mandatory quality standard did so over concerns about placing unreasonable burdens, including financial liabilities, on organisations, especially smaller advice agencies. However, all of these nine respondents felt that organisations should nevertheless be required to carry out a degree of self reporting and/or that quality should be independently verified by such methods as questionnaires or mystery shopping.

Of the reasons given by respondents for preferring the introduction of a mandatory quality standard, common examples were an ability to improve and maintain a better standard of quality across all providers, an ability properly to audit providers and assistance with the standardisation of advice amongst providers.

Of those who gave an indication of their preference, 52% (including 63% of all responding NfP agencies, 20% of representative bodies plus one consultant and a firm of solicitors) considered that providers should be audited at least once every three years with an additional 10% (including 11% of all responding NfP agencies and 50% of the consultants) of respondents considering that audits should take place every two years. In addition to three yearly audits, 14% of respondents (all NfP agencies) wanted to see an assessment of new providers.

### **Branding & Logo**

The number of respondents who expressed a preference for a mandatory logo was equal to the number who did not favour this approach.

48% (20) of all respondents did not express a preference either way.

Common reasons put forward by those respondents who preferred a mandatory logo included improved information to clients and a mark of quality.

Of those respondents who did not favour the introduction of a mandatory logo, many had concerns about cost or felt there would be a need for extensive marketing necessary to bring the logo to the attention of the client base. Others simply felt that there was no

identified need for a logo or had concerns about a negative impact on their own current branding.

## Summary of Consultation Responses – Individual Questions

By way of an overview, we have also analysed data drawn from the consultation responses in terms of the types of organisations which responded to the consultation and their locality. These results are summarised at **Appendix B**.

We set out below a summary of the results from the consultation and include, where applicable, headline points representing the views of respondents to the individual questions listed in the consultation.

### Funding Models

#### Question 1

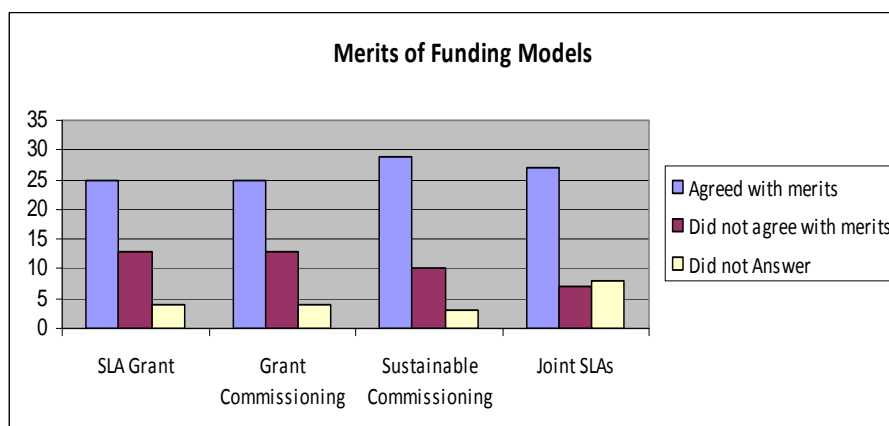
*Do you agree with the merits of the various alternative funding models summarised in section 3 (a) and (b) of this paper on funding mechanisms? What other advantages and drawbacks can you foresee?*

#### Analysis

The respondents who indicated that they agreed or disagreed with the merits expressed in the paper can be broken down as follows:

	Agreed with merits		Disagreed with merits		Not answered	
	Number of responses	%	Number of responses	%	Number of responses	%
SLA Grant	21	60	13	31	4	9
Grant Commissioning	25	60	13	31	4	9
Sustainable Commissioning	29	69	10	24	3	7
Joint SLAs	27	64	7	17	8	19

This data is reflected in the chart below:



## **Merits of the Funding Models**

Around two thirds of all the respondents said that they generally agreed with the merits as summarised in the paper. Of those who disagreed, the vast majority commented on particular advantages or disadvantages rather than simply disagreeing with all aspects of the various funding models. In many cases, respondents considered that the paper had overstated particular disadvantages.

### *Stand alone grants*

In respect of stand alone grants, 2 respondents expressly disagreed with the perceived disadvantage as regards long-term cost. They considered that, even if the number of providers were to reduce through commissioning, it is unlikely that this would make the process more expensive. One organisation pointed out that commissioning would not necessarily reduce costs.

29% (12) of respondents expressly disagreed with the comment that the link between funders' objectives and grants may not be particularly strong. Two respondents said that this would seem only to apply to poorly developed arrangements rather than being inherent to that type of funding. Some considered that, where arrangements have been in place for a while and were strongly developed, funders' objectives could easily be met. Linked to this, some respondents felt that it would be easier to achieve objectives with longer grant periods (such as those in excess of three years). Many considered that there was no reason why specific matters such as services to be provided, opening hours, outreach services etc. could not be included in a SLA. More than one respondent felt that effective monitoring and management of the grant was the main determinant of success.

12% (5) of respondents expressly disagreed with the comment that grants tend to be of a shorter duration, with many noting that grants in Wales are commonly for longer periods. Two respondents did not believe that there were any barriers to funders making longer term commitments, subject to performance, for longer term needs.

Two respondents expressly agreed that some grant budgets have become static and the same providers are funded each year regardless of whether they are best able to meet the objectives. By continuing along these lines, funders are not getting the opportunity to assess what other providers can offer.

### *Commissioning*

Two respondents expressly commented that a more intensive commissioning process may be inappropriate in a small rural area. Another respondent felt that a prescriptive commissioning approach may not embody the eclectic mix of advice provision which already exists.

### *Sustainable Commissioning*

Two respondents expressly endorsed the perceived advantage that this model would eliminate perverse incentives by focusing on client outcomes. These respondents felt that the model placed value on the contribution of volunteers.

Some respondents felt that this model would enable the specific needs of rural Wales to be addressed. Respondents also felt that it would require a significant culture shift but that this was to be seen as an advantage.

Other respondents felt that there were other advantages not covered in the paper, for example, that by maintaining separate funding, the model recognises and respects the differences between the third and commercial sectors. A respondent also felt that it would also improve understanding between funders and create conditions to overcome particular problems concerning access to specialist advice in certain areas.

One respondent questioned the comment that there could be a risk that the solutions offered by providers could fall short of what would be included in a top-down specification. This respondent did not agree that there was an inherent risk of low quality solutions as funders are generally at liberty to establish minimum thresholds.

One respondent felt that any form of commissioning would pose a threat to the third sector by limiting the number of providers.

### *Joint Service Level Agreements (SLAs)*

Two respondents expressly stated that the potential for disagreement between funders about the content of an SLA was under-stated in the paper. They both noted that a SLA which would be appropriate for an urban area might be largely inappropriate for services which are to be delivered in rural communities. Both respondents felt that there should be scope for funders to take different views on the different aspect of the services which were required in their locality.

Other respondents felt that there were other disadvantages not covered in the paper. One respondent felt that there would need to be tight contractual arrangements between partner providers concerning the responsibilities of each. Another respondent considered that there was a risk that funders would put forward their own 'shopping list' of requirements which would be largely accepted without any proper needs analysis being undertaken.

Another respondent was not convinced that this option would be at all straightforward to coordinate given that it relies on a voluntary partnership approach amongst a number of funders with potentially different priorities.

## **Improvements**

One respondent commented that, in their view, none of the models adequately recognise the significance of social policy or volunteering.

## **Alternatives**

One organisation argued that a model should be built around a diverse pool of providers in order to ensure that clients are able to exercise choice when deciding who to approach and who could deliver collaborative services with 'added-on' value to all categories of clients in a holistic manner. Examples given were Citizen Advice Bureaux, Age Concern, the Law Centre, and various advice agencies.

## **CLAs Model**

In addition to commenting on the alternative funding models summarised in the paper, a large number of respondents also commented on the merits of the LSC's CLAs model. It was not the intention of this consultation process to seek detailed views about the merits and implications of the CLAs. However, these views were welcomed and considered, particularly as means of a comparison against the alternative funding models.

## Question 2

***Do you have any preferences for any of the funding models outlined? What improvements, if any, would you suggest to the options outlined? If you do not agree with any of the options or feel that they might disproportionately impact on a particular group(s), can you explain your reasons why? What alternatives would you suggest?***

### Analysis

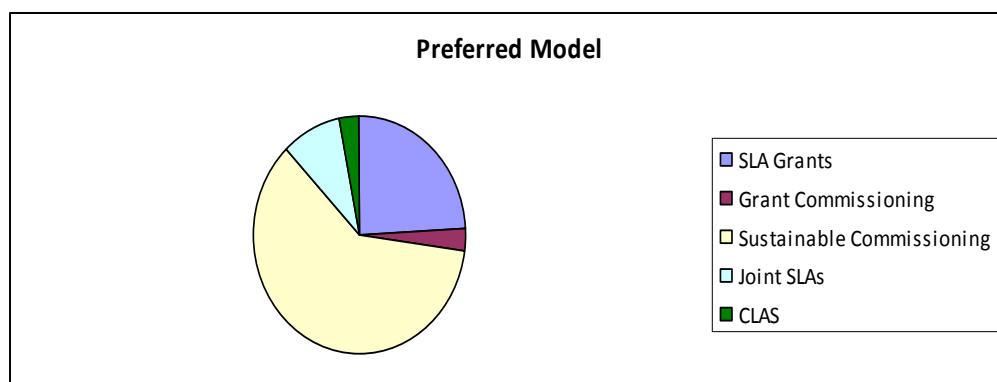
#### Preference for Funding Model

Overall, the number of respondents expressing a preference for a particular funding model can be broken down as follows:

Funding Model	Number of responses	% <i>(responses shown as a percentage)</i>
SLA Grants	8	19
Grant Commissioning	1	2.4
Sustainable Commissioning	20	47.6
Joint SLAs	3	7.1
CLAS	1	2.4
No preference or split	9	21.4

Looking particularly at those who expressed a preference for a particular model (i.e. excluding for this purpose only those who did not express a preference), sustainable commissioning was preferred by 61% of respondents. However, while this model was the ultimate preference for some respondents, it was commented by many that it would only be practical to implement this model after the carrying out of an in-depth 'Needs Analysis' or "*...local service provisions modelling exercise*" in the different regions. In view of this, some respondents commented that, until such steps had been taken, a Joint SLA might be a good stepping stone.

This data is reflected in the chart below:

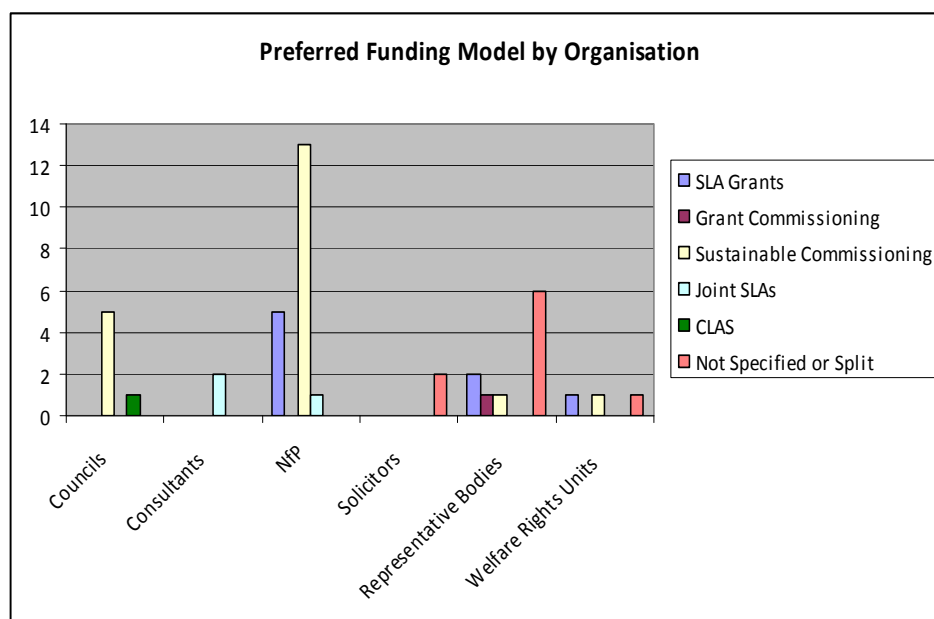


### Preferences by various types of respondent

Looking at the preferences of the different types of respondent, the number of respondents expressing a preference for a particular funding model can be broken down as follows:

Funding Model	Councils	Consultants	NfP Agencies	Solicitors	Welfare Rights Units	Representative Bodies
SLA Grant	0	0	5	0	1	2
Grant Commissioning	0	0	0	0	0	1
Sustainable Commissioning	5	0	13	0	1	1
Joint SLAs	0	2	1	0	0	0
CLAS	1	0	0	0	0	0
No preference	0	0	0	2	1	6

This data is reflected in the chart below:



83% of councils who responded expressed an ultimate preference for sustainable commissioning. However, it was considered that the implementation of this model might be premature pending the outcome of a needs analysis. As a stepping stone, these respondents suggested that a joint SLA could be agreed between funders prior to moving to Sustainable Commissioning. Both consultants favoured the Joint SLA approach. Just over 68% of NfP agencies favoured sustainable commissioning, whilst 26% preferred Grants teamed with SLAs.

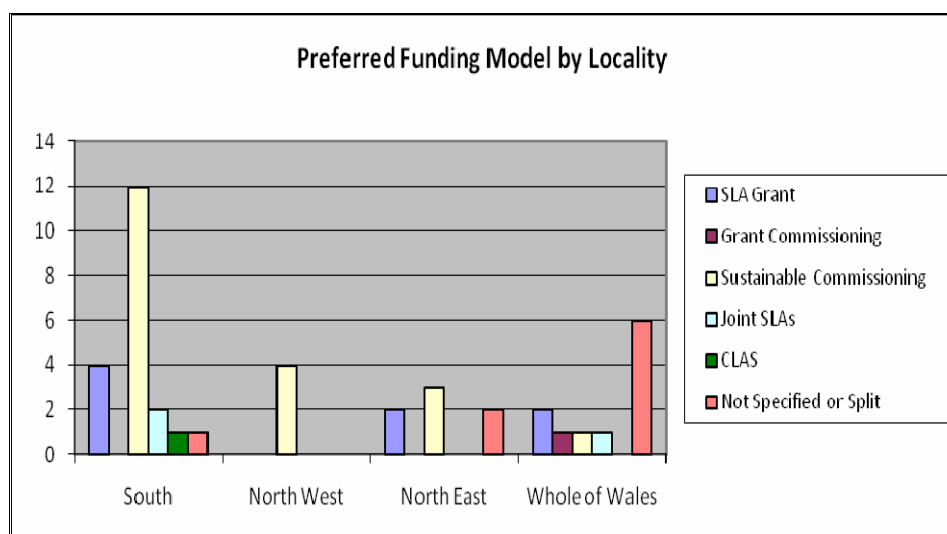
In terms of the other types of respondent, of those who expressed a preference, the results were generally split across the various models.

### *Preferences by locality*

Looking at the preferences of the respondents in various locations, the number of respondents expressing a preference for a particular funding model can be broken down as follows:

Locality	Model					
	SLA Grant	Grant Commissioning	Sustainable Commissioning	Joint SLAs	No Preference	CLAS
South	4	0	12	2	1	1
North West	0	0	4	0	0	0
North East	2	0	3	0	2	0
Whole of Wales	2	1	1	1	6	0

This data is reflected in the chart below:



Notably, all the respondents from the North West of Wales expressed an ultimate preference for sustainable commissioning. By way of comparison, in the North East, 60% of those who expressed a particular preference (being all local authorities and making up 43% of respondents overall from this region) preferred this model. The other expressed preference in this region was for grants with SLAs.

In South Wales, of those who expressed a preference for a particular model, 63% preferred sustainable commissioning (with the exception of one welfare rights unit, all of these respondents were NfP agencies), 21% (all NfP agencies) preferred grants with SLAs and 11%

(an equal number of NfP agencies and consultants) preferred Joint SLAs. The only respondent to prefer the CLAs model was based in the South.

### **Responses and comments**

Two respondents indicated that they had preference for more than one of the models and for this reason, they have been allocated to a category entitled “no preference or split”. One respondent wanted to see a combination of grants with SLAs and Sustainable Commissioning. The other respondent felt that either grant commissioning or grants with SLAs were a preferred starting point.

Another organisation gave a more precise indication of their preference which drew on elements of all the models but placing considerable focus on ‘bottom-up’ commissioning.

Other organisations in this category also made it known that they could see the advantages of some of the models but didn’t go as far as to express a clear preference either way. One of these respondents, a representative body, suggested “*a hybrid of [SLA grants] with the advantages of [sustainable commissioning] and [Joint SLAs].*” Another of these respondents (another representative body) considered that the Sustainable Commissioning model was “*attractive*” from the perspective of the third sector. A further representative body also endorsed “*...the perceived advantages of this model*” and recommended a geographically specific pilot to be implemented.

It is worth noting that 60% (6) of respondents allocated to this “no preference or split” category were representative bodies. Many indicated in their response that, rather than express their own preference, they would support the model preferred by the majority of their members or the majority of respondents overall. Another common reason for not expressing a preference for one model was that many of the representative bodies were responding on behalf of members based across the whole of Wales and, due to the complexities of the geography and culture, did not feel that a “*one size fits all*” single national funding model would be appropriate. Many other respondents also made this point in their responses and felt that it may be preferable to pilot different models in different localities.

#### *Reasons for choosing a particular funding model*

There was a degree of commonality in the reasoning given by respondents for choosing one model over another.

10% of respondents (4 in total split equally between NfP agencies, consultants, representative bodies and welfare rights units) felt that it would lead to improved partnership and engagement between community organisations or as one respondent called it, a move to a “*community based*” model. 3 out of these 4 respondents favoured Sustainable Commissioning; the other respondent favoured joint SLAs.

21% of respondents (9 in total of which, with the exception of one representative body, all were NfP agencies) felt that it would lead to the development of the most appropriate

services for the community or particularly, “..a localised response to providing appropriate service..”. All of these respondents favoured Sustainable Commissioning.

24% of respondents (10 in total of which 50% were local authorities, 20% representative bodies and the remainder split equally between NfP agencies, welfare rights units and consultants) chose a model based partly on its perceived flexibility. One response preferred a “flexible model for local needs”, another respondent preferred a model which “...allows choice”. 3 of these respondents preferred grants with SLAs, 6 preferred sustainable commissioning and the remaining respondent favoured joint SLAs.

14% of respondents (6 in total of which, with the exception of a NfP agency, all were local authorities) gave geographic or boundary considerations as their reasoning for choosing a model. For instance, consideration of the needs of different client bases, including the requirements of rural communities and bilingual needs, together with an allowance for “cross boundary considerations”. All of these respondents favoured Sustainable Commissioning.

Other reasons provided by respondents included cost factors with grants being seen as “..significantly cheaper to administer...” and issues regarding reporting such as an ability to “... fit with current reporting mechanisms such as results based accountability...”.

### Question 3

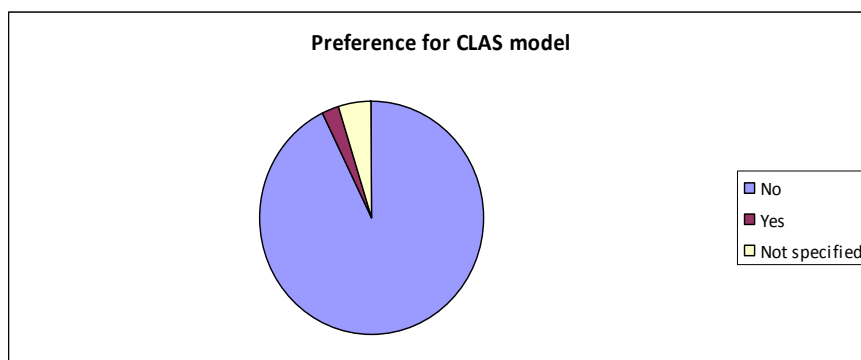
***Do you prefer the LSC's CLAs model in preference to the other funding mechanisms outlined in this paper?***

#### Analysis

The number of respondents expressing a preference for the CLAs model can be broken down as follows:

	Number of responses	% <i>(responses shown as a percentage)</i>
No	39	93
Yes	1	2
Not Specified	2	5

This data is reflected in the chart below:



Notably, 93% of all respondents said that they did not prefer the CLAs model. Only one respondent (a local authority) preferred this model over the other models set out in the paper.

## Geographic Clusters

### Question 4

***Do you agree with the LSC's regional model? If you do not agree with this model can you explain your reasons why? If you prefer the national model or the local authority model, please explain your reasons. Similarly, if you prefer a model not mentioned, please explain the basis of your views?***

***Does your answer depend upon which funding model or geographical cluster is chosen? If so, why?***

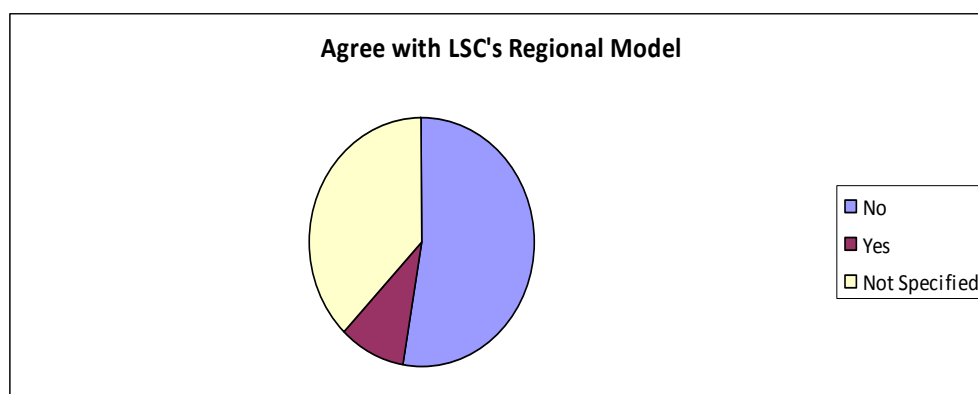
### Analysis

#### LSC's Regional Model

The number of respondents who agreed or disagreed with the LSC's Regional Model can be broken down as follows:

	Number of responses	% (responses shown as a percentage)
No, do not agree with model	22	52
Yes, agree with model	4	10
Not Specified	16	38

This data is reflected in the chart below:



Of the 10% of respondents who said that they favoured the LSC's Regional Model, one respondent did so with "...the exception of SE Wales probably..." considering that "...this is the most unwieldy and artificial of groupings...". This 10% was split equally between NfP agencies and representative bodies.

Just over half of all respondents said that they did not agree with the Regional Model. 68% of these respondents were NfP agencies, 18% were representative bodies, 9% were welfare rights units and the other 5% being from the solicitor sector.

38% (16) of respondents did not answer this question or felt they had insufficient knowledge of the whole of Wales to comment definitively. These included all the responding local authorities, 16% of all responding NfP agencies, 40% of responding representative bodies with the remainder split equally between solicitors, welfare rights units and consultants.

Of those who expressly disagreed with the Regional Model, 23% (5 respondents, all NfP agencies) cited differences between rural and urban communities and felt that the model did not account for those differences. 14% of respondents (3 NfP agencies - 2 located in South Wales and 1 located in North East Wales) cited cultural differences between areas falling within particular regions with one specifying that “...the LSC model does not take into account localised variances”.

27% (6 respondents which, with the exception a representative body, were all NfP agencies) of those who disagreed with the Regional Model cited cross-boundary issues. In particular, it was considered that it would cause difficulties for providers based at the edges of procurement areas or those not properly fitting into one particular region. It was also felt that clients would want to go to their nearest provider and not necessarily one within their allocated ‘region’. Some of these respondents clearly expressed the need for flexible working across boundaries, for example, one respondent expressing that it was “...imperative that there should be informal cross-border working as already happens at present...”.

14% (3 NfP agencies) of those who disagreed with the Regional Model did so expressly on the basis that they considered it to be unnatural or artificial. For instance, these respondents felt that regions appeared to be based on traditional geographic county lines which are now largely historic.

5 respondents made express reference to the current reorganisation of the Local Health Boards (LHB) in Wales and queried whether there would be justification for creating models which mirror the proposed LHB regions. One respondent considered that reference to the Wales Spatial Plan, published by the Welsh Assembly Government might provide a clearer perspective of future planning of local services in Wales.

### **Other Models**

10 respondents (24% of all respondents) expressed a preference for a model based on Local Authority boundaries. These included 32% of all responding NfP agencies, 67% of welfare rights units together with one firm of solicitors and a representative body.

4 other respondents expressed a preference for other (all different) models.

No respondents expressed a preference for the National Model.

Respondents expressed varied and diverse views about the perceived advantages and disadvantages of the LSC’s Regional Model as well as preferences for other preferred models.

Of the 10 respondents who considered that a model based on local authority boundaries had merits many agreed that it would offer a clearer opportunity for an assessment of local needs and an ability to deliver a responsive service which would meet those needs. However, 2 of those who indicated a preference for a local authority model did so with some degree of reservation, stating that, regardless of the boundary, there was a clear need for informal cross-border working.

### **Particular observations**

In their responses, some respondents expressed particular opinions about various geographical clusters.

#### *South Wales*

35% of respondents (6 in total, all NfP agencies) based in South Wales with the addition of another respondent responding on behalf of the whole of Wales (equating to 17% of all 42 respondents), felt there was justification given its demographic and diversity for separating Cardiff from its grouping with the Vale of Glamorgan and Bridgend.

10% of respondents (2 NfP agencies) based in South Wales felt that Bridgend would be better placed with Swansea and Neath Port Talbot. One respondent felt that it would be better placed with Rhondda Cynon Taf and Merthyr Tydfil (as it was in the former county of mid-Glamorgan).

#### *North Wales*

5% (2) of respondents overall agreed that there were merits for linking Gwynedd and Ynys Môn. These same respondents also favoured the linking of Conwy with Denbighshire and Flintshire with Wrexham.

14% of respondents (6 respondents in total including 5 of the local authorities) overall considered that there should be some collaboration between the local authorities in North Wales.

#### *Mid Wales*

There were insufficient responses regarding this region to draw any real conclusions. However, 3 respondents expressed their disagreement with the proposed linking of Ceredigion with Powys. It was considered by one respondent that Powys should be considered as a stand-alone region. Another respondent felt that it should be linked with Pembrokeshire and Carmarthenshire. A further respondent felt that Powys should be split, Brecon and Ystradgynlais being more appropriately linked with South Wales, and Mid and North Powys with South Gwynedd and North Ceredigion.

## Improving Access to Specialist Advice

### Question 5

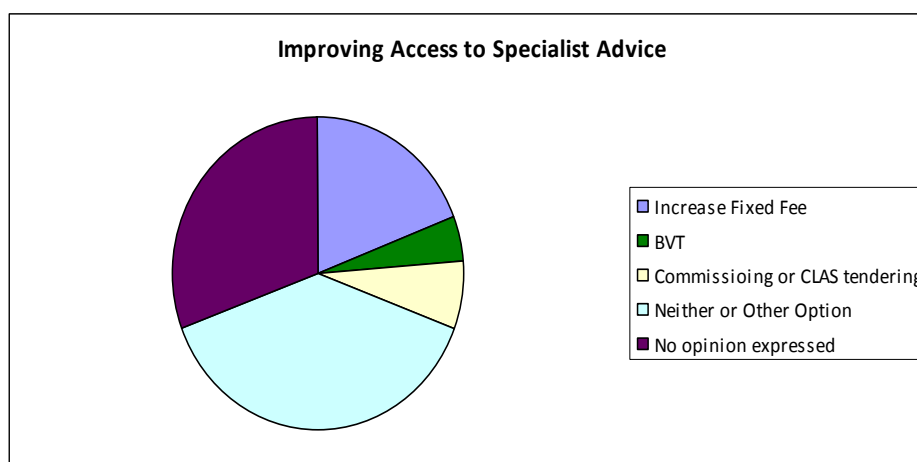
*Which of the three options described for improving access to specialist advice do you prefer? Please explain your reasons. If you do not agree with any of these options or feel that this model disproportionately impacts on a particular group(s), can you explain your reasons why? For instance, you may feel that other methods of delivering advice in rural locations are more appropriate such as outreach services, telephone advice, advice via a webcam or internet based services. If so, please explain the basis of your views? Does your answer depend upon which funding model or geographic is chosen? If so, why?*

### Analysis

The number of respondents who expressed a preference for one of the three options outlined in the paper can be broken down as follows:

	Number of responses	% (responses shown as a percentage)
Increase Fixed Fee	8	19
BVT	2	5
Commissioning or CLAS Tendering	3	7
Neither or Other Option	16	38
No opinion expressed	13	31

This data is reflected in the chart below:



Of the three options specified, significantly more respondents preferred increasing the fixed fee over the other options.

However, 38% of respondents indicated that they did not favour any of the three options outlined or expressly stated that they did not consider that any of the options were suitable.

## Responses and comments

Two of the respondents who indicated a preference for increasing the fixed fee, felt that it enabled greater flexibility and the ability to set the funding according to demand. Others felt that this would more adequately compensate providers for the work undertaken. However, some of those who felt that increasing fixed fees would help improve access to specialist advice made it clear that it still posed considerable limitations. One respondent stated that an increase would be *"...a start to improve the size of the potential advice providers and their quality"* but that *"...this alone is insufficient"*. Another pointed out that increasing fixed fees *"...is not without difficulty in a fixed budget scenario as if some fees are increased, others may have to be reduced"*.

Of those who felt that best value tendering had merits, there were still reservations with one respondent indicating that they would like to see *"...a pilot set up in a rural area.."*. Another respondent indicated that for BVT to work in this scenario *"... monitoring and evaluation would need to move away from being concerned with process to a greater emphasis on quality and outcomes"*.

2 of the 3 respondents who indicated a preference for commissioning or CLAS tendering, felt that this would lead to the most comprehensive service provision, in particular by not precluding *"...a wide range of service-delivery methods including phone, internet, outreach..."*. Again reservations were expressed and in particular, the potential to lead to *"cherry picking by bidders"* and a need for robust monitoring.

### *Other Options*

Many respondents, especially those operating in a rural area, indicated that the focus needed to be on the provision of outreach services including home visits, surgeries and the use of telephone and internet where appropriate. Some respondents however, expressed concern about the excessive use of internet based services in poorer or rural areas. Concern was raised from respondents about the need for appropriate reimbursement to providers for the provision of these outreach services, especially in rural areas.

Others felt that effective joint working amongst providers and funders was imperative to create *"holistic"* service provision.

Two respondents considered that an option would be for local authorities or WAG, alone or in conjunction with the LSC, to allocate specific funding to meet identified shortages of supply.

Others raised issues included the possibility for funding the development of future services together with the offer of training to attract providers, focusing on the identification and resolution of recurring problems to reduce the need for access to specialist advice.

## Referral Systems

### Question 6

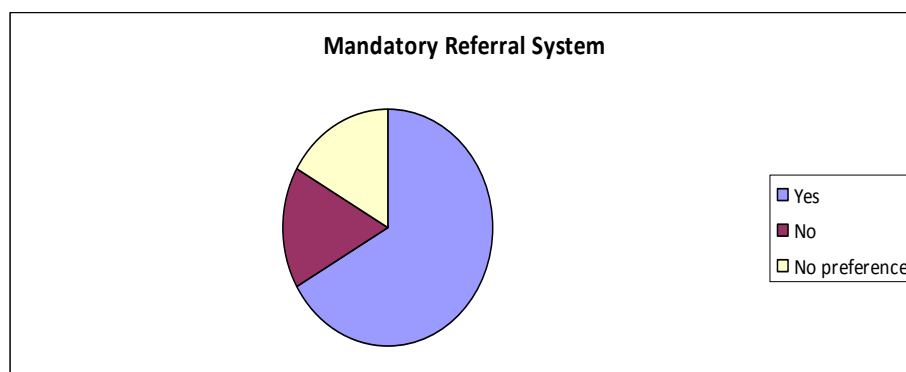
***Do you consider that use of a robust referral system should be made mandatory? If you do not agree, please explain the basis for your view?***

### Analysis

The number of respondents who considered that a robust referral system should be made mandatory can be broken down as follows:

	Number of responses	% <i>(responses shown as a percentage)</i>
Yes	28	67
No	7	16.5
No Preference	7	16.5

This data is reflected in the chart below:



Over two thirds of all respondents favoured the introduction of a mandatory referral system.

### Responses and comments

The majority of respondents who preferred a mandatory referral system didn't give any specific reasons for this. 7% of these respondents (an equal number of NfP agencies and representative bodies) felt that it would help prevent 'referral fatigue'. 7% of these respondents (2 NfP agencies) felt that it would lead to greater cohesion between providers and 7% (2 NfP agencies) considered that the system would generate helpful useable statistics.

Of those who didn't favour a mandatory system, 43% (3 NfP agencies) had concerns about the practicality of creating and maintaining such a system. 71% of respondents (5 in total, 3 NfP agencies and 2 representative bodies) who didn't favour a mandatory system felt that it

would be premature to impose such a system with some indicating that perhaps it would be something to review in the future.

Many respondents raised issues about the funding and maintenance of such a system with some respondents calling for a systems co-ordinator to ensure the effective running of the system and accurate reporting. Issues were also raised about the need for maintaining client confidentiality and issues regarding data protection.

### Question 7

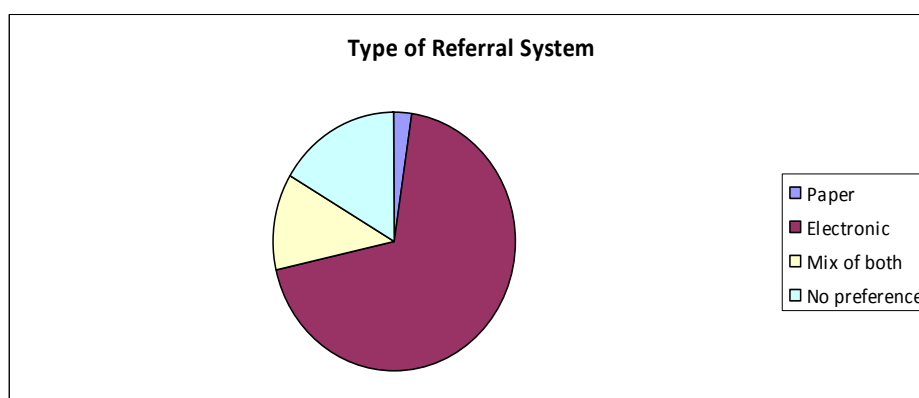
***Do you have a preference for a paper based system or an electronic referral system? Please explain your reasons for preferring one of the options.***

### Analysis

The number of respondents who expressed a preference for a paper-based or an electronic referral system can be broken down as follows:

	Number of responses	% <i>(responses shown as a percentage)</i>
<b>Paper</b>	1	2
<b>Electronic</b>	29	69
<b>Mix of both</b>	5	12
<b>No preference</b>	7	17

This data is reflected in the chart below:



A total of 81% (34) of respondents favoured an electronic system or a partly paper based and partly electronic system. These included all responding local authorities and consultants, 89% of NfP agencies, 80% of representative bodies and 34% of welfare rights units.

Of those who preferred an electronic system or a mixed paper/electronic system, 15% (5 respondents which, with the exception of a welfare rights unit, were all NfP agencies) did so

on the basis that such a system would be easier to administer and 9% (2 NfP agencies and 1 representative body) felt that it would result in useable statistics.

#### **Question 8**

***If you have any alternative suggestions, please provide us with your views.***

#### **Analysis**

93% of respondents (39) did not have any alternative suggestions. 5% of respondents (1 NfP agency and 1 representative body) considered that a simplified electronic referral system based on the exchange of emails would be worth considering further.

## Quality Standards

### Question 9

*Do you consider that possession of a quality standard should be made mandatory? Please explain the basis for your view.*

*If you consider that it should be made mandatory, how regularly do you think that providers should be audited? Every year, two years, three years or four years? If not, how often?*

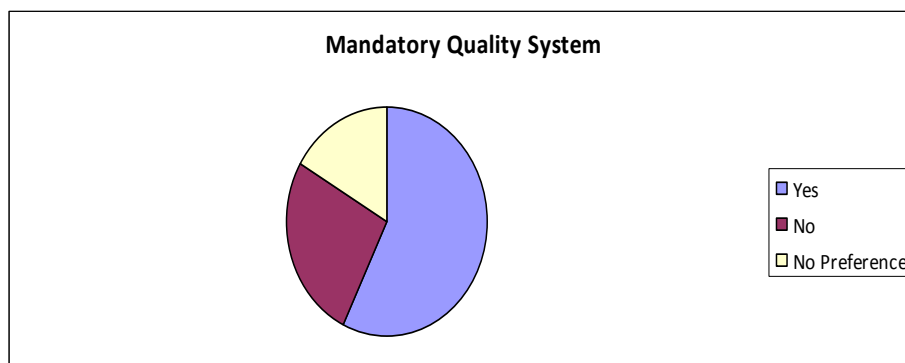
*If you have any alternative suggestions to improving and/or maintaining quality, please provide us with your views.*

### Analysis

The number of respondents who considered that a quality standard should be made mandatory can be broken down as follows:

	Number of responses	% <i>(responses shown as a percentage)</i>
Yes	24	57
No	11	26
No preference	7	17

This data is reflected in the chart below:



Just over half of all respondents (57%) felt that a quality standard should be made mandatory. These respondents included all responding consultants, 79% of all responding NfP agencies, 40% of representative bodies, 17% of responding local authorities plus with a similar indication from a firm of solicitors and a welfare rights unit.

Only about a quarter of respondents expressly considered that a mandatory quality standard should not be imposed. 17% of respondents did not express a preference.

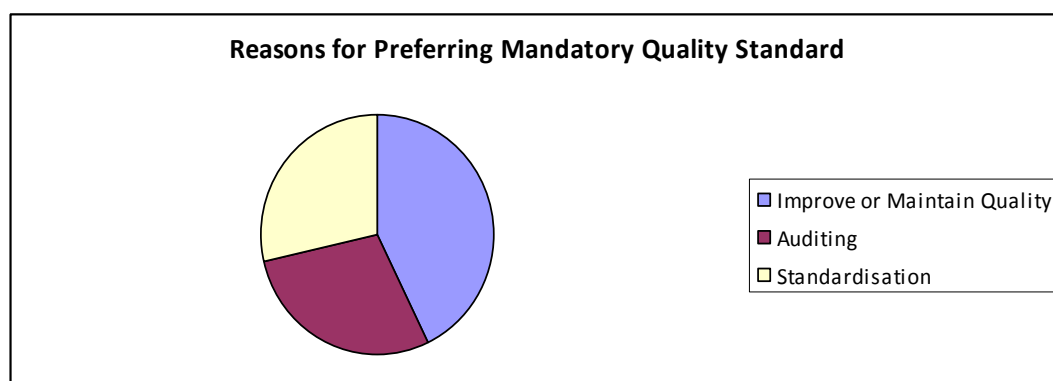
### *Common Reasons for Preferring a Mandatory Quality System*

About half of all respondents who favoured the introduction of a mandatory quality system did not give any specific reasons for this. However, others gave a number of different reasons for their choice with the more common reasons being (i) the improvement and maintenance of quality standards across providers; (ii) the ability to audit providers and have a standard against which quality could be audited; and (iii) standardisation of quality standards amongst providers.

The number of respondents who gave such reasoning is shown in the following table:

	Number of responses	% <i>(responses shown as a percentage of those who preferred a mandatory standard)</i>
<b>Improve or Maintain Quality Standards</b>	6	25
<b>Auditing</b>	4	17
<b>Standardisation amongst providers</b>	4	17

This data is reflected in the chart below:



### *Regularity of Audits*

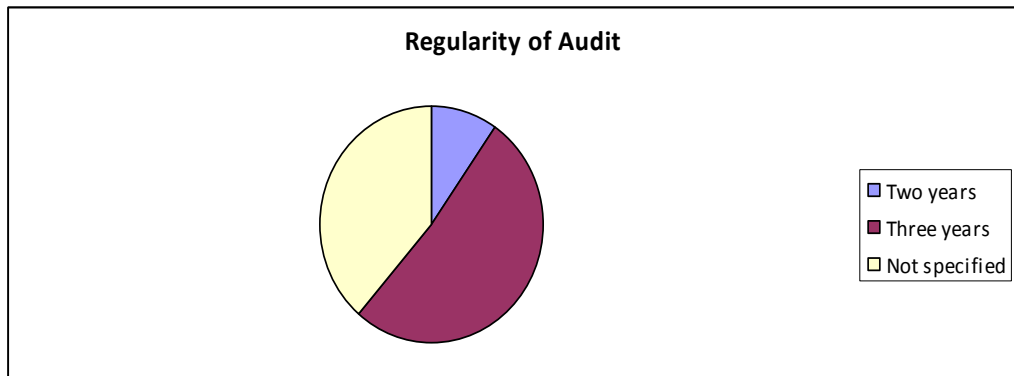
Of those respondents who favoured the introduction of a mandatory quality standard or did not express a clear preference, 39% (12) did not express any preference as regards the type or regularity of audits against such a standard.

Other respondents did comment on the regularity of audit and the results are shown in the following table:

	Number of responses	% <i>(responses shown as a percentage of those who favoured a mandatory standard or did not express a clear preference)</i>
Every year	0	0
Every Two Years	3	10
Every Three Years	16*	51
More than Three Years	0	0
No preference	12	39

\*One respondent considered that audits should take place “every 2 or 3 years”. For the ease of analysis this respondent has been allocated to the ‘every three years’ category.

This data is reflected in the chart below:



51% considered that the audits should be held every three years with an additional 10% of respondents considering that the audit should be held at least every two years.

14% (6) of respondents considered that new suppliers should be audited initially with follow up audits every three years. 6% (2) of respondents considered that in addition to three-yearly audits, suppliers should be monitored by funders on a more regular basis. One of these respondents expressed a desire to see annual ad hoc 'mystery client' monitoring.

## Branding & Logo

### Question 10

***Do you consider that the use of a shared logo should be made mandatory? Please explain your basis for this view.***

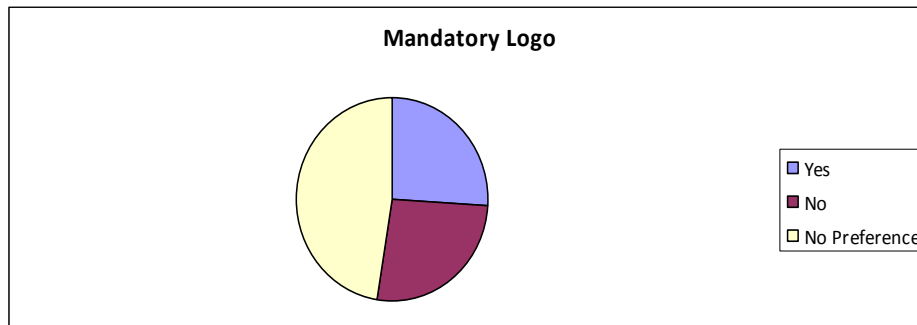
***If you have any alternative suggestions to demonstrate membership of a shared network, please provide us with your views.***

### Analysis

The number of respondents who considered that use of a shared logo should be made mandatory can be broken down as follows:

	Number of responses	% <i>(responses shown as a percentage)</i>
Yes	11	26
No	11	26
No preference	20	48

This data is reflected in the chart below:



The number of respondents who expressed a clear preference for a mandatory logo was therefore equal to the number who did not favour this approach.

In terms of the views of the specific responding sectors, an equal number (32%) of NfP agencies preferred the introduction of a mandatory logo to those who did not. Regarding the representative bodies, 30% did not wish to see a mandatory logo being introduced compared to 20% who did (the remainder choosing not to express a preference either way). All consultants favoured the introduction of a mandatory logo but only 16% of local authorities expressly agreed (the remaining local authorities choosing not to indicate a clear preference). Half of the solicitors firms also expressed a preference for a mandatory logo (the other 50% not expressing a preference). Welfare rights units were split equally with an equal number (33%) expressing a preference for a mandatory logo to those who did not.

Nearly half of all respondents did not express a preference.

## Responses and comments

Of those respondents who indicated that they would like to see a mandatory logo for providers, 36% (4 respondents, including all consultants, a representative body and a NfP agency) felt that it would give improved information to clients and 27% (2 NfP agencies and 1 representative body) considered that it would be a mark of quality. One local authority considered that it would like to see a logo which provided an “...acknowledgement of the funding source”.

Of those respondents who did not favour the introduction of a mandatory logo, 36% (3 NfP agencies and 1 representative body) did so because of cost implications and 64% (7 respondents including 3 NfP agencies, 2 representative bodies and a firm of solicitors) considered that there was insufficient need on grounds that there tends to be a lack of recognition or interest on the part of the general public. 36% (3 NfP agencies and a firm of solicitors) expressed concern about a perceived need for extensive marketing necessary to bring the logo to the attention of the client base. 18% (a NfP agency and firm of solicitors) expressed some concern about the number of other logos presently available and that additional logos could further clutter providers’ letterheads. A notable 55% of respondents (6 in total split equally between NfP agencies and representative bodies who did not favour a mandatory logo did so because of concerns that a mandatory logo could undermine their own branding and logos.

## Findings and Recommendations

### Alternative Funding Mechanisms

We recognise that it is undesirable to suggest one funding model which is best or indeed appropriate for the whole of Wales.

If one model was suggested or imposed across Wales, it could not and would not work. Many councils will prefer to fund advice services separately from the LSC for various reasons including a desire to maintain control over which organisations receive local authority funding. Local authorities will also have different views about whether such stand alone funding should take the form of Grant Based Funding, Grant Based Commissioning or Sustainable Commissioning.

One of the main difficulties with analysing different types of advice models is whether any particular model complies with EU procurement law. We explain below our understanding of the legal position with the models suggested in the consultation paper in the hope that this would be helpful to interested parties. While the analysis of the legality of these models is based upon legal advice we have received, any interested party would of course need to obtain their own legal opinion.

A further consideration is that it is likely that councils' budgets will not increase in the short to medium term and that it appears inevitable that local authorities will need to be increasingly accountable over how funds are spent.

### Stand Alone Grant Funding

Where a preference was expressed through our consultation process, this model was second in popularity. 19% of all respondents expressly preferred this model. Removing responses where no preference was expressed, this figure rises to 24%.

We explained in the consultation paper that a number of local authorities provide grants as a means of offering financial support to third sector organisations. A grant may be general in nature in order to assist with the overheads of the provider or specific for the purposes of a particular project or service.

Historically, there have been significant differences of policy between local authorities in Wales with regard to agreed performance criteria and the means of monitoring the way in which the grant money has been spent. We are aware that some local authorities in Wales have entered into forms of service level agreements (SLAs) with funded organisations in order to increase accountability. A SLA is a document which set outs a series of obligations that the provider is expected to meet in return for the provision of the grant.

By way of an example, obligations in such an agreement commonly include:

- *The operation of an equality & diversity policy;*
- *Maintenance of adequate insurance cover;*

- *Agreement to deliver a certain range of services;*
- *Maintenance of a quality assurance system; and*
- *Maintenance of appropriate systems for supervision and the appraisal of staff.*

We are aware however that some local authorities are moving away from grant funding. Many may be doing so over concerns about the impact of EU Procurement law.

### *EU Procurement Regulations*

Where the estimated value of a contract (net of VAT) between a funder and an advice agency equals or exceeds relevant EU procurement financial thresholds, then the EU Procurement Regulations<sup>1</sup> may be applicable. For local authorities, the relevant financial threshold for service contracts is £139,983<sup>2</sup> per contract.

Where the Regulations do apply, all providers must be able to compete for the contract on an equal basis. Funders cannot give preferential treatment to third sector organisations and cannot appoint or re-appoint an existing provider without running a fair, open and non-discriminatory competition. The basis for an award of a contract would have to be based on either lowest price or in accordance with the principles of 'MEAT' i.e the Most Economically Advantageous Tender<sup>3</sup>. This allows the funder to consider value for money and what it is that they are getting for their money.

Provision of specialist legal advice is classified as a Part B service (category 21) which means that contracts for specialist advice do not need to comply with all of the mandatory procedural requirements of the EU Procurement Regulations; the only requirement being the need to publish an award notice. However, whilst this allows more scope for tailoring the applicable procedures to suit a particular type of provider, it does not mean that the funder can avoid complying with all procurement principles. In fact, policy guidance issued by the Office of Government Commerce (OGC) indicates that, regardless of the classification as a Part B service, funders should still follow the spirit of the Regulations and ensure best value.

In addition to the above, there may be other statutory duties on local authorities which may include the need to use best value competition in the procurement of services.

There is some uncertainty about whether generalist advice, which includes areas of advice which may not be considered to be strictly legal, would also be a Part B service. The full ambit of the EU Procurement Regulations may therefore apply to *contracts* for generalist advice.

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<sup>1</sup> Procurement and commissioning processes in England and Wales are governed by the Procurement Contracts Regulations 2006. These Regulations bring into UK law the EU Directive on the Co-ordination of Procurement Procedures 2004.

<sup>2</sup> See [http://www.ogc.gov.uk/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules\\_eu\\_procurement\\_thresholds\\_.asp](http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds_.asp)

<sup>3</sup> A useful summary covering contractual obligations can be found in the factsheet entitled *An Introduction to Commissioning and Tendering*, published by ACEVO

## *Contracts or Grants*

Whilst procurement law, as summarised above, applies to public sector *contracts* it may not apply to public sector *grant arrangements*.

A relevant consideration therefore is the extent to which a grant based arrangement, with or without the use of a SLA, could be interpreted as a contract.

The key definition of a contract in distinguishing it from a grant agreement is the concept of 'consideration'. For an arrangement to be enforceable as a contract both parties must give an element of consideration. This means that both parties must contribute something of value to the arrangement. Commonly, one party provides goods or services directly in return for a payment from the other party of a sum of money for those goods or services.

A grant arrangement however, involves one party being provided with funding to undertake a defined activity which the funder has an interest in supporting. No service is actually delivered to the funder in return for the funding. A funder may provide a grant to a service provider to enable the service provider to deliver services to and for the benefit of third parties (e.g. clients receiving advice). As the funder does not receive something of value, there is no consideration and therefore no contract. Therefore, a grant is a financial transfer and may not bring any strict contractual law obligations in itself<sup>4</sup>.

The award of a grant could be restricted to a third sector organisation. However, the choice of criteria used when awarding a grant would still be subject to public authority obligations to act reasonably and to comply with established policy.

Whilst the distinction between contracts and grants has not been considered by the courts in relation to legal advice contracts, it has otherwise been considered by the European Court of Justice on a number of occasions in the context of VAT<sup>5</sup>. The ECJ has concluded that, where a funder does not receive a benefit from the services it funds, there is no contract for services and therefore no supply for the purposes of VAT.

### *The use of a SLA with a grant arrangement*

The use of a SLA with a grant does not change the position above. A SLA attached to a grant would constitute the conditions on which the grant is given. The conditions could be very specific such as detailing the exact nature of the services to be funded, setting out

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<sup>4</sup> For further information, see *Improving Financial Relationships with the Third Sector: Guidance for Funders and Purchasers*, HM Treasury, May 2006

<sup>5</sup> Examples include: *Apple and Pear Development Council v Customs and Excise Commissioners* [1988] 2 All ER 922; *Mohr v Finanzamt Bad Segeberg* [1996] STC 328 - ECJ case

requirements for monitoring and evaluation and also setting out the circumstances under which the grant must be repaid.

Unfortunately, these principles can be obscured by confused drafting by funders of SLAs associated with grants. Poorly drafted SLAs may use contractual language and impose terms and conditions more usually associated with contracts for service. This does not necessarily mean that they would not be grant arrangements as the distinction between a grant arrangement and a contract is determined by the legal nature of the relationship and not the terminology which is used. If it complies with the key principle that the funder does not receive a return, these agreements will still be, in legal terms, grants.

A grant is not enforceable on the basis of legally binding mutual obligations as is the case with a contract. However, a funder can still legally require repayment if the funding is not used in accordance with the defined conditions upon which the funding was provided.

#### *Drafting of grant conditions*

Provisions that are commonly included in an SLA could just as easily be set out in the grant agreement itself or perhaps be contained in a separate schedule. Drafting the documents in this way may alleviate some of the confusion.

The use of the term 'service level agreement' may not in itself be particularly helpful. The contents of the agreement need not change but we would certainly recommend that the term 'grant conditions' be used in place of an 'agreement'.

#### **Recommendations – Stand Alone Grant Funding**

We recommend that where local authorities decide to continue to provide grants to third sector organisations, they do so via a set of grant conditions as opposed to SLAs as explained above.

We recommend that the Welsh Assembly Government, the LSC and/or local authorities consider instructing a solicitor to draft a template set of grant conditions for optional use by local authorities. Solace, Welsh Local Government Association, Representative Groups and local authorities should be consulted upon before the content is agreed.

## Grant Based Commissioning

The term 'commissioning' is gaining in popularity amongst some local authorities. It is important to be clear that different organisations have a tendency to mean different things when they refer to commissioning for advice services.

Our consultation paper explained that if the term 'commissioning' is used when local authority funding is continuing to be by way of a grant, this would generally appear to imply that the local authority wishes to define more tightly the types of services they purchase and the locations in which the services are delivered. So, for example, commissioning for services by way of grants might include the following:

- *The funding timescale (i.e. the period for which funding is granted) being increased;*
- *Consultation with potential providers about the design of the specification before it is agreed;*
- *Tendering with a number of providers or working with a single legal entity; and*
- *Placing outcomes at the heart of the service specification.*

Notably, grant commissioning might also seek to restrict the funding to a particular group, for instance, restricting applications to organisations in the third sector.

In our consultation paper, we provided the examples of the London Borough of Tower Hamlets (LBTH) and London Borough of Greenwich (LBG). We summarise these examples below.

Following an internal review, LBTH decided it wished to follow some of the procurement principles used in open procurement in order to create a framework for allocating and administering their voluntary sector budget that increased transparency. By creating a specification, LBTH's view was that the advice sector could more clearly understand what services the council wanted to fund and how the outcomes to be achieved could contribute to the council's objectives.

LBTH decided that it wished to continue funding a similar number of advice providers as before. However, LBG decided it wished to work with a single legal entity so it followed a commissioning process of publishing an invitation to tender document, allowing a period of time for potential providers to submit questions, assessing each bid against a series of essential and then desirable criteria.

The commissioning model followed by LBG is quite similar to the LSC CLAs model with one major difference: the council invited applications from voluntary or not-for-profit organisations only. This tender was for generalist advice and specialist legal advice.

Our consultation exercise found very little support for the grant based commissioning model with only one respondent expressing a preference for this model.

Despite the lack of popular support for this model identified during our consultation process, we can see why this model has its supporters. This process is arguably more transparent than grant funding and the councils' objectives can be clearly linked into the commissioning process. Further, in a time of recession, it is easier to reduce grant funding than it is to reduce funding allocated via a commissioning process.

### *Legality*

There may some question about the legality of limiting an invitation to tender to third sector providers only. However, legal advice which we obtained indicated that such a position would be permitted if the commissioning authority could demonstrate that there was an element in the service specification that third sector organisations would deliver significantly better than other types of organisations. We are advised that the general principles of procurement law – objectivity, fair treatment, transparency, acting without discrimination - would need to be met in relation to any preference for a third sector organisation. This will require a significantly stronger justification than the English law requirement to exercise public duties reasonably. Procurement law imposes positive duties of equal treatment, including between service providers of differing legal status, whereas English public and administrative law requires, in essence, decision making which cannot be shown to be unreasonable.

While our brief was, amongst other things, to establish *'whether there could be a contracting process that would meet the aims of "Making Legal Rights a Reality in Wales" without compromising the future of third sector providers'* it did not require us to find a contracting process which would unconditionally guarantee the future of all third sector providers. Furthermore, it was implicit in the brief that the interests of clients must come first.

Where a contracting or commissioning process seeks to purchase high volume specialist and generalist advice services, we do not consider it is in the interests of clients to bar private providers who might be best placed to assist other providers by combining their skills, knowledge and experience in delivering a joint bid. For this reason alone, we could not recommend any competitive tendering model that would clearly discriminate against any sector, private or third sector.

Anecdotally, in England, we understand that some local authorities are moving away from grant funding to this form of commissioning in part because of concerns over the legality of grant funding. However, as earlier expressed, and based upon legal advice that we have obtained, it is our view that this belief is misplaced and that grant funding does not breach UK or EU procurement rules.

Therefore, if a local authority wished to guarantee unconditionally the future of all its third sector providers, a stand alone grant backed by conditions would be the most appropriate model for achieving such an objective.

We consider that all the advantages of grant based commissioning are equally applicable to another funding model known as Sustainable Commissioning.

## Sustainable Commissioning

In the early stages of researching potential alternative models, we came across the Sustainable Commissioning model which is promoted by new economics foundation<sup>6</sup> (nef).

This model is often described as a bottom up approach to commissioning. Instead of preparing a very detailed specification describing exactly how and where services should be delivered, the funder typically specifies the outcomes expected but allows bidders to compete for the tender by asking them how they would deliver the services in order to achieve the outcomes specified. Bidders are encouraged to consult service users in order to add to their understanding of the services which are required.

This approach allows bidders to be more creative in preparing their bids and means that funders may receive bids that are stronger than they would have been had a tight specification been included. This model could allow existing providers to use their knowledge of local conditions to tailor a bid according to perceived need and enable bidders to offer important added value services such as social policy.

In our consultation paper, we explained that there is support for such an approach from various quarters. In the publication, *'A Third Dimension, A Strategic Plan for the Voluntary Sector Scheme, (WAG January 2008)*, it states:

*"The third sector can also improve public services by being involved in their design, commissioning and evaluation. Groups set up by, or involving people who use public services should play an active part in shaping improvements to those services. They should be able to do this in ways that do not prejudice opportunities for the third sector to deliver improved services. We envisage the CVCs playing an important facilitating role, ensuring that a constructive dialogue takes place with the wider third sector and citizens locally."*

In The Social Enterprise Strategy for Wales (WAG June 2005), a number of objectives were listed including increasing the involvement of social enterprise in delivering public services.

Both of the above publications are quoted in the Wales Council for Voluntary Action's Guidelines on third sector involvement in commissioning public services (December 2008). Also quoted is Beecham<sup>7</sup>. In 'Delivering Beyond Boundaries', Beecham calls for more ambitious arrangements for involving citizens and engaging them in the design, delivery and involvement of public services.

While such a bottom up concept is fairly new, aspects of this approach have in fact been used by local authorities for several years in the consideration of, for example, planning applications. When supermarkets compete for permission to build a superstore, it is now not uncommon for the local authority to ask the applicants what additional social benefits their proposals can bring. In October 2009, North West Leicestershire District Council said

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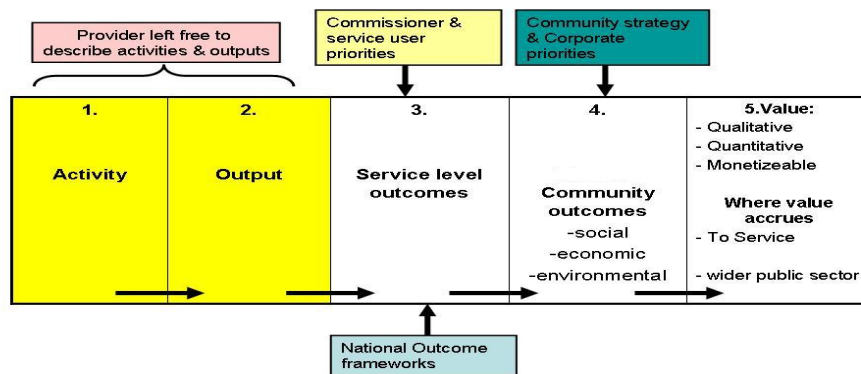
<sup>6</sup> [www.neweconomics.org](http://www.neweconomics.org)

<sup>7</sup> Making the Connections – Delivering Beyond Boundaries, Sir Jeremy Beecham, November 2006

that it was minded to approve one particular bid which would include the construction of a motability unit and the creation of 300 jobs.<sup>8</sup>

The Sustainable Commissioning model was developed by nef in partnership with the London Borough of Camden to support sustainable communities and demonstrate the added community value from third sector provision. This project, ‘Third Sector Service Delivery in Camden’ was supported by HM Treasury through the Invest to Save Budget<sup>9</sup>. This model was first applied to a Mental Health Day Care Service although now Camden are using the model for all of their supporting people and related social services, commissioning approximately £35 million.

The Sustainable Commissioning model is represented in the diagram below<sup>10</sup>:



In a LSC CLAs specification, columns 1 and 2 would be decided by the funder whereas in a Sustainable Commissioning invitation to tender, these columns are left blank and are completed by the bidder.

For our earlier consultation paper, nef prepared a paper describing this model in some detail and sought to explain how this model could work in Cardiff, Bridgend and Vale of Glamorgan. This is reproduced with some minor updating in this paper in **Appendix C**.

### *Publishing the Invitation to Tender*

In a Sustainable Commissioning scenario, an invitation to tender document would be produced which would set out key aims and objectives for the commissioned service, an outline of what services were to be provided, and to whom they should be provided.

In the tender application form, the bidder explains how they will deliver a service to meet the funder’s requirements. This includes providing information about proposed delivery methods, opening times, days and locations (although the service specification may set out minimum opening times).

<sup>8</sup> <http://news.bbc.co.uk/1/hi/england/leicestershire/8295821.stm>

<sup>9</sup> <http://www.isb.gov.uk>

<sup>10</sup> Diagram designed by New Economics Foundation see Appendix A for further information

Bidders are free to explain how they would be able to provide added value to their proposed service. Examples of this could include committing to recruit and train a certain number of volunteers and providing advice seminars to help prevent local people getting into unmanageable debt.

For the purposes of this report, nef have very kindly prepared an example of a mock invitation to tender document which incorporates an application form and specimen scoring criteria. This is for illustrative purposes only and does not seek to suggest how any particular tender should be designed or scored as this will depend upon funders' objectives and priorities. This can be found in **Appendix D**.

The distinguishing feature of Sustainable Commissioning is that it does encourage innovation and creativity in allowing providers (and potentially service users) to offer proposed solutions. Given that local providers and clients are probably in the strongest position to understand local needs and problems, this 'bottom up' approach enables such providers to potentially offer solutions that may not have otherwise been considered.

This model also has a much stronger focus on client outcomes rather than outputs. The tender document asks bidders how they will provide services that are measured against client outcomes rather than outputs. This arguably reduces the perverse incentive to focus on closing cases quickly in order to achieve an output rather than an outcome. There is arguably therefore less prospect of a provider 'cherry picking' cases which are quick and easy to close or a provider seeking the quickest conclusion to a case, rather than the best outcome for a client. We note that these concerns were expressly identified in the Study of Legal Advice at Local Level<sup>11</sup> recently carried out by the Ministry of Justice.

There is a potential risk with this model however that unless the funder sets a minimum specification, the solutions offered by providers could fall short of what would have been included in a top-down specification written by a funder. In the specimen example in **Appendix D**, there is an outline of the services which must be delivered but there is no reason why a funder could not be a little more prescriptive in its requirements or alternatively provide a minimum specification. Significant further work will clearly need to be undertaken in properly defining the services to be delivered together with the means of assessing and monitoring bids.

Clearly, this model would represent a cultural shift in how advice services are commissioned and it would require some resources in the short term to implement the model. For instance, training may need to be offered to organisations in order to help them to prepare an appropriate bid.

It was striking that a clear majority of respondents (61%) to our consultation who did express a preference chose the Sustainable Commissioning model. A majority of NfP agencies and councils expressed support for this model. Geographically, there was support for this model across North East, North West and South Wales.

Given that there appears to be clear support for such a model from both providers and funders, we suggest that a pilot is used to evaluate how well the Sustainable Commissioning model works in practice, particularly in comparison to the CLAs model.

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<sup>11</sup> See Recommendation 2, Study of Legal Advice at Local Level – Implementation Plan, Ministry of Justice, September 2009

Sustainable Commissioning could work either as a joint commissioning process between the Welsh Assembly Government, the LSC and the local authorities or as a sole commissioning process by the local authorities alone.

If local authorities preferred to commission services alone, on the basis of legal advice which we have obtained, they could do so under a grant arrangement which would fall outside the EU procurement regime. The funder could, if it was considered reasonable in all the circumstances, specify that the applicants for such funding have to be organisations from the third sector. In short, the legal position is similar to that explained earlier in relation to the grant based commissioning model.

In our brief, we were asked to consider how any model could apply to both the third sector and private sector providers. In doing so, we have to consider whether any such alternative is a viable, legal alternative to the CLAs model.

We consider that the 'bottom up' Sustainable Commissioning funding model is suitable for the joint commissioning of advice services where there is a clear willingness on the part of one or more local authorities to work together with the LSC.

The funder could choose to contract with either a consortium of providers or a single organisation. Joint bids from groups of providers should be permitted. However, contracting with a consortium can lead to problems covering regulation, accountability and potential conflicts of interest. Therefore, the funder should consider asking any consortium proposing to bid to form a single legal entity. It is typical for a consortium seeking to form a single legal entity to do so, for example, via a Joint Venture Company (JVC). Typically, the consortium is asked to provide information relating to the management, structure and funding of the JVC.

This single legal entity could be free to sub-contract some or all of the services provided to other providers. This is akin to the approach presently taken by the LSC with its CLAs model.

Whilst it was envisaged that a tender would be awarded to a single legal entity (or consortium bid), the model could theoretically be adapted so as to be possible to award contracts to multiple bidders. In a larger geographical area such as, by way of an example only, North Wales, it may be preferable to split the advice service contracts to be awarded into two or more geographically-defined contracts. Our legal advice is that bidders could be precluded from bidding for both of the contracts offered. The advantage of such an approach would be that no one bidder could win all contracts and be in a position of dominance. Funders would of course need to obtain their own legal advice in this area.

Under joint commissioning, a contractual relationship is unambiguous as the LSC is required to procure specialist advice services on the basis of a private contract. This means that EU procurement law would apply. Even if it were not, as previously explained, it would not be in the interests of clients to prevent private sector providers from bidding for a contract under this model. However, interested parties should be clear that, as with any bidding scenario, Sustainable Commissioning may result in some third sector providers being part of an unsuccessful bid. This could potentially impact on a third sector provider's other funding streams and could result in an advice agency closing thus potentially reducing the potential

for future competition in the local area. This is akin to two of the key disadvantages of a CLAs.

In the Ministry of Justice's Study of Legal Advice at Local Level (LALL) Implementation Plan<sup>12</sup>, referred to earlier in this paper, concerns were expressed about the potential impact of a CLAs on other funding streams (which might be withdrawn) and particularly on providers who were not part of a successful bid. Recommendations 7 & 8 of that study were as follows:

*"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.*

*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."*

We agree with these recommendations and consider that, if a Sustainable Commissioning pilot is commissioned, that similar steps should be taken to monitor the impact of Sustainable Commissioning on the local area.

### **Recommendations – Sustainable Commissioning**

We recommend that the Welsh Assembly Government, the LSC and local authorities enter into negotiations to pilot the Sustainable Commissioning model. Our comments about where such a pilot might take place are included later in the section – Geographical Clusters.

This model could work where the successful bidder is a consortium of providers or be awarded only to a single legal entity. The model could also theoretically be adapted so as to be possible to award contracts to multiple bidders. For a larger geographical area, for example say North Wales, it may be preferable to split the advice service contract into two or more geographically-defined contracts.

In common with recommendations 7 & 8 of the LALL study, we also recommend that the Welsh Assembly Government, LSC and relevant local authorities take steps to monitor the impact of the establishment of a Sustainable Commissioning Model on other funding streams in the area, and should aim to involve other existing funders of local advice in plans for a Sustainable Commissioning Model wherever possible. Such an evaluation should also monitor the impact of the establishment of the Sustainable Commissioning Model on local advice providers, including the potential for future competition in the area.

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<sup>12</sup> Ministry of Justice, September 2009

## Joint Service Level Agreements

A further option which we explored in our consultation paper is the idea of funders such as the Welsh Assembly Government, the LSC, the Equality and Human Rights Commission, Big Lottery Fund and local authorities, agreeing a joint service level agreement across all providers to be funded by any of these organisations. This does not involve the pooling of any funding.

Presently, depending upon the funder, some advice organisations have to maintain a quality assurance system whereas some do not. Some must work closely with other advice organisations while others do not. All provide varying amounts of information to their funder.

A joint SLA would encourage funded organisations to work more closely with funders and other organisations to further improve the quality of advice and service provided to clients. This would also improve consistency in the level of information expected by funders from the providers they finance.

Unlike grant conditions associated with a grant, this joint SLA model refers to a number of funders agreeing on a joint service level agreement. A joint SLA could include, for example, such areas as agreeing to provide information about the cause of clients' problems, agreeing to use a signposting and referral system and maintaining an accredited quality assurance system. In addition, it could incorporate a commitment on the part of funders to reduce providers' administrative reporting burdens, perhaps through the means of a common set of case outcomes.

Such a model would seek to exploit some of the key advantages of joint working whilst avoiding the complexities and difficulties associated with joint funding. If different funders were to agree on some common funding conditions, it could be relatively easy to improve the quality of services offered to the client and offer the potential to reduce providers' administrative burdens.

Local authorities, by keeping their funding separate, would be free to continue funding Not-for-Profit agencies thus not compromising the future of their local third sector.

Examples of requirements that could be included in a joint Service Level Agreement are:

- (i) Operation of Equality & Diversity policies*
- (ii) Maintenance of a Quality Assurance system*
- (iii) Services Provided*
- (iv) Opening Hours*
- (v) Harmonised Case Reporting*
- (vi) Reporting on the causes of problems experienced by clients (failure demand)*
- (vii) Client Satisfaction*

In our consultation, we consulted on respondents' views of being required to maintain a quality assurance system and a referral system. Our findings are set out at Pages 52 to 54 below.

We also set out below our thinking on other requirements in the SLA and in particular, our consideration on the inclusion in the Joint Service Level Agreement of matters referred to above at (v) and (vi) and (vii).

### *Harmonised Reporting*

A common constructive complaint that providers across all sectors frequently make is about the amount of recording and reporting that is required by funders. This is particularly acute for providers in the third sector who are required to provide different sets of data to different funders about similar types of work.

In the Study of Local Advice at a Local Level Implementation Plan<sup>13</sup>, the fourth recommendation states:

*“We recommend that, as a matter of urgency, the LSC works with providers, the Office of the Third Sector [OTS] and the Welsh Assembly Government Third Sector Unit [TSU] 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.”*

We endorse this recommendation and suggest that this work includes ascertaining whether it is possible to harmonise the reporting of closed cases across the major funders of advice including Big Lottery Fund, Equality and Human Rights Commission, and Local Authorities.

### *Failure Demand*

We recommend that any restructuring of provider reporting to funders should include information about the cause of a client’s problem.

Advice UK with Vanguard Consulting carried out a study<sup>14</sup> with participating advice organisations in Powys and Oxford in order to establish whether their systems could be redesigned in order to increase efficiency. Amongst other things, the study categorised clients’ enquiries into various groupings. They found an alarmingly high proportion of enquiries were what they termed ‘failure demand,’ meaning problems caused by service failings on the part of public services. The results of this study indicated that in one advice agency, 95% of all failure demand observed in the study was caused by the Department for Work and Pensions (DWP). This is an alarming figure

As Advice UK points out in its report, the data collected in its study is not sufficient to be considered a scientific study. Therefore, further investigation, preferably with the DWP, would be helpful in order to establish the degree to which Advice UK’s concerns can be demonstrated.

The point of collecting statistics which show the cause of a client’s problem is to attempt to prevent the problem reoccurring by feeding this information back to the agency where the

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<sup>13</sup> Published by Ministry of Justice, September 2009

<sup>14</sup> Radically Rethinking Advice, Advice UK, September 2008

failure occurred in the hope that they take steps to improve their service. Clearly, this would require the support and co-operation of the relevant agency.

It is plainly desirable to be in a position to be able to reduce demand for advice by resolving a flaw(s) in the system operated by a public body. We would therefore wish to see work on failure demand continued and potentially be part of a SLA between a funder and the advice provider.

### *Client Satisfaction*

It is a common funding requirement that advice providers have procedures in place for monitoring client satisfaction. Typically, a provider will send a questionnaire at the conclusion of a matter to a sample of clients with any questionnaires returned by clients being kept in a central folder.

There are five main problems with this approach:

- (i) Typically only a small proportion of clients are motivated to return the questionnaires;
- (ii) Clients that are especially satisfied or dissatisfied are more likely to return the questionnaire thus skewing results;
- (iii) This task adds to the administrative burden for providers;
- (iv) Some clients may be overly complimentary in case they need their services in the future (for fear of upsetting the advice provider);
- (v) In an audit scenario or situation where a funder wishes to see completed questionnaires, providers may be concerned about showing completed questionnaires which include criticisms about the service provided.

Assuming that the monitoring of client satisfaction is important to funders, consideration should be given to implementing a system that overcomes the weaknesses of the conventional system described above.

We think that a better system would be for the funder to monitor client satisfaction or better still, for the funder to engage the services of an independent agency to carry out a random sampling exercise for each organisation funded.

This random sampling would not necessarily be expensive. A survey need not be arranged more than annually. Such an approach would ensure that:

- (i) Results would be independent and therefore more meaningful;
- (ii) Funders would be able to follow up any serious concerns or complaints raised;
- (iii) Providers would no longer have to spend time sending questionnaires to clients;
- (iv) Results would be less skewed as the completed questionnaires would not overly reflect the views of delighted and disgruntled clients.

### *How would a SLA be constructed?*

A standard form SLA could be used by funders using different types of funding arrangements although the agreement would need to be very carefully worded. Certain terms should not be used in such an agreement if the funding provided arises from a mixture of grant arrangements (e.g. some local authorities) and a contract for services (e.g. LSC). The topics that have been suggested in this section for possible inclusion in a joint SLA could be included without it necessarily being deemed a contract for services. If the joint funding involved was grant based rather than contractual, it would be desirable to refer to this agreement as 'joint funding conditions' in order to avoid confusing the arrangement with a contract.

As explained above in relation to grant conditions, whilst a grant is not enforceable on the basis of legally binding mutual obligations as is the case with a contract, a funder can nevertheless still legally require repayment from a provider if the funding is not used in accordance with the defined conditions upon which the funding was provided.

### *Consultation Responses*

Whilst this option was not as popular as Sustainable Commissioning or Grant Funding, many respondents recognised the advantages of the joint SLA model especially as a stepping stone to a form of commissioning.

It was interesting that the two independent consultants who responded both expressed a preference for this model.

The Not-for-Profit agency that supported this option commented that:

*"... combining the way we operate with the joint SLA model would be a good transition stage and could lead to developing a more coherent advice model in the future. This model would be further improved by further enhancing the referral service available for different areas of advice model in the future."*

We think the main reason why the joint SLA model was not more popular amongst providers was because many feared that joint SLAs might be used by funders to further increase the administrative burdens on providers.

As explained above, there is no reason why joint SLAs would necessarily increase the overall burden on providers. Depending upon the detail of the SLA, it could actually reduce the burden, particularly if joint reporting protocols can be agreed. Where any requirement in a SLA increases the administrative burden, this must be justified on the grounds of significantly improving client care, for example, using a robust referral system.

The joint SLA approach represents a midway position between the current position and either commissioning or tendering of services. Both funders and providers would work closer than had previously been the case although the complexities that accompany joint funding would be avoided.

**Recommendations**

Where funders decide not to enter or to postpone arrangements for jointly commissioned advice services, funders should seek to improve the joined up effectiveness of their funding by agreeing upon a set of conditions. This may be known as a joint SLA or joint funding conditions.

## Geographic Clusters

This section of our report is particularly relevant should a jointly commissioned advice service, say Sustainable Commissioning or a future CLA, be commissioned.

As explained in our earlier consultation paper, under the proposed jointly commissioned Community Legal Advice services, the LSC consulted on whether to have one Community Legal Advice service (CLAs) network covering the whole of Wales, a number of regional CLAs's or a number of CLAs's (22) reflecting local authority boundaries. Their consultation process did not show significant support for any particular model but 37% of those who did respond opted for the regional model (compared to 20% opting for the local authority model). After their detailed consultation process and joint commissioning discussions with the Welsh Assembly Government and the Welsh Local Government Association, the preferred approach was to have eight regional CLAs's. However, it was stressed by the LSC that this approach was flexible and would depend on local views in each region.

Any jointly commissioned advice service will seek to serve a number of local communities. Whilst it was not within the brief to carry out an additional consultation exercise on geographic clusters, we felt it was appropriate and helpful to enquire in our consultation paper whether respondents preferred any such service to cover:

- (i) the whole of Wales;
- (ii) a number of regions identified by the LSC; or
- (iii) a jointly commissioned service for each local authority.

An analysis of the responses indicated that there was no real consensus of opinion. 52% of respondents did not agree with the LSC's Regional Model against 10% that were in favour. 38% expressed no preference. Our earlier analysis showed that different respondents had different views mainly due to the individual characteristics of their local area. We briefly considered attempting to build a new model based upon the responses received but this was not possible. Our brief was mainly concerned with South and North Wales and we did not therefore consider, in detail, the views of those operating in Mid Wales. Furthermore, respondents had conflicting views about the clusters of local authorities which it would be appropriate to link together.

It is clear that any jointly commissioned model based upon local authority boundaries could not work. The main reason for this is that there is an insufficient supply of specialist lawyers covering the five social welfare law categories of welfare benefits, housing, employment, debt and community care. In Wales, there are particular shortages in Employment and Community Care. Furthermore, such a model would not acknowledge the reality that clients often seek advice from providers based in a different local authority from that in which they reside. This might be, for example, because the client lives near the border of two authorities, because the client works in a different area from their home town or because of public transport routes. Another reason may be because clients may expressly wish to seek advice in an area where there is less chance of them being recognised.

It is also likely that any alternative geographical cluster model suggested based upon say the Wales Spatial Plan or Local Health Boards would also meet resistance.

There is no one geographical model which would be suitable for all parts of Wales. This is partly because demand for advice in poorer areas does not correspond with more affluent areas, for example, demand for welfare benefits advice would likely be higher in areas of deprivation. Furthermore, some local authorities will work together better than others and some councils will be quite keen to preserve the status quo.

### **Recommendations**

We are unable to recommend any particular established regional model.

We suggest that further work is done with each of 22 local authorities in Wales to establish which neighbouring authorities would be suitable partners and to identify advice service requirements in the various regions. This may include, where appropriate, the undertaking of a needs analysis. The representative groups should also be consulted to ensure that providers' views are taken into account.

This exercise should be prioritised in areas where there are significant gaps in service provision and also in areas where a joint commissioning pilot may take place.

## Improving Access to Specialist Advice

Access to specialist legal advice in Wales varies according to category of law and geographic location. The LSC manages formal bid rounds approximately every three years although they have also run a series of mini bid rounds where there has been a shortage of face to face specialist advice supply.

In the consultation exercise, we were keen to learn of respondents views about how access to specialist advice could be improved. Options that were put forward in our paper were:

- (i) Increasing the level of the fixed fee paid where shortages occur;
- (ii) Holding a Best Value Tendering competition;
- (iii) Using Commissioning or CLAs tendering

Our analysis showed that the majority of respondents did not support any of the above alternatives. The only option that received any notable support (8 responses) was to increase the level of the fixed fee.

At the time the consultation paper was produced, it appeared unlikely that the Ministry of Justice would be in a position to increase the level of fixed fees either across the board or, as this option alludes to, targeted at categories where shortages of supply are occurring. The prospect of the Ministry of Justice being able to increase the level of fixed fees has not, as far as we are aware, changed.

In any case, we are not convinced that stand-alone targeted increases would necessarily be beneficial to providers or clients in the long term. While higher fees may attract additional bids, both from local and non-local providers, such increases would only probably exist in the short term and could be revoked at the end of an existing contract once supply had been increased.

It was, perhaps, unsurprising that a Best Value Tendering competition was unpopular given that such a model is untested and, in the absence of experience, its results are unpredictable.

The only realistic model we can identify that could increase access to specialist advice is through a commissioning exercise. As can be seen earlier, we recommend the piloting of a Sustainable Commissioning tender.

## Signposting and Referral

We discussed referral fatigue in our consultation paper and explained that one of the aims of the Community Legal Service (CLS), launched in April 2000, was to improve access to quality information, advice and legal services through an inclusive network of providers from libraries to generalist advice suppliers to solicitors. Community Legal Service Partnerships (CLSPs) were subsequently created across England & Wales in order to bring together different funders and providers of legal services.

At the centre of the CLS and CLSPs was the idea of implementing a seamless service meaning that, if a provider could not assist with a problem, a client would be signposted or referred to another provider that could help.

In practice, referral arrangements arguably do not work particularly well across the CLS. The failure of this so called seamless service may in part be explained by ‘referral fatigue.’

Referral fatigue can be caused by a number of factors such as an advice agency not having up to date information about which providers offer advice services at various levels, not knowing whether the other agency has the capacity to accept a referral, a possible lack of understanding as to whether a potential referral is appropriate, and worries about whether certain other agencies offer an appropriately high quality service.

Another issue is that the systematic use of a referral system has associated costs and, if these are not adequately funded, the system will not be used. Furthermore, in practice, agencies commonly refer matters to other agencies that they know or believe will provide a high quality service<sup>15</sup>. This would appear to highlight the need for development of appropriate initiatives for joint working, for example, shared training and spending some time in other agencies. Of course, for any referral system to be used to its potential, these initiatives would need to be adequately funded and monitored.

An electronic referral system using a website can offer some or all of the following features:

- (i) Current information about participating organisations, their contact details and specialisms;
- (ii) Reports producing statistics showing the number of potential clients being signposted and referred to other agencies;
- (ii) A search feature, allowing users to search for member organisations by area, type of work etc;
- (iii) Information about languages spoken within member organisations and access to interpreters;

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<sup>15</sup> The Importance of Being Connected: Why, How and When Referrals are made by Community Groups, Advice Services Alliance, September 2009

- (iv) A secure log on facility allowing members to store client details when referring a case;
- (v) An online diary for making referrals to those organisations that have indicated that they have capacity to accept clients.

Examples of existing electronic referral systems can be seen at [www.nellbooker.net](http://www.nellbooker.net) and [www.refernet.co.uk](http://www.refernet.co.uk)

There have been unofficial voluntary pilots across London whereby advice agencies have trialled electronic referral systems. However, it is evident that these systems are not routinely used by all agencies<sup>16</sup>. The reasons for this are varied but include:

- (i) Concern that the system is not being kept up to date;
- (ii) Preferring to use pre-existing email referral groups;
- (iii) Worries that an insufficient number of other organisations are using the system.

However, the main reason why voluntary pilots have not succeeded in the past is arguably because there is a lack of an incentive – either a carrot or a stick - to persuade the agency to use them.

One of the reasons why the LSC has promoted the use of joint commissioning through the CLAs model is that it solves much of the referral problem by offering various advice services at one or more sites.

For referral systems to work, it is recommended that funding is contingent upon funded organisations using a robust referral system. A joint SLA, for instance, could clearly incorporate a requirement to use a robust system.

### *Consultation*

The respondents to the consultation expressed clear support for the mandatory use of a robust referral system. Two thirds were in favour and only 17% were against.

Respondents also indicated that they preferred to use an electronic system over a paper based one. Only 2% expressed a clear preference for a paper based system. We are pleased that respondents agreed with the strong advantages that electronic systems offer over paper based systems including

1. *It is easier to keep the system up to date;*
2. *It is far easier to keep statistics of referrals made and received;*
3. *It can be easier to send and receive details of the client's problem; and,*
4. *Electronic Information can be backed up whereas paper records can get lost.*

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<sup>16</sup> An Evaluation of the Online Referral System for Legal Advice, DG Legal, Nov 2007

Some respondents raised the concern that broadband internet coverage was not universally available across Wales. While the need for broadband services across Wales is not disputed, a broadband connection would not be necessary for the purposes of using an electronic referral system as the system does not require the user to download data from the site (other than displaying the relevant pages).

If an electronic referral system were to be launched in Wales, it would need some administrative and technical support including training of users, technical support, and monitoring of usage. The Welsh Assembly Government and its partners would need to consider how this could be funded. The significant costs involved in designing and building such a system would be minimised if an existing system was adapted for use in Wales.

Under the joint SLA model, making the use of a robust electronic system mandatory is strongly recommended. Under the Sustainable Commissioning model, it will be for bidders to decide how they wish to ensure that clients are signposted and referred to other appropriate advisers.

We are recommending a different approach under the joint SLA type model as there are a number of separate, distinct and independent organisations providing advice services separately who would need a robust referral system in order for clients not to get lost in the system. However, under the Sustainable Commissioning model, the same problem doesn't occur as one legal entity is responsible for delivering advice services across the local area. Of course, a referral system of some kind is still important as there will be clients that require advice in an area of law not delivered by the single legal entity.

### **Recommendations**

If a joint SLA approach is piloted, and funders agree that an electronic referral system should be made mandatory, a system should be procured, including the cost of training, technical support and monitoring. Suitably adapted existing systems and new software would be eligible for consideration.

## Quality Standards

At the specialist level, possession of the LSC's quality assurance standard (the Specialist Quality Mark) is a mandatory condition of funding.<sup>17</sup>

At the generalist level, many funders require quality assurance accreditation as a condition of continuing to receive funding. The most common standard is the LSC's General Quality Mark. Controversially, the LSC stopped auditing this standard a few years ago as a result of a decision to focus its resources elsewhere. However, this year, the LSC outsourced the auditing of the General Quality Mark to a private assessment body and auditing has now resumed.

It is arguably in the best interests of clients to obtain advice from a provider that is maintaining a quality assurance system audited by an independent organisation. While such systems do not currently cover the quality of advice, they do cover a range of other important areas including training & development of caseworkers, supervision, quality control and client satisfaction.

The majority of respondents agreed that a quality standard should be made mandatory. Just over half of respondents believed that audits should take place every three years, although 39% did not express a preference.

The LSC appears to be moving to a system of auditing the majority of its specialist providers every three years. It has confirmed that all providers will receive an audit against the SQM between 2010 and 2013<sup>18</sup>. At the generalist level, providers wishing to obtain and maintain accreditation against the General Quality Mark are currently audited every other year.<sup>19</sup>

It is our view that it would be against the interests of clients if providers, in receipt of public funds, were not required to follow an established quality standard. For those organisations which do not currently hold a quality standard, support and assistance in applying for and obtaining quality standard accreditation may be available through the representative bodies, for example, Advice UK.

It is important to strike an appropriate balance between having a regular independent audit and overburdening providers with frequent audits. On balance, if the regularity of the audits is not already prescribed by the relevant assessment body, we agree with the majority of respondents that an audit which takes place every three years strikes the correct balance.

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<sup>17</sup> From 2010, the LSC will accept the Law Society's practice management standard – Lexcel – as an alternative.

<sup>18</sup> The LSC audit some providers more frequently on the basis of a number of risk factors including the amount of funds received from the Commission

<sup>19</sup> The General Quality Mark application Process- Edition 1 (April 2009), Legal Services Commission

### **Recommendations**

Funders in Wales should seek to impose, as a condition of funding, that any organisation in receipt of public money should hold and maintain accreditation against an appropriate recognised quality assurance standard. This condition could appear:

- (a) In a grant conditions document;
- (b) Be part of a joint SLA; or
- (c) Be a pre-requisite to bidding in a Sustainable Commissioning scenario.

## **Branding and Logo**

It is not uncommon for providers to share logos to indicate to members of the public that they hold a particular quality assurance system or that they are a member of a particular service (e.g. Community Legal Service), consortium or a representative body.

If funders and providers were keen for the public to be aware of any new joint working arrangements, such initiatives would need to be publicised and marketed. One of the key tools in communicating such initiatives is the use of logos.

Adopting a shared logo offers a number of advantages; for example, members of the public may more easily be able to recognise that a provider was part of a new network and might feel re-assured that a member of this network had met stringent requirements specified by funders. Furthermore, a directory of members of the network could be published (say online) and this may increase recognition and familiarity of providers' services.

However, there are some potential drawbacks to adopting a new logo. The number of logos on stationery has arguably already reached saturation point and logos reflecting quality standards are so widely used now that they are becoming less of a competitive advantage. Moreover, having to potentially reprint stationery could represent a significant cost to the provider.

Changing logos too often can be confusing for the public. There may also be some public criticism if significant sums of money are spent on re-branding.

### *Consultation*

Our analysis showed an equal split between respondents. Approximately half of respondents had no preference while those that did express a preference were split evenly between those wanting to adopt a shared logo and those who did not.

The degree to which the need to adopt a shared logo arises depends upon which funding model is chosen. If a region decides to pilot the Sustainable Commissioning model, the adoption of a logo will be essential otherwise clients will be confused as to who is providing the services.

However, with the joint SLA model, the case for adopting a joint logo is less convincing. Our view is that given the fact that, in this model, funding is not pooled, there is no absolute need to use a shared logo. If the SLA model is piloted and is deemed a success then, at that stage, a discussion about adopting a shared logo might be useful.

**Recommendations**

If the Sustainable Commissioning funding model is piloted and a successful organisation, or group of providers, is successful in winning the tender, then adoption of a shared logo would be essential in order for clients to clearly understand who was providing the service.

Given that the case for a shared logo is less strong under the joint SLA model, we do not recommend using such a logo in the short term.