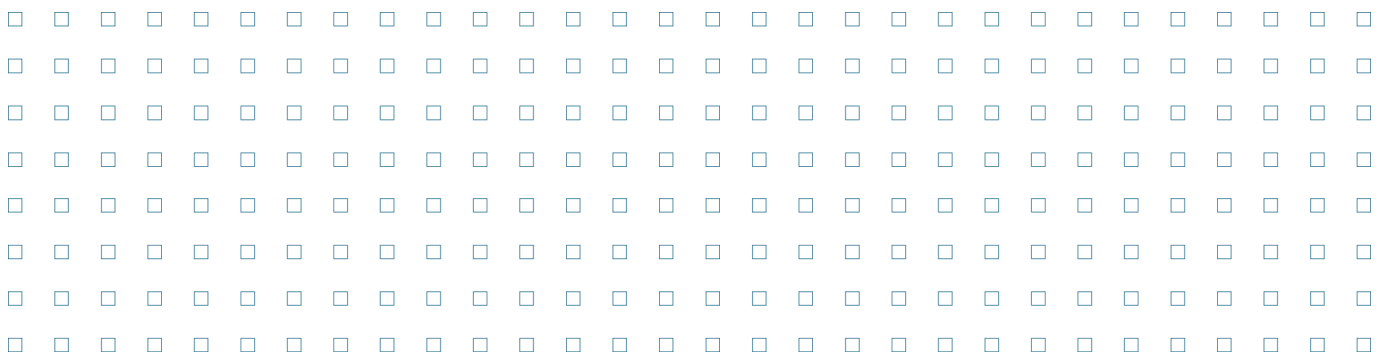




Study of Legal Advice at Local Level Implementation Plan

24 September 2009





Ministry of
JUSTICE

Study of Legal Advice at Local Level

Implementation Plan

**This information is also available on the Ministry of Justice website:
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Introduction

The Legal Advice at Local Level Study was carried out by a project team of Ministry of Justice officials between January and June 2009, overseen by a Steering Group chaired by Lord Bach and made up of representatives of the major advice sector bodies, the legal profession and Government Departments with an interest. A list of Steering Group members and the Steering Group's Terms of Reference are attached as **Annex A**.

The Study focused on the following four issues:

- The impact of the recession and the demand for civil legal advice.
- The impact of civil legal advice fixed fees on local providers – financially and in terms of the type of work they are taking on.
- The initial experience of Community Legal Advice Centres, including the impact on other providers in the area.

Trends in funding from sources other than the Community Legal Service, including local authority funding, national lottery funding, charities, central government departments, and others.

In the course of the Study, project team members met with a wide range of organisations, collected information from them and from other sources, and visited fifteen areas of England and Wales. During these “snapshot visits” they met with advice providers and funders, whose input was invaluable. The report of the Study was published on 11 June 2009, and is available on the Ministry of Justice website: www.justice.gov.uk. The report made nine recommendations, and this implementation plan sets out how we intend to take the recommendations forward. A table of implementation actions is attached as **Annex B**.

Recommendation 1

The aim behind the introduction by the Legal Services Commission [LSC] of the Unified Contract, and accompanying system of fixed fees, was to increase the availability and accessibility of legal advice in the “social welfare” categories of law (especially debt, housing and welfare benefits). The fixed fee scheme provides for a “swings and roundabouts” effect, where the costs for a provider of lengthier cases are offset by shorter ones. Although the fixed fee scheme allows “exceptional” cases (those taking at least three times as long as the standard period allowed for by the fee) to “escape” to hourly rates, no specific provision is made for providers whose caseload is weighted toward more complex cases or “difficult to serve” clients. The providers we met, or heard about, during the study who were having the greatest difficulty with the fixed fee scheme appeared to be those who did not benefit from an appropriate case mix.

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

Action

We wish to establish whether there are sections of the population that are routinely more “difficult to serve” (i.e. possibly those with mental health problems or those with English as a second language) and whether there are certain providers who deal with a disproportionate number of “difficult” clients, or who have a disproportionate number of complex cases. If such a client or provider group could be identified with confidence, we could consider making special provision – e.g. by lowering the “escape” threshold, or creating an “uplift” in fees – to ensure sustainability.

In addition, the ASA Policy Advisory group suggested that pilots might be carried out which would test alternatives to the current fee arrangements, such as reducing the “exceptional” threshold to twice (rather than three times) the fixed fee (with the accompanying reduction in the standard fee). The LSC suggested that these pilots might be run in areas with Community Legal Advice Centres or Networks and the Steering Group agreed that this option should be explored. Provision will be made in the new Unified Contract for piloting of different approaches.

The LSC collects a large amount of detailed information on the work done by providers, receiving approximately 60,000 lines of data for civil “controlled work” claims each month. MoJ analysts are working with LSC colleagues to identify how this data might be interrogated to identify the client and/or provider groups referred to above, and to assess whether “cherry picking” and/or “early closing” is taking place (see Recommendation 2). The methodology for such analysis, including the time and resource which would be required to carry it out, will be fully specified by the end of October.

Recommendation 2

We were told by some providers, and some representative bodies, that the system of fixed fees is creating “perverse incentives” – encouraging behaviour by providers which is not in the best interest of vulnerable clients, or in line with the Government’s policy intentions. Among the behaviours said to be encouraged are “cherry picking” – choosing only straightforward cases, and turning away those with more complex problems – and “early closing” – seeking the quickest conclusion to a case, rather than the best outcome for the client.

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

Action

The LSC regional offices currently utilise information on cases reported by providers through Key Performance Indicators. Providers’ performance is managed regionally, against national benchmarks. Analysis of this information may demonstrate trends in the types and length of cases taken on. The LSC also collects data on case outcomes and this could also be analysed to identify whether cases appear to be closing at an earlier stage. This analysis is included in the work referred to above under Recommendation 1, and will be fully specified by the end of October.

As part of its quality controls on providers, the LSC employ peer reviewers. Their knowledge, and their views on provider behaviour, should inform this work, and we intend to organise a symposium for them in December.

Recommendation 3

Many providers told us that they had experienced severe cash flow problems since the commencement of the fixed fee scheme in October 2007. Some of these will have been the result of transitional arrangements, but others appear to relate to the system of “standard monthly payments” [SMPs] provided by the LSC. Financial difficulties are said to be exacerbated by the need to carry the cost of disbursements through the life of a case, and the way in which Work in Progress is valued for tax purposes.

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

Action

A Working Group is being set up to help in the analysis of the SMP scheme and to explore issues around stage payments and disbursements. The Group will include representatives of the LSC, the Law Centres Federation, HM Treasury, the Legal Action Group, the Law Society, the Advice Services Alliance and Citizens Advice. The Working Group will be convened in October.

Separately, we are collecting information on the requirements for Work in Progress valuation, and will be discussing with relevant members of the Working Group the potential for guidance on these.

Recommendation 4

The fixed fee scheme was said significantly to have increased the administrative burden placed on providers. Many were concerned at the level of detail required by the LSC, which was felt to be disproportionate to a fixed fee system.

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.

Action

The LSC will meet with the ASA and OTS and with the Welsh Assembly Government TSU by the end of October.

In addition, HM Treasury has commissioned research, on behalf of the Financial Inclusion Taskforce, which is designed to inform work on improving the consistency and efficiency of reporting of the delivery of, and demand for, free-to-client money advice services in England and Wales. It seeks to understand: the impact of current systems for monitoring and reporting on clients advisers and services; the potential benefits of funders using a common reporting standard; and the options for implementing change.

This work is currently being carried out by IFF Research, who are interviewing advisers and funders and reviewing reporting documentation. It is due to be completed in November 2009.

Recommendation 5

Many providers have had to make radical changes to their administration systems, including information technology, in order to manage the requirements of the fixed fee scheme. Although great efforts have been made, and attitudes were almost universally willing and positive, we were struck by the relative lack of focus on this part of the organisation, including the lack of suggestions for joint working or resource sharing between providers.

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

Action

We have already started to make contact with major voluntary sector funders and to explore available funding streams. In addition, drawing on work commissioned by bassac [*Sharing Without Merging*, January 2005] and papers from the NCVO Collaborative Working Unit, we have identified four ways in which “back office” functions might be shared between providers – see paper at **Annex C**. The output of this work is intended to be a paper for providers on available funding streams and the types of activity which they would support. This will be produced by the end of February 2010.

Recommendation 6

The system of fixed fees targets legal aid funding clearly, and appropriately, at the provision of legal advice to clients. There is no provision for other work carried out by many advice providers – particularly those in the not for profit sector – such as “second tier” support to community organisations, facilitating and managing pro bono activity and preventative or educational work.

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

Action

A working group will be established with membership drawn from: the Department of Business, Innovation & Skills; the LSC; the Law Society; the Advice Services Alliance; AdviceUK; the Law Centres Federation; LawWorks; the Office of the Third Sector; and Citizens Advice. This group will examine how this work is currently funded, and support the Department in developing proposals by the end of February 2010 to increase accessibility and, where possible, availability of funding to advice providers for this work. The working group will be convened in October.

During the Steering Group meeting on 15 July, members supported the proposal from the ASA’s Policy Advisory Group that the recommendation should be widened to consider the demand for legal services arising from the “malfunction of Government services (e.g. failure to accurately process or promptly pay benefit claims)”. This issue relates closely to work currently being taken forward across Government to reduce “avoidable contact”, to AdviceUK’s work on systems thinking, and to work being taken forward by the Council on Social Action.

Recommendations 7 and 8

The concept of a Community Legal Advice Centre or Network [CLAC/N] is to co-ordinate local authority and LSC funding in order to provide “easily accessible face-to-face services (from early advice to legal representation) to address the combinations of problems people experience”. CLACs have been established in five areas to date, and these appear to be working well, and achieving high customer satisfaction ratings. However, concerns were expressed about the potential impact of establishment of a CLAC/N on other funding streams in an area, which (it was felt) might be withdrawn, and on providers in the area who were not part of the CLAC/N contract.

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.

Action

At the time that the Commission consulted on and published the CLS Strategy, an impact assessment was not carried out on the proposed policy to introduce CLACs and CLANs. LSC has agreed that in future a full equalities impact assessment should be carried out as part of the process of setting up a CLAC or CLAN. The EIA will be carried out at the same time as the needs analysis and will be subject to formal consultation. The outcome of this analysis will then inform the specification and performance standards for the service and again there will be consultation on that specification.

Part of the needs analysis and impact assessment will be to identify other funding streams that may be affected as part of the new service. This may be funding that is received by providers who also receive funding from the LSC and/or local authority or funding that is received by other providers. Having identified those other sources of funding, LSC will contact other funders to see what involvement, if any, they would like to have with the joint commissioning process.

For new services the full EIA will be followed by a post implementation review, six months into the new service and then an annual review on an ongoing basis. This will enable LSC to monitor the impact of the establishment of the service on other providers and ensure that the service is being delivered in accordance with the specification. It is not possible to do this work retrospectively so for those services already established LSC will ensure that they establish as accurate a baseline as possible of the LSC and local authority services that existed prior to the establishment of a CLAC and monitor what happened to those services and unsuccessful bidders for the CLAC on an ongoing basis. This will be added as a standard agenda item for all CLAC Liaison Boards.

Recommendation 9

Where a local authority has a good knowledge of local communities' needs, and of existing advice provision, and uses this to shape the CLAC/N, this could meet many of the concerns expressed to us. It is not clear how much scope local authorities have felt they had (or wanted) to shape CLAC/Ns in this way.

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

Action

Further work on this recommendation will be informed by the research on CLACs which has recently been carried out for the Local Government Association. The report of this research is due to be published in the autumn.

Annex A: Steering Group Terms of Reference

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

The steering group will:

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

Advise on next steps following the completion of the report.

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

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

The study will examine:

- The impact of the recession and the demand for civil legal advice.
- The impact of civil legal advice fixed fees on local providers – financially and in terms of the type of work they are taking on.
- The initial experience of Community Legal Advice Centres, including the impact on other providers in the area.

Trends in funding other than the Community Legal Service, including local authority funding, national lottery funding, charities, central government departments, and others

The study will not:

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

Research user need in depth – in particular we cannot in the time get into analysis of latent and unmet demand. We can however, draw on existing material about this.

Steering Group Members

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

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

Melissa Morse (Project Leader, MoJ)

Derek Hill (Interim Policy Director, Legal Services Commission)

Sir Jeremy Beecham (Vice Chair, Local Government Association)

Carol Storer (Legal Aid Practitioners Group)

Stephen Hewitt (Legal Aid Practitioners Group)

Elizabeth Ladimeji (Citizens' Advice)

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

Debbie Edwards (Home & Legal Team, HM Treasury)

Steve Hynes (Director, Legal Action Group)

Nick Woolf, Ruth Haynes (Chair and Vice Chair, Law Centres Federation)

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

Douglas Robinson (Assistant Director, BERR)

Richard Jenner (Director, Advice Services Alliance)

Richard Miller (Head of Legal Aid, Law Society)

Suzanne Kochanowski (Department for Communities and Local Government)

Alan Scott (Unite Officer)

Catriona Cardiff (HM Treasury)

Lynne Schofield (Welsh Assembly Government)

Fran Targett (Chair of Wales Independent Advice Providers Forum)

Osama Rahman (Chief Economist, MoJ)

Carol Storer (Chief Executive, Legal Aid Practitioners Group)

David Harker (Chief Executive, Citizens Advice)

Julie Bishop (Chief Executive, Law Centres Federation)

Ruth Haynes (Chair and Vice Chair, Law Centres Federation)

Rebecca Hilsenrath (Chief Executive, Law Works)

Rebecca Wilkie (Director, Bar Pro Bono Unit)

Annex B: Implementation Plan Timeframes

Recommendation	By end October 2009	By end December 2009	By end February 2010
1. We recommend that further work should be done to consider the role of providers who focus on more complex cases or “difficult” clients, including monitoring the level of claims for “exceptional” cases and the success of such claims.	Full specification of analysis methodology, including time and resource required.		
2. We recommend that consideration be given to developing a monitoring system to identify the impact of these incentives on services to clients, including examining the extent to which existing research could illuminate this.	Full specification of analysis methodology, including time and resource required.	Symposium for peer reviewers.	
3. We recommend that further work be done to understand the basis of the financial impacts of elements of the fixed fee scheme (in particular the Standard Monthly Payment process; the payment of disbursements; the valuation of Work in Progress) on providers.	First working group meeting.		
4. We recommend that, as a matter of urgency, the LSC works with providers, the Office of the Third Sector and the Welsh Assembly Government Third Sector Unit 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.	LSC to meet with ASA, OTS and WAG TSU.		

Recommendation	By end October 2009	By end December 2009	By end February 2010
5. We recommend that the Ministry of Justice discusses with other funders and relevant Government departments and Welsh Assembly Government whether funding aimed at increasing administrative, management and financial resources in the voluntary sector might be specifically targeted at nfp providers of legal advice.			Guidance for advice providers on funding streams and activity they support.
6. We recommend that, in light of the complementary nature of this work, the Ministry of Justice should consider discussing with other relevant Departments and other funders how to ensure that this type of work is funded and encouraged across the country.	First meeting of the Working Group.		Working Group proposals on increasing accessibility and availability of funding.
7. 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.			
8. 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.			CLAC Liaison Boards to have considered the impact of the CLAC.
9. We recommend that action be taken to encourage and support local authorities in shaping local CLAC/Ns	LGA research to be published autumn 2009.		

Annex C: “Back office” functions

Introduction

The Legal Advice at Local Level (LALL) study looks at the impact of the recent reforms on providers of civil legal aid. It concludes that the aim of the fixed fee regime to increase the efficiency of providers has been achieved in many areas and some providers have responded well to incentives to become more efficient.¹ However the study also found there is limited focus on “back office” efficiencies. This is likely to be as a result of the necessity for providers to maintain attention on the core business; as a result, time for administrative functions has been reduced and is not given a high priority. The study also found there to be a shortage of funding specifically targeting administration, increasing financial skills or improvements to information technology.

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

Problems experienced by providers

Providers we spoke to feel there has been an increase in administrative burdens as a result of fixed fees, and that fixed fees do not cover the costs of performing “back office” functions. Discussions with providers have also found there are seemingly few funds available to cover management and administrative issues and that funding from other streams was being used to subsidise this to a significant extent. We have also been told that providers have been left with little time to coordinate additional fundraising for their organisation. For example, the Law Centres Federation indicate that only three of their members were successful in obtaining funding from the Modernisation Fund,² however they felt this number could have been much higher if providers had enough time to spend on making applications for funding sources such as this.

Collaborative working

As the importance of nfp providers in delivering legal aid increases, so too does the higher expectations placed on providers to deliver high quality services. This means organisations must become increasingly business-like and have effective infrastructure in place to meet these expectations.

¹ Study of Legal Advice at Local Level

² **Modernisation Fund**-A £16.5 million Real Help for Communities: Modernisation fund to help with the cost of mergers, partnerships and moves to more efficient sharing of back office functions for at least 3000 third sector organisations.

An increasingly common way for the nfp sector to strengthen their “back office” functions in response to government policies and initiatives, is to work collaboratively.³

By sharing “back office” functions organisations are able to achieve a greater overall output than if these activities were to be pursued alone.³ There is great potential to enhance the nfp sector by working collaboratively, such as attaining better use of resources, improving opportunities for influencing policy, using best practice and creating stronger linkages with other providers.

There are various models for collaborative working, many of which involve some level of outsourcing, and vary in terms of formality. For example, organisations may choose to become a member of an umbrella or networking group which is a relatively informal and low cost form of collaboration. A more formal form is outsourcing and shared services and often focuses on operational functions such as human resources.³

Providers in various areas we met with during the “snapshot visits” indicated that in some instances they have consorted with other providers to share “client facing” functions, particularly reception and triage. Organisations working in a shared office environment report real social and entrepreneurial advantages. The shared environment facilitates networking and enables individuals to brainstorm issues, share ideas and see other ways of working. It can create a vibrant, positive environment where peer learning, personal and organisational development is possible. Within shared building arrangements, cost efficiencies can be delivered if a number of small to medium organisations share an office building and, possibly common resources including receptionist, telecoms, photocopier.³

However providers we spoke to demonstrated little evidence of sharing “back office” functions. Studies have shown that by sharing these services duplication of resources is removed and it enables organisations to share resource costs.³ Specific figures vary but Business Link states that savings of up to 40% can be derived from outsourcing. Other benefits include clear negotiable costs, ability to focus resources, better access to specialist knowledge, clear monitoring of performance. Four ways in which providers could share “back office” functions are:

- Human resources and recruitment – for many small nfp providers employing few staff, the requirement for HR within each organisation is minimal, and as such there is not an identified need or capacity for a dedicated HR functions. Opportunities exist between smaller advice providers to share information and the potential to outsource to the same HR specialist.⁴

³ ‘Sharing without merging’ bassac, January 2005

⁴ ‘Working together for better office infrastructure’ acevo, Institute of Fundraising and CFDG, 2006

- Staff development and training – many organisations, particularly providers of legal advice, have similar training requirements and training costs can often be high. This could be done by online web based training, which has become popular because of its flexibility.³
- Information Technology (IT) – many providers already share this function, for example Citizens Advice Bureaux have a case recording system. However, other providers such as Law Centres report their IT systems are not unified and inefficient. Sharing systems where possible would be beneficial in developing support for users, obtaining discounts for equipment, and in using software and time more efficiently.⁴
- Finance and payroll services – providers of advice manage their financial functions in a very similar way. Benefits of sharing these functions would be in reducing time spent on day-to-day financial accounting and data entry, developing greater support and information for budget holders, sharing best practice, and developing accounting software to support the work of the partnering providers.⁵

There are numerous advantages of sharing “back office” functions with nfp providers:⁵

- Quality of back office services – providers may experience an improved or wider range of services and access to a higher level of expertise and to the latest technology, making greater specialism possible for partners so they are able to keep up to date with developments in specialist fields. By improving the quality of services, providers will have greater confidence in fulfilling their responsibilities such as their LSC contract or Service Level Agreement.
- Potential savings – cost savings through economies of scale, releasing more money for frontline work.
- Staff effectiveness – staff who used to multi-task on areas where they felt they lacked suitable skills can concentrate on more specialist work for example, case workers who are required to spend a significant amount of time performing administrative functions will be able to focus their expertise on case work. This will allow also for more productive use of management’s time. Additionally, there is also the benefit of networking, which will either improve back office efficiency or the effectiveness of charitable activities.

There are disadvantages identified with regards to working collaboratively with other organisations. This includes draining of time and resources, particularly with regards to setting up a new organisation if required, recruiting Trustees, providing business plans and annual reports. Redundancies are also a possibility if there is a duplication of posts that are no longer required.⁵

⁵ ‘Sharing back office services: A model of collaborative working’ NCVO, September 2005

With changes to the procurement of advice services and funder requirements, organisational efficiency is increasingly essential to the ability of providers to deliver services. On a strategic level, the advice umbrella organisations might consider how to improve the common back office problems of their organisations, for example, considering whether a national pool of experts could be established to help struggling organisations. On the local level, providers should consider more collaborative back office working with other local advice organisations where possible. The Ministry of Justice, in discussions with other funders, will also identify possible funding streams that can facilitate the sharing of administrative, management and financial functions for the nfp advice sector.

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