



Making Legal Rights a Reality
The Legal Services Commission's
Strategy for the CLS

Response of Child Poverty Action Group

October 2005

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Introduction

CPAG is the leading charity campaigning for the abolition of poverty among children and young people in the UK and for the improvement of the lives of low income families. CPAG aims to: raise awareness of the extent, nature and impact of poverty; bring about positive income policy changes for families with children in poverty; and enable those eligible for benefits and tax credits to have access to their full entitlement. The Citizens' Rights Office within CPAG works to fulfil these aims by providing advice, training and information on social security legislation. CPAG pioneered the use of test cases in the UK; we have been taking test cases in social security law since 1971. We also contribute to CPAG's Rights publications, in particular the Welfare Benefits and Tax Credits Handbook; the leading text in this field. In addition to this, we use our social security expertise and information gained through our advice work to inform CPAG's policy work and to directly lobby for change and respond to new policy and legislation.

During the year 2004/5 we responded to over 2000 written and telephone advice enquiries and trained over 1000 advisers. One of our test cases, which emanated through our Specialist Support service, concerned the case of a 12 year old child with a 'learning difficulty' fighting for an award of disability living allowance (DLA) – a benefit that acknowledges the extra costs involved as a result of a disability. This resulted in the positive conclusion that claimants do not have to have a medically recognised condition in order to count as 'disabled' for DLA, thereby helping to ensure that people with no diagnosis of a medical condition, but with reasonable care and/or mobility needs, are awarded DLA. The case also considered the issue of children being called to give evidence before benefit appeal tribunals and concluded that a "tribunal should be very cautious before requiring any child to give evidence, and should only call for a child to give evidence if it is satisfied that a just decision cannot otherwise be made".

This response is driven and informed by our organisation's purpose in fighting the causes and addressing the symptoms of child poverty and our experience as second-tier advice and training providers and as holders of two LSC contracts to carry out test case litigation and to provide national Specialist Support in welfare benefits.

The value that the legal and advice sector brings to society is immense. We believe one of the key challenges of this strategy should be to get a commitment at Government level to recognise that the legal and advice sector has a fundamental role to play as a key structure in society, like the National Health Service, in terms of its preventative, supportive and change-making function and to be apportioned a fair share of the public spending budget. We believe that in order for the CLS to truly develop along the lines that values the rights of citizens it needs to be properly resourced. We therefore feel that much of the vision is constrained by the inadequate pot of funds that prevent the CLS from realising its potential.

Q. 1 Do you agree with the flexible definition of the CLS as we have outlined in paragraphs 1.5 – 1.16?

1. Although it may be true that seeking to define the CLS more specifically risks the diversion of energy away from more crucial issues like how to address the needs of those who require advice, we nevertheless feel that it is important to get the definition right but, moreover, for this definition to be met to ensure that the CLS is what it is stated to be. We would support having a wide definition to ensure service provision is not restricted through prescriptive terms but we feel that currently there are problems with the recognition of what the CLS is and of the role of the Commission in relation to the CLS both in terms of its promotion and its funding duties.
2. The problem may not stem from the definition itself but rather from the definition not being representative of the reality of current CLS provision. A Citizens Advice report⁷ found, in surveying Citizens Advice Bureaux (CABx) views, only 7% of respondents agreed that the CLS had been effective in meeting the needs of its clients – in particular those of specific disadvantaged groups - 69% strongly disagreed when asked whether the CLS has had a positive impact on the local landscape of advice provision and 39% of CABx said they thought their CAB was in an “advice desert”. It therefore seems that the securing of access to services that meet individual’s needs is something that the CLS has failed to achieve. If this is to remain in the definition then it must be realised.
3. The LSC needs to build better recognition of what the CLS is and make clear the responsibilities of the Commission, service providers and other funders within the meaning of the CLS. The Independent Review of the CLS² found that there is a need to define the role and agenda for the CLS and recommended that the aims and functions of the CLS be clarified and made more transparent both internally and to external service providers and stakeholders.

Q. 2 Do you agree that our primary focus for the CLS should remain as defined in paragraphs 1.17 – 1.23?

4. We support the primary focus on the protection and promotion of individual rights. The promotion of a rights-based culture must include the ability for citizens to enforce their rights. The provision of accessible legal and advice services is therefore crucial to citizenship. As an organisation concerned with fighting for the abolition of child poverty, we support the primary focus on social welfare categories of law in addressing problems which contribute to social exclusion. We would strongly argue for all areas of social welfare law being covered (not just those relating to welfare benefits, debt and housing) and public law. Furthermore, the right to a fair hearing is not limited to proceedings relating to mental health and public law children cases so we are not clear why these groups have been singled out in paragraph 1.18. The Social Exclusion Unit has defined social exclusion as *what happens when people or areas suffer from a combination of linked problems such as unemployment, poor skills, low-incomes, poor housing, crime, bad health, family breakdown and lack of access to services*. The Legal

¹ *Geography of Advice: An overview of the challenges facing the CLS*. Citizens Advice, February 2004.

² Department for Constitutional Affairs: *The independent Review of the CLS*. Matrix, April 2004.

Services Research Centre survey of justiciable problems found that legal problems tend to occur in 'clusters', for example 'family' problems comprised of domestic violence, divorce, children problems and relationship breakdown, 'employment' problems comprised of employment rights, redundancy, personal injury, disability, benefits, mental health. The research also shows that people experience problems within more than one cluster, for example people with long-standing ill-health or disability were particularly vulnerable to a whole range of problems associated with social exclusion. They had a much greater tendency than others to report employment, debt, welfare benefits and housing problems. Therefore, in order for the legal and advice sector to play its role in tackling social exclusion the CLS should be organised so as to ensure individuals have access to legal and advice services to address the multiple of problems they may face.

Q. 3. Do you agree that the vision set out in paragraphs 2.1-2.16 is the right one for the CLS? If not, what would you change or add?

5. We strongly support a CLS that focuses on the rights of individuals. The joint publication *Legal and Advice Services: A Pathway to Regeneration*³ concluded that legal and advice services are fundamental to the creation of a rights-based culture – they promote citizenship and encourage people to take part in the democratic process and promote access to justice in local communities.
6. We support the focus on those who face poverty, disadvantage, discrimination and exclusion. However, we are not clear how the prioritising will affect the clients who are outside this core group. Paragraph 2.6 states that you will also “provide a legal information and advice service, available to everyone in order to promote early and proportionate resolution of problems”. We are not sure what this means but it suggests a rationing of provision that we would not support. Would the only legal service on offer be in the form of information and advice – there is no mention of representation? This would seriously diminish access to justice for people who may be marginally above the poverty line.
7. The vision to have at the heart of the CLS a commitment to use the law to achieve positive change not just in individual lives but in cases where there is a shared common problem is particularly welcomed. CPAG’s experience is that test cases are valuable in challenging issues on a national as well as on a local level. As most social security benefits and tax credits are administered nationally it makes sense for CPAG to have a national focus. However, it is difficult to see what the role of national organisations is within the CLS strategy. We think test cases can be a highly cost effective way to help resolve systemic problems and can achieve the following:
 - a) Deter unlawful administrative practice and lead to improvements in this area.
 - b) Lead to improved standards of adjudication.
 - c) Highlight the legal basis of social welfare problems and the potential for resolving them by legal means.
 - d) Generate publicity and promote the aims of the organisation.

³ *Legal and Advice Services: A Pathway to Regeneration*. Department for Constitutional Affairs and Law Centres Federation, February 2004.

- e) Promote an interpretation of the law which maximises benefit to claimants.
 - f) Even if we do not actually win a case, it can still highlight injustices and help build pressure to remedy these.
8. We would like to see the test case work of national organisations like CPAG, Public Law Project, Shelter and Liberty featuring in the CLS strategy.
9. In addition to litigating on individual cases, organisations may take cases in their own name. This can be because individual cases which are symptomatic of systemic problems often settle before they reach court. An example of this is CPAG's proposed challenge to the HMRC's tax credit overpayment recovery procedures.
10. We would hope that the commitment extends to funding social policy work that often forms a strong part of advice work and can have the same impact as legal challenges on achieving positive change to large groups of people. For too long this part of advice work has been not been recognised as a valuable, and indeed cost-effective, tool in effecting change and, as such, not deemed a priority for funding. People working in the legal and advice sector are well placed to identify trends of problems or policies or law that disadvantage a particular group and to use their expertise to identify, through existing or proposed legislation or practice, the impact on particular client groups and to use this to press for change. There are vast examples of the benefit that such work brings to individuals and communities.
11. We would therefore like to see the following points considered:
- a) The role of single-issue national organisations in the CLS.
 - b) Consideration given to funding posts in national organisations for legal officers to undertake test case work.
 - c) More flexible funding for test case organisations.
 - d) Making funding available for organisations to bring test cases in their own names where these would benefit groups of claimants.
 - e) The waiving of financial eligibility limits in public interest cases.
 - f) Funding social policy work.
12. We would welcome a meeting with you to discuss the above points further.
13. We fully support a CLS that is *client-focussed and accessible* offering a seamless service from initial advice to complex litigation. This would have to include, as paragraph 2.6 in the consultation paper states, the CLS providing representation where this is the best option. We would want this to include representation at all Tribunals and, in the case of the welfare benefits, before the Social Security Commissioners. People seeking to enforce their rights within social security law are mostly those who face poverty, disadvantage, discrimination and exclusion – the second core group the CLS strategy is seeking to prioritise help for. Where an individual has to challenge a benefit decision to an Appeal Tribunal the rate of

success is significantly higher where s/he is represented - 67% of oral hearings are decided in the claimant's favour where the hearing is attended by the claimant and a representative, compared with 55.8% where the claimant attends without a representative⁴. Furthermore, there is a very strong case for appeals to be heard orally rather than on paper – and therefore the need for access to representation - as the chances of success for the claimant is greatly increased with oral hearings – 53.1% of oral hearings were decided in the claimant's favour compared with 21.9% for paper hearings⁵.

14. The need for access to representation at the next tier of appeal (Social Security Commissioners), where the appeal is based on a point of law so the arguments have greater complexity, is even greater. There is often a gross inequality of arms where that the Secretary of State has access to advice from solicitors and representation by counsel compared with claimants who are left unrepresented.
15. We support the development of the front-line services along holistic lines that can respond to the cluster of problems that individuals encounter. We would want to see a CLS that is able to advise on all the areas that most affect those who are socially excluded to ensure that the interconnection between them is addressed from both a point of relief and strategic action. This need not be in the form of all providers covering all areas if there are strong referral systems – see concerns raised in paragraph 47 below. Whatever the model of front-line services we believe that a holistic approach can only be achieved with such services having access to high quality second-tier support in these areas of law. There needs to be room for single – issue organisations which have a depth of expertise to offer advice in particular fields and an overview of developments on a national level.
16. There is a great need for improved access to advice for those who need it most. The Citizens Advice report *Geography of Advice* evidences a growing lack of access to publicly funded legal services across the country. The report points to some startling statistics in what it refers to as 'advice deserts'. The CLS strategy must consider the causes of these 'advice deserts' if it is to develop an accessible and co-ordinated CLS.
17. Second-tier provision increases access to advice. The Methods of Delivery (Specialist Support) evaluation, which looked at access, quality, cost and impact, found that specialist support does increase access to legal services for clients as it gives them access to higher levels of expert help which may not be available otherwise.
18. We wholly endorse the CLS being *independent*. This is paramount in enabling individuals to access impartial information about their rights and seek assistance with their enforcement. We are concerned that, in the field of welfare rights, there is a growing move towards a way of working that could undermine the principle and need for independent advice which is being promoted as a better deal for the client. We refer specifically to the development of Joint Teams - where the Pension Service 'Local Service' merges with local authority teams (mainly Fairer Charging Teams) to provide welfare services to some qualifying older people. Although there are some valuable principles underlying the work of such teams, we believe that current arrangements will not result in a satisfactory welfare benefits service to claimants. We feel that insufficient attention has been paid to

⁴ Quarterly Appeal Tribunal Statistics: December 2004

⁵ As above, n.4. (See footnote 4)

issues of welfare rights advocacy and independence in the work of Joint Teams and that the advent of such teams could lead to the erosion of independent welfare rights advocacy from welfare rights advisers working outside the Joint Teams. We believe that the only way to protect independence is to ensure that there is a separate and independent welfare rights service that can deal with complex cases, complaints and disputes.

19. An assumption of a Community Legal Service is that it is joined-up and this involves strong co-ordination of services. Part of the key in developing a seamless service will be to try to ensure that where an individual seeks help to resolve their problem they do not fall out of the system due to lack of access to the right level of help through poor referral systems or no appropriate services to refer them to. If the CLS is going to be a serious player in the fight against the causes and symptoms of social exclusion then it must be adequately resourced. Funding that comes through the legal aid scheme represents just 0.45% of public spending – that is £2.2 billion per year out of a total of £485 billion. If it is accepted that the provision of legal and advice services is fundamental to tackling poverty and promoting citizenship then it must be funded accordingly.
20. Research points out that as people experience multiple problems they become much more likely to experience problems that have a direct role in social exclusion.⁶ The Government accepts that poverty is multi-dimensional – as such a greater commitment is needed to fund the legal and advice sector to enable it to address the clustering of problems and the interconnection between clusters. There needs to be greater cross-departmental contribution to the CLS.
21. We accept that the LSC has to control its expenditure and ensure it is offering value for money and as such will want to monitor its cost-effectiveness. However, we would strongly argue for the LSC involving those who work in the legal and advice sector when considering the need for and scope of targets. Some things are easier to measure than others – such as the amount of benefit income gained. We would hope that any plans to develop future targets on outcomes are not so cumbersome that they result in less time spent on providing a service to clients and not in danger of being so closely tied to funding that providers feel the need to alter their holistic approach in order to reach targets that are easier to meet. We would be concerned at targets being based purely on financial measurements as this may present too simple a picture of the outcome for the client. Any outcome targets could instead be more based on assumptions. For example where there is evidence of advice in one area effecting improvements in another, such as the impact that housing advice and representation can have on a person's health. Consideration also needs to be given to the role of second-tier advice providers who may not have access to the outcome of the case. If outcome targets are set, they have importance for justifying existing funding and in levering in greater funds from Government and other sources - a further reason for targets to be attainable and to measure the right things.
22. We support the commitment to place quality at the heart of the CLS. The LSC have a role in driving up the knowledge and skills of those working within the CLS. In fact the Specialist Support Projects were set up with the aim of increasing the knowledge and skills in specific categories of law. We therefore see second-

⁶ Pleasence, P., Buck, A., Balmer, N.J., O'Grady, A., Smith, M., and Genn, H. *Causes of Action: Civil Law and Social Justice*.

tier advice provision as an essential part of CLS and in maintaining quality of advice.

23. We are pleased that there is a move to measure quality of advice and not just systems and processes. However, the peer review scheme poses some difficulties for national second-tier organisations like ours where we may find either that the peer reviewer is a current or previous client of ours or one with whom we are or have been in competition with for funds. We would welcome a discussion with you to explore this concern further.

Q. 4. Do you agree that these are the main challenges that the CLS faces? Are there others?

24. We agree that these are the main challenges but within these main headings there are further challenges and concerns we feel need emphasising. We believe that the CLS should be made up of a mixture of providers. There has been a real decline in the number of solicitors doing legal aid work. Over the past 10 years the number of solicitors with practising certificates has grown by over 52% yet the number of legal aid firms has decreased from over 11,000 to under 5,000 and the Law Society Gazette's 2004 Survey of Firms undertaking legal aid work found that 74% of firms surveyed did not anticipate doing the same amount of legal aid work in five years time. One of the challenges will be to look at and address the causes of this, some of which are detailed in the Report on the adequacy of Civil Legal Aid provision of Constitutional Affairs Committee.⁷ The training support scheme for trainee solicitors goes some way in trying to encourage more solicitors to work in legal aid, and we welcome this. However, for this to have an impact it must be done in conjunction with reform of contracts that have, in part, contributed to solicitors abandoning legal aid work.
25. The LSC's Civil Contracting Report 2005 reveals a stark drop in the number of legal help contracts in some of the main areas of social welfare law over the last 5 years. For example, the number of contracts amongst solicitors in employment law has gone from 384 in the year 2000 to 164 in 2005 and this decrease has not been compensated by an equivalent increase in Not for Profit contracts - only 3 extra contracts were awarded in this area over this period. Yet the need for employment law advice is ever more important as the Government focuses on full employment and the emphasis of employment as a route out of poverty. It is promoting more rights at work - for parents and for those with a disability- and yet the advice provision in this area is diminishing.
26. One of the key challenges should be to get a commitment at Government level to recognise that the legal and advice sector has a fundamental role to play as a key structure in society, like the National Health Service, in terms of its preventative, supportive and change-making function and to be apportioned a fair share of public spending budget. The sector needs to be adequately resourced and responsibility for contributing towards its funding should be cross-departmental. Whenever policy or law is changed the impact that this will have on the legal and advice sector must be considered and addressed. In order to tackle social exclusion, eradicate child poverty and promote citizenship, Government strategy

⁷ House of Commons Constitutional Affairs Committee, Civil Legal Aid: adequacy of provision: fourth report of session 2003-04, Volume 1, 2004.

has to be joined-up and without a properly resourced legal and advice sector such commitments are in real danger of not being realised.

27. Funding needs to be far more stable, less bureaucratic and based on trust. Contracts with the LSC are often too short to allow for stability and development and administratively too complex. Providers are often not compensated adequately - not having their funding annually up-rated or not being able to claim for some of the administration or management of the contract and this needs to be addressed. The information gleaned through development of the draft National Occupational Standards reveals the huge scale of work that people working in the legal and advice sector have to carry out at the various levels of provision. Legal expertise is expensive and time consuming to build up, people will be put off staffing services which are only funded short term. It also takes time and money to build up recognition for advice and legal services, which may be wasted if they have to be closed because of funding cuts. The Law Society points to a marked decline in the morale of legal aid practitioners.⁸ The current culture is such that it is assumed that funding will be less stable and for short periods of time. The need for a shift in this culture is another challenge for the CLS if it is to develop a strong morale and confidence in legal and advice services – both from the point of service providers and users. We can draw upon our own experience of LSC contracts as examples of the above problems.
28. We are concerned about the commissioning of legal and advice services through an inappropriate use of competition. This can fail to address levels of need as well as creating ill-feeling within the sector. It can also not necessarily result in the best provider as many may be put off by the process, demoralised by a previous failed attempt, be inexperienced in this method of raising funds or not have the time and resources needed to put in a competitive bid – and can divert energy away from the running of a service. Furthermore, price competition may not recognise other factors that need to be given appropriate weight (diversity, quality, and reaching those who are 'hard to reach'). It sets providers up against each other, often in areas where the level of demand and of unmet need is so high there is need and scope for more providers rather than fewer. The bad feeling that this can create between providers could also affect the building of strong referral systems.

Q. 5. Do you support the proposal to establish a national stakeholders group? Do you have any comments in the initial remit and proposed membership?

29. We would support establishing such a national group and would welcome discussing with you how CPAG might be involved. We have some reservations about the proposed membership of this group including both providers and funders of legal and advice services because of potential conflicts of interests when looking at the definition of client need and the allocation of resources. Providers may argue a need to resource services that are aimed at challenging decisions and practices of the funder – how does the LSC see this issue being addressed?

⁸ Parliamentary Brief, written evidence by the Law Society, Legal Aid Enquiry by the Constitutional Affairs Committee of the House of Commons, The Law Society, 2004

Q. 6. Do you agree that the planning function of CLSPs should be undertaken by a different body? Do you agree the appropriate body should be agreed between the LSC and local authorities?

30. As a national organisation we have had no direct involvement in CLSPs so our response to this point is limited. It seems clear that the original vision of CLSPs has not been realised. This has been due to a number of factors, some of which are set out in the Matrix report⁹: lack of resources to perform its array of tasks; lack of local authority support; partnerships not representing the mix of providers; a lack of clarity in the role of CLSPs and their influence on funding. Some sort of reform is therefore needed that addresses these concerns without the CLS losing what the Matrix report refers to as 'a local strategic presence'. Any new proposal should also consider the report by Advice Services Alliance¹⁰ on regional planning which reveals some interesting findings. It also questions whether in fact we need more planning and floats the suggestion of "a system in which the LSC laid down a broad framework as to the type of work that was felt to be most appropriate in individual categories of law and/or geographical areas, with providers then being left to make decisions as to which type of cases and clients would be prioritised at any one time".

Q.7. Paragraph 6.3 outlines steps to ensure that appropriate resourcing is available for the CLS. Are there other steps the Commission should take?

31. Please also see points made under Q.3. and Q.4. Furthermore, we would like to see the civil legal aid budget ring-fenced to protect it from rising expenditure on criminal legal aid. Since 1997-98 spending on criminal legal aid has gone up by 37% and civil legal spending has decreased by 10%.¹¹ Without an adequate civil legal aid budget citizens will be denied access to their civil rights. Such a denial conflicts with the desire to focus on the rights of individuals and to develop legal and advice services to uphold these rights as stated in paragraph 2.1 of the consultation document. We would like to see this budget, and the CLS budget as a whole, increased to properly reflect the vast contribution and savings to society made by the work that the budget funds: preventing homelessness through its debt and housing advice; alleviating poverty through maximising benefit entitlement; tackling discrimination at work through employment advice; improving a child's life chances through the prevention of school exclusion; and so on. Moreover, much of the work of the legal and advice sector is spent dealing with poor decision making and practice. Yet this is not recognised and recompensed accordingly.

Q.8. Do you agree with the three priority work areas for the CLS as outlined in paragraph 7.1? If not, what should the priority work areas be?

⁹ Department for Constitutional Affairs: *The independent Review of the CLS*. Matrix, April 2004.

¹⁰ *Regional Planning and its Limitations*, Adam Griffith, Advice Services Alliance, July 2005.

¹¹ A Fairer Deal for Legal Aid, Department for Constitutional Affairs, July 2005. Source: LSC/DCA.

32. We support the prioritising of these work areas and would add that second-tier provision has a strong role to play in all three areas.

Individual acts of advice, assistance and representation.

- a) Second-tier advice increases access to legal and advice services for clients as it gives them access to higher levels of expert help which may not be available otherwise. In some cases it also reduces the need to refer a client on as the adviser is supported throughout the case and their knowledge and confidence is increased. The evaluation of the Methods of Delivery Specialist Support Pilot confirmed that specialist support does increase access to legal services for clients and meets a real need.
- b) The development of strong front-line and second-tier services could help to grow a culture of confidence in the legal and advice sector which would help to challenge some of the problems highlighted by the Legal Services Research Centre's National Survey of Justiciable Problems (some of which are set out at paragraph 7.4 of the strategy document) – in particular it may address issues of access, encourage more people to resolve their legal problem and reduce the need for referral and the problems that this can cause.

Strategic action to address the need for advice.

- c) Second-tier advice providers are in a strong position not only to be able to identify, through its advice service, trends of problems or policies or law that disadvantage a particular group but also be able to use its expertise in a given area of social welfare law to identify, through existing or proposed legislation, the impact on particular client groups and to use this to take strategic action. The strategic action can take the form of a legal challenge through a test case (as detailed in paragraphs 7 and 9 above) and second-tier organisations that have built up an expertise in a given area of law are well-placed to take on such work. They can also use this expertise and information gained to feed back to the relevant government departments on the impact of their decisions and practice.
- d) Second-tier organisations can also use this information to develop its advice and information services to support advisers in their casework – for example, through developing advice sheets.

Information about legal rights

- e) The promotion of a rights based culture goes hand in hand with a commitment to promote the social welfare categories of law and prioritise help to those most affected by these categories. Second-tier support provides an essential tool for front-line advisers to assist their clients to exercise their rights. Such support increases the adviser's knowledge and skills to deal with cases thereby raising the level of knowledge accessible to the client. Building a culture of rights must include access to all the relevant information and processes available to that client from beginning to end. The more knowledge and skills there are in the advice sector the more confidence the client will have in both seeking and attaining a resolution to their problem.
- f) One of the challenges of promoting legal rights is in breaking down of what can be quite complex information into an accessible and usable form.

Information gained through a second-tier advice queries can be used to develop advice sheets to break down tricky points of law or to explain rights relating to particular groups of clients, making it more accessible to the adviser and to the client.

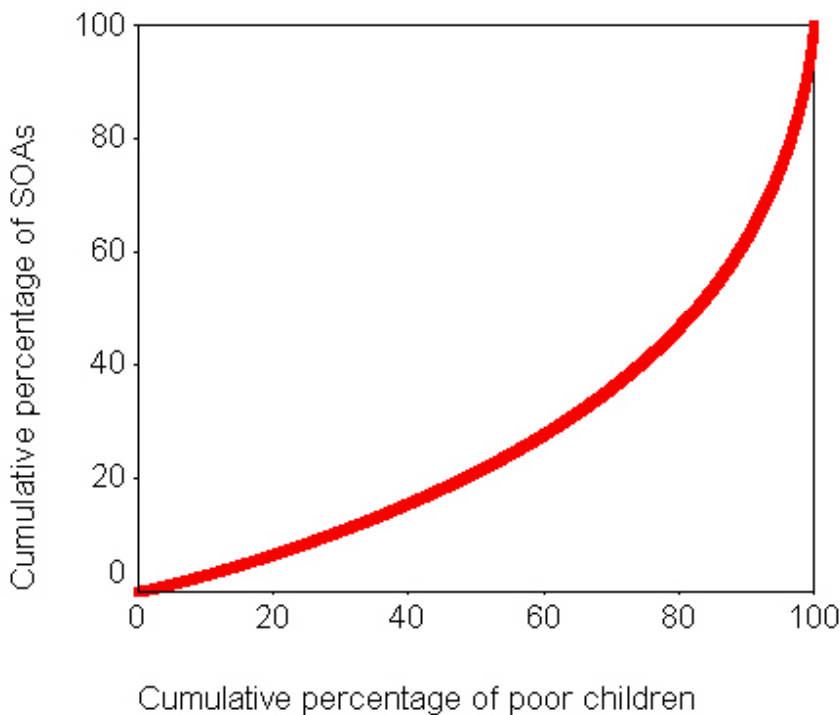
Q.9. Do you agree with our proposal to expand our telephone service? Is it right to make a basic level of service (such as information on legal rights and self-help packs) available to everyone regardless of means?

33. Whilst we recognise the current budgetary constraints and some of the benefits that telephone advice can bring, we have concerns about the expansion of front-line telephone advice if this is to be developed at the expense of the number of available outlets for face-to-face advice. There are real limitations in front-line telephone advice and it is not clear to us how this service fits with developing both a seamless and holistic CLS that can adequately address the clustering of problems. We feel that social security, as an area of law, is too complex to adequately advise claimants via a telephone service. The statistics set out in Volume 2 of the consultation document showing the total number of welfare benefit cases taken through the CLS Direct Telephone Service (for the period July 2004 to December 2004) as just under a quarter of the total cases as compared with debt cases representing over a half, may suggest that welfare benefits are less suited to this model of advice giving than other subjects, like debt.
34. We also have concerns about access. If this service expands and face-to-face services decline there is a real danger of those not able to use a telephone service having no access to advice. Someone with a mental health problem, for example, may have difficulty using the telephone –this would seem to conflict with the intention to focus on those who face disadvantage and exclusion. Furthermore, some people may not be able to afford the cost of the call – is there any provision to call people back to reduce this burden?
35. Strong systems of referral will have to exist between telephone advice and face-to-face to ensure that people do not fall out of the system. If there is to be a reduction in face-to-face it is not clear how a national telephone service will be able to deal with referring people on to their nearest advice service – what will happen where the caller does not live in a targeted area but needs face-to-face advice? A national telephone advice service will need to ensure that it can identify trends and local needs if it is to form part of mainstream advice provision – how will this fit with identifying strategic action in relation to local practices? Making the service available to everyone regardless of means is a positive model for advice.
36. There are also concerns that relate to the skills of those working within the legal and advice sector – skills that are needed for basic face-to-face work are transferable to more advanced work and there is a danger that these skills could be lost if face-to-face advice diminishes.

Q.10. Do you agree that over time we should develop the greatest concentration of face-to-face services in the most deprived communities?

37. We have concerns about concentrating face-to-face advice only in the most deprived communities. Although focusing on the most deprived areas will disproportionately reach more poor children, not all poor children live in these targeted areas. The chart below shows the spatial distribution of child poverty using Super Output Areas (SOAs). These are geographical areas smaller than electoral wards. This research¹² carried out by Jonathan Bradshaw on the latest (2004) Indices of Multiple Deprivation for England correlates a cumulative total of SOAs with a cumulative total of poor children, to show what proportion of poor children live in areas of high child poverty. The research demonstrates that a coverage of 12 per cent of the SOAs would only capture about a third of poor children – two thirds lived outside those areas.

Spatial distribution of child poverty



38. It is not clear what would happen to existing services that provide face-to-face advice outside the targeted areas. Many of which may fit the CLS model in most other regards. We can only presume that such services would face funding cuts and ultimately be forced to close. It is also not clear to us how this plan would fit with other funding streams – is there an intention to have a strategic plan to target the same areas or to ensure that gaps created by a focus on the most deprived areas are filled?

¹² Chart taken from Bradshaw, J. (2004) *Poverty*. A paper presented to the JRF Centenary Conference Poverty and Place: Policies for Tomorrow, 13 December 2004.

39. A further concern with restricting face-to-face services to these areas is that they could be more vulnerable to future reductions in funding and closure. This is because it creates a face-to-face advice sector that is open only to a few rather than the many – resulting in people and communities feeling like they have no stake in the advice sector. Such feeling may be exacerbated if they see existing services being run down because they are not within the targeted area. It also hinders the promotion of a rights-based culture and a citizenship agenda.

Q.11. Do you agree with the proposals to pilot Community Legal and Advice Centres and Community Legal and Advice Networks, as outlined in paragraphs 7.22 – 7.32? Do you agree with their proposed remits and the broad descriptions of the services they will provide?

40. The model for Community Legal and Advice Centres (CLACs) being proposed is an attractive (although, perhaps, not an entirely new) one. We are very worried about the impact such centres could have on existing providers, some of which offer a service not that dissimilar to this model, such as some Law Centres and CABx. If the plan is to base these services in major urban centres, existing advice centres - like Law Centres and CABx as well as smaller providers - are bound to be affected and it is not clear what would happen to these during the Pilot stage or beyond. This could result in less diversity of provision and exacerbate problems of access - hindering the desired plan to target groups that do not access current services.
41. We also wonder how useful the Pilot results will be – as they may be based on circumstances that are very different than at the time of any roll-out. If a CLAC is placed in an area where there are existing providers then there is a strong chance that the existing providers will see a cut in funding –their volume of work will undoubtedly be affected by the arrival of a CLAC and they may struggle to meet LSC contractual requirements (assuming the LSC continued to fund them) and who will the local authority fund, them or the CLAC? This could result in existing services being reduced or closed. The decision to roll out the Pilot will then be based on the findings at a time when there were greater services in the area. It could create planning difficulties for the CLACs that are to be rolled out in terms of meeting the right level of demand in the area.
42. We wonder whether a better model would be to provide more funding to existing providers and help to develop a strong referral system between providers who between them are able to cover the cluster of problems that people can face. Perhaps this could be done via the Community Legal and Advice Networks.
43. We are also concerned that this model may develop to further exclude solicitors from being part of the CLS. The statistics mentioned in paragraph 24 above reveal the large decline in the number of legal aid practitioners as a growing concern. There is a danger that this model (which appears to fit more naturally with models within the Nfp sector) and the proposal to focus face-to-face advice, and thus funding, in the most deprived areas could continue this decline. Thereby, reducing access to justice where a client's problem can only be progressed through a solicitor. The growing use of discretion in the fields welfare benefits and tax credits where challenges can only be made via a judicial review,

such as tax credit overpayment recovery, increase the need for access to solicitors.

44. We would certainly support some of the activities detailed in paragraph 7.26 of the strategy document, in particular the tackling of institutional causes of problems and targeting groups that do not access current services. However, much of this work, or at least the foundation to enable such work, is already established within the advice sector, for example many CABx will carry out social policy and outreach work. It is usually lack of resources and funding restrictions, that leads to such work not being carried out or not carried out to the full. We wonder how existing work would fit with the proposed model and whether funding could instead be used to enable existing providers, that cover a broad range of categories of law, to perform these activities.
45. We support the idea of Community Legal and Advice Networks although we are unclear as to how these will relate to the development of Centres. On a similar point above, we would want to see the involvement at any existing well run-networks in the development of any new model. One of the barriers to maintaining an effective network is resources and we would strongly argue for these to be adequately funded, especially if part of their remit may be tackling institutional problems which cut across a range of categories of law.
46. It is not clear to us where second-tier services would fit within this model. A second-tier service has the structure and resource to be able to build and maintain its expertise in an area of law. It has the advantage of being able to focus on one area of law and to master it. Front-line services will vary in terms of their levels of specialism but whatever the future model of the front-line services, it is highly unlikely that they will be able to build and maintain the level of expertise that is available from second-tier provision. This is especially so, if the presumption is in favour of providers that deliver services in several areas of social welfare law as the strategy proposes in paragraph 7.33. Moreover, as front-line provision develops, potentially along the lines set out in the strategy, the levels of engagement with these subjects will grow and we foresee an increase in demand for second-tier services. The Specialist Support projects, funded by the LSC, are currently set up to provide support in the social welfare categories and we see this second-tier provision as working not merely to complement but to underpin the vision to provide a comprehensive social welfare law service.

Q.12. Do you agree that there should be an increasing presumption in favour of services that work across several areas of social welfare law?

47. We support front-line services providing a holistic approach that will be able to respond to the clusters of problems faced by those experiencing social exclusion. Provided the services are adequately resourced in recognition of the specialist knowledge and skills needed in each category of law – as currently demonstrated by the draft National Occupational Standards – this could be a good model for front-line services. Given the concern over adequate resources we feel it is important to pilot such a model rather than presume services should develop along these lines.
48. We do not think it necessary or possible for this to be the presumption or model for second-tier provision, for the reasons stated in the paragraph 46 above. The

findings from the Methods of Delivery (Specialist Support) Pilot led to the strategic decision to continue with the development of expertise in the CLS. It was felt that there are significant benefits to the CLS through the funding of Specialist Support and so it was recommended that it become a mainstream contracting option and be provided on a national level. The providers of Specialist Support are mostly organisations with a specialism in one category of law – who have built up an expertise in that area. The need for second-tier services in welfare benefits arises out of the highly complex and ever changing nature of social security and tax credits law – with its many Acts, Regulations, caselaw, Directions and guidance. The level of demand for such services is high both because of this and because of the large caseload of enquiries that the front-line services have to deal with on welfare benefits. The strategy needs to include second-tier services provided by national organisations with a specialism in one category of law.

Q.13. Do you agree that the CLS should put more resources into taking strategic action? What other approaches could be taken beyond those outlined in paragraphs 7.37-7.47?

49. We would support this proposal. Please see points made in paragraphs 7-9 and 32 (c). Furthermore, given the LSC's role in developing the provision of help in preventing disputes about legal rights we would like to see the LSC help push for improvements in decision-making that would help reduce the need for some legal challenges. There is a very high level of poor decision-making in the field of social security – statistics highlighted in paragraph 13 above bear this out. The benefits that are most affected by this – disability living allowance and incapacity benefits – are the ones that are claimed by some of the most disadvantaged in society. We would like to see proper and independent scrutiny of decision-making standards, via a person or body which can examine and effectively report back to the DWP and the HMRC on the quality of their decisions and the reasons for poor quality decisions, and a yearly obligation placed on the DWP and HMRC to agree, with the independent scrutineer, to an effective programme for improving decision-making. Perhaps the LSC has a role and an interest in helping to promote this idea – we would welcome a discussion with you to explore this further.

Q.14. What other ways can the LSC promote information about legal rights and responsibilities?

50. In our response to the joint discussion paper produced by the Citizenship Foundation, Legal Action Group, Advice Services Alliance we agreed that there is a need for a national strategy for public legal education and support the proposal to establish an independent steering group to consider and recommend how such a strategy should be taken forward. The responses to the discussion paper threw up some interesting ideas around the methods of delivery of public legal education that the LSC may want to consider, as it promises in Volume 2 of the consultation document. We think that there is scope for the promotion of information about legal rights through schools – through the Citizenship curriculum and, if funded, via talks at schools to parents and pupils from legal and advice providers.

Q.15. Have we identified the key issues in developing the appropriate links between the social welfare areas of CLS, Children and Family Services and the CDS? What other steps could be taken to facilitate these links?

51. We do not feel informed enough to provide detailed comment on this. It seems sensible to develop links between these areas. If one of the options to pilot provision of family advice by Community Legal Advice Centres goes ahead we would reiterate our concern that many poor children would fail to benefit from such an initiative if the Centres are restricted to the most deprived areas – see paragraph 37 above.

About CPAG

CPAG is the leading charity campaigning for the abolition of poverty among children and young people in the UK and for the improvement of the lives of low income families. CPAG aims to: raise awareness of the extent, nature and impact of poverty; bring about positive income policy changes for families with children in poverty; and enable those eligible for benefits and tax credits to have access to their full entitlement.

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