

## CONSULTATION REPORT

### EXECUTIVE SUMMARY

- A woman is dismissed from work for being pregnant
- A disabled person loses their benefits after being wrongly assessed as fit for work
- A young couple are unable to get their landlord to undertake essential repairs and their children's health is suffering
- A man's wife and child are being threatened with deportation
- A person with mental health problems has fallen into debt and has had to be admitted to hospital following a relapse

When people get into difficulty in their daily lives, they need to be able to get the right information and advice as early as possible. If this information and advice is no longer available, they could become unemployed, homeless or in debt – and, not only will they suffer distress, but the state will incur increased costs. Where legal support, whether in the form of legal help or legal representation, is also not available, the number of people who then try to represent themselves will increase and the courts and tribunals will have to adapt to deal with this increase in unadvised and unrepresented litigants.

These are the unintended consequences of the Government's legal aid changes and the reductions in local authority funding, which have destabilised and reduced the advice and legal support sector at a time of increased need. As a result, instead of saving money, these cutbacks are very likely to end up costing more elsewhere in the system.

The Low Commission was established in 2012 by the Legal Action Group (see Annex 1) and funded by a group of major foundations, led by the Baring Foundation, to develop a strategy for addressing these problems. Widespread concern about the impact of the changes and the lack of a strategy for addressing their consequences means our work has had extensive support from a wide spectrum of organisations and individuals. Over the past nine months, we have heard from over 230 organisations and individuals – in person and in writing – about their views on the future of social welfare law advice and support.

The Commission recognises that these are changing times and the drive for austerity means there are currently fewer resources. We are seeking to develop a fresh approach, which involves measures to reduce the need for advice and legal support in the first place, whilst developing more cost effective approaches to service provision, both centrally and locally, and drawing on a wider range of funding sources than hitherto. Some of the key principles underpinning our approach are early intervention and action rather than allowing problems to escalate, investment for prevention to avoid the wasted costs of failure demand, developing different service offerings to meet different types of needs and investing in a basic level of provision of information and advice.

Although this report is written in a time of austerity, it is also a time of innovation and rapidly moving change in the provision of legal services and of dispute resolution. New providers are moving into the legal services market as a result of the Legal Services Act 2007 and new

technology is changing the way that many people seek information and interact with service providers. It is important that our strategy maximises the opportunities that these developments offer for those who have the resources, both financial and practical, to interact with them, so that the most resource intensive, face to face, help can be concentrated on those who need it most.

Our aim is to develop a strategy for the next Government to implement in 2015. Our recommendations are highlighted in bold throughout the text and grouped by audience at the end of our report in Annex 2. In summary, the main components of our strategy are that:

- Legal aid should be viewed as part of a continuum including information, general advice, specialist advice, legal help and legal representation, rather than as a stand alone funding mechanism; the more we can do at the beginning of this spectrum, the less we should have to do at the end
- By reducing demand, taking early action and simplifying the legal system it will be possible to reduce some of the need for advice and legal support
- For those who can afford to pay, affordable advice and legal support should be more accessible and the routes into it much better communicated and understood
- People with pressing problems need a simple and effective way of accessing good advice, without hurdles or confusion. Much basic provision can be developed using a combination of public legal education, national telephone helplines and websites, local advice networks and specialist support for front line advice agencies
- More in-depth and intense support should be targeted at those most in need
- Ensuring the quality of all levels of service provision must be a high priority
- We would like to see a more open and collaborative advice sector. There is considerable scope for local advice agencies to work more closely together and in some cases even to merge. We would also like to see the national advice services umbrella bodies work more closely together and share their resources and experience more widely
- The importance of advice and legal support on social welfare law to people's lives, coupled with challenges to its continued provision and additional costs to government that are likely to result if no action is taken, makes it imperative that the next UK Government develops a **National Strategy for Advice and Legal Support** in England for 2015-20 and that the Welsh Government develops a similar strategy for Wales
- Local authorities should co-produce or commission **local advice and legal support plans** in conjunction with local not-for-profit and commercial advice agencies; these plans should review the services available, including helplines and websites, whilst targeting face to face provision to ensure that it reaches the most vulnerable and ensuring some resources are available for legal representation where it is most needed, to supplement the reduced scope of legal aid
- We estimate that currently, post the implementation of the 2012 Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), there is about £400m per year available to fund advice and legal support services- mainly coming from local authorities, the Money Advice Service and the legal aid that remains for social welfare law.
- We estimate at least a further £100m pa is required in order to ensure a basic level of provision
- We are calling on the next UK Government to provide half this extra funding by establishing a 10 year **National Advice and Legal Support Fund** of £50m pa, to be administered by the Big Lottery Fund (BIG), to help develop provision
- We propose this Fund should be financed by the Ministry of Justice, the Cabinet Office and the DWP, as the main creator of the need for advice and legal support (on the polluter pays principle)

- 90% of the Fund should be used to fund local provision, with 10% for national initiatives; further details of the expenditure to be met by the Fund are given in Annex 3
- BIG should allocate the 90% share of the National Fund to local authorities, based on indicators of need, to help implement **local advice and legal support plans**, which should be prepared in conjunction with the local advice sector
- We are also calling on other national and local statutory, voluntary and commercial funders to contribute a further £50m pa to help develop provision. These should include NHS clinical commissioning groups, housing associations, additional Money Advice Service funding, charities, trusts and foundations and lawyer fund generation schemes, such as the interest on money held for clients and dormant accounts.
- Most of our recommendations apply equally to Wales, but it will be important to build on the momentum resulting from the Welsh Government's Advice Services Review published in May 2013. The Welsh Government will also need to decide on the most appropriate management arrangements for the National Advice and Legal Support Fund in Wales and some of the recommendations will also need to take account of the different arrangements for local government and the local NHS in Wales.

We believe that by investing in a wider range of information and advice, with some legal help and representation, many of the undesirable consequences of the LASPO Act can be avoided and we will end up saving money.

**We welcome comments on our draft outline report by the end of September and will then publish our final report, including supporting annexes, in December 2013.**

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## 1. INTRODUCTION

- 1.1. The UK Government's austerity programme has involved, and will continue to involve, major cutbacks in public services and in welfare benefits. Inevitably, and along with the wider impact of the economic situation, these reforms and cutbacks generate increases in the demand for information, advice and legal support on issues such as debt, employment, housing, and welfare benefits to help people cope with the problems of everyday life. Yet those who provide this support are also now suffering from the cuts in civil legal aid and reductions in local authority funding.
- 1.2. It was against this background that the Legal Action Group established the Low Commission in October 2012, with the remit of developing a strategy for the future provision of advice and legal support on social welfare law in England and Wales, which:
  - meets the need for the public, particularly the poor and marginalised, to have access to good quality independent advice and legal support
  - is informed by an analysis of the impact of funding changes and by an assessment of what can realistically be delivered and supported in the future
  - influences the thinking and manifestos of the political parties in the run up to the 2015 election.
- 1.3. The Commission is chaired by Lord Colin Low and comprises eight other commissioners with experience in this field, together with a small secretariat (see Annex 2). We have taken evidence from and met with over 230 individuals and organisations since we began our work. Our final report will be published in December 2013.

### **Our area of concern**

- 1.4. The problems of everyday life come in many shapes and sizes. They can happen to anyone at any time and may be unexpected, one-off events or form part of a series of interrelated problems. Some problems will be easy to resolve but others may prove more difficult. These problems may not appear legally significant or cutting edge, but they relate to issues that are part of the fabric of the everyday lives of individuals and families across the country. If left unresolved, they can have profound consequences for these individuals, their communities and ultimately the state. Crucially, these problems will often have a legal solution. The 1999 Paths to Justice study found that 40% of those surveyed had experienced a "justiciable problem" relating to a civil law matter and demonstrates the widespread and common nature of civil justice problems.<sup>1</sup> We recognise that the problems of everyday life often include family issues and consumer problems, but for the purposes of our inquiry we have focussed on problems relating to asylum and immigration, community care, debt, education, employment, housing and welfare benefits – collectively referred to as "social welfare law".
- 1.5. There is no standard profile for the kind of person who experiences social welfare law problems; the particular features of the problems will vary every time, as will the capacity of the individual concerned to resolve them. Affluence, degree of education or employment status are no bar to people experiencing social welfare law problems. In particular, in a time of economic instability and austerity, anyone can be affected, whether they are a newly redundant worker, a highly skilled immigrant or a

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<sup>1</sup> Genn H, Paths to Justice, 1999

disabled person affected by changes to the provision of welfare support. Nonetheless, it is the most vulnerable or deprived people in society who are most likely to be affected, including for example disabled people. Although some people sometimes experience only one type of problem in isolation, more often than not they experience a cluster of interrelated problems. Both socio-legal research and social exclusion studies have shown that people experience a combination of interrelated problems, with money and debt problems often identified as 'central elements in cascades of justiciable problems'.<sup>2</sup> In order to be effective, advice and legal support must therefore be capable of dealing with the 'whole person'.

- 1.6. In its consultation on proposals for the reform of legal aid in 2010, the Government frequently justified removing areas of social welfare law from scope on the basis that the issues concerned related to the personal choices of the individual and therefore were not suitable for public funding. We consider that this analysis is based on an incomplete understanding of the nature of many social welfare law problems. An individual's employment conditions are largely outside their control; an individual's immigration problem often will stem from a status inherited and unresolved from their childhood; an individual's ill health and its impact on their family cannot be predicted. These are not situations that stem from choice.
- 1.7. Paths to Justice examined the various strategies for resolving problems and looked at barriers and pathways to advice. The study found that:
  - Two thirds of people try, initially at least, to solve problems directly by contacting the other party involved; very few went directly to advisers.
  - In total, about 90% had sought advice in the past, and 60% had sought advice on a recent problem
  - 60% of those who sought advice contacted solicitors and citizens advice bureaux, but demand for free advice exceeded supply
  - One in 20 failed to take any action to solve their problem and about one in five of these people did not take action because they did not think anything could be done
  - Over a third tried to resolve the problem without receiving any advice (the 'self-helpers'); the reasons given included that good advice was inaccessible, fear of legal costs and negative experiences of legal advisers or legal processes. Fewer than half of those who tried to resolve their problem on their own succeeded in achieving a resolution by agreement.<sup>3</sup>
- 1.8. The providers of advice and legal support on social welfare law issues in England and Wales fall into five main categories; the delivery of these services ranges from face to face to national helplines and websites:
  - Local not-for-profit advice agencies, comprising 350 Citizens Advice Bureaux (under the umbrella of Citizens Advice) operating out of 3,500 locations and over 800 other independent advice agencies (under the umbrella of Advice UK) providing information and advice and some legal support across all or most aspects of SWL
  - Over 50 local law centres (under the umbrella of Law Centres Network), set up to use their specialist legal skills to address and alleviate poverty, providing legal help and representation and undertaking strategic case work across all or most aspects of SWL

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<sup>2</sup> Pleasence P, Balmer N, Buck A, O'Grady A, Genn H, Multiple Justiciable Problems: Common Clusters and Their Social and Demographic Indicators, Journal of Empirical Legal Studies July 2004

<sup>3</sup> Genn H, Paths to Justice, 1999

- National charities, such as Shelter, Age UK and Youth Access providing information, advice and some legal support on their areas of specialism
- Local authorities providing statutory advice on homelessness and in some cases providing welfare rights advice
- Private law firms providing paid for and pro bono legal help and representation

### Legal aid

- 1.9. A limited legal aid system was available in serious criminal cases from the early 20<sup>th</sup> century, but it was not until after the Legal Aid and Advice Act (1949) that the civil legal aid system was established. Most of the population (80%) were eligible for legal aid when the first cases were funded in 1950. In the late 1960s it became increasingly recognised that legal services were failing impoverished communities. This led to the creation of the advice and assistance scheme, or green form legal aid, as it became known, which allowed a member of the public, provided they passed a means test, to receive advice on any legal problem in England and Wales. Solicitor firms working in civil legal aid, despite the wide scope of the green form, tended to specialise only in family cases and this had been the pattern since the start of the scheme. Some more progressive solicitor firms and the new not-for-profit Law Centres, the first of which was North Kensington founded in 1970, began to undertake cases in housing, welfare benefits and other social welfare law matters.
- 1.10. The number of green form cases increased to a peak of 1.5m in the 1990s. This coincided with a growing demand for advice services. The rising cost of legal aid led the Government to reduce the number of people eligible for help and the scope of what was covered. A system of quality control was also introduced in the mid 1990's. Provided they obtained a quality mark, advice charities without solicitors for the first time were permitted to provide legal aid services. The number of advice charities contracted by the Legal Services Commission (LSC)<sup>4</sup> expanded from an initial 42 to around 300, most of whom provided legal aid services only in social welfare law. Due to budget pressures governments periodically changed the scope of what the scheme covered and adjusted the eligibility regulations to reduce the number of people entitled to claim help with civil legal problems. By 1993 eligibility for legal aid had fallen to 53% of the population and areas of civil law such as probate matters had been removed from the scope of the scheme.
- 1.11. The Conservative and Liberal Democrat coalition Government announced its spending plans in October 2010. Due to the decision to protect spending in some budgets, a greater proportion of the cuts fell on departments such as the Ministry of Justice (MoJ) with unprotected budgets. For the spending period April 2011-15, the MoJ was expected to find 23% in cuts to reduce its total budget from £9.3b to £7.3b. As part of its cost cutting measures, the MoJ announced a consultation in November 2010 on its plans to cut £350m from a total budget for legal aid of £2.1billion. Most of these proposed cuts (£278m) fell in civil legal aid, including cuts to social welfare law relating to debt, employment, housing, non-asylum immigration cases, and welfare benefits. These cuts in scope were implemented by the 2012 Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act, taking effect from April 2013. According to the MoJ's 2012 Impact Assessment, £89m is being lost in funding for social welfare cases – a reduction of 238,820 cases.
- 1.12. International Comparisons. Recent governments have used international comparisons of the costs of the legal aid system to justify cut-backs. The Labour

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<sup>4</sup> The LSC is a non departmental public body of the MoJ responsible for the operation of the administrative organisation of legal aid in England and Wales. It was replaced by the Legal Aid Agency on 1 April 2013.

Government commissioned a report from Roger Bowles and Amanda Perry of the University of York for an explanation for the greater levels of expenditure in England and Wales compared to other countries.<sup>5</sup> They found that part of the reason for this was the higher levels of crime and the greater number of criminal prosecutions brought to court in England and Wales. They also found that the relatively higher cost of legal aid in England and Wales compared to other EU countries appears “to be offset by lower court budgets and public prosecution costs.” France for example, only spent 4.8 Euros per head of population on legal aid, compared to 57.67 Euros in England and Wales, but once other costs of the courts system were factored in the total cost was 51.40 Euros in France – much closer to the figure of 80.48 Euros for England and Wales. The Netherlands had larger overall courts and legal aid expenditure at 90.61 Euros.

- 1.13. The Legal Action Group carried out two opinion polls in November 2010 and January 2012 on the public’s attitude to funding social welfare law advice services. Both polls were conducted by GfK NOP using a cross section of 1,000 randomly selected members of the public. The polls found that over 80% of the public, across all social classes, believed that advice on common civil legal problems should be free to everyone or, at least to those people earning on or below average income of £25,000 per year. When asked to prioritise between the different areas of advice, the results between the surveys were again consistent with approximately 70% in each survey suggesting that child protection should be the first priority for state funding for advice services, followed by help with housing and employment law problems. The Legal Action Group concluded from the research that despite the often hostile media coverage of legal aid, the general public believe it is fair for people, especially those on lower incomes, to have access to free advice services paid for by the state.

### **Impact of the legal aid changes**

- 1.14. The cuts in scope, totalling £89m, have hit advice charities hard. Birmingham Law Centre for example was forced to go into receivership in June 2013 after its board of trustees decided it was no-longer viable due to the loss of half its income from legal aid.<sup>6</sup> Shelter has had to close nine of its advice centres as a result of a £3m cut in its legal aid. Other advice charities are reporting a lack of specialist services to refer their clients to due to the cuts in legal aid.<sup>7</sup> Citizens Advice’s overall income is estimated to have fallen from £177m in 2010/11 to £144m in 2013/14, a reduction of nearly £33m or over 18.5%, of which £22m is accounted for by loss of legal aid in 2013/14 and most of the remainder from cuts in local authority funding. The loss of welfare benefits from the scope of the legal aid system meant most of the just under 300 not-for-profit providers, including 128 Citizens Advice Bureaux, left the legal aid system in April 2013.

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<sup>5</sup> Bowles and Perry, ‘International comparison of publicly funded legal services and justice systems, MoJ October 2009. See page 27.

<sup>6</sup> [http://www.legalactiongroupnews.org.uk/birmingham-law-centre-closes/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=birmingham-law-centre-closes](http://www.legalactiongroupnews.org.uk/birmingham-law-centre-closes/?utm_source=rss&utm_medium=rss&utm_campaign=birmingham-law-centre-closes)

<sup>7</sup> July 2013 Editorial Legal Action Journal



## Box 1

### Examples of Cuts

- In Manchester, the reduction in funding has meant that Manchester CAB (MCAB) has gone from having six drop-in centres to three. MCAB has lost about 14 staff posts through voluntary or compulsory redundancy, or staff leaving and their posts not being refilled. In addition, two generalist advisers and one welfare benefits manager accepted reduced hours, 10 staff were redeployed in to other roles (generally at a lower grade than those they previously occupied, e.g. three senior generalists are now generalists) and one caseworker took a 12 month unpaid sabbatical.
- Similar effects are reported by smaller advice agencies. For example, Northamptonshire Rights and Equality Council has made three out of four staff redundant, as since 2010-11 its funding has been cut by 52%. In 2010-11 it had 97 hours of caseworker time; this financial year it will be reduced to 25 hours.
- In Tameside, local agencies are managing to offer generalist advice to more clients than before but in some cases the waiting list for appointments is five weeks long. In addition to the increased delay, Tameside also reported that although it is seeing about double the number of clients compared to last year, while it previously could refer 50% of the ones needing specialist help this is down to 10%.
- Citizens Advice and other national bodies have seen the termination of MoJ funded second tier specialist support contracts. For example, the loss of Citizens Advice's employment contract at its Specialist Support Unit in Wolverhampton means it has very little capacity to support employment and discrimination cases.

- 1.15. As a result of LASPO 2012, funding will still be available for cases involving:
- Asylum
  - Community care
  - Housing or debt problems involving serious disrepair that endangers life or where the individual is at risk of eviction or repossession
  - Discrimination cases
  - Special educational needs
  - Appeals to the Upper Tribunal (points of law) in welfare benefits cases.

For debt, discrimination and special educational needs cases, those wishing to receive legal aid have to access advice via the mandatory telephone gateway created under the 2012 Act, which requires individuals seeking assistance to phone a single number so their eligibility for legal aid can be assessed by a non-legally qualified adviser. Those deemed eligible are then transferred to an advice provider. In most cases, the advice is delivered by telephone, with some face to face advice available if deemed necessary.

- 1.16. Advice on immigration, welfare benefits, all other debt, housing and employment cases and many education cases are out of scope for public funding. Under the Money Advice Service scheme, there is still funding for debt advice available across England and Wales. However, it is of real concern to the Commission that many individuals will not be able to access any advice or support about how to resolve problems on the vast majority of social welfare law cases. Throughout our evidence gathering process, it has been made clear to us that the almost complete removal from scope of welfare benefits advice will have serious consequences for the advice sector and therefore for individuals who need support and advice. It has also been highlighted that those in need of immigration advice are often particularly vulnerable due to fear of being removed from the country and therefore can be easily exploited

by those offering high cost and low quality advice services. The changes to the advice landscape will also have an impact on those areas of social welfare law remaining in scope for funding, such as the viability of the asylum advice sector. The increased use of fees for appeals to tribunal on matters such as employment and immigration disputes is already acting as a financial barrier to justice and we are concerned that the cumulative impact of these changes will be to reduce access to justice for the poorest in society.

- 1.17. One consequence of the legal aid changes is that more and more people will have no alternative but to try and represent themselves, leading to increased time and costs for the courts and tribunals. Anecdotally, we have heard that in some cases the judiciary are requesting the listing of fewer cases per day due to the need for additional time to explain matters to litigants in person. Another consequence, highlighted to us by front line advice agencies, is that people are getting increasingly angry at the predicament they face. As President of the Supreme Court, Lord Justice Neuberger, has said, the rule of law itself then becomes under threat: 'My worry is the removal of legal aid for people to get advice about law and get representation in court will start to undermine the rule of law because people will feel like the Government isn't giving them access to justice in all sorts of cases. And that will either lead to frustration and lack of confidence in the system, or it will lead to people taking the law into their own hands.'<sup>8</sup>

#### Box 2

##### Impact of LASPO and Welfare Reform

- Barbara Kerridge, Riverside Advice Agency, Cardiff: "Clients are getting angry".
- Bristol CAB report seeing very high numbers of people needing food vouchers and even clients refusing vouchers for food banks because they don't have electricity or gas to cook the food. "These are desperate situations and we do what we can with emergency payments and charitable grants where there is little or no recourse to benefits".
- Campbell Robb, CEO Shelter: "It's an extraordinary bleak picture"
- Respondent to University of Warwick and illegal survey: "It seems to me (regardless of the fact that I will be losing my job) that the cuts are going to hit the most vulnerable at the very times when they will need our help the most."

- 1.18. As well as causing particular concerns in each area of social welfare law, the LASPO Act changes give rise to some more general concerns:

- First, there are worries that the structure of the remaining advice under LASPO will force individuals to wait until crisis point until seeking advice and support. The Government has always made clear that it intended to focus resources on issues involving human rights or where an individual is at risk of losing their home. It is therefore still possible to get legal aid for housing or debt issues, but only when the person concerned is at risk of repossession or eviction. This is a counterintuitive approach and creates a perverse incentive to wait until things reach a crisis point. If the government wishes to see individuals resolve their

<sup>8</sup> Lord Neuberger, 5 March 2013, The Today Programme BBC Radio 4 <http://www.bbc.co.uk/news/uk-21665319>

problems outside the formal justice system, removing the availability of early advice to help people resolve their problems before they become more intractable does not make sense.

- Secondly, the new funding structure is likely to add to the ‘revolving door’ problem faced by clients. If individuals are only able to access support on crisis issues and advisers are not funded to address associated problems or the cause of the problem (such as unemployment, not receiving the correct benefit, or resolving underlying financial problems) then the individual will keep returning to crisis point as the problem will only be temporarily masked, not solved.
- Thirdly, there are other background legislative and policy changes taking place that may impact on individual’s need for advice, such as the Welfare Reform Act and the introduction of Universal Credit. Major policy changes take time to embed and during this period there are often important legal challenges as the meaning of legislation is clarified. Additionally, individuals switching from one regime to another (such as the current switch from Disability Living Allowance to Personal Independence Payments) may need support in understanding their new entitlement and in completing any necessary procedures or processes. Advice agencies can also support government with the implementation of new legislation by reporting on any unintended and systemic problems. At a time of such widespread reform, it is worrying that many advice agencies may not be able to do this, posing a risk both to the effective implementation of policies and to the capacity of individuals to resolve their problems.
- Finally, the government’s emphasis on ‘digital by default’ significantly alters the way in which individuals will be expected to interact with the state. The Government Digital Strategy was launched in November 2012, setting out that everybody who can use digital services in their dealings with government and public services will be encouraged to do so, and that the remaining estimated 18% of the population who are offline will be ‘assisted’ to deal digitally. Universal Credit will be one of the ‘digital by default’ exemplar services. We consider that this new approach to applying for and dealing with state entitlement will pose considerable challenges for many, and that many of those who struggle will turn to advice agencies for assistance in navigating the new processes.

1.19. This review of the impact of the legal aid changes is necessarily incomplete. Due to the timing of our report only the very short term effects can be recorded here. However, we are concerned it will also prove difficult to record the longer term effects, because the austerity cuts to public services have meant that the capacity of organisations to monitor and report on the impact of the LASPO changes has been reduced. In particular, the loss of the Legal Services Research Commission and its Civil and Social Justice Panel Survey instantly reduces the volume and quality of information we have about people’s experiences of the justice system.

- **The Ministry of Justice should put in place mechanisms for monitoring the full impact of the LASPO changes and should publish the results**

1.20. Section 10 of LASPO Act 2012 is intended to act as a safety net to guarantee the funding of cases that would ordinarily be out of scope for funding under LASPO but where either human rights or EU law require the provision of legal aid. During the passage of LASPO through Parliament, the (then) LSC estimated there would be around 6000 Section 10 applications per annum. Yet, in the first three months since the implementation of LASPO, there were only 233 (compared with an expectation

of 1500), of which only six have been granted.<sup>9</sup> The analysis of whether human rights or EU law requires legal aid to be provided in a particular case is undoubtedly complex and legal in nature. Unfortunately, this means that the process of application to the Legal Aid Agency for funding is resource intensive for professionals and prohibitively difficult for individuals to complete without support. Applications for exceptional funding are made at risk, with funding only being granted if the application is successful.

1.21. In light of very low grant rates, solicitors are routinely refusing to take on this work at risk. In addition, the nature of the application process means that it is in fact impossible for an individual to be guaranteed funding unless the application form has been completed by a solicitor. These barriers to Section 10 funding are particularly worrying in view of the fact that Section 10, by its very nature, is intended to protect vulnerable individuals. It is also of concern that there is no mechanism to prioritise urgent cases, with the Legal Aid Agency taking up to 20 working days to determine exceptional funding applications and making no commitment to determine applications in advance of the hearing date that the funding is applied for.

- **The Legal Aid Agency should remunerate solicitors and specialist advisers for applications for exceptional funding under Section 10 of the LASPO Act. If there are classes of cases where it appears manifestly unfair that legal aid funding was not available except under Section 10, then those areas should be brought back into scope**
- **The Ministry of Justice should simplify the application process for Section 10 funding to make it easier for people to use**
- **The Ministry of Justice should publish case summaries where funding is granted under Section 10, so that there is greater clarity as to which applications for exceptional cases funding may succeed**

## 2. OUR APPROACH

2.1. We believe that justice is worth investing in. The case for access to justice has been made by a number of important authorities and we wholeheartedly support the principle that disputes should be resolved by reference to the intrinsic merits of the case rather than the relative means of the parties. We are confident that the practical benefits of the state guaranteeing and promoting justice can be felt across society and the economy. Conversely, failing to resolve these disputes has consequences. In its Impact Assessment of the Proposed Changes to Legal Aid in 2010, the Ministry of Justice warned that the LASPO changes could result in a reduction in the fairness of disputes, leading to reduced social cohesion, increased criminality and increased costs for other departments.

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<sup>9</sup> From 1 April – 1 July 2013 there were 270 applications for exceptional funding in total, but this figure includes applications for an internal review of refusals of funding (37). This means that there were in fact only 233 applications for exceptional funding.

### Box 3

#### Access to justice

- “Denial of legal protection to the poor litigant who cannot afford to pay is one enemy of the Rule of Law.” – Lord Bingham, The Rule of Law
- “There is no doubt that access to justice is a constitutional principle”- The House of Lords Select Committee on the Constitution, 2010
- “The four justifications for access to justice are: equality before the law, enforcement of legal rights, responding to unmet legal needs, reducing social exclusion.”- Sir Ross Cranston, How Law Works 2004

- 2.2. In order to avoid these negative consequences, we consider there needs to be an independent adjudication system and for all parties to a dispute to have access to this system with a chance to make their case. To make this a reality, there needs to be free or low cost advice and, where appropriate, representation available to those who would otherwise be unable to make their case.
- 2.3. Similarly, in any democracy there must be a mechanism for individuals to hold the state to account for its use of power and to enforce legal entitlements and rights. In England and Wales the processes of challenge through appeals and judicial review provide this opportunity, but there is an obvious imbalance in power between the ‘repeat player’ of government and the ‘one shot’ individual, who may be unfamiliar with law and procedure. Provision of independent advice to those who consider that the state has made a mistake acts as an important corrective mechanism to inequality of arms and is an important part of the checks and balances that underpin the rule of law.
- 2.4. We also believe that a government policy must be understood by those who are subject to it, if it is to be successfully implemented. As each person (or business or organisation) cannot be expected to understand the full details of their rights and entitlements or legal processes, advisers will explain to individuals when they are (or are not) entitled to a benefit or will describe whether it is the individual or their landlord or their employer who may be breaking the law. Advisers – be they in a large international law firm or working in a small legal advice clinic – will not necessarily encourage their clients to pursue a challenge come what may, but can help to translate law and procedure to non-experts, giving an objective view of the merits of a position. In the Paths to Justice survey, it was reported that two out of every three individuals who were told by an adviser that nothing could be done about their problem did not pursue the matter any further, thus reducing the number of individuals who choose to pursue weaker cases through the tribunals and courts system – thereby leading to another cost saving for the state.<sup>10</sup>
- 2.5. In an ideal world, therefore, we would like to see:
- Enhanced status for advice and legal support
    - Advice and legal support recognised as an essential part of a civilised society
    - People’s legal capability being regarded as just as important as financial literacy
  - Approaches that
    - Recognise people frequently experience problems in clusters

<sup>10</sup> Genn H, Paths To Justice, 1999

- Emphasise the importance of early intervention and action
- See advice as an integral part of tackling different forms of disadvantage
- Recognise the role of the market in providing services, while ensuring services are available (through public or other sources of funding) to people in need
- Providers of advice and legal support services that
  - Focus on clients' needs at all times
  - Co-operate and join up to provide a seamless service
  - Recognise the potential of new technology, not just to reduce costs, but to provide information and advice in innovative ways
  - Recognise the importance of face to face provision for the most disadvantaged
  - Have the capacity and inclination to feedback to Government (locally and nationally) about how to reduce demand resulting from systems failure
  - Have sufficient resources to provide legal representation where it is most needed

2.6. As a result, information, advice and legal support is available to everyone, one way or another.

Box 4

Welsh Government's Advice Services Review

We have been able to learn from the Advice Services Review recently conducted by the Welsh Government, which reported in May 2013. The review was done in the light of the "unprecedented challenges being faced by not-for-profit advice agencies as a result of funding decreases across Wales alongside rising demand due to the current economic downturn." It concluded that there is likely to be a significant increase in the demand for specialist welfare benefit, debt, housing and discrimination advice as a result of Welfare Reform and the on-going economic downturn and recommended that the Welsh Government should invest in a series of measures to help the sector respond. These measures included the proposal to establish a National Advice Network of government departments, representatives of the advice sector, funders and other stakeholders to ensure strategic coordination of advice services, increased shared learning and make best use of available resources. Other recommendations included the development of Regional and Local Advice Networks, financial support for the not-for-profit sector and a Framework of Standards for Information and Advice based on existing quality marks and standards. As can be seen, much of the Welsh Review's thinking is reflected in our own approach, although we have not recommended a National Advice Network for England, since we are doubtful that it would produce tangible benefits, given the size of England compared with Wales.

2.7. In developing our own response to the challenges faced by the advice sector, we have taken the view that although the previous legal aid system, prior to LASPO, funded much excellent work by solicitors and not-for-profit organisations and enabled many poorer people to get access to justice, it is not something that can simply be reinstated in the current context. Furthermore, a number of features of the legal aid system, such as the compartmentalisation of cases into subject specific 'matter starts', which were then divided between providers often in small contracts, have rendered the system excessively bureaucratic and process driven. This means providers no longer have the freedom and funding to diagnose and then focus on the full needs of the client, making the system less effective than it should be. In addition, many people fell outside its financial eligibility thresholds, but were unable to pay fees at private client rates. Unfortunately, there is no magic solution that can take the place of the old legal aid system while also remedying its defects.

2.8. We are therefore seeking to develop a fresh approach, which involves measures to reduce the need for advice and legal support in the first place, whilst developing more cost effective approaches to service provision and drawing on a wider range of funding sources than hitherto. We view legal aid as part of a continuum including information, generalist advice, specialist advice, legal help and legal representation; the more we can do at the beginning of the spectrum, the less we may need to do at the end, where there will be less money available. Rather than allowing problems to escalate and having to spend more to fix them further down the line, the key principles underpinning our approach are:

- early intervention and action
- investment for prevention to avoid the wasted costs of failure demand
- developing different service offerings to meet different types of needs
- investing in a basic level of provision of information and advice.

2.9. We believe that the importance of advice and legal support on social welfare law to the lives of disadvantaged people, coupled with the severity of the challenges to its continued provision and the resulting costs that will fall to government, makes it imperative that the next UK Government agrees a National Strategy for Advice and Legal Support, which the Ministry of Justice should take the lead in developing together with other government departments and the not-for-profit and commercial advice sector. We also believe that the Equalities and Human Rights Commission should be consulted on the development and implementation of this strategy in view of its significance for human rights and equalities issues.

- **The next UK Government should set out and publish a National Strategy for Advice and Legal Support in England for the 5 year term of the next Parliament (2015-2020), which should be cross cutting across all departments and should seek to embed the provision of advice and legal support in people’s daily lives, so they can get the help they need at an early stage. It should also address ways of reducing demand and simplifying the system, so there is less need for advice and legal support.**
- **In Wales, the Welsh Government should develop a National Strategy for Advice and Legal Support, building on its advice services review, in conjunction with the National Advice Network for Wales.**
- **The Equalities and Human Rights Commission should be consulted on the development and implementation of the national strategies for advice and legal support.**

### 3. REDUCING DEMAND

3.1. Early action programmes. If we are going to succeed in reducing the need for advice and legal support, then intervening early and taking action to prevent problems turning into crises is an essential starting point. We welcome and support the work that other organisations, led by the Early Action Taskforce, have undertaken in developing early action approaches.<sup>11</sup> The Early Action Taskforce’s second report, “The Deciding Time: Prevent today or pay tomorrow” (November 2012) makes a

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<sup>11</sup> Set up by Community Links, Newham, in 2011 bringing together a group of national experts across the sectors to tackle the question of how to build a society that prevents problems from occurring, rather than one that copes with the consequences.

number of recommendations for achieving this, including 10 year Spending Plans, reviewed every 2-3 years, and treating early action as an investment (like capital investment) that cannot be raided. In order to facilitate early action initiatives, we are therefore proposing that the National Fund we are recommending should be a 10 year fund (see para 6.2).

- 3.2. We have adopted the analysis of the Baring Foundation in its recent report, “Social Welfare Legal Advice and Early Action”, which listed the potential benefits of early action in helping individuals solve their social welfare law problems as:
- Reducing the number of people needing advice, through people avoiding problems, and being better able to deal with the early stages of problems by themselves
  - Reducing the intensity of presenting demands, from specialist to general advice needs, and from general advice needs to information
  - Reducing the number of problems which give rise to serious advice needs
  - Getting the right decisions sooner, thereby avoiding costly appeals or drawn out advice processes
  - Reducing repeat or “revolving door” demand
  - Reducing multiple referrals or “referral fatigue”.<sup>12</sup>
- 3.3. The report also sets out the four key components of early action. First is citizen capability, which means helping individuals to develop the skills and confidence necessary to recognise and address a problem with a legal solution. Second comes intervening at the right time, with Barings advocating that advice agencies try to act ‘one step sooner’, and consider whether an intervention is at the ‘right time’ to help the individual. The third component of the approach is delivering advice differently – for example, it could mean improving referral facilities between advice agencies so that users do not fall between the gaps or could mean delivering advice in a way that resolves the problem while also improving user resilience. The final component is better feedback and learning, which encourages advice agencies to be outward looking and to work with a range of partners in efforts to act on the drivers of demand.
- 3.4. Putting this approach into practice means always maintaining a focus on the needs of the individual. For example, it means making sure that the voluntary and statutory agencies that already work with people experiencing ill health, poverty, unemployment, homelessness, drug and alcohol addiction and other forms of disadvantage also understand the important role that information and advice have to play in helping address these problems. While a large charity, such as the Women’s Institute or the MS Society, may be excellently placed to support individuals in a number of ways they inevitably cannot be experts at everything. There will therefore be added value if they are able to recognise a social welfare law problem with a legal solution and work with advice agencies to ensure that the individual concerned receives the best advice possible or to embed advice and legal support in their own organisations.
- 3.5. Similarly, by building links with community organisations, advice agencies can help develop the capacity of individuals or groups to recognise when there is a problem with a legal solution and to know who to turn to for help in solving the problem. It will also provide an additional forum for the distribution of basic information about rights and entitlements. Working closely with community organisations will also bring advice agencies closer to individuals who may experience problems and will allow them to

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<sup>12</sup> Randall J, Social Welfare Legal Advice and Early Action, Baring Foundation available at <http://www.baringfoundation.org.uk/STVSEA9.pdf>



spot problems and act “one step sooner”. We recommend that every area develops early action initiatives as part of its local planning process. It is also important to recognise that legal solutions to an individual’s problem may not help to address all the individual’s needs and so by working with charities with a much wider range of expertise and resources, advice agencies may be better placed to help.

- **Local advice and legal support plans (see para 7.5) should include early action initiatives which integrate information and advice services into mainstream service provision**

3.6. Advice agencies frequently experience people presenting with problems which result from over complex administrative procedures or simply poor communication. They are therefore well placed to provide feedback to those administering these processes on how they could be improved. Examples include letters clients cannot understand, trying and failing to get to speak to someone, and finding out why a payment has been stopped with no reason given. In Nottingham, advice workers and housing benefit officers worked together to sort out these kinds of problems, so the client could go in and get an answer rather than being caught between the two. Initially this resulted in the time involved in resolving issues reducing from an average of 100 days to 23 days; and eventually to just 5 days (see case study). In Portsmouth, the City Council’s tender specification for their advice services contract included a requirement to provide feedback on failure demand generated by the failure of agencies themselves or others to get it right for their clients. The City Council work closely with Advice Portsmouth on this – for example, they ran a seminar for staff on failure demand so that staff could get better at recognising where problems are the result of other parts of other organisations, such as the local authority, not doing things correctly and can help correct this.

#### Box 5

##### Nottingham Systems Thinking Programme

The Systems Thinking Programme in Nottingham analysed 500 advice demands across a range of advice services, and found that:

- 30% of that demand was a result of “preventable failures in public services”
- a further 12% was deemed broader “failure demand” generated by the failure of agencies themselves or others to get it right for their clients.

Not only was demand analysed, but the flow of advice enquiries through the system was precisely mapped and analysed in order to understand which steps in the process constituted “value” for the client, and what actions were taken that were unnecessary “waste”. Resulting from this mapping exercise, “system conditions” that cause waste were identified, and a pilot project between advice agencies and Nottingham City Council’s Housing and Council Tax Benefits service was undertaken to identify and implement changes by which closer collaboration could improve service delivery.

This Benefits Pilot produced striking results:

- Analysis of the issues with which customers presented, showed that approximately 60% of issues within the Pilot were preventable
- The Pilot cases required, on average, less than half the adviser time of comparable cases, and the average number of actions required to resolve a case fell by over 30%
- The average time taken to resolve cases began at 100 days, fell initially to 23 and then later in the Pilot fell further to just five. On average, cases in the Pilot were closed within a quarter of the time taken for other comparable cases
- All cases in the Pilot were resolved without the need for further challenge, review or

appeal.’

The Benefits Pilot has since been extended to two further advice agencies, and a plan to extend the pilot is currently being considered by Nottingham City Council.

Source: Social Welfare Legal Advice and Early Action by Joe Randall, Baring Foundation 2013

- **Local advice and legal support plans (see para 7.5) should include provision for advice agencies (with support from their national bodies) to work with relevant local public agencies, such as local authority housing departments and Job Centre Plus, on ways of reducing the demand for advice by helping improve or redesign their processes.**
- **The National Advice and Legal Support Fund (see para 6.2) should support national agencies to do work on failure demand, including funding for judicial review cases, as well as through its funding allocations to local authorities.**

3.7. Right first time. Getting decisions about individuals right first time should be a core concern for those delivering public services, not only because it results in better public services for individuals, but also because it saves the state the costs of putting things right (including costs to departmental staff of reviewing decisions, judicial costs and other costs of holding a hearing) at a later stage. This failure to get decisions right first time also generates waste for advice agencies, which have to spend time advising people on how to get wrong decisions put right. For example, in 2011-2012, on average 35% of appeals against welfare benefits decisions were upheld. According to Helen Grant, Minister for Legal Aid, the cost of these appeals has trebled to £66m per year.<sup>13</sup> When demand for advice services is high and funding is a concern, it is important to eliminate as much of this waste from the system as possible. We have heard about the efforts of government departments to improve decision-making. We welcome the DWP’s recognition of the importance of better communication with users, increasing the opportunities for individuals to provide DWP with all the relevant and up to date information required to make a particular decision. We also welcome projects such as the Early Legal Advice Project, conducted in the Midlands and East of England region of the UK Border Agency, which explored how to improve asylum decisions through the provision of early legal advice. Although the final evaluation for this project reported that the overall costs of conducting a case in the pilot were higher than those in standard cases, it also contains an unprecedented amount of information about the asylum process and identified a number of benefits – such as improved communication and understanding between legal advisers and Home Office staff – that we hope will continue to be explored. In addition, the Ministry of Justice’s Work Programme for Administrative Justice sets out the need for the MoJ to work with other departments to seek improvements in decision making. We support these efforts but believe there is clearly scope for improvement and that steps must be taken to support and incentivise better decision-making by government departments and agencies and their contractors, such as ATOS and Capita. We believe that those who create the need for advice should also be required to pay for the costs of that advice – on a ‘polluter pays’ principle.

<sup>13</sup> See, for example, <http://www.independent.co.uk/news/uk/politics/crackdownon-disability-benefits-costs-taxpayer-66m-in-appeals-costs-8724779.html>

- **The Ministry of Justice should develop further protocols with other government departments and agencies about taking steps to improve the quality of decision-making so that fewer assessments are overturned on appeal. The MoJ should report annually on progress to the Public Accounts Committee and the Justice Select Committee.**
- **The Ministry of Justice and the Treasury should develop and implement ‘polluter pays’ charging models to promote good decision-making by DWP and its contractors, with the income generated from these funds going into the National Advice and Legal Support Fund (see para 6.2).**

3.8 Addressing the source of the problem. It is not only government departments whose actions generate demand for advice. For example, the banking and lending systems themselves can result in people getting into financial difficulties which could have been avoided with the use of financial mechanisms better suited to their personal circumstances, such as community banking. Likewise, employers have a role to play in reducing unnecessary disputes with employees through the use of good human resources policies. This is especially so following the introduction of fees for making an appeal to the Employment Tribunal, which we consider may act as a barrier to many employees challenging the behaviour of their employers.

#### Box 6

##### Community Banking

The idea of community banking or community finance goes by many names and has been gaining increasing prominence in the U.K. At the core is the existence of financial institutions that have a remit that goes beyond maximizing profit to include goals ranging from financial inclusion to local economic development. The goal is for different organisations to come together to be able to both support individuals with financial inclusion through advice, banking services, credit when needed and education, alongside projects to support lending to businesses and local economic development. There have been many positive successes from such partnerships and many financial organisations in the UK work with advice agencies in delivering advice or have services in house that meet outcomes in debt and housing. For example:

- **Enterprise Credit Union** was the first credit union in the UK to succeed in replicating the Irish Money Advice Budgeting Service (MABS) model. Credit Union staff provide access to money advice, debt repayment services and budgeting and bill payment help. The growing popularity of MABS has led to housing association partnerships with Knowsley Housing Trust and the Riverside Group.
- **Lewisham Plus Credit Union** have developed and piloted ‘budget accounts’ to correspond with the roll out of Universal Credit which help members manage their bills over the new monthly cycle of benefits payments. They are working with a range of housing partners including registered social landlords and private landlords to help residents manage welfare reform changes and with debt advice.
- **Wessex Home Improvement Loans** provide home improvement loans for people who would otherwise be excluded from accessing funds but who need to address their house maintenance needs. They take referrals from 20 Local Authorities in the South West for essential maintenance, repairs and adaptations.

They have a sustainable finance model which uses Local Authority capital to finance the repairs. This means the capital is available to be reused once it is repaid. They recently launched Wessex Resolutions to deliver free money advice services with a similar delivery model, so they take referrals from Local Authorities and often visit vulnerable clients at home to deliver high quality debt advice.

However, despite successes in supporting access to finance in the UK, credit unions and other such institutions still have a tiny market share of deposits. International comparison show the UK is still dominated by a small number of very large commercial banks. In contrast, in France cooperative banks have a larger share of the banking market than commercial banks, and Germany has a ‘three pillar’ banking system comprising commercial, cooperative and state-owned savings banks.<sup>14</sup> This means there is still a lot of progress yet to be made, but new changes to FCA legislation means there is more scope to do this. There is also a need for the sector to become more financially sustainable and appeal to a more diverse client base<sup>15</sup>. With the right support and partnerships in place there is potential to scale and stimulate positive competition across the financial services industry.

#### 4. SIMPLIFYING THE SYSTEM

4.1. Good law. Just as, bad, unnecessary, complex and opaque law generates the need for legal advice and lawyers, so, good clear statute law that is ‘necessary, clear, coherent, effective and accessible’ should make it easier for advice specialists to provide helpful information and advice for those with problems and those who help them. We welcome the government’s “Good Law” initiative<sup>16</sup> being undertaken by the Parliamentary Counsel’s Office, which will be consulting lawyers, academics and judges to ascertain how to make law better and clearer and we would urge them to consult more widely with the advice sector. The Law Commission also published some outstanding reports on the reform of housing law and housing dispute legislation.<sup>17</sup> Its recommendations, if implemented, would have made it easier for both landlords and tenants to understand their mutual rights and responsibilities; would have enabled advisers to give advice to landlords and tenants more easily on their rights and responsibilities; and, if litigation in court was unavoidable, would have reduced costs for social and private tenants and landlords by reducing the need for expensive advocates. We regret that the recommendations have not been implemented in England, but welcome the progress being made in Wales. We recommend the identification of more areas for innovative law making where legislation removes the need for disputes to be resolved in courts – which most people are reluctant to use – and replaces them with processes which are easily accessible and are free to use. Examples of free and effective services are the Financial Services Ombudsman, which has effectively taken consumer disputes with financial institutions from the courts, and the Tenancy Deposit Protection Schemes, where free adjudication services, accessed on-line, have removed the need to use the courts.

- **Parliamentary Counsel’s Office, as part of the Good Law initiative, should engage with Advicenow, advice agencies, Law Society specialist**

<sup>14</sup> new economics foundation (2012) Stakeholder Banks

<sup>15</sup> Jones and Ellison (2011) Community finance for London: Scaling up the credit union and social finance sector

<sup>16</sup> <https://www.gov.uk/good-law>

<sup>17</sup> Law Commission, Renting Homes: The Final Report Law Com 297

([http://lawcommission.justice.gov.uk/docs/lc297\\_Renting\\_Homes\\_Final\\_Report\\_Vol1.pdf](http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf))

**committees and with the Civil Procedure Rule Committee and should use this dialogue to help improve legislation by making it simpler and easier to understand.**

- **The UK Government should revisit the Law Commission’s reports on housing dispute resolution.**
- **The Ministry of Justice and the Cabinet Office should identify areas for innovative law making where legislation removes the need for disputes to be resolved in courts.**

4.2. Courts and tribunals. In a time of austerity, when there is very little legal aid for the problems of everyday life but those problems are increasing, we need to look at ways in which their resolution in courts and tribunals could be made more efficient and effective, both for the users of the justice system and for the system itself. This process has to start at the very beginning of the individual’s potential journey. It has to look at each step of that journey from the individual’s point of view and assess what help and what changes are needed to make the process navigable by unassisted and unrepresented litigants.

4.3. This issue has received attention from the President of the Supreme Court, Lord Neuberger<sup>18</sup> from the Lord Chief Justice,<sup>19</sup> from past and present Masters of the Rolls, and past and present Presidents of the Tribunal Service who have raised challenging issues for their services to consider. The Judicial Executive Board in its Response to the MoJ’s most recent consultation on legal aid drew attention to the severe difficulties caused by the changes in funding of legal aid<sup>20</sup> and, in the absence of legal aid, the rise in the number of litigants in person (LIPs).<sup>21</sup> The Civil Justice Council (CJC) first raised this issue in their Working Group Report on Self Represented Litigants<sup>22</sup> and, more recently, the Report of the Judicial Working Group on Litigants in Person set out a comprehensive range of recommendations designed to enable courts and tribunals to deal more effectively with LIPs, including innovative recommendations on the approach of the judiciary which build on best practice in other jurisdictions. We welcome this far sighted report and support all its recommendations, especially those which deal with potential new approaches for the judiciary in dealing with LIPs. There is necessarily a degree of overlap in our recommendations:

- **The Ministry of Justice should work with Advicenow on the review of forms recommended by the Civil Justice Council working group, in order to ensure that its own process of continual improvement meets the needs of unassisted and unrepresented litigants, and should ensure these reviews build on learning from the advice sector, the Law Society, from its own counter and call centre staff and from the judiciary.**
- **The Ministry of Justice should work with the gov.uk team and Advicenow to develop an information strategy for other departments whose decisions are appealed to tribunals so that their decision letters set out all the relevant information about the decision and how to challenge it.**
- **The National Advice and Legal Support Fund (see para 6.2), working in conjunction with the MoJ, should commission and fund Advicenow to develop authoritative and independent self-help guides for all areas of**

<sup>18</sup> <http://www.bbc.co.uk/news/uk-21665319>

<sup>19</sup> <http://www.lawgazette.co.uk/news/lcj-voices-new-fears-over-rise-litigants-person>

<sup>20</sup> <http://www.judiciary.gov.uk/Resources/JCO/Documents/Consultations/jeb-response-reform-legal-aid-june-2013.pdf>, para 7,8,9

<sup>21</sup> *Ibid*, para 10

<sup>22</sup> <http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/self-represented-litigants.htm>

social welfare law, including a review of all current guides; the aim should be to ensure that litigants in person know what is expected of them in the most common types of cases and know what evidence they need to produce.

- **The Civil Justice Council Working Group, with MoJ, should ascertain which types of cases most commonly have one or more litigants in person and should develop a series of checklists for both parties in these cases (e.g. landlord and tenant, small consumer disputes with small businesses).**
- **In more complex cases, and where resources allow, Her Majesty's Courts and Tribunal Service (HMCTS) should check – by telephone if possible, before hearings to make sure that litigants in person have all the material they need for the judge to make a decision to avoid wasting precious hearing time; this telephone checking should also identify cases suitable for mediation – as happens already in the county court small claims mediation scheme.**
- **HMCTS should review the welfare benefits appeal process to identify areas that might be suitable for a more inquisitorial, possibly telephone based, approach to establishing all the relevant facts and reaching a decision, building on the flexible approach to hearings already developed by the Traffic Penalty Tribunal and others.**
- **MoJ and DWP should consider with the Housing Law Practitioners Association the cost benefit of funding independent duty specialist advice schemes on the lines of housing possession court duty schemes at busy tribunal centres during the roll out of Universal Credit.**
- **The judiciary should consider changes that might be valuable in enabling courts to deal justly with cases involving one or more litigants in person, in particular the extent to which more inquisitorial processes might be helpful.**

4.4. Alternative dispute resolution (ADR). Parallel with the more proactive approach that is now being contemplated by leading judicial figures in both courts and tribunals to meet the needs of LIPs is the need to further develop alternative and appropriate dispute resolution. This is necessary both to meet the needs of citizens but also to avoid burdening the courts with cases which could be dealt with more effectively elsewhere. We have seen a number of exemplars of good practice from county court telephone mediation; through the now abolished Social Fund Commissioner with expert inspectors dealing with matters on the telephone; to the web and telephone access to the Financial Ombudsman Service and its powers to award significant damages; traditional mediation models; and the relatively new Centre for Justice which combines expertise, active investigation and the possibility of both mediation and arbitration within an affordable costs regime. The new EU Directive on ADR will give an impetus to all these developments. The ideal model of ADR for unassisted individuals is:

- An assessor or forum which has all the legal expertise required
- An inquisitorial function to ensure that all the necessary facts and evidence are discovered
- Flexible and personal engagement using telephone or email in preference to writing or oral hearings so that the assessor does all the paperwork
- Built-in mediation where appropriate for issues where there may be no “right” answer or where an agreed solution is desirable
- A final binding decision on both parties
- No cost or low cost -and, where paid for, predictable pricing with the possibility of costs shifting and/or means weighting.

4.5. We welcome the ADR Handbook recently published under the auspices of the Civil Justice Council and as part of the Jackson reforms.<sup>23</sup> The great challenge for the use of ADR has always been to flag it up as early as possible, and to achieve its use where one party is a reluctant player. The Centre for Justice is seeking a rule change to the Civil Procedure Rules to require people to engage in ADR if one party wishes to do so. We can see benefit in this approach which is more timely and less expensive in those areas of social welfare law where the dispute is not about a financial entitlement (such as a benefit entitlement) but about more nuanced issues such as suitable housing, employment problems or social care packages.

- **The Civil Justice Council should consider whether a mandatory referral to ADR might be useful under an agreed set of circumstances.**
- **The Ministry of Justice and DWP should consider the lessons that might be learnt from over two decades of dispute resolution by the Social Fund Commissioner and consider whether there are additional areas of benefit appeals where such an integrated model might be helpful in the efficient handling of appeals.**
- **More generally, the Ministry of Justice should consider the innovative and effective elements of ADR – expert assessors, inquisitorial fact finding, telephone contact – whenever large blocks of social welfare law work are log-jammed in either courts or tribunals.**

## 5. APPROACH TO PROVISION

5.1. Overall strategy. Although this report is written in a time of austerity, it is also a time of innovation and rapidly moving change in the provision of legal services and dispute resolution. New providers are moving into the legal services market as a result of the Legal Services Act 2007 and new technology is changing the way that many people seek information and interact with service providers. It is important that our strategy maximises the opportunities that these developments offer for those who have the resources, both financial and practical, to interact with them, so that the most resource intensive, face to face, help can be concentrated on those who need it most.

5.2. At the same time, there is a growing recognition that information and advice on legal issues needs to be part of the overall offering that many organisations – health providers, local authorities, major charities and housing associations – provide to their existing clients. We have been impressed by the way that leaders in the field are already doing this and demonstrating the benefits for their clients and for themselves in cost benefit terms – in improved health outcomes, greater engagement in the local economy and society, improved ability to pay the rent, and reduction in problems that, understandably, cause people suffering from chronic or acute conditions to experience sleepless nights. An important element of our strategy is the location of information and advice services in the places – real or virtual – where people already turn for help or for services: both the places where they go, the people and organisations that they turn to and the websites that they feel are there especially for them. This supports a more proactive engagement with clients who need help but may not realise it; it can also help to concentrate help on those who have already been identified as the most vulnerable. We recognise that in the area of asylum and immigration, care must be taken to ensure that locating advice in the community does not breach the statutory regulation scheme. However we have seen a number of community-led initiatives in this area (such as one led by Citizens UK) and

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<sup>23</sup> [http://ukcatalogue.oup.com/product/9780199676460.do#\\_Ue5tom2i10w](http://ukcatalogue.oup.com/product/9780199676460.do#_Ue5tom2i10w)

consider that with careful planning and coordination with the Office of the Immigration Services Commissioner it is possible to develop new approaches without risking prosecution for those involved.

Box 7

#### Age UK Primary Care Navigators

Age UK Kensington and Chelsea (K&C) worked in collaboration with its local authority to place an information and advice worker – called a primary care navigator – in GP surgeries. Surgery staff were encouraged to refer patients to the navigator if it appeared that the individual would benefit from support not normally offered by the surgery.

The navigators undertook a wide range of different functions: conducting home visits; liaising between families, health services and social care services; arranging for assistance to be provided to the individual; and, linking up the individual with other community services.

A review of data demonstrated that in the six months prior to seeing the navigator, each patient on average used GP services 8.6 times. In the six months post referral, this reduced to an average of 4.64. Similarly, in the six months prior to seeing the navigator each patient attended A&E an average of 1.36 times. In the six months after this reduced to 0.6 times. There were also significant reductions in outpatient, inpatient and out of hours episodes. On average, there was net intervention saving of £644 per patient.

In addition to reducing the number of medical interventions required to support the individuals concerned, the approach allowed Age UK K&C to reach vulnerable older people who do not normally attend advice centres. The approach also meant that Age UK was able to support the individuals' access to services which they were unable to reach without assistance. The navigator was also able to deal with the individual in an integrated way, acting as a link between different services, reducing the likelihood of the patient falling through the gap between health and social care.

- 5.3. The markets also play a role in the provision of legal services. Those who have more resources – in financial or capability terms – can now access an increasing range of web and telephone services which may offer initial free advice and then access to fixed price pieces of advice and legal representation. The use of conditional or contingent fees, as a way of funding cases where there is a financial award if successful has also increased in recent years, especially in employment or personal injury cases. Immigration, community care and special education cases are also areas where there is a fee charging market. Now legal aid is generally no longer available, it is perhaps worth considering again whether those who benefit from legal advice and support to gain access to financial awards, for example in welfare benefits appeals, which result in backdated benefit awards as well as future correct entitlement, might also be asked to contribute from their successful outcome to help others needing help in future. So, help would be free at the point of delivery but contingent on success. We know that there is principled resistance in many quarters to any deduction from a financial award but 90% of back dated benefit and 100% of future entitlement is infinitely better than 0% of past and future, which is what will be the reality, unless new ways of funding these claims can be found. Ethical lending schemes, such as the credit facility developed by Toynbee Hall and other credit union initiatives to help people pay for immigration advice, also have a role to play here (see case studies). At the same time, it is important that Citizens Advice, in its



consumer protection role, continues to work with relevant regulatory bodies to try and protect people from being exploited by unscrupulous commercial providers of advice seeking to take advantage of vulnerable people by charging for, poor quality, advice.

#### Box 8

##### Toynbee Hall

Toynbee Hall offers a range of free advice and support services out of its centre in Tower Hamlets, London. Its services include debt advice, generalist advice services under contract from the City of London, welfare benefits advice for those with cancer and a drop-in legal advice clinic supported through pro bono.

Following the LASPO reforms, Toynbee Hall was concerned about the availability of good quality, affordable immigration advice for its local community. In response, it is developing a model that provides immigration advice on a fee-charging basis. In addition, Toynbee Hall has substantial concerns that the rise in fee-charging within the advice sector could have the unintended consequence of pushing clients towards high-cost credit to pay fees. It is therefore looking to develop a model of affordable credit from which clients can borrow money to fund legal advice services.

- 5.4. Increasingly the new legal services market is offering tiered services: self-service using pro forma, on screen Q&A to complete standard materials, lawyer reviewed services, and more traditional lawyer led services. This is a new approach to the concept of “unbundling” where the client does as much as possible of the fact giving, listing and evidence assembly and the use of the lawyer is concentrated on those elements where legal experience is most valuable and essential. The transparency of fixed cost pricing is important in overcoming people’s justifiable fear of the unpredictable and high cost of using a lawyer. The “unbundling” approach is a sensible way of reducing the amount of paid lawyer time required. The most notable examples of this are to be found in new providers in the legal marketplace – no doubt because they require significant capital investment. The Law Society provided a guidance paper to enable traditional solicitors firms to offer this approach in those family cases, where legal aid is no longer available. These services respond to a demand from people who can afford to pay reasonable, predictable prices and who can cope with the tasks required in an “unbundled” approach. It is important to make the most of scarce legal resources so that people who can deal with many aspects of their legal problem do not access those services which are required for the most vulnerable.
- 5.5. The real challenge is to develop equivalent tiered services which will tackle the most common SWL problems, which new providers are not covering at present, because they are more difficult and there is less of a paying market for them. This is market failure and is a classic area where the state should step in – not to reinstate legal aid, but to support the capital investment, with other key partners, in the development of standardised, commoditised online services. This would make the most of thinly stretched front line providers by giving them expertly developed systems which can be used with more confidence by volunteers and general advice workers, and also by those with the capability to help themselves. The MoJ has already taken a small step in this direction with its online legal aid eligibility checker, available on gov.uk, and with the funding for Advicenow.<sup>24</sup> This should continue on a sustained footing to

<sup>24</sup> <https://www.gov.uk/check-legal-aid>

provide the necessary materials to support effective resolution in court and, wherever possible, without having to go to court, as well as through supporting the development of national telephone and website services.

#### Box 9

##### Using technology to redesign information and advice services

Redesigning advice services to reflect the challenges and opportunities of the digital age rather than simply attempting to digitise existing services was the theme of a seminar we hosted and many meetings we attended. Instead of seeing technology as a challenge to face to face delivery, we view technology as a tool to improve services. Possibilities for its use in the delivery of information and advice include:

- **Niche advice hubs:** The evolution of individual advice agencies with a single niche or specialism, with technology allowing individuals to access a particular hub without too much constraint by geography.
- **Peer to peer communities:** Many individuals turn to online communities rather than websites specifically designed to share information and direct users to advice. Just as there is scope to embed information and advice in physical communities, there is the potential to reach many individuals using links to their online communities.
- **Personalised information:** The increased use of sophisticated information input systems means that information can be tailored to the specific circumstances and needs of an individual, helping to bridge the gap between information and advice. The Rechtwijzer website (<http://www.rechtwijzer.nl/>) in the Netherlands is one of the best examples of this approach (see case study).
- **Supporting collaboration and partnership:** technology can be used to improve the capacity of different organisations to work together, for example by developing common information gathering systems to facilitate referrals or using shared calendars. This approach could also allow agencies to build a stronger evidence base which could then be used to feedback to local and national government.
- **Sharing ideas and good practice:** there is scope to share learning about which approaches to innovation work and which don't, how much investment they require, risks and opportunities and so on. A website containing this type of information could help to reduce the risks of innovation. The "Showcase of Fundraising Innovation and Inspiration" website (<http://www.sofii.org/>) is an example of this approach.

##### Model of Provision

- 5.6. In keeping with this approach, we propose the following model of provision:
- A public legal education system, making full use of the internet and embedding information about SWL issues in community settings locally
  - National helpline and website services, providing information and advice on all aspects of social welfare law, building on and developing current services
  - Local advice networks of generalist and some specialist advisers for each local authority area, providing face to face information, advice and legal support
  - Access to specialist national support for front line agencies.
- 5.7. A public legal education system. The aim of this system would be to provide the general public with the knowledge, confidence and skills needed to deal with law-related issues so that people are better able to help themselves and are less likely to end up in a court or tribunal. Public Legal Education (PLE) is recognised as important in Section 28 of the Legal Services Act 2007 which gives the regulatory objective of "increasing public understanding of the citizen's legal rights and duties" to the

approved front line regulators including the Legal Ombudsman. However action to give effect to this so far has been limited and very little has been focussed on the area of social welfare law – possibly the most difficult as well as the most important area to address, given the cuts in legal aid funding. The importance of PLE was recognised by the Civil Justice Council Report on self-represented litigants which said “Public legal education is the true starting point for helping the public and thereby those who could become self- represented litigants”.<sup>25</sup> More recently, in late 2012, the Attorney General asked his pro bono co-ordinating committee to set up a working group on pro bono and PLE. But these steps fall short of embedding PLE in the delivery of justice services in the same way as public health, and public health education, are an integral part of health services. Specifically we see a need for the MoJ to recognise the strategic importance of PLE as a way of meeting its desire to see people resolving their problems without access to the courts. We therefore want to see PLE form part of the national curriculum, in the same way that personal financial responsibilities are already included, so that young people have knowledge, skills and confidence in the wider areas of legal rights as they move into wider society.

#### Box 10

##### Law Centres and PLE

PLE has always been a significant Law Centre activity. For example, various Law Centres have been conducting, alongside their discrimination casework, public legal education work on human rights and equalities. This has been coordinated through the Law Centres Network and enabled through a grant from the European Union Progress programme. Some Law Centres have truly excelled in their commitment to PLE work. Hackney Community Law Centre has jointly initiated a project called ‘Mind the Justice Gap’, where students from local schools are invited to engage with legal issues through practical problems, thus coming to understand the relevance of law to their daily lives. Wythenshawe Law Centre has a contract with a local housing association to advise tenants on their rental agreements and to ensure they understand their obligations with the aim of avoiding evictions.

- 5.8. We would like to see PLE delivered in a variety of community settings – both general and specialist settings for people with particular needs or issues, for example young people, older people, disabled people, prisoners and asylum seekers:
- Through a variety of educational approaches with a particular emphasis on improving the law-related skills that are vital to successful self-advocacy
  - Through web and app enabled resources that can be accessed anywhere anytime
  - Through partnerships of PLE expertise with law students, lawyers and judges and with community and advice workers
  - Through work in schools to empower young people to tackle the problems of everyday life.
- **The Ministry of Justice should work with the Department for Education, to integrate information about legal rights and responsibilities into the national curriculum on citizenship**

<sup>25</sup> Paragraph 23 in the Executive Summary of the Civil Justice Council report (*Access to Justice for Litigants in Person, November 2011*)

- **The National Advice and Legal Support Fund (see para 6.2) should fund Law for Life and Advicenow to develop a web based public legal education resource for the general public, based upon the Advicenow website**
- **Local advice and legal support plans should include training for key local community based workers and volunteers to act as local problem noticers, navigators of web based information and community legal champions, using Law for Life training modules, focussed on capability.**

- 5.9. National helpline and website services. The aim of these services would be to make it possible for any member of the public to get information and advice on their SWL problem(s) and, where appropriate, to be signposted to suitable face to face or specialist advice or to a website. There are a number of national helplines providing “remote advice” that a significant percentage of the public find it useful to access. Remote advice also ensures that those who live in “advice deserts” or who have mobility, health or caring issues, can still get assistance easily. Current provision ranges from single topic helplines for particular client groups (such as RNIB’s helpline) or for particular aspects of social welfare law (such as Shelter’s housing helpline and the National Debtline) to the two more comprehensive helplines – Adviceline (run by Citizens Advice) and Civil Legal Advice (CLA- run by MoJ contractors). People access these different helplines through a wide range of points, depending on their personal circumstances and where they are most comfortable going for help; these might include searching a website, contacting a charity, going into an advice agency or to their local authority, being told about it by a friend or by a community worker. We think this variety is important and that having a wide funnel of different entry points to each of these different helplines and websites enables a wide variety of user needs to be met, so, we do not consider it either desirable or feasible generally to seek to merge or rationalise them.
- 5.10. But we recognise that these services have capacity problems. Shelter is only able to answer 60,000 of its 140,000 calls and so has not been publicising its helpline; CLA acts as a ‘gateway’ for legal aid, so is only able to provide advice on topics that are still in scope – it is also poorly promoted; Citizens Advice struggles in the face of high demand and is only able to answer 45% of calls. Referral arrangements between these different helplines could also be improved. We therefore think that, in addition to the single topic helplines, there needs to be one national comprehensive helpline, with supporting websites, which can act as a safety net for those who have nowhere to go or whose needs cannot be met by other providers.
- 5.11. Citizens Advice is in the process of developing a new strategy for Adviceline, with the aim of enabling callers to phone a single number, get their questions answered and, where appropriate, get referred to their local bureau. Meanwhile, the MoJ’s CLA line would benefit from being made more comprehensive and being better promoted. We therefore think there is a strong case for:
- Combining these two helplines into one and securing the capital investment required to develop them into one comprehensive service.
  - Developing a telephone service which can either deal with the problem fully when it is asked or refer on to a more appropriate provider (e.g. a single topic telephone or face to face service, face to face general advice or paid for advice where needed).
  - Maintaining a regularly updated and open source database of quality assured providers and websites which is shared by all providers.
  - Exploring different ways of securing the capital investment for such a project. One option could be for a commercial partner to provide the helpline on a free basis in return for; a) being able to develop its own access to the market for good

value commercial services, and, b) as recompense for this access to paid for services, dealing with a specified amount of advice and support on matters which are out of scope and where callers do not have the resources to pay.

- Integrating the national helpline with Law for Life's Advice Now website, which we consider to be the premier generalist website, as well as with Citizens Advice own Adviceguide website.

5.12. We appreciate that this proposal would require extensive discussion and development work. This would need to involve a feasibility study conducted by Citizens Advice, the MoJ and Law for Life to explore the proposal in further detail and to try – if that route is selected – to secure a commercial partner. Although this would require a great deal of work, we believe the “prize” of a comprehensive national, but non mandatory, Advice Helpline, with supporting websites and with links to a variety of specialist helplines and to both commercial and not-for-profit front line advice agencies, is one from which the general public would greatly benefit.

- **In England and Wales, Citizens Advice, the Ministry of Justice and Law for Life should undertake a study, with the help of funding from the National Advice and Legal Support Fund (see para 6.2), to explore the feasibility of combining Adviceline and the Civil Legal Advice helpline into one national comprehensive helpline run by Citizens Advice, possibly in conjunction with a commercial partner and supported by the Adviceguide and Advice Now websites, with links to a variety of single topic helplines and to both commercial and not-for-profit front line advice agencies.**

#### Box 11

##### Learning from others

In the Netherlands, where in the early 2000s the government undertook a large reconfiguration of publicly funded legal advice services, significant time and effort has been put into developing a website to guide individuals through a range of legal problems. The Rechtwijzer website asks visitors to select an area of law and uses a series of questions to guide the individual through the problem, offering personalised and strategic information. The website had been developed collaboratively by the Dutch Legal Aid Board and the University of Tilburg, and we were struck by the good sense of partnership working and shared investment in the necessary new technology. In New South Wales, Australia, a similar (although currently less sophisticated) website is available, associated with a telephone help line. When compared to the provision of information in England and Wales, we took the view that the more interactive and personalised services available in the Netherlands and NSW offered a more accessible and easy to use way of delivering information.

5.13. Local advice networks. The aim of these local networks would be to provide a basic level of information and advice, including some face to face and some legal support, in each local authority area. Some important work has already taken place in recent years in developing local advice networks, most recently through the Advice Services Transition Fund (ASTF) in England, which required advice agencies to submit partnership bids. Local networks would bring together local providers to consider need collectively. Each area's network would vary according to local circumstances and the resources available, but the aim would be to develop a spectrum of provision

ranging from information and generalist advice to more specialist advice and legal support, including, where necessary and appropriate, legal representation. We recognise that in some cases the most appropriate response will be a legal response, or at least the threat of one, and it is therefore important that some of the network's resources are earmarked for this. Each network would need to decide how best to prioritise their limited resources – for example, Avon and Bristol Law Centre has made the decision to concentrate its limited legal resources on casework and representation of cases of strategic importance, with potential to influence case law. In recognition of this, it is important that the networks include private as well as not-for-profit providers and that advice agencies integrate with legal aid providers to ensure cases which require litigation services covered by legal aid are referred on to an appropriate lawyer.

#### Box 12

##### Advice Services Coventry

Advice Services Coventry is a partnership between the independent advice agencies in Coventry, including Coventry Law Centre, Age UK, Student Union Advice Centre, Coventry Refugee Centre, Coventry Citizens Advice Bureau and four other independent agencies. The partnership was formed in 2005 with the aim of coordinating the delivery of advice services in the city, increasing the links between agencies that deliver services and building seamless service pathways for users of the services.

Coventry City Council supports the partnership and rather than asking advice agencies to tender competitively for funding offers grant aid to each organisation in the partnership.

The partnership has a single coordinating website for members of the public, which lists the different types of issue on which individuals may need to seek advice and identifies those agencies in the partnership that may be able to help. The members of the partnership also have a shared online referral system and an agreed protocol for handling referrals and ensuring that individuals receive a joined up service. The shared systems also allow organisations in the partnership to collect consistent information about problems experienced by service users across the city.

Coventry Law Centre has also set up partnerships with non-advice agencies, such as a Healthy Living Centre (for community care support); the city's "Troubled Families" team (for specialist benefits and debt help); and local Community Based Champions (to reach and support young undocumented migrants). Their project with Grapevine, an intellectual disability organisation, provides a case management model where the legal and non-legal matters are addressed simultaneously.

- 5.14. Members of the network would work with the local authority to co-produce a 10 year local advice and legal support plan (see para 7.5), identifying gaps in provision, targeting provision at the most vulnerable and showing how they would use their allocation from the proposed National Advice and Legal Support Fund (see para 6.2), alongside local funding sources, to deliver the plan and how they would ensure quality of provision. Allocations would be based on indices of need for unitary or county authorities in England and for six regional groupings of local authorities in Wales. However, local plans and local advice networks might cover smaller (e.g. districts) or larger (e.g. sub regions like Greater Manchester) areas, depending on local circumstances. Unlike the ASTF which only permitted 25% of the funding to be

spent on provision of services, there would no restrictions on how the allocation from the Fund could be used.

- 5.15. Provision would include encouraging access to website services where appropriate, preserving face to face advice and legal help for those in the greatest need. Networks would be expected to make full use of web-chats and Skype and other digital communication, as ways of delivering convenient services for users and as a way of reaching more people through one-to-many services. Kiosks carrying electronic information in different locations round the area, as pioneered by Cambridge CAB and others, would be another way of extending reach. Some of the provision would be in advice centres, but specialist advisers could also be based in community settings, such as GP surgeries, or in secondary health care settings, such as mental health hospitals or cancer clinics, where they would be well placed to reach the most vulnerable and to advise on debt and other issues contributing to, or resulting from, poor mental health. As indicated in paragraph 3.6, it should be a standard part of the role of all network agencies to provide feedback to local and national government on how their processes could be streamlined to meet users' needs better. Local authorities' own in-house provision on benefits and housing would complement this provision, where appropriate.

#### Box 13

##### Cambridge CAB's Advicehub kiosks: bridging the digital divide

National demand for free advice services has been rising steadily over the last five years, with people experiencing difficulties during the economic downturn. In Cambridge, a city whose population is due to increase by over 20% by 2031<sup>26</sup>, the Citizens Advice Bureau (which also serves the people of South Cambridgeshire, another area undergoing massive growth) is no exception. Struggling to deal with the growing numbers of clients turning up to be seen at their daily drop-in advice sessions, Cambridge CAB turned to innovative technology to find a solution.

With seed funding from the Big Lottery Fund and additional financial support from others, including the Nominet Trust, 'Advicehub' was launched in 2009. With the objective of increasing people's access to advice right across the county of Cambridgeshire, the Bureau has set up a network of 19 Advicehub self-help touchscreen kiosks in community centres, GP surgeries, libraries and hospitals, where people can get access to online generalist and specialist advice from within their own communities. Trials of video specialist advice sessions are currently taking place, where more complex issues can be addressed by an adviser in one part of the county with a client elsewhere, using software to share case documents and record outcomes.

In the last twelve months, the kiosks have been used by over 65,000 individual users, with the main topics being benefits, debt and housing. Cambridge CAB has recently been successful in securing additional funding from the Big Lottery Fund to develop Advicehub over the next two years, with provision for installing another ten kiosks in their catchment area.

- **The Advice Services Umbrella bodies should ensure their local members contribute to regional and/or local advice networks.**

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<sup>26</sup> The Cambridgeshire County Council Research Group (CCCRG) mid-2009 population estimate for Cambridge City is 119,100. The population has increased by 8% since 2001 and is forecast to increase by a further 28% by 2031

- **In England, unitary authorities and county councils should encourage and support the development of local advice networks for their areas to provide a basic level of information and advice, including some face to face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund (see para 6.2).**
- **In Wales, local authorities should encourage and support the development of six regional advice networks to provide a basic level of information and advice, including some face to face and some legal support, as recommended in the Welsh Government's Advice Services Review, through a combination of local funding and support from the National Advice and Legal Support Fund.**

5.16. Access to specialist national support for front line agencies. The aim would be to ensure that all front line agencies had access to specialist support. This would be provided by specialist bodies, such as Shelter (housing), CPAG (benefits) and others, as well as by national umbrella bodies like Citizens Advice, who have a specialist centre in Wolverhampton providing advice to bureaux on benefits, employment and other issues. This advice is provided in the main by telephone, but also includes briefings and reference material, as well as training. Part of the costs of provision can be met by subscription fees, but there is also a need for some core funding to sustain the various services.

- **The National Advice and Legal Support Fund (see para 6.2) should ensure that front line agencies have access to the specialist support they need for working on complex cases through funding national specialist advice agencies**

### **Implications for advice provision**

- 5.17. Those providing information and advice need to:
- deliver advice in a manner which addresses the needs of the whole person (and sometimes their family)
  - ensure that clients with multiple advice needs get all their problems resolved at the same time (avoiding revolving door demand)
  - refer clients to those advice providers best able to help them (preventing referral fatigue) and
  - provide clients with capabilities through the advice process so that they are better able to solve problems themselves in future or encouraged to seek help earlier (preventing repeat demand).
- 5.18. Approaches that deliver advice in convenient settings (workplace, GP surgeries and hospitals, schools, supermarkets, local communities, with family and friends) are also more likely to succeed in reaching people at an earlier stage. Responding to users' needs by enabling them to talk to specialists as early as possible in the process, rather than having to go through too many gateways, have also been shown to be effective (see Advice Portsmouth case study and Advice UK's systems thinking/demand led approach). Our discussions with the Design Council identified some key principles for good design of services, which we commend to those designing advice services:
- Focus on user needs
  - Observe people in context, don't just ask them their opinions
  - Map needs as customer journeys
  - Create simple prototypes and test them out
  - Improve good ideas, kill bad ideas



- Iterate until you have an elegant solution.

#### Box 14

##### Advice Portsmouth

Advice Portsmouth is part of the YOU Trust charity, which runs a number of charitable projects. In 2006 they won the contract with the Legal Services Commission to run a Community Legal and Advice Centre (CLAC) with Portsmouth CAB as their sub-contractor. However, they found that the LSC's processes (and, in particular, the 'matter starts' regime) got in the way of providing an integrated service to clients and therefore prevented clients getting what they needed (which was primarily advice concerning debt and benefits. The CLAC had also found they had to spend a lot of time interviewing clients repeatedly to collect data required by the LSC and it was taking a long time to actually address clients' problems. As a result a lot of clients (around 33%) left the advice centre without ever having their problems dealt with.

When the CLAC came to the end of its first three years, Portsmouth City Council decided instead to tender for a new contract focussing on issues such as how well the contractor would relate to clients, how it would learn about customer demand and how it would design a service that achieved outcomes for clients. Advice Portsmouth won the contract. Its approach is to try and ensure the client gets to see a specialist as quickly as possible after arrival, rather than having to go through a series of interviews and gateways. Instead of designing services around categories that the service or funder dictates, its approach is to listen carefully to what matters to clients and to understand their problems in the round, since people usually have multiple problems. Staff's job descriptions focus on service delivery principles, rather than specifying what the post holder is required to do; they highlight the importance of listening skills and the ability to work alongside people using the service, rather than simply technical knowledge.

If a member of staff does not have all the technical expertise to deal with a client's problems, rather than referring them on to someone else, they will get a colleague to join them, as soon as they are free. By getting support from other colleagues, rather than referring the client to a specialist in another field, the whole team has been up-skilled and more confident to deal with any issue presented. Satisfaction levels are now very high and the number of clients seen has increased.

- 5.19. Independence. Although advice services will often be funded by different parts of government and by other agencies, such as Housing Associations, we believe it is important they are, in the main, delivered independently by not-for-profit agencies or solicitors that are not part of the services and structures about which people are seeking advice. Independent advice is more likely to be trusted because it is better placed to respond to clients' (as opposed to service providers') needs and it avoids potential conflicts of interest. It also has the added bonus of advice agencies being able to provide independent feedback to service providers, which we see as a vital part of reducing failure demand and which should be built into the service specification.

## Quality

- 5.20. Few consumers of social welfare law advice and legal support use them on a sufficiently frequent basis to assess and respond to quality. Consumers can judge whether a service is easy to access or treats them appropriately, but are unlikely to be able to tell whether the advice they are given is accurate or whether an outcome is better or worse than might be expected. Similarly, it is difficult to find out whether organisations are financially robust and able to provide continuity of service. Therefore, we believe it is extremely important for all advice and specialist legal services receiving public funding from any source, to have an appropriate externally assessed quality standard, including peer review. We support the retention of peer review as a quality assurance measure for those organisations holding legal aid contracts. The LSC used to publish very helpful 'Improving Your Quality' guides, which set out what peer reviewers were looking for and how to demonstrate compliance with this in your files; but, regrettably, these are no longer being kept up to date.
- 5.21. There are currently a number of quality standards relevant to legal advice and support. Organisations choose which one(s) to adopt depending on a range of factors including the services they deliver and the requirements of their funders/regulators. Some are general management standards which could apply to any organisation, such as the ISO 9000 series, or PQASSO in the not-for-profit sector, and some are specific to the legal advice sector, such as the Law Society's Lexcel standard, the LAA's Specialist Quality Mark (SQM), or the Advice Quality Standard, originally developed by the LSC as the General Help Level of the CLS Quality Mark, and now owned by Advice Services Alliance (ASA). We believe that specific quality standards that are designed for advice and legal services provide the best quality assurance for consumers. There is no one standard that is designed to cover all the services included in our model of provision; but we believe that is appropriate as services differ so much, for example advice services giving brief advice to large numbers of people operate in a different way from specialist legal services handling small numbers of litigated cases.
- 5.22. The table below shows where the leading standards overlap and where they diverge.

<b>Standard covers:</b>	<b>AQS</b>	<b>Lexcel</b>	<b>SQM</b>
Organisational sustainability	Yes	Yes	Yes
Management systems	Yes	Yes	Yes
Internal systems of supervision/quality of advice	Yes	Yes	Yes
General advice	Yes	No	No
General advice with casework	Yes	No	No
Specialist advice	No	Yes <sup>27</sup>	Yes
External peer review	No	No	No

- 5.23. General Advice. The "Advice Quality Standard" was first used to describe a standard developed by all the major advice networks under "Working Together for Advice" funding from the Big Lottery Fund between 2008-2010, and which included a peer review of advice. The independent evaluator's report praised the "quality and value of the product which has been developed", but unfortunately due to a lack of funding it was not possible to roll the standard out after the end of

<sup>27</sup> But only for organisations employing solicitors.

the project in 2011. The current “Advice Quality Standard” is not the standard described above but is the new name for the General Help Quality Mark transferred from the LSC. The ASA has set up a development group to look at how to improve the current AQS but warns that it will remain difficult to make the transition to the Working Together for Advice AQS standard without significant new funding. We support the ASA in its efforts to find a way to make the AQS self-financing, through a levy on assessment fees or other mechanisms.

- 5.24. Specialist Advice. The Special Quality Mark (SQM) provides recognition for specialists, whether or not they are legally qualified (e.g. local authority welfare rights units without solicitors); but the LAA has not been able to allocate resources to it, so it could simply wither away. This would leave non-legally qualified specialists without an appropriate accreditation scheme as Lexcel only covers organisations with solicitors. We believe that the AQS, which already covers casework, could be further developed to cover specialist legal work and so ensure that suitable accreditation was available for all levels of service. It could be very attractive to Citizens Advice and Advice UK members offering both generalist and specialist advice to be accredited to different levels of the same standard as they were in the days of the CLS Quality Marks.
- 5.25. Passporting. There is already some degree of passporting between standards. For example, the LAA will accept current accreditation to either the SQM or Lexcel in order to hold a legal aid contract, and Citizens Advice Bureaux which pass the Citizens Advice membership audit are passported to accreditation under the AQS. The Advice Services Review carried out by the Welsh Government had a recommendation to “Develop a Framework of Standards for Advice and Information through the National Advice Network based on existing quality marks and standards”.<sup>28</sup> This recommends better passporting between different standards and the development of a single register of all quality assured providers. We support this recommendation.
- **The Legal Aid Agency should retain peer review as a quality measure for organisations holding legal aid contracts and should update the ‘Improving Your Quality Guides’ and post them on its website**
  - **All publicly funded advice and specialist legal services should be accredited to an appropriate externally assessed quality standard; the Advice Quality Standard (AQS), Lexcel or the Specialist Quality Mark.**
  - **There should be further development of passporting between the various quality standards being used in the legal sector. In particular:**
    - **The Law Society should issue guidance for solicitors working in the not-for-profit sector when carrying out its review of the Lexcel standard.**
    - **The Advice Services Alliance should incorporate external peer review into the AQS**
    - **The Advice Services Alliance should adapt the ‘Advice with Casework’ level of the AQS to cover specialist advice.**

### **Outcomes reporting**

- 5.26. There is no widely used reporting framework for advice outcomes across the advice sector and providers often have different reporting measures for different funders. There has been some work to develop outcome tools but in practice providers have found these time consuming to implement. Advice agencies also

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<sup>28</sup> Advice Services Review – Final Report March 2013

often lack capacity to collect long term outcome data, particularly where outcomes accrue to government departments who are not funders of advice, such as DWP, Department for Education and Department for Communities and Local Government. It is also challenging to gather evidence of advice preventing a bad outcome happening. As a result, collection often focusses on short term benefits to clients in terms of financial gains or simply reporting the number of people seen. Whilst these outcomes are easier to measure they can give a misleading picture of the work that advice agencies do and the value their services have.

- **The Big Lottery Fund should work with the national umbrella organisations to develop a common outcomes framework which clearly articulates the value and impact of advice and includes outcomes from different types of advice work, such as prevention, early intervention and strategic use of the law.**

5.27. The framework will be the first step towards greater standardisation of reporting measures across the sector but it will still give providers some freedom to come up with appropriate indicators towards these outcomes. We do see a role for consolidating the learning from projects which have developed ways of measuring advice and there should be greater learning and sharing of tools where they are not already publicly accessible. It is not always going to be realistic to expect agencies to measure some of the longer term outcomes of advice and we see a greater role for collaboration with universities in measuring long term health outcomes as well as with other public delivery agencies that refer their clients for advice. We also see a gap in terms of collection of outcomes data from people who access advice services online and new tools should be developed in tandem with new methods for delivering advice online and remotely.

- **The National Advice and Legal Support Fund (see para 6.2) should fund research into measuring the outcomes of advice services, including outcomes for people who access advice services online.**

### **Redesign of services**

5.28. Local infrastructure. Advice organisations should be constantly reviewing ways of developing their services, or increasing efficiency and sustainability, and this may involve partnering or merging with other organisations. At a local level, we believe there is considerable scope for local advice agencies to work more closely together. In some cases, they may decide to merge into one organisation in order to reduce back office costs and overheads, whilst retaining different outlets for their services, as the Law Centres in South West London have done through improved use of IT, streamlining administrative systems and sharing other backroom functions. Funders can often play a key role in helping with these developments, both by helping fund the costs of merger, but also by kick-starting discussions. In Sheffield, a combination of factors that included the need of the local authority to make savings, concern about consistency of advice across the city and the existence of a Sheffield wide membership network of welfare rights organisations (Community Legal Advice Services for South Yorkshire) led to a co-produced approach with the local authority and CLASSY members (see case study). It is important to remember that these developments take time and cost money, but in the long run redesign of services in this way, by focussing on the needs of users (in line with the systems thinking approach), can deliver the best results, as well as being more cost effective.

Box 15

Moving to a single welfare rights service in Sheffield

Like a number of cities Sheffield has developed a wider range of small welfare rights organisations. By 2011 there were at least 19, many were neighbourhood services, some serving particular communities particular ethnic minority communities or the deaf and others providing a specialist service on debt or mental health.

Reductions in funding to local government, welfare reform and the economic crisis all meant that there was a growing concern that this service model was not sustainable or capable of providing consistent quality across the city. The intention of the local authority to consider moving from grant aid to formal procurement to address these deficits mobilised the sector through its membership network CLASSY to reject its traditional approach - lobbying councillors and absorbing cuts. Instead a decision was made to pro-actively engage the local authority at cabinet level - building a co-produced relationship between trustees and elected members. At an early stage it was clear that the local authority was attracted to the quality kite mark of the Citizen Advice brand with existing independent welfare rights organisations generally seeing the opportunity to become part of a city wide bureau as positive. This co-produced approach has led to a collaboration which aims to establish a single city wide service created from existing CLASSY members.

The process to create this single organisation has not been an easy one, with many organisations concerned they will lose focus on their client groups and concerns about the financial stability of the new organisation. This has meant a robust focus on due diligence and also challenging debate on the principles that underpin the new organisations constitution. The intention is that the new organisation Sheffield Citizens Advice and Law Centre will be established in the Autumn of 2013.

- 5.29. National infrastructure. We believe that the funding environment will necessitate reform of the current national infrastructure for advice and legal support, in the same way as is happening at the local level. Although, it would seem logical to have just one umbrella body for the whole of the advice sector, the different characteristics, brands and roles of the agencies in the sector makes this difficult to achieve without losing their distinctive features. Furthermore, we have been impressed by the innovative work done by Advice UK (e.g. around systems thinking and managing failure demand) and by its capacity to continue to attract new members in the current financial environment, as well as by the work the Law Centres Network has been doing on collaborative working and on measuring impact. So we would not want to see their roles in any way diminished.
- 5.30. Although the financial situation may mean there are eventually just two umbrella bodies – one for Citizens Advice Bureaux and one for all other advice agencies and law centres – we consider it more important, in the first instance, that the three 2<sup>nd</sup> tier umbrella bodies take steps to share their resources more openly, particularly those that have been developed with the help of public funding. For example, we would like to see Citizens Advice making its information system, Adviser Net, freely available to other quality assured advice agencies. Given the extent of its public funding (£20m from BIS) and its strategic importance in the

sector, we would also expect Citizens Advice to be more outward facing and exercising a stronger national leadership role in the sector (more akin to the role played by Citizens Advice Cymru in Wales and the role it often plays at the local level) by working with the other two 2<sup>nd</sup> tier umbrella bodies on ways of addressing the challenges they, their members and their service users face. This is particularly important, given the loss of funding that the Advice Services Alliance, the 3<sup>rd</sup> tier umbrella body for the sector has experienced, and which has put its continued existence in doubt.

- **Local advice agencies should explore the potential for sharing back office functions or merging their organisations to reduce costs and increase sustainability- and thereby provide a better service to their users.**
- **Citizens Advice, Advice UK and the Law Centres Network should work together more closely, sharing good practice, such as Advice UK's systems thinking work, and sharing their resources more, particularly those, such as Citizens Advice's Adviser net, which have been developed with the help of public funding. Citizens Advice should exercise a stronger national leadership role for the sector in England by working with the other two 2<sup>nd</sup> tier umbrella bodies on ways of addressing the challenges they, their members and their service users face.**

5.31. Private sector legal providers, both solicitors firms and barristers chambers, will continue to have an important role to play, although those who have depended on legal aid for funding their social welfare law services have had to reduce or even end these services. There are also concerns that the proposals in the Government's recent Transforming Legal Aid consultation paper will further reduce the capacity of private providers to continue to undertake public law work. We propose in the future that they should be involved in the development of local advice and legal support plans and should be able to bid for funding from the local allocation of the National Advice and Legal Support Fund alongside not-for-profit agencies, but they would need to be able to show how their service complements other services for the area. Partnerships with the not-for-profit sector will be one way of demonstrating how their areas of expertise fit with other local provision.

## 6. COSTS

6.1. We estimate that the cost of ensuring a basic level of information and advice, with some legal support, on social welfare law issues in England and Wales in 2015, as outlined above, will be at least £500m per year. Actual costs will depend on local circumstances and will need to be further researched as part of the process of taking forward and developing our recommendations. However, the two most significant cost items are the National Helpline and Website services and the local advice networks. A significant amount of on-going funding is already being spent on these and other items, but what is also needed is some additional funding to develop and supplement this provision in line with our recommendations. We therefore propose the following allocation of funding:

- £400m per year on-going funding of current provision from the remaining legal aid for social welfare law (£61m), from continued local government funding (£180m) and other current sources (£159m), such as the Money

Advice Service, Cabinet Office, Big Lottery Fund and government departments, such as BIS.

- £50m new funding per year from central government to create a National Advice and Legal Support Fund to help implement the changes we are proposing.
- A minimum of a further £50m additional funding per year from a variety of other statutory, voluntary and commercial sources (e.g. Money Advice Service, NHS, Big Lottery Fund, Housing Associations, trusts and foundations, charities, lawyer fund generation schemes, pro bono, fees etc), to supplement and complement the new National Fund.

6.2. We believe there is a strong case for central government investing some of its resources in a National Advice and Legal Support Fund to help fund our proposals. The provision of advice and legal support can have a major beneficial impact on the lives of service users, resulting in savings down the line to the state, as well as increased income for clients. At the same time, there is also a very real risk of system overload as a result of welfare reform, increased self-representation in the courts, and increased caseloads for MPs and councillors. Advice and legal support can also help government departments promote their own objectives.

6.3. We are therefore recommending an annual contribution of £50m pa for 10 years funding from central government (in addition to continuing legal aid) to help fund these proposals. Ten year funding, reviewed every two to three years, is in line with the recommendations of the Early Action Taskforce for early action initiatives, and has been welcomed by the Chair of the Public Accounts Committee, since it allows time to plan investments that can help prevent problems developing and achieve savings at a later date. It also provides funding stability, which organisations like the Law Centres Network have highlighted as being very important for work with vulnerable people, where the impact of constant pilots and uncertain funding is very damaging. It is also a waste of time and expertise to be unable to plan long term, and risk losing staff with skills, knowledge and expertise.

6.4. At the same time, we are calling for further contributions of at least £50m from increases in other national and local sources which all have an interest in funding advice and legal support (e.g. Money Advice Service, NHS, Big Lottery Fund, Housing Associations, trusts and foundations, charities, lawyer fund generation schemes, pro bono support, commercial fees etc). These funding sources would be in addition to those provided by central government for the National Fund and would be subject to their own application processes (see paras 8.5 onwards), but we believe they could help ensure that the recommendations in our report are implemented in an integrated and sustainable way.

- **The next UK Government should establish a National Advice and Legal Support Fund of £50m pa for 10 years (£500m in total) for England and Wales to be used for funding national and local advice and legal support work, which will help reduce the costs to the state, that would otherwise have occurred over the 10 year period.**
- **Parliament's Public Accounts Select Committee and the National Audit Office should review periodically the effectiveness of the UK Government's national strategy (see para 2.9) and the National Fund.**

6.5. We propose that 10% of the Fund be used for commissioning national initiatives (e.g. national helplines development, national public legal education and specialist support) with 90% being allocated to local authority areas on a per capita basis in accordance with need. The breakdown of the National Fund's annual expenditure is given in Annex 3.

- **The National Advice and Legal Support Fund should allocate 90% of the fund (£45m pa) to local authority areas in England and local authority regions in Wales on a ring fenced, per capita basis in accordance with need, with the remaining 10% (£5m pa) going to national initiatives.**

## 7. PLANNING AND DELIVERY MECHANISMS

7.1. National planning, commissioning and coordination. At the national level, we see there being a need for a mechanism(s) for:

- Ensuring, as far as possible, that people have access to justice
- Developing a strategic overview, researching and monitoring the need for advice and legal support and identifying the areas and groups in greatest need and ensuring planning for these
- Ensuring those government departments with the greatest interest in the provision of advice and legal support contribute towards its costs
- Identifying, in consultation with key stakeholders, national initiatives to meet these needs, including national helplines, websites and other new technology developments; national infrastructure and specialist support; and research and monitoring
- Determining the proportion of national funds required to fund national initiatives
- Allocating the remaining national funds to local areas according to need, to ensure a basic level of provision in all areas
- Overseeing quality and helping ensure common outcome reporting mechanisms
- Encouraging best practice in commissioning advice and legal support, including where appropriate joint commissioning between commissioners and co-production with the advice sector.

7.2. On balance, we propose that rather than seeking to establish a new body or transfer responsibilities to another government department or agency, the Ministry of Justice (MoJ) should take on responsibility for these roles, reflecting the need for information and advice and legal aid to be viewed as part of the same spectrum of support for citizens in securing access to justice. The MoJ would have the lead policy role, but should commission the Big Lottery Fund to act as its funding agent in managing and distributing the National Advice and Legal Support Fund. The Big Lottery Fund has had extensive experience of managing advice services funding programmes, having made more grants in this sub sector than any other part of the third sector. It has also had wide ranging experience of managing grant programmes on behalf of government, both in the advice field (including the current Advice Services Transitional Fund) and in other fields, such as health and childcare. It is therefore well placed to work with the MoJ in this way and has indicated that it would be pleased to work with partners, including government, to look at the proposals in our report and the role the Big Lottery Fund can play.

- **The next UK Government should place responsibility with the Ministry of Justice for national policy on advice and legal support on problems relating to social welfare law in England.**



- **The Ministry of Justice should ensure as far as possible that citizens have access to information, advice and legal support on social welfare law issues.**
- **The Ministry of Justice should commission the Big Lottery Fund to manage the distribution of the National Advice and Legal Support Fund in England.**
- **The Welsh Government should determine how it wishes to manage its share of the National Advice and Legal Support Fund in Wales.**

7.3. Local Planning, Commissioning and Co-ordination. At the local level, we see there being a need for a mechanism(s) for deciding how best to spend an area's funding allocation from the Big Lottery Fund. This would involve:

- Reviewing existing provision and funding
- Identifying areas and groups in greatest need (drawing on the Joint Strategic Needs Assessment and similar assessments, including information about levels of debt)
- Developing a consistent strategic approach and planning local provision in consultation with key stakeholders
- Marshalling other local resources to meet these needs (e.g. from local government, DWP and allocated national funds) alongside the allocation from the National Fund
- Applying Community Budgeting approaches to the coordination of local funds
- Helping providers access other sources of funding (e.g. Clinical Commissioning Groups and Housing Associations)
- Commissioning services to meet these needs; inviting agencies to say what they can deliver for set amounts of money, rather than trying to specify outputs and competing on price; more bottom-up and less top-down approaches.
- Promoting joint commissioning (e.g. with health, youth and housing services)
- Monitoring local provision.

7.4. Identifying need is an essential prerequisite for effective planning, targeting and resource allocation. It is particularly important for commissioners to have data about needs, as opposed to just relying on service utilisation data. Joint strategic needs assessments are an important starting point, but we believe they could usefully be developed. By getting access to data about the level of indebtedness in the local authority area, commissioners would be much better placed to know what services were needed and where they should be targeted and citizens would be much better placed to campaign for these services to be provided. The best source of data is that held by Experian on behalf of a range of financial institutions through the Credit Account Information Sharing (CAIS) system. This data covers individuals' financial status, including their indebtedness and creditworthiness. If this data could be made available on an aggregate basis (e.g. by ward and by local authority), this could inform the planning of services. However, this would require the Government to reach agreement with Experian about sharing this information with commissioners. There are some voluntary organisations which have relevant good quality information which is available at local authority and national level. Two of the most relevant are Citizens Advice and Step Change. There are some examples (for example the Leeds Joint Strategic Needs Assessment) where this information is used by commissioners but this is not the norm. We also welcome the development of Asset-Based Community Development as a means of identifying and building on an area's strengths, as well as its weaknesses.

- **The Big Lottery Fund should base indicators of unmet need for advice and legal support on currently available data and should use them to determine each area's allocation from the National Fund.**

- **The Big Lottery Fund should publish the indicators used to allocate the Fund to different local authority areas in England.**
- **The UK Government should reach agreement with Credit Account Information Sharing (CAIS) for data on indebtedness to be shared at a local population level on an annual basis with commissioners.**
- **The UK Government should support key national welfare rights providers to work together to share their intelligence more systematically with local commissioners.**

7.5. We think local authorities (county councils and unitary authorities in England and local authority regions in Wales) should be responsible for ensuring adequate arrangements are in place for planning local advice and legal support services. These arrangements could include the local authority co-producing a plan, working in partnership with the local advice sector, or could involve the local authority commissioning another agency(ies), such as the Citizens Advice Bureau, to produce the plan in conjunction with others. We recognise the following issues would need to be addressed:

- those local authorities who currently invest little or nothing in advice and legal support should be encouraged to do so
- national funds allocated to local areas should be additional and not used by the local authority to replace their own funding
- independent advice and legal support needs to be provided, not just in-house local authority provision
- The needs of people in institutions outside their “home” local authority area (such as prisoners, people in secure hospitals and detainees in immigration centres) should be addressed
- good practice in commissioning needs to be developed, especially given most local authorities’ lack of experience in commissioning advice and legal support services
- Specialist provision (e.g. legal representation) may sometimes need to be commissioned on a wider geographical basis

7.6. We propose the following ways of addressing these issues:

- Local advice and legal support plans should cover local authority areas or groups of areas depending on geography (e.g. sub-regions, unitary, county or district authorities in England and six regional groupings of local authorities in Wales)
- The Big Lottery Fund should publish the principles which it believes should underpin these plans in England
- Allocation of funds from the National Fund should be conditional on these plans
- Allocations to each area should be ring-fenced and publicised, making it harder for local authorities to use the funds in other ways
- Local authorities should jointly commission specialist advice where appropriate
- Local advice and legal support plans should be published and local authorities should be required to report annually on achievements against planned outcomes.

7.7. We considered, but rejected the idea of introducing a statutory requirement on local authorities to review and make provision for independent advice and legal support within the resources available, which we believe would not command support from either national or local government. However, there is a duty in the Care Bill (2013) in England, which requires local authorities “to establish and maintain a service for providing people in its area with information and advice relating to care and support for adults and support for carers”. Amongst other matters, the service must “provide

information on how to access independent financial advice on matters likely to be relevant to adults who have needs for care and support...and to identify matters that are or might be relevant to their personal financial position.” This duty provides a useful lever for advice agencies to use in their discussions with local authorities.

- **Each local authority (county councils and unitary authorities in England and local authority regions in Wales) should be under an obligation to make arrangements for the preparation of a local advice and legal support plan in conjunction with the local advice sector, including local commercial providers, either through co-producing the plan or through commissioning a lead organisation, to carry out this work**
- **Each local authority should set out and publish an assessment of advice and legal support needs for its area, including the needs of people in institutions outside their ‘home’ local authority area**
- **Each local authority should publish its local advice and legal support plan, setting out objectives, required outcomes, the resources to be devoted to meeting needs and the timescale for review**
- **Each local authority should decide how best to spend its allocation from the National Advice and Legal Support Fund to help implement this plan, taking account of the importance of independent advice provision and any potential conflicts of interest**
- **Each local authority should publish a progress report on the implementation of their local advice and legal support plan every three years**
- **The Big Lottery Fund should develop guidance for local authorities and the local advice sector on the preparation of local advice and legal support plans**
- **The Big Lottery Fund should only allocate resources to an area where it and the Ministry of Justice are satisfied that a needs assessment and a delivery plan are in place and that these are appropriate**
- **The Big Lottery Fund should develop best practice principles for local authorities on commissioning advice and legal support**

7.8. Our proposed delivery mechanism is significantly different from the former Legal Services Commission in that we envisage most commissioning of advice and legal support services being undertaken by the local authority, but with a requirement to co-produce local advice and legal support plans with the local advice sector. Management and distribution of the National Advice and Legal Support Fund will be the responsibility of the Big Lottery Fund, which has extensive experience of funding the advice sector. This delivery mechanism is in keeping with the government’s emphasis on localism and utilises existing bodies, rather than seeking to reinstate an old one, such as the Legal Services Commission, or creating a new one.

## **8. FUNDING**

8.1. Overall approach to funding. The social welfare law advice sector (not-for-profit and private) is faced with major cuts in legal aid for social welfare law (£89m) and local authority funding (c. £40m). We therefore want to encourage a broader mix of funding than hitherto, including making full use of charging fees for those who can afford to pay; drawing on a range of national and local government funding sources; developing more ‘polluter pays’ approaches, including for DWP (for faulty assessments by their contractors) and financial institutions (for contributing to indebtedness); mobilising a wider range of charitable funding sources; and pro bono and voluntary support. In particular, we believe there is the possibility of

securing some increases in funding from the Money Advice Service, the local NHS, Charities, Housing Associations, the Big Lottery Fund, lawyer fund generation schemes and trusts and foundations.

- 8.2. Advice and legal support services receive, or could potentially receive, funding from five different sources:
- National public sector funding, including Ministry of Justice (legal aid and grants), Cabinet Office and other government departments, such as the Department for Work and Pensions (DWP) and the Department for Business Innovation and Skills (BIS)
  - Local public sector funding, including local authorities, the local NHS and the local Prison Service
  - Voluntary funding, including charities, trusts and foundations, housing associations and volunteering support
  - Commercial sector funding, including sponsorship, fees, insurance, creditor contributions and pro bono support
  - Other sources of funding, including Big Lottery Fund, Money Advice Service, Social Impact Bonds and Lawyer Fund Generation Schemes.

Further details of each of these sources is given below.

### National Public Sector Funding

- 8.3. National Advice and Legal Support Fund. We propose that the National Fund is financed from three main sources:
- Ministry of Justice, as the lead department with responsibility for ensuring access to justice
  - Cabinet Office, as the lead department for the not-for-profit sector, and as a current contributor (with funding from the Treasury) to the Advice Services Transition Fund (ASTF), which ends in 2015. The ASTF has funded partnerships in 226 of the 325 unitary or district councils in England to help transform service delivery; however, only 25% of the funding can be used to fund direct provision of advice, whereas the National Advice and Legal Support Fund should be able to fund 100% of the costs of direct provision.
  - Department for Work and Pensions (DWP), as the government department that gives rise to most of the need for advice and legal support, both through the number of appeals against its decisions and through the Welfare Reform changes it is introducing. We support a "Polluter Pays" approach whereby the DWP should be required to contribute towards the cost of the demand for advice it is creating (see para 3.7), as well as helping meet the costs involved in introducing its reforms. The latter was recognised by the Public Accounts Select Committee in its report on DWP's Job Centres: "Some people will need help to manage claims and job searches online, and this is likely to increase the burden on third parties, such as libraries and Citizens Advice—at a time when council and third party welfare services are under pressure. The Department should ensure that there is sufficient support in place to assist vulnerable claimants. It should also include an assessment of the burden on third party advisers in helping people online as part of its monitoring of online take-up under Universal Credit and predecessors such as Jobseeker's Allowance Online." DWP is currently providing some funding to local authorities to assist with the cost of introducing Universal Credit, some of which can be used to fund advice charities.

- **The National Advice and Legal Support Fund should be funded by annual contributions from the Ministry of Justice (£16m), Cabinet Office/Treasury (£18m) and DWP (£16m)**
- **The Ministry of Justice's contribution to the National Advice and Legal Support Fund should be funded from savings resulting from improved case management of courts and tribunals and from the £50m savings on civil legal aid funding for the not-for-profit sector (=£16m)**
- **The Cabinet Office's contribution to the National Advice and Legal Support Fund should be a continuation of funding provided by the Treasury for the Advice Services Transitional Fund (=£18m, including the provision for Wales)**
- **DWP should contribute the balance of the £50m National Advice and Legal Support Fund (=£16m) and should finance its contribution in part or in whole through penalties paid by contractors, such as ATOS and Capita, for faulty ESA/PIP assessments that exceed an agreed level**

8.4. The Department for Business Innovation and Skills provides (£20m) core funding to support Citizens Advice work. Since Citizens Advice is the only national advice umbrella body to receive funding of this kind, we believe it is important that it shares the resources it is able to develop with this funding more widely within the advice sector (see para 5.30).

#### Local Public Sector Funding

- 8.5. Local authority funding. In the past, many local authorities have had welfare rights units of their own. The number of these has reduced considerably, although in Wales, every local authority has at least one welfare rights worker and five authorities still have units of five to six people. Instead, local authorities have increasingly supported not-for-profit provision, including Citizens Advice Bureaux, which received £76m in England in 2010/11 (reducing to £71m in 2013/14), independent advice agencies (which Advice UK estimates received £65m in 2012/13) and Law Centres (which received £7.1m in 2010/11). There is no definitive estimate of how much funding local authorities provide the not-for-profit sector as a whole in England, although the Cabinet Office's Review of Not-for-profit Advice Services (2012) estimated it at c. £220m in 2010/11. It is still too early to say how much this funding is going to reduce, as a consequence of the cuts in central government grant to local government (33% up to 2015 with a further cut of 10% in 2015/16). One potentially positive development is the transfer of public health funding from the NHS to local government, as it is this element of former Primary Care Trust funding that has often been used to fund advice services in health settings. We have therefore assumed that local authority funding will fall from c. £220m in 2010/11 to £180m in 2015/16.
- 8.6. Health and Wellbeing Boards in England and Local Service Boards in Wales will have an important role in coordinating and developing strategies and commissioning policies for services to meet the needs of their areas. Through playing the leading role on these bodies, local authorities can also play an important role in helping marshal local funds to support local advice and legal support plans, as part of community budgeting approaches. In some areas they may wish to use the Health and Wellbeing Board as the forum for discussing and developing the plan. Local authorities have also received funds from DWP to help implement the welfare reforms, but the indications are that not much of this is being used to commission services from the not-for-profit sector. Partnership working, such as the partnership between Macmillan and Glasgow City Council

(see case study) is something with considerable potential for development. For all these reasons, the Commission sees local government continuing to be the most important funder of advice services in the future.

#### **Box 16**

##### Macmillan/Glasgow City Partnership

The service started off as a three way partnership in January 2009 but by the beginning of 2012 had grown to encompass 10 partners, spanning health and community care, to provide an innovative and specialist financial support service to people with cancer and a range of other long term conditions. In addition to benefits advice, people are supported with debt advice and the service has supported Macmillan's financial guidance service pilot. The model also encompasses three dedicated social workers. The partnership has helped 8,500 people achieve over £22m in financial gains for service users. It has also generated a number of efficiencies for Glasgow City Council including an increase in Council Tax collection rates; reductions in eviction and homelessness; and efficiencies for the revenues and benefits service. The success of the service has been recognised with a number of awards including the COSLA president's prize for the best Scottish local authority service of any type and Health & Social Care partnership of the year (Local Government Chronicle/LGA award) in March 2012.

- **As part of the process of co-producing local advice and legal support plans in their areas (see para 7.5), local authorities should make appropriate financial provision for the delivery of the plan, using their mainstream budgets, public health budgets and their ring fenced allocation from the National Advice and Legal Support Fund**
- **As part of the process of co-producing local advice and legal support plans in their areas (see para 7.5), local advice agencies in England should show how they can help their local authority comply with its duties under the Care Bill 2013 to provide information and advice (see para 7.7)**
- **The Health and Wellbeing Boards in England and Local Service Boards in Wales should be consulted regarding the local advice and legal support plans for their areas (see para 7.5)**
- **Local authorities should use their local contacts and networks to help local advice agencies access other sources of local funding, such as the NHS and Housing Associations**

8.7. NHS Clinical Commissioning Groups. Primary Care Trusts (prior to April 2013) and now Clinical Commissioning Groups are an important funder of not-for-profit advice and legal support in England, both in community settings, such as GP surgeries, and in specialist settings, such as Mental Health Trusts (see Sheffield Mental Health CAB case study) and cancer clinics, where advice services sometimes form part of the patient pathway. In Wales, the Government's 'Better Advice, Better Health' programme has provided funding to Citizens Advice Bureaux to provide advice in health settings; the Local Health Boards also provide some funding. The rationale for this funding is graphically spelled out in an evidence review of local benefits advice services prepared by Macmillan Cancer Support: "One of the people interviewed even commented that financial

difficulties were ‘more of a worry than the cancer’.<sup>29</sup> Debt and financial insecurity, as well as housing, homelessness and unemployment can be both a cause and a consequence of mental health problems. In the words of MIND’s report “Still in the Red”, “Most people believed their debt had made their mental health worse and their mental health had made their debt worse”.<sup>30</sup> There is strong evidence to show how much income patients have secured as a result of receiving advice and growing evidence to show positive impacts on health and health costs. For these reasons, the Commission sees NHS funding as an increasingly important source of funding for advice work.

- 8.8. Some members of the Richmond Group of health charities, such as the Stroke Association, have questioned the legitimacy of health funds (or indeed charitable funds) being used in this way, but provided the health outcomes are clearly demonstrated, we feel there is a strong case and we recommend that the Richmond Group explores the potential for integrating advice into their service offerings with the help of NHS funding. Sometimes, advice services may also best be planned in conjunction with related services, such as cognitive behavioural therapy, which are being rolled out as part of a nationally funded programme (Improving access to psychological therapies (IAPTs)). More generally, there is a need for all those involved in the NHS and public health to develop effective referral arrangements to advice services, so that patients receive an integrated service.
- **The Advice Services Umbrella bodies in England should engage with key stakeholders at a national level, such as NHS England, Public Health England, Health Watch England and the National Association for Voluntary and Community Action to ensure that local commissioners understand the contribution that advice services can make to health and wellbeing. They should also help their local members develop appropriate service offerings to present to health commissioners**
  - **The Advice Services Umbrella bodies in Wales should engage with key stakeholders at a national level, such as NHS Wales, Public Health Wales, the Board of Community Health Councils in Wales and Wales Council for Voluntary Action and help their local members develop appropriate service offerings to present to health commissioners**
  - **The Richmond Group of health charities should explore the scope for securing funding for advice services for their users from the NHS and from local authorities, as well as from their own voluntary income**
  - **Clinical Commissioning Groups in England and Local Health Boards in Wales should consider commissioning advice provision alongside other interventions**
  - **Clinical Commissioning Groups in England and Local Health Boards in Wales should include advice provision in their health pathways (e.g. for cancer and for other conditions) and set up referral systems, which make it easy for health, social care and community workers to refer patients to appropriate sources of advice**

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<sup>29</sup> Local Benefits Advice: an evidence review, Macmillan Cancer Support, Oct. 2012

<sup>30</sup> Still in the Red: update on debt and mental health, MIND, 2011

## Box 17

### Sheffield Mental Health CAB - Case Study

Sheffield Mental Health Citizens Advice Bureau and Advocacy Service (SMHCAB&AS) has been in existence for over 30 years it is one of the highest ranked bureau in the country for quality of advice. The Bureau was set up in 1976 inside the 'Asylum' on the outskirts of the city in order to enable people who either, because of their mental ill health, legal detention under the Mental Health Act or geographical isolation, could not access mainstream services. This has meant providing a service 'in-house' on the wards of the Sheffield Health and Social Care Foundation Trust and to people who are using community based mental health services. The Bureau has evolved alongside the city's mental health services - and has developed a strong collaboration with the Foundation NHS Trust who host it. The majority of funding for the organisation comes through contracts with the Clinical Commissioning Group.

The rationale for the focus of the service is that the needs and experience of people with an acute mental health problem necessitates a targeted service. There is a growing body of evidence that shows the strong relationship between poor mental health and vulnerability- both social isolation and financial and personal insecurity. For example in the supporting document<sup>31</sup> for the government's mental health strategy - No health without mental health- the Department of Health noted that:

"Low income and debt are associated with higher rates of mental illness. Studies suggest that the effect of low income on mental health may be largely explained by the effect of debt. Moreover, people with mental health problems are more likely to get into problematic debt. Rates of debt in people with no mental health problems are 8%. The rates of those with depression and anxiety are 24%, and for those with psychosis 33%"

This evidence has validated the approach taken by SMHCAB&AS over the years. Unlike many neighbourhood services, it targets those who are most likely to need the service - people with a psychosis. These people because of their poor mental health and vulnerability are also often the most likely to find it difficult to access welfare rights services. People experiencing an acute mental illness episode are often socially isolated, experience discrimination and can require support from people with specialist knowledge of their condition and the services that they are using. SMHCAB&AS aims to ensure that at the same time as people are being supported by mental health services to get well, they are also being supported to resolve some of the causes of that poor health - such as people's indebtedness and housing insecurity. The service also helps to provide advocacy to ensure that - should they wish it - the views of people who are receiving mental health services are heard and their wishes taken into account.

In 2011/12 the Bureau saw 703 clients of whom almost 300 were in- patients. Services provided include benefits (58%) and debt (14%), with others including signposting, housing, health and community care. More recently the bureau has worked with the NHS Foundation Trust to build the service into the Acute Care Pathway. This means that the Bureau is involved at the beginning of someone's admission into the mental health service and can start working very quickly with the patient so that issues can be resolved before someone returns to live in the community.

<sup>31</sup> The Economic case for improving efficiency and quality in mental health - DH - 2011 p10



- 8.9. Prison and Police Service. Prisons often fund advice services as part of their rehabilitation work with prisoners and over 40 CAB services are provided in prison settings. Police and Crime Commissioners (PCCs) also commenced in April 2013 and may eventually be another potential source of funding for advice work relevant to their objectives- for example on benefits and debt advice given the potential link with crime. However, they are very new and still finding their feet.

#### Voluntary sector funding

- 8.10. Charities. A number of national charities (often covering Wales, as well as England) raise income from the general public, which is then used to fund the provision of advice, either by the charity itself (as in the case of Shelter and Macmillan Cancer Support) or through contracts or grants to advice agencies. For example, the Royal British Legion funds Citizens Advice and Advice UK to provide benefits advice to war veterans. The scale of resources charities allocate to advice can be very significant. Macmillan spends over £15m voluntary income per annum on one off grants and advice services. Shelter has to rely increasingly on its voluntary income, up to £10m of which is spent on advice services. National charities are likely to be able to grow their voluntary income, given their fundraising capacity, but there is little prospect of local organisations being able to do this.
- 8.11. One particular type of charity that often provides advice on debt and benefits is benevolent societies – mutual associations that provide financial and social services to individuals, often according to their religious, political or trade affiliation. Occupational benevolent societies, such as Perennial, the horticulturalists benevolent society, are increasingly giving advice on benefits to ensure that their clients are getting the benefits they are entitled to, before allocating grants to them from their own funds. They have also made the strategic decision to invest resources in advice services, in place of loss making care homes. Many benevolent societies are linked to Turn2us, who help people in financial need gain access to welfare benefits, charitable grants and other financial help – online, by phone and face to face through partner organisations. By targeting advice services at particular sections of the community, these charities can often reach people who might not normally access generalist advice provision. An alternative approach is for a charity to fund a post in a specialist advice agency – for example, the MS Society funds a post at the Disability Law Service to advise people with MS on benefits and other issues. Another approach is for charities to buy units of advice for its own beneficiaries from an advice agency.
- 8.12. Another type of charity with an important role to play in reducing in demand is credit unions, which can provide more affordable banking and lending arrangements than other providers (see case study on community banking).
- **Members of National Voices and the Care and Support Alliance and other charities should consider how they can best use their own resources to meet the advice needs of their service users, including commissioning provision from specialist advice agencies**
  - **Benevolent Societies should review how they can best ensure their members have access to advice and legal support e.g. on debt and welfare benefits**
- 8.13. Trusts and Foundations. Trusts and Foundations are an important source of funding for advice services (estimated funding in 2012 =£6m). Most will focus their funding on helping develop new services, rather than providing on-going core funding for current services, but there are signs that this is changing given the pressures on advice

agencies. There are a number of specialist trusts with a particular interest in the advice and legal support sector:

- The Access to Justice Foundation was set up to receive funds awarded by the courts for pro bono costs. This amounted to about £100k in 2012, with additional funds of around £80k from other sources. The Foundation distributes these funds to Legal Support Trusts (see below) and to Reaching Justice Wales, as well as to national pro bono organisations and to strategic projects. The Foundation has been promoting a number of other lawyer fund generation schemes (see para 8.30), which, if successful, could greatly enhance the resources at its disposal.
- The largest of the Legal Support Trusts is the London Legal Support Trust, which also raises voluntary funds from the legal profession through a series of fundraising initiatives, such as sponsored walks and other events. The Trust, which describes itself as a 'League of Friends' for the legal system, distributed around £700k in 2012 to specialist legal advice agencies in London and the South East.
- The newly formed Legal Education Foundation (LEF) has an endowment of c. £200m following the sale of the College of Law. This will yield an annual net sum of £6m for grants. LEF's charitable object is to promote and advance legal education.
- The Money Advice Trust works in the field of debt advice and has an income of c. £10m pa from a combination of endowment interest, corporate sponsorship and income generation from training and from fees for Debt Management Plans and Individual Voluntary Arrangements. The major part of its income (£6.3m) is spent on the National Debtline.

8.14. Foundations have a very low profile in Wales. The Waterloo Foundation (set up by Admiral Insurance) is the biggest Wales based foundation. Lloyds TSB Foundation funds a number of advice service projects across Wales. Wales Council for Voluntary Action (WCVA) led an initiative to try and interest England based foundations in providing more funding in Wales, but the response was that there was very little demand and the quality of applications was low. WCVA has tried to address this 'chicken and egg' problem through its own work, but without much success to date.

- **The Access to Justice Foundation, the London Legal Support Trust and Legal Education Foundation should review how they can best support the recommendations in this report e.g. through funding public legal education work**
- **Other trusts and foundations should review how they can best help build the capacity of advice agencies to enable them to play the roles outlined in this report**

8.15. Housing Associations. Housing Associations (HAs) are charities, which in England currently house c.5m people (about the same as local authorities), of whom about 70% are on benefits. 14% of HA tenants do not have a bank account and as many as 24% do not have direct debit facilities. HAs in England have a turnover of over £10 billion each year. They are increasingly becoming involved in wider neighbourhood services, including giving advice to more than 500,000 people (National Housing Federation's 2011 neighbourhood audit (2012)). HAs in Wales currently house around 280,000 people (around twice the number housed by local authorities) and have a turnover of over £650 million pa. They are also increasingly involved in advice provision. The welfare reforms directly impact on HAs and their tenants – particularly the change to paying housing benefit monthly in arrears direct into tenants' bank accounts (as part of Universal Credit), the so-called "bedroom tax" on spare rooms and the overall cap on benefits. HA tenants in Wales are particularly hard hit by the

bedroom tax, because much of the housing stock comprises three bedroom dwellings transferred from the local authority.

- 8.16. From HAs' point of view there is a risk of increased defaults leading to evictions, as well as increased management and court costs. From the tenants' point of view, many of whom are used to managing their finances on a weekly basis, there could be cash flow problems, as well as the risk of getting into difficulties through spending their housing benefit to meet other competing demands, such as food, fuel and transport costs, instead of using it to pay their rent. Many tenants do not have access to the internet and yet the Government hopes to see 80% of Universal Credit claims online by 2017. It is estimated that around half of the UK's nine million people who have never been online live in social housing. The National Housing Federation predicts a 50% rise in rent arrears as a result of the reforms (NHF report commissioned from Ipsos Mori and Cambridge University January 2013). Providing advice on these issues clearly makes sound business sense for HAs, as they want to sustain their tenancies and, as far as possible, avoid evictions. Since many local authorities no longer provide housing advice themselves, HAs are increasingly getting involved in this area. Depending on geography, it may sometimes be appropriate to commission advice on a regional basis in order to achieve economies of scale. One way of financing advice in this field would be through the development of insurance schemes for tenants of social housing (see also para 8.21).

#### Box 18

##### Fair Money Advice

Behind the problem of rising rent arrears is often the greater problem of unmanageable tenant over-indebtedness. Many Housing Associations see the impact of tenants continually falling into arrears and the cost of taking recovery action. People in rent difficulties frequently struggle with multiple debts, and face mounting pressure from aggressive recovery tactics from collection agencies. The issue is not about paying off one's debts but the inability to prioritise under the pressure of constant harassment.

Fair Money Advice (FMA) provides an independent debt counselling service to tenants of Housing Associations (HA), with a clear 'client' centric focus. A dedicated advisor is allocated to a tenant facing eviction to provide intensive support through one on one financial counselling. This dedicated, independent support results in 70% of tenants sticking to all repayment arrangements set up by FMA, and a 90% rate of eviction action halted or prevented.

Over a number of years FMA has proved to be a cheaper and more effective option than full cost recovery when dealing with tenants in arrears: taking into account staff time spent on chasing tenants through the courts, making home visits - and properties standing empty, creating community displacement. Research has shown that this model saves the HA up to £8 for every £1 they invest in fees to FMA. Fair Money Advice has worked with over 5,000 clients, repaid over £400,000 in rent repayment, and is repaying over £4 million for other priority and consumer debts. The service is paid for by the income recovery departments of the partner HA and some public contracts. Over time it is hoped that the service will become fully sustainable through HA fees.

One of FMA's clients, the HA Circle 33 said: 'We previously funded another advice agency, but were not particularly satisfied with the results. Based on our discussions with Fair

Finance (FF), we decided that the services provided, and flexibility in delivery, suited our residents needs more effectively. Moreover, the reporting and monitoring provisions within the FF contract, allowed us to effectively track the progress and effectiveness of the services delivered. There is clear reporting for top level analysis of outcomes. We have continued to work with FF, as the service is valuable to residents and provides direct access for our income recovery team. Overall we are satisfied with the quality of service and appreciative of the external challenges in which Fair Money Advice deliver the service.”

- **The National Housing Federation (NHF) and Community Housing Cymru (CHC) should promote the role of Housing Associations in ensuring the provision of independent advice, especially face to face advice, through publishing examples of good practice, whilst also stressing the need for advice to be seen as an integral part of the business of running a housing association.**
- **Local advice agencies in England and Wales should seek contracts with housing associations in their areas to provide advice and legal support to their tenants.**

8.17. Volunteering support. Volunteers play a major role in providing information and advice. For example, there are 21,500 volunteers working in Citizens Advice Bureaux compared with 7000 paid staff. The ability of voluntary organisations to harness volunteer support, as well as to access other sources of funding, is another reason (in addition to the ‘independence’ argument – see para 5.19) why they, rather than statutory bodies, should often be the provider of choice. Increasingly, volunteers are drawn from either those who have retired (who typically, are able to stay with the agency for a substantial time) or from students (who are keen to gain work experience, with a view to getting a paid job, and therefore may only stay for a few months). This requires more flexible approaches to involving volunteers for example. through offering evening roles or short term project work. Involving volunteers requires infrastructure and training, which, again, is being affected by the cuts. One particular role that volunteers can play is that of Mackenzie Friends, who, with the approval of the judge, provide support and assistance to clients in preparing for and appearing in court. However, training is essential for people undertaking these roles.

#### Box 19

##### Making the most of local law student volunteers

Several Law Centres have solid relations with local universities that extend the universities’ practical law clinic work to supplement that of the Law Centre, giving students valuable experience and familiarity with the law of everyday life, and supplementing the Law Centres’ core services. Good examples of this can be seen at Surrey Law Centre and at Cumbria Law Centre. Luton Law Centre makes more extensive use of law undergraduates from Brunel University by getting them to volunteer on their year out as well as during their studies, which allows for deeper encounter with social welfare law and diverse client groups.

- **The Civil Justice Council, as part of its Self-Represented Litigants initiative, should continue to develop proposals for making greater use of Mackenzie Friends, including appropriate training and support**

- **NCVO and Wales Council for Voluntary Action, together with the Advice Services Umbrella bodies, should review the current barriers to involving volunteers in advice and legal support work and develop proposals for addressing them**

### Commercial sector funding

- 8.18. Sponsorship. Commercial law firms occasionally provide support to advice agencies through direct sponsorship. For example, in 2012/13 Linklaters provided the Mary Ward Centre, who are located near them in London, with a grant of £90k (increased from £40k in previous years because of the LASPO cuts) towards their work. In her LAG annual lecture (December 2012), Lucy Scott-Moncrieff, the then President of the Law Society, called on the larger law firms to fund individual specialists where legal aid has been withdrawn and there is no private market for example in the welfare benefits area, in order to preserve and develop these areas of expertise.<sup>32</sup> There may be some increase in sponsorship from the major law firms in response to this type of call, but this is only likely to result in modest sums – and they will tend to be London orientated.
- 8.19. There is also commercial sponsorship of advice from organisations that benefit from the capacity of individuals to pay for utilities and other services. The National Debt Line, run by the Money Advice Trust, has over 30 different commercial sponsors, including Barclays, British Gas and BT. There may be opportunities to seek additional corporate sponsorship of advice from utilities companies and financial institutions. However, it will be important to monitor whether large corporations choose to continue with voluntary funding of advice if they are also subject to levies by the FCA to fund the Money Advice Service.
- **Major law firms and other national companies should consider whether they could sponsor some of the national initiatives in this report, as well as working in partnership with local advice networks in the areas where they are based**
- 8.20. Fees. Fee income is the main source of income for private practitioners other than legal aid. Although it is often difficult to charge fees for some aspects of social welfare law provision, such as debt or benefits, there is scope for charging some clients for aspects of immigration, employment, community care and special education work. Contingent fee arrangements could also be used in benefit cases, where backdated benefits may be paid (see para 5.3). Solicitor agencies in the not-for-profit sector, like Law Centres, are now allowed to charge for advice through a recent change to the SRA Practice Framework Rules (2011), although this is new territory and organisations are exploring it with understandable caution. Sometimes, they are doing this through using subsidiaries, such as Community Interest Companies (CICs). There are two potential advantages to not-for-profits developing charging mechanisms. First, they may be able to generate a surplus which can then fund free advice. Second, they can fill the gap in services created by the withdrawal of legal aid, preserving expertise on matters no longer in scope. For example Rochdale Law Centre has established a CIC, “Rochdale Legal Enterprise”, which provides advice on immigration and employment cases and donates any surpluses on this work back to the Law Centre. Rochdale Legal Enterprise’s employment work will be undertaken on a no-win, no-fee agreement, which will take 25% of the settlements or awards made to clients in employment tribunal proceedings.

<sup>32</sup> <http://www.lag.org.uk/magazine/2013/02/where-do-we-go-from-here.aspx>

Contingent fee arrangements of this kind are a way of generating fee income, which can be used by both private sector and not-for-profit providers, although private sector providers typically charge a 30-35% success fee. Another approach to income generation, developed by Calderdale CAB, is to establish a social enterprise subsidiary to market the CAB's services to employers, including the local authority, who pay a fee to allow their staff to access the service – for example for debt advice. One of the challenges both the private sector and the not-for-profit sector face in generating more fee income is lack of expertise in business planning and marketing, although this is being addressed through publications and training provided by the Law Society. Nevertheless, the cuts in legal aid will inevitably mean a decline in income from social welfare law for private firms and there is only limited scope for not-for-profit agencies generating fee income.

8.21. Insurance. Insurance can also be used to finance paid for advice, particularly employment advice. One way of scaling up the availability of insurance would be for local authorities and housing associations to negotiate block insurance agreements on behalf of their tenants, which included cover for legal expenses. Trade union membership often also includes insurance cover against employment disputes. At present, in the UK, there is very little use of before the event insurance, even when it is provided, so there would also need to be an awareness raising campaign about the potential benefits of having this kind of cover- as well as a need to ensure that premiums remain affordable for those who are most likely to need them. In other European countries, such as Germany, France and Holland, legal insurance is widely used by over 60% of households . Another approach would be for employers to pay for advice services to meet the needs of their employees, as part of employee assistance programmes.

- **The Local Government Associations for England and Wales, National Housing Federation and Community Housing Cymru should investigate the feasibility of making insurance cover available to social housing tenants**

8.22. Creditor payments. One particular source of funding for debt advice is the service charge received by debt advice lines such as Step Change and Pay Plan, which help people develop debt repayment plans, with the creditors paying the providers a percentage fee out of the payment they receive. This has the great merit of linking demand to capacity, thus enabling providers to respond to requests for advice in a sustainable way. This approach only has limited applicability, but it is an effective way of funding debt advice.

8.23. Pro Bono. Lawyers acting pro bono – for the public good, providing their services voluntarily, without payment – already make a significant contribution to access to justice. But it is unrealistic to consider that pro bono could ever replace publicly funded legal help and representation. At the same time as the need for pro bono help is increasing, cuts in legal aid and in funding from local authorities threaten the crucial infrastructure of general advice centres on which pro bono delivery to individuals depends. Many small high street firms that provide unsung unpaid help to their clients are also under threat. Leading pro bono law firms consider that there is unlikely to be any significant growth in pro bono hours in the foreseeable future and that the areas of social welfare law that are now out of legal aid scope are specialist areas that are difficult to replace with pro bono advice, due to the complexity of relevant laws and regulations.<sup>33</sup> Pro bono work is often mediated through one or other of the two main pro bono intermediaries – the Bar Pro Bono Unit (BPBU) for barristers and Law Works (LW) for solicitors. In both cases, the challenge is to

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<sup>33</sup> Submission from 8 City of London major commercial law firms

extend outside London where most of the major firms are based. Northumbria Law School have helped develop a North East Hub, which is an important first step in regional development and which provides a model for others to follow. More generally, university law schools are becoming an increasingly important source of pro bono help, which is of mutual benefit both to clients and to the schools themselves. There is also potential for making better use of IT and telephony, in terms of unbundling cases into different parts, some of which the client could do for themselves, whilst others require the help of a lawyer, who could be based remotely, thus combining doing pro bono work with their own practice.

- **LawWorks and the Bar Pro Bono Unit should develop initiatives for expanding the role of pro bono provision through the use of new technology.**
- **University Law Schools should work with LawWorks, the Bar Pro Bono Unit and Law for Life to further develop the way that law students can provide pro bono services, including public legal education.**
- **LawWorks and the Bar Pro Bono Unit should work with others in the pro bono community to develop pro bono services outside London and the south east of London.**

#### Other sources of funding

- 8.24. Big Lottery Fund. BIG operates under Act of Parliament and is given policy directions by the English and Welsh Governments. However, these directions are high level and focussed on outcomes, rather than on specific programmes. Since the Lottery began in 1994, advice services have received more funding than any other part of the voluntary sector. BIG also administers grant programmes for Government, such as the current Advice Services Transition Fund (ASTF) for England, which means it has valuable experience both in managing funds and in the advice field. It is also matching the ASTF with its own resources, making an overall fund in England of £66m. BIG has been reviewing its policy on advice funding and, potentially, could play a role in helping fund aspects of the Commission's strategy. In Wales, BIG has not prioritised advice as much as England, but it is considering an Anti-Poverty programme, which could involve advice agencies.
- 8.25. In England, the design of the Advice Services Transition Fund in particular demonstrates BIG's vision for change in this sector. BIG started from the perspective of service users, not the current structure of the provider base. It believes that duplication can be reduced through better and new collaborations between local providers (including mergers). More resilient and sustainable services require a greater focus on the impact advice can make across a wider range of social indicators. In parallel, evidence of impact needs to be skilfully and professionally articulated to local commissioners, which requires strong leadership with more business-minded and enterprising skills. BIG recognises the importance of providing help for people in solving problems connected with their 'rights and responsibilities' and has estimated that the cost of leaving people's problems unaddressed is £1.5 billion pa in public spending, with the biggest cost falling on the NHS.
- 8.26. BIG is potentially interested in focussing investment in specific neighbourhoods with the highest level of problems and adopting a 'whole person' approach, involving a mixture of advice and non-advice services, with the aim of building resilience and a sense of responsibility, as well as collective skills, capabilities and support networks within neighbourhoods. This fits well with the Commission's interest in promoting PLE work and building capacity at the local level. BIG is also interested in implementing

local 'systems thinking' solutions between voluntary sector services and local public agencies working in the specific neighbourhoods, with a view to developing closer co-operation and stronger networks. BIG also favours working in partnership with bodies like Advice UK, Law Centres Network and the Baring Foundation to take forward this type of approach.

- **The Big Lottery Fund, in England and in Wales, should review how best it can support the recommendations in this report e.g. through funding local public legal education work and supporting local advice networks in the most disadvantaged areas, for example to undertake work on reducing failure demand.**

8.27. The Money Advice Service (MAS) provides financial capability support via online, telephone and face to face services, as well as running a debt advice fund. All MAS' work is financed by a levy on financial services, which in 2013/14 has raised £80m, of which £36m goes on financial capability work and £34m on debt advice work. MAS are funded via a mechanism tied to the Financial Conduct Authority (FCA). MAS will be seeking an increase in its budget for debt advice for 2014/15. Given continuing high levels of debt and the demand this creates for advice, we support MAS in its bid for an increased budget. We also believe there is a strong case for a higher proportion of MAS's budget being allocated to debt advice, as opposed to financial capability work, since this is where the need is strongest. The transfer of the regulation of pay day loan providers from the Office for Fair Trading to the FCA in April 2014 should add further weight to this bid for an increased budget.

- **The Financial Conduct Authority (FCA) should increase its levy on financial institutions to £100m pa to reflect the high incidence of debt.**
- **The FCA should allocate 60% of the levy (£60m) to fund debt advice services.**
- **The FCA should use its powers under the legislation to impose a levy on pay day loan companies to fund debt advice services, when they take over their regulation from the Office of Fair Trading in April 2014.**

8.28. Social Impact Bonds. Social Impact Bonds (SIBs) are a financial mechanism for funding interventions that will result in savings to the public purse. Pioneered by Social Finance in Peterborough Prison in a project designed to reduce reoffending, SIBs involve investors, such as trusts and foundations and BIG, putting up the initial funding required for the intervention (e.g. employment, benefits and housing advice, training and other types of support to prevent re-offending). At the same time, an agreement is entered into with the government department that will stand to benefit from the intervention (e.g. the Ministry of Justice or a particular local authority department). This agreement involves metrics for measuring the rate of improvement to be achieved; once the target is reached, over an agreed timescale, the 'benefitting' government department begins paying back the original investors.

8.29. Applying SIBs to advice and legal support services is more complex than other interventions, such as prevention of reoffending, because the metrics are harder to agree and apply and it is also very difficult to create a control group against which to compare the intervention. Furthermore, attributing the improvement to the provision of advice and legal support (as opposed to other factors) can be more challenging and quantifying the saving to a local authority can be difficult. It is therefore, likely to be difficult to find local authorities willing to enter into agreements of this kind, particularly in the present financial climate. Wales Council for Voluntary Action is exploring the potential for developing SIBs in Wales. It has already launched a



financial bond to support the development of partnerships between the voluntary and public sector through a payment by results approach. The English Government is also keen to encourage this type of approach. There could therefore be a prospect of the Cabinet Office funding a pilot to test the approach in a selection of local authority areas.

- **The Cabinet Office should fund a pilot to test the Social Impact Bond's applicability to advice services in England**

8.30. Lawyer fund generation schemes. There are five different kinds of schemes at varying forms of development

- The costs awarded for pro bono cases. These amounted to around £100k in 2012. The money goes to the Access to Justice Foundation
- Dormant funds held by solicitors for clients who can no longer be traced
- Dormant funds held by solicitors in relation to companies that have dissolved (so called 'bona vacantia estates').
- Damages awarded as a result of collective actions in competition law, which remain unclaimed
- Interest on Lawyers' Trust Accounts (IOLTA), which is the extra interest that lawyers can achieve through grouping together funds they hold on behalf of clients (e.g. mortgage deposits) and thereby getting a higher interest rate than they would on the individual sum. This scheme has been successfully introduced in the US, Australia and Canada.

8.31. Given the financial challenges being faced by the advice and legal support sector, there is clearly potential for recommending that more of these schemes be implemented. This would require further discussion with relevant officials at the Cabinet Office, BIS and the Treasury before drafting recommendations with any prospect of success. The London Legal Support Trust which has examined these schemes in detail considers the last three of the schemes to have particular potential.

- **The Cabinet Office should agree an exemption for dormant funds held by solicitors in relation to companies that have dissolved (known as 'bona vacantia estates'), so that they are paid to the Access to Justice Foundation, rather than to the Treasury**
- **The UK Government should introduce legislation to make the Access to Justice Foundation the recipient of unclaimed damages in collective actions**
- **The UK Government should introduce a compulsory Interest on Lawyers' Trust Accounts (IOLTA) scheme for firms with profits above an agreed threshold with the proceeds of the scheme being paid to the Access to Justice Foundation.**

## **Annex 1- The Low Commission**

### Commission members

Lord Colin Low (cross bencher and disability rights campaigner) (Chair)  
Amanda Finlay (former Legal Services Director at the Ministry of Justice) (Vice Chair)  
Bob Chapman (Administrative Justice and Tribunal Council, Wales Committee member),  
Professor Mark Gamsu (public health consultant).  
Vandna Gohil (former Director Voice4Change and Programme Manager for Voluntary Action Leicestershire)  
David Hagg (CEO Stroud District Council)  
Steve Hynes (Director of the Legal Action Group)  
Pam Kenworthy (Howells LLP  
gu)  
Vicky Ling (former member of Civil Justice Council and author of Legal Aid Handbook)  
Susan Steed (New Economics Foundation and Centre for Markets and Public Organisations, University of Bristol)

### Secretariat

Richard Gutch. Secretary  
Sara Ogilvie, Research Assistant

### Funders

Baring Foundation  
Barrow Cadbury Trust  
Esmee Fairbairn Foundation  
LlankellyChase Foundation  
Trust for London  
Freshfields LLP

## **Annex 2- Recommendations by Audience** (References are to the relevant paragraph in the report)

### UK Government

- The next UK Government should set out and publish a National Strategy for Advice and Legal Support in England for the 5 year term of the next Parliament (2015-2020), which should be cross cutting across all departments and should seek to embed the provision of advice and legal support in people's daily lives, so they can get the help they need at an early stage. It should also address ways of reducing demand and simplifying the system, so there is less need for advice and legal support. (2.9)
- The next UK Government should place responsibility with the Ministry of Justice for national policy on advice and legal support on problems relating to social welfare law in England (7.2)
- The next UK Government should establish a National Advice and Legal Support Fund of £50m pa for 10 years (£500m in total) for England and Wales to be used for funding national and local advice and legal support work, which will help reduce the costs to the state, that would otherwise have occurred over the 10 year period (6.4)
- The National Advice and Legal Support Fund should be funded by annual contributions from the Ministry of Justice (£16m), Cabinet Office/Treasury (£18m) and DWP (£16m) (8.3)
- The Ministry of Justice should commission the Big Lottery Fund to manage the distribution of the National Advice and Legal Support Fund in England (7.2)
- Parliament's Public Accounts Select Committee and the National Audit Office should review periodically the effectiveness of the UK Government's national strategy and the National Fund (6.4)
- The UK Government should introduce legislation to make the Access to Justice Foundation the recipient of unclaimed damages in collective actions (8.31)
- The UK Government should introduce a compulsory Interest on Lawyers' Trust Accounts (IOLTA) scheme for firms with profits above an agreed threshold with the proceeds of the scheme being paid to the Access to Justice Foundation (8.31)
- The UK Government should revisit the Law Commission's reports on housing dispute resolution (4.1)
- The UK Government should reach agreement with Credit Account Information Sharing (CAIS) for data on indebtedness to be shared at a local population level on an annual basis with commissioners (7.4)
- The UK Government should support key national welfare rights providers to work together to share their intelligence more systematically with local commissioners (7.4)

### Ministry of Justice and Legal Aid Agency

- The Ministry of Justice should put in place mechanisms for monitoring the full impact of the LASPO changes and should publish the results (1.19)
- The Ministry of Justice should ensure as far as possible that citizens have access to information, advice and legal support on social welfare law issues (7.2)
- The Legal Aid Agency should remunerate solicitors and specialist advisers for applications for exceptional funding under Section 10 of the LASPO Act. If there are classes of cases where it appears manifestly unfair that legal aid funding was not available except under Section 10, then those areas should be brought back into scope (1.21)

- The Ministry of Justice should simplify the application process for Section 10 funding to make it easier for people to use (1.21)
- The Ministry of Justice should publish case summaries where funding is granted under Section 10, so that there is greater clarity as to which applications for exceptional cases funding may succeed (1.21)
- The Ministry of Justice should develop further protocols with other government departments and agencies about taking steps to improve the quality of decision-making so that fewer assessments are overturned on appeal and should report annually on progress to the Public Accounts Committee and the Justice Select Committee (3.7)
- The Ministry of Justice should work with Advicenow on the review of forms recommended by the Civil Justice Council working group, in order to ensure that its own process of continual improvement meets the needs of unassisted and unrepresented litigants, and should ensure these reviews build on learning from the advice sector, the Law Society, from its own counter and call centre staff and from the judiciary (4.3)
- The Ministry of Justice should work with the Gov.uk team and Advicenow to develop an information strategy for other departments whose decisions are appealed to tribunals so that their decision letters set out all the relevant information about the decision and how to challenge it (4.3)
- More generally, the Ministry of Justice should consider the innovative and effective elements of ADR – expert assessors, inquisitorial fact finding, telephone contact- whenever large blocks of social welfare law work clog up either courts or tribunals (4.5)
- The Legal Aid Agency should retain peer review as a quality measure for organisations holding legal aid contracts and should update the ‘Improving Your Quality Guides’ and post them on its website (5.25)
- The Ministry of Justice should commission the Big Lottery Fund to manage the distribution of the National Advice and Legal Support Fund in England (7.2)
- The Ministry of Justice’s contribution to the National Advice and Legal Support Fund should be funded from savings resulting from improved case management of courts and tribunals and from the £50m savings on civil legal aid funding for the not-for-profit sector (=£16m) (8.3)

#### Ministry of Justice with other Government Departments and Agencies

- The Ministry of Justice and the Treasury should develop and implement ‘polluter pays’ charging models to promote good decision-making by DWP and its contractors, with the income generated from these funds going into the National Advice and Legal Support Fund (3.7)
- The Ministry of Justice and the Cabinet Office should identify areas for innovative law making where legislation removes the need for disputes to be resolved in courts (4.1)
- The Ministry of Justice and DWP should consider the lessons that might be learnt from over two decades of dispute resolution by the Social Fund Commissioner and consider whether there are additional areas of benefit appeals where such an integrated model might be helpful in the efficient handling of appeals (4.5)
- MoJ and DWP should consider with the Housing Law Practitioners Association the cost benefit of funding independent duty specialist advice schemes on the lines of housing possession court duty schemes at busy tribunal centres during the roll out of Universal Credit (4.3)

- The Ministry of Justice should work with the Department for Education, to integrate information about legal rights and responsibilities into the national curriculum on citizenship (5.8)

### Cabinet Office

- The Cabinet Office's contribution to the National Advice and Legal Support Fund should be a continuation of funding provided by the Treasury for the Advice Services Transitional Fund (=£18m, including the provision for Wales) (8.3)
- The Cabinet Office should fund a pilot to test the Social Impact Bond's applicability to advice services in England (8.29)
- The Cabinet Office should agree an exemption for dormant funds held by solicitors in relation to companies that have dissolved (known as 'bona vacantia estates'), so that they are paid to the Access to Justice Foundation, rather than to the Treasury (8.31)

### Other Government Departments and Agencies

- The Equalities and Human Rights Commission should be consulted on the development and implementation of the national strategies for advice and legal support. (2.9)
- Parliamentary Counsel's Office, as part of the Good Law initiative, should engage with Advicenow, advice agencies, Law Society specialist committees and with the Civil Procedure Rule Committee and should use this dialogue to help improve legislation by making it simpler and easier to understand. (4.1)
- DWP should contribute the balance of the £50m National Advice and Legal Support Fund (=£16m) and should finance its contribution in part or in whole through penalties paid by contractors, such as ATOS and Capita, for faulty ESA/PIP assessments that exceed an agreed level (8.3)
- The Financial Conduct Authority (FCA) should increase its levy on financial institutions to £100m pa to reflect the high incidence of debt (8.27)
- The FCA should allocate 60% of the levy (£60m) to fund debt advice services (8.27)
- The FCA should use its powers under the legislation to impose a levy on pay day loan companies to fund debt advice services, when they take over their regulation from the Office of Fair Trading in April 2014 (8.27)

### The Judiciary and the Civil Justice Council

- The Civil Justice Council Working Group, with MoJ, should ascertain which types of cases most commonly have one or more litigants in person and should develop a series of checklists for both parties in these cases (e.g. landlord and tenant, small consumer disputes with small businesses) (4.3)
- In more complex cases, and where resources allow, Her Majesty's Courts and Tribunal Service (HMCTS) should check - by telephone if possible, before hearings to make sure that litigants in person have all the material they need for the judge to make a decision to avoid wasting precious hearing time; this telephone checking should also identify cases suitable for mediation – as happens already in the county court small claims mediation scheme (4.3)
- HMCTS should review the welfare benefits appeal process to identify areas that might be suitable for a more inquisitorial, possibly telephone based, approach to

establishing all the relevant facts and reaching a decision, building on the flexible approach to hearings already developed by the Traffic Penalty Tribunal and others (4.3)

- The judiciary should consider changes that might be valuable in enabling courts to deal justly with cases involving one or more litigants in person, in particular the extent to which more inquisitorial processes might be helpful (4.3)
- The Civil Justice Council should consider whether a mandatory referral to ADR might be useful under an agreed set of circumstances (4.5)
- The Civil Justice Council, as part of its Self- Represented Litigants initiative, should continue to develop proposals for making greater use of Mackenzie Friends, including appropriate training and support (8.17)

#### Local authorities and Local Advice and Legal Support Plans

- Each local authority (county councils and unitary authorities in England and local authority regions in Wales) should be under an obligation to make arrangements for the preparation of a local advice and legal support plan in conjunction with the local advice sector, including local commercial providers, either through co-producing the plan or through commissioning a lead organisation to carry out this work (7.7)
- Each local authority should set out and publish an assessment of advice and legal support needs for its area, including the needs of people in institutions outside their 'home' local authority area (7.7)
- Each local authority should publish its local advice and legal support plan, setting out objectives, required outcomes, the resources to be devoted to meeting needs and the timescale for review (7.7)
- Each local authority should decide how best to spend its allocation from the National Advice and Legal Support Fund to help implement this plan, taking account of the importance of independent advice provision and any potential conflicts of interest (7.7)
- Each local authority should publish a progress report on the implementation of their local advice and legal support plan every three years (7.7)
- In England, unitary authorities and county councils should encourage and support the development of local advice networks for their areas to provide a basic level of information and advice, including some face to face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund (5.15)
- As part of the process of co-producing local advice and legal support plans in their areas, local authorities should make appropriate financial provision for the delivery of the plan, using their mainstream budgets, public health budgets and their ring fenced allocation from the National Advice and Legal Support Fund (8.6)
- The Health and Wellbeing Boards in England and Local Service Boards in Wales should be consulted regarding the local advice and legal support plans for their areas (8.6)
- Local authorities should use their local contacts and networks to help local advice agencies access other sources of local funding, such as the NHS and Housing Associations (8.6)
- Local advice and legal support plans should include early action initiatives which integrate information and advice services into mainstream service provision (3.5)
- Local advice and legal support plans should include provision for advice agencies (with support from their national bodies) to work with relevant local public agencies, such as local authority housing departments and Job Centre Plus, on ways of reducing the demand for advice by helping improve or redesign their

- processes (3.6)
- Local advice and legal support plans should include training for key local community based workers and volunteers to act as local problem noticers, navigators of web based information and community legal champions, using Law for Life training modules, focussed on capability (5.8)

### The advice sector

- In England and Wales, Citizens Advice, the Ministry of Justice and Law for Life should undertake a study, with the help of funding from the National Advice and Legal Support Fund (see para 6.2), to explore the feasibility of combining Adviceline and the Civil Legal Advice helpline into one national comprehensive helpline run by Citizens Advice, possibly in conjunction with a commercial partner and supported by the Adviceguide and Advice Now websites, with links to a variety of single topic helplines and to both commercial and not-for-profit front line advice agencies. (5.12)
- The Advice Services Umbrella bodies should ensure their local members contribute to regional and/or local advice networks (5.15)
- As part of the process of co-producing local advice and legal support plans in their areas, local advice agencies in England should show how they can help their local authority comply with its duties under the Care Bill 2013 to provide information and advice (8.6)
- All publicly funded advice and specialist legal services should be accredited to an appropriate externally assessed quality standard; the Advice Quality Standard, Lexcel or the Specialist Quality Mark (5.25)
- There should be further development of passporting between the various quality standards being used in the legal sector. In particular:
  - The Law Society should issue guidance for solicitors working in the not-for-profit sector when carrying out its review of the Lexcel standard.
  - The Advice Services Alliance should incorporate external peer review into the Advice Quality Standard
  - The Advice Services Alliance should adapt the 'Advice with Casework' level of the Advice Quality Standard to cover specialist advice (5.25)
- Local advice agencies should explore the potential for sharing back office functions or merging their organisations to reduce costs and increase sustainability- and thereby provide a better service to their users (5.30)
- Citizens Advice, Advice UK and the Law Centres Network should work together more closely, sharing good practice, such as Advice UK's systems thinking work, and sharing their resources more, particularly those, such as Citizens Advice's Adviser net, which have been developed with the help of public funding. Citizens Advice should exercise a stronger national leadership role for the sector in England by working with the other two 2<sup>nd</sup> tier umbrella bodies on ways of addressing the challenges they, their members and their service users face (5.30)
- The Advice Services Umbrella bodies in England should engage with key stakeholders at a national level, such as NHS England, Public Health England, Health Watch England and the National Association for Voluntary and Community Action to ensure that local commissioners understand the contribution that advice services can make to health and wellbeing. They should also help their local members develop appropriate service offerings to present to health commissioners (8.8)
- The Richmond Group of health charities should explore the scope for securing funding for advice services for their users from the NHS and from local authorities, as well as from their own voluntary income (8.8)

- Local advice agencies in England and Wales should seek contracts with housing associations in their areas to provide advice and legal support to their tenants (8.16)
- LawWorks and the Bar Pro Bono Unit should develop initiatives for expanding the role of pro bono provision through the use of new technology (8.23)
- University Law Schools should work with LawWorks, the Bar Pro Bono Unit and Law for Life to further develop the way that law students can provide pro bono services, including public legal education (8.23)
- LawWorks and the Bar Pro Bono Unit should work with others in the pro bono community to develop pro bono services outside London and the south east of London (8.23)

### Big Lottery Fund and the National Advice and Legal Support Fund

- The National Advice and Legal Support Fund should allocate 90% of the fund (£45m pa) to local authority areas in England and local authority regions in Wales on a ring fenced, per capita basis in accordance with need, with the remaining 10% (£5m pa) going to national initiatives (6.5)
- The Big Lottery Fund should base indicators of unmet need for advice and legal support on currently available data and should use them to determine each area's allocation from the National Fund (7.4)
- The Big Lottery Fund should publish the indicators used to allocate the Fund to different local authority areas in England (7.4)
- The Big Lottery Fund should develop guidance for local authorities and the local advice sector on the preparation of local advice and legal support plans (7.7)
- The Big Lottery Fund should only allocate resources to an area where it and the Ministry of Justice are satisfied that a needs assessment and a delivery plan are in place and that these are appropriate (7.7)
- The Big Lottery Fund should develop best practice principles for local authorities on commissioning advice and legal support (7.7)
- The Big Lottery Fund should work with the national umbrella organisations to develop a common outcomes framework which clearly articulates the value and impact of advice and includes outcomes from different types of advice work, such as prevention, early intervention and strategic use of the law (5.26)
- The National Advice and Legal Support Fund should support national agencies to do work on failure demand, including funding for judicial review cases, as well as through its funding allocations to local authorities (3.6)
- The National Advice and Legal Support Fund, working in conjunction with the MoJ, should commission and fund Advicenow to develop authoritative and independent self-help guides for all areas of social welfare law, including a review of all current guides; the aim should be to ensure that litigants in person know what is expected of them in the most common types of cases and know what evidence they need to produce (4.3)
- The National Advice and Legal Support Fund should fund Law for Life and Advicenow to develop a web based public legal education resource for the general public, based upon the Advicenow website (5.8)
- The National Advice and Legal Support Fund should ensure that front line agencies have access to the specialist support they need for working on complex cases through funding national specialist advice agencies (5.16)
- The National Advice and Legal Support Fund should fund research into measuring the outcomes of advice services, including outcomes for people who access advice services online (5.27)



- The Big Lottery Fund, in England and in Wales, should review how best it can support the recommendations in this report e.g. through funding local public legal education work and supporting local advice networks in the most disadvantaged areas, for example to undertake work on reducing failure demand (8.26)

### Voluntary Sector Funders

- Members of National Voices and the Care and Support Alliance and other charities should consider how they can best use their own resources to meet the advice needs of their service users, including commissioning provision from specialist advice agencies (8.12)
- Benevolent Societies should review how they can best ensure their members have access to advice and legal support e.g. on debt and welfare benefits (8.12)
- The Access to Justice Foundation, the London Legal Support Trust and Legal Education Foundation should review how they can best support the recommendations in this report e.g. through funding public legal education work (8.14)
- Other trusts and foundations should review how they can best help build the capacity of advice agencies to enable them to play the roles outlined in this report (8.14)
- The National Housing Federation (NHF) and Community Housing Cymru (CHC) should promote the role of Housing Associations in ensuring the provision of independent advice, especially face to face advice, through publishing examples of good practice, whilst also stressing the need for advice to be seen as an integral part of the business of running a housing association (8.16)
- NCVO and Wales Council for Voluntary Action, together with the Advice Services Umbrella bodies, should review the current barriers to involving volunteers in advice and legal support work and develop proposals for addressing them (8.17)

### Other Funders

- Clinical Commissioning Groups in England and Local Health Boards in Wales should consider commissioning advice provision alongside other interventions (8.8)
- Clinical Commissioning Groups in England and Local Health Boards in Wales should include advice provision in their health pathways (e.g. for cancer and for other conditions) and set up referral systems, which make it easy for health, social care and community workers to refer patients to appropriate sources of advice (8.8)
- Major law firms and other national companies should consider whether they could sponsor some of the national initiatives in this report, as well as working in partnership with local advice networks in the areas where they are based. (8.19)
- The Local Government Associations for England and Wales, National Housing Federation and Community Housing Cymru should investigate the feasibility of making insurance cover available to social housing tenants (8.21)

### Wales

(Unless stated otherwise the recommendations above apply to Wales as well as England; those below are specific to Wales)

- In Wales, the Welsh Government should develop a National Strategy for Advice and Legal Support, building on its Advice Services Review, in conjunction with the National Advice Network for Wales (2.9)
- The Welsh Government should determine how it wishes to manage its share of the National Advice and Legal Support Fund in Wales (7.2)

- In Wales, local authorities should encourage and support the development of six regional advice networks to provide a basic level of information and advice, including some face to face and some legal support, as recommended in the Welsh Government's Advice Services Review, through a combination of local funding and support from the National Advice and Legal Support Fund (5.15)
- The Advice Services Umbrella bodies in Wales should engage with key stakeholders at a national level, such as NHS Wales, Public Health Wales, the Board of Community Health Councils in Wales and Wales Council for Voluntary Action and help their local members develop appropriate service offerings to present to health commissioners (8.8)

### Annex 3- Breakdown of National Advice and Legal Support Fund's expenditure

Para	Recommendation	Cost-£m	Source	Assumptions
3.6	National failure demand initiatives	1.0	National Fund	10 cases at £100k each
4.3	Self Help guides roll out	0.1	National Fund	Funding for Advice Now to disseminate the guides through conferences and training
5.8	Public Legal Education (national)	0.5	National Fund	Law for Life- National Research Director and National Policy Director (£120k); Advice Now website staff (£100k); and digital technology development (£280k)
5.8	Public Legal Education (local)	6.0	National Fund	Development and training costs for each of the local advice networks to buy in training for local community workers, volunteers and others to provide basic information and signposting- £38k per 158 networks = £6m
5.12	National Helpline Services	1.0	National Fund	Development costs for Cit A and MoJ contractors e.g. for designing and specifying the service and helping secure a commercial partner to provide the capital investment required; on-going subsidy in later years
5.15	Local Advice Networks	39	National Fund and other funds	Average of £250k (likely range of £100k to £500k depending on area) per 150 counties/unitary authorities in England and per 6 regions in Wales = £39.5m.
5.16	Access to national specialist support for front line agencies	1.1	National Funds	£100k each to 11 specialist providers (e.g. Shelter, CPAG etc.)
5.25	Quality Standards	0.3	National Funds	Development work; costs of standards funded by fees
5.27	Outcomes research	1.0	National Funds	Research into measuring outcomes from advice, e.g. for online advice
	TOTAL	50.0		£45m local; £5m national