

Geography of advice	
An overview of the challenges facing the Community Legal Service	
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Summary

The provision of advice and legal services has been transformed over the past decade. The passage of new legislation granting citizens new rights, combined with the introduction of contracting and targeting of services, the reform of civil procedure and eligibility for legal aid, have changed both the profile and nature of legal needs and the availability of appropriate services. Millions of people now have new rights in law, but limited means or ability to achieve rights in practice.

The key product of the current Government's reforms has been the Community Legal Service (CLS) – a loose structure for the co-ordination of sectors, services and funding. This report looks at how well this structure is working and fulfilling the objective of delivering access to justice through publicly funded legal services, and considers the issues facing the CLS within the wider policy context of developing access to justice, such as tribunals and eligibility criteria.

The report argues that there is great potential in the CLS, and credits the progress that has been made to improve access to justice through the CLS. New partnerships have the potential to make a valuable contribution to service provision and understanding local needs. Consumers can now have much greater confidence in the quality of publicly funded advice.

However, the report also identifies serious problems, which must be addressed for the CLS to be sustainable. Advice deserts are opening up, and the infrastructure of the CLS is underdeveloped and unsustainable. Fragmentation and desertification are posing serious challenges to the long-term viability of the CLS, and providers are being discouraged and demoralised by the dead weight of unnecessary bureaucracy.

These problems are clearly demonstrated by evidence from CABx, the Legal Services Commission and elsewhere. This report presents an overview of CAB evidence from each region on the adequacy of service provision under the CLS, and places this evidence in context of the major challenges posed by delivering access to justice, such as the scale of unmet advice needs and the challenge of ensuring appropriate eligibility for public funding. It is backed up by a survey of CABx, which showed that:

- **39 per cent percent of bureaux thought that their CAB was in an “advice desert”**
- **68 per cent of bureaux report difficulties finding CLS Solicitors who can deal with immigration cases**
 - **58 per cent with family law cases**
 - **60 per cent with housing cases**
 - **27 per cent with employment law cases**
 - **10 per cent with welfare benefit law cases.**

The report is divided into three parts; Part 1 looks at key policy challenges facing the CLS scheme in respect of meeting citizens advice needs, Part 2 takes a snapshot look at services on a geographical basis and questions whether service

planning mechanisms are delivering appropriate access to advice, and Part 3 explores where the CLS should go from here to fulfil its objective of delivering access to justice.

The report concludes that there is a need for greater transparency in decision-making within the CLS and Government policy about public funding of legal services, that partnerships need more support to fulfil their role, that crucially the LSC must provide for greater flexibility in the contracting regime, and that the Government must commit itself to greater capacity building in the CLS for the initiative to be sustainable in the longer term. Overall there is a need for:

- Policy and practice concerning the CLS to be more strongly and effectively linked with government policies for tackling social and financial exclusion and improving community cohesion
- The development of a more holistic approach to the delivery of legal advice services
- Support for the CLS from Government through policies to widen access to justice, for example appropriate eligibility levels, review of court fees and the principle of full cost recovery, and funding for tribunal representation.

1 Introduction

The geography of legal aid is complex and constantly changing.

Lord Falconer, speech to Legal Aid Practitioners Group, 17 October 2003

- 1.1 Ensuring equality of access to legal redress is an important state obligation under the Human Rights Act. In this context the provision of both affordable and publicly funded legal services is vital to citizenship. Successive surveys have pointed to a considerable level of unmet need for legal services, with several million people experiencing legal problems every year. In a mixed economy of legal advice provision, the focus of contemporary policy debate must be directed towards the provision of services which meet peoples' needs, provides choice, access, and are appropriate to dealing with clients' problems as they present themselves in daily life.
- 1.2 Policy makers have to face the challenge of how to address these issues, and are increasingly dealing with a moving target. New and welcome legislation conferring rights to citizens requires continuous adaptation in the system of publicly funded legal services. The need to make the most effective use of the public funds, which are invested in legal services, is not in any doubt. The key question is whether at the present time the system that has been designed to do this is actually working from a users or public perspective.
- 1.3 The 1999 'Access to Justice' reforms, which established the Community Legal Service, applied market ideas to improve the quality of services and control the costs - rather than compensating lawyers on a demand led pay-as-you-go basis for assisting those qualifying for the state subsidy of civil legal aid, lawyers were required to apply for contracts. Contracting of services was also expanded from not for profit (NfP) agencies, under a common quality mark and funding system. The Government's aim was to facilitate 'seamless' access to justice.¹ However, the Access to Justice Act also provided for a cap on CLS expenditure through powers to limit the number of cases processed and a Funding Code approved by Parliament.² At the same time procedural rules were reformed in the courts to speed up the civil process and encourage use of Alternative Dispute Resolution (ADR).³
- 1.4 One immediate impact of the 1999 reforms was a reduction in the amount of publicly funded litigation - around 100,000 non-family civil legal aid

¹ The White Paper *Modernising Justice*, as implemented by the Access to Justice Act 1999, built on reforms that had already started; contracting from the NfP sector was introduced on a pilot basis in 1995. The reforms made contracting compulsory but stopped short of open competitive tendering.

² Access to Justice Act, sections 5 & 8

³ Implementation of Lord Woolf's report '*Access to Justice. Final Report to the Lord Chancellor on the civil justice system in England and Wales*', July 1996. produced new Civil Procedure Rules which state an 'overriding objective' for the civil process of encouraging early resolution of disputes and dealing with cases justly and proportionately.

certificates were issued in 1999/2000, whilst only 45,000 were issued in 2000/01. Much of this can be explained by the exclusion of personal injury litigation from the funding code and the effect of the new civil procedure rules. However, there has also been a reduction in the number of solicitors' firms carrying out legally aided work. Whilst in 1999/2000, 8,900 solicitors offices received at least some payments for family work, by March 2002 only 3,800 firms offered this service. In the economic context of cost cutting and contracting, solicitors have found cities the easiest and most profitable areas to serve because the greatest numbers of potential clients are concentrated within the smallest travelling distance. The consequence has been that the number of access points into the legal aid system has reduced.

- 1.5 From the perspective of CABx and their clients the CLS system is proving to be vulnerable. The withdrawal of providers limits the extent to which the Community Legal Service can successfully offer a seamless and joined up service. A solution needs to be found to ensure meaningful advice and representation networks are available, covering both advice and litigation. The system appears to be ineffective at filling 'advice gaps', where there are shortages of competent advisers in specialist areas of law; for example immigration and asylum. There are also reports of an emerging shortage of specialist workers willing to work in advice agencies within the confines of the current contracting system.
- 1.6 Citizens Advice are concerned about the growth of 'advice deserts' in various parts of the country and major geographical inconsistencies in service provision. In rural areas, advice services have always been in short supply. However, the trend towards clustering of services in urban centres combined with trends towards the increasing specialisation and economies of scale in legal business, has been accompanied by a decline in the number of legal practitioners bidding for CLS contract work.⁴ Within this broad analysis there are significant regional variations. However, the trend is clear – significant parts of the country are inadequately serviced by legal aid lawyers or other appropriate services, and this is likely to intensify.
- 1.7 In order to meet the future challenges for the delivery of advice and legal services, the following principles need to be integral to the development of the Community Legal Service:
- Recognition that under the **Human Rights Act** ensuring citizens' equality of access to legal redress is a state obligation
 - Clearly stated aims to tackle **poverty and social exclusion**

⁴ The Legal Services Commission's report for 2002-2003 show that the total number of "offices" with civil contracts (solicitors, and NfP agencies) at the end of March 2003 was 5,061 compared with 5,321 at the end of March 2002, a reduction of 5 per cent. The number of solicitors' offices with contracts fell by 3.5 per cent from 4,543 as at 31 March 2002 to 4,383 as at 31 March 2003 which shows a 'bottoming out' from the declines of previous years (see *Access Denied*, Law Society August 2002). A further 258 solicitors' offices held contracts for "Licensed Work only" (this relates principally to litigation work), a reduction of 34 per cent from last year. New 'matter starts' have fallen by approximately 31 per cent between May 2002 and May 2003.

- A **client-centred focus** on individuals' real needs and circumstances, with appropriate redress for poor quality services
- **Diversity of provision and choice** for individuals who need advice through a mixed economy of provision, information, education and self-help, improved access to existing services and the widening of available methods of legal redress and adjudication
- **Effective partnership** between agencies, including between public and private agencies to deliver a seamless network of services – whether provided by those offering general help and advice or specialist casework
- A **holistic approach** to solving problems, with sufficient flexibility in funding, training and auditing criteria to encourage and enable front-line service providers to provide holistic responses as appropriate in clients best interests
- A **sustainable funding framework** for advice services with sustainability as a key principle for the Legal Services Commission (LSC) in its approach to the management of funds and contracts
- An emphasis on **wider problem solving** (eg through social policy work) with proper incentives for this work to be undertaken by advice providers and Community Legal Service Partnerships.

1.8 This paper discusses these challenges. It looks at the key issues of unmet legal needs, the expectations of the Community Legal Service, and examines in brief the provision, sustainability and adequacy of services in each region. It does not provide a detailed map of regional service provision, but seeks on the basis of CAB and Community Legal Service Partnership evidence to illustrate where there are problems. It concludes that the Community Legal Service is heading towards a crisis. This is due to policies, which place unsustainable burdens on providers, without sufficient incentives to improve and develop the infrastructure of advice services. Alternative, more sustainable models of funding and provision should be explored.

Part 1 – Challenges for the Community Legal Service

This part highlights a number of key challenges facing the Community Legal Service. These cover:

- The challenge of providing access to help with resolving legal problems
- The role of the Community Legal Service
- The role of legal services providers
- The role of partnerships
- The challenge of providing Specialist Legal Advice and Help
- The challenge of tackling debt and financial exclusion
- Access to Tribunals and ADR Schemes
- Access to Small Claims Remedies
- Eligibility for Legal Help and Representation.

2 The challenge of Access

2.1 There is little agreement as to what constitutes equal ‘access to justice’. ‘Easy geographical access’ is not the only measure of appropriate access to legal services. Findings from the first periodic survey of legal need among adults in England and Wales suggest that vast numbers of people experience legal type problems (approximately 19 million) at some time in their lives but nothing is done to resolve over a fifth of all these problems.⁵ One key challenge for the planners and providers is to ensure that legal services do reach those who are not predisposed towards taking action to resolve legal problems, or do not have the means to pay for advice. The Legal Services Research Centre’s (LSRC) periodic survey finds that people from certain groups are less likely to take action – people on low incomes and those in receipt of benefits, people without educational qualifications, and members of black and ethnic minority groups.

2.2 The LSRC’s first periodic review of legal need used random sampling techniques to establish the legal needs profile of over 5000 people from different socio economic groups. Thirty seven per cent of the respondents experienced one or more ‘justiciable’ problems. This finding is similar to results of Professor Genn’s *Paths to Justice* survey, which found that 38 per cent of responding adults experienced justiciable problems.⁶ Based on

⁵ Pleasence, P., Buck, A., Balmer, N.J., O’Grady, A., and Genn, H. *Causes of Action: Civil Law and Social Justice*. Interim Report to the Lord Chancellor’s Department and Legal Services Commission, December 2002 (full findings of the first LSRC Survey of Justiciable Problems, to be published February 2004). Those who take no action are sometimes referred to as “lumpers,” see Hazel Genn: *Paths to Justice: What people do and think about going to Law*. Oxford: Hart Publishing, 1999; Genn uses the term “lumpers” to define a group of people who have one or more legal type problem but who do not seek advice or help to resolve it.

⁶ The term ‘justiciable’ is used generically to describe non-trivial problems, which are capable of resolution through a judicial or quasi-judicial (eg tribunal or complaints) process. See Genn: *Paths to Justice: What people do and think about going to Law*. Oxford: Hart Publishing, 1999

the aggregation of the LSRC and *Paths to Justice* research, the size of the group who fail take appropriate action to deal with their problem can be estimated at around two million adults in England and Wales⁷. The people in this group tend to share the following characteristics:

- They have experienced problems relating to money, employment, accidental injury or work-related ill health
- Over half of them have an annual income of less than £10,000
- The majority are living in rented accommodation, as compared to those who took action.

2.3 The *Paths to Justice* survey shows the types of problems most commonly experienced included money problems (nine per cent); injuries/health problems resulting from accidents/poor working conditions (eight per cent); owning residential property (eight per cent); living in rented accommodation (eight per cent); employment problems (six per cent); and family/relationship problems (six per cent). Based on the research, it can be estimated, for example, that there are over six million adults who have experienced housing problems (disputes with landlords, housing disrepair, mortgage default etc) in the past five years that might have needed a legal solution.

2.4 The LSRC survey found that up to about one quarter of respondents made unsuccessful attempts to obtain advice, and fifteen percent of those who seek advice are unsuccessful in obtaining it. Problem type was found to have a bearing on this, with those experiencing problems with benefits, for example, very likely to have made such a failed attempt.⁸ In 19 per cent of justiciable matters, no action was taken to deal with the problem(s); however, this figure rose to 40 per cent in five categories of problem: mental health, medical negligence, police treatment, personal injury and domestic violence. Overall, these findings clearly indicate a general link between factors of social exclusion and the experiencing of justiciable problems.

2.5 The LSRC and *Paths to Justice* surveys also show that legal problems tend to occur multiply or in 'clusters', such as family problems (domestic violence, divorce, post relationship issues and problems relating to children), problems relating to low-income housing and homelessness (rent arrears, threatened eviction, homelessness, landlord-tenant disputes over disrepair or tenancy deposits, unfair treatment and harassment), economic related problems and multiple consumer/debt problems (debt, mortgage arrears, bailiffs, welfare benefits, mental health) and employment problems (employment rights, redundancy, personal injury, disability, benefits, mental

⁷ *Legal and Advice Services: A pathway out of social exclusion*. LCD and Law Centres Federation November 2001

⁸ Pascoe Pleasence, Alexy Buck, Nigel Balmer, Aoife O'Grady *Summary of Findings of the First LSRC Periodic Survey of Legal Need* Interim Report to the Lord Chancellor's Department and Legal Services Commission, December 2002

health). This suggests that to be effective, publicly funded legal services need to be organised in such a way as to tackle problems holistically.

2.6 The 1999 reforms attempted to move towards 'a planned system', of publicly funded assistance by setting and enforcing targets for providers, indicated by the analysis of need. However, the extent to which the CLS provides for a holistic service, which tackles citizens' problems as they present themselves in real life and overcomes barriers to justice is questionable in light of the LSRC's findings. Citizens Advice see the following areas as key barriers to delivering access to justice:

- The availability of legal advice and help
- advice on debt and tackling financial exclusion
- access to Tribunals and ADR scheme
- access to small claims litigation in consumer and personal injury cases
- eligibility tests for Legal Help, Help at Court and Legal Representation.

Is the Community Legal Service delivering access to advice and representation?

2.7 The Community Legal Service (CLS) was introduced to provide common systems of funding and the planning and co-ordination of service providers "to ensure that every community has access to a comprehensive network of legal service providers of consistently good quality, so that people with actual or potential legal problems are able to find the information and help they need".⁹ This initiative was considered to be a key plank of the Government's programme to tackle social exclusion.

2.8 The Legal Services Commission (LSC) was established with the duty to lead in developing the service, to manage the Community Legal Service fund which replaced legal aid in civil and family cases, to enter into contracts with providers of all types of legal service, and to develop, in co-operation with local authorities and others, local, regional and national plans, to match the delivery of legal services to identified needs and priorities. The mechanism for carrying out the tasks of assessing local needs and priorities, and matching funding to them, were to be partnerships between the LSC and other funders, local authorities and local providers.

2.9 Overall the Community Legal Service scheme has brought improvements, such as the Quality Mark and new Methods of Delivery pilots, which may not have been achieved under the legal aid system. However, it is impossible to ignore evidence that growing numbers of solicitors firms are finding the contracting regime unworkable and are pulling out.¹⁰ The reasons for this are two-fold, firstly the immediate impact of restrictions under the funding code and the consequent budgetary constraints which

⁹ *Modernising Justice* Lord Chancellor's Department, December 1998

¹⁰ See footnote 4 and para 2.18

have forced the LSC to prioritise resources. For example, in the first year of the Community Legal Service the Liverpool area was allocated five percent less for solicitors providing social welfare law than produced by the Green Form system in 1997/98.

- 2.10 In 2002-03 and 2004-05 contract holders are effectively being expected to operate the same services for less, in real terms, as contract remuneration levels have not increased in line with inflation. Set against the context of significant changes in social welfare law such as new legislation on public authorities' duties relating to homelessness, mental incapacity and domestic violence, and the increasing need for advice which such recent legislation generates, this can hardly be seen as an appropriate trend.
- 2.11 There are also concerns that the requirements of the bidding and contract compliance processes create business uncertainty for law firms relying on legal aid work. In the first two years of the Community Legal Service, a Law Society survey showed a 12 per cent decline in firms offering legally aided services in crucial areas such as employment law.¹¹ The same pressures of contract management and compliance, and delivering planning services to the rigid specifications of controlled work in the contract are also affecting services in the not for profit sector.
- 2.12 In a recent survey of CABx experience of the CLS (See Appendix) the majority view was that the CLS had not improved the delivery of legal advice, or made a positive impact on the local landscape of advice provision. It was not seen as having had beneficial impact on the location of providers, or increased services; indeed most bureaux thought services had diminished. This was seen as mostly due to the withdrawal of private solicitors from publicly funded legal services; but also from the CLS taking up time and resources, which could otherwise have been devoted to service provision.
- 2.13 Over 200 CABx in England and Wales responded to the survey, which canvassed CABx views on the effectiveness of the CLS. Only seven percent of respondents could agree that the CLS has been effective in meeting the needs of its clients, and in particular the needs of specific disadvantaged groups such as young homeless people, and those with learning difficulties and mental health problems.
- 2.14 General dissatisfaction with the way that the Community Legal Service has developed was clearly indicated. Sixty nine percent or strongly disagreed with the question; "Has the CLS had a positive impact on the local landscape of advice provision? (eg providers are located more strategically; providers, including solicitors doing legal aid work, have increased capacity to offer a service)." **Thirty nine per cent of bureaux said that they thought that their CAB was in an "advice desert".**

¹¹ *Access Denied* Law Society August 2002

- 2.15 The theme “local solicitors are doing less legal aid work” came through strongly in all the responses from CABx. Forty out of the 100 written comments on this question specifically mentioned reduction of solicitor provision in the area and subsequent gaps in the pattern of services, for example one bureau records that locally the Community Legal Service has had “the opposite of a positive impact. The majority of solicitors were not interested in undertaking quality assurance audits and dropped funded advice. We are left with one doing family only”. **Ten per cent of bureaux reported difficulties finding CLS Solicitors who can deal with welfare benefit law cases, 27 per cent with employment law cases, 58 per cent with family law cases, 60 per cent with housing cases, and 68 per cent with immigration cases.**
- 2.16 Asked whether the Community Legal Service has improved the accessibility of legal information and advice generally, or for individuals and groups facing social exclusion, 71 per cent of CAB respondents on access generally and 84 per cent on social exclusion thought either that access had not improved or expressed no opinion. Over 45 per cent of CAB respondents thought that the CLS should develop evaluation tools for measuring the impact of legal information and advice services on communities and the extent to which it tackles social exclusion.
- 2.17 If the Government is serious in its hope that the Community Legal Service will help to tackle social exclusion, the contractual regime and compliance monitoring system, must be refocused to produce a more stable system appropriate to the needs of users in terms of where they live and nature of their legal problems.

The challenge of working with a range of providers

- 2.18 Solicitors firms are key frontline service providers in the Community Legal Service. Only qualified lawyers are allowed to offer certain specialist types of legal service to the public, involving complex and difficult legal matters, which may require litigation or trial. Whilst over the past 10 years, the number of solicitors with practising certificates has grown by over 52 per cent from 57,167 to 86,603, the number of legal aid firms has decreased from over 11,000 to 4,361. Although publicly funded work in solicitors firms has been undergoing a long-term decline, this has accelerated in the past three years; for example in family law there are now 3,392 solicitors firms undertaking publicly funded work compared with the 4,593 firms offered contracts when the Community Legal Service was launched. In their 2002 Annual Report the Legal Services Commission drew attention to this problem; “We are concerned about the changes we are seeing in the supplier base. Between March and April 2002, 6 per cent of CLS suppliers left, including some firms of good quality. We are picking up intelligence through our regional offices that up to 50 per cent of firms are seriously considering stopping or significantly reducing publicly funded work.”¹²

¹² Legal Services Commission Annual Report 2001/02, para 2.7

- 2.19 Legal aid services are also provided by the not for profit (NfP) advice sector, of which Citizens Advice Bureaux represent the largest number of providers. A high proportion of caseworkers who work in the advice sector are not qualified solicitors or barristers, but do provide court and tribunal based assistance through representation as a 'litigation friend', or intervening as 'friend of the court', or through providing advice desks in court buildings. Citizens Advice Bureaux offer advice in 143 county and 33 magistrate courts; 83 per cent of CABx provide tribunal representation for clients.
- 2.20 The Citizens Advice Service is a key agency involved in helping people gain access to justice in today's society. CAB services are provided from over 2000 outlets. The CAB service deals with nearly six million new problems each year. Citizens Advice Bureaux are independent charities, developed by and for the community. They are responsible for securing their own funds to continue to provide their service. They have no statutory right to funding from any source. CABx presently rely on the public sector for 89.2 per cent of their funds to enable them to operate, 227 bureaux have contracts with the Legal Services Commission to provide publicly funded legal services. Legal Services Commission funding now accounts for 19 per cent of all CAB funds.
- 2.21 CAB clients are predominantly people with low incomes or reliant on welfare benefits. CABx are 'rights based organisations' that help people to challenge decisions made by public services and provide high quality advice to individuals on their rights and responsibilities in relation to welfare benefits, employment rights, resolution of debt and housing problems, consumer disputes, immigration and asylum rights amongst many other issues. CABx are involved in representing people, in courts, tribunals and negotiations with third parties. Where they are not able to advise or represent on any matter they refer people on. The service aims to help people to access their entitlements from the public services, and fulfil individuals' legitimate expectations. It works to combat social exclusion by tackling a multiplicity of interrelated problems as they present themselves to clients, and to achieve social change by using case evidence to influence policy and practice across the public and private sectors.
- 2.22 Another key provider in the NfP sector are Law Centres; these provide a free and independent professional legal service to people who live or work in their catchment areas. They are grant and contract funded, and employ solicitors, barristers, legal advisers and community workers specialising in demand led areas of social welfare law including welfare rights, immigration and nationality, housing and homelessness, employment rights, and sex and race discrimination. Like other providers in the NfP sector, Law Centres see themselves as fulfilling a wider role (than supplying legal services) by tackling underlying issues, structural problems and situations that generate legal service need.
- 2.23 Other providers also play a significant role in this sector, including Shelter which holds £2.15m of LSC contracts in housing advice operating from over

25 housing aid centres, and approximately 70 contracts are operated by networks of independent advice centres which have developed in response to particular local, regional or national needs, and represented nationally through AdviceUK, and the Advice Services Alliance which runs a Community Legal Service support service. Overall there are 416 contracts with the not-for-profit sector.

- 2.24 In this mixed economy of service providers, there has been considerable debate around the role that different types of suppliers should play in the delivery of services under CLS. The LSC's Final report "Quality and Cost" on the Civil Advice and Assistance Pilot 2001¹³ compared how solicitors and not for profit agencies work – it concluded that NfP agencies were more expensive per case and often took longer, however they provide a higher quality service and better outcomes for clients than other suppliers. The report concluded that the additional time taken on cases reflected the profile of more vulnerable clients', but that the methods of service and delivery used in the NfP sector gives clients added value and keep overheads to a minimum. The success and appeal of this model was reflected in a recent Law Society consultation¹⁴, which explored amongst other options how legal aid solicitors could become more like NfP agencies.
- 2.25 However, many bureaux and advice agencies consider that by contrast the effect of the current NfP contract is to push NfP agencies towards the business model of Solicitors firms, which have a higher risk-capacity and capital base, and can cross-subsidise services from private client income. In this respect, the Community Legal Service is generally not providing for a mixed economy of services or diversity in service type. Rather, the trend is towards homogeneity, which may not be feasible for all types of providers. This could function to deter some providers and prevent innovation.
- 2.26 The NfP contract is an agreement for statutory purchase (under the Access to Justice Act, section 6(3)) and funding for services specifically drafted and tailored for the not for profit sector; it is part of the core funding for many advice agencies and comes within the remit of the Voluntary Sector Compact.¹⁵ The compact emphasises that Government purchasers should be aware of the needs and capabilities of the sectors they procure from, that contracts should "fit" their purpose and audit requirements should be

¹³ Moorhead *Quality and Cost: Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot*, IALS (2001). This report assessed the block contracting of legal advice and assistance in civil, non-family cases and was submitted to the Legal Services Commission. It contains the most thorough assessment of legal advice and assistance ever undertaken, involving the use of experimental, randomised control and a number of innovative research methods to develop a full profile of advice and assistance work and the quality of service provided. Its particular focus is an examination of differences of approach between solicitors in private practice and "not for profit" agencies in the provision of social welfare law.

¹⁴ *The Future of Publicly Funded Legal Services* Law Society March 2003

¹⁵ The *Voluntary Sector Compact*, NCVO. The importance of the compact has been underlined both by the Treasury's Cost Cutting Review of the Role of the Voluntary and Community Sector in Service Delivery, *The Role of the Voluntary and Community Sector in Service Delivery, A Cross Cutting Review* HM Treasury, September 2002

proportionate. There are concerns widespread concerns in the NfP sector that the terms of the contract are inconsistent the Compact.

- 2.27 One of the major concerns for the NfP sector with the current contracting regime reported by the survey, is that the CABx bear all the risk of being unable to perform contract hours. The majority of contracted bureaux thought that overall levels of administration associated with meeting the requirements of the NfP contract were harming advice services and should be reduced, and that this could be achieved without reducing the LSC's ability to ensure value for money. Many of the contractual requirements were considered to be proxies for quality and did not measure value directly.
- 2.28 Many bureaux also report concerns that use of auditors with little or no experience in advice work, results in a paper trail with less time spent on advising the client. Audits can retrospectively 'disallow' hours on cases, and the LSC is increasingly penalising underperformance on hours targets. The new NfP contract introduced in April 2003 is seen as much more demanding (with no additional remuneration) and bureaux are particularly concerned about the efficient introduction of time standards restricting their ability to help clients. Both can result in reductions of funding and an increase in contracting costs. There is a real fear that contracts will become unviable and many bureaux will have to withdraw from publicly funded legal services, leaving many people without access to appropriate services.
- 2.29 The CAB survey also reported widespread dissatisfaction with the fact that NfP contracts are no longer up-rated in line with the RPI and NI increases, nor is there any up-rating for salary increments, or payment to enable agencies to cover the costs of sickness and maternity cover. Forty three to fort six per cent of CABx strongly agreed with need to change current funding system under NfP contracts to include:
- annual up-rating in line with the RPI
 - annual up-rating in line with salary increments
 - annual up-rating in line with any increase in NI contributions.

- 2.30 The Citizens Advice believes that the recommends that the obligations under the Voluntary Sector Compact should be followed through to contracts for publicly funded legal services. The Department for Constitutional Affairs and the LSC should embark on a programme of contract simplification to achieve consistency with the Voluntary Sector Compact.**

The challenge of partnerships

- 2.31 CLS Partnerships are charged with a number of challenging tasks. First assessing local priority needs for legal advice and guidance and the production of a Strategic Plan for the area. Second establishing referral systems. Third, taking action within local communities to increase access

to justice for all, especially those groups or individuals experiencing social deprivation. They are also expected to establish linkages with Government programmes and local initiatives. Whilst Citizens Advice endorse these objectives for CLSPs we are not convinced that CLSPs are delivering fully or consistently on their objectives or providing an effective framework for joined up working and planning. This is not surprising as they have very few resources to support a challenging development brief.

- 2.32 There are major problems for current CLS Partnerships arising from a range of sources, including insufficient local government support, lack of solicitor participation in partnerships and tensions between funders and providers involved. Many partnerships are concerned that expectations of them are unrealistic. High expectations make the partnerships very dependent on Legal Services Commission resource input and this represents a risk to their long-term sustainability. As research by the Advice Services Alliance, which analysed CLSP working procedures concludes "CLSPs are clearly not fully fledged partnerships."¹⁶
- 2.33 Despite the Government's emphasis on the importance of co-operation at local level to determine the needs of an area, and the best way to meet those needs, there is no statutory obligation on local authorities to get involved with the Community Legal Service. The Post-implementation review of the Community Legal Service in 2000 concluded that "partnerships are currently heavily reliant on goodwill alone to ensure their survival, and this may not be sufficient if troubled times lie ahead. A sensible way forward in respect of this issue would be to review the position at the proposed three-year review to determine whether a duty would be appropriate".¹⁷
- 2.34 The results of the recent survey of CABx show that CLS Partnerships scarcely begin to provide an effective infrastructure for advice networks, for example, only 16 per cent of bureaux could agree that their CLSP had successfully made the case for advice at a local level. Only 16 per cent of bureaux could agree that the resources they put into participating in their CLSP were justified by its achievements.

The challenge of providing specialist legal advice and help

- 2.35 As our evidence in Part 2 of this report demonstrates, in many parts of the country, especially rural communities, CABx are reporting that solicitors are no longer undertaking legally aided work on housing, family and community care issues, employment cases and asylum and immigration. Whilst there is much that CABx and other agencies can do for clients there are some problems which are often more appropriately resolved by using solicitors' professional legal expertise such as drafting and applying for injunctions, administering divorce proceeding, or defending possession and eviction actions.

¹⁶ Griffith: *Partnerships and the Community Legal Service*, ASA June 2002,

¹⁷ Naylor: 'Post-implementation review of the Community Legal Service, LCD 2001

- 2.36 The present system does not seem particularly effective at filling these gaps, for example where there are shortages of competent advisers in specialist areas of law, such as employment, immigration and asylum, and onward referrals to legal practitioners are difficult. The result is that clients may have to travel over 20 miles for specialist advice. In some cases this may simply not be possible because of the client's personal circumstances; for example a disabled client who visited the CAB in Romsey had a family matter to resolve which needed a solicitor's expertise; he was unable to travel to Southampton for a referral due to his disability. Many other such examples are included in Part 2 of this report.
- 2.37 On housing advice, Citizens Advice research¹⁸ shows there is both a need for and value to preventative interventions to avoid repossessions, and resolve tenants rent arrears difficulties often caused by problems with the administration of housing benefit. Such interventions are cost effective as they avoid the additional public and social costs of homelessness and local authorities having to exercise unnecessarily their duties to re-house homeless persons.
- 2.38 Areas of social welfare law concerning the most vulnerable clients, such as mental health and community care law, attract virtually no public funding at all, despite their central importance to tackling social exclusion and human rights abuses. There is a need for greater access to CLS advice or representation for people with specific needs regarding for example disability discrimination issues, translation; support and advocacy for people with mental health problems and learning difficulties.
- 2.39 There are critical problems in gaining access to legal services in rural areas with dispersed and small populations, which means that pockets of poverty are difficult to identify when planning services and poor and expensive public transport provides a significant barrier. These concerns are demonstrated by examples in Part 2 of this report.

The challenge of tackling debt and financial exclusion

- 2.40 Although 193 CABx hold contracts for debt advice there is a supply and demand problem with debt and financial advice for low-income households generally. Over the last six years, Citizens Advice Bureaux UK wide have reported a substantial increase in the number of new debt enquiries. Notably there has been a marked growth in the number of new enquiries about consumer credit where enquiries have risen by 44 per cent over the six years to 2003.¹⁹ This growth has taken place during an economic boom, where low rates of unemployment, low interest rates and soaring

¹⁸ *Possession Action: the last resort? CAB evidence on court action by social landlords to recover rent arrears* - Citizens Advice, February 2003

¹⁹ Citizens Advice Annual Report 2002/3

house prices have fuelled a substantial increase in mortgage and consumer credit lending.²⁰

- 2.41 MORI and Bristol University Personal Finance Research Centre also conducted research for the DTI and reported in November 2002: This concluded that about a quarter of households (5.4 million households) reported that they had been in financial difficulties in the last 12 months, including 18 per cent who had been in arrears on one or more of their household commitments, and around two in ten (4.33 million households) were in financial difficulties at the time of the survey.²¹ Research for the CPP Group also found that one in four people were worried they will not be able to keep up with debt repayments in the next three months. Of 2,000 people surveyed, 29 per cent said they were in danger of falling behind with their mortgage payments. Twenty two per cent said they would be able to pay their council tax and 12 per cent thought they would be unable to keep up with their credit card payments.
- 2.42 Although the additional funds from the Legal Services Commission have enabled more NfP agencies to offer a specialist debt advice service, many agencies find that they have to offer a two-tier service, if they do not have any other funding to provide help to those not eligible for Legal Help. In some agencies this means that the agency is only able to offer a full debt casework service to those eligible for Legal Help. It is possible for people who are more articulate and assertive to deal with negotiations with their creditors themselves, with the aid of self-help information on dealing with debts. But it is not necessarily the case that all those whose disposable income is above the threshold for legal aid are able to cope effectively with their debts without advice and support. In some CAB advisers' experience even the most articulate people find it difficult to manage multiple debt, especially when they are dealing with other problems in their lives. Also, self-help for debt problems can fail because many creditors will not negotiate with the debtor, or accept their offer of repayment, but instead insist they approach a debt adviser, at a CAB for example, who can look into their circumstances.
- 2.43 There is strong evidence that the demand and need for free debt advice outstrips the supply. And, without sustainable sources of funding for free money advice services, there is a danger that the advice gaps will not be adequately filled and existing provision could be cut. Should the economy take a significant downturn, CABx and other free money advice agencies are likely to need significant additional support to meet the increased demand for debt advice.
- 2.44 The Government are taking steps to tackle the wider issue of access to debt advice. The DTI have set out in the recently published Consumer

²⁰ See *In too Deep – CAB clients' experience of debt*, Citizens Advice, May 2003 for a discussion of this issue.

²¹ *Over-indebtedness in Britain:- Household Survey on the Cause, Extent and Effects of Overindebtedness*. Elaine Kempson PFRC, and MORI, DTI November 2002

Credit White Paper its vision for improving access to free debt advice.²² Citizens Advice hopes that this work will look at the question of financial eligibility criteria for legal help with debt cases. **Citizens Advice therefore recommends that the Government should review the financial eligibility criteria for legal help with debt cases.**

- 2.45 The Legal Services Commission are also seeking to address the problem of demand for debt advice by rolling out the telephone advice 'Methods of Delivery' pilots on a national basis. However, it is not clear how this service might join up to initiatives proposed by the DTI in their White paper, or how consumers might be actually helped by these services or find them appropriate to their needs. Research on the use of National Debtline has shown that low income debtors do not use the service in the proportions that might be expected and possible reasons include a preference for advice delivered face to face.²³

²² *Fair, Clear and Competitive – The Consumer Credit Market in the 21st Century* – DTI, December 2003

²³ *Evaluation of Money Advice Debtline Pilot and business case for development of 'National Debtline'*, Prepared by Deloitte and Touche for the Department of Trade and Industry, 2003

3 Particular access problems under the Community Legal Service

Access to tribunals and alternative dispute resolution (ADR) schemes

- 3.1 As a means of achieving results for clients and getting best value for money, Citizens Advice Bureaux place great emphasis on mediation, negotiation and settlements, use of Tribunals, Ombudsmen schemes and other ADR procedures where these are effective. However, there are no incentives or rewards for publicly funded practitioners to pursue these avenues for clients. For example CABx are currently limited in the amount of contract time they can claim for dealing with correspondence on behalf of clients, which may be essential to negotiate a resolution, and can prevent the client being taken to court in debt cases. Incentives to negotiate effectively in complex cases should be structured into the contractual regime and into the funding code.
- 3.2 In a mixed economy of services, access to justice is best promoted through a diversity of pathways to legal redress. Tribunals are often described as a cheaper more accessible and user-friendly forum of adjudication; the various tribunals handle over a million cases a year. However, there is no public funding available for legal representation at tribunals and users often find themselves dealing with complex legal issues and procedures unassisted. Across all the advice areas that come within the scope of the CLS, bureaux frequently report cases, which demonstrate a clear need for public funding to be made available for representation at tribunals, and additional benefits to helping clients resolve issues through tribunal processes rather than allowing legal problems to escalate further. Given the principles imposed by the Human Rights Act, it is increasingly difficult to justify the exclusion of tribunal representation from the scope of the funding code.²⁴
- 3.3 Undertakings have been made to address the issue of funding appropriate representation at Tribunals. Lord Irving of Lairg described the exclusion of tribunal representation from legal aid funding as “a gap which cannot be rationally justified in the provision of legal aid.....there is no greater unfairness than the leally unrepresented applicant against the legally represented employer in industrial tribunal cases(it is) ..irrational to exclude tribunal cases from any call on the legal aid budget.”²⁵ Consideration of the issues around arrangements for improving citizens’ knowledge and understanding of their rights in relation to tribunal jurisdictions, and ways to make those rights a reality, has formed part the

²⁴ Article 6 of the European Convention on Human Rights establishes the principle of ‘equality of arms’ in the context of criminal law, but arguably the principle extends to all proceedings involving the determination of civil rights and obligations (see para. 3.14). As a result of lobbying by human rights lawyers, some representation for Mental Health Review Tribunal, Immigration Adjudicator and Immigration Appeal Tribunals has now been brought into the scope of CLS funding.

²⁵ Lord Irving of Lairg ‘The Legal System and Law Reform under Labour’ in *Law Reform for All* Blackstones 1996

Government's Review of Tribunals.²⁶ Citizens Advice has concerns that too often applicants' rights are compromised by not having an independent advocate to present their case and deal with tribunal officials.

A client of a CAB in the North West appealed refusal of a claim for attendance allowance. She was sent a hearing date which coincided with an important appointment with her consultant. This was explained to the Appeals Service, but they would not postpone the hearing. The CAB adviser attended the hearing and asked for an adjournment, which was granted by the chair. At the request of the Appeals Service, the adviser then wrote to them setting out the dates on which she would not be available to represent the client. Despite this, the hearing was relisted for a date on which the adviser had stated she would not be available.

A client of a CAB in the South attended a tribunal hearing for a Disability Living Allowance appeal. The client was partially sighted and also suffered from depression. He found the venue very badly signposted and ended up becoming flustered finding the right room in time. He was greeted by a clerk who commented that he had been running, in such a way as to imply that the client should not therefore be claiming a disability benefit. The clerk also said that the client had been drinking. The client was therefore already very distressed even before the hearing had begun.

A CAB in the East of England reported a case involving a client whose legs are paralysed and who lives in a council property specially adapted for her disability. She has received Disability Living Allowance for the last four years, at the highest rate for care and mobility for the last three years. She attended a tribunal with her husband to challenge the latest award, which allowed only the middle rate for care. The CAB representative had not been able to attend, but sent a written submission to the tribunal. The client then contacted her in great distress. She felt that she and her husband had not been listened to and that the tribunal members had been far from sympathetic. One of the grounds for the client needing night time care was that she often needs to go to the toilet. The client reported that the tribunal questioned her very aggressively on this, implying they did not believe her. When she told them that she tried to restrict her liquid intake, especially in the evening, to control the problem, the doctor on the panel commented 'well, where does all this water come from then?' The client lost the appeal, and in view of her experience, does not want to take the matter further even with grounds to do so.

- 3.4 Frequently, an imbalance of power exists between parties to a tribunal, for example with social security tribunals, appeals to the Social Security Commissioners, and to employment tribunals. Whilst tribunals are more informal than the courts, the legal complexity and technicality involved in pursuing a case continues to grow, and the Council on Tribunals is urging

²⁶ Sir Andrew Legatt: *Tribunals for users, One system, One service*. August 2001

the adoption of complex 'Model Rules' of procedure.²⁷ Social Security law is governed through several Acts, hundreds of sets of regulations and amending statutory instruments, and volumes of guidance and reported case law. Employment law also grows ever more complex, with the addition of new employment rights, and there is also a growing trend, first highlighted in Citizens Advice's 1995 report 'Barriers to Justice', for employers at industrial tribunals to be represented by barristers or solicitors, again putting unrepresented applicants at a severe disadvantage.²⁸

- 3.5 Research shows that representation can make a real difference to the outcomes of tribunals.²⁹ It has long been the view of Citizens Advice that bureau clients would benefit from funded representation at tribunals, that in many cases achieving a positive resolution at tribunal stage saves further expense at a later stage, and that tribunal representation should be treated in the Funding Code on a similar basis to legal representation, but subject to a more appropriate merits test. The Legatt Report on Tribunals has also raised concerns about lack of funded representation for vulnerable tribunal users.³⁰ It is therefore hoped that the forthcoming White Paper on Tribunals will include proposals on this issue.
- 3.6 Citizens Advice recommends that the Government should immediately implement the proposals of Sir Andrew Legatt for public funding to be extended for tribunal representation, especially for cases where representation is required because applicants' personal circumstances (such as inadequate knowledge of English, or mental or physical disability) or the complexity of the case make it unreasonable to be able to expect them to present the case effectively themselves.

Access to small claims litigation in consumer and personal injury cases

- 3.7 There will always be cases where, whether as a result of the other parties' intransigence or due to public policy, the only solution for the client is to go to court, for example - housing disrepair, personal injury, recovery of small debts and consumer claims or unpaid employment tribunal awards. Yet, in practice small claims litigation often produces a zero-sum gain for clients. CABx report clients on low incomes who find the costs of taking a case prohibitive due to excessive court fees, costs, disbursements and the failure of remission procedures, high insurance premiums for conditional fee agreements in personal injury cases, and the low financial eligibility limits for publicly funded legal representation.

²⁷ *Guide to Drafting Tribunal Rules*, Council on Tribunals, November 2003. The suggested rules are adapted from codified rules of evidence and case preparation etc in the Civil Procedure Rules.

²⁸ *Barriers to Justice – CAB Clients' experience of legal services*, NACAB, September 1995

²⁹ See Genn: *Paths to Justice: What people do and think about going to Law*. Oxford: Hart Publishing, 1999

³⁰ Sir Andrew Legatt: *Tribunals for users, One system, One service*. August 2001

- 3.8 Government policy of ‘full cost recovery’ exacerbates problems of access to legal redress. This policy was never debated in Parliament but requires the recovery of almost the full cost of running the civil justice system from litigants so that the court system can pay for itself. Implicit within the civil justice reforms of 1999 was an aim to reduce the number of cases reaching the courts. If the principle of full cost recovery is retained, it is inevitable that as the numbers of cases drop, court fees will rise. CAB evidence suggests that there are many people with income only a little above income support level who find the fees a real deterrent, and who receive no assistance with the cost. Remission of fees is a matter of discretion, however, the CAB Service has little confidence that court staff are actually exercising this discretion in all but a few cases. For example:

A CAB in the South reported a client who applied for fee remission on an application for suspension of a warrant. The application for remission showed that the client's income, from incapacity benefit, was 50p per week above income support level. However, his application was refused. Consequently, he could not afford to apply for the suspension of the warrant and suffered severe stress from subsequent enforcement action.

A client of a CAB in the East, a widowed pensioner, applied for exemption from fees to suspend and vary a warrant of execution. Her income was less than £80 a week, but her application was rejected on the grounds of having sufficient disposable income. The CAB involved felt that the court did not properly take into account her actual expenditure.

- 3.9 **Citizens Advice recommends that the Department of Constitutional Affairs should review the principle of full costs recovery and the court fees system, which act as barriers to justice for many people.**
- 3.10 The policy of the 1999 civil justice reforms has been to encourage more civil claims to be funded privately on a conditional fee (CFA) basis. Personal injury as a category of work was removed from the scope of the CLS Funding Code. The introduction of CFAs has stimulated the development of new insurance products and loans to cover upfront litigation costs such as expert reports. The promotion of these products has stimulated growth of a new market of “claims management companies”. These are enterprises run by non-lawyers offering various forms of “no win, no fee” deals through mass marketing on television and the press, and through high pressure sales techniques practiced by cold calling, doorstep sales or touting for business in public places.³¹
- 3.11 This has resulted in a far from transparent compensation system in which consumers enter into a bewildering set of consumer credit agreements; evidence from CABx shows that in a large majority of cases claimants

³¹ See *Door to Door: CAB Clients' experience of doorstep selling*, Citizens Advice September 2002

recover little more in damages and settlements than they are required to pay out in insurance premiums, legal fees and disbursements so they do not receive any money in compensation to restore their previous standard of living. Due to lack of clear, independent and transparent advice, litigation becomes a zero-sum gain. For example:

A CAB client in the Midlands claimed compensation for an accident; she was advised by a claims management company to take out an after the event insurance policy. The compensation accepted was £1,750.00 the insurance premium and interest charges amounted to £1,847.59.

Another client of a CAB in the Midlands recovered compensation of £2,400 from which the claims management company deducted £2,190.16 in fees and loan finance.

A CAB in the North reported a client had an accident at work and took out a Conditional Fee Agreement on a loan of £1396.50 with a basic additional fee of £250; the injury sustained is unlikely to qualify for compensation above £1,800.

- 3.12** Citizens Advice therefore recommends that the Department of Constitutional Affairs should commission research on recoverability levels (damages and settlements) in personal injury compensation obtained through conditional fee funding, to determine whether the present approach to funding personal injury from CFAs is working in the consumers' interest.

Eligibility tests for Community Legal Service funded help

- 3.13** No system of public funding for legal services can be fair unless the eligibility criteria are appropriate and kept under review. Between 1999/2000 and 2002/2003, net spending on civil legal aid was cut from £564 million to £483 million. Exclusions contained in Schedule 2 of the Access to Justice Act have also had a dramatic effect on the range of civil cases funded.³² The Funding Code imposes further restrictions on income grounds, although there is a gross income limit (aggregated to include a partner's income) of £2,288 per month, anyone with a net monthly income of more than £621 per month after housing costs and allowances for dependants, or with disposable capital of more than £3,000, will not usually be eligible for advice under the legal help scheme, (although they may be able to qualify for full Legal Representation in Court Proceedings). Further contributions are sought from the client for Legal Representation in Specified Family Proceedings from clients with a monthly disposable income of anything above £267.

³² Personal injury, death or damage to property, conveyancing, boundary disputes, wills, trusts, defamation, company or partnership law, and tribunal cases are excluded from the Funding Code.

- 3.14 Citizens Advice have serious concerns about this means test, its complexity as well as the rigidity, consistency and fairness of its application. For example in assessing disposable income, no allowance is made for payment of council tax or unpaid bills, and the amount allowed for work related expenses is too low to accurately reflect real expenditure. The following cases illustrate CAB concerns:

A CAB in Dorset wrote to their MP to express concern about an elderly client who was ineligible for publicly funded legal help because her income was 61p over the qualifying limit. If she were in receipt of income support, she would qualify automatically, and in fact, the bureau discovered that she was eligible for income support but had not been aware of the fact. The bureau have now made a claim on her behalf, but in the interim she needed urgent legal advice. The bureau considered it unfair that a client who is unaware of an entitlement to benefit should not be able to obtain free legal advice, despite actually qualifying for the passporting benefit in question.

A CAB client in Essex had obtained Legal Help and CLS funding in a family case which involved the client's ex-husband seeking sole possession of the family home, and issues over the custody of their children. The client who was receipt of income support and therefore eligible for CLS funding, then moved into a low income job and received Working Family Tax Credit instead; this took her income to 10,551 per annum, so the LSC withdrew funding. The Client still had to attend the Court Hearing, and received a bill for Solicitors fees amounting to £700, which she could not afford to pay. As well as mortgage loan repayments, she had additional debts to pay that did not qualify as outgoings for the purpose of assessment.

A CAB client in Cambridgeshire sought advice on eligibility for legal help for family mediation. On the basis of evidence presented to the bureau the adviser concluded that the client's monthly income was £610 and therefore under the threshold. However, the adviser phoned the LSC who advised that on the figures supplied the client would not be eligible.

A CAB in the East Midlands reported a client – a mother in a family case where involving a divorced couple's dispute over contact with the children. The ex husband earns around £32,000 per year whilst the client was on working families tax credit and looking after the children. Whilst the ex-husband was able to adjust his outgoings and liabilities to meet the eligibility tests, the client was refused funding.

- 3.15 The disposable capital limit of £3,000 is also well below that allowed for eligibility for means tested benefits, thus it prevents any benefits related passporting. There are also concerns about the value of the client's home being taken into account if that value is over £100,000. In the south east of

England this causes problems where all but the smallest properties are worth well above this amount; it is a particular problem for older people who have retired and paid off their mortgages but live on the basic pension income. Often, clients facing significant legal expenses cannot gain access to the capital locked in their homes, as their incomes are too low to allow them to borrow money using the property as security. These clients are not then eligible for legal aid, so are denied access to help in obtaining legal advice.

- 3.16 The other element of the Funding Code, which establishes eligibility, is the application of a merits test. Cases will only be funded where there is a chance of success of at least 50 per cent, and where there is a minimum ratio of damages to costs. The Legal Services Commission is vulnerable to Human Rights Act challenges in this respect as the grant of legal aid is clearly a public law right; the European Court of Human Rights has ruled that imposition of a merits test can, in some circumstances, violate article 6(1) of ECHR.³³ However, the LSC does have a residual discretion to disapply the merits test, and in the case of *Jarret* it was held that the LSC should apply the discretion more widely and consider where "the withholding of legal aid would make the assertion of a civil case practically impossible... or lead to an obvious unfairness."³⁴ **Citizens Advice recommends that the LSC should produce policy guidance on when they will exercise this discretion and monitor and publicise the types of circumstances in which they exercise it.**
- 3.17 For the purposes of performing Legal Help work under LSC Contracts, the merits are considered by the application of the 'Sufficient Benefit Test'. This has to be applied by advisors from the outset at the very start of the case when the client first makes the application for Legal Help, and must be kept under review throughout the case. It stipulates that Legal Help may only be provided where there is sufficient benefit to the client to justify work or further work being carried out.
- 3.18 Under the 'Sufficient Benefit Test' the cash level or value of a case at which the CLS may fund, can exclude clients on the lowest incomes who may have disputes and problems of a low monetary value, but which are of great significance to them. A system that is expected to help tackle social exclusion is effectively saying to the least well off in society that they may have a case but it is not worth pursuing it, without regard to the importance or impact of the case to the individual.
- 3.19 **Citizens Advice recommends that the Department of Constitutional Affairs should review the financial eligibility limits for publicly funded legal help which function to exclude all but the very poorest in society from help with the costs of legal advice and representation, and consider what changes should be made to ensure that assessment is undertaken with reference to the impact of the case on the client.**

³³ *Aerts v Belgium*. ECHR Reports of Judgments and Decisions 1998.

³⁴ *R (ex parte Jarrett) v. Legal Services Commission* [2002] ACD 160

Part 2 – Access to publicly funded legal services

4 Regional pictures

- 4.1 The following sections look at the CAB evidence about problems people have obtaining access to publicly funded legal services in different parts of the country to see if the Community Legal Service is fulfilling its objectives, and how barriers to justice are affecting the lives of CAB clients. The case studies focus on access to appropriate services, especially solicitor or specialist services where generalist casework is insufficient in delivering legal remedies. Over half the CABx responding to the CLS survey were within a mile of the nearest law firm with an LSC contract, however this proximity does not in itself adequately match services to needs. Often local CLS lawyers only practice or operate a contract in a particular field. Due to the limited nature of the contracts they hold, or pressure from other work, they may refuse to take on complex and difficult cases, or leave clients waiting for a number of weeks to obtain appointments. In cases such as domestic violence or housing repossession where urgent legal action is required, this causes major problems for clients.
- 4.2 The regional pictures in this part of the report are subdivided by county and conurbation clusters. They are not intended to provide a detailed assessment of the entire level of provision in any area. They provide examples of local access problems and users experience drawn from case studies brought to our attention by bureaux, and also from the data provided by the Citizens' Advice CLS Survey, reports from Regional Legal Services Committees and Regional Directors' Contracting Strategies, and CLSPs' local needs assessments and strategic plans. This evidence by its nature is unevenly distributed and predominantly qualitative rather than quantitative. However, it is sufficient to illustrate clearly that 'advice deserts' have developed, and where insufficient supply is leading to significant problems for people in accessing appropriate levels of service in their community.

Greater London

- 4.3 London is an area of high and shifting demand. London contains concentrations of both high and low-income households, and polarisation with 30 per cent of working age adults in income poverty. Poverty rates are particularly high for minority ethnic groups, and with half the entire minority ethnic population of Great Britain living in the capital, income inequality in London has a strong ethnic dimension. The spatial aspect of deprivation is also strongly marked, with Inner London – an area of nearly three million inhabitants- registering rates of income poverty far higher than in any region of Great Britain.³⁵ As the economy of advice provision is as diverse as the City itself, any overall assessment of the availability of 'services to need' is challenging. However, the adequacy of advice services is a particular

³⁵ The London Plan: Spatial Development Strategy June 2001

problem for many outer London boroughs, which are generally affluent but contain pockets of deprivation and seem to be unable to access sufficient funding for services to tackle their deprived areas.³⁶ As one housing adviser has observed:

"I'm glad this issue has been raised. The problem of getting hold of a solicitor is one that comes up so often when we're dealing with CAB and other providers that it's less like an issue and more like a way of life. The feedback we get from agencies throughout London is that it's virtually impossible to get solicitors to take on emergency cases."³⁷

- 4.4 The Citizens Advice survey showed that 81 per cent of the respondents in the London region reported problems with referring clients to LSC contracted firms undertaking emergency applications in family cases, and 90 per cent in immigration cases and 63 per cent in housing cases (See Appendix). Despite public transport links 37 per cent of bureaux in London thought their CAB was in an 'advice desert', and 73 per cent thought that their local referral network was getting worse.

South and West London

- 4.5 Bureau evidence from around South and West London highlights the problems of differential levels of advice provision between inner and outer London.
- **Bromley CAB** report that whilst three local solicitors firms offer housing advice services under the CLS, only one firm provides debt and welfare benefits services, and that these services are too distant for the geographically isolated parts of the borough.
 - **St Helier CAB's** client needed help with a neighbour dispute involving harassment and violence; the bureau contacted two solicitors firms locally with housing expertise who were both unable to help as they did not have LSC housing contracts. The client contacted the only local firm with a housing contract but they were too busy to help.
 - CABx experience is that there is a lack of housing solicitors in **Sutton**, and particularly solicitors who deal with homelessness situations. The London Boroughs of both Merton and Sutton have particular shortages with only a limited number of firms doing family work (mostly matrimonial) and no contracts for housing, debt, employment, welfare benefits – the only other solicitor contracts are for immigration, whilst the NfP agencies do very limited debt and

³⁶ *Breaking Down the Barriers* A report on targeting regeneration resources by the Economic and Social Development Committee, Greater London Assembly, July 2003

³⁷ Michele Scott, housing fieldworker, Shelter London. May 2003

welfare benefit work.³⁸ The local MP also reports difficulty in obtaining "any solicitor involvement in the local CLSP."³⁹ Referrals usually have to go to Croydon and there is quite a wait before clients are able to get to see a solicitor.

- **Thornton Heath** CAB report that no solicitors are available in Croydon to deal with welfare benefits cases under contract, and that the Community Legal Service Directory is misleading.
- **Sheen** CAB report an urgent need for more housing solicitors in their area. In one case a client was not able to get housing advice under the CLS because there are insufficient solicitors available and willing to help with warrants of eviction; the family received an eviction warrant and had less than a week to challenge it. The CAB could not find a legally aided housing solicitor available, and the CAB had to do their best to intervene on her behalf.
- **Sheen** CAB report that getting access to CLS solicitors for housing problems is so problematic, that they are often referring clients to firms in other boroughs such as Streatham and Hounslow and Acton. Although this is generally quite effective, the solicitors often won't take on urgent cases. The bureau considers that the major reason that there are not enough Community Legal Service solicitors in the area, is that Sheen is in the comparatively affluent borough of Richmond, so the LSC does not provide sufficient contracts even though there is significant population of people on benefits. Help with family law cases is generally sufficient, but there is insufficient provision for advice areas such as employment, and even where clients can get advice, they cannot get representation.
- **Sheen** CAB also report concerns that the lack of legally aided employment advice in their area renders poor clients vulnerable to unfair dismissal. One client, a lorry driver, who was unfairly dismissed by his employer, had contacted several solicitors firms in the area who advertised legally aided employment advice, but none would take on the case at the time. The bureaux made enquiries and found that there was only one firm left dealing with employment cases under CLS, but the firm was composed of one solicitor and one trainee, and had already passed their matter starts' quota so could not take on any new CLS cases.
- **Feltham** CAB report that local solicitors say the situation with the Community Legal Service is impossible in terms of access for clients, and that due to the complexities of the administration solicitors do not want to operate under CLS but prefer to do private work.

³⁸ Legal Services Commission *London Regional Report and Update*. 2003-2004

³⁹ Conversation with Paul Burstow MP about local advice services in Sutton and Cheam

- **Feltham CAB** report the case of a client suffering from osteo-arthritis, who had separated from his wife but still shares a joint council tenancy. He had been made homeless and had been living in a car for several months. He was unable to find a CLS solicitor to take on the case as there were hardly any housing solicitors in the area, and of these none were able to take on new cases. After phone calls from the bureau the client eventually did get a solicitor, but they were not really able to help. The council rejected his application for housing on the grounds that he was not divorced from his wife, and the solicitor was not prepared to challenge this decision. The client was understood to be still homeless eight months later.
- Overall, **Feltham CAB** considers that housing advice is a huge problem in the area. Rents are high and there is a shortage of council accommodation; there are many cases of single homeless people and not enough LSC funded housing solicitors. Consequently clients cannot get legal assistance. Clients have had to wait up to six months to see CLS family solicitors. However, an employment advice project was set up by LSC in Hillingdon and Hounslow after they identified employment advice as a major gap. Feltham CAB now refers all employment problems to this service.
- **Brentford and Chiswick CAB** report daily problems referring urgent family, housing and immigration problems.

Inner London

4.6 Although Camden is well served by a network of agencies, the CLSP notes that “Only four organisations north of the Euston Road can offer specialist advice on debt matters. As this is where the most need was identified this would suggest a gap in provision.”⁴⁰

- **Hammersmith and Fulham CAB** report weekly problems in finding a CLS lawyer to deal with urgent asylum and immigration cases, and problems with referrals in debt and welfare benefit cases.
- **Paddington CAB** report a client needing assistance with a DLA appeal. The bureau contacted the LSC who gave details of 3 solicitors currently providing Welfare Benefits help under contract, however when contacted two of these said they no longer provided this service, whilst the third was due to go on maternity leave so was unable to take on any new cases.
- **City of London CAB** report that although they have very few difficult housing and domestic violence cases, local CLS firms will only do a restricted range of work and take on a very small number of publicly

⁴⁰ The Camden Community Legal Service Partnership Strategy 2003

funded clients. Only one firm in the City of London has a contract for family work.⁴¹

- The London Advice Services Alliance (LASA) indicate that the London Borough of Hackney has insufficient provision for those actively seeking help and support, information and advice. London Borough of Hackney has made significant cuts to its support for independent advice provision. According to the Index of Multiple Deprivation, Hackney is the second most deprived district in the country.⁴² Chatham, Kings Park and Wick wards rank as among, the most disadvantaged in England. Failure to invest in advice services misses the fact that such services can generate significant income for the local economy. Research by the Hackney Marsh Partnership has shown that the work of Kingsmead Advice Service directly resulted in clients improving their income - in 2000/01 this totalled £78,707.83, in 2001/02 the income generated totalled £161,689.76.

North and East London

- The Borough of **Barnet** has no NfP agencies operating LSC contracts, the CAB report that clients often have to be referred to suppliers in neighbouring boroughs.
- **Havering CAB** report that for debt, welfare benefits, and mental health there are no LSC contracts in the borough, and that the service has weekly difficulties in finding CLS lawyers to deal with urgent family cases.

The South East

- 4.7 The South East is a large and populous region with eight million people spread over 67 district, borough and unitary local government units. Although prosperous as a region, there are 119 wards in the top 20 per cent of the Index of Multiple Deprivation; these deprived wards are scattered rather than clustered together, though they tend to be located in coastal areas. They can also be located next to other wards of comparative affluence, for example Ashford and Havant. For service planning, this causes difficulties in balancing effective service delivery with economies of scale and consequently there are 'advice deserts' scattered throughout the South East.
- 4.8 Many bureaux report problems with referrals to specialist services such as housing solicitors (See Appendix). Seventy four percent of bureaux in the region, which responded to the survey on the CLS, said they had problems obtaining publicly funded help from solicitors in urgent housing and family cases, 77 per cent with immigration cases and 29 per cent with employment

⁴¹ Legal Services Commission *London Regional Report 2003*

⁴² This is a measure of population weighted average of the combined ranks for the wards in a district

cases. Forty two percent of bureaux in the south east thought their CAB was in an 'advice desert.'

Berkshire and the Home Counties

- **Reading CAB** undertook a survey of local solicitors, which showed that between 2001 and 2002 there was a 23 per cent decrease in the availability of publicly funded work in the area. Particularly large decreases were seen in: consumer contracts (85 per cent reduction), wills and probate (50 per cent reduction), other civil litigation (42 per cent reduction), matrimonial (42 per cent reduction). Over the same period, the bureau has witnessed large increases in its more legal areas of work, for example, a 49 per cent increase in immigration and nationality enquiries, 29 per cent increase in employment and 18 per cent increase in separation/divorce enquiries. However, local solicitors firms have drastically cut the issues for which they offer legal help and five firms have ceased provision completely. One of these five had offered publicly funded work in 13 areas of law in 2001. Another firm has reduced from eleven practice specialisms in 2001, to just one in early 2002.
- **Bracknell CAB** report a similar picture. There are only six solicitors firms in Bracknell Forest Borough; all except two have withdrawn from providing legal help and one of these has withdrawn from the area solicitors' rota and has requested that the CAB do not send them cases requiring emergency injunctions.
- **Maidenhead CAB** report the experience of a single female client, threatened with homelessness and in need of specialist advice. But with no publicly funded housing advice available in the area she could not get the advice she needed.
- **West Berkshire CAB** report that there are no CLS solicitors in their area, the nearest being 20 miles away, and that the bureau has weekly difficulties in making referrals of domestic violence, housing eviction and employment cases.
- In Buckinghamshire and Oxfordshire, there is only one law firm in each county with an LSC housing contract, compared to nearly 30 firms with family contracts.⁴³ However, **Buckingham and Winslow CAB** report that there is only one local firm offering CLS funded family work, and that for other areas of legal advice clients face a 36 mile round trip.
- There are extreme shortages in specialist areas such as actions against the police; the CAB in **High Wycombe** reported that a client was advised by the CRE that he had a claim against the police for racial harassment. The CAB contacted firms in the CLS Directory

⁴³ Legal Services Commission *South Eastern Region Contracting strategy 2003 – 2004*.

but none had a contract covering this area – the nearest being Ealing, a distance of 20 miles. The client also contacted two other local firms, one of which required an insurance premium for potential costs and a second recommended by Wycombe Racial Incidents Group, which was unable to take the case due to personnel shortages.

- A similar pattern emerges in Oxfordshire. **Abingdon CAB** report a lack of local family solicitors offering LSC funded services, with clients having to travel to Oxford. One of Abingdon's clients needed emergency help from a solicitor to apply for a non-molestation order against her ex-partner. With the only solicitor in the immediate area providing appropriate publicly funded assistance on holiday, the client had to wait for an appointment the following week in Oxford. She was concerned about what might happen over the weekend.
- **Oxford CAB** report weekly problems with referrals in housing, family and immigration cases.
- **West Oxfordshire CAB** report that there is only one solicitor with a family law contract, and no other category specific contracts locally they have daily problems making referrals in urgent housing and employment cases. Eventually, the bureau were able to set up a service with the help of a CLS solicitor from outside the area, who uses the bureau as an office one day a week.

Kent, Surrey and Sussex

4.9 Sussex is sparsely served by legal aid practitioners with for example only six contracts in employment and no NfP provision, whilst in Kent there are also concerns that the level of supply is insufficient to meet the populations needs. Surrey seems an unlikely county to be classified as an 'advice desert', as it boasts over 210 Solicitors firms, yet few undertake legal aid work; for example there is only one housing contract for the whole of the county⁴⁴. According to the Law Society there are no Community Legal Service solicitors in Woking undertaking family work and all Woking solicitors have now pulled out of the CLS:

- **Thanet CAB** report that there is no housing solicitor in the area, and on further research it was found that although there are seven firms listed under housing in the directory, on the ground there are currently scarcely any firms providing specialist housing law services under contract in the whole of Kent.
- The CAB in **Tunbridge Wells** report that it is often difficult to get clients appointments with family lawyers. Although several firms

⁴⁴ Legal Services Commission *South Eastern Region Contracting Strategy 2003 – 2004*. Whilst there are 51 family contracts in Surrey, there is only one housing contract and no debt or welfare benefits contracts.

have contracts in this area, they give private clients priority. The main LSC quality assured housing advice contract in the county is operated successfully by the CAB in Tunbridge Wells, and the only firm in Tunbridge Wells which takes on housing cases does so under tolerance.

- Citizens Advice and Shelter report that there is a problem across the county with a drastic lack of solicitors willing and able to do representation for housing cases in **Medway & North Kent**. In the Medway local authority area (a population exceeding 250,000) there are no solicitors practices with specialist contracts in housing, and no local authority service or tenancy relations officer, so consequently there are concerns that illegal evictions are taking place. Non-solicitor housing advisers do intervene in these cases, but local judges do not always allow them rights of audience.
- In **North Kent** for housing cases advice agencies say they refer to one reliable reputable firm with a housing contract in Orpington.
- **Faversham CAB** report that there is only one law firm with an LSC contract left in the area, other solicitor providers having gone out of business. Now clients have to travel to Canterbury 10 miles away.
- **Woking CAB** reports that local clients have to go to Farnborough for publicly funded legal advice, as local providers have pulled out. In one case the bureau's client could not find a solicitor to help her obtain an injunction, as all the local solicitors contacted said that they either no longer did publicly funded work, or they did not have the time to take on her case.
- **Walton, Weybridge and Hersham CAB** report that they have daily difficulties referring urgent family cases to solicitors, and that no solicitors are available to take difficult cases such as actions against the police and mental health cases, only one solicitors firm is offering family advice, whilst the nearest other CLS lawyer is a sole practitioner based in Hounslow, 12 miles away which takes half an hour to access by car and is difficult to get to by public transport. In one case the bureau needed a solicitor to advise their client in a family law matter; amongst other things, the client's wife was threatening to limit his access to their children. The client had not been able to find a local solicitor who could help, and eventually, the bureau found a firm in another town. The four firms that the bureau had contacted first of all were not taking on any further publicly funded matrimonial clients.
- **Guildford CAB** report the experience of one client whose ex-partner coerced his new girlfriend into attacking the client and causing a black eye. Police and Social Services became involved, however she was unable to get an injunction against him because the violence

was committed by a third party and there was no legal help solicitor in Guildford willing to take on the case.

- In **Leatherhead**, the CAB report that there are no local providers taking on family and housing cases, with the nearest CLS firms over five miles away.
- **Runnymede CAB** report an extreme case of harassment against a family on a low income who sought advice on obtaining an injunction. The bureau phoned five solicitors firms listed in the CLS Directory; two specifically said they were no longer taking on publicly funded cases. The bureau has regular problems with referrals, especially with family and domestic violence cases. The same bureau reported another client whose wife had filed for divorce, and has obtained an injunction against the client for violence, and preventing access to capital. The bureau telephoned ten firms before they found one, which could assist. The remainder said that they either did not take on publicly funded cases, or that their caseloads were too heavy. The nearest most reliable CLS firm is 10 miles away.
- **Haywards Heath CAB** report a woman evicted from her family home over her husband's debts was unable to find a CLS solicitor in Haywards Heath or Burgess Hill able to help. Haywards Heath CAB describe the area in terms of a “desert of professional, specialist representatives for Courts, Tribunals etc”. Also with only one lawyer doing family work, conflicts of interest often arise.
- **Hastings and Rother CAB** report that there is only one solicitor in Hastings with expertise in immigration matters and one firm of solicitors prepared to give an introductory interview to clients for £10.
- **Lewes CAB** express concern that whilst at the time the Community Legal Service was launched there were four firms taking on difficult family cases in Lewes, now there is only one and this can lead to conflicts of interest. In one case a client was advised to get an injunction to prevent a member of her family from harming her. The CAB phoned more than 15 solicitors under the Community Legal Service scheme - none would see her. Eventually, a Brighton solicitor agreed to see her. The bureau have written to the LSC contracts manager in Brighton complaining about lack of contracts for domestic violence cases. There is no provision for debt, welfare benefits and employment cases, which also causes problems for clients.
- **Shoreham CAB** express concern that solicitors advertising in the CLS Directory often deny their contracted status when approached by clients with difficult problems. One client who experienced financial difficulties whilst being treated for cancer, found that his bank took him to court and now has the right to recover his car. The

client want to appeal, but cannot find a CLS solicitor to help. All solicitors contacted deny they have contracts in the consumer field and have said “we don’t do that anymore.”

- In **Eastbourne**, the CAB report that last remaining solicitors firm with a Community Legal Service housing contract has pulled out of the service, though some specialist housing advice work still takes place through an outreach office of the Brighton Housing Trust.
- **Uckfield CAB** reported that it is 10 miles to the nearest CLS lawyer, and likewise for **Bognor Regis CAB**, which reports daily referral problems with housing, family and immigration cases.

Hampshire

- **Hampshire CAB** report a client who was charged with theft from her employer and suspended from her job. The CAB was unable to find a solicitor in the area who was able to offer publicly funded help, as they were all too busy already. The client was too frightened to go to court alone, and couldn't afford private help.
- **Petersfield and District CAB** report that only two firms in Petersfield provide advice in matrimonial matters under the CLS scheme; last year one of these firms stated that “no new appointments will be accepted in the area until the middle of 2003”.
- **Andover CAB** report a client unable to obtain a CLS funded appointment with local solicitor, the area has a population of 45,000 but only one CLS solicitor dealing with family matters. The LSC Regional Report has also concluded that there are “significant shortfalls” in suppliers able to conduct work in the appropriate timeframe for survivors of domestic violence seeking civil remedies, and alludes to research which reveal gaps in rural areas in this respect, and that in rural Hampshire in particular victims to have travel considerable distances in order to receive advice and there does seem a lack of suppliers able and willing to undertake emergency injunctions.⁴⁵
- **Alton CAB** reported that it increasingly takes more calls to obtain CLS referrals for clients. Even if solicitors firms are in the CLS Directory, they often refuse to take cases. The CAB phoned nine local solicitors firms from the directory whose entries claimed they offered CLS legal help for civil work. All of them said they no longer did. The bureaux report particular shortages of specialists in housing, personal injury, domestic violence and that in Alton, most solicitors are resisting taking part in the CLS Partnership – they see it “as a waste of time”. They have concerns about the charging regime and administrative process. Consequently there has been a

⁴⁵ Legal Services Commission *South Eastern Region Report 2002 – 2003*.

dramatic drop in the number of solicitors taking part in the CLS legal help scheme. In the Alton area the LSC funds services in Aldershot and Havant, but nothing for the rural areas. Three years ago there were six solicitors in Alton doing legal help work now there is just one. In Hampshire generally over the last couple of years solicitors have gradually withdrawn from the CLS and the impact of this on the CABx has been enormous; local CAB workers feel they have had to become "quasi-solicitors". Few solicitors offer CLS legal help for civil work despite what the CLS directory say.

- In **New Milton** the CAB report that there are three CLS firms, but these only take family cases with all other matters filtered through a Tuesday evening surgery. As a result there are regular problems making referrals for eviction and employment proceedings. In the Bournemouth, Poole and Christchurch areas there are only two firms with LSC housing contracts.

South West

- 4.10 In the South West, 93 per cent of the region is classed as rural, and there are many areas of low income and employment; Bristol, Plymouth, Penwith and Kerrier all show high indices of deprivation.⁴⁶ Over the past decade the South West has also had the fastest growing population of any English region, and this has placed inevitable strains on housing supply and essential services.⁴⁷ However, legal services have declined and transport links in the region are also a problem; bureaux report that many towns in the West Country no longer have sufficient private practice firms doing family law under civil contracts.
- 4.11 Research by the Law Society shows that there are no CLS housing solicitors in relatively populous areas such as Bristol North and Swindon South. Concerns have been raised in Parliament, in February 2003 Julia Drowse MP highlighted that; "in Swindon...it is now 18 months since any lawyers have provided housing legal aid, apart from the law centre, which cannot cope with the demand."⁴⁸
- 4.12 Citizens Advice's survey (See Appendix) also reveals supply and access problems in the region with 68 per cent of the CAB respondents in the region reporting problems with referring clients to LSC contracted firms undertaking publicly funded housing work, 31 per cent with employment law matters, and 50 per cent of respondents in the region reporting the local referral network is getting worse. Fifty six percent of respondents thought their CAB was in an 'advice desert.'

⁴⁶ Government Office South West - Geographical Information: Neighbourhood Statistics

⁴⁷ Regional Housing Strategy 2002–2005 Government Office South West

⁴⁸ Julia Drowse MP, *Hansard* 13th Feb 2003, in Debate on Legal & Advice Services

Dorset, Wiltshire and Avon

- A client at a **Dorset CAB** needed to see a solicitor specialising in criminal law work. There used to be four firms undertaking this work, and until quite recently there were two, but one has ceased operating because of the LSC's demands on their contract. The bureau considers one firm for the area to be an unsatisfactory level of provision.
- **Poole CAB** reported the difficulty their client was in as a result of publicly funded legal services not being available for boundary disputes. She is on low income, in receipt of benefits, but is having to defend herself against a neighbour who has started legal action against her.
- **West Wilts CAB** report that local solicitors only do crime and family work, and that as a result they have daily problems with housing referrals. As the community is based in a rural setting there are inadequate transport links to get to solicitors who deal with housing problems. The LSC's regional report also highlights the need for more advice housing provision in Swindon and Wiltshire.
- The CAB in **Salisbury** report that the local authority's possession claim against their client was scheduled at an occasional venue operating on Wednesdays only. Although it was close to the client's village, there were no public transport links on the one day of the week when the venue is used. The client would find it difficult to attend the possession hearing because she has no car and cannot afford a taxi. Although she could get a lift from friends, she would have to tell them the reason why she needed the lift. The CAB wrote to the main court in the circuit asking whether any consideration was given to local transport links when setting hearing days at occasional venues.
- In the **Bristol** area (population 380,000) both the CAB and Shelter report that there is a lack of housing law services and other specialist solicitor provision. Five years ago there were at least six firms who regularly practiced in housing law and other legal aid funded work. Each of these firms contributed to a duty possession proceedings rota at the Bristol County Court. Five of these firms have now withdrawn from publicly funded work since the introduction of the Community Legal Service leaving only South West Law servicing the whole of Bristol. Advice agencies are concerned that the LSC's Regional Directory fails to keep up to date; the 2002 edition listed nine organisations at eleven separate offices providing housing advice at specialist level, however one of these – the part time housing solicitor at the Law Centre – only takes referrals from other members of his team, three of the advertised firms have withdrawn

from providing housing services, two will only provide housing services to fee paying clients who are usually landlords and two will only do some housing work under tolerance and will pick and choose their cases.

- In the whole of the **Bath and North East Somerset** area (population 166,000) there is only one specialist housing lawyer, with two other firms listed in the Directory (however, one of these does work under tolerance and the other works mainly on behalf of landlords).
- **North East Somerset CAB** report that the nearest CLS funded lawyers are in Bristol, 20 miles away. The Bureau was approached by a Jamaican man seeking leave to remain in the UK, and in urgent need of advice to meet a Home Office deadline. A bureau advisor contacted a law centre in Bristol, which was unable to help as it no longer runs drop in sessions for immigration advice. The adviser tried six firms of solicitors listed in the Community Legal Service directory - none were taking on new clients, or could offer an appointment within four weeks.

Gloucestershire and Somerset

4.13 The LSC South West's Regional Report states that family provision in the North Cotswolds and West Somerset should be an 'urgent priority'. Overall Somerset has many isolated rural areas of high need. Somerset CLSP conclude that "Sedgemoor and West Somerset have a number of areas/towns which are "advice deserts" in terms of social welfare law." Specialist Family advice is needed in West Somerset.⁴⁹ The CLSP strategy shows that there is a high need for advice in housing, debt, welfare benefits and employment categories in Watchet, Williton, Minehead, Highbridge, Cheddar, Axbridge, Dulverton, Burnham, Langport Dunster and Porlock. However, there are no specialist solicitor contracts in these area.⁵⁰

- There are no solicitors with LSC contracts in housing advice at all in **Gloucestershire**.
- **South Somerset CAB** reports daily problems with employment and housing referrals, local CLS solicitors only do crime and family work. The CAB operate the only housing advice contract for the whole of North Somerset (population 188,000). The CAB report that clients have to travel long distances to access employment advice, immigration advice and specialist help with for mental health and community care cases.

⁴⁹ Somerset Community Legal Service Partnership *Strategic Plan for the development of legal advice services in Somerset 2002-2005*

⁵⁰ *ibid*

- **Yeovil CAB** report that the biggest private practice provider of publicly funded legal services provider pulled out of the CLS and has now left Yeovil.

Devon and Cornwall

4.14 Devon, with a largely rural population has a history of serious problems of vulnerable groups suffering social and legal exclusion. In Plymouth, for an area with a population of 254,200, there is only one contract for welfare benefits advice. The Devon Law Centre was finally launched with LSC funding in Plymouth in 2001. However, the predominantly rural areas that have the least access to services with many services clustered in the southern part of the county. A journey from Ilfracombe in the north east of the county to see a specialist solicitor in Plymouth takes two and a half hours by car, or over five hours by bus. There are some particular categories of law in which there are shortages of solicitor suppliers, for example:

- **Plymouth CAB** report that the last remaining solicitor with a LSC contract in welfare benefits has withdrawn from CLS work.
- **Bideford CAB** report that there is no criminal defence lawyer in Bideford anymore; the Magistrates Court shut and the Criminal Defence Service lawyer moved as a direct consequence.
- In Cornwall, **Truro CAB** has no LSC contract. When the contracts were allocated the Truro solicitors provided what the LSC deemed to be an acceptable level of service, although the CAB think that this is no longer the case. There is not a single firm in the whole of Cornwall providing immigration advice under the CLS, no employment contracts, limited housing advice and in Truro only one firm with an LSC contract still doing welfare benefits and debt work at specialist level. Truro CAB believes there is a clear case for extension of Carrick CAB's debt and welfare benefits contract (which currently only covers the Falmouth area), to cover Truro also. Apart from the CABx, the main source of advice is a DTI pilot project involving Cornwall County Council Trading standards delivering Debt, Welfare Benefit and Employment as well as Consumer advice. The CLSP state that; "there is insufficient quantity of provision with possibly as little as only 41 per cent of people in need of advice currently receiving it."⁵¹

4.15 Bureaux across Devon report that there is increasing awareness amongst local authorities, including the Legal Services Commission about income lost to the economy through poor levels of benefit take up, and insufficient welfare benefits advice. Devon County Council facilitates a county-wide Welfare Benefits Task Group which involves 30 statutory and voluntary organisations in planning take-up initiatives. Nine take up pilots have been

⁵¹ The Cornwall Community Legal Service Partnership Strategic Plan 2002-2005

run across the county over the last three years and have raised £2.3m of previously unclaimed benefits; a return of at least 8:1 on investment. One of these projects is the East Devon Social Security Campaign co-ordinated by Devon Welfare Rights Unit and run through Exmouth and East Devon CABx. The received £30,000 funding from Devon County Council, East Devon District Council and East Devon Primary Care Group. 466 clients have been seen. £329,648 of unclaimed benefit revenue has been raised to date, and it is projected in excess of £500,000 will be raised once the full results are known. 22 per cent of the clients were low-income families and there was a high incidence of disability within these families.

The Midlands

- 4.16 Although there is a reasonable density of providers of publicly funded legal advice in the central conurbations, contracted provision starts thinning dramatically from the centre of the region. The further west one goes, the less accessible providers become. To an extent this reflects the rural-urban divide, and corresponding demographic patterns. However CABx report that there are real problems with lack of specialist providers in relatively populous centres also, for example Dudley, Northampton, Derby, and Hereford. In the North Midlands there are concerns that solicitors are increasingly pulling out of the service. However it is the rural East Midlands, which is the area of scarcest provision in the region.
- 4.17 The Citizens Advice CLS survey found that 74 per cent of respondents in the region reported difficulties in accessing immigration lawyers, 70 per cent with housing cases, 55 per cent with family cases, and 37 per cent with employment cases. 90 per cent of CABx think that they are in an 'advice desert'.

Birmingham, Wolverhampton and Central Midlands

- 4.18 Birmingham has a large number of providers of publicly funded legal services with forty contracting firms listed on the LSC's JuskAsk website, but there are nevertheless problems with some specialist contracts and legal help in particular categories:
- **Shirley CAB's** client was facing bankruptcy proceedings, and needed advice on recovering money owed under contract. The bureau contacted the six solicitors firms in the Birmingham area listed in the LSC Directory as covering consumer issues under their LSC contract. All have said they no longer offered this service.
 - **Burleigh CAB** report no that there is no CLS housing solicitor in the town; the nearest is in Walsall or Birmingham.
 - **Walsall CAB** report only one specialist family firm locally, and daily problems finding lawyers to deal with urgent housing and immigration matters, including for clients from other boroughs.

- **Dudley CAB** report supply shortages despite being the second largest of the conurbation CLSPs in the region and having one of the 88 most deprived local authority wards across the country. With the exception of family law the only social welfare categories funded by the LSC are welfare benefits and debt. The Immigration provider recently lost its fee earner in this category, and therefore the contract is not presently running at full capacity. In a recent parliamentary debate on legal and advice services, and drawing on CAB evidence and the strategic plan produced by the Dudley CLSP, the local MP Ross Cranston QC concluded that despite all the innovations of the CLS "big gaps remain in the extent to which legal advice and help are available in Dudley...we have a real gap in respect of employment law, for which there are no specific legal assistance suppliers. Some provision is made in respect of housing, but it is clearly insufficient...the local CAB provides advice on debt...but it is operating at near full capacity."⁵²
- **Stratford upon Avon CAB** has no LSC contract; it has weekly difficulties making referrals for immigration cases (20 miles to nearest provider), housing cases (20 miles to the nearest provider), and employment cases (40 miles to the nearest provider). There are no category specific contracts in Stratford, which the LSC's Regional Report concedes, raises questions about the ability to meet demand in some of the social welfare law categories. Access to Coventry as the sub regional centre for Stratford is not feasible for many clients and there is very little public transport outside Stratford.
- In **Banbury** the CAB report that there is only one CLS firm and as a result they have weekly difficulties with being able to make referrals. In **Studley** there is currently no supply of CLS services of any description. In **Warwick**, again there are no category specific LSC contracts.

West Midlands

- **Rugby CAB** report daily problems in accessing housing, family and immigration practitioners for emergency applications. In one case the Bureau tried to advise a man whose ex-wife's new partner was in breach of a court order concerning access to the client's children. The client had a very real concern that his children were at risk from his ex-wife's partner. But the bureau was unable to find a Community Legal Service solicitor to help process an injunction within a 15-mile radius. They observe that the contracting system seems to have made it financially unviable for solicitors to take up cases such as this.
- **South Shropshire CAB** report that the provision of local legal aid solicitors is 'very limited'. Salisbury and District CAB report weekly

⁵² Hansard: 13 Feb 2003: Column 347WH

problems with making housing referrals – the only local solicitors who do housing cases also work for the Council so it is not always appropriate to refer, and the bureau also report frequent problems with referrals for community care, education and immigration cases with clients having to travel.

- The CAB in **Bridgnorth** report that a lone parent on income support had received a summons to attend court for a review of her financial circumstances, but had been unable to attend as she felt it was impossible to get there. It would be an 80-mile round trip involving two buses, or getting a taxi, which would cost £44 in total, a third of her weekly income. The bureau commented that poor provision of public transport and the closure of local courts make it difficult for people on low incomes who live in rural areas to travel to court.

4.19 In the furthest west and rural parts of the Midlands, especially the Malvern Hills which contains Kyre Vale, Valley of the Teme and Lindridge wards all amongst the most deprived wards nationally, and other rural districts are sparsely served. For example:

- In **Worcester** there are no CLS solicitors doing housing work.
- In the county of **Herefordshire** there are no solicitors doing CLS funded mental health cases, and the Council have identified a lack of independent housing advice provision from their homelessness strategy work.
- There is no debt advice provision at Specialist Help level in the local authority districts of Malvern Hills, Wychavon, Bromsgrove, Worcester and Wyre Forest.⁵³

East Midlands - Rutland, Leicestershire, Northamptonshire

- In **Rutland**, the county has only one solicitor giving Community Legal Service funded advice, and then only in family matters, referrals may involve travelling 50 - 100 miles. The pressure, therefore, on the local CAB is immense - with far more than the average number of cases per head of population. The CAB have developed a video conferencing referral facility with a law firm 25 miles away for personal injury cases. In Leicestershire the CAB report there were no LSC funded case starts for 2003 in employment, debt, welfare benefits, community care and public law.
- **Lutterworth CAB** report that they have had repeated problems in referring clients over the past two years, because of no solicitors offering publicly funded work in the immediate area, and poor public transport connections to nearby towns with solicitors who do offer this work. Usually clients are referred to Leicester.

⁵³ LSC West Midlands Regional Report 2002

- **Northampton CAB** describes its catchment area as an advice desert with no local CLS solicitors doing housing and immigration work.
- The **Leicester, Derbyshire and Northampton CLSPs** all report that lack of access to employment advice had a greater adverse impact on black and minority ethnic communities than on the population as a whole. In Leicestershire the county council's welfare rights service is currently restricted to social services clients and there are no other specialist welfare rights service providing representation at appeal tribunals. Leicestershire CLSP has identified the needs for increased provision of advice services on housing, debt, welfare rights, and employment.⁵⁴
- In **Northampton and Northamptonshire** although a number of family providers are listed under CLS, the LSC's Regional Report admits that these firms have been moving away from providing a service to publicly funded clients in these areas in favour of providing a service to private clients only. In both Northampton and Northamptonshire, there are no contracted organisations, either solicitor or not-for-profit, undertaking specialist housing work under LSC contracts. As a result in Northamptonshire there are no allocated LSC case-starts for housing, employment, welfare benefits, education, community care, public law or immigration, and no case starts for debt, housing, employment or other public law categories in Northampton.⁵⁵
- The Northampton area is also poorly serviced by CLSPs, with Corby Borough Council, Daventry District Council, East Northamptonshire District Council, Kettering Borough Council, South Northamptonshire District Council and Wellingborough Borough Council not covered or participating in any CLSP.

North Midlands

- **Burntwood CAB** report that a client was unable to find a CLS solicitor in their area – those listed in the CLS Directory have withdrawn because it is “too much hassle.”
- **Rugely CAB** report that in the Cannock Chase area (South Staffordshire) the CAB is the only provider with a contract to provide publicly funded legal services in most social welfare law categories, and that in immigration case referrals have to made to Walsall and Birmingham. The LSC Regional Report identifies that there is no provision for publicly funded housing advice in Cannock Chase.⁵⁶

⁵⁴ Leicestershire Community Legal Service Partnership Strategic Plan 2002-2005

⁵⁵ LSC East Midlands Regional Report 2003

⁵⁶ Stoke on Trent CLSP Strategic Plan 2001-2002

- **Derby CAB** report that on a daily basis they have debt cases for which specialist help is needed but none is available locally from the CLS.
- **Stoke on Trent CLSP** Strategic Plan 2001-2002 noted that “there are gaps in specialist provision for the categories of employment and community care.”⁵⁷
- **Stafford CAB** report that in one case a client faced a possession hearing at Stafford County Court; he only had a week to prepare a defence and urgently needed representation. However, there was only one firm of solicitors with an LSC contract covering housing work within a 10-mile radius of Stafford, and they were not taking on any more housing cases. The CAB wrote to the District Judge seeking an adjournment to allow the client further time to instruct a solicitor. Eventually the CAB found a solicitor in Birmingham who was able to consider taking on the case.
- **Melton CAB** report that local solicitors only undertake crime and mental health work as publicly funded services. For all other matters clients are referred to Leicester, 17 miles away or Nottingham, 21 miles away.
- **Litchfield CAB** report a publicly funded client who was charged by their solicitor after the firm decided to withdraw from their LSC contract.
- **Burton on Trent** has one solicitors firm with an LSC housing contract, and no CLS employment solicitors.
- **Lincoln CAB** report being ‘overwhelmed’ with debt cases.
- **Newcastle-under-Lyme’s CAB** report that the nearest CLS lawyer is four miles away, and that they experience daily problems in being able to make appropriate employment referrals in employment cases.

East Region

4.20 The East Region consists of medium-sized urban areas, intermixed with market towns and smaller rural districts 34 per cent of all households in the region have an income of £15,000 or less per annum, 14 per cent of working age adults are in households with an income below the poverty threshold. Unemployment rates for some minority ethnic communities and people with disabilities are over twice the regional average rate.⁵⁸

4.21 Due to the nature of employment in the East Region, there are significant numbers of migrant workers working either legally or illegally in the rural

⁵⁷ Stoke on Trent Community Legal Service Partnership Strategic Plan 2001-2002

⁵⁸ Government Office East of England Social Strategy 2003

economy. This group has particular advice needs, for example, for immigration advice, yet there are very few immigration specialists and bureaux themselves are only able to offer limited advice because of the OISC scheme. For example, Lowestoft CAB reported that to access an immigration solicitor, a client would need to travel in excess of 30 miles.

4.22 The Citizens Advice survey showed that 70 per cent of respondent bureaux in the region had regular difficulties referring clients to CLS in solicitors in urgent housing, family and immigration cases, and 38 per cent with employment cases. 70 per cent of respondents also said that local referral networks were getting worse.

Hertfordshire, Bedfordshire and Essex

- **Bishops Stortford CAB** report that the immediate area has no housing solicitors undertaking publicly funded work.
- **Abbots Langley CAB** report a client who needed legal advice to obtain an injunction against husband. The CAB phoned seven solicitors in Watford and St. Albans – six could not offer an appointment within six weeks. Urgent legal help is difficult to obtain.
- **Buntingford CAB** report that there are no CLS solicitors in their area, the nearest solicitors taking LSC funded clients are 15-20 miles away and the bureau report weekly problems in housing and urgent family referrals.
- **Hertsmere CAB** report monthly problems with urgent family and housing referrals. Transport is a huge problem for clients living in Hertsmere villages. The bureau regularly contact solicitors in Hertsmere and Watford to ask what services they provide, and why they no longer do publicly funded work; they cite insufficient pay and too much administration.
- **Leighton CAB** report having weekly problems in making appropriate referrals to LSC funded housing specialists, and regular problems with referrals for benefits, employment problems and domestic violence cases. Although there is one CLS firm within one mile of the CAB it only does matrimonial work.
- **Dunstable CAB** reports that it is only provider in the area on some issues – benefits housing, employment. The Mid and North Bedfordshire CLSP strategic plan for 2003 reported a shortfall in housing advice in a number of wards compared to the region as a whole.⁵⁹

⁵⁹ Mid and North Bedfordshire CLSP Strategic Plan 2003

- **Southend CAB** report daily problems making employment referrals. The CAB report a reduced number of local solicitors offering publicly funded legal services – the choice is very limited for clients. Southend also report a client who urgently needed an injunction against a violent ex-partner. So serious was the threat of violence, that local police had supplied her with a mobile phone with which to contact them directly in the case of emergencies. Yet still no solicitors were able to help or provide publicly funded legal services.
- **Loughton CAB** report that for all referrals in all categories of law, clients have to travel at least five miles, and that the CAB are the main provider of publicly funded legal advice.
- **Billericay CAB** report a client in urgent need of legal assistance, who had been told by the local LSC funded solicitor that the firm had used all its case starts and she would have to wait six weeks for an appointment.
- Both **Colchester and Tendring CABx** have undertaken detailed client profile surveys and were involved in a Citizens' Panel surveying exercise with the CLSP. This showed that of those sampled in the area 33 per cent of people think it is difficult or fairly difficult to obtain information about legal rights and entitlements; 37 per cent of people think it is fairly or very difficult to obtain personal advice about legal rights and entitlements; 25 per cent of people said that they were prevented from accessing advice services by a lack of knowledge about what was available; 22 per cent of people said that they were prevented from accessing the advice they need by the cost. Although the survey showed that 26 per cent of the issues dealt with by the CAB were employment related, many of the clients held low paid jobs and were not eligible for legal help as they had a working partner. The survey also suggests that the debt advice services currently available are insufficient to meet demand across the Partnership area. The local advice providers' forum concluded that there was massive under provision in housing advice across the Partnership area, with insufficient general and specialist resources to cope with demand.⁶⁰

East Anglia

- In Suffolk, **Felixstowe CAB** report daily referral problems for housing cases, weekly referral problems for domestic violence cases, and weekly referral problems for asylum and employment cases.
- **Thetford CAB** report that for immigration, employment and housing referrals clients have to travel up to 30 miles, and local transport infrequent and expensive.

⁶⁰ Colchester Community Legal Services Partnership Strategic Plan 2003

- **Fenland CAB** report clients facing distances of 25 miles for advice on immigration matters and 23 miles for advice on other non-family issues. The CLSP Strategic Plan for Broadland district shows that there is a lack of existing contracted supply in the district in debt, housing, employment and welfare benefits advice, and the Breckland partnership considers that there is a need to increase the provision of services for rural areas.⁶¹
- **Great Yarmouth CLS partnership** believes that due to the high level of deprivation the existing need for contracted supply has been underestimated and demand will increase.

Cambridgeshire

- **Peterborough CAB** report an Italian speaking client who received death threats from her partner in prison. The client was unable to get a solicitors appointment – only one firm in the whole city offered Italian translation –but this firm had reached its LSC limit for cases and had no extension. Peterborough CLS Partnership report an urgent need to increase provision for immigration advice in the town.⁶²
- **Cambridge CAB** report high demand for specialist employment services and have weekly problems in making referrals.

North Region

4.23 The North region has a patchwork of advice provision. The region seems to have a problem of particular shortages in specialist areas of law, and access problems to generalist categories in rural areas. The LSC's report states that the use of tolerances in civil contracts in rural areas is in some cases the only way to offer face to face access to funded services in social welfare law.⁶³ The LSC's regional report also states that the region is vulnerable to any loss of suppliers in rural and more isolated urban areas, both for family provision and as a gateway to social welfare law provision. The report notes that the numbers of dispersed asylum seekers continues to increase, creating a strain on existing supply; this accords with bureau evidence. Neither Redcar nor Doncaster have CLS firms undertaking housing, Pontefract & Castleford has only one housing solicitor and there are no solicitors offering publicly funded advice on housing law north of Newcastle.

4.24 The Citizens Advice survey (See Appendix) showed that 50 per cent of respondents in the region had difficulties making referrals in urgent family law cases (such as domestic violence) and 48 per cent with immigration cases.

⁶¹ Broadland CLS Partnership Strategic Plan

⁶² Peterborough CLSP Strategic Plan 2002

⁶³ Legal Services Commission *North East Regional Report 2003*

Yorkshire

- Bureaux report that there is a shortage of immigration practitioners throughout Yorkshire and most especially North Yorkshire. **Selby CAB**, was approached by a man of North African origin seeking leave to remain in the UK. The bureau does not have a specialist immigration worker, and therefore was unable to provide the specialist legal advice the client needed (and would have been in breach of the OISC regulatory scheme for immigration advice if it had attempted to do so). The bureau contacted every specialist local service listed in the Community Legal Service directory, but every single one was too busy to take on new cases.
- In **Scarborough & Whitby** there is only one publicly funded firm doing housing work and no local contract for work in welfare benefits and debt.
- **Rotherham CAB** report there are no other providers so the CAB locally is an advice "oasis", the nearest CLS lawyer to Rotherham is ten miles away in Sheffield.
- **Calderdale CAB** complained of weekly difficulties in finding CLS solicitors to provide help for their clients in Calderdale. There are no local immigration solicitors.
- **York** has yet to establish a CLSP.
- **North Yorkshire** is a very rural area with few specialist solicitors and poor transport connections. Such is the shortage of solicitors firms that the Legal Services Commission and East Riding have initiated the CitizenLink pilot. CitizenLink is a video conferencing facility which enables members of the public in East Yorkshire to access advice and casework assistance from specialist housing and family lawyers. This is done by East Riding Council funding video conferencing centres in the larger towns and villages of East Riding which provide access points for the public. The first 45 minutes of advice is free, but thereafter the usual means and merits test applies.
- **Wakefield District CAB** reports having to refer clients ten miles for the nearest employment and housing solicitors with LSC contracts, and the area is served by sparse bus services.
- **Barnsley CAB** report that they are in an 'advice desert', with no contracted housing advice available locally, and the CAB operates the only debt and benefits contract. Barnsley CAB also consider that there are insufficient matter starts available to local family lawyers to deal with the number of domestic violence cases. The CAB point to overwhelming levels of need in all categories of social welfare law, and that with the CAB currently working at full capacity, they are

having to turn away more potential clients than they are able to see. This is confirmed by the CLSP, that “the physical wait for advice in the town...is so long that many people leave before their problem is discussed, let alone solved.”⁶⁴ The CLSP expressed particular concerns about the shortage of housing advice agencies, and noted that “in Barnsley out of 298 housing advice cases, 123 would have sought legal advice had it been available.”⁶⁵

- In **Bradford** there is only one firm of solicitors providing housing advice, although the Law Centre employs a specialist barrister and there are two NfP agency contracts. However, the CLSP are concerned that this is insufficient supply of advisors as Bradford Council has recently transferred all its stock to the private sector and has moved to a bid based allocation system, generating greater advice needs amongst tenants.
- There is only one housing solicitor with an LSC contract servicing both **Dewsbury and Wakefield**. This is a large semi rural district with many ex mining villages and towns with major social deprivation issues. There is one firm with a housing contract in **Huddersfield**, but they are not in a position to meet local demand in **Rotherham** the only housing advice provision is a temporary worker at the CAB. Across the whole of West Yorkshire agencies have to routinely refer clients to solicitors in Leeds for advice in housing, employment or immigration cases.

Durham and Northumberland

- 4.25 In Durham and Northumberland the core funding of not-for-profit advice providers is provided by District Councils, which means advice agencies are vulnerable to pressures of local government finance. The contribution of the LSC advice provision is limited compared to other parts of the region. There is currently no specialist employment advice in Derwentside, Durham, Easington or rural Northumberland. There is no local supplier of immigration advice in South Tyneside, and no CLSP for the borough. Likewise there are no solicitor housing contracts north of Newcastle.
- 4.26 The LSC’s regional report identifies lack of specialist welfare benefits services in Chester le Street, Sedgefield, Alnwick, Castle Morpeth, Tynedale and Wansbeck. The CLSPs report a high and increasing need for debt advice. This reflects a pattern of severe shortages of specific advice and specialist services in the North East, For example, there is a lack of specialist housing advice services in Northumberland and Redcar and Cleveland. There is no contracted supply at all for health and community care advice in the North East.⁶⁶

⁶⁴ Barnsley Community Legal Service Partnership: An Assessment of the Need for Legal and Advice Services in Barnsley 2003

⁶⁵ *ibid*

⁶⁶ Legal Services Commission *North East Regional Report 2002-2003*

- There is currently no specialist debt advice provision in **Durham City or Sedgefield**.
- **Alnwick CAB** has given up its LSC contract.
- In **Berwick** the CAB is the main Quality Marked agency for 100 miles. They have been unable to get LSC funding for telephone advice, and employment cases present the biggest problems, with caseworkers having to make referrals to solicitors 59 miles away. There are two local firms with LSC contracts, but they only have matter starts for criminal and matrimonial cases.
- **North Kirklees** report that there is no LSC funded employment advice provision, and only two local solicitors doing Legal Help work.

North West Region

- 4.27 The North West covers some of the UK's old industrial heartlands. Whilst these have benefited from regeneration projects, the region also contains some remote rural areas. For many important towns in the North West advice services are limited, particularly for specialist services. For example, nine CLSPs: Bolton, Cumbria, East Lancashire, Halton, Blackburn with Darwen, Salford, Oldham Warrington and Wigan, have all identified a major gaps in employment advice provision.⁶⁷
- 4.28 Results from the Citizens Advice CLS survey showed that in the North West, 46 per cent of bureaux which responded said they had difficulty obtaining help from CLS solicitors who can deal with family law cases, 42 per cent had problems referring with housing cases, and 53 per cent had problems referring immigration cases. 29 per cent of bureaux thought that their CAB was in an 'advice desert.' (See Appendix)

Merseyside

- **St Helens and Knowsley**, only have one solicitors firm each doing LSC funded housing work. Consequently the LSC's Regional Report identifies "pockets of priority need particularly in the Newton West and also in West Sutton wards where access to specialist /casework level housing advice is limited to the centre of St Helens."⁶⁸ The Regional Legal Services Committee also identify that there has been a loss of suppliers in Liverpool and Sefton.
- Across the whole of **the Wirral** there are no CLS solicitors with debt contracts, and there is only one debt contract each in Knowlsey, Sefton and Liverpool.

⁶⁷ Legal Services Commission *North West Regional Report 2002-2003*

⁶⁸ Legal Services Commission *North West Regional Report 2002-2003*

- For **Knowsley, Sefton, St Helens and the Wirral** there are no solicitors contracts for employment advice, and only one for Not for Profit contract for employment advice in the Wirral.
- **Speke CAB** report that they are the only CLS provider in an isolated area. Although the nearest firm of solicitors dealing with CLS funded cases is four miles away, the CAB describe the local community and “psychologically and financially isolated, people do not travel to other areas for services – they just do without them”. Speke CAB also report a 50 per cent drop in the number of solicitors in the area providing housing and welfare advice.

Lancashire and Greater Manchester

- In **Bolton**, the CAB report weekly problems in making appropriate referrals to housing and family lawyers. Central and South Lancashire, Stockport, Tameside and Trafford CLSPs have all identified major gaps in housing provision, such as Chorley and West Lancashire; West Lancashire and Blackburn only have one solicitors firm each doing LSC funded housing work. Halton CLSP has identified a serious gap in housing advice services at all levels.⁶⁹
- Both **Warrington and Wigan** only have one CLS firm each doing housing work.
- **Oldham** Community Legal Service Partnership have suggested that there is a need to restructure the existing profile of local housing advice supply funded by the Legal Services Commission and to meet need for housing advice services to be delivered in languages such as Urdu, Punjabi, Bangla and Gujarati.
- **Macclesfield CAB** report that they have to make referrals to solicitors in Manchester, due to lack of local CLS providers. Macclesfield CAB are particularly concerned that there are no local immigration solicitors and that they have to refer clients to Stockport Law centre. Stockport CLSP have identified that, if the current increase in demand continues this could result in a lack of capacity within contracts, which might result in the need in future for increased funding of specialist housing advice.⁷⁰
- **Tameside** Community Legal Service Partnership needs assessment shows that across the CLSP area only 25 per cent of those who had at least one legal problem in the last two years got help with it.⁷¹

⁶⁹ Halton Community Legal Service Strategic Plan 2003

⁷⁰ Stockport Community Legal Services Partnership Strategic Plan 2003

⁷¹ Tameside Community Legal Service Partnership Strategic Plan April 2002 – March 2005

Cheshire

- In **Halton, Ellesmere Port and Warrington** there are no CLS solicitors providing housing advice under LSC contracts.
- **Ellesmere Port CAB** report weekly problems dealing with urgent housing cases, and clients having to wait two to three weeks for appointments with solicitors in urgent family and domestic violence cases. Clients usually have to be referred to CLS lawyers in Chester or Liverpool.
- **Chester CAB** reported a client – an older woman, who needed help drawing up her will. CLS solicitors listed as providing publicly funded family services all refused provide this help.

Cumbria

- In **Barrow and Furness** there are no CLS firms doing specialist housing work and only one private practice with a specialist Quality Mark.
- In **Carlisle** there is only one private practice with an LSC housing contract; they also have an office in Eden, however they are limited to four matter starts a week and are now considering giving up their contract. Cumbria CLSP have identified serious gaps in housing advice provision in the area including Carlisle, the West Coast, Maryport and Millom.⁷²
- **Kendal CAB** report a case in which a client required legal advice prior to a child custody hearing in three days; the bureau phoned five specialist solicitors in the area but none could give advice prior to the child custody hearing. Three firms said that they were too involved in big cases in another court. Another client was defending a notice seeking possession in the private rented sector, she attempted to find specialist help. The two CLS solicitors with housing contracts in the county both had reached their quota of case starts.

4.29 In Cumbria there are particular shortages of welfare benefits advice. Around £34m per annum may be lost to the local economy as a result of non-take-up of Attendance Allowance and other benefits by pensioners.⁷³

Wales

4.30 Access to CLS services in Wales is clearly influenced by the rural context. However, in certain categories of law the contracted provision is underdeveloped. Until last year there were no employment contracts in

⁷² Cumbria Community Legal Service Strategic Plan 2003

⁷³ Older people: what do they spend their benefits on? Craig et al, *Disability Rights Bulletin*, Disability Alliance Spring 2003

Wales. Immigration is also an area where there is a significant supply shortage, with provision concentrated in Cardiff. As the LSC Wales' Contracting Strategy says "The Committee identifies as a high priority that the Commission takes the necessary steps to ensure that there are adequate numbers of contracted immigration suppliers to respond to any anticipated changes in the levels of demand. This is likely to involve increasing capacity in Wrexham and Swansea, and possibly Newport, and closely monitoring capacity in Cardiff."⁷⁴ Across Wales there are particular supply shortages in housing, welfare benefits and debt advice.

- 4.31 Thirty seven percent of bureaux in Wales which responded to the Citizens Advice survey thought that their CAB was in an 'advice desert'; 48 per cent mentioned that they found it difficult finding a CLS solicitor who can deal with family law cases, 54 per cent having difficulty referring employment law cases, and 63 per cent having difficulty referring immigration cases.
- 4.32 Big challenges are faced by advice providers in Wales, with existing centres having to service wide geographical areas:
- **Powys CAB** covers 2006.56 square miles whilst **Gwynedd CAB** covers an area of 984.44 sq. miles. Both bureaux are concerned that no allowance is given for the geographical coverage expected from the contract, and that the exclusion of travel time from the scope of the contract hours works against rural bureaux which have to operate through outreach services to function effectively. The LSC for Wales report identifies limited access to family lawyers in the Gwynedd area, and a geographical gap in all contract categories.
 - The **Ceredigion CLSP** note that "there is evidence that certain sections of the rural population may have particular problems in accessing legal advice and information. This is in the main due to the nature of rural deprivation where low incomes may combine with geographical isolation and lack of regular access to facilities in larger settlement centres."⁷⁵ The CLSP has also identified the need for greater levels of advice provision in debt, housing and employment to serve the major towns of Aberystwyth, Cardigan and Lampeter.
 - In **Aberystwyth and Brecon**, there are no LSC funded mental health services and the Legal Services Regional Committee has identified unmet need for specialist advice in welfare benefits. The CAB also report that there is no specialist advice in Aberystwyth.
 - In **Caerphilly** there are no LSC funded housing suppliers.
 - In **Pembrokeshire** there are no holders of LSC welfare benefits & debt advice contracts.

⁷⁴ Wales Legal Services Commission Regional Report September 2003

⁷⁵ Ceredigion Community Legal Service Partnership Consultation Draft Legal Information and Advice Services Strategy

- In **Monmouthshire**, especially Abergavenny there is a need for more provision of debt and welfare benefits advice; the LSC has identified this as a priority need but has stated that there is no funding available.⁷⁶
- **Flintshire CLSP** report that those seeking legal advice in welfare benefits & debt matters have to wait up to 14 days for advice from local agencies.
- In **Neath and Port Talbot**, clients often have to wait two to three weeks for debt and benefits advice from LSC funded suppliers.⁷⁷

⁷⁶ Wales Legal Services Commission Contracting Strategy September 2003

⁷⁷ Wales LSC Regional Report September 2003

Part 3 – The future of the Community Legal Service

5 A system heading for crisis?

- 5.1 The evidence from CABx in all regions clearly demonstrates that publicly funded legal services are far from accessible in all parts of the country; in fact they are in decline. This conclusion supported by a Law Society survey of over 200 firms with LSC contracts which found that for the majority of areas of work, decline is expected in the number of firms expecting to undertake work for legally aided clients in the future. A 49 per cent drop in the number of firms dealing with consumer problems and a 33 per cent drop in firms dealing with employment law is predicted.⁷⁸
- 5.2 Several bureaux are also cutting back on their contracts due to the burden of management information. For example, Canterbury CAB has recently renegotiated its contract to provide only half the hours of legal advice that it used to provide. This must be alarming at a time when new evidence points to a continuing high level of unmet demand for help with legal problems and opportunities for people to gain access to their rights remains unfulfilled.
- 5.3 Ministers and the Legal Services Commission have repeatedly denied that there is any looming crisis. In a response to a recent question on solicitors withdrawal from the Community Legal Service, Department for Constitutional Affairs Minister Lord Filkin said "I can only say in all honesty that that is not the picture shown by the current evidence. While there are some pockets of problems, in some areas those are being covered by alternative arrangements."⁷⁹
- 5.4 However, there have been an intense warnings and concerns expressed from provider organisations in recent months about the sustainability of the current contracting system. Peter Williamson of the Law Society said ; "The scope of legal aid has narrowed. Eligibility has tightened, and, the most important fact of all is that the number of people obtaining civil advice and representation is going down. Fewer people being helped, not more".⁸⁰ David Harker in his speech at Citizens Advice AGM has said; "It is clear that the current arrangements are not delivering access to justice. They are delivering injustice and unfairness, and it is inexcusable."⁸¹ Former Bar Council Chairman Mathias Kelly has also said "Access to justice for the public is a vital public service. The poor level of funding in legal aid is driving quality lawyers out of the service resulting in patchy or no service to the public."⁸²

⁷⁸ *Access Denied* Law Society August 2002

⁷⁹ *Hansard*; 23 Oct 2003: Column 1774

⁸⁰ Address by the President of the Law Society, Peter Williamson to the Solicitors Annual Conference 2003 Queen Elizabeth II Conference Centre, London Thursday 25 September 2003

⁸¹ David Harker Speech to Citizens Advice AGM, York, September 2003

⁸² Citizens' Advice Bureaux' report on legal aid – Bar Council Response: 23 September 2003

- 5.5 The growth of identifiable ‘advice deserts’ illustrates the problem of major geographical anomalies in the services provided under the Community Legal Service. The Legal Services Commission does not have the statutory power to restrict by reference to geographical location, ethnic community, age or any other factor apart from “financial eligibility” the category of clients to whom services can be offered. The Access to Justice Act establishes that the duty of the Commission in respect of civil legal services is to “establish, maintain and develop a service known as the Community Legal Service for the purpose of promoting the availability to individuals of services of the descriptions specified in subsection (2) and, in particular, for securing (within the resources made available, and priorities set, in accordance with this Part) that individuals have access to services that effectively meet their needs.”⁸³ The Act provides that priorities shall be set in accordance with any directions given by the Lord Chancellor, and after taking into account the need for services. On the basis of evidence presented in this report, it can be argued that the LSC is failing in its primary legal function.
- 5.6 The evidence presented in this report suggests that the Legal Services Commission is also failing in its key function of bringing together service providers and funders, and the for profit and not-for profit sector to realise a vision of integrated services which are flexible and responsive to clients needs. These failures could be partly accounted for by the constraints the LSC has to work within, such as the limitations of the Funding Code. However there is a lack of effective partner participation, and an inflexible model of contracting that does not encourage or enable providers to develop an appropriate range of services in all areas suitable to clients needs. The nature of partnership working and approach to contracting would seem to be matters in which the LSC has a strong hand to determine.
- 5.7 The reasons for the current problems are multiple. However, a number of key themes stand out from the CAB evidence presented in this report:
- The approach to both **funding, and contracting of services**, and the administration of the CLS, makes delivery on the ground more complex and restricted than it need be
 - Our evidence raises concerns about how far present **planning mechanisms** accurately identify local needs and then proceed to develop local advice networks with an appropriate balance between generalist and specialist help
 - **Partnerships** are variable in their output and quality, and underdeveloped as an infrastructure for local advice provision; the partnership concept does not seem to be fulfilling its potential.

In the rest of this section we look at these themes in more detail.

⁸³ Access to Justice Act 1999 (AJA), clause 4(1)

Funding and contracting of services

- 5.8 Currently the Legal Services Commission contracts for the NfP sector have a number of unfairnesses and inflexibilities. These include:
- inflexibility in claimable hours for 'Controlled Work'
 - inflexibility in the types of work that can be claimed for
 - inflexibility in the funding formula relative to work undertaken.
- 5.9 The contracts are based on hours per annum, per caseworker, rather than units of work (solicitor contracts are different, based on 'matter starts' which means in effect each contractor has a ration or quota of cases). The feasibility of achieving the target hours is affected by the extent to which contract compliance audits allow or disallow time actually spent by advisors helping clients. CABx may find it difficult to meet the hours because of local circumstances beyond their control, especially in areas of widely scattered need. In rural areas for example, dealing with a smaller number of clients who have to travel long distances means more missed appointments, which it is not always possible to fill with other contracted work. Equally, cases undertaken by CABx may exceed the time guidelines for good reason, such as clients' vulnerability or special circumstances including mental health problems. However, there is no guarantee that the auditors may agree with CAB judgements and preliminary feedback from educational contract compliance audits in 2003 suggests that many of the hours the bureaux considered justifiable could be retrospectively disallowed.
- 5.10 The new (April 2003) NfP contract enables the LSC to specify what is required to qualify as claimable 'Controlled Work' even more closely than in the past. All work claimed under the contract must be "clearly justified and proportionately evidenced" on the relevant file, and agencies cannot claim for "work not directly involved in provision of legal services to clients", for example making up and routine updating of clients files and records, form filling on behalf of clients (eg personal bankruptcy forms), eligibility calculations, photocopying and typing. Legal Research is usually not claimable, unless it involves complex or recently altered points of law. For letter writing and telephone calls the standard claim is six minutes for a routine letter or phone call. Perusal of incoming letters is generally not claimable, unless the letter is more complex/lengthy than a standard or routine letter. This level of detailed reporting on controlled work can undermine a caseworkers capacity to respond appropriately to the needs of individual clients in some cases.
- 5.11 The Legal Services Commission needs to embark on a programme of contract simplification to achieve consistency with the Voluntary Sector Compact. The LSC should review the types of civil contract for controlled work, with the purpose of introducing elements of flexibility into the contracting regime, to enable providers to spend more time on problem solving. **Citizens Advice recommends that current restrictions on using contract time for prevention of problems should be removed; for example, on helping clients fill in welfare benefit claims, which can**

save appeals later, and on use of contract time for social policy evidence gathering.

- 5.12 Other unfair terms, which need to be reviewed, include the standard term in the contacts that allows the Legal Services Commission to reduce their funding to a CAB by the same amount as any reduction in their core funding unless that core funding is replaced to their satisfaction within a specified period. There are cases where local authority funding to agencies has been reduced because the local authority believes it is duplicating LSC funding. In fact, the LSC Funding Code only covers the very poorest people in the community. The majority of clients attending CABx and other community advice centres will not (under the disposable income tests) be eligible for help from the Community Legal Service.
- 5.13 The new NfP civil contracts do not provide for annual uprating of funding in line with the Retail Price Index. At the same time there has been no compulsory reduction in contracted hours to compensate; there is concern amongst bureaux that the long-term effect could be that contracts will become financially unviable. Unlike private solicitors, advice agencies cannot subsidise legal aid from private client work. They do not have reserves to draw on, and they cannot raise bank loans. Bureaux are not able to use funding from other sources to subsidise legal aid contracts – it defeats the LSC's aim that contracting should provide extra money for extra work. CABx have found it difficult to accommodate the lack of a cost of living adjustment in 2003-04, but the problem will be even worse in subsequent years if no increase is made. Assuming that the current rate of inflation continues, contract holders will be over six per cent worse off in real terms in 2005.
- 5.13 Citizens Advice therefore recommends that annual RPI uprating should be re-introduced.**
- 5.14 None of the issues raised above suggests that contracts and targets should be abandoned as the basis of the CLS. Clearly in a planned system, the Legal Services Commission has to be able to control expenditure and ensure value for public money by setting targets for suppliers, underpinned by needs analysis. However as CAB evidence suggests, the present system is resulting in gaps and 'advice deserts; which calls into question whether the approaches to both planning and contracting are working.

Planning around local needs

- 5.15 In developing their strategic plans and local needs analysis CLSPs follow the methodology and templates developed by the LSC, known as 'Predictive Needs Models and Indicators.' The models and indicators are based on socio-economic data at ward level, such as the Index of Multiple Deprivation and the Jarman Index. The CLSPs map geographic priorities for contract disbursement in particular categories of law by aggregating these indices with subject-specific predictors of need and other relevant

data, such as housing repossessions, benefit take up, employment count, age and disability, county court judgments etc.

- 5.16 However, there are problems with this overall approach. Firstly, there is inevitably a tension between ‘objective’, statistical measurements, which places emphasis on hard data; and ‘subjective’ measurements, which take account of local knowledge and user feedback. In arriving at an assessment of need, which can be adopted by funders, providers and users of legal services, CLSPs need to take proper account of both objective and subjective data. Secondly, total numbers alone can be misleading, for example using the number of income support claimants as a guide to allocation of contracts in welfare benefits; wards with the largest population in the local authority area will not surprisingly have larger numbers of income support claimants living in them, and there can also be a number of clusters of benefit claimants throughout the partnership area that are hidden by mapping data at ward level. Thirdly, Predictive Needs Models are not designed to indicate levels of demand or supply, and therefore cannot indicate need in terms of potential numbers of case starts. They are intended only to indicate relative need (met or unmet) between areas.
- 5.17 The Legal Services Commission’s method for identification of legal and advice need is to effectively “ring-fence” deprivation and exclusion to specific localities, or specific problem categories. It can therefore become impossible for clients to access the appropriate level of advice because of geographical anomalies. In particular, basing contract allocations on borough level indices can make it difficult for generally affluent boroughs containing pockets of deprivation to access sufficient provision in their deprived areas. The contracting focus is strongly on inputs and with limited flexibility to respond to variations in advice demand on the ground in terms of either the level or nature of demand. The topic specific focus of contracts means that funding is not recognising the way that clients may often experience a cluster of problems.
- 5.18 Needs change and planning can only provide broad indications of required levels of service, usually based on past data. Needs analysis can identify where a population group has low access to services, or where there is a particularly inadequate supply of advice in a subject, but it is not always the most effective system for anticipating future needs caused by local trends such as job losses experienced where employers move elsewhere.
- 5.19 Citizens Advice recommends that the Community Legal Service should develop more relevant and responsive ways of identifying needs at local level.**

Re-energising the potential of Partnerships

- 5.20 The principle of partnership lies at the heart of the Community Legal Service, but needs to be re-energised for the CLSP structure to work. To date CLSPs have made a significant contribution to networks, referrals, local needs analysis, and prioritisation of resources within the CLS, but they do

not by themselves provide an infrastructure for the service. However, if CLSPs are to continue to play a significant role in the CLS they must be effectively resourced.

- 5.21 There are some excellent examples of comprehensive needs mapping; Ceredigion, Barnsely, Colchester and Somerset CLSPs have all produced strategies, which include highly detailed and comprehensive needs analysis, using local data from advice agencies on numbers of unseen clients and client profiles. However, as Citizens Advice research has shown CLSP capacity, performance, activity levels and outputs varies widely across the CLSP structure.⁸⁴
- 5.22 The survey of CABx views of the Community Legal Service revealed that bureaux have been active participants in CLSPs with 93 per cent of respondents being active members and over 70 per cent being involved through the steering committee. In many cases bureaux were the prime mover in setting up their local CLSPs. Despite their high level of commitment, only 16 per cent thought that the success and effectiveness of their CLSP justified their efforts. Few see the CLSPs as successful in their main task of co-ordinating the delivery of accessible and targeted legal aid services on a local level. Partly, this is because CLSPs have not been able to engage solicitors or other external partners, such as local strategic partnerships. Nor have many levered in new funding.
- 5.23 If CLSPs are to fulfil their potential, examples of good practice must be disseminated and followed through. CLSPs should have a representative and diverse membership, ensure that there is effective relationship-building with other community stakeholders eg Local Strategic Partnerships, and should have access to appropriate administrative support. **Citizens Advice recommends that if they are to continue all CLSPs should observe minimum standards of practice in terms of their structure including membership of a steering group and involvement of user groups, and that should be adequate and consistent funding for CLSP support, to be provided by independent secretariats.**
- 5.24 Citizens Advice research also suggests that there is a need for greater local authority involvement in partnerships, although they should not become the dominant force, as this can provide an unfair advantage by enabling local authorities to apply for Legal Services Commission funding in competition with other providers. Rather, more practical participation in CLSP project and capacity development by local authority officers is required, and more interest by local councillors is required. Although CLSPs are a best value indicator in local authority audits, this has not by itself prevented some CLSPs from becoming moribund. **Citizens Advice recommends that local authority involvement in CLSPs be encouraged. As a means of achieving this, consideration should be given to making more active local authority support for their CLSP infrastructure a Best Value indicator, or a statutory duty.**

⁸⁴ *Potential Partnerships - Bureaux Views of the Community Legal Service Dec 2003*

6 Conclusions

- 6.1 Citizenship requires that rights granted by Parliament must be enforceable. Erecting ever-tighter barriers to justice through legal aid eligibility tests and rationed supply of subsidised services undermines citizenship. Great transparency is needed to ensure that politicians, commentators, public servants and citizens are aware of the role of civil justice in protecting rights and tackling social exclusion, and what the public policy choices are for the future supply of and eligibility for publicly funded legal services. Citizens Advice would like to see the public profile of the debate over publicly funded legal services raised at every level of public policy and debate.
- 6.2 Judged by the number of reviews now underway, Government recognise that there is key strategic problem in delivering legal and advice services to those who need them the most. In addition to the Independent Review of the Community Legal Service, public policy on delivering legal and advice services is also being informed by number of Government reviews on Advice Services.⁸⁵ However, there is a real need for a ‘whole systems’ approach to advice services so that needs analysis, mapping of services, contracting strategies and the development new delivery models can work in a policy context which prioritises benefits and outcomes for clients and communities. Just as the Wanless Report made the case to the Treasury for looking at NHS expenditure across the “whole system” of Health and Social Care,⁸⁶ a similar exercise needs to be undertaken in relation to advice and legal services. This type of approach would have potential to achieve a better fit between services, legal needs and available funding streams, would demonstrate the value of prevention and early resolution of problems through first tier advice, and serve broader policy objectives of tackling social exclusion.
- 6.3 Whilst a ‘whole system’ approach is needed, there is much that can be done to improve the system as it stands. CAB evidence suggests that the Community Legal Service risks facing the twin dangers of ‘fragmentation’ and ‘desertification’. The problem of ‘fragmentation’, is one where services are not sufficiently joined up, referrals become increasingly difficult, and gaps open up between community needs and contract specifications. The problems could be addressed by more flexible contracting regimes and greater support for partnerships, especially at local government level. This would involve addressing the level of remuneration for providers who at present face real term cuts in the value of their funding for two years running and are being asked to do more for less. The balance between

⁸⁵ The Independent Review of the Community Legal Service was announced in April 2003. The other relevant current reviews include the Department of Constitutional Affairs Review of the Regulation of Legal Services, the DCA ‘Cost of Contracting’ Survey, the DCA and Treasury commissioned Survey of Contracting, Purchase and Supply, the DCA ‘Value for Money’ study in the NfP sector, the DTI led Cross-cutting Review of Advice Services, and the Better Regulation Task Force Study of Compensation and Litigation. The Constitutional Affairs Select Committee is also undertaking an inquiry into Legal Aid Deserts.

⁸⁶ *Securing our Future Health: Taking a Long-Term View* Final Report by Derek Wanless April 2002

funding generalist and specialist help will also need to be reviewed to improve the referrals process.⁸⁷

- 6.4 The freezing of contract at 2002 values has caused problems for contact holders, and the Legal Services Commission has confirmed that there will be no changes to current budget restrictions and it will unfortunately not be able to fund any increase from 1st April 2004. **Citizens Advice does not believe that this is acceptable. Remuneration levels for NfPs and for solicitors should be reviewed to see what changes are needed to retain or recruit the necessary supplier. Additional costs should be available to cover for long-term absence of staff, increases in National Insurance contributions etc.**
- 6.5 The problem of 'desertification', of providers not wanting to undertake publicly funded work within the CLS under the current contracting regime, is more challenging. It requires consideration of the additional steps need to be taken to incentivise providers to work as part of the Community Legal Service and improve recruitment and retention within the CLS. Providers and professionals at all levels of the service need to feel valued and not undermined by public institutions. This requires both flexibility in working arrangements and the development of a common professional ethos amongst providers, but most importantly it requires looking at the overall funding of the Community Legal Service.
- 6.6 The Legal Services Commission needs to set targets for achieving national minimum levels of generalist advice and legal service provision, underwritten by a development funding for underfunded advice agencies to build up an adequate advice infrastructure. Different service models may be appropriate for employment of solicitors to undertake specialised legal work at low overheads. However, a key issue in assessing the merits of different service models is what sort of contractual regime the service model should be subject to undertake CLS funded work. This means changing the way that targets are set so that they focus on outcomes for clients.
- 6.7 As regards the best model for effective delivery of services and division of labour between advice workers and solicitors, the model of 'comprehensive centres' or 'one stop shops' cannot meet all situations, so elements of choice which characterise a mixed economy of service provision needs to be maintained. Often more than one centre is needed to provide client choice and to avoid conflicts of interest (for example in family disputes). Areas of scattered population might not be able to support such centres. In many places, several existing agencies may already provide a good joint

⁸⁷ Very recent research commissioned by the Legal Services Research Centre used model clients (mystery shoppers) to test the approach of 294 Specialist Quality Mark holders when approached by clients needing advice in a category of work in which they do not specialise. It showed that rather than clients being referred, 35 per cent and 40 per cent of clients were signposted to an appropriate supplier whilst a similar proportion (35 per cent to 40 per cent) were signposted to a less appropriate provider. Morehead and Sherr: *An Anatomy of Access: Evaluating entry, initial advice and signposting using model clients*. LSRC Dec 2003

service between them and it would be wasteful to put them together in one place.

- 6.8 Policy needs to focus on the development of networks of services involving several different suppliers and skill-sets, all providing a basic generalist service, but with agreed division of labour for more specialist and advanced provision. Solicitors and barristers specialising in particular subjects could form part of these networks, whether in private practice or attached to advice centres, but taking referrals and providing second tier services across the network. The real challenge is whether such networks could be contractually underpinned so that consumers would be entitled to expect minimum standards of service delivery.
- 6.9 New thinking and bold experimentation is needed if the existing infrastructure is not to stagnate or disappear. The Legal Services Commission should lead the way in encouraging providers to experiment with new ways of working through local advocacy projects, charities, community interest companies, and extending the funded caseworker model so that legal services could work proactively in the community alongside other professionals such as social workers and health professionals. The Community Legal Service has shown itself capable of such innovation through rolling out the Family Advice and Information Network Pilots (FAInS).
- 6.10 The Independent Review of the Community Legal Service now underway needs to focus on outcomes and improving access to advice, on how effective the whole system of advice and representation services, which the Community Legal Service represents, is at delivering access to justice and human rights. A review of the approach to monitoring contracts will be vital if advice providers are to have the right incentives – a balance needs to be achieved between rigorous audit and contract compliance procedures, with incentives to keep providers working positively and flexibly in to clients needs whilst paying due regard to providers' professional rules, ethics and best practice expertise.
- 6.12 Citizens Advice recommends that the social exclusion agenda within the CLS should be strengthened by developing tools to demonstrate the impact of advice on social exclusion, through aggregation of outcome measures of provision of advice, such as level of welfare benefits achieved, or health benefits to clients.**
- 6.13 There is limited recognition that public legal education and effective early intervention has a preventative effect and in many cases can save substantially on both the human and public costs of resolving problems clusters at a crisis stage. However, as the LSRC's legal needs survey shows, lack of knowledge about both legal rights and available services and their functions is a key problem. **Citizens Advice recommends that the Department for Constitutional Affairs should develop a public education campaign to improve the effectiveness of the CLS.**

- 6.14 Many of the strains on the Community Legal Service still boil down to the restrictions imposed by the Funding Code, such as the exclusion of preventative work and tribunal representation from the scope of civil legal aid. Net spending on civil legal aid has fallen from £836 million in 1998/99 to £813 million in 2002/03.⁸⁸ Within a cash limited budget, there will always be a need for tight quality assurance controls and eligibility criteria, however there are also widespread misperceptions about the role of civil legal aid. Although all elements of legal aid concern rights under the law, separation of the legal aid budget into three separate funding streams; criminal, asylum and civil may achieve greater political transparency. **Citizens Advice recommends that civil legal aid should be ring-fenced to improve strategic planning and funding stability.**
- 6.15 Without a broad base of public and Parliamentary understanding of, and support for, legal services, it may be extremely difficult to persuade Government to remove the current restrictions operating under the funding code and LSC contracts. Greater certainty over the funding streams used to assist the most vulnerable to access their rights and move beyond social exclusion, would provide an important first step to future decisions over the scope of the funding code and the nature of controlled work under LSC contracts. For example the role of tribunal representation and preventative work. Currently the level of governmental liaison with the Community Legal Service varies by government department. The question needs to be raised at a strategic level in Government as to whether other spending departments should be contributing to civil legal aid costs where policy change results in greater needs for advice and representation.

⁸⁸ Legal Aid Board, Annual Report 1998/99, p6, LSC, Annual Report 2002/03, p2.

7 Recommendations

Short Term

- The annual RPI uprating of contracts should be re-introduced.
- The role of the CLS in meeting the needs of disadvantaged groups and areas should be made more explicit. CLSP plans should demonstrate how they intend to meet identified needs; these should be collated and annexed to the LSC's Regional Reports with maps showing the supplier base.
- The Department for Constitutional Affairs and the LSC should embark on a programme of contract simplification to achieve consistency with, and follow through, obligations under the Voluntary Sector Compact.
- The Department for Constitutional Affairs should implement the proposals of the Legatt Report for public funding to be extended to tribunal representation in classes of cases, where representation is required because of applicants' personal circumstances (such as inadequate knowledge of English, or mental or physical disability) or the complexity of the case make it unreasonable to expect them to present the case themselves.
- Local authority involvement in CLSPs should be encouraged by making active support for their CLSP a Best Value indicator, and Government should consider whether a statutory duty is needed.
- The LSC should produce policy guidance on when they will exercise their discretion to disapply the merits test for funding cases.

Medium Term

- Citizens Advice recommends that the Department of Constitutional Affairs should review the financial eligibility limits for publicly funded legal help which function to exclude all but the very poorest in society from help with the costs of legal advice and representation, to:
 - consider what changes should be made to ensure that assessment is undertaken with reference to the impact of the case on the client
 - provide for the extension of public funding for tribunal representation in cases of hardship and user vulnerability
 - consider what changes may be needed for financial eligibility criteria for legal help with debt cases.
- The LSC should review the types of civil contract for controlled work, with the purpose of introducing elements of flexibility into the contracting regime, to enable providers to spend more time on problem solving. Current restrictions on using contract time for prevention of problems should be

removed; for example, on helping clients fill in welfare benefit claims, which can save appeals later, and on use of contract time for social policy evidence gathering.

- Remuneration levels for NfP agencies and for solicitors should be reviewed to see what changes are needed to retain or recruit the necessary suppliers, and additional costs should be reviewed other such as cover for long term absence, increases in National Insurance contributions etc. Annual RPI uprating should be re-introduced.
- The social exclusion agenda within the CLS should be strengthened by developing tools to demonstrate the impact of advice on social exclusion, through aggregation of outcome measures of provision of advice, such as level of welfare benefits achieved, or health benefits to clients.

Long Term

- The CLS should use more sophisticated ways of identifying needs, by engaging university and colleges in research. This would have to be developed to ensure that there is enough practically collected statistical data to form a standard model.
- The Department of Constitutional Affairs should review the principle of full costs recovery and the court fees system, which act as barriers to justice for many people.

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