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## Public Provision of Legal Services in the United Kingdom: A New Dawn?

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# Public Provision of Legal Services in the United Kingdom: A New Dawn?

Anne Owers

## **Abstract**

There are likely to be two effects on the provision and demand for legal aid. First, under Article 6 of the ECHR, there may be a requirement for free legal advice and representation for those whose civil rights are at issue in complex cases and who could not otherwise afford it. This may particularly affect representation before tribunals, which deal with matters for which no legal aid is currently available such as employment, welfare benefits, and immigration. Legal aid has already been promised for immigration and asylum tribunals. Second, there is likely to be a large amount of litigation in the areas of public and administrative law in an effort to explore the effect of the Human Rights Act; the public law division of the High Court, known as the Crown Office, is anticipating that its workload will double in the short and medium term. Thirdly, as I will go on to explain, there is likely to be enormous pressure on criminal legal aid, which may reduce the resources available, in a fixed budget, for civil legal aid.

# PUBLIC PROVISION OF LEGAL SERVICES IN THE UNITED KINGDOM: A NEW DAWN?

*Anne Owers*

This is a very interesting and critical time for the provision of publicly-funded legal services in the United Kingdom. On April 3, 2000, a new system was launched to fund and deliver legal aid in civil cases and to plan a new funding structure for criminal legal aid. The essential components of the new system include a Legal Services Commission (or "LSC"), which provides public funds made available by the Lord Chancellor's Department<sup>1</sup> to quality-assured suppliers, through contracts, *via* the Community Legal Service Fund for civil matters covered by legal aid and the Criminal Defense Service for criminal legal aid. A second essential element is the removal of certain cases, including almost all personal injury claims, from the scope of legal aid. These cases are to be funded through conditional fee agreements between solicitors and clients. A third aspect of the new system is the development of local Community Legal Service (or "CLS") Partnerships to plan and consult on the delivery of civil legal services at the local level. The new system involves funders which are principally the LSC, local authorities, and charities, such as the National Lotteries Charities Board, and suppliers which include advice and law centers and private practitioners who are involved in working and consultative groups. A fourth component is a Community Legal Service website to provide access to both a directory of legal providers and sources of information. It is hoped that such access will eventually lead to on-line advice. Finally, the system includes plans for a salaried Public Defender Service for criminal defense work.

In addition to this restructuring of publicly funded legal services, the Human Rights Act of 1998<sup>2</sup> ("Human Rights Act") is due to come into effect in the United Kingdom on October 2,

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1. The Lord Chancellor's Department is the government department with responsibility for courts, tribunals, legal aid, and the appointment of judges and magistrates. It is headed by the Lord Chancellor, who is a Minister in the Cabinet, as well as the Speaker of the House of Lords, and able to sit as a judge in the House of Lords judicial committee.

2. Human Rights Act, 1998, c. 42 (Eng).

2000. It brings into U.K. law, for the first time, most of the provisions of the European Convention on Human Rights<sup>3</sup> ("ECHR"), violations of which will now be actionable in domestic courts and tribunals.

There are likely to be two effects on the provision and demand for legal aid. First, under Article 6 of the ECHR, there may be a requirement for free legal advice and representation for those whose civil rights are at issue in complex cases and who could not otherwise afford it. This may particularly affect representation before tribunals, which deal with matters for which no legal aid is currently available such as employment, welfare benefits, and immigration. Legal aid has already been promised for immigration and asylum tribunals. Second, there is likely to be a large amount of litigation in the areas of public and administrative law in an effort to explore the effect of the Human Rights Act; the public law division of the High Court, known as the Crown Office, is anticipating that its workload will double in the short and medium term. Thirdly, as I will go on to explain, there is likely to be enormous pressure on criminal legal aid, which may reduce the resources available, in a fixed budget, for civil legal aid.

### I. *HISTORY OF LEGAL AID AND ASSISTANCE*

In the United Kingdom, the main source of free or subsidized legal advice has been the legal aid scheme. First introduced following the Rushcliffe Report in 1945,<sup>4</sup> civil legal aid has had three key elements. It was demand-led, it was largely delivered through and by lawyers in private practice; and the chief means for controlling its expenditure was by lowering the number of eligible recipients. Other sources of legal assistance for the less well off—*pro bono* work and salaried providers—are relatively under-developed, particularly *pro bono* work.

Initially, legal aid was provided through the Law Society, which is the representative organization of solicitors in England and Wales. By the 1980s, the independent Legal Aid Board, which was later transformed into the LSC, administered it.

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3. Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 221.

4. REPORT OF THE COMMITTEE ON LEGAL AID AND LEGAL ADVICE IN ENGLAND AND WALES, 1945, Cmd. 6641.

There was a period, in the mid-1970s, when the pattern of declining eligibility levels and demand-led private practice delivery came close to breaking down. New models of legal advice provision were developed. In 1970, the first law center opened, and community advice centers and citizens' advice bureaux, staffed by paralegals and volunteers, appeared in many urban centers. These initially operated on a small amount of central government funding provided by the Lord Chancellor's Department and central government grants for inner-city regeneration programs.

At the same time, there was pressure to increase the scope and decrease the eligibility levels for legal aid, which had originally covered 80% of the population but had by then dropped to 40%. There was considerable debate among the advice and legal sector as to which should be the lobbying priority: the extension of legal aid or the development of a salaried, social welfare-oriented sector (or even a National Legal Service to parallel the National Health Service). The majority view focused on the former in order to preserve the principle that public funding for legal services was demand-led and independent.

Thus, in 1979, legal aid eligibility limits were lowered, so that the scheme again covered nearly 80% of the population, and the green form scheme<sup>5</sup> was introduced to allow solicitors to provide legally-aided initial advice and assistance for up to one hour automatically and extended with permission. But, the minimal central government funding for the salaried legal sector, and any concept of strategic planning for law and advice centers, was never developed. Law and advice centers continued to be set up in a haphazard way, dependent on local authority and charitable funding, usually on a year-by-year basis. Meanwhile, as the Legal Action Group<sup>6</sup> pointed out, the legal aid scheme helped to fund a large increase in the number of lawyers in private practice in the 1970s and 1980s, but only a small rise in the proportion of social welfare law they undertook.<sup>7</sup>

In the years since 1979, the downside of a demand-led system became ever more apparent. Faced with increased expendi-

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5. Green Form was the legal aid system whereby solicitors could give free advice and assistance for up to two hours.

6. The main non-governmental organization in the United Kingdom which researches, publishes, and campaigns on legal services.

7. LEGAL ACTION GROUP, *A STRATEGY FOR JUSTICE* 8 (1992).

ture, both overall and costs-per-case,<sup>8</sup> the government drastically cut eligibility levels so that virtually only those on state social support qualified for civil legal aid.<sup>9</sup> Legal aid rates of remuneration have also lagged well behind rates for private client work, making it unattractive, or even financially unviable, for solicitors in private practice.

Meanwhile, legal and advice centers are over-subscribed and the geographic distribution is uneven. The fragile and temporary nature of their funding base has made it difficult to plan ahead or strategically; and, their funders operate different and, sometimes, mutually contradictory assessment measures. The centers, also, have not been subject to any clear, standardized quality or skills criteria.

In addition, funding pressures undermined some of the principles that underpinned the 1970s vision, such as the importance of information, education, and preventive and group actions. Funders often demand measurable quantitative results (*i.e.*, client numbers). Increasingly, law and advice centers are buying into case-driven and means-tested legal aid work in order to meet shortfalls in grant-aid funding.

The system has, therefore, suffered from some clear and systemic defects, which were well-documented in many reports from the main consumer and legal organizations. It was fragmented, in terms of geographic scope. It was lawyer-driven rather than client-oriented. It had the capacity to absorb money without any clear accountability, strategy, or quality controls, while at the same time, it starved out the less attractive, less acute, and less mainstream areas of legal activity.

The Community Legal Service is the cornerstone of the package of reforms now being put into place. It aims to replace the present fragmented and piecemeal system with a coherent, joined-up strategy both for funding and delivering legal services.

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8. Total expenditure on legal aid jumped from UK£620,000,000 in 1991-92 to UK£1,528,000,000 in 1997-98. Civil and family legal aid spending rose from UK£586,000,000 in 1992-93 to UK£793,000,000 in 1997-98, but the number of cases started each year over that period fell by 31%.

9. The Lord Chancellor's Department estimates that only 23% of the population is eligible for non-contributory legal aid in civil matters. In addition around 25% can obtain some contribution to their legal costs; this percentage includes individuals whose incomes are so low that they are eligible for additional state support. Some commentators considered these figures to be an over estimation of those eligible.

As the government's White Paper said, "Our longer-term aim is to ensure that every community has access to a comprehensive network of legal service providers of consistently good quality."<sup>10</sup> This aim was given statutory form on April 3, 2000, when the Access to Justice Act of 1999, was implemented.

## II. *JOINED-UP FUNDING: REDISTRIBUTING LEGAL AID*

The new LSC operates two funds: an open-ended Criminal Defence Fund and a cash-limited Community Legal Service Fund. The amount of money available to the LSC has remained broadly the same, as have the financial eligibility limits, which effectively limit civil legal aid to those on benefits or very low wages.

### A. *Quality Suppliers*

Under both schemes, the LSC will only provide funds for contracted suppliers on agreed terms and subject to audited quality standards. Under the CLS Fund, those contracts may be awarded to lawyers in private practice, salaried lawyers and paralegals in the not-for-profit sector, and non-lawyer agencies such as advice centers. There is also, incidentally, a proposal for the Criminal Defence Fund to set up a pilot Public Defender Service to provide, for the first time, salaried criminal defence work.

Clearly, the aim is to increase quality. However, there are real concerns about the quantity and accessibility of legal aid provision. There has already been a huge drop in the number of solicitors in private practice who are now able to offer legally-aided services: from 11,000 last year to 5000 this year. Though the 5000 who remain did in fact provide 80% of legal aid services, it is nevertheless acknowledged that there has been a significant decrease in the amount, and the geographical availability, of legal aid provided through private practice. One of the aims of the new system is that that gap will be filled by the Community Legal Service Partnerships, which will bring in other funders and other suppliers.

The LSC is also itself pioneering new models of service delivery to try to meet some of these gaps, such as second-tier ex-

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10. LORD CHANCELLOR, *MODERNISING JUSTICE* ¶ 2.6 (1998).

pert advisers, particularly in areas such as immigration and human rights where local expertise may be lacking, and the provision of telephone advice services. It is too early to say whether these schemes are working, either in their own terms, or in terms of filling gaps in supply.

### B. *Funding Priorities*

From the beginning, it has been clear that social welfare law has been one of the new Government's key priority areas, in terms of improving both the quality and quantity of legal advice and representation available.

A Community Legal Service will revolutionize ordinary people's access to information about their rights, and new avenues to good quality legal services. It will be a cornerstone of the Government's pledge to protect everyone's basic rights. The disadvantaged and socially excluded will find help with the issues that affect their everyday lives at the heart of the new service. As part of the Community Legal Service, legal aid spending will be refocused on the people and cases where it is most needed and can do most good.<sup>11</sup>

These principles are reflected in the statutory basis for the CLS Fund. It cannot fund cases which can be funded in other ways, such as a conditional fee agreement.<sup>12</sup> Thus personal injury cases, which can be funded through conditional fee agreements, are, in general, excluded from CLS funding. The Access to Justice Act also sets a higher merit test, in general, for cases to be funded, while allowing this test to be lowered in certain priority areas. Under the Access to Justice Act, the Lord Chancellor has the power to issue directions, which the LSC must take into account, on the priority areas for funding.

In February, 2000, the Lord Chancellor issued his first directions, giving top priority to child protection cases and cases where a client risks losing life or liberty. All cases in these two categories that meet appropriate merits criteria should be funded. After that, high priority should be given to other child

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11. *Id.*

12. Conditional fee agreements are now extended to all types of civil case, including family cases that involve property disputes; these agreements can also be used in cases which do not involve money, as the conditional fee will be reclaimable from the losing party.



welfare cases, domestic violence cases, cases alleging serious wrong-doing or breaches of human rights by public bodies, and social welfare cases, including housing proceedings and advice about employment rights, social security entitlements, and debt.

Most recently, at the launch of the CLS on April 3, 2000, the Lord Chancellor also pledged an additional UK£23,000,000 to develop and provide advice and assistance to asylum-seekers who are now being dispersed around the country. An additional UK£23,000,000 will be allocated to mental health, community care, and other public law cases, particularly those involving claims under the Human Rights Act. The Lord Chancellor also announced an increase in the hourly legal aid rates that have been frozen for the last four years and had prompted a threatened strike by legal aid practitioners.

### *C. Pressures on the Fund and Its Suppliers*

The new funding arrangements rest upon a new view of lawyering in private practice. Ministers have gone to great pains to lecture solicitors in particular that they must regard themselves as business people. Running a solicitors' firm, it is said, is no different from running any small business. It is a matter of managing resources, ensuring sufficient cash-flow, and making decisions on the profitability of work. Conditional fee agreements, which depend upon accurate prior risk assessment and careful financial management, exemplify the skills that the new solicitor will need to survive. At one level, it is correct for the government to insist on proper management of public money. However, there is considerable concern among solicitors, particularly those in social welfare and public interest law, that the principle of public service will be lost in the search for profitability.

As a result, smaller niche firms, particularly those that do outreach and *pro bono* work and those principally reliant on legal aid, may fail to survive. Indeed, some small but highly-rated firms specializing in community care, such as services provided for the mentally ill and other vulnerable groups, were initially unable to secure sufficient funding under the new contractual arrangements to be viable and voiced their opposition. Though the challenge was unsuccessful, the judges expressed concern at the decision-making processes and the possible consequences.

In addition, the cash-limited CLS Fund will collide almost immediately with the new funding demands that follow the implementation of the Human Rights Act. The Access to Justice Act, at least initially, is bound to stimulate litigation, in terms of both kind and volume. This will have direct and indirect consequences for the CLS Fund. Directly, the CLS Fund will suffer from the fact that the government has chosen not to set up a Human Rights Commission to take cases, provide advice and information, and monitor litigation. Moreover, the Human Rights Act specifically prevents public interest groups from taking human rights cases in their own names on behalf of groups or classes of person. All publicly-funded Human Rights Act-related litigation will therefore fall on the cash-limited CLS Fund, which will be faced with the extremely difficult task of prioritizing.

There is also an indirect threat to the CLS Fund. Though the Criminal Defence Fund is theoretically separate from the CLS Fund, the Lord Chancellor has made it clear in Parliament that both funds will be competing for money within his own, limited departmental budget. But it is not an equal competition. The Criminal Defence Fund is not, nor can it be, cash-limited, particularly when the Human Rights Act is in force with its specific requirement to provide free representation in criminal cases when the interests of justice demand it. In all other countries that have incorporated rights, such as Canada and New Zealand, criminal justice has been the area of law in which there has been the greatest explosion of work. The same will certainly be true in the United Kingdom. The CLS Fund, therefore, faces an increase in the volume of work and the threat of a decreased budget at precisely the time when public funds will be most needed to establish good legal precedents on behalf of those who cannot afford expensive court proceedings.

### III. *JOINED-UP DELIVERY: THE NEW MODEL CLS*

The second plank of the government's plan is the creation of the CLS itself. Under the Access to Justice Act, the LSC is charged with another duty separate from the provision of civil legal aid through the CLS Fund. It is to establish, maintain, and develop the CLS.

The CLS will provide, in the order listed in the Access to Justice Act: 1) general information about the legal system and

legal services, 2) advice to individuals, 3) help in settling, or otherwise resolving, legal disputes, 4) help in enforcing decisions to resolve such disputes, and 5) help in relation to legal proceedings not relating to disputes.

There is, therefore, a very strong emphasis on initial advice and dispute resolution, rather than litigation. This reflects the view that front-loading is important since early and accurate diagnosis and advice can prevent or at least minimize legal problems and reduce the need for more costly later intervention. These are certainly extremely important elements of legal service provision, which have up to now been neglected or underfunded.

The LSC, and its network of legally-aided contractors, is only one of the players in the new CLS scheme. At the local level, legal advice, particularly initial front-line advice, may be provided by a variety of agencies, with a variety of funders. Citizens' advice bureaux exist in most localities and are usually funded by local authorities. They principally offer initial information, advice, and signposting, though some citizens' advice bureaux have lawyers (and may even have legal aid franchises). Local law centers and advice centers may also rely on local authority funding. There may also be specialist advice centers which cater to particular groups, such as people with disabilities or children, or particular areas of advice and law, such as debt or immigration. Some centers may be funded charitably. Most recently, the National Lottery Charities Board has become a significant funder of help and assistance that is directed towards disadvantaged groups and children.

#### *A. Partnerships and Service Delivery*

The aim of the CLS is to bring coherence to the present fragmented provision of legal advice and information. Local Community Legal Service Partnerships will be set up to co-ordinate, map, and network legal service providers and their funders at a local level and will seek to ensure clear and consistent quality criteria. The key players in those partnerships will be the two main funders of local legal services, the LSC and its regional committees, and the relevant local authority, who will work with local suppliers, both in private practice and in the salaried advice sector.

Over the last year, a group of Pioneer Community Legal Service Partnerships ("Pioneer Partnerships") were set up. These were six local authorities representing a spread of rural and urban areas, who agreed to work with the Lord Chancellor's Department and the Legal Aid Board to develop a best practice blueprint for CLS Partnerships. Forty other local authorities have since joined as associate partners to pool their ideas.

The task for the Pioneer Partnerships was to establish best practice models for: 1) assessing local need and priorities for advice and information, 2) establishing networks of local providers of all kinds and referral arrangements, and 3) co-ordinating the plans of the different funding bodies such as local authorities, charities, *etc.*

An independent evaluator from the Institute of Advanced Legal Studies, London University, assessed this work. His report<sup>13</sup> sets out some of the general lessons to be drawn from these initial partnerships. He also offers good practice models for structuring partnerships, assessing levels of service provision, mapping supply, establishing sound referral networks, assessing need, and drawing up *concordats* for joint objectives and to encourage joint working where possible.

The problems that emerged from the Pioneer Partnerships are not surprising. They include: rivalry and distrust between some suppliers, both between and within the private practice/salaried divide; the tension between centrally-determined funding priorities, for example those of the LSC, and locally identified need; funders' reluctance or inability to compromise their independence or aims; the difficulties of mapping supply and, in particular, need; the problems of setting up a trusted and reliable referral system; and whether and how to involve suppliers in executive decision-making. The Pioneer Partnerships are a long way from being able to overcome these difficulties and provide a truly integrated service, even assuming that this was possible or desirable, but they have clearly helped to build up trust and understanding among the varied funders and providers of legal advice locally.

However, there appear to be two principal weaknesses, or dangers, as the Pioneer Partnership model becomes the main

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13. RICHARD MOORHEAD, PIONEERS IN PRACTICE: THE COMMUNITY LEGAL SERVICE PIONEER PROJECT RESEARCH REPORT (2000).

way of delivering community legal services. The first is issues of accountability and independence. The Pioneer Partnerships do not seek, or want, direct involvement from the consumers of legal services. The consumers' main role is limited to responding to surveys or participating in focus groups. The idea of a consumer representative on the Pioneer Partnership steering groups is dismissed as tokenistic and unrepresentative. Suppliers do have a role in Pioneer Partnerships, but it is a limited one because it is felt that it would be difficult for them to make disinterested decisions in matters that affect their own income or that of their organization. The larger, and more centrally-directed suppliers, in particular the National Association of Citizens Advice Bureaux, can play a more strategic role. This strategic role, however, raises concerns for smaller, more locally-based suppliers, both in the advice sector and in private practice.

Funders clearly have the lead role. The LSC is the strongest and most focused player but it has a centrally directed vision and is, in turn, heavily dependent upon the government's funding, vision, and agenda.<sup>14</sup> This may conflict with the notion of addressing local need and priorities. Local authorities, the other main funding partners, may also have conflicts. As the research project into the Pioneer Partnerships identified, some local authorities may be keener to support welfare advice, which can raise living standards of local people without any cost to the local authorities, than housing advice, which may result in increased local authority spending on repairs.

The second question is whether there are the resources, or the will, to develop the ideas and possibilities thrown up by the Pioneer Partnerships. Those schemes aim to identify and deal with problems that have bedevilled the provision of legal services in the United Kingdom, such as their fragmentation, variable quality standards, and poor referral systems. However, there is no new money available and no central resource for training, information, or skills-sharing. Solving the problem of fragmentation involves more than simply pressing a "de-frag button." Moreover, many would argue that the new provisions in practice

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14. The new LSC Chairman's statement at the launch of the Commission supports this contention. He stated: "I am confident that all Commission members will contribute towards helping the Commission to develop and implement the Lord Chancellor's policy objectives."

will amount to little more than rearranging the deckchairs on the Titanic, while simultaneously manufacturing a huge iceberg. Many view the new provisions as threatening the viability of many small solicitors' firms who will not be able to obtain contracts or sustain the cashflow requirements of conditional fees.

The provision of good quality front-line advice is clearly important, but it needs a hinterland of specialist and legal services for those cases and issues that are outside its competence or scope. If public interest lawyering in private practice is starved out, the front line will become the only line and front-loading will become down-loading.

### *B. Quality-Marking and Information Technology*

Parallel with the work of the Pioneer Partnerships, a Quality Task Force was set up to develop core quality criteria for the provision of legal advice and assistance at the various levels of provision. The Quality Task Force included representatives of the legal profession, the advice sector, consumer representatives, local authorities, and other funders. The Quality Task Force, whose work was taken over by the Legal Aid Board, has now developed a Quality Mark, assimilated into the standards required of legal aid contractors, which was launched on April 3, 2000. Those providing legal advice and assistance under the CLS will need to reach the minimum Quality Mark standard for the service they provide, at one or more of the three Quality Mark levels: information, general help, and specialist help. The standards for each level are specified.

The final piece of the CLS jigsaw is the better use of information technology. The CLS website, "Just Ask!," was also launched on April 3, 2000. It contains a directory of over 15,000 providers, searchable by area of law and level of service provision. It provides information in six non-English languages and access to other online legal information and help websites. However, it does not yet attempt to give direct advice or information to users.

Again, these developments offer opportunities, rather than definitive returns. Some studies have shown that attempts to standardise quality and competence have depressed, rather than improved, standards because they are geared to the achievable and measurable. They tend to prioritize process over product

and to discourage innovation. Furthermore, awarding benchmarks of quality is extremely dangerous unless there is a structure for assessing and monitoring those who are quality-marked. The LSC will monitor and assess those it funds and it is assumed that local CLS partnerships, or their members, will do local evaluation and monitoring of other suppliers. However, funders who are under political pressure may, as they have in the past, be drawn to prioritising quantity and output over quality and real outcome. Equally important in the longer run, it is not clear how best practice models, or innovative or effective new models of delivery, are to be identified, publicised, and promoted and how staff are to be trained and supported.

While the use and development of information technology clearly offers new possibilities, in the medium term it is unlikely to be more than a signpost, pointing those with internet access to suppliers, who may or may not have the capacity, or in practice the specialist knowledge, to help them. The website is not yet linked to any local network providing more detailed information on the law or local providers, nor can it yet provide direct on-line advice to users; and that too will require the investment of considerable resources.

### *CONCLUSION*

The new framework, and its implementation, have certainly stimulated a great deal of activity and ideas on the delivery of publicly funded legal services. For example, they have stimulated an interesting debate about the nature and function of front-line advice and its relationship with specialist and legal casework services; highlighting the fact that both require expert and specific skills.

There is a developing consensus that an effective support, referral, and mentoring network between the front-line and the specialist, or lawyer, is key. Too often referrals are not made, are made inappropriately, or cannot be made because there is no one who will take them. Clients are sometimes dumped, rather than referred. Both the CLS development team and the Legal Services Commission are working on proposals for the effective use of second-tier agencies and exploring telephone advice support, the transfer of cases, and the possibility of some quasi-contractual relationship between generalists, which could include

“High Street” solicitors as well as advice centers, and specialists. If this develops, and, of course, if it is properly resourced, this would be a new concept in the United Kingdom, where lawyers and agencies have traditionally held on to cases and clients, and indeed have often been under financial pressure from their funders to do so.

Work is also being done to look at the appropriateness, quality, and cost of advice provided by paralegals and lawyers respectively. In some cases, it reveals that present assumptions and funding structures inhibit the most effective delivery systems, whoever is the provider.

For example, one study identified telephone advice as the most effective means of advice provision, particularly if it is backed up with information sheets which can be sent out to the client. Yet advice in the United Kingdom, whether provided by the private or salaried sector, relies overwhelmingly on personal contact, partly because most providers are funded only for the clients they physically see or write to and partly because of a perception that telephone advice is unreliable. Funding legal advisers not to do casework, but to provide clear and accessible information, *via* more sophisticated telephone and information technology systems, is also something that the new Legal Services Commission and the CLS could prioritise.

Other research has compared the quality and cost of initial advice given by solicitors and non-solicitor agencies. It challenges both the assumptions commonly made: that solicitors provide better quality advice but at greater cost. The initial research results show that, in general, the advice given by the non-solicitors was fuller and better, but the costs-per-case were higher, largely because the non-solicitors spent more time on each problem. Crude cost-per-case analysis in other advice sectors bears out the general thesis that providing high quality initial advice, in the salaried sector, is not cheaper per case, but that it is likely to save the cost of expensively disentangling or litigating cases that have gone wrong for want of good early advice.

There are many good fairies, with extremely good intentions, at the christening of the new Legal Services Commission and Community Legal Service. The new regime offers an opportunity to tackle some of the underlying problems of legal service



provision in the United Kingdom, and also to build on its strengths, principally the commitment of those in the salaried sector and in private practice who work for relatively low salaries on behalf of disadvantaged and marginalised groups. And it is a long time since there has been such interest, and at such a high level, in the kind of law in which JUSTICE and other not-for-profit legal organizations have practised.

However, there is also considerable concern as to whether these large expectations and positive aims will be achieved. Public legal service provision remains centrally driven, funder-led, and case-led, and it is easy to see how its strategic aims can be undermined by financial constraints and the priorities of those who pay, rather than those who use. There are no powerful counterweights, either in the shape of serious and widespread *pro bono* work by private lawyers, or bottom-up community-based initiatives. The Community Legal Service is still a concept, rather than a structure, and rolling it out will require investments of time, resources, commitment, and organization from hard-pressed local bodies with divergent aims. Even the welcome emphasis on social welfare and poverty law could be a two-edged sword, allowing public legal provision to become poor law, in every sense of the word, with an over-reliance on front-line, non-specialist, overworked and under funded agencies, which lack the ability or skills to spot and progress matters that ought to be litigated, not mediated; or to deal with the underlying legal issues that cause individual problems.

We need to be very clear about the gains and objectives that we want to promote in these early and transitional days. For JUSTICE, those would include: 1) the development, and proper monitoring, of quality standards, 2) mutual recognition, by front-line advisers and specialist lawyers, of each other's skills and needs and a similar recognition by government and funders, 3) proper referral systems and an appropriate use, and funding, of telephone and second-tier advice, 4) the provision of accessible, accurate information *via* as many outlets as possible, 5) an acceptance by funders that the provision of early, good-quality and properly-resourced legal advice ultimately saves resources, and 6) a continued acknowledgement by government that access to legal advice is a fundamental civil right, in particular where the individual is facing larger and more powerful opponents.

A year ago, I thought that the jury was still out on whether

the United Kingdom could square the magic circle of delivering better-quality, more accessible social justice law without spending any more money. That jury has now been sitting for another year, and its verdict is still not settled. But what is clear is that the interplay of domestically enforceable human rights, a new community legal service and, soon, a public defender system for criminal cases is going to make for a very interesting time in public service lawyering in the United Kingdom.