

## **PUBLIC PROVISION OF LEGAL SERVICES IN THE UK: A NEW DAWN?**

This is a very interesting and critical time for the provision of publicly-funded legal services in the UK. On 3<sup>rd</sup> April 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 are:

- a Legal Services Commission, 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)
  - the Criminal Defence Service (for criminal legal aid)
- the removal of certain cases (including at present, almost all personal injury claims) from the scope of legal aid; they are to be funded through Conditional Fee Agreements between solicitors and clients.
- local Community Legal Service Partnerships to plan and consult on the delivery of civil legal services at local level, involving
  - funders (principally the Legal Services Commission, local authorities and charities such as the National Lotteries Charities Board)
  - suppliers (including advice and law centres and private practitioners, who will at least be involved in working and consultative groups and may in some cases be part of the executive machinery)
- a Community Legal Service website to provide access to a directory of legal providers and to sources of information; and, it is hoped, eventually on-line advice
- plans for a salaried Public Defender Service for criminal defence work.

In addition to this restructuring of publicly funded legal services, the Human Rights Act 1998 is due to come into effect in the UK on 2<sup>nd</sup> October 2000. It brings into UK law, for the first time, most of the provisions of the European Convention on Human Rights (ECHR), which will now be arguable in domestic courts and tribunals. It is likely to have two effects on the provision and demand for legal aid:

- there may be a requirement for free legal advice and representation for those whose civil rights are at issue and who could not otherwise afford it, under Article 6 of the ECHR. This may particularly affect representation before Tribunals (which deal with matters such as employment, welfare benefits and immigration) for which at present no legal aid is available (legal aid has already been promised for immigration and asylum tribunals);
- there is likely to be a large amount of litigation, particularly initially, in public and administrative law cases to explore the effect of the Human Rights Act: the public law division of the High Court, the Crown Office, is anticipating a doubling of its workload in the short and medium term.

### *History of legal aid and assistance*

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<sup>1</sup> 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 being the Speaker of the House of Lords, and being able to sit as a judge in the House of Lords judicial committee.

In the UK, the main source of free, or subsidised, legal advice has been the legal aid scheme. Ever since civil legal aid was first introduced, following the Rushcliffe Report in 1945<sup>2</sup>, it has had three key elements. It has been demand-led, it has largely been delivered through and by lawyers in private practice, and the chief means for controlling its expenditure has been by lowering the number of those eligible to claim it. Other sources of legal assistance for the less well-off – pro bono work, and salaried providers – have been relatively under-developed, particularly the former. Initially, legal aid was provided through the Law Society (the representative organisation of solicitors in England and Wales); but, by the 1980s, it was administered by the independent Legal Aid Board (which has now been transformed into the Legal Services Commission).

There was a period, in the mid-1970s, when the pattern of declining eligibility levels and demand-led private practice delivery came close to being broken. New models of legal advice provision were developed – the first law centre opened in 1970, and ‘community advice centres’ and citizens’ advice bureaux (CABx) staffed by paralegals and volunteers appeared in many urban centres. There was initially a small amount of central government funding for these bodies, through the Lord Chancellor’s Department and central government grants for inner city regeneration programmes.

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 favoured focusing on the former, in order to preserve the principle that public funding for legal services was demand-led and independent.

So, in 1979, legal aid eligibility limits were lowered, so that the scheme again covered nearly 80% of the population; and the ‘green form’ scheme was introduced to allow solicitors to provide legally aided initial advice and assistance (up to one hour automatically, extendable with permission). But the minimal central government funding for the salaried legal sector, and any concept of strategic planning for law and advice centres, was never developed. Law and advice centres 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>3</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>4</sup>

In the years since 1979, the downside of a demand-led system became ever more apparent. Faced with increased expenditure, both overall and in costs per case<sup>5</sup>, the government drastically cut eligibility levels so that virtually only those on state social support qualify for civil legal aid.<sup>6</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.

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<sup>2</sup> *Report of the Committee on Legal Aid and Legal Advice in England and Wales*, Cmd 6641, HMSO, 1945

<sup>3</sup> The main UK non-governmental organisation which researches, publishes and campaigns on legal services.

<sup>4</sup> *A strategy for justice*, Legal Action Group, 1992, p.8.

<sup>5</sup> Total expenditure on legal aid jumped from £620 million in 1991/2 to £1528 million in 1997/8. Civil and family legal aid spending rose from £586 million in 1992-3 to £793 million in 1997-8, but the number of cases started each year over that period fell by 31%.

<sup>6</sup> 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 includes people whose incomes are so low that they are eligible for additional state support. These figures are considered by some commentators to be an over-estimate of those eligible.

Meanwhile, legal and advice centres are over-subscribed and geographically unevenly spread. The fragility 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. Nor have they been subject to any clear, standardised quality or skills criteria.

In addition, some of the principles that underpinned the 1970s vision – the importance of information, education and preventive and group actions as against individual casework – were undermined by funding pressures. Funders often demand measurable quantitative results (i.e. client numbers) and increasingly law and advice centres have bought 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 organisations. It was fragmented, both in terms of geography 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 starving out the less attractive, less acute, and less mainstream, areas of legal activity.

The Community Legal Service (CLS) 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. 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>7</sup>

This has now been given statutory form in the Access to Justice Act 1999, and implemented on 3<sup>rd</sup> April 2000.

### **'Joined-up' funding: redistributing legal aid**

The new Legal Services Commission (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 legal aid to those on benefits or very low wages).

#### *Quality suppliers*

Under both schemes, the Commission will only provide funds, on agreed terms and subject to audited quality standards, with contracted suppliers. Under the CLS Fund, those contracts may be let to lawyers in private practice; salaried lawyers and paralegals in the not-for-profit sector; and non-lawyer agencies such as advice centres. (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 5,000 this year. Though it is pointed out that the 5,000 who remain did in fact provide 80% of legal aid services, it is nevertheless acknowledged that there has been a

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<sup>7</sup> *Modernising Justice*, para. 2.6

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 (see below), 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 expert 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.

### *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 revolutionise 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>8</sup>.

These principles are reflected in the statutory basis for the CLS Fund. It cannot fund cases which can be funded in other ways, for example through a conditional fee agreement (CFA)<sup>9</sup>: so that personal injury cases, which can be funded through CFAs, are in general excluded from CLS funding. The Act also sets a higher merits test in general for cases to be funded, while allowing this to be lowered in certain priority areas. Under the 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: to give top priority to child protection cases and cases where a client risks losing life or liberty; all cases in these categories that meet appropriate merits criteria should be funded. After that, high priority should be given to

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

Most recently, at the launch of the Community Legal Service on 3<sup>rd</sup> April, the Lord Chancellor also pledged an additional £23million to provide and develop advice and assistance to asylum-seekers, who are now being dispersed around the country, and a further £23 million for mental health, community care and other public law cases, particularly those involving claims under the Human Rights Act. He also announced increases in the hourly legal aid

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<sup>8</sup> Lord Chancellor, in introduction to *Modernising Justice*

<sup>9</sup> Conditional fee agreements are now to be extended to all types of civil case, including family cases that involve property disputes; and they will be able to be used in cases which do not involve money, as the success fee will be reclaimable from the losing party.

rates, which have been frozen for the last four years (and had prompted a threatened strike by legal aid practitioners).

#### *Pressures on the fund and its suppliers*

The new funding arrangements rest upon a new view of lawyering in private practice. Ministers have been at pains to lecture solicitors, in particular, that they must regard themselves as businesspeople. 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 taking 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 of course correct for 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, those which do outreach and *pro bono work*, and those principally reliant on legal aid, may fail to survive. Indeed, a challenge has already been mounted, by a new, but highly-rated small firm specialising in community care (the services provided for the mentally ill and other vulnerable groups), which was unable to secure sufficient funding under the new contractual arrangements to be viable. Though the challenge was unsuccessful, the judges expressed concern at the decision-making processes and their possible consequences.

In addition, the cash-limited CLS Fund will collide almost immediately with the new funding demands that will follow implementation of the Human Rights Act 1998. The Act, at least initially, is bound to stimulate more, and different kinds of, litigation. This will have direct and indirect consequences for the CLS Fund. Directly, it 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 face extremely difficult choices as to priorities.

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, as the Criminal Defence Fund is not, and cannot be, cash-limited, particularly when the Human Rights Act is in force, with its specific requirement to provide free representation where the interests of justice demand it in criminal cases. In all other countries that have incorporated rights, criminal justice has been the area of law where there has been the greatest explosion of work: this was the case both in Canada and New Zealand. The same will certainly be true in the UK. The CLS Fund therefore faces an increased 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 themselves afford expensive court proceedings.

#### **'Joined-up' delivery: the new model CLS**

The second plank of the government's plan is the creation of the Community Legal Service itself. Under the Access to Justice Bill, the Legal Services Commission is charged with another duty, separate from the provision of civil legal aid through the CLS Fund. It is to 'establish, maintain and develop' something called the Community Legal Service.

The services that the CLS will provide are, in the order listed in the Bill

- the provision of general information about the legal system and legal services
- the provision of advice to individuals
- help in settling, or otherwise resolving, legal disputes;
- help in enforcing decisions to resolve such disputes;
- 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: early and accurate diagnosis and advice can prevent, or minimise, 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 Legal Service Commission, and its network of legally aided contractors, are only one of the players in the new CLS scheme. At 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 (CABs) exist in most localities and are usually funded by local authorities. They principally offer initial information, advice and signposting, though some CABs have lawyers (and may even have legal aid franchises). Local law centres and advice centres may also rely on local authority funding; and there may also be specialist advice centres which cater for particular groups (such as people with disabilities or children) or particular areas of advice and law (such as debt, or immigration). Some of them 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.

#### *Partnerships and service delivery*

The aim of the Community Legal Service 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 Legal Services Commission (and its regional committees) and the relevant local authority – working 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' were set up. These were six local authorities, representing a spread of rural/urban areas, who have 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 Pioneers was to establish best practice models for

- assessing local need and priorities for advice and information
- establishing networks of local providers of all kinds, and referral arrangements
- co-ordinating the plans of the different funding bodies (local authorities, charities etc).

An independent evaluator (from the Institute of Advanced Legal Studies, London University) has assessed this pioneering work. His report<sup>10</sup> sets out some of the general lessons to be drawn from these initial Partnerships, and 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.

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<sup>10</sup> *Pioneers in practice: the Community Legal Service Pioneer Project Research Report*, Richard Moorhead, 2000

The problems that emerged from the pioneers 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 Legal Services Commission) 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; 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 Partnership model rolls out as the main way of delivering community legal services. The first is issues of accountability and independence. The Partnerships do not seek, or want, direct involvement from the consumers of legal services: their role is limited to responding to surveys, or participating in focus groups. The idea of a consumer representative on the Partnership steering groups is dismissed as tokenistic and unrepresentative. Suppliers do have a role in Partnerships, but it is a limited one: as 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 organisation. The larger, and more centrally-directed suppliers, in particular the National Association of Citizens Advice Bureaux, can play a more strategic role: but this in itself raises concerns for smaller, more locally-based suppliers, both in the advice sector and in private practice.

Funders clearly have the lead role. The Legal Services Commission 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>11</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 authority) than housing advice (which may result in increased local authority spending on disrepair).

The second question is whether there are the resources, or indeed the will, to develop the ideas and possibilities thrown up by the CLS Pioneers. Those schemes aim to identify and deal with problems that have bedevilled the provision of legal services in the UK: their fragmentation, variable quality standards, and poor referral systems. But 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 will amount to little more than rearranging the deckchairs on the Titanic, while simultaneously manufacturing a huge iceberg, by 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.

### *Quality-marking and IT*

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<sup>11</sup> see, for example, the new LSC Chairman's statement at the launch of the Commission : "I am confident that all Commission members will contribute towards helping the Commission to develop and implement the Lord Chancellor's policy objectives".

Parallel with the work of the CLS Pioneers, 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. It 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 3<sup>rd</sup> April. 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 criteria for each level are specified.

The final piece of the CLS jigsaw is the better use of information technology. The CLS website 'Just Ask!'<sup>12</sup> was also launched on 3<sup>rd</sup> April. It contains a directory of over 15,000 providers, searchable by area of law and level of service provision. It provides information in 6 non-UK 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 firm deliverables. Some studies have shown that attempts to standardise quality and competence have acted to depress, rather than improve, standards because they are geared to the achievable and measurable. They tend to prioritise 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 Legal Services Commission 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, under political pressure, may (as they have in the past) be drawn to prioritising quantity and output, over quality and real outcome. Equally importantly, it is not clear, in the longer term, 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 IT 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.

## **The future of public legal services in the UK**

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 Aid Board are working on proposals for the effective use of second-tier agencies, 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 centres) and specialists. If this develops (and, of course, if it is properly

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<sup>12</sup> [www.justask.org.uk](http://www.justask.org.uk)

resourced) this would be a new concept in the UK, where lawyers and agencies have traditionally held on to cases and clients, and indeed have often been under financial pressures from their funders to do so.

Work is also being done into 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<sup>13</sup> identified telephone advice as easily 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 UK, 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<sup>14</sup> 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 UK, 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 organisations 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 and funder- 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 organisation 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 underfunded 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.

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<sup>13</sup> carried out on behalf of the Legal Aid Board by the Policy Studies Institute

<sup>14</sup> from the Institute of Advanced Legal Studies

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

- the development, and proper monitoring, of quality standards
- mutual recognition, by front-line advisers and specialist lawyers, of each other's skills and needs; and a similar recognition by government and funders
- proper referral systems and an appropriate use, and funding, of telephone and second-tier advice
- the provision of accessible, accurate information via as many outlets as possible
- an acceptance by funders that the provision of early, good-quality and properly-resourced legal advice ultimately saves resources
- a continued acknowledgment by government that access to legal advice is a fundamental civil right, in particular where the individual is facing larger and more powerful opponents.

When I presented a similar paper in Australia, a year ago, I said that the jury was still out on whether the UK 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 UK.

**Anne Owers**  
**April 2000**