

Report of the Law Commission on the future of advice and legal support

TACKLING THE ADVICE DEFICIT

A strategy for access to advice and legal support on
social welfare law in England and Wales

**The Law
Commission**

January 2014

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Annexes relating to the report appear online only at:
www.lowcommission.org.uk as follows:

- 1 Low Commission's methodology for surveys of local area services and MP surgeries
- 2 Social welfare law contextual issues
- 3 Good law
- 4 Courts and tribunals
- 5 Alternative dispute resolution
- 6 Public legal education
- 7 Helplines and websites
- 8 Quality
- 9 Outcomes
- 10 Funding assumptions and breakdown of National Advice and Legal Support Fund
- 11 National public sector funding
- 12 Local authority funding
- 13 Advice and health
- 14 Voluntary sources of funding
- 15 Advice and housing associations
- 16 Commercial sources of funding
- 17 Pro bono
- 18 Other sources of funding

Legal Action Group

The purpose of the Legal Action Group is to promote equal access to justice for all members of society who are socially, economically or otherwise disadvantaged. To this end, it seeks to improve law and practice, the administration of justice and legal services.

Contents

Foreword by Lord Woolf	iv
Acknowledgements	vi
Executive summary	vii
List of abbreviations	xii
1 Introduction	1
Our area of concern	1
Legal aid	4
Impact of the legal aid changes and other funding cuts	6
2 Our approach	21
3 Reducing preventable demand	28
Right first time	28
Addressing the source of the problem	31
Early action programmes	31
Communication	33
Systems thinking	34
4 Simplifying the system	37
Good law	37
Courts and tribunals	38
Alternative dispute resolution	44
5 Approach to provision	46
Overall strategy	46
Model of provision	51
Implications for advice provision	61
Quality	64
Outcomes reporting	67
Redesign of services	68
6 Costs of provision and main funding sources	72
7 Planning and delivery mechanisms	76
National planning, commissioning and co-ordination	76
Local planning, commissioning and co-ordination	77
8 Details of funding sources	87
Overall approach to funding	87
National public sector funding	87
Local public sector funding	89
Voluntary sector funding	93

Commercial sector funding	99
Other sources of funding	102
9 What next?	106

Appendices

1 Background to the Low Commission	108
Low Commission’s tasks	108
Membership of the Low Commission	108
Low Commission secretariat	109
Low Commission funding	109
Low Commission timetable	109
2 List of interviewees and consultees	110
3 Recommendations by audience	114

Boxes

1 Examples of cuts to advice and legal support networks	7
2 Examples of cuts to local agencies	8
3 Low Commission’s survey findings	9
4 MP surgeries survey	11
5 Impact of the LASPO Act and welfare reform	15
6 Access to justice	21
7 Welsh Government’s Advice Services Review	24
8 National Strategy for Advice and Legal Support	26
9 Nottingham Systems Thinking Programme	35
10 Age UK primary care navigators	47
11 Toynbee Hall	48
12 Using technology to redesign information and advice services	49
13 Law Centres and public legal education	52
14 Learning from others	58
15 Advice Services Coventry	59
16 Lasa’s rightsnet website	60
17 Advice Portsmouth	62
18 Cambridge CAB’s Advicehub kiosks: ‘bridging the digital divide’	63
19 Case study: Moving to a single welfare rights service in Sheffield	69
20 The local planning process	80
21 Content of local plans	81
22 Competitive tendering in Manchester	85
23 Case study: Sheffield Mental Health CAB	92
24 Fair Money Advice	96
25 Making the most of local law student volunteers	98
26 Personal Support Unit	98

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- 8 Quality
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- 11 National public sector funding
- 12 Local authority funding
- 13 Advice and health
- 14 Voluntary sources of funding
- 15 Advice and housing associations
- 16 Commercial sources of funding
- 17 Pro bono
- 18 Other sources of funding

Foreword

This report tackles one of the most difficult and persistent problems facing any society. It is how society meets one of its heaviest responsibilities, namely the responsibility to ensure that its members who are least able to protect themselves are provided with the assistance that they require to cope with the challenges with which they are inevitably faced.

This is particularly difficult to achieve when a nation, like our own, is seeking at the same time to deal with acute financial difficulties requiring the imposition of stringent controls, including cuts, on public spending across the board. The scale of the challenge faced by those who have this responsibility in the UK is fully appreciated by the chair and the distinguished members of the Low Commission.

The situation requires a fresh approach on the part of both central and local government, the relevant public bodies and the voluntary sector. The Commission recognises that the approach must be, as they recommend, holistic, co-operative, pragmatic and imaginative. It should be tailored to be as economical as possible but at the same time must have the resources, fresh where necessary, so as to ensure that we do not throw away the opportunity the Commission's report could provide of making a real difference to the situation.

Often all that is needed is guidance, assistance and support. But where this is needed it must be provided. All too often, even when the assistance is available, those whom it would benefit do not appreciate that this is the situation, or if they are aware of their need, do not know how the assistance can be obtained. That problem is one where modest resources can achieve a great deal. However, partly because of this country's financial situation, even the modest resources required are scarce and difficult to obtain. In recent times these difficulties have been increased as the scarcity of the resources has increased, for example in consequence in the cuts in the availability of legal aid.

In this situation, it is critical that those resources that are available are used proactively and to best effect. How to do this most effectively is a task that the Low Commission, which was only established in late 2012, has sought to tackle after conducting a campaign of extensive consultation. The Commission has developed a fresh approach. They have produced realistic proposals, identified measures to reduce the need for support and developed what they regard as a cost-effective approach to providing what is needed, both centrally and locally. The report identifies the key principles for doing this. Vitaly, it stresses the importance of early intervention and sets out a strategy which if implemented could produce a radical improvement in the situation.

The strategy recognises the virtues of simplicity, the importance of making good use of new technology (the provision of which has sadly been so far neglected) and the contribution which can be made by education. It stresses the importance of co-operation between the different agencies and the need for them to work more closely together.

The report deserves careful examination, in particular by those in government. Its authors appreciate that they cannot expect changes to take place overnight and it addresses its recommendations to the UK government to be established after the next general election. This should enable different parties to make clear that these recommendations are part of its agenda for government.

If the recommendations are implemented, this will not only support those who have the need for the assistance the recommendations should provide, but society as a whole. As a society we cannot continue to neglect the duty we owe to those who are the least fortunate of our fellow citizens.

The Rt Hon the Lord Woolf

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Executive summary

- A young couple are unable to get their landlord to undertake essential repairs.
- A nurse who has worked in the NHS for 20 years cannot rent a new house because her immigration status has not been regularised.
- A person in debt has started suffering from severe anxiety and depression and is in danger of losing his house and his job.
- A person has been unfairly dismissed.
- A disabled person loses her benefits after having been wrongly assessed as fit for work.
- An older person living in a cold house is not able to get advice on income maximisation to enable her to heat the house properly.

When people get into difficulty in their daily lives, as in the examples above, they need to be able to get the right information and advice as early as possible. If this information and advice is not available, they could become unemployed, homeless or in debt – and, not only will they suffer distress, but the state will incur increased costs. Where legal support, whether in the form of legal help or legal representation, is also not available, the number of people who then try to represent themselves will increase, and the courts and tribunals will have to adapt to deal with this increase in unadvised and unrepresented litigants. Likewise, when systems that are supposed to support people fail to function effectively, those individuals require extensive help, often including specialist and legal skills, to have their needs met.

These are the consequences, intended or unintended, of the government's civil legal aid changes in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, involving a cut of £89m pa in legal aid on social welfare law, as well as the reductions in local authority funding of advice and legal support, estimated to be at least £40m pa by 2015. These cutbacks have destabilised and reduced the advice and legal support sector at a time of increased need. As a result, instead of saving money, the cutbacks are very likely to end up costing more elsewhere in the system.

The Low Commission was established in late 2012 by the Legal Action Group (LAG) (see Appendix 1 for terms of reference and membership) and funded by a group of major trusts and foundations, as well as some corporate support, to develop a strategy for addressing these problems. Widespread concern about the impact of the changes and the lack of a strategy for addressing their consequences means our work has attracted extensive interest from a wide spectrum of organisations and individuals. Over the past 12 months, we have heard from more than 250 organisations and individuals – in person and in writing – about their views on the future of social welfare law advice and legal support and their

comments on our draft report (see Appendix 2 for list of contributors and consultees). We have also met a further 400 people at wider meetings. Our report has been greatly assisted by all the comments and suggestions we have received during its preparation.

The Commission recognises that these are changing times and the drive for austerity means that there are currently fewer resources than in the past. We are therefore seeking to develop a fresh approach, which involves measures to reduce the need for advice and legal support in the first place, while developing more cost-effective approaches to service provision, both centrally and locally, and drawing on a wider range of funding sources than hitherto. Some of the key principles underpinning our approach are:

- early intervention and action rather than allowing problems to escalate;
- investment for prevention to avoid the wasted costs generated by the failure of public services;
- simplifying the legal system;
- developing different service offerings to meet different types of need;
- investing in a basic level of provision of information and advice; and
- embedding advice in settings where people regularly go, such as GP surgeries and community centres.

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

Our aim is to develop a strategy for the next UK government and Welsh government to implement in 2015. Our 100 recommendations are highlighted in bold throughout the text and grouped by audience in Appendix 3. Further background to the report is available online in our 18 Annexes – see www.lowcommission.org.uk.

In summary, the main components of our strategy are as follows:

- People with pressing problems need a simple and effective way of accessing good advice, without hurdles or confusion. Much basic provision can be developed using a combination of public legal education, national telephone helplines and websites, local advice networks and specialist support for frontline advice agencies.
- Greater use needs to be made of new technology and helplines for those who can manage to access these forms of communication and are not digitally

excluded. We believe that, in addition to the current range of specialist helplines, there should be a one-stop national helpline and website, providing a comprehensive advice service for the general public, which can act as a safety net for those who have nowhere else to go or whose needs cannot be met by other providers. This will free up resources to ensure that more face-to-face, in-depth and intensive support can be targeted at those most in need.

- There is a continuum including public legal education, informal and formal information, general advice, specialist advice, legal help and legal representation. Legal aid should be viewed as part of this continuum, rather than as a stand-alone funding mechanism; the more we can do at the beginning of this spectrum, the less we should have to do at the end.
- **Public legal education** should be given higher priority, both in the school alongside financial literacy, and in education for life, so that people know their rights and know where to go for help.
- The Ministry of Justice (MoJ) should conduct a ‘sense check’ review of the matters excluded from the scope of the LASPO Act and consider reinstatement of some provisions – including, in particular, housing cases involving disrepair and the right to quiet enjoyment – to ensure that there are no inconsistencies between its stated aims and practice.
- By **reducing preventable demand**, taking early action and simplifying the legal system, it will be possible to reduce some of the need for advice and legal support. This should include a stronger focus on getting decisions about individuals right first time (for example, by requiring the Department for Work and Pensions (DWP) to pay costs on upheld appeals), on developing good law and on taking steps to make **courts and tribunals more efficient** and effective (for example, through adapting their model of dispute resolution at every stage to meet the needs of litigants with little or no support).
- For those who can afford to pay, affordable advice and legal support should be more accessible and the routes into it much better communicated.
- Ensuring the quality of all levels of service provision must be a high priority.
- We would like to see a more open and collaborative advice sector. There is considerable scope for local advice agencies to work more closely together and in some cases even to merge. We would also like to see the national advice services umbrella bodies work more closely together and share their resources and experience more widely.
- The importance of advice and legal support on social welfare law to people’s lives, coupled with challenges to its continued provision and additional costs to government that are likely to result if no action is taken, makes it imperative that the next UK government develops a **National Strategy for Advice and Legal Support** in England for 2015–20, preferably with all-party support, and that the Welsh Government develops a similar strategy for Wales. There should be a **Minister for Advice and Legal Support**, within the MoJ, with a cross-departmental brief, who should lead the development of this strategy.

- Local authorities or groups of local authorities should co-produce or commission **local advice and legal support plans** with local not-for-profit and commercial advice agencies. These plans should review the services available, including helplines and websites, while targeting face-to-face provision so that it reaches the most vulnerable. They should also ensure that some resources are available for legal help and representation where it is most needed, to supplement the reduced scope of legal aid.
- We estimate that by 2015, post the implementation of the LASPO Act, there will be about £400m pa available to fund advice and legal support services – mainly coming from local authorities, the Money Advice Service (MAS), the Big Lottery Fund and the legal aid that remains for social welfare law.
- We estimate at least a further £100m pa is required in order to ensure a basic level of provision of information, advice and legal support on social welfare law.
- We are calling on the next UK government to provide half of this extra funding by establishing a ten-year **National Advice and Legal Support Fund** (‘National Fund’) for England and Wales of £50m pa, to be administered by the Big Lottery Fund, to help develop provision.
- We propose that this National Fund should be financed by the MoJ, the Cabinet Office and the DWP (as the main creator of the need for advice and legal support). Of the Fund, 90 per cent should be used to fund local provision, with ten per cent for national initiatives; further details of the expenditure to be met by the Fund are given in Annex 10.
- The Big Lottery Fund should allocate the 90 per cent share of the National Fund to local authority areas, based on indicators of need which draw on joint strategic needs assessments and Health and Wellbeing Strategies. These funds should be used to help implement local advice and legal support plans, which should be co-produced by local authorities and the local advice sector.
- We have also identified other national and local statutory, voluntary and commercial funders, which we believe could contribute the other £50m pa required and thereby match the National Fund. These should include NHS clinical commissioning groups, housing associations and additional MAS funding (for example, by increasing the Financial Conduct Authority’s levy on financial institutions, and introducing a levy on payday loan companies).
- Trusts and foundations, the Big Lottery Fund and lawyer fund generation schemes, such as the Interest on Lawyer Trust Accounts (IOLTA) and dormant funds held by solicitors (for example, for clients who can no longer be traced or for companies that have dissolved) should also contribute to this second £50m.
- Most of our recommendations apply equally to Wales, but it will be important to build on the momentum resulting from the Welsh Government’s Advice Services Review, the final report of which was published in March 2013. The Welsh Government will also need to decide on the most appropriate

management arrangements for the National Advice and Legal Support Fund in Wales, and some of the recommendations will also need to take account of the different arrangements for local government and the local NHS in Wales.

Our six overarching recommendations are:

- **Public legal education** should be given higher priority, both in the school alongside financial literacy, and in education for life, so that people know their rights and know where to go for help.
- Central and local government should do more to **reduce preventable demand** (for example, by requiring the DWP to pay costs on upheld appeals).
- **Courts and tribunals** should review how they can operate more efficiently and effectively (for example, through adapting their model of dispute resolution at every stage to meet the needs of litigants with little or no support).
- The next UK government should develop a **National Strategy for Advice and Legal Support** in England for 2015–20, preferably with all-party support, and the Welsh Government should develop a similar strategy for Wales. There should be a **Minister for Advice and Legal Support**, within the MoJ, with a cross-departmental brief for leading the development of this strategy.
- Local authorities, or groups of local authorities, should co-produce or commission **local advice and legal support plans** with local not-for-profit and commercial advice agencies.
- The next UK government should establish a ten-year **National Advice and Legal Support Fund** of £50m pa, to be administered by the Big Lottery Fund, to help develop provision of information, advice and legal support on social welfare law in line with local plans.

Urgent action is also required to address the application and funding problems arising with section 10 of the LASPO Act on exceptional funding arrangements. These were intended to act as a safety net to guarantee the funding of cases that would ordinarily be out of scope for legal aid funding, but where either human rights or EU law require the provision of legal aid. The evidence to date is that these arrangements are not working.

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

List of abbreviations

ADR	Alternative dispute resolution
AQS	Advice Quality Standard
ASA	Advice Services Alliance
ASTF	Advice Services Transition Fund
BIS	Department for Business, Innovation and Skills
BPBU	Bar Pro Bono Unit
CABx	Citizens Advice Bureaux
CAIS	Credit Account Information Sharing
CLA	Civil Legal Advice
CLAC	Community Legal and Advice Centre
CLAN	Community Local Area Network
CLAS	Community Legal Advice Service
CLASSY	Community Legal Advice Services for South Yorkshire
CLS	Community Legal Service
CLSP	Community Legal Service Partnership
CPR	Civil Procedure Rules
DCLG	Department for Communities and Local Government
DWP	Department for Work and Pensions
EHRC	Equality and Human Rights Commission
FCA	Financial Conduct Authority
FF	Fair Finance
FMA	Fair Money Advice
HA	Housing association
HMCTS	Her Majesty's Courts and Tribunals Service
IOLTA	Interest on Lawyer Trust Accounts
LAA	Legal Aid Agency
LAG	Legal Action Group
LASPO Act	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LEF	Legal Education Foundation
LSC	Legal Services Commission
LW	LawWorks
MAS	Money Advice Service
MoJ	Ministry of Justice
PCC	Police and Crime Commissioner
PLE	Public legal education
PSU	Personal Support Unit
RCJ	Royal Courts of Justice
SIB	Social impact bond
SQM	Specialist Quality Mark
SRA	Solicitors Regulation Authority
WCVA	Wales Council for Voluntary Action

1 Introduction

- 1.1 The UK government's austerity programme initiated in 2010 has involved, and will continue to involve, major cutbacks in public services and in welfare benefits. Inevitably, and along with the wider impact of the economic situation, these reforms and cutbacks generate increases in the demand for information, advice and legal support on issues such as debt, employment, housing, immigration and welfare benefits to help people cope with the problems of everyday life. Yet those who provide this support are also now suffering from the cuts in civil legal aid and reductions in local authority funding.
- 1.2 It was against this background that LAG established the Low Commission in October 2012 (see Appendix 1), with the remit of developing a strategy for the future provision of advice and legal support on social welfare law in England and Wales, which:
- meets the need for the public, particularly the poor and marginalised, to have access to good quality independent advice and legal support;
 - is informed by an analysis of the impact of funding changes and by an assessment of what can realistically be delivered and supported in the future; and
 - influences the thinking and manifestos of the political parties in the run-up to the 2015 general election in the UK and the 2016 election in Wales.

The Commission is chaired by Lord Colin Low and comprises nine other commissioners with experience in this field, together with a small secretariat (see Appendix 1). We have taken evidence and comments from over 250 individuals and organisations (see Appendix 2), and met a further 400 at wider meetings since we began our work. Our 100 recommendations are shown in bold throughout the text and are listed by audience in Appendix 3.

Our area of concern

- 1.3 The problems of everyday life come in many shapes and sizes. They can happen to anyone at any time and may be unexpected, one-off events or may form part of a series of interrelated problems. Some problems will be easy to resolve, but others may prove more difficult. These problems may not appear legally significant or cutting edge, but they relate to issues that are part of the fabric of the everyday lives of individuals and families across the country. If left unresolved, they can have profound consequences for these individuals, their communities and ultimately the state. Crucially, these problems will often have a legal solution. The 1999 study *Paths to justice* found that 40 per cent of those surveyed had experienced a 'justiciable problem' (a problem for which there might be a legal solution) relating to a civil law matter, and demonstrates the

widespread and common nature of civil justice problems.¹ We recognise that the problems of everyday life often include family issues and consumer problems, but for the purposes of our inquiry we have focused on problems relating to asylum and immigration, community care, debt, education, employment, housing and welfare benefits – collectively referred to as ‘social welfare law’.

- 1.4 There is no standard profile for the kind of person who experiences social welfare law problems; the particular features of the problems will vary every time, as will the capacity of the individual concerned to resolve them. Level of affluence, degree of education or employment status are no determiner of people who will experience social welfare law problems. In particular, in a time of economic instability and austerity, anyone can be affected, whether they are a newly redundant worker, a highly skilled immigrant or a disabled person affected by changes to the provision of welfare support. Nonetheless, it is the most vulnerable or deprived people in society who are most likely to be affected, including many disabled people. Although some people sometimes experience only one type of problem in isolation, more often than not they experience a cluster of interrelated problems. Both socio-legal research and social exclusion studies have shown that people tend to experience a combination of interrelated problems, with money and debt problems often identified as ‘central elements in cascades of justiciable problems’.² In order to be effective, advice and legal support must therefore be capable of dealing with the ‘whole person’.
- 1.5 In its consultation on proposals for the reform of legal aid in 2010,³ the government frequently justified removing areas of social welfare law from scope on the basis that the issues concerned related to the ‘personal choices’ of the individual and therefore were not suitable for public funding. We do not agree with this analysis of the nature of many social welfare law problems. An individual’s employment conditions are largely outside their control; an individual’s immigration problem will often stem from a status inherited and unresolved from their childhood; an individual’s ill health and its impact on their family cannot be predicted. These are not situations that stem from personal choice.
- 1.6 *Paths to justice* examined the various strategies for resolving problems and looked at barriers and pathways to advice. The study found that:
- two-thirds of people try, initially at least, to solve problems directly by contacting the other party involved; very few went directly to advisers;

1 H Genn, *Paths to justice: what people do and think about going to law*, 1999. *Paths to justice* was a survey examining how often people experience problems for which there might be a legal solution and how they go about solving them.

2 P Pleasence, N Balmer, A Buck, A O’Grady, H Genn, ‘Multiple justiciable problems: common clusters and their social and demographic indicators’, *Journal of Empirical Legal Studies*, July 2004.

3 *Proposals for the reform of legal aid in England and Wales*, Ministry of Justice (MoJ), Consultation Paper CP12/10, Cm 7967, November 2010, available at: www.official-documents.gov.uk/document/cm79/7967/7967.pdf.

- in total, about 90 per cent of those surveyed had sought advice in the past, and 60 per cent had sought advice on a recent problem;
- 60 per cent of those who sought advice contacted solicitors and Citizens Advice Bureaux (CABx), but demand for free advice exceeded supply;
- one in 20 failed to take any action to solve their problem, and about one in five of these people did not take action because they did not think anything could be done;
- over a third tried to resolve the problem without receiving any advice (the ‘self-helpers’); the reasons given included that good advice was inaccessible, fear of legal costs and negative experiences of legal advisers or legal processes. Fewer than half of those who tried to resolve their problem on their own succeeded in achieving a resolution by agreement.

1.7 The providers of advice and legal support on social welfare law issues in England and Wales fall into five main categories; the delivery of these services ranges from face-to-face to national helplines and websites. The five categories are:

- 1) *local not-for-profit advice agencies*, comprising 350 CABx (under the umbrella of Citizens Advice) operating out of 3,500 locations, and over 800 other independent advice agencies (under the umbrella of AdviceUK), as well as other local agencies, providing information and advice and some legal support across all or most aspects of social welfare law;
- 2) *over 50 local Law Centres* (under the umbrella of the Law Centres Network), set up to use their specialist legal skills to address and alleviate poverty, provide legal help and representation and undertake strategic case-work across all or most aspects of social welfare law;
- 3) *national charities*, such as Shelter, Age UK and Youth Access, providing information, advice and some legal support in their areas of specialism;
- 4) *local authorities* providing informal and formal information and generalist advice through a wide range of social and community workers, as well as specialist staff providing statutory advice on homelessness and, in some cases, welfare rights advice;
- 5) *private law firms* providing paid-for and pro bono legal help and representation.

In addition, the Advice Services Alliance (ASA), a third-tier umbrella body, plays an important co-ordinating role in the advice and legal sector (eg on issues such as quality), as well as a representative role on legal aid. However, the (then) Legal Services Commission⁴ (LSC) cut its grant to the ASA for performing its representative role in respect of the not-for-profit sector, as part of the overall cuts to legal aid, with effect from 2013/14.

⁴ The LSC was a non-departmental public body of the MoJ responsible for the operation of the administrative organisation of legal aid in England and Wales. It was replaced by the Legal Aid Agency (LAA) on 1 April 2013.

Legal aid

- 1.8 A limited legal aid system was available in serious criminal cases from the early 20th century, but it was not until after the Legal Aid and Advice Act 1949 that the civil legal aid system was established. Most of the population (80 per cent) were eligible for legal aid when the first cases were funded in 1950. In the late 1960s it became increasingly recognised that legal services were failing impoverished communities. This led to the creation of the advice and assistance scheme, or green form scheme, as it became known, which allowed members of the public, provided they passed a means test, to receive advice on any legal problem in England and Wales. Firms of solicitors working in civil legal aid, despite the wide scope of the green form scheme, tended to specialise only in family cases, and this had been the pattern since the start of the scheme. Some more progressive solicitors' firms and the new not-for-profit Law Centres (the first of which was North Kensington Law Centre founded in 1970) began to undertake cases in housing, welfare benefits and other social welfare law matters.
- 1.9 The number of green form cases increased to a peak of 1.5m pa in the 1990s. This coincided with a growing demand for advice services. The rising cost of legal aid led the government to reduce the number of people eligible for help and the scope of what was covered in 1992/93. A system of quality control was also introduced in the mid-1990s. Provided they obtained a quality mark, advice charities without solicitors for the first time were permitted to provide legal aid services. The number of advice charities contracted by the LSC expanded from an initial 42 to around 300, most of who provided legal aid services only in social welfare law. Due to budget pressures, governments periodically changed the scope of what the scheme covered and adjusted the eligibility regulations to reduce the number of people entitled to claim help with civil legal problems. By 1993, eligibility for legal aid had fallen to 53 per cent of the population and areas of civil law such as probate matters had been removed from the scope of the scheme.
- 1.10 Eligibility levels continued to decline under the Labour government which took office in 1997. In 1998, 52 per cent of the population were eligible for legal aid, but this had reduced to 29 per cent by 2007. Eligibility levels and the number of cases in social welfare law then increased between 2007 and 2010.⁵ This was due to three factors – the recession, which meant more people were potentially eligible for legal aid; a decision by the government to bring more people into scope; and an increase in the budget to allow more civil law cases to be paid for by the legal aid scheme.

⁵ *Austerity justice*, Steve Hynes, LAG, 2012, p64.

- 1.11 When Labour left office in 2010, social welfare law legal help cases had peaked at 485,664 for the year 2009/10. However, by last year, 2012/13, the numbers of social welfare law cases had fallen to 293,319, due to decisions made by the coalition government to reduce expenditure on civil legal aid.⁶
- 1.12 The coalition government announced its spending plans in October 2010. Due to the decision to protect spending in some budgets, a greater proportion of the cuts fell on departments, such as the Ministry of Justice (MoJ), with unprotected budgets. For the spending period April 2010 to March 2015, the MoJ was expected to reduce its resource budget from £8.3bn in 2010/11 to £7bn in 2014/15, involving overall resource savings of 23 per cent in real terms.⁷ As part of its cost-cutting measures, the MoJ announced a consultation in November 2010 on its plans to cut £350m from a total budget for legal aid of £2.1b (see para 1.5 above). Most of these proposed cuts (£278m) fell in civil legal aid, including cuts to social welfare law relating to debt, employment, housing, non-asylum immigration cases and welfare benefits, as well as cuts to family law. These cuts in scope were implemented by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, taking effect from April 2013. According to the MoJ's 2012 impact assessment, £89m pa is being lost in funding for social welfare cases – a reduction of 238,820 cases.
- 1.13 International comparisons. Recent governments have used international comparisons with the costs of the legal aid system in England and Wales to justify cutbacks. The Labour government commissioned a report from Roger Bowles and Amanda Perry of the University of York for an explanation for the greater levels of expenditure in England and Wales compared to other countries.⁸ They found that part of the reason for this was the higher levels of crime and the greater number of criminal prosecutions brought to court in England and Wales. They also found that the relatively higher cost of legal aid in England and Wales compared to other EU countries appears 'to be offset by lower court budgets and public prosecution costs'. France for example, only spent 4.68 euros per head of population on legal aid, compared to 57.87 euros in England and Wales, but once other costs of the courts system were factored in the total cost was 51.40 euros in France – closer to the equivalent figure of 80.48 euros for England and Wales. The Netherlands had larger overall courts and legal aid expenditure at 90.61 euros.

6 See *Civil legal aid – the secret legal service?*, LAG, September 2013, available at: www.lag.org.uk/media/133089/legal_aid_secret_service.pdf.

7 HM Treasury, *Spending review 2010 Cm 7942*, October 2010, p55, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203826/Spending_review_2010.pdf.

8 R Bowles and A Perry, *International comparison of publicly funded legal services and justice systems*, MoJ, October 2009, p27.

- 1.14 LAG carried out two opinion polls, in November 2010 and January 2012, on the public's attitude to funding social welfare law advice services.⁹ Both polls were conducted by GfK NOP using a cross-section of 1,000 randomly selected members of the public. The polls found that over 80 per cent of the public, across all social classes, believed that advice on common civil legal problems should be free to everyone, or at least to those people earning on or below an average income of £25,000 pa. When asked to prioritise between the different areas of advice, the results between the surveys were again consistent, with approximately 70 per cent in each survey suggesting that child protection should be the first priority for state funding for advice services, followed by help with housing and employment law problems. LAG concluded from the research that despite the often hostile media coverage of legal aid, the general public believe that it is fair for people, especially those on lower incomes, to have access to free advice services paid for by the state.

Impact of the legal aid changes and other funding cuts

- 1.15 The cuts in the scope of legal aid totalling £89m pa in April 2013 (see Annex 11 on national public sector funding) have hit people who need help hard, as well as the advice and legal support bodies who provide much of that help. As part of its work for its *Review of the not for profit advice sector* (2012) in England, the Cabinet Office estimated that local authority funding of the sector as being £220m in 2010/11, which we estimate could fall to £180m, or even to £160m, in 2015/16 (see Annex 12 on local authority funding) – thus bringing the overall cuts in funding from these two sources to £129m or more. The Equality and Human Rights Commission (EHRC) has also ended its grant programme, which between 2008 and its end in 2013 totalled £30.9m. In Wales, the Independent Advice Providers Forum has collected evidence of £4.1m cuts kicking in from April 2013, £2.4m of which were from the loss of legal aid contracts, and the rest from reductions in Welsh Government, local authority, European and other funding from corporate and charitable sources. In its place the Advice Services Transition Fund will put just over £1m back into advice services in Wales.

⁹ See *Social welfare law: what the public wants from civil legal aid. Findings from a nationwide opinion poll*, LAG, March 2012, available at: www.lag.org.uk/media/47770/social_welfare_law_what_the_public_wants_from_civil_legal_aid.pdf; and *Social welfare law: what is fair? Findings from a nationwide opinion poll survey*, LAG, November 2010, available at: www.baringfoundation.org.uk/WhatIsFair.pdf.

Box 1**Examples of cuts to advice and legal support networks**

- Shelter has had to close nine of its advice centres as a result of a £3m cut in its legal aid funding.
- Citizens Advice's overall income is estimated to have fallen from £177m in 2010/11 to £144m in 2013/14, a reduction of £33m (over 18.5 per cent), of which £22m is accounted for by loss of legal aid in 2013/14 and most of the remainder is from cuts in local authority funding.
- ASA have had their grant from the (then) LSC cut, reducing their ability to perform a co-ordinating and representative role.
- There has been a 300 per cent increase in referrals from the Civil Legal Advice telephone line to National Debtline since April 2013.
- The loss of welfare benefits from the scope of the legal aid system meant that most of the just under 300 not-for-profit providers, including 128 Citizens Advice Bureaux, left the legal aid system in April 2013.
- Citizens Advice and other national bodies have seen the termination of MoJ-funded second-tier specialist support contracts. For example, the loss of Citizens Advice's employment contract at its Specialist Support Unit in Wolverhampton means that it has very little capacity to support employment and discrimination cases.
- Other advice charities are reporting a lack of specialist services to refer their clients to due to the cuts in legal aid.¹⁰

1.16 At the local level, the cuts have affected different areas in different ways, with some local authorities cutting all their funding and others increasing their funding in recognition of the increased need for advice and legal support.

¹⁰ July 2013 *Legal Action* 3.

Box 2**Examples of cuts to local agencies*****Birmingham***

- With a population of just over one million, Birmingham is the second largest city in the UK. Funding for its independent advice sector though, has always tended to lag behind other large cities such as Manchester. On top of this, the legal aid cuts in April 2013 have come as a body blow to specialist advice services in the city, arriving as they do on top of other funding reductions. Birmingham CAB service is one of the largest in the country. However, the City Council cut its grant in 2010/11 from £590,000 pa to the present level of £265,000.
- According to Emma Cook, acting Chief Executive for the Bureau, the grant reduction led to 7,500 fewer people being assisted over the last year, with numbers down to under 30,000. ‘The loss of our legal aid contracts from April means a third of our service has gone’, says Cook. Over £700,000 worth of legal help work in debt and welfare benefits went from April, and the bureau has had to redeploy or make redundant the 27 staff who worked on the legal aid contracts.
- After a series of financial problems, the Law Centre was forced to go into receivership in June 2013 after its board of trustees decided it was no longer viable, in part due to the loss of half its income from legal aid.¹¹ The Community Law Partnership (CLP), a firm of solicitors specialising in social welfare law, employs 30 staff including three partners. After the legal aid cuts in April 2013, CLP had to make redundant two fee earners who mainly undertook legal aid work in benefits and debt. Rosaleen Kilbane, partner at CLP, explained that despite the firm losing money on legal help work, ‘we did it as it was necessary to provide a good service to the clients. We now have to turn away clients and ration the matter starts we do have for priority cases such as street homeless and families’.

Manchester

- In Manchester, the reduction in funding has meant that Manchester CAB (MCAB) has gone from having six drop-in centres to three. MCAB has lost 23 specialist worker posts. In addition, the hours and the roles of other posts have had to be changed, with one caseworker taking a 12-month unpaid sabbatical.

11 See ‘Birmingham Law Centre closes’, LAG News, 25 June 2013, at: www.legalactiongroupnews.org.uk/birmingham-law-centre-closes/?utm_source=rss&utm_medium=rss&utm_campaign=birmingham-law-centre-closes.

Other areas

- Similar effects are reported by smaller advice agencies. For example, Northamptonshire Rights and Equality Council has made three out of four staff redundant, as since 2010/11 its funding has been cut by 52 per cent. In 2010/11 it had 97 hours of caseworker time per week; this financial year it will be reduced to 25 hours per week.
- Cutbacks in local authorities' own welfare benefits departments are also having a significant impact on provision.
- Essex Benefits Plus service, which provided information, advice and training, free of charge, to staff in the local authority and in frontline advice agencies, has had its funding cut since the end of September 2013, because the county council considered that their services were duplicated by a range of other local and national organisations.

1.17 The Low Commission carried out some of its own research in five different areas. Although it proved difficult to build up a before-and-after picture so close to April 2013 when the legal aid cuts took place, we have been able to track some important changes, which are highlighted in Box 3 below, and we plan to continue with further research as part of our post launch phase in 2014 (see Chapter 9 below). The Young Legal Aid Lawyers have also been seeking to find out the impact of the changes on MPs' surgeries, some of which are given in Box 4 below. (See Annex 1 for the Commission's survey methodology.)

Box 3**Low Commission's survey findings**

- In **Tameside**, local agencies are managing to offer generalist advice to more clients than before, but in some cases the waiting list for appointments is now five weeks long. As Susan Riley, joint manager of the CAB said: 'At some point an appointment for five weeks away becomes useless to someone needing help.' In addition to the increased delay, Tameside also reported that although it is seeing about double the number of clients compared to last year, while it previously could refer 50 per cent of the ones needing specialist help, this is down to ten per cent, as the only place to refer welfare benefits clients for specialist help is the Council's in-house service. 'We are giving more generalist help, but this cannot necessarily plug the gap left by the loss of specialist help, as generalist advisers cannot become specialist.'

- In **Swansea and Neath Port Talbot**, where the Citizens Advice Bureau covers both local authority areas, the bureau's budget was cut by 30 per cent, as a result of £300,000 from legal aid and other cuts, and 12 out of 36 posts (mostly specialist caseworkers) were made redundant. Some of the remaining former debt and benefits workers are now doing general advice work. The remaining staff have been reorganised and the service offered by the CAB reviewed, to cut out both the initial diagnostic interview and the long-term casework, so that resources can be concentrated on giving people proper advice the first time they visit and then supporting them through whatever actions they decide to take. It is too early to see the long-term impact, but it is clear that demand is rising and it is still going to be very difficult to cope.
- In **Gloucestershire**, Shelter has had to close its Gloucester office and the combined CAB for Cheltenham, Tewkesbury and Cotswold has gone into administration. However, some additional funding has been made available by Stroud District Council, Gloucester Homes (a social landlord) and Macmillan Cancer Support, as well as by the Advice Services Transition Fund. The Gloucester Law Centre is reporting a doubling of enquiries about immigration and debt between April and August compared with the same period last year. Benefit cases have increased by 37 per cent at Forest of Dean CAB over the past year, and there has been a 75 per cent increase in payday loan issues. In the first quarter of 2012/13, Stroud CAB had a 15 per cent increase in debt cases and a 22 per cent increase in benefit cases.
- In **Bristol**, despite the fact that the City Council has continued to be very supportive of the advice sector, there has been an 18 per cent decrease in funding for the agencies surveyed. The majority of the decrease in funding has been at the Law Centre (over £100,000), which has had to make five staff redundant. The CAB reported that it is having to manage increasing numbers of general poverty queries and seeing increasing evidence of absolute poverty.
- In **Kensington and Chelsea** the agencies surveyed lost almost ten per cent of their funding in 2012/13. This meant they had lost almost 30 per cent since 2010/11. Provision of free employment advice in the borough dropped by 50 per cent following the LASPO Act scope changes, and specialist debt advice also reduced by about 50 per cent. Post April 2013, only seven solicitors were employed, compared to 10.5 in 2012. Some specialists were redeployed as generalist advisers, but overall seven specialist posts were lost. At the same time, the agencies were experiencing an increase in demand in housing and debt cases, especially homelessness and possession cases.

Box 4**MP surgeries survey**

In 2011, Young Legal Aid Lawyers carried out a survey of 45 MPs and their caseworkers to examine the possible impact of the LASPO Act proposals on MPs' ability to help their constituents with legal problems. Twenty-nine of the original MPs agreed to take part in a follow-up survey to examine actual effects of the implementation (see Annex 1 for survey methodology). The findings are published in their report *Nowhere else to turn: one year on* (August 2013).¹² The main findings are as follows:

- There has been a growth in demand for advice in areas affected by the LASPO Act. 86 per cent of respondents reported an increase in demand for advice since 1 April 2013, especially in those areas no longer in the scope of legal aid, such as welfare benefits, and aspects of housing and debt.
- There are increased difficulties in referring constituents to local advice providers, such as CABx, Law Centres and other advice agencies. Respondents said they are running out of options for constituents who are unable to pay privately for legal advice.
- MPs are concerned about the future. A significant proportion of respondents expressed concern about the changes to legal aid and how the changes might affect their constituents and the work of MPs and caseworkers in the future.

The Commission has also met with MPs, one of who said: 'We used to be the place of last resort, but increasingly, we are becoming the place of first resort.'

1.18 Following the LASPO Act, funding is still available for some social welfare law cases, involving:

- asylum;
- community care;
- housing or debt problems involving serious disrepair that endangers life or where the individual is at risk of eviction or repossession;
- discrimination;
- special educational needs;
- appeals to the Upper Tribunal (points of law) in welfare benefits cases.

¹² *Nowhere else to turn: one year on. A follow up study addressing the impact of legal aid cuts on MPs' ability to help their constituents*, Young Legal Aid Lawyers, August 2013, available at: www.younglegalaidlawyers.org/sites/default/files/Nowhere%20else%20to%20turn_one%20year%20on.pdf.

For debt, discrimination and special educational needs cases, those wishing to receive legal aid have to access advice via the mandatory telephone gateway created under the LASPO Act, which requires most individuals seeking assistance to phone a single number or make contact online, so their eligibility for legal aid can be assessed by a non-legally qualified adviser. Those assessed as being eligible are then transferred to an advice provider. In most cases, the advice is delivered by telephone, with some face-to-face advice available if assessed as being necessary. However, LAG has found a disturbing reduction in the take-up of legal aid cases for the first quarter of 2013/14 – 3,586 cases compared with the government’s own projection of 7,452 (a 52 per cent shortfall). LAG believes this has been caused by a number of factors, including the reduction in the number of solicitors’ firms and charities, such as CABx, offering legal aid; a perception among the public that they can no longer get help with any civil law problems; the complexity of the new arrangements; and the failure by the government to advertise the availability of services adequately.¹³

- 1.19 We have also heard concerns from the Equality and Human Rights Commission (EHRC) that 62 per cent of individuals faced with a discrimination problem do not know their rights, and a similar number do not know the procedures involved in bringing a claim. Therefore, although discrimination cases remain in scope for the purposes of the LASPO Act, there are concerns that individuals will struggle to access appropriate and free help. For example, discrimination cases often arise in the context of employment cases, which are out of scope, and so the person experiencing discrimination may well consider that they cannot access legal help. We welcome the commitment by the Government Equalities Office to fund the Equality Advisory Support Service for three years, but consider that generalist advice agencies may not be in a position to act as an effective channel to its services.
- 1.20 Advice on immigration, welfare benefits, all other debt and housing and employment cases and many education cases is out of scope for public funding. Under the Money Advice Service (MAS) scheme, there is still funding for debt advice available across England and Wales. However, it is of real concern to the Commission that many individuals will not be able to access any advice or support about how to resolve problems on the vast majority of social welfare law cases. Throughout our evidence-gathering process, it has been made clear to us that the almost complete removal from scope of welfare benefits advice will have serious consequences for individuals who need support and advice, as well as for the advice sector itself. We are also concerned that the removal of legal aid for welfare benefits cases means that individuals or their advisers can no longer get paid ‘disbursements’ under the legal aid scheme. This means that

¹³ *Civil legal aid – the secret legal service?*, LAG, September 2013.

even where an agency may be able to provide welfare benefits advice, it is unlikely to be able to pay for any medical reports or other evidence considered essential to bringing a successful appeal. It has also been highlighted that those in need of immigration advice are often particularly vulnerable due to fear of being removed from the country and therefore can be easily exploited by those offering high cost and low quality advice services.

- 1.21 The changes to the advice landscape will also have an impact on those areas of social welfare law remaining in scope for funding, such as the viability of the asylum advice sector. The increased use of fees for appeals to tribunal on matters such as employment and immigration disputes, as well as the restrictive administrative arrangements for lodging claims (eg email and fax are no longer permitted) are already acting as a financial barrier to justice and we are concerned that the cumulative impact of these changes will be to reduce access to justice for the poorest in society. We also have to remember that even pre LASPO, people were not getting access to the advice they needed. For example, Sutton CAB told us that the demand for welfare benefit appeal advice has trebled over the last few years – and the queues outside CABx started long before the introduction of the LASPO Act (see Annex 2 for further details of social welfare law contextual issues).
- 1.22 In addition to these general concerns, a wide range of individuals and organisations we consulted with suggested to us that the decision to exclude specific areas from legal aid funding was perverse. For example, we heard that although asylum remains in scope, a number of matters very closely associated to the wellbeing of the individual – such as family reunion cases – are excluded from scope. We consider that it is very important that the MoJ ensures that where it has elected to keep an area of law in scope for a particular reason (such as to prevent homelessness or to fulfil its duties under the Convention relating to the Status of Refugees), this aim is not frustrated by the exclusion of associated matters from the funding regime.
- 1.23 The Commission recognises the particular difficulties of providing advice and representation in housing law cases unless the agency undertaking the work employs lawyers. This is due to most matters, if they cannot be resolved, having to be litigated in the county court, rather than within the tribunal system, as is the case for the other areas of social welfare law. To act for a client in the county court, a representative requires rights of audience. For this reason we are recommending that cases involving housing disrepair and the right to quiet enjoyment (protection from harassment and unlawful eviction) are restored to the legal aid scheme, as we believe this is the most practical way in which the public can get the assistance they need in such cases.
- 1.24 Related to the fact that housing cases are generally taken to the county court is the issue of costs. In the courts system, costs follow the event and so in successful cases the other side pays the costs. In the majority of damages-based housing

claims, such as in disrepair cases, legal aid acted as a loan towards the cost of the case which would be recovered. The small value of many claims and the county court small claims limit, make them unsuitable for insurance-backed litigation or conditional fee arrangements ('no win, no fee').

- 1.25 We note that according to the government's estimate of the cost of cutting housing cases from scope, only £5m was saved in cases that required representation and £7m in cases that only needed advice.¹⁴ These are relatively small sums in terms of overall government spending, but we would suggest that spending on housing law services has an important impact on ensuring that public sector and private landlords fulfill their obligations to provide habitable homes for their tenants.
- 1.26 The Commission would also request that the government revisits the issue of advice on housing benefit being paid for under the legal aid scheme. A good number of practitioners pointed out to the Commission that they cannot give clients advice on housing benefit, but have to say to them that if the problem with their benefit claim leads to them being at risk of losing their home they can return for advice and representation. This seems us to be a very clear example of where the state should be paying for early advice to avoid incurring greater costs, specifically those of court proceedings, further down the line.

R1: The Ministry of Justice should conduct a 'sense check' review of the matters excluded from the scope of the LASPO Act and consider reinstatement of some provisions to ensure that there are no inconsistencies between its stated aims and practice. In particular, we consider housing cases involving disrepair and the right to quiet enjoyment (protection from harassment and unlawful eviction); and advice on housing benefit should be restored to the legal aid scheme.

R2: Local advice and legal support plans (see para 7.5) should include provision for disbursements in order to support welfare benefits advice work.

- 1.27 One consequence of the legal aid changes is that more and more people will have no alternative but to try to represent themselves, leading to increased time and costs for the courts and tribunals. Anecdotally, we have heard that in some cases the judiciary are requesting the listing of fewer cases per day due to the need for additional time to explain matters to litigants in person. Another consequence, highlighted to us by frontline advice agencies, is that people are getting increasingly angry at the predicament they face. As President of the Supreme Court, Lord Neuberger, has said, the rule of law itself then comes under threat: 'My worry is the removal of legal aid for people to get advice about

¹⁴ *Legal aid reform: scope changes; impact assessment*, IA MoJ 028, 2010, p17; available at: <https://www.justice.gov.uk/downloads/consultations/ia-scope-changes.pdf>.

law and get representation in court will start to undermine the rule of law because people will feel like the government isn't giving them access to justice in all sorts of cases. And that will either lead to frustration and lack of confidence in the system, or it will lead to people taking the law into their own hands.¹⁵ It is therefore important to ensure that there is sufficient recognition of the need for a framework of rights and of the need for access to advice and legal support, in order to ensure that the rule of law is maintained. Government has a duty to deal with citizens effectively.

- 1.28 We are concerned about the equality implications of the legal aid changes and funding cuts. In its response to the government's consultation on the reforms to legal aid in 2010, the EHRC took the view that proposed changes to scope could have a disproportionate impact on individuals with protected characteristics (in particular gender, race or disability) and that it had not been demonstrated that the measures could be objectively justified. We have repeatedly heard concerns that there are likely to be particular impacts on black and minority ethnic communities as a result of the loss of immigration advice from legal aid. Some of the other changes, such as those affecting family law,¹⁶ could mean that women with housing and welfare benefit problems arising from relationship breakdown, will find that all their needs for legal advice are outside the scope of legal aid because of the reduction in the scope of housing cases.

Box 5

Impact of the LASPO Act and welfare reform

Impact on clients

- Barbara Kerridge, Riverside Advice Agency, Cardiff: 'Clients are getting angry.'
- Bristol CAB reports seeing very high numbers of people needing food vouchers and even clients refusing vouchers for food banks because they don't have electricity or gas to cook the food. 'These are desperate situations and we do what we can with emergency payments and charitable grants where there is little or no recourse to benefits.'
- Campbell Robb, CEO of Shelter: 'It's an extraordinarily bleak picture.'
- Sutton CAB reports that the demand for welfare benefit appeal advice has trebled in the last three years and that their clients are increasingly having to rely on food banks.

15 Lord Neuberger, BBC Radio 4's 'Today' programme, 5 March 2013, see: www.bbc.co.uk/news/uk-21665319.

16 Family law is now largely outside the scope of legal aid, except for certain areas such as child protection, domestic violence and forced marriage.

- More generally, there is a perception among the public and some community organisations that legal aid as a whole is no longer available since April 2013, because what is and is not in scope is so complicated.

Impact on providers

- Respondent to the University of Warwick and ilegal (www.illegal.org.uk) survey: ‘It seems to me (regardless of the fact that I will be losing my job) that the cuts are going to hit the most vulnerable at the very times when they will need our help the most.’
- Some of the City law firms explained to us that the loss of social welfare law legal expertise will make it harder for them to train their own lawyers to deliver pro bono advice.
- The Legal Aid Practitioners Group have described smaller practices doing social welfare law as ‘on their knees’ with only one in eight cases being taken forward through lack of legal aid, and a growing loss of practitioners and skills that is taking place.
- Young lawyers are not coming into legal aid work because it has no long-term future for them.
- Some practitioners in family law, who used to identify and tackle welfare benefits and housing issues, are no longer able to do this because of the loss of legal aid.

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

- First, there are worries that the structure of the remaining advice under the LASPO Act will force individuals to wait until crisis point before seeking advice and support. The government has always made clear that it intended to focus resources on issues involving human rights or where an individual is at risk of losing his or her home. It is therefore still possible to get legal aid for housing or debt issues, but only when the person concerned is at risk of repossession or eviction, or in a few other limited circumstances. This is a counterintuitive approach and creates a perverse incentive to wait until things reach a crisis point. If the government wishes to see individuals resolve their problems outside the formal justice system, removing the availability of early advice to help people resolve their problems before they become more intractable does not make sense.
- Second, the new funding structure is likely to add to the ‘revolving door’ problem faced by clients. If individuals are only able to access support on crisis issues, and advisers are not funded to address clusters of associated problems or the fundamental cause of the problem (such as unemployment,

not receiving the correct benefit, or resolving underlying financial problems), then the individual will keep returning to crisis point as the problem will only be temporarily masked, not solved.

- Third, there are other background legislative and policy changes taking place that may impact on an individual's need for advice, such as the Welfare Reform Act 2012 and the introduction of universal credit to replace six of the main means-tested benefits and tax credits. Major policy changes take time to embed and during this period there are often important legal challenges as the meaning of legislation is clarified. Additionally, individuals switching from one regime to another (such as the current switch from disability living allowance to personal independence payment) may need advice and support in understanding their new entitlement and in completing any necessary procedures or processes. Advice agencies can also support government with the implementation of new legislation by reporting on any unintended and systemic problems, especially since other funding cuts are likely to lead to poorly delivered statutory services, which in turn will increase the need for advice agencies to help individuals affected to take relevant action. At a time of such widespread reform, it is worrying that many advice agencies may not be able to do this, posing a risk both to the effective implementation of policies and to the capacity of individuals to resolve their problems.
- Finally, the government's emphasis on 'digital by default' significantly alters the way in which individuals will be expected to interact with the state. The Government Digital Strategy was launched in November 2012, setting out that everyone who can use digital services in their dealings with government and public services will be encouraged to do so, and that the remaining estimated 18 per cent of the adult population who are offline will be 'assisted' to access digital services. Universal credit will be one of the 'digital by default' exemplar services. We consider that this new approach to applying for and dealing with state entitlement will pose considerable challenges for many, and that some of those who struggle will turn to advice agencies for assistance in navigating the new processes. However, we recognise that, over time, it may also mean that more people become used to using new technology.

1.30 This review of the impact of the legal aid changes is necessarily incomplete. Due to the timing of our report, only the very short-term effects can be recorded here. However, we are concerned it will also prove difficult to record the longer-term effects, because the austerity cuts to public services have meant that the capacity of organisations to monitor and report on the impact of the LASPO Act changes has been reduced. In particular, the closure on 1 April 2013, as a result of the LASPO Act, of the Legal Services Research Centre, which commissioned, as well as undertook, some very important research, and the loss of its *Civil and social justice panel survey*, instantly reduces the volume and quality of information we have about people's experiences of the justice system. The

reduction of EHRC funding and the loss of the Administrative Justice and Tribunals Council¹⁷ further adds to this lack of research capacity. It will therefore be very important that funders – such as the Nuffield and Leverhulme Trusts, the Economic and Social Research Council and the Big Lottery Fund – all support universities and other research bodies to undertake research. At the same time, local agencies should undertake social policy work, with the help of funding from our proposed National Advice and Legal Support Fund (see para 6.1 below). We have also recommended later in our report that further research be undertaken into the outcomes of advice and legal support with the help of the National Advice and Legal Support Fund (see para 5.38 and R44). However, the Ministry of Justice also has a responsibility to monitor the impact of the changes it has introduced, and the EHRC recommended that the MoJ should monitor the actual outcomes of the reforms and any mitigating actions, disaggregating any data by equality group. The MoJ will undertake an implementation review of the LASPO Act within three to five years of its implementation. However, given the potentially serious impacts of the changes on people’s access to justice, we believe that the MoJ should publish data on the uptake of the remaining aspects of legal aid every quarter and undertake and publish a more detailed impact review annually.

R3: The Ministry of Justice should put in place a quarterly and annual mechanism for monitoring the full impact of the LASPO Act changes over time, and should publish the results on the uptake of the remaining aspects of legal aid quarterly and a more detailed impact review each year.

- 1.31 Section 10 of the LASPO Act is intended to act as a safety net to guarantee the funding of cases that would ordinarily be out of scope for funding under LASPO but where either human rights or EU law require the provision of legal aid. During the passage of the LASPO Act through parliament, the (then) LSC estimated that there would be 5,000–7,000 section 10 applications per year. Yet, in the first three months since the implementation of the LASPO Act, there were only 233 applications (compared with an expectation of around 1,500), of which only six have been granted (and four of these were inquest cases).¹⁸ The analysis of whether human rights or EU law requires legal aid to be provided in a particular case is undoubtedly complex and legal in nature. Unfortunately, this means that the process of application to the Legal Aid Agency (LAA) for funding is resource-intensive for professionals and prohibitively difficult for individuals

17 A non-departmental public body which supervised and regulated administrative justice and tribunals, which was abolished on 19 August 2013.

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

to complete without support. Applications for exceptional funding are made at risk, with funding only being granted if the application is successful.

- 1.32 In the light of very low grant rates, solicitors are routinely refusing to take on this work at risk. In addition, the nature of the application process means that it is in fact proving impossible for an individual to get a definitive response to his or her application unless the form has been completed by a solicitor. These barriers to section 10 funding are particularly worrying in view of the fact that section 10, by its very nature, is intended to protect vulnerable individuals. It is also of concern that there is no effective mechanism to prioritise urgent cases, with the LAA taking up to 20 working days to determine exceptional funding applications and making no commitment to determine applications in advance of the hearing date that the funding is applied for. The British Red Cross provided us with a graphic illustration of all these points in relation to three family reunion cases they have been helping with in South Yorkshire. They conclude that ‘we believe the process of applying for exceptional funding or seeking a preliminary view is too complicated for enquirers to complete themselves, even if they had a good standard of education and a high level of English’.

R4: The Legal Aid Agency should remunerate solicitors and specialist advisers for all applications for exceptional funding under section 10 of the LASPO Act. If there are classes of cases where it appears manifestly unfair that legal aid funding was not available except under section 10, then those areas should be brought back into scope. Funding for this should initially come from the unused budget for section 10.

R5: The Legal Aid Agency should simplify the application process for LASPO Act section 10 funding to make it easier for people to use without recourse to legal assistance.

R6: The Legal Aid Agency should publish case summaries where funding is granted under section 10 of the LASPO Act, so that there is greater clarity as to which applications for exceptional cases funding may succeed.

- 1.33 Further justice system developments. At the time of writing this report, the government has confirmed that it intends to introduce a ‘habitual residence’ test, providing that applications for certain benefits may only be made by those who can demonstrate that they are (i) lawfully resident in the UK at the time an application for civil legal aid is made and (ii) have resided lawfully in the UK for a continuous period of at least 12 months. The government is also conducting a consultation on changes to judicial review, including:

- changing payment of work undertaken before the permission stage of judicial review so that the work is largely at the risk of the lawyer;

- changing the costs regime; and
- removing standing for individuals or organisations seeking to bring a public interest claim.

- 1.34 We take this opportunity to urge the government in the strongest terms to reconsider the proposals listed in para 1.33 above. Any concerns that the government has with immigration should be addressed by border controls, not the justice system. The bureaucratic difficulties the residence test would create for lawyers and the LAA would surely be costly and would create yet another bureaucratic hurdle for vulnerable people to surmount.
- 1.35 Judicial review performs a key role in clarification of the law and of the state's powers. We consider that judicial review is of fundamental importance to the UK's constitutional framework, providing individuals with the opportunity to hold the state to account for unlawful actions or decisions. We welcome the fact that this has been recognised in the MoJ's recent consultation paper, *Judicial review: proposals for reform*, which states that 'Judicial Review is a critical check on the power of the state'.¹⁹ However, we are gravely concerned that the suite of proposed changes will make it much more difficult for people without financial resources to take action by way of judicial review, and will also make it impossible for other individuals or charities to bring cases on their behalf. We are concerned that in an effort to deter unmeritorious cases, the government may unwittingly undermine the essential function that judicial review has in holding the executive to account. We suggest that judicial management of unmeritorious cases would be a better way to achieve the government's objectives without undermining a crucial element in the established system of constitutional checks and balances.

¹⁹ *Judicial review: proposals for reform*, Consultation Paper CP25/2012, Cm 8515, MoJ, December 2012, para 2; available at: <https://consult.justice.gov.uk/digital-communications/judicial-review-reform>.

2 Our approach

2.1 The World Justice Project defines the rule of law as a system in which the following four universal principles are upheld:²⁰

1. The government and its officials and agents as well as individuals and private entities are accountable under the law.
2. The laws are clear, publicized, stable and just, are applied evenly, and protect fundamental rights, including the security of persons and property.
3. The process by which the laws are enacted, administered and enforced is accessible, fair and efficient.
4. Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

2.2 In his *Interim report to the Lord Chancellor on the civil justice system in England and Wales* (1995), Lord Woolf said that a civil justice system should:²¹

- be *just* in the results it delivers;
- be *fair* in the way it treats litigants;
- offer appropriate procedures at a reasonable *cost*;
- deal with cases with reasonable *speed*;
- be *understandable* to those who use it;
- be *responsive* to the needs of those who use it;
- provide as much *certainty* as the nature of particular cases allows;
- be *effective*: adequately resourced and organised.

Box 6

Access to justice

- ‘Denial of legal protection to the poor litigant who cannot afford to pay is one enemy of the Rule of Law.’ – Lord Bingham, *The Rule of Law*, Penguin, 2010.
- ‘There is no doubt that access to justice is a constitutional principle.’ – The House of Lords Select Committee on the Constitution, 2010.

²⁰ See: www.worldjusticeproject.org/what-rule-law.

²¹ See: <http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/civil/interfr.htm>. All emphasis in original.

- ‘The four justifications for access to justice are: equality before the law, enforcement of legal rights, responding to unmet legal needs, reducing social exclusion.’ – Sir Ross Cranston, *How law works*, OUP, 2006.

- 2.3 Justice is an integral element of democracy. The case for access to justice has been made by a number of important authorities on the basis that disputes should be resolved by reference to the intrinsic merits of the case rather than the relative means of the parties. The practical benefits of the state guaranteeing and promoting justice can be felt across society and the economy. Conversely, failing to resolve these disputes has consequences. In its impact assessment of the proposed changes to legal aid in 2010, the Ministry of Justice (MoJ) warned that the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act changes could result in a reduction in the fairness of dispute resolution, leading to reduced social cohesion, increased criminality and increased costs for other departments.²²
- 2.4 In order to avoid these negative consequences, we consider that there needs to be equal access to an independent adjudication system, either courts and tribunals or other dispute resolutions systems recognised by statute, and for all parties to a dispute to have access to this system with a chance to make their case. To make this a reality, there needs to be free or low cost advice and, where appropriate, representation available to those who would otherwise be unable to make their case. This is the purpose of funding under LASPO Act section 10 ‘exceptional cases’, a provision which recognises the principle that the most vulnerable will require help to access equal justice. However, that principle is not being met in practice and requires more than a case-by-case approach to do so. (See more on problems with section 10 in paras 1.31 and 1.32 above.)
- 2.5 Similarly, in any democracy there must be a mechanism for individuals to hold the state to account for its use of power and to enforce legal entitlements and rights. In England and Wales the processes of challenge through appeals and judicial review helped provide this opportunity (see para 1.33 above), but there is an obvious imbalance in power between the ‘repeat player’ of government and the ‘one shot’ individual, who may be unfamiliar with law and procedure. Provision of independent advice to those who consider that the state has made a mistake acts as an important corrective mechanism to inequality of arms and is an important part of the system of checks and balances that underpin the rule of law (see para 5.27 below for a discussion on independence).

²² *Legal aid reform: scope changes; impact assessment*, IA MoJ 028, 2010, available at: <https://www.justice.gov.uk/downloads/consultations/ia-scope-changes.pdf>.

- 2.6 We also believe that a government policy must be understood by those who are subject to it, if it is to be successfully implemented. Each person (or business or organisation) cannot be expected to understand the full details of his or her rights and entitlements or legal processes. Advisers will therefore need to explain to individuals when they are (or are not) entitled to a benefit or will describe whether it is the individual, the individual's landlord or the individual's employer who may be breaking the law. Advisers – be they in a large international law firm or working in a small legal advice clinic – will not necessarily encourage their clients to pursue a challenge come what may, but can help to translate law and procedure to non-experts, giving an objective view of the merits of a position. In the *Paths to justice* survey, it was reported that two out of every three individuals who were told by an adviser that nothing could be done about their problem did not pursue the matter any further, thus reducing the number of individuals who choose to pursue weaker cases through the tribunals and courts system – thereby leading to another cost saving for the state.²³
- 2.7 In an ideal world, therefore, we would like to see:
- Enhanced status for advice and legal support:
 - advice and legal support recognised as an essential part of a civilised society;
 - people's legal capability being regarded as just as important as financial literacy.
 - Approaches that:
 - recognise that people frequently experience problems in clusters;
 - emphasise the importance of early intervention and action;
 - see advice as an integral part of tackling different forms of disadvantage;
 - recognise the role of the private sector²⁴ in providing services, while ensuring that services are available (through public or other sources of funding) to people in need.
 - Providers of advice and legal support services that:
 - focus on clients' needs at all times;
 - co-operate and join up to provide a seamless service;
 - recognise the potential of new technology, not just to reduce costs, but to provide information and advice in innovative ways;
 - also recognise the importance of face-to-face provision for the most disadvantaged;
 - have the capacity and inclination to feed back to government (locally and nationally) about how to reduce demand resulting from systems failure;
 - have sufficient resources to provide legal representation where it is most needed.

²³ H Genn, *Paths to justice*, 1999.

²⁴ Including private solicitors, as well as new entrants such as Co-operative Legal Services.

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

Box 7

Welsh Government's Advice Services Review

We have been able to learn from the Advice Services Review recently conducted by the Welsh Government, which reported in March 2013.²⁵ The review was done in the light of the 'unprecedented challenges being faced by Not for Profit (NfP) advice providers as a result of funding decreases across Wales alongside rising demand due to the current economic downturn'. It concluded that there is likely to be a significant increase in the demand for specialist welfare benefit, debt, housing and discrimination advice as a result of welfare reform and the ongoing economic downturn, and recommended that the Welsh Government should invest in a series of measures to help the not-for-profit sector respond. These measures included the proposal to establish a National Advice Network of government departments, representatives from the advice sector, key funders and other stakeholders to ensure strategic co-ordination of advice services, increase shared learning and make best use of available resources. Other recommendations included the development of Regional and Local Advice Networks; financial support for the not-for-profit sector; and a Framework of Standards for Advice and Information based on existing quality marks and standards.

As can be seen, much of the Welsh Review's thinking is reflected in our own approach, although we have not recommended a National Advice Network for England, since we are doubtful that it would produce tangible benefits, given the size of England compared with Wales.

- 2.8 In developing our own response to the challenges faced by the advice sector, we have taken the view that although the previous legal aid system, prior to the LASPO Act, funded much excellent work by solicitors and not-for-profit organisations and enabled many poorer people to get access to justice, it is not something that can simply be reinstated in full in the current economic context, as some have advocated to us. We do not feel that this is a realistic strategy, nor do we think it is necessarily desirable. A number of features of the legal aid system have rendered it excessively bureaucratic and process-driven. The system that developed did not give providers the freedom and funding to diagnose and

²⁵ *Advice Services Review: final research report*, available at: <http://wales.gov.uk/topics/housingandcommunity/research/community/advice-services-review-final-research-report/?lang=en>.

then focus on the full needs of the client, making the system less effective than it should have been. In addition, legal aid did not provide funding for public legal education or for enabling people to learn and develop skills for coping with some of the situations they face. Finally, many people fell outside its financial eligibility thresholds (even though these were raised in 2002 under the last government), but were nonetheless unable to pay fees at private client rates. Overall, we believe, particularly in an age of austerity, that rather than having a funding mechanism purely for legal support, there would be more value in having a funding mechanism for the full spectrum of education, information, advice and legal support, while always ensuring that some funding was available for legal representation when particularly needed.

2.9 We are therefore seeking to develop a fresh approach, which involves measures to reduce the need for advice and legal support in the first place, while developing more cost-effective approaches to service provision and drawing on a wider range of funding sources than hitherto. We view legal aid as part of a continuum including public legal education, informal and formal information, generalist advice, specialist advice, legal help and legal representation; the more we can do at the education, information and advice end of the spectrum, the less we may need to do at the other end, where there will be less money available. However, we do recognise that the starting point in this continuum may sometimes vary depending on the circumstances and there will be feedback loops between different elements, making it sometimes more of a cycle than a straightforward continuum. Rather than allowing problems to escalate and having to spend more to fix them further down the line, the key principles underpinning our approach are:

- early intervention and action;
- investment for prevention to avoid the wasted costs of preventable demand;
- simplifying the legal system;
- developing different service offerings to meet different types of needs;
- investing in a basic level of provision of information and advice;
- embedding advice in places where people regularly go.

2.10 Some have said to us that measures to reduce the need for advice and legal support have been promoted in the past without success. We have therefore deliberately developed recommendations which go with the grain of existing initiatives, such as the Public Accounts Select Committee's concern about the additional need for advice being generated by the Department for Work and Pensions (DWP) (see para 3.6 below) and the Good Law Initiative (see paras 4.1–4.4 below), which we believe have more chance of gaining traction than in the past. Our aim is to review the whole system to make it work better, not just to deal with current issues faced by individuals and agencies as a result of the LASPO Act.

- 2.11 Although there will be less funding for legal help and representation, we believe it is essential that each part of England and Wales continues to have some funding so that the potential to resolve issues through legal action can be realised at different points in the process. Therefore, it will be a requirement that each local advice and legal support plan (see para 7.5 below) ensures that there is some provision for this. Evidence we have collected suggests that only a small number of cases may require legal support – most can be resolved through the provision of information and advice from a CAB or other advice agency, which can enable more early intervention and greater use of (trained) volunteers. However, the potential use of legal support always needs to be available as an option.
- 2.12 We believe that the importance of advice and legal support on social welfare law to the lives of disadvantaged people, coupled with the severity of the challenges to its continued provision and the resulting costs that will fall to national and local government, makes it imperative that the next UK government agrees a National Strategy for Advice and Legal Support. The MoJ should take the lead in developing this strategy, together with other government departments and the not-for-profit and commercial advice sectors. We would also like to see the responsibility for leading the development of this strategy, and for ensuring a cross-departmental approach to its development, resting with one minister in the MoJ, working with the DWP, the Cabinet Office, the Department for Business, Innovation and Skills (BIS) and other relevant departments, as well as with the Welsh Government. Part of the role of this minister would be to act as a champion for advice and legal support within government. We also believe that the Equality and Human Rights Commission should be consulted on the development and implementation of this strategy in view of its significance for human rights, equalities and discrimination issues.

Box 8

National Strategy for Advice and Legal Support

A minister in the MoJ should be responsible for drawing up the non-devolved aspects of the national strategy in England and Wales. The strategy should be integrated with other relevant national strategies, such as welfare reform, support for civil society and citizenship, which should all explicitly integrate the advice and support implications of the ways in which they deliver their plans.

Particular areas which the strategy should cover include:

- a framework of rights, including the need for people to be able to access advice and legal support;
- an assessment of the current situation, including problems emerging

from the LASPO Act and funding cutbacks;

- measures for reducing preventable demand;
- measures for simplifying the system;
- support for litigants in person;
- provision of public legal education, informal and formal information, general advice, specialist advice, legal help and legal representation;
- legal aid as one funding mechanism alongside others;
- judicial review.

Parts of this strategy will be applicable to Wales, as well as to England, but the devolved aspects of the strategy, eg on the provision of information and advice, will need to be adapted to the Welsh context.

The aim should be to ensure all-party support for the strategy.

R7: The next UK government should set out and publish a National Strategy for Advice and Legal Support in England and Wales for the five-year term of the next parliament (2015–20), which should be cross-cutting across all departments and preferably have all-party support.

R8: A minister in the Ministry of Justice should have the lead role in developing (the non-devolved aspects of) the National Strategy for Advice and Legal Support in England and Wales.

R9: In Wales, the Welsh Government should develop the devolved aspects of the National Strategy for Advice and Legal Support, building on its Advice Services Review, in conjunction with the National Advice Network for Wales.

R10: The Ministry of Justice and the Welsh Government should consult the Equality and Human Rights Commission on the development and implementation of the national strategies for advice and legal support to ensure that the needs of disadvantaged and discriminated against groups are taken into account.

3 Reducing preventable demand

- 3.1 Social welfare law is in the main rights-based. Parliament has decided that where someone meets criteria defined by law, eg for a benefit or the right to remain in the country, then he or she is entitled to that benefit or status. It is, therefore, a duty of government, both central and local, to apply the law correctly in every case, so that the intention of parliament is carried through. We believe that it follows from that duty that government must explain its decisions clearly, and in making and communicating decisions should act only in the best interests of the individual concerned. Mistaken decisions, obscure communications and omitting to point out to individuals what rights they have or may have, constitute a failure to carry out the will of parliament in conferring these specific rights on individuals.

Right first time

- 3.2 Getting decisions about individuals right first time should therefore be a core concern for those delivering public services, not only because it results in better public services for individuals, but also because it saves the state the costs of putting things right (including costs to departmental staff of reviewing decisions, judicial costs and other costs of holding a hearing) at a later stage. This failure to get decisions right first time also generates waste for advice agencies, which have to spend time advising people on how to get wrong decisions put right. For example, in 2011/12, on average 35 per cent of appeals against welfare benefits decisions were upheld. Moreover, this figure might have been higher had more of the other 65 per cent had access to advice and legal support. Helen Grant, a former justice minister, reported that the cost of these appeals (which the Department for Work and Pensions (DWP) has to reimburse Her Majesty's Courts and Tribunals Service (HMCTS) for) has trebled from £21m in 2009/10 to £66m in 2012/13.²⁶ When demand for advice services is high and funding is a concern, it is important to eliminate as much of this waste from the system as possible – and as soon as possible.
- 3.3 From our meetings with DWP officials, we have heard about the efforts of government departments to improve decision-making. We welcome the DWP's recognition of the importance of better communication with users, increasing the opportunities for individuals to provide the DWP with all the relevant and up-to-date information required to make a particular decision. We also welcome projects such as the Early Legal Advice Project, conducted in the Midlands and

²⁶ See, for example, 'Crackdown on disability benefits costs taxpayer £66m in appeals costs', *Independent*, 21 July 2013, available at: www.independent.co.uk/news/uk/politics/crackdownon-disability-benefits-costs-taxpayer-66m-in-appeals-costs-8724779.html.

East of England region of the UK Border Agency, which explored how to improve asylum decisions through the provision of early legal advice. Although the final evaluation for this project reported that the overall costs of conducting a case in the pilot were higher than those in standard cases, it also contains an unprecedented amount of information about the asylum process and identified a number of benefits – such as improved communication and understanding between legal advisers and Home Office staff – that we hope will continue to be explored.²⁷ In addition, the Ministry of Justice’s (MoJ’s) work programme for administrative justice set out in its Strategic Work Programme for 2013–2016 the need for the MoJ to work with other departments to seek improvements in decision-making.²⁸ Some of our consultees have proposed measures for improving the assessment and appeals process, which is outside our brief, but we do make suggestions below about how to incentivise these kinds of developments.

- 3.4 We support the efforts above but accept the suggestion made to us by many individuals and organisations throughout our evidence-gathering process that there is clearly scope for improvement. The Justice Select Committee suggested in 2010 that one way of challenging government departments to do better in their administrative decision-making would be to borrow from environmental law the principle of ‘polluter pays’, introducing a penalty for poor decision-making by the DWP or other departments which would then be used to offset the costs incurred by the MoJ in organising tribunal hearings. At the time of that report, the then Minister for Legal Aid, Jonathan Djanogly, commented that polluter pays in this arena was a bureaucratic way of ‘robbing Peter to pay Paul’. We take the view that a straightforward system to encourage and incentivise good decision-making across government departments, their agencies and contractors – rather than to punish them – should be explored. The real advantage of such an approach is that by developing a mechanism to incentivise good decision-making, the worries of ‘robbing Peter to pay Paul’ can be avoided. This is because the system will ultimately result in fewer appeals and result in a cost-saving for the state, so is not simply concerned with shifting money for the sake of it. We understand that there are different possible models that could be used, but recommend the introduction of a simple system of one-way tribunal costs to act as an incentive for public authorities to get administrative decisions right at an earlier stage, rather than proceeding to a tribunal hearing. We would like to avoid an overly complex system and any risk of satellite litigation around the issue of costs, and so we are suggesting a summary costs procedure in all

27 M Lane, D Murray, R Lakshman, C Devine and A Zurawan, *Evaluation of the Early Legal Advice Project – final report*, Research Report 70, Home Office, May 2013, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/199962/horr70.pdf.

28 *Administrative justice and tribunals: a Strategic Work Programme, 2013–16*, MoJ, December 2012, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf.

tribunals concerning public authorities, which in practice will mainly involve the DWP, the Home Office and the UK Border Agency.

- 3.5 Our proposal is that at the end of a tribunal case in which an applicant has been represented by a qualified lawyer, an Office of the Immigration Services Commissioner accredited representative or an adviser working for a registered charity such as a CAB, the representative can apply for the costs of preparing the case and representing at the hearing. To apply for costs the adviser should be prepared to submit a short schedule of costs at the end of the tribunal hearing. No applications should be accepted after the hearing. We would suggest that the costs awarded should be on a scale of between a minimum of £100 and a maximum of £500. As a rough guide, the maximum fee would be intended to compensate representatives who have had to prepare and represent in a hearing lasting over three hours, while the minimum would compensate a representative who has assisted a client in a short hearing of under an hour's duration.
- 3.6 More broadly, we consider it is essential that the DWP contribute to the support that will be required from advice organisations as a result of its welfare reforms, just as it contributes to the additional costs of tribunal appeal hearings. This was recognised by the Public Accounts Select Committee in its report on the DWP's jobcentres:

[S]ome people will need help to manage claims and job searches online, and this is likely to increase the burden on third parties, such as libraries and Citizens Advice – at a time when council and third party welfare services are under pressure. The Department should ensure that there is sufficient support in place to assist vulnerable claimants. It should also include an assessment of the burden on third party advisers in helping people online as part of its monitoring of online take-up under Universal Credit and predecessors such as Jobseeker's Allowance Online.²⁹

In view of this, we consider that there is a good basis for the DWP to contribute to the funding of advice agencies to reflect the essential work that agencies undertake in helping individuals to understand and respond to government policy. It is hoped that the savings made from improvements in the DWP decision-making process could be used to fund this strategic contribution.

R11: The Ministry of Justice should develop further protocols with the Department for Work and Pensions, the Home Office, the UK Border Agency and other relevant government departments and agencies, about taking steps to improve the quality of decision-making so that fewer assessments are overturned on appeal. The Ministry of Justice should report annually on progress to the Public Accounts Committee and the Justice Select Committee.

²⁹ House of Commons Committee of Public Accounts. *Department for Work and Pensions: Responding to change in jobcentres. Fifth Report of Session 2013–14*, June 2013, Conclusion and recommendation 5.

R12: The Department for Work and Pensions and the Home Office should be incentivised by the Ministry of Justice to get things right first time by improving their decision-making and dispute-resolution processes through a tribunal costs regime for those cases which it loses on appeal.

R13: The Department for Work and Pensions should be required to make a strategic contribution to the National Advice and Legal Support Fund (see para 6.1), in recognition of the fact that its policies create demand for advice services and require the support of advice agencies to ensure successful implementation.

Addressing the source of the problem

- 3.7 It is not only government departments whose actions generate demand for advice. For example, the banking and lending systems themselves can result in people getting into financial difficulties which could have been avoided with the use of financial mechanisms better suited to their personal circumstances, such as community banking (see Annex 16). There is also widespread evidence of consumers being exploited by payday lenders. For example, a recent review by the Office of Fair Trading³⁰ found that the payday lenders with the biggest share of the market were guilty of irresponsible lending and were failing to comply with the standards required of them. Likewise, employers have a role to play in reducing unnecessary disputes with employees through the use of good human resources policies. This is especially so following the introduction of fees for making a claim to an employment tribunal, which we consider is likely to act as a barrier to many employees challenging the behaviour of their employers.

Early action programmes

- 3.8 If we are going to succeed in reducing the need for advice and legal support, then intervening early and taking action to prevent problems from turning into crises is an essential starting point (although we recognise that this will not be so relevant to some aspects of social welfare law, such as asylum). We welcome and support the work that other organisations, led by the Early Action Taskforce, have undertaken in developing early action approaches.³¹ The Early Action Taskforce's second report, *The deciding time: prevent today or pay tomorrow* (November 2012),³² makes a number of recommendations for achieving this, including ten-year spending plans, reviewed every two to three years, and

30 *Payday lending. Compliance review. Final report*, Office of Fair Trading, March 2013, available at: www.offt.gov.uk/shared_offt/Credit/oft1481.pdf.

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

32 Available at: www.community-links.org/uploads/documents/Deciding_Timefinal.pdf.

treating early action as an investment (like capital investment) that cannot be raided. In order to facilitate early action initiatives, we are therefore proposing that the National Advice and Legal Support Fund we are recommending should be a ten-year fund (see para 6.5 below).

3.9 We have adopted the analysis of the Baring Foundation in its recent report, *Social welfare legal advice and early action*, which listed the potential benefits of early action in helping individuals solve their social welfare law problems as:

- reducing the number of people needing advice, through people avoiding problems, and being better able to deal with the early stages of problems by themselves;
- reducing the intensity of presenting demands, from specialist to general advice needs, and from general advice needs to information;
- reducing the number of problems which give rise to serious advice needs;
- getting the right decisions sooner, thereby avoiding costly appeals or drawn out advice processes;
- reducing repeat or ‘revolving door’ demand;
- reducing multiple referrals or ‘referral fatigue’.³³

3.10 The report also sets out the four key components of early action. First is *citizen capability*, which means helping individuals to develop the skills and confidence necessary to recognise and address a problem with a legal solution. Second is *intervening at the right time*, with the Baring Foundation advocating that advice agencies try to act ‘one step sooner’ to stop problems becoming more serious, and consider whether an intervention is at the ‘right time’ to help the individual. The third component of the approach is *delivering advice differently* – for example, it could mean improving referral facilities between advice agencies so that users do not fall between the gaps or could mean delivering advice in a way that resolves the problem while also improving user resilience. The final component is *better feedback and learning processes*, which encourages advice agencies to be outward looking and to work with a range of partners in efforts to act on the drivers of demand.

3.11 Putting this approach into practice means always maintaining a focus on the needs of the individual. For example, it means making sure that the voluntary and statutory agencies that already work with people experiencing ill health, poverty, unemployment, homelessness, drug and alcohol addiction and other forms of disadvantage also understand the important role that information and advice have to play in helping address these problems. While a large charity, such as the Women’s Institute or the MS Society, may be excellently placed to support

³³ J Randall, *Social welfare legal advice and early action*, Baring Foundation, January 2013, p2; available at: www.baringfoundation.org.uk/STVSEA9.pdf.

individuals in a number of ways, they inevitably cannot be experts at everything. There will therefore be added value if they are able to recognise a social welfare law problem with a legal solution and work with advice agencies to ensure that the individual concerned receives the best advice possible or to embed advice and legal support in their own organisations.

3.12 Similarly, by building links with community organisations, advice agencies can help develop the capacity of individuals or groups to recognise when there is a problem with a legal solution and to know whom to turn to for help in solving the problem. The three benefits of an enabling approach are:

- to enable people to avoid problems in the first place;
- to equip people to deal quickly with issues when they occur;
- to guide people through processes and procedures, including self-representation.

Working in this way will also provide an additional forum for the distribution of basic information about rights and entitlements. Working closely with community organisations, including more recent developments such as food banks, will also bring advice agencies closer to individuals who may experience problems and will allow agencies to spot problems and act ‘one step sooner’. We recommend that every area develops early action initiatives as part of its local planning process, including training local volunteers to be able to provide information, signpost and give early advice. It is also important to recognise that legal solutions to an individual’s problem may not help address all the individual’s needs and so by working with charities with a much wider range of expertise and resources, advice agencies may be better placed to help. Finally, we think that it is important that advice agencies share their experience of early action initiatives in order to spread the learning gained from them; the Big Lottery Fund could assist with this.

R14: Local advice and legal support plans (see para 7.5) should include early action initiatives which integrate information and advice services into mainstream service provision.

R15: The Big Lottery Fund should help spread the learning gained by advice agencies through their early action initiatives.

Communication

3.13 Advice agencies frequently experience people presenting with problems which result from failure to communicate a clear decision in plain English and to give reasons for the decision which enable the recipient to check that all the right information has been taken into account, as well as understanding the reasoning behind the decision. These failures are often aggravated by incomplete sentences, use of jargon and, in the case of court forms, by Latin terms which are meaningless to ordinary people, but often important. Examples include

letters that clients cannot understand, trying and failing to speak to someone, and trying to find out why a payment has been stopped with no reason given. On decision letters, the use of standard text in automatically generated letters often renders them incomprehensible. Advice agencies that have to help people deal with these situations are therefore well placed to provide feedback to those administering these processes on how they could be improved.

Systems thinking

3.14 AdviceUK, the co-ordinating body for independent advice providers in the UK, has pioneered the use of Vanguard Consulting's 'Systems Thinking'³⁴ in the advice sector, with the following characteristics:

- it looks at users in the round and not at problems in silos;
- it looks not just at the presenting problem but also at the background in poverty, unemployment, homelessness and poor health, especially mental health, drug and alcohol addiction, etc;
- it bears down on inefficiencies in the system from bureaucracy's mistakes.

In Nottingham, advice workers and housing benefit officers worked together to sort out these kinds of problems, so the client could go in and get an answer rather than being caught between the two. Initially this resulted in the time involved in resolving issues reducing from an average of 100 days to 23 days; and eventually to just five days (see Box 9). In Portsmouth, the City Council's tender specification for their advice services contract included a requirement to provide feedback on preventable demand generated by the failure of agencies themselves or others to get it right for their clients. The City Council worked closely with Advice Portsmouth on this – for example, they ran a seminar for staff on preventable demand so that staff could get better at recognising where problems are the result of other parts of other organisations, such as the local authority, not doing things correctly and can help correct this. Similarly, we believe there is scope for advice agency staff to provide feedback and training to local authority staff on how to improve their processes.

34 Vanguard Method for Systems Thinking: <https://www.vanguard-method.com/>.

Box 9**Nottingham Systems Thinking Programme³⁵**

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

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

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

This Benefits Pilot produced striking results:

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

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

³⁵ Source: *Social welfare legal advice and early action* by Joe Randall, Baring Foundation, January 2013, pp12–13.

R16: Local advice and legal support plans (see para 7.5) should include provision for advice agencies (with support from their national bodies) to work with relevant local public agencies, such as local authority housing departments and Jobcentre Plus, on ways of reducing preventable demand for advice by helping improve or redesign their processes.

R17: The National Advice and Legal Support Fund (see para 6.1) should support national not-for-profit agencies to do work on preventable demand, including funding for judicial review cases against national public bodies, as well as through its funding allocations to local areas.

4 Simplifying the system

Good law

- 4.1 Just as, bad, unnecessary, complex and opaque law generates the need for legal advice and lawyers, so, good, clear statute law that is ‘necessary, clear, coherent, effective and accessible’ should make it easier for advice specialists to provide helpful information and advice for those with problems and those who help them.³⁶ Where the law and its interpretation are clear, this facilitates the provision of public legal education and of web, phone and leaflet enabled information and advice. It makes easier the task of volunteers and general advisers and makes the most efficient use of specialist and legal help. Clear law also facilitates negotiation and settlement. An understanding of the likely outcome of a case going to court, because of a clear line of case-law or clear statute law, can also support efforts to mediate.
- 4.2 We welcome the government’s ‘good law’ initiative being undertaken by the Parliamentary Counsel’s Office, which will be consulting lawyers, academics, judges and others to ascertain how to make law better and clearer, and we would urge them to consult more widely with the advice sector and with the Civil Justice Council and the Civil Procedure Rule Committee.
- 4.3 The Law Commission also published some excellent reports on the reform of housing law and housing dispute resolution.³⁷ Its recommendations, if they had been implemented, would have made it easier for both landlords and tenants to understand their mutual rights and responsibilities; would have enabled advisers to give advice to landlords and tenants more easily on their rights and responsibilities; and, if litigation in court was unavoidable, would have reduced costs for social and private tenants and landlords by reducing the need for expensive advocates. We regret that the recommendations have not been implemented in England, but welcome the progress being made in Wales.
- 4.4 We recommend the identification of more areas for innovative law-making where legislation provides alternative and appropriate dispute resolution processes that are more accessible than courts – which most people are reluctant to use – and replaces them with processes that are easily accessible and are free to use. Examples of free and effective services are the Financial Ombudsman Service, which has largely taken consumer disputes with financial institutions from the courts, and the tenancy deposit protection schemes, where free adjudication

³⁶ Good law initiative, see: <https://www.gov.uk/good-law>.

³⁷ Law Commission, *Renting homes: the final report*, Law Com No 297, May 2006; available at: http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf.

services, accessed online, have removed the need to use the courts (see Annex 3 on good law).

R18: Parliamentary Counsel’s Office, as part of the good law initiative, should engage with Advicenow, advice agencies, the Civil Justice Council, Law Society specialist committees and the Civil Procedure Rule Committee, and should use this dialogue to help improve legislation by making it simpler and easier to understand.

R19: The Department for Communities and Local Government should revisit the Law Commission’s reports on housing dispute resolution.

R20: The Ministry of Justice and the Cabinet Office should identify areas for innovative law-making where legislation removes the need for disputes to be resolved in courts.

Courts and tribunals

- 4.5 In a time of austerity, when there is very little legal aid for the problems of everyday life but those problems are increasing, we need to look at ways in which their resolution in courts and tribunals could be made more efficient and effective, both for the users of the justice system and for the system itself. This process has to begin from the very start, when the individual first experiences a problem that could be resolved through the justice system (ie a ‘justiciable’ issue³⁸). It has to look at each step of the process from the individual’s point of view and assess what help and what changes are needed to make the process navigable by unassisted and unrepresented litigants.
- 4.6 Experience around the world shows that helping people in this situation has many components, all of which need to be tackled. There is no silver bullet, but there are many things that can be done for comparatively modest cost, which can make a difference. These include:
- public legal education (PLE) which alerts people to the fact that they have a problem that has a potential legal solution and explains how to pursue their rights; PLE also helps train volunteers in the community, in advice clinics and in the Personal Support Unit in courts to be more effective (see Box 26);
 - the provision of information and advice, using the potential of new media as well as more traditional media;
 - the design of forms and the guidance notes that accompany them – critical in improving access and reducing mistakes which are costly and time-consuming to put right;³⁹

38 H Genn, *Paths to justice*, 1999.

39 An initial scoping report has been undertaken by Advicenow, building on feedback from advisers and counter and call-centre staff at Her Majesty’s Courts and Tribunals Service (HMCTS).

- step-by-step guides for common types of proceedings, exemplified by the Royal Courts of Justice (RCJ) CAB and Advicenow guides;
 - checklists and route maps which ensure the litigant in person has all the evidence required by the court and has taken all the necessary procedural steps;
 - the provision of trained volunteers at court to assist and support litigants in person (see the Personal Support Unit case study in Box 26);
 - reviewing of cases suitable for mediation and providing or mandating a service such as the county court mediation service;
 - active engagement by the court or tribunal with the litigant to ensure that all necessary steps have been taken to resolve the dispute informally or through alternative dispute resolution (ADR);
 - court – and indeed tribunal – duty advice schemes where there is sufficient volume of cases to justify this investment to ensure that individuals have the benefit of legal advice, thus focusing on the key issues and saving the time of the judge (for example, housing duty solicitor schemes);
 - an inquisitorial or more proactive approach in which a Judicial Practice Direction explicitly sets out the way in which the judge must assist the litigant in person without entering into the arena (an approach used in Australia in the Victorian Civil and Administrative Tribunal – see para 4.11 below).
- 4.7 Some of these measures are already underway or are being considered. We support their introduction at the earliest opportunity. Most are relatively inexpensive but would smooth and speed up the court process, helping to get cases ‘right first time’ and avoiding endless calls to courts and abortive hearings, so relieving pressure on courts and tribunals as well as improving access to justice.
- 4.8 This issue has received attention from the President of the Supreme Court, Lord Neuberger,⁴⁰ from the Lord Chief Justice,⁴¹ from past and present Masters of the Rolls, and past and present Senior Presidents of Tribunals who have raised challenging issues for their services to consider. The last two Senior President of Tribunal’s annual reports set out in detail the way in which each chamber of the tribunals service has sought to address the needs of its users, and the Senior Presidents’ vision for the future includes challenging new issues designed to further improve accessibility and access to justice. One factor which is clearly helpful to the tribunals is the division by subject-matter which enables each chamber to concentrate on its particular users and their needs. This is much more of a challenge in the county courts, where, apart from ‘possession days’,

40 ‘Lord Neuberger, UK’s most senior judge, voices legal aid fears’, BBC News UK, 5 March 2013; see: www.bbc.co.uk/news/uk-21665319.

41 ‘LCJ voices new fears over rise in litigants in person’, *Law Society Gazette*, 27 September 2012; see: www.lawgazette.co.uk/news/lcj-voices-new-fears-over-rise-litigants-person.

the list is likely to contain a mixture of cases. However, we consider that this ‘typology’ may well be a clue to the way forward, certainly in developing online materials to assist people and potentially in developing further innovations.

- 4.9 This is an encouraging start in the direction of changing the judicial approach to reflect the needs of those using the courts better and, in the absence of legal aid, the rise in the number of litigants in person. In February 2013 the Chancellor of the High Court announced a review of the practice and procedure of the Chancery Division, both in and outside London, with a brief to make recommendations for change.⁴² It included among its five terms of reference:

To consider the implications for business in the Chancery Division of the imminent reduction in the availability of Legal Aid, and to make recommendations designed to secure the best access to justice for self represented litigants.⁴³

- 4.10 The Review published its Provisional Report at the end of July 2013⁴⁴ calling for comments by the end of October. In the chapter devoted to litigants in person, the Chair of the Review, Lord Justice Briggs, says: ‘I consider that the provision of the best access to justice for litigants in person within the Chancery Division calls for a culture change, both in attitude as well as in practice and in procedure, and that if it is to yield worthwhile results, it needs to be conducted in accordance with a small number of basic principles’.⁴⁵ These are:

- maximising available free or affordable legal advice;
- maximising free or affordable representation;
- bespoke and early judicial case management;
- increased judicial robustness in the identification and dismissal of hopeless cases;
- a more investigative judicial approach to cases involving one or more litigants in person;
- use of professional assistance from qualified agencies in the drafting of standard forms and directions for use in connection with litigants in person.⁴⁶

We welcome the thoughtful approach of this review to an area of business that has a small overlap with social welfare law and where litigants in person have appeared for many years. We are encouraged to see that many of our

42 See: www.judiciary.gov.uk/publications-and-reports/CMR/chancery-modernisation-review.

43 See: www.judiciary.gov.uk/publications-and-reports/CMR/chancery-modernisation-review#headingAnchor2.

44 *Chancery Modernisation Review: Provisional report*, Lord Justice Briggs, July 2013; see: www.judiciary.gov.uk/Resources/JCO/Documents/Reports/CMR%20Provisional%20Report.pdf.

45 *Chancery Modernisation Review: Provisional report*, para 9.31.

46 *Chancery Modernisation Review: Provisional report*, para 9.33.

recommendations, coming at the problem primarily from a layperson's viewpoint, chime with those arrived at by a working party of distinguished lawyers.

4.11 Other jurisdictions have led the way in identifying changes in judicial approach which enable the courts to adopt a more proactive approach to eliciting the necessary facts and evidence from litigants when one or both are representing themselves. A leader in this field is the Victorian Civil and Administrative Tribunal in Australia. A review by the former President of the Tribunal proposed a 'self-represented persons strategy' that would include the following elements:⁴⁷

- a positive duty on the tribunal to assist all parties;
- enhanced powers and duties of the principal registrar (including to assist parties);
- a litigants in person co-ordinator;
- expanded pro bono services;
- the establishment of a self-representation civil law service;
- a Judicial Direction on how judges can and should deal with unrepresented litigants (see Annex 4 section 4).

4.12 In this country, we were enormously heartened by the recent report of the Judicial Working Group on Litigants in Person commissioned by Lord Dyson, the Master of the Rolls, in December 2012, chaired by Mr Justice Hickinbottom, and published in July 2013.⁴⁸ Its recommendations follow, and in some cases lead, international best practice, and include recommendations on:

- the development of web-based materials and audio visual guides to assist litigants in person;
- judicial training; and
- most cogent of all, recommendations that look at the difficult question of how far our adversarial system may need to change to cope justly with the needs of unassisted and unrepresented litigants.

4.13 The report recommends that the Judicial Office should undertake, urgently, further work to assess the merits of three proposals:

- provision of a dedicated rule that makes specific modifications to other rules where one or more of the parties to proceedings is a litigant in person;

47 *'One VCAT' – President's review of VCAT*, Hon Justice Kevin Bell, November 2009, pp74–79, available at: www.vcat.vic.gov.au/sites/default/files/president%27s_review_of_vcat_report%5B1%5D.pdf.

48 *The Judicial Working Group on Litigants in Person: Report*, July 2013; available at: www.judiciary.gov.uk/Resources/JCO/Documents/Reports/lip_2013.pdf.

- introduction of a specific power into Civil Procedure Rules (CPR) 3.1 that would allow the court to direct that, where at least one party is a litigant in person, the proceedings should be conducted by way of a more inquisitorial form of process;
- introduction of a specific general practice direction or new Civil Procedure Rule that would, without creating a fully inquisitorial form of procedure, address the needs of litigants in person to obtain access to justice while enabling courts to manage cases consistently with the overriding objective.

We can only applaud these suggestions and look forward to seeing the implementation of all their recommendations which have the potential to make a significant contribution to equal justice.

- 4.14 The Judicial Executive Board in its response to the Ministry of Justice's (MoJ's) recent consultation on legal aid drew attention to the severe difficulties caused by the changes in funding of legal aid⁴⁹ (particularly in relation to debt and housing cases) and, in the absence of legal aid, the rise in the number of litigants in person.⁵⁰ The Civil Justice Council first raised this issue in their Working Group report on self-represented litigants in 2011.⁵¹ More recently, the report of the Judicial Working Group on Litigants in Person set out a comprehensive range of recommendations on the issue which build on best practice in other jurisdictions (see paras 4.12–4.13 above). We welcome this far-sighted report and support all its recommendations, especially those that deal with potential new approaches for the judiciary in dealing with litigants in person. There is necessarily a degree of overlap in our recommendations (see Annex 4 on courts and tribunals). We also think it is important that the MoJ keeps the costs of the increase in litigants in person under review, eg in terms of increased court time, slowing down the system; this could initially be done through surveying a sample of areas.

R21: The Ministry of Justice should work with Advicenow and other national advice agencies on the review of forms recommended by the Civil Justice Council Working Group on self-represented litigants, in order to ensure that its own process of continual improvement meets the needs of unassisted and unrepresented litigants, and should ensure

49 *Response of the Judicial Executive Board to the government's Consultation Paper CP14/2013, Transforming legal aid: delivering a more credible and efficient system*, 4 June 2013, paras 7, 8, 9, available at: www.judiciary.gov.uk/Resources/JCO/Documents/Consultations/jeb-response-reform-legal-aid-june-2013.pdf.

50 *Response of the Judicial Executive Board to the government's Consultation Paper CP14/2013*, para 10.

51 *Access to justice for litigants in person (or self-represented litigants). A report and series of recommendations to the Lord Chancellor and to the Lord Chief Justice*, Civil Justice Council, November 2011, available at: www.judiciary.gov.uk/JCO%2FDocuments%2FCJC%2FPublications%2FCJC+papers%2FCivil+Justice+Council+-+Report+on+Access+to+Justice+for+Litigants+in+Person+%28or+self-represented+lit.

that these reviews build on learning from the advice sector, from the Law Society, from its own counter and call-centre staff and from the judiciary.

R22: The Ministry of Justice should work with the GOV.UK team, Advicenow and other national advice agencies to develop an information strategy for other departments whose decisions are appealed to tribunals so that their decision letters set out all the relevant information about the decision and how to challenge it.

R23: The National Advice and Legal Support Fund (see para 6.1), working in conjunction with the Ministry of Justice and other funders, such as the Money Advice Trust, should commission and fund relevant agencies to develop authoritative and independent self-help guides for all areas of social welfare law, including a review of all current guides; the aim should be to ensure that litigants in person know what is expected of them in the most common types of cases and know what evidence they need to produce.

R24: The Civil Justice Council Working Group on self-represented litigants, with the Ministry of Justice, should ascertain which types of cases most commonly have one or more litigants in person and should develop a series of checklists for both parties in these cases (eg landlord and tenant, consumer disputes with small businesses).

R25: In more complex cases, and where resources allow, Her Majesty's Courts and Tribunals Service should check – by telephone if possible – before hearings, to make sure that litigants in person have all the material they need for the judge to make a decision, to avoid wasting precious hearing time. This telephone checking should also identify cases suitable for mediation – as happens already in the county court small claims mediation scheme.

R26: Her Majesty's Courts and Tribunals Service should review the welfare benefits appeal process to identify areas that might be suitable for a more inquisitorial, possibly telephone-based, approach to establishing all the relevant facts and reaching a decision, building on the flexible approach to hearings already developed by the Traffic Penalty Tribunal and others.

R27: The Ministry of Justice and the Department for Work and Pensions should conduct a cost-benefit analysis of funding independent duty specialist advice schemes along the lines of housing possession court duty schemes at busy tribunal centres during the roll-out of universal credit.

R28: The judiciary should consider changes that might be valuable in enabling courts to deal justly with cases involving one or more litigants in person, in particular the extent to which more inquisitorial processes might be helpful.

R29: The Ministry of Justice should keep the costs of the increase in litigants in person under review, eg in terms of increased court time and slowing down the system; this could initially be done through surveying a sample of areas.

Alternative dispute resolution

4.15 Parallel with the more proactive approach that is now being contemplated by leading judicial figures in both courts and tribunals to meet the needs of litigants in person is the need to develop alternative and appropriate dispute resolution further. This is necessary both to meet the needs of citizens and to avoid burdening the courts with cases that could be dealt with more effectively elsewhere. We have seen a number of exemplars of good practice – from county court telephone mediation; through the now abolished Social Fund Commissioner (abolished April 2013) with expert inspectors dealing with matters on the telephone; to the web and telephone access to the Financial Ombudsman Service and its powers to award significant damages; traditional mediation models; and the relatively new Centre for Justice, which combines expertise, active investigation and the possibility of both mediation and arbitration within an affordable costs regime. The new EU Directive on alternative dispute resolution (ADR)⁵² may give some impetus to all these developments (see Annex 5 on ADR). The ideal model of ADR for unassisted individuals is:

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

⁵² Directive 2013/11/EU on alternative dispute resolution for consumer disputes (Directive on consumer ADR), 21 May 2013.

- 4.16 We welcome the ADR handbook recently published under the auspices of the Civil Justice Council and as part of the Jackson reforms.⁵³ The great challenge for the use of ADR has always been to flag it up as early as possible, and to achieve its use where one party is a reluctant player. The Centre for Justice is seeking a rule change to the CPR to require people to engage in ADR if one party wishes to do so. There may be some benefit in this approach which is more timely and less expensive in those areas of social welfare law where the dispute is not about a financial entitlement (such as a benefit entitlement) but about more nuanced issues such as suitable housing, employment problems or social care packages. However, we consider it essential to add a note of caution. If individuals are to be strongly encouraged or indeed forced by the state to resolve their disputes outside the courts and tribunals system, it is incumbent on the state to invest in these systems and to ensure that procedural guarantees, fairness and quality of these alternative services are equal to those offered by the formal justice system and that individuals have the necessary advice and support.

R30: The Ministry of Justice and the Department for Work and Pensions should consider the lessons that might be learned from over two decades of dispute resolution by the Social Fund Commissioner (now abolished) and consider whether there are additional areas of benefit appeals where such an integrated model might be helpful in the efficient handling of appeals.

R31: More generally, the Ministry of Justice should consider the innovative and effective elements of alternative dispute resolution – for example, expert assessors, inquisitorial fact-finding, telephone contact – whenever large blocks of social welfare law work are log-jammed in either courts or tribunals.

⁵³ S Blake, J Browne, and S Sime, *The Jackson ADR Handbook*, OUP, 2013.

5 Approach to provision

Overall strategy

- 5.1 Although this report is written in a time of austerity, it is also a time of innovation and rapid change in the provision of legal services and dispute resolution. New providers are moving into the legal services market as a result of the Legal Services Act 2007 and new technology is changing the way that many people seek information and interact with service providers. It is important that our strategy maximises the opportunities that these developments offer for those who have the resources, both financial and practical, to interact with them, so that the most resource intensive, face-to-face, help can be concentrated on those who need it most. It is also important that funders are willing to take a risk in supporting innovative work and, thereby helping realise the latent potential within many advice agencies to provide services in new ways.
- 5.2 At the same time, there is a growing recognition that information and advice on legal issues needs to be part of the overall offering that many organisations – for example, health providers, local authorities, major charities and housing associations – provide to their existing clients. We have been impressed by the way that leaders in the field are already doing this and demonstrating the benefits for their clients and for themselves in cost-benefit terms – in improved health outcomes; greater engagement in the local economy and society; improved ability to pay the rent; and reduction in problems that, understandably, cause people suffering from chronic or acute conditions to experience sleepless nights.
- 5.3 An important element of our strategy is the location of information and advice services in the places – real or virtual – where people already turn for help or for services: both the places where they go, the people and organisations that they turn to and the websites that they feel are there especially for them. This supports a more proactive engagement with clients who need help but may not realise it; it can also help to concentrate help on those who have already been identified as the most vulnerable. We recognise that in the area of asylum and immigration, care must be taken to ensure that locating advice in the community does not breach the statutory regulation scheme. However, we have seen a number of community-led initiatives in this area (such as one led by Citizens UK) and consider that with careful planning and co-ordination with the Office of the Immigration Services Commissioner it is possible to develop new approaches without risking prosecution for those involved.

Box 10**Age UK primary care navigators**

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

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

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

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

- 5.4 Commercial providers also play a role in the provision of legal services. Those who have more resources – in financial or capability terms – can now access an increasing range of web and telephone services which may offer initial free advice and then access to fixed price pieces of advice and legal representation. The use of conditional or contingent fees, as a way of funding cases where there is a financial award if successful (‘no win, no fee’), has also increased in recent years, especially in employment or personal injury cases. Immigration, community care and special educational needs cases are also areas where there is the potential for charging fees.

- 5.5 Ethical lending schemes, such as the credit facility developed by Toynbee Hall,⁵⁴ and other credit union initiatives to help people pay for immigration advice, also have a role to play here (see Box 11). At the same time, it is important that Citizens Advice, in its consumer protection role, continues to work with relevant regulatory bodies to try to protect people from being exploited by unscrupulous commercial providers of advice seeking to take advantage of vulnerable people by charging for, potentially poor quality, advice.

Box 11

Toynbee Hall

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

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

- 5.6 Increasingly, the new legal services market is offering tiered services: from self-service using pro forma, on-screen Q&As to complete standard materials; to lawyer-reviewed services; through to more traditional lawyer-led services. This is a new approach to the concept of ‘unbundling’ where the client does as much as possible of the fact-giving, listing and evidence-assembly, and the use of the lawyer is concentrated on those elements where legal experience is most valuable and essential. The transparency of fixed-cost pricing is important in overcoming people’s justifiable fear of the unpredictable and high cost of using a lawyer. The ‘unbundling’ approach is a sensible way of reducing the amount of paid lawyer time required. The most notable examples of this are to be found in new providers in the legal marketplace – no doubt because they require significant capital investment. The Law Society provided a guidance paper to enable traditional solicitors’ firms to offer this approach in those family cases where legal aid is no longer available. These services respond to a demand from people

⁵⁴ See: www.toynbeehall.org.uk.

who can afford to pay reasonable, predictable prices and who can cope with the tasks required in an ‘unbundled’ approach. It is important to make the most of scarce legal resources so that people who can deal with many aspects of their legal problem do not access those services which are required for the most vulnerable.

- 5.7 The real challenge is to develop equivalent tiered services that will tackle the most common social welfare law problems, which new providers are not covering at present, because they are more difficult and there is less of a paying market for them. This is market failure and is a classic area where the state should step in – not to reinstate legal aid, but to support the capital investment, with other key partners, in the development of standardised, commoditised online services. This would make the most of thinly stretched frontline providers by giving them expertly developed systems which can be used with more confidence by volunteers and general advice workers, and also by those with the capability to help themselves. The Ministry of Justice (MoJ) has already taken a small step in this direction with its online legal aid eligibility checker, available on GOV.UK,⁵⁵ and with the funding for Advicenow. This should continue on a sustained footing to provide the necessary materials to support effective resolution in court and, wherever possible, without having to go to court, as well as through supporting the development of national telephone and website services.

Box 12

Using technology to redesign information and advice services

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

- **Niche advice hubs:** The evolution of individual advice agencies with a single niche or specialism, with technology allowing individuals to access a particular hub without too much constraint by geography.
- **Peer-to-peer communities:** Many individuals turn to online communities rather than to websites specifically designed to share information and direct users to advice. Just as there is scope to embed information and advice in physical communities, there is the potential to reach many individuals using links to their online communities.

55 See: <https://www.gov.uk/check-legal-aid>.

- **Personalised information:** The increased use of sophisticated information input systems means that information can be tailored to the specific circumstances and needs of an individual, helping to bridge the gap between information and advice. The Rechtwijzer website in the Netherlands (www.rechtwijzer.nl) is one of the best examples of this approach by using Q&As to define users' specific situations and offering tailored advice, tools and steps to take (see Box 14).
- **Supporting collaboration and partnership:** Technology can be used to improve the capacity of different organisations to work together, for example by developing common information-gathering systems to facilitate referrals or using shared calendars. This approach could also allow agencies to build a stronger evidence base which could then be used to feed back to local and national government.
- **Collecting outcomes information:** Technology could better support the development of outcomes data collection so users of online advice can track progress made, as well as for users of advice services to give feedback to the agencies they have used.
- **Online tools:** Software that can guide a user through a relatively simple process. An example of this is the 'CourtNav' tool recently developed by the Royal Courts of Justice Advice Bureau and Freshfields Bruckhaus Deringer LLP (see <http://courtnav.org.uk>). The first module, which was part-funded by the Ministry of Justice, is intended to guide a litigant in person through the process of filing a divorce or civil partnership dissolution, and is due to launch shortly. CourtNav asks users questions and then uses their answers to auto-complete the relevant court forms. The form content is checked online by a solicitor and once returned the user can download the forms which they can submit to the relevant court.⁵⁶
- **Sharing ideas and good practice:** There is scope to share learning about which approaches to innovation work and which don't, how much investment they require, risks and opportunities and so on. A website containing this type of information could help to reduce the risks of innovation. The 'Showcase of fundraising innovation and inspiration' website (www.sofii.org) is one such example from another field.

⁵⁶ Other modules dealing with different forms and courts will follow. To access CourtNav users will need to contact the RCJ Advice Bureau (www.rcjadvice.org.uk).

Model of provision

- 5.8 In keeping with the strategy we have outlined above, we propose the following model of provision. We recognise that each of the elements below require further work, including more detailed evidence of need. It will also be important to ensure that they reach groups who may have difficulty accessing them, such as refugees, disabled people and victims of domestic violence. The model we propose comprises the following elements:
- *a public legal education system*, making full use of the internet and embedding information about social welfare law issues in community settings locally;
 - *national helpline and website services*, providing information and advice on all aspects of social welfare law, building on and developing current services;
 - *local advice networks* of generalist and some specialist advisers for each local authority area, providing face-to-face information, advice and legal support;
 - *access to specialist national support* providing information and advice for frontline agencies.
- 5.9 A public legal education system. The aim of this system would be to provide the general public with the knowledge, confidence and skills needed to deal with law-related issues so that people are better able to help themselves and are less likely to end up in a court or tribunal. Public legal education (PLE) is recognised as important in section 28 of the Legal Services Act 2007, which gives the regulatory objective of ‘increasing public understanding of the citizen’s legal rights and duties’ to the approved frontline regulators including the Legal Ombudsman. However, action to give effect to this so far has been limited and very little has been focused on the area of social welfare law – possibly the most difficult as well as the most important area to address, given the cuts in legal aid funding. The importance of PLE was recognised by the Civil Justice Council report on self-represented litigants which said: ‘Public legal education ... is the true starting point for helping the public and thereby those who could become self-represented litigants.’⁵⁷ More recently, in late 2012, the Attorney-General asked his pro bono co-ordinating committee to set up a working group on pro bono and PLE. However, these steps fall short of embedding PLE in the delivery of justice services in the same way that public health, and public health education, are an integral part of health services. Specifically, we see a need for the Ministry of Justice (MoJ) to recognise the strategic importance of PLE as a way of meeting its desire to see people resolving their problems without access to the courts. We therefore want to see PLE form part of the national curriculum, in the same way that personal financial responsibilities have recently

⁵⁷ *Access to justice for litigants in person (or self-represented litigants). A report and series of recommendations to the Lord Chancellor and to the Lord Chief Justice*, Civil Justice Council, November 2011, Executive Summary para 23, available at: www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/cjc/self-represented-litigants.htm.

been included so that young people have knowledge, skills and confidence in the wider areas of legal rights as they move into wider society. PLE will not necessarily deal with the issues people face completely – and may even increase demand for information and advice – but it should enable earlier intervention to take place, thus reducing the need for legal support. It should also be recognised that the value of PLE is not only to those individuals educated, but also to their family and friends, who can benefit from their knowledge (in the same way that those who are trained in first aid in the workplace can ensure that the rest of the workforce benefit). (See also Annex 6 on PLE.)

Box 13

Law Centres and public legal education

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

- 5.10 We would like to see PLE delivered in a variety of community settings – both general and specialist settings for people with particular needs or issues, for example young people, older people, disabled people, prisoners and asylum seekers:
- through a variety of educational approaches with a particular emphasis on improving the law-related skills that are vital to successful self-advocacy;
 - through web and app enabled resources that can be accessed anywhere anytime;
 - through partnerships of PLE expertise with law students, lawyers and judges and with social, community and advice workers;
 - through work in schools to empower young people to tackle the problems of everyday life.

5.11 The capabilities that PLE is seeking to develop are:

- recognising and framing the legal dimensions of issues and situations;
- finding out more about the legal dimensions of issues and situations;
- dealing with law-related issues and situations;
- engaging and influencing by understanding the relationships between the law in our everyday lives, the democratic process and wider social issues.

5.12 We think there is a need to develop better systems of outcome measurement to demonstrate how these capabilities are being improved through PLE. Law for Life: The Foundation for Public Legal Education, a charity dedicated to ensuring that people have the knowledge, confidence and skills needed to deal with law-related issues, has undertaken some pioneering work in this field, including producing a range of accessible and well-written guides and training modules, which we would like to see further developed. Law for Life has also done work on measuring outcomes with the University of Bristol and has developed an evaluation framework, drawing on the experience of evaluating financial capability projects.⁵⁸ This has been shared with other providers of PLE across Europe through the EU Grundtvig project, which aims to develop the adult education sector. It provides a sound basis for the evaluation of the outcomes of PLE projects. The Money Advice Trust also has extensive experience in PLE around debt issues. We would also like to see innovative campaigns to help promote PLE in ways that the public can easily understand.

R32: The Ministry of Justice should work with the Department for Education to integrate information about legal rights and responsibilities into the national curriculum programmes of study for citizenship.

R33: The National Advice and Legal Support Fund (see para 6.1) should fund relevant agencies to develop web-based public legal education resources for the general public, based upon websites such as Advicenow.

R34: Local advice and legal support plans should include training for key local community-based workers and volunteers to act as local problem-noticers, navigators of web-based information and community legal champions, using Law for Life training modules and guides, focused on capability.

5.13 National helpline and website services. International experience in countries where legal aid budgets have been reduced demonstrates the value of continuing investment in websites and helplines, often integrated, to meet the needs of people with social welfare law and other problems. There are many reasons to make the most of the increasing possibilities offered by fast-moving change in web and telephony services:

⁵⁸ Law for Life's reports are available at: www.lawforlife.org.uk/publications.

- remote access advice ensures that those living in ‘advice deserts’ or who have mobility, health or caring issues have a way of accessing the advice they need;
- specialist advice can be developed on a national basis and delivered effectively to those with specialist needs in the virtual places where they already turn for help;
- websites offer the possibility of ‘one-to-many’ advice which can be accessed both by those with the capacity to use such sites unaided and by frontline advice workers and volunteers, expanding their potential for help;
- the provision of information and advice through web and telephony to those who are willing and able to interact in this way provides a method of meeting demand which reserves scarce face-to-face and intensive advice and help for the most vulnerable.

5.14 Our strategy is to embed advice in the places – both real and virtual – where people already feel that their needs are met and where they naturally turn when they need help. So websites and helplines for particular groups of people – such as the Royal National Institute of Blind People, Saga, Age UK; Mind, Rethink Mental Illness; Macmillan Cancer Support; and benevolent societies, such as Perennial for gardeners – all have an important part to play in the landscape of provision. In addition, there are specialist websites and helplines on particular topics, such as Shelter (for housing) and National Debtline. This variety and this ‘wide funnel’ are all important in reaching as many people as effectively as possible (see Annex 7).⁵⁹

5.15 However, we recognise that these services have capacity problems, in particular in their helpline provision. Shelter is only able to answer 60,000 of its 140,000 calls and so has not been publicising its helpline. Citizens Advice struggles in the face of high demand and is only able to answer 45 per cent of calls. Civil Legal Advice (CLA) acts as the mandatory gateway for those who wish to access legally aided advice on debt, discrimination and special educational needs problems. It also provides telephone and electronic advice on areas of civil law which remain in the scope of legal aid, including debt (if a person’s home is at risk), discrimination, certain aspects of education and housing and family matters (mainly child protection and cases involving victims of domestic violence). A small number of welfare benefits cases involving appeals to the upper tribunal are also covered. As it is only able to provide advice on topics that are still in scope for legal aid, and it is also poorly promoted and very difficult to find, the result is that demand for the CLA service is declining (the number of callers reduced from 35,000 in April 2012 to 20,000 in July 2013). Referral arrangements between these different helplines could be further

⁵⁹ We understand that the MoJ conducted an (unpublished) review of all the different helplines that received government funding, with a view to rationalising them. However, to our knowledge nothing resulted from the review.

improved, building on examples like the Money Advice Trust's referral arrangement between Citizens Advice and the National Debtline. Citizens Advice is in the process of developing a new strategy for its national telephone service, Adviceline, with the aim of enabling callers to phone a single number, get their questions answered and, where appropriate, get referred to their local bureau. Meanwhile, the Legal Aid Agency's (LAA's) CLA line would benefit from being made more comprehensive and being better promoted.

5.16 What we would like to see is a one-stop national helpline providing a comprehensive advice service for the general public, which can act as a safety net for those who have nowhere else to go or whose needs cannot be met by other providers. This would involve:

- developing a telephone service which can either deal with the problem fully when it is asked (eg through having call centres similar to the LAA's CLA ones, but for all enquiries relating to social welfare law, not just those eligible for legal aid) or refer on to a more appropriate provider (eg a single-topic telephone or face-to-face service, face-to-face general advice or paid-for advice where needed);
- maintaining a regularly updated and open-source database of quality assured providers and websites, which is shared by all providers and is accessible to different groups, eg young people;
- exploring different ways of securing the capital investment for such a project. One option could be for a commercial partner to provide the helpline on a free basis in return for: a) being able to develop its own access to the market for good value commercial services for those able to pay; and b) as recompense for this access to paid-for services, dealing with a specified amount of free advice and support on matters which are out of scope for legal aid and where callers do not have the resources to pay;
- ensuring that the national helpline is supported by relevant websites, including Law for Life's Advicenow website, which we consider to be the premier, most comprehensive advice website, and Citizens Advice own Adviceguide website;
- ensuring that the services are publicised in the right places;
- exploring funding sources for ongoing running costs, including call centres, which allow for the fact that giving good advice requires allowing adequate time, rather than having to stick to an absolute time limit; and discussing related issues such as whether the helpline will be a freephone number.

5.17 We appreciate that this proposal would require considerable discussion and development work. We therefore propose that in the first instance the MoJ, in conjunction with the Department for Business, Innovation and Skills (BIS), should discuss with the LAA and other relevant bodies, such as Citizens Advice, Law for Life and Money Advice Trust, how this might best be achieved. We

believe the ‘prize’ of a comprehensive national advice helpline, with supporting websites and with links to a variety of specialist helplines and to both commercial and not-for-profit frontline advice agencies, is one from which the general public would greatly benefit. Generally, we believe there is a need now for discussion between government and advice agencies on who does what in this field. As one consultee stated: ‘There is no sense in advice agencies spending time and effort replicating or duplicating what is on government websites, nor in government obstinately pressing on with a go-it-alone strategy, when a joint strategy with organisations the public trust could benefit both.’

- 5.18 The website element of this strategy is important in that it can meet much more demand than any telephone helpline, and can empower those with the capacity to find out about the problems they are experiencing and how to tackle them. Sometimes, the web-based information and advice will be sufficient. Sometimes users will need to seek further help but should have a better understanding of where to seek it. In addition, comprehensive, independent and trusted websites have huge value for trusted intermediaries and for volunteers working in many advice settings. The two prime examples of such sites are Advicenow (www.advicenow.org.uk), now part of Law for Life; and Adviceguide (www.adviceguide.org.uk), the website originally developed by Citizens Advice for their advisers but now available to the general public as well as to advice organisations licensed by Citizens Advice. For many years the MoJ and subsequently the Legal Services Commission recognised the importance of the Advicenow site and the role that it played in equipping people to resolve problems themselves, seek appropriate help or, if they had to come to court, have a better chance of knowing what to do. In the last few years, funding has been on a one-off basis only, perhaps because some of the issues which it covers are seen as non legal aid issues, perhaps because of the government’s focus on its own website, GOV.UK (www.gov.uk). The government site depends for its success, however, on links through to sites such as this. In addition, many of our consultees have emphasised the importance to them and to those whom they serve of having an independent and trusted site, which brings together in one place the best of all specialist web-based information and advice, linking through to, for example, Shelter and the Citizens Advice web advice. Where there were gaps in provision, Advicenow filled these, most recently in working with the Royal Courts of Justice (RCJ) CAB, funded by the Advice Services Transition Fund, to develop five guides for those considering and then going to court.⁶⁰
- 5.19 Whatever the reason for the break in long-term funding for Advicenow, the result is a massive gap in what is one of the crucial elements of any possible delivery model for advice and support in social welfare law: a ‘go to’ site, as described by the Civil Justice Council working party on litigants in person, which contains

⁶⁰ See: <http://advicenow.org.uk/going-to-court/>.

information and advice on a range of problems and which is accessible in the way the information is presented and emotionally and practically supportive, as well as legally and procedurally accurate.

- 5.20 Other countries have recognised the importance of such provision, through single dedicated websites such as the Rechtwijzer⁶¹ in the Netherlands, which was specifically designed to assist resolution of problems, and to integrate with other elements of the scaled-down Dutch legal help provision (see Box 14). Another outstanding example is the New South Wales (NSW) Law Access project in Australia which is an integrated package of services with a core website providing a ‘one stop shop’ with referral, legal information and self-help assistance and a state-wide call-centre, developed as a joint project with representatives of the NSW Ministry of Justice, Legal Aid Commission and the legal profession on its board.⁶² A different approach is seen in the USA where, in the absence of legal aid for much of the population, the Legal Services Corporation has run a Technology Initiatives Grants programme with funding from Congress, which has encouraged web-based innovations designed to reach further into the numbers of those unable to access face-to-face help by harnessing the power and reach of new technologies.⁶³
- 5.21 High quality web-based provision is no longer a ‘nice to have’, as it might have been regarded in the days when legal aid covered any matter of English law and social welfare law issues were within scope. It is now an essential element in the constitutional framework which enables citizens to understand the law and to live within the rule of law. The MoJ has an important role in ensuring that there is appropriate provision. As we have said earlier in our report, the market will step in to meet needs where there is the possibility of ‘paid-for services’ to recoup the investment required in providing free access to expert web-based materials. In the area of social welfare law however, there is market failure which needs to be addressed.

R35: In England and Wales, the Ministry of Justice and the Welsh Government should commit to the concept of national comprehensive helplines, with appropriate website support and with links to a variety of single-topic helplines, as well as to commercial and not-for-profit frontline advice agencies.

R36: In England and Wales, the Ministry of Justice and the Department for Business, Innovation and Skills, and the Welsh Government, should review with the Legal Aid Agency and other relevant bodies, such as Citizens Advice, Law for Life and Money Advice Trust, how national comprehensive helplines with appropriate website support could best

61 See: www.hiil.org/project/rechtwijzer and www.rechtwijzer.nl.

62 See: http://info.lawaccess.nsw.gov.au/lawaccess/lawaccess.nsf/pages/about_us.

63 See: <http://tig.lsc.gov/about-us/background>.

be developed. A feasibility study should then be conducted into their preferred approach, with the help of funding from the National Advice and Legal Support Fund (see para 6.1 and Annex 10) and possibly in conjunction with a commercial partner.

Box 14

Learning from others

In the Netherlands, where in the early 2000s the government undertook a large reconfiguration of publicly funded legal advice services, significant time and effort has been put into developing a website to guide individuals through a range of legal problems. The Rechtwijzer website asks visitors to select an area of law and uses a series of questions to guide the individual through the problem, offering personalised and strategic information. The website had been developed collaboratively by the Dutch Legal Aid Board and the University of Tilburg, and we were struck by the value of partnership working and shared investment in new technology.

In NSW, Australia, a similar (although currently less sophisticated) website is available, associated with a telephone helpline. When compared to the provision of information in England and Wales, we took the view that the more interactive and personalised services available in the Netherlands and NSW offered a more accessible and easy to use way of delivering information.

- 5.22 Local advice networks. The aim of these local networks would be to provide a basic level of information and advice, including some face-to-face and some legal support, in each local authority area. Some important work has already taken place in recent years in developing local advice networks, most recently through the Advice Services Transition Fund (ASTF) in England, which required advice agencies to submit partnership bids. We believe it is important to learn from these projects. Local networks would bring together local providers to consider need collectively. Each area's network would vary according to local circumstances and the resources available, but the aim would be to develop a spectrum of provision ranging from information and generalist advice to more specialist advice and legal support, including, where necessary and appropriate, legal representation. We recognise that in some cases the most appropriate response will be a legal response, or at least the threat of one, and it is therefore important that resources are earmarked for this and that the networks include private as well as not-for-profit providers. Advice agencies should integrate with solicitors to ensure that cases that require litigation services covered by legal aid are referred on to an appropriate lawyer.

Box 15**Advice Services Coventry**

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

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

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

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

- 5.23 Members of the network would work with the local authority to co-produce a ten-year local advice and legal support plan (see para 7.5 below), identifying gaps in provision, targeting provision at the most vulnerable and showing how they would use their allocation from the proposed National Advice and Legal Support Fund (see para 6.1 below), alongside local funding sources, to deliver the plan and how they would ensure quality of provision.

R37: The advice services umbrella bodies should ensure that their local members contribute to regional and/or local advice networks.

- 5.24 Access to specialist national support for frontline agencies. The aim would be to ensure that all local frontline agencies had access to national specialist support. This would be provided by specialist bodies, such as Shelter (housing),

Child Poverty Action Group, Lasa (benefits), Age UK (community care) and others, as well as by national umbrella bodies such as Citizens Advice, who have a specialist centre in Wolverhampton providing advice to bureaux on benefits and other issues (but no longer on employment). Some specialist support is provided jointly, eg Citizens Advice and Shelter's National Homelessness Advice Service (which is funded by the Department for Communities and Local Government (DCLG)). This advice is provided in the main by telephone, but also includes briefings and reference material, as well as training; it could also include online forums and make greater use of new technology to deliver support to advisers on all aspects of social welfare law (see Box 12). Part of the costs of provision can be met by subscription fees, but there is also a need for some core funding to sustain the various services. Specialist agencies also need to be able to access information and helplines to enable them to keep up-to-date. A real gap at the moment is the lack of specialist advice on employment and immigration law. (See Annex 10 for proposed funding arrangements.)

Box 16

Lasa's rightsnet website

The rightsnet website (www.rightsnet.org.uk) was launched in 1998 by the advice and technology charity Lasa and provides expert welfare rights support to frontline advisers, policy-makers and second-tier organisations across the UK. Thousands of advisers visit the subscription website every day for news on the latest legislative changes and case-law developments, and to access peer support with casework queries through the website's online adviser discussion forums.

Over its 15-year existence, rightsnet has developed a sustainable funding basis for its current welfare benefit service, and demonstrates how technology can be used to provide a platform for people from a broad range of organisations from the independent advice sector – including Citizens Advice Bureaux, Law Centres and local authorities – to come together to share their experience and expertise and, by avoiding duplication, make the most effective use of their own scarce resources in delivering advice to the communities they serve. Given the resources, Lasa would like to be able to develop the support they provide to all aspects of social welfare law.

In addition, rightsnet provides an effective means of feedback to decision-makers and government, with the Department for Work and Pensions, HM Courts and Tribunal Service and the Upper Tribunal also using the service.

R38: The National Advice and Legal Support Fund (see para 6.1 and Annex 10) should ensure that frontline agencies have access to the specialist support they need for working on complex cases through funding national specialist advice agencies.

Implications for advice provision

- 5.25 Those providing information and advice need to:
- deliver advice in a manner that addresses the needs of the whole person (and sometimes the person’s family);
 - ensure that clients with multiple advice needs get their problems resolved as part of one process (avoiding ‘revolving door’ demand);
 - refer clients to those advice providers best able to help them (preventing ‘referral fatigue’); and
 - provide clients with capabilities through the advice process so that they are better able to solve problems themselves in future or are encouraged to seek help earlier (preventing repeat demand).
- 5.26 Approaches that deliver advice in convenient settings – for example, workplaces, GPs’ surgeries and hospitals, schools, supermarkets, local communities, with family and friends – are also more likely to succeed in reaching people at an earlier stage. Responding to users’ needs by enabling them to talk to specialists as early as possible in the process, rather than having to go through too many gateways, have also been shown to be effective (see Box 17 and para 3.14 on systems thinking). Our discussions with the Design Council identified some key principles for good design of services, which we commend to those designing advice services:
- focus on user needs;
 - observe people in context, don’t just ask them their opinions;
 - map needs as customer journeys;
 - create simple prototypes and test them out;
 - improve good ideas, kill bad ideas;
 - iterate until you have an elegant solution.

Box 17**Advice Portsmouth**

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

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

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

- 5.27 Independence. Although advice services will often be funded by different parts of government and by other agencies, such as housing associations, we believe it is important that they are, in the main, delivered independently by not-for-profit agencies or solicitors that are not part of the services and structures about which people are seeking advice. Independent advice is more likely to be trusted

because it is better placed to respond to clients' (as opposed to service providers' or statutory bodies') needs and it avoids potential conflicts of interest. It also has the added bonus of advice agencies being able to provide independent feedback to service providers, which we see as a vital part of reducing preventable demand and can act in the client's best interests – and should therefore be built into the service specification. However, there remains an important role which public bodies, such as local authorities and housing associations, should continue to play – and we also recognise that, where the right protocols are in place to ensure an arms'-length approach, this role can also embrace advice.

- 5.28 New technology. We recognise the potential for new technology, not just to reduce costs, but also to provide information and advice in innovative ways, via smartphone apps, for example. At the same time, we are well aware of the importance of face-to-face provision, especially for the most disadvantaged. Local advice networks would be expected to make full use of web-chats and Skype and other digital communication, as ways of delivering convenient services for users or their friends and families in more remote areas, and as a way of reaching more people through one-to-many services. Kiosks carrying electronic information in different locations around the area, as pioneered by Cambridge CAB and others, would be another way of extending reach (see Box 18). Local networks should also publicise relevant national websites and helplines to increase people's awareness of these resources.

Box 18

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

National demand for free advice services has been rising steadily over the last five years, with people experiencing difficulties during the economic downturn. In Cambridge, a city with a rapidly expanding population,⁶⁴ the CAB (which also serves the people of South Cambridgeshire, another area undergoing massive growth) is no exception to this trend. Struggling to deal with the growing numbers of clients turning up to be seen at their daily drop-in advice sessions, Cambridge CAB turned to innovative technology to find a solution.

With seed funding from the Big Lottery Fund and additional financial support from others, including the Nominet Trust, 'Advicehub' was launched in 2009. With the objective of increasing people's access to advice

64 The Cambridgeshire County Council Research Group (CCCRG) mid-2009 population estimate for Cambridge City is 119,100. The population has increased by eight per cent since 2001 and is forecast to increase by a further 28 per cent by 2031.

right across the county of Cambridgeshire, the bureau has set up a network of 19 Advicehub self-help touchscreen kiosks in community centres, GPs' surgeries, libraries and hospitals, where people can get access to online generalist and specialist advice from within their own communities. Trials of video specialist advice sessions are currently taking place, where more complex issues can be addressed by an adviser in one part of the county with a client elsewhere, using software to share case documents and record outcomes.

In the last 12 months, the kiosks have been used by over 65,000 individual users, with the main topics being benefits, debt and housing. Cambridge CAB has recently been successful in securing additional funding from the Big Lottery Fund to develop Advicehub over the next two years, with provision for installing another ten kiosks in their catchment area.

Quality

- 5.29 We believe it is essential to ensure advice and legal support are delivered to a high standard. Otherwise, there is a danger of people being misled or even exploited. More positively, where quality is assured, there is more scope for partnership working and referrals, as providers will have greater confidence in each other. One way of ensuring this is by the sector having its own quality standards, although we recognise it is important that these do not become excessively bureaucratic and must bring benefits to clients (see Annex 8 on quality).
- 5.30 Few consumers of social welfare law advice and legal support use them on a sufficiently frequent basis to assess the quality of the service they receive fully. Consumers can judge whether a service is easy to access or treats them appropriately, but, in many cases, are unlikely to be able to tell whether the advice they are given is accurate or whether an outcome is better or worse than might be expected. Similarly, it is difficult to find out whether organisations are financially robust and able to provide continuity of service. Therefore, we believe it is extremely important for all advice and specialist legal services receiving public funding from any source, to have an appropriate externally assessed quality standard, including peer review and user feedback. We support the retention of peer review as a quality assurance measure for those organisations holding legal aid contracts. The LSC used to publish very helpful 'Improving your quality' guides, which set out what peer reviewers were looking for and how to demonstrate compliance with this in one's files; but, regrettably, these are no longer being kept up to date.
- 5.31 There are currently a number of quality standards relevant to legal advice and support. Organisations choose which one(s) to adopt depending on a range of

factors, including the services they deliver and the requirements of their funders/regulators. Some are general management standards which could apply to any organisation, such as the ISO 9000 series, or PQASSO in the not-for-profit sector,⁶⁵ and some are specific to the legal advice sector, such as the Law Society's Lexcel standard, the LAA's Specialist Quality Mark (SQM) or the Advice Quality Standard, originally developed by the LSC as the General Help Level of the Community Legal Service (CLS) Quality Mark, and now owned by Advice Services Alliance (ASA). We believe that specific quality standards that are designed for advice and legal services provide the best quality assurance for consumers. There is no one standard that is designed to cover all the services included in our model of provision; but we believe that is appropriate as services differ so much – for example, advice services giving brief advice to large numbers of people operate in a different way from specialist legal services handling small numbers of litigated cases. The ASA has traditionally led the sector on quality assurance, and is now in the advanced stages of ensuring the sustainability of this work through developing a fee-based system for participating agencies.

- 5.32 General advice. The term 'Advice Quality Standard' (AQS) was first used to describe a standard developed by all the major advice networks under 'Working Together for Advice' with funding from the Big Lottery Fund between 2008 and 2010, and which included a peer review of advice. The independent evaluator's report praised the 'quality and value of the product which has been developed', but unfortunately due to a lack of funding it was not possible to roll the standard out after the end of the project in 2011. The current AQS is not the standard described above but is the new name for the General Help Quality Mark transferred from the LSC. The ASA has set up a development group to look at how to improve the current AQS but warns that it will remain difficult to make the transition to the Working Together for Advice AQS standard without significant new funding. We support the ASA in its efforts to find a way to make the AQS self-financing, through a levy on assessment fees or other mechanisms. For their part, the umbrella agencies need to encourage their members to participate, understand the value of paid-for quality assurance accreditation and include the fees in their budgets.
- 5.33 Specialist advice. The Specialist Quality Mark (SQM) provides recognition for specialists, whether or not they are legally qualified (eg local authority welfare rights units without solicitors); but the LAA has not been able to allocate resources to it, so it could simply wither away. This would leave non-legally qualified specialists without an appropriate accreditation scheme as Lexcel only covers organisations with solicitors. We believe that the AQS, which already covers casework, could be further developed to cover specialist legal work and

65 ISO 9000: standards for quality management systems. PQASSO: Practical Quality Assurance System for Small Organisations.

so ensure that suitable accreditation was available for all levels of service. It could be very attractive to Citizens Advice and AdviceUK members offering both generalist and specialist advice to be accredited to different levels of the same standard as they were in the days of the CLS Quality Marks.

5.34 Passporting. There is already some degree of passporting between standards. For example, the LAA will accept current accreditation to either the SQM or Lexcel in order to hold a legal aid contract, and Citizens Advice Bureaux that pass the Citizens Advice membership audit are passported to accreditation under the AQS. Age UK are developing a similar arrangement for their members. The Advice Services Review carried out by the Welsh Government had a recommendation to ‘develop a Framework of Standards for Advice and Information through the National Advice Network based on existing quality marks and standards’.⁶⁶ This recommends better passporting between different standards and the development of a single register of all quality assured providers. We support this recommendation. Other funders, such as the Money Advice Service, are also developing a common framework for their funded organisations.

5.35 The table below shows where the leading standards overlap and where they diverge.

Standard covers:	AQS	Lexcel	SQM
Organisational sustainability	Yes	Yes	Yes
Management systems	Yes	Yes	Yes
Internal systems of supervision/ quality of advice	Yes	Yes	Yes
General advice	Yes	No	No
General advice with casework	Yes	No	No
Specialist advice	No	Yes ⁶⁷	Yes
External peer review	No	No	No

5.36 Funding. We recognise that all these developments cost money. We have therefore recommended that the National Advice and Legal Support Fund (see para 6.1 and Annex 10) should support these developments. National development work may need to be front-loaded to enable a fee-based system to be introduced as soon as possible. At the local level, local advice and legal support plans should aim to provide funding for surveys of local users, so as to ensure that users’ views inform quality assessments.

⁶⁶ *Advice Services Review: final research report*, March 2013, recommendation 10 p120, available at: <http://wales.gov.uk/topics/housingandcommunity/research/community/advice-services-review-final-research-report/?lang=en>.

⁶⁷ But only for organisations employing solicitors.

R39: The Legal Aid Agency should retain peer review as a quality measure for organisations holding legal aid contracts and should update the ‘Improving Your Quality’ guides and post them on its website.

R40: All publicly funded advice and specialist legal services should be accredited to an appropriate externally assessed quality standard: the Advice Quality Standard, Lexcel or the Specialist Quality Mark.

R41: There should be further development of passporting between the various quality standards being used in the legal sector. To aid this:

- **The Law Society should issue guidance for solicitors working in the not-for-profit sector when carrying out its review of the Lexcel standard.**
- **The Advice Services Alliance should incorporate external peer review into the Advice Quality Standard.**
- **The Advice Services Alliance should adapt the ‘Advice with Casework’ level of the Advice Quality Standard to cover specialist advice.**

R42: Other umbrella bodies and professional bodies with memberships should consider building on Citizens Advice and Age UK’s examples of passporting for their members.

Outcomes reporting

5.37 There is no widely used reporting framework for advice outcomes across the advice sector and providers often have different reporting measures for different funders. There has been some work to develop outcome tools, but in practice providers have found these time-consuming to implement. Advice agencies also often lack capacity to collect long-term outcome data, particularly where outcomes accrue to government departments who are not regular funders of advice, such as the Department for Work and Pensions, the Department for Education and the DCLG. It is also challenging to gather evidence of advice preventing a negative outcome from happening. As a result, collection often focuses on short-term benefits to clients in terms of financial gains, or simply reporting the number of people seen. While these outcomes are easier to measure, they can give a misleading picture of the work that advice agencies do and the value their services have.

R43: The Big Lottery Fund should work with the national advice services umbrella organisations to develop a common outcomes framework which clearly articulates the value and impact of advice and includes outcomes from different types of advice work, such as prevention, early intervention and strategic use of the law.

5.38 The framework will be the first step towards greater standardisation of reporting measures across the sector, but it will still give providers some freedom to come up with appropriate indicators towards these outcomes. We do see a role for consolidating the learning from projects that have developed ways of measuring advice, and there should be greater learning and sharing of tools where they are not already publicly accessible. It is not always going to be realistic to expect agencies to measure some of the longer-term outcomes of advice, and we see a greater role for collaboration with universities in measuring long-term health outcomes as well as with other public delivery agencies that refer their clients for advice. We also see a gap in terms of collection of outcomes data from people who access advice services online and new tools should be developed in tandem with new methods for delivering advice online and remotely. Finally, the framework needs to include measures that assist with demonstrating continuous improvement (in line with the systems approach). (See Annex 9 on outcomes.)

R44: The National Advice and Legal Support Fund (see para 6.1 and Annex 10) should fund research into measuring the outcomes of advice services, including outcomes for people who access advice services online.

Redesign of services

5.39 Local infrastructure. Advice organisations should be constantly reviewing ways of developing their services, or increasing efficiency and sustainability, and this may involve partnering or merging with other organisations. At a local level, we believe there is considerable scope for local advice agencies to work more closely together. In some cases, they may decide to merge into one organisation in order to reduce back-office costs and overheads, while retaining different outlets for their services, as the Law Centres in south-west London have done through improved use of IT, streamlining administrative systems and sharing other backroom functions. We do not feel that simply trying to maintain the status quo is a viable strategy in the current financial climate. Funders can often play a key role in helping with these developments, both by helping fund the costs of merger, and also by kick-starting discussions. In Sheffield, a combination of factors that included:

- the need for the local authority to make savings;
- concern about consistency of advice across the city;
- the desire to create easier pathways for clients;
- the existence of a Sheffield-wide consortium (Community Legal Advice Services for South Yorkshire (CLASSY)) of advice organisations (including five CABx, one Law Centre and 11 AdviceUK members)

led to a co-produced approach with the local authority and CLASSY members (see case study in Box 19). One of the key motivating factors was the local authority's determination to have a single contract for advice services in the city.

CLASSY and the City Council, with high-level support from Citizens Advice nationally, then played an active role in using the history of collaboration between the advice agencies to help bring this about. It is important to remember that these developments take time and cost money, but in the long-run redesign of services in this way, by focusing on the needs of users (in line with the systems thinking approach – see para 3.14 above), can deliver the best results, as well as being more cost-effective.

Box 19

Case study: Moving to a single welfare rights service in Sheffield

Like a number of cities, Sheffield has developed a wide range of small welfare rights organisations. By 2011 there were at least 19, many neighbourhood services, some serving particular geographic communities, others specific ethnic minority communities, as well as specialists meeting the needs of deaf people, those with mental health problems and those in debt.

Reductions in funding to local government in particular, along with welfare reform and the economic crisis all meant that there was a growing concern that this service model was not sustainable or capable of providing consistent quality across the city. The intention of the local authority to consider moving from grant aid to formal procurement to address these deficits mobilised the sector through its consortium, CLASSY, to reject its traditional approach, which had to some degree relied on lobbying councillors, absorbing cuts and bidding for new business.

Instead a decision was made to engage proactively the local authority at cabinet level – building a co-produced relationship between trustees and elected members. At an early stage it was clear that the local authority was attracted to the quality kite mark of the Citizens Advice brand with existing independent welfare rights organisations generally seeing the opportunity to become part of a city-wide CAB-branded service as positive. This co-produced approach has led to a collaboration which aims to establish a single city-wide service created from existing CLASSY members.

The process to create this single organisation has not been an easy one, with many organisations concerned that they will lose focus on their client groups and concerns about the financial stability of the new organisation. This has meant a robust focus on due diligence and also challenging debate on the principles that underpin the new organisation's constitution and how service will be delivered. In spite of all these challenges and having to work to a very tight timescale, Sheffield Citizens Advice and Law Centre (formed by the merger of 13 organisations) is planned to be up and running by the end of 2013.

- 5.40 National infrastructure. We believe that the funding environment will necessitate reform of the current national infrastructure for advice and legal support, in the same way as is happening at the local level. Although it would seem logical to have just one umbrella body for the whole of the advice sector, the different characteristics, brands and roles of the agencies in the sector make this difficult to achieve without losing their distinctive features. Furthermore, we have been impressed by the innovative work done by different umbrella bodies – including AdviceUK, for example around systems thinking and managing failure demand, and its capacity to continue to attract new members in the current financial environment; Citizens Advice and its policy and information work; and the work the Law Centres Network has been doing on collaborative working and on measuring impact. So we would not want to see the roles of different umbrella bodies in any way diminished. Other bodies have also played important co-ordinating roles, such as the Money Advice Trust in relation to co-ordinating the free money advice sector.
- 5.41 Although the financial situation may mean some of the umbrella bodies possibly having to merge, we consider it more important, in the first instance, that they take steps to share their resources more openly, particularly those that have been developed with the help of public funding. For example, we would like to see Citizens Advice making its information system, Adviser Net, freely available to other agencies, provided appropriate training and quality assurance is in place. Given the extent of its public funding (c£20m pa grant in aid from BIS) and its strategic importance in the sector, we would also expect Citizens Advice to be more outward-facing and to exercise a stronger national leadership role in the sector (more akin to the role played by Citizens Advice Cymru in Wales, where, for example it chairs the Independent Advice Providers Forum (albeit on a very different scale than would be required in England)) by working with the other umbrella bodies on ways of promoting efficiencies and effectiveness across the sector. There continue to be a number of important functions around co-ordination and representation, which the ASA the third-tier umbrella body for the sector, has undertaken in the past, but which are now under threat, given the loss of funding that the ASA has experienced.

R45: Local advice agencies should explore the potential for sharing back-office functions or merging their organisations to reduce costs and increase sustainability – and thereby provide a better service to their users.

R46: The various national advice umbrella bodies should work together more closely, sharing good practice (such as AdviceUK’s systems thinking work) and sharing their resources more, particularly those, such as Citizens Advice’s AdviserNet, that have been developed with the help of public funding.

R47: Citizens Advice, with support from the Advice Services Alliance, should exercise a stronger national leadership role for the sector in England by working with the other umbrella bodies on ways of promoting efficiencies and effectiveness across the sector.

- 5.42 Private sector legal providers, both solicitors' firms and barristers' chambers, will continue to have an important role to play, although those who have depended on legal aid for funding their social welfare law services have had to reduce or even end these services. There are also concerns that the proposals in the government's recent *Transforming legal aid* consultation paper will further reduce the capacity of private providers to continue to undertake public law work. We propose in the future that private providers should be involved in the development of local advice and legal support plans (see para 7.5 below) and should be able to bid for funding from the local allocation of the National Advice and Legal Support Fund (see para 6.1 below) alongside not-for-profit agencies, but they would need to be able to show how their service complements other services for the area. Partnerships with the not-for-profit sector will be one way of demonstrating how their areas of expertise fit with other local provision.

6 Costs of provision and main funding sources

6.1 We estimate that the cost of ensuring a basic level of information and advice, with some legal support, on social welfare law issues in England and Wales in 2015, as outlined above, will be at least £500m per year. The two most significant cost items are (i) the national helpline and website services (see para 5.13 above) and (ii) the implementation of local advice and legal support plans (see para 7.5 below). A significant amount of ongoing funding is already being spent on these and other items, but what is also needed is some additional funding to develop and supplement this provision in line with our recommendations. We therefore propose that funding comes from three main sources:

- 1) £400m per year ongoing funding of current provision:
 - the remaining legal aid for social welfare law (£61m) (which we believe should continue to be managed by the Legal Aid Agency (LAA));⁶⁸
 - continued local government funding (£180m or even less); and
 - other current sources (£159m), such as the Money Advice Service, Big Lottery Fund and government departments, such as the Department for Business, Innovation and Skills (BIS) (to Citizens Advice) and the Department for Work and Pensions (DWP), who are currently providing some funding to local authorities to assist with the cost of introducing universal credit, some of which can be used to fund advice charities.
- 2) £50m new funding per year from central government (Cabinet Office, Ministry of Justice (MoJ) and DWP) to create a National Advice and Legal Support Fund ('National Fund') to be managed by the Big Lottery Fund to help implement the changes we are proposing.
- 3) A minimum of a further £50m additional funding per year from a variety of other statutory, voluntary and commercial sources eg Money Advice Service, NHS, Big Lottery Fund, housing associations, trusts and foundations, charities and lawyer fund generation schemes, to supplement and complement the new National Fund at both national and local level.

See Annex 10 for funding assumptions and breakdown of National Fund expenditure on which these figures are based.

6.2 It is immediately apparent that the lion's share of the resources going towards meeting need in this area – £400m – comes from existing funding by central and local government and the Big Lottery Fund. It is vitally important that this existing funding continues and that the new National Advice and Legal Support Fund is used to lever even greater effectiveness from this spending by helping

⁶⁸ See Annex 12 on local authority funding.

both central and local government to see the three funding sources above as complementing each other.

- 6.3 We initially considered trying to assemble all these funds into a single pot, but we decided that this was neither practical nor desirable. Annex 10 on funding assumptions explains some of the different processes involved in accessing these funds. We also think a single pot would be more vulnerable to cuts, as well as being unpopular with funders and applicants. Nevertheless, we do believe that there is scope for local authorities to help marshal some of the local funds and to encourage them to help implement the local advice and legal support plans (see para 7.5 below).
- 6.4 We believe there is a strong case for central government investing some of its resources in a National Advice and Legal Support Fund for information, advice and legal support on social welfare law to help fund our proposals. The provision of advice and legal support can have a major beneficial impact on the lives of service users, resulting in savings down the line to the state, as well as increased income for clients.⁶⁹ At the same time, there is also a very real risk of system overload as a result of welfare reform, increased self-representation in the courts and increased caseloads for MPs and councillors. Advice and legal support can also help government departments promote their own objectives.
- 6.5 We are therefore recommending an annual contribution of an additional £50m pa for ten years from central government (in addition to ongoing government funding eg for continuing legal aid) to create a National Fund to help fund these proposals. Unlike the Advice Services Transition Fund, which only permitted 25 per cent of the funding to be spent on provision of services, there would no restrictions on how the allocation from the Fund could be used (see para 8.3 below). We recognise that £50m is a modest sum given the scale of, growing, need that we are seeking to address. However, in the current financial context, we consider it a realistic sum to be seeking. Ten-year funding, reviewed every two to three years, is in line with the recommendations of the Early Action Taskforce for early action initiatives, and has been welcomed by Margaret Hodge MP, Chair of the Public Accounts Committee, since it allows time to plan investments that can help prevent problems developing and achieve savings at a later date. This will require some frontloading to fund early action, which can then reduce the need for acute, and more expensive, provision in later years. It also provides funding stability, which organisations like the Law Centres Network have highlighted as being very important for work with vulnerable people, where the impact of constant pilots and uncertain funding is very damaging. It is also a waste of time and expertise to be unable to plan long-term, and risk losing staff

69 See M Parsonage, *Welfare advice for mental health service users: developing the business case*, Centre for Mental Health, 2013, available at: www.centreformentalhealth.org.uk/publications/publications_list.aspx.

with skills, knowledge and expertise. However, we recognise that the effectiveness of the National Fund, including its management by the Big Lottery Fund, and the government's National Strategy for Advice and Legal Support, should be reviewed periodically by the Public Accounts Committee and the National Audit Office.

- 6.6 At the same time, we are calling for further contributions of at least £50m (as indicated in para 6.1(3) above) from increases in other national and local sources which all have an interest in funding advice and legal support (eg Money Advice Service, NHS, Big Lottery Fund, housing associations, trusts and foundations, charities and lawyer fund generation schemes). These funding sources would be in addition to those provided by central government for the National Fund and would be subject to their own application processes (see Annex 10 on funding assumptions and paras 8.5 onwards), but we believe they could help ensure that the recommendations in our report are implemented in an integrated and sustainable way.

R48: The next UK government should establish a National Advice and Legal Support Fund of £50m pa for ten years (£500m in total) for England and Wales to be used for funding national and local advice and legal support work, which will help reduce the costs to the state that would otherwise have occurred over the ten-year period.

R49: Parliament's Public Accounts Committee and the National Audit Office should review periodically the effectiveness of the UK government's National Strategy for Advice and Legal Support and the National Advice and Legal Support Fund.

- 6.7 We propose that ten per cent of the National Fund be used for commissioning national initiatives (eg national helplines development, national public legal education and specialist support) with 90 per cent being allocated to local authority areas on a per capita basis and in accordance with need. This would enable an average of £250,000 to be allocated to each county or unitary authority area in England and to the Welsh regions, although in practice the sums could range from £100,000 to £500,000 according to need. The breakdown of the National Fund's annual expenditure is given in Annex 10. A number of comments on our draft report suggested that the balance between local and national work was incorrect. In particular, it was suggested that groups such as victims of domestic violence, individuals with a rare problem (such as illness) or with a problem involving a niche area of law (perhaps a particular education problem) may well need to access services of such a specialist nature that it would make better sense to be provided at a national or regional level. We very much recognise the need for such services and, in Annex 10 on the breakdown of the spend of national money, make clear that these are precisely the types of service that should be funded out of the national allocation. We would also expect that local plans would involve scope for collaboration at a regional level where necessary.

R50: The National Advice and Legal Support Fund should allocate 90 per cent of the fund (£45m pa) to local authority areas in England and local authority regions in Wales on a ring-fenced, per capita basis in accordance with indicators of deprivation and levels of existing provision, with the remaining ten per cent (£5m pa) going to national initiatives.

7 Planning and delivery mechanisms

National planning, commissioning and co-ordination

- 7.1 At the national level, we see there being a need for a mechanism (or mechanisms) for:
- developing a strategic overview, researching and monitoring the need for advice and legal support and identifying the areas and groups in greatest need and ensuring planning for these;
 - ensuring those government departments which generate the greatest need for advice and legal support contribute towards its costs;
 - identifying, in consultation with key stakeholders, national initiatives to meet these needs, including national helplines, websites and other new technology developments; national infrastructure and specialist support; and research and monitoring;
 - determining the proportion of national funds required to fund national initiatives;
 - allocating the remaining national funds to local areas on a per capita basis and according to indicators of need, to ensure a basic level of provision in all areas;
 - overseeing quality and helping ensure common outcome reporting mechanisms;
 - encouraging best practice in commissioning and procuring advice and legal support, including, where appropriate, joint commissioning between commissioners and co-production with the advice sector.
- 7.2 On balance, we propose that rather than seeking to establish a new body or transfer responsibilities to another government department, such as the Cabinet Office, or to a government agency, the Ministry of Justice (MoJ) should take on responsibility for these roles, reflecting the need for information and advice and legal aid to be viewed as part of the same spectrum of support for citizens in securing access to justice. The MoJ would therefore have the lead policy and co-ordinating role, working closely with other relevant government departments on the development of a National Strategy on Advice and Legal Support, but should commission the Big Lottery Fund to act as its funding agent in managing and distributing the National Advice and Legal Support Fund in England. The Big Lottery Fund has had extensive experience of managing advice services funding programmes, having made more grants in this sub-sector than any other part of the not-for-profit sector. It has also had wide ranging experience of managing grant programmes on behalf of government, both in the advice field (including the current Advice Services Transition Fund) and in other fields, such

as health and childcare. It is therefore well placed to work with the MoJ in this way and has indicated that it would be pleased to work with partners, including government, to look at the proposals in our report and the role the Big Lottery Fund can play. Some of our consultees have suggested that this role could be better performed by a trust or foundation with particular expertise in the area, such as the Baring Foundation or the Access to Justice Foundation, but we do not feel they have the scale or scope to be able to manage such a large fund. The Welsh Government should determine how it wishes to manage its share of the National Fund.

R51: The next UK government should place responsibility with the Ministry of Justice for national policy on access to advice and legal support. The Ministry of Justice should ensure that citizens have access to information, advice and legal support on social welfare law issues.

R52: The Ministry of Justice should commission the Big Lottery Fund to manage the distribution of the National Advice and Legal Support Fund in England.

R53: The Welsh Government should determine how it wishes to manage its share of the National Advice and Legal Support Fund in Wales.

Local planning, commissioning and co-ordination

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

- reviewing existing provision and funding;
- identifying areas and groups in greatest need (drawing on the Joint Strategic Needs Assessment and similar assessments, including information about levels of debt and taking account of existing provision);
- developing a consistent strategic approach and planning local provision jointly with the local advice sector and other key stakeholders, including commercial providers;
- ensuring that maximum possible use is made of national provision, especially websites and helplines, to avoid duplication of resources and 'reinventing the wheel';
- helping marshal other local resources to meet these needs (eg from local government, the NHS and housing associations) alongside its allocation from the National Fund;

- applying Community Budgeting⁷⁰ approaches to the co-ordination of local funds;
- signposting providers to other sources of national and local funding where appropriate;
- commissioning services to meet these needs and promoting joint commissioning (eg with health, youth and housing services);
- monitoring local provision.

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

R54: The Big Lottery Fund and the Fund Manager for Wales should base indicators of unmet need for advice and legal support on currently available data and should use them to determine each area's allocation from the National Advice and Legal Support Fund.

⁷⁰ Community Budgets are a way for local public service providers to work together to meet local needs, allowing providers to share budgets with the aim of improving outcomes for local people and reducing duplication and waste; see: <https://www.gov.uk/government/policies/giving-local-authorities-more-control-over-how-they-spend-public-money-in-their-area--2/supporting-pages/community-budgets>.

R55: The Big Lottery Fund and the Fund Manager for Wales should publish the indicators used to allocate the National Advice and Legal Support Fund to different local authority areas.

R56: The next UK government should reach agreement with organisations who hold financial information through the Credit Account Information Sharing system for data on indebtedness to be shared at a local population level on an annual basis with planners and commissioners.

R57: Advice agencies should share their intelligence more systematically with local planners and commissioners.

7.5 We think local authorities (county councils and unitary authorities in England and local authority regions in Wales) should be responsible for ensuring that adequate arrangements are in place for developing local advice and legal support plans for their areas, working in conjunction with the local advice sector. These arrangements could include the local authority co-producing a plan, working in partnership with the local advice sector or commissioning another agency (or agencies), such as the Citizens Advice Bureaux (CABx), to produce the plan in conjunction with others. The precise area (or areas) to be covered by the plans could vary according to geography. We recognise there would need to be a number of measures put in place to ensure that these were genuinely local plans, developed in conjunction with the local advice sector, rather than just being local authority led plans. There would also need to be a contingency arrangement in the event of a local authority refusing to participate in the local planning process.

7.6 In particular, the following issues would need to be addressed:

- those local authorities who currently invest little or nothing in advice and legal support should be encouraged to do so;
- the National Fund's allocation to local areas should be additional and not used by the local authority, directly or indirectly, to replace their own funding;
- independent advice and legal support needs to be provided, not just in-house local authority provision;
- the needs of people in institutions outside their 'home' local authority area (such as prisoners, people in secure hospitals and detainees in immigration centres) should be addressed;
- good practice in commissioning needs to be developed, especially given most local authorities' lack of experience in commissioning advice and legal support services; grants rather than competitive tendering should be used where possible for procurement;
- specialist provision (eg legal representation) may sometimes need to be commissioned on a wider geographical basis.

- 7.7 Our proposals for addressing these issues are set out in two boxes below – one on the process for preparing the plans and the other on the content of the plans.

Box 20

The local planning process

Approach

- For local advice and legal support plans to be comprehensive and effective, they must be drawn up by the local advice sector (defined as not-for-profit and commercial) and local government working together. The plan-making process may benefit from a representative group drawn from the local advice sector and local government and led by an independent chair.
- The plan submitted to the Big Lottery Fund must be signed by both local government and the local advice sector. It will be a public document readily available to the public at no charge.
- The Big Lottery Fund will make funding available to a specified local authority that will act as the accountable body. This funding is ‘ring-fenced’ to be used solely for the purposes set out in the funding requirements of the plan.

Commissioning and procurement

- As the accountable body, local authorities should commission services working in partnership with the local advice sector. Where appropriate, a number of local authorities may wish to commission specialist services jointly.
- Local authorities should consider procuring local advice and legal support services through grant programmes, where appropriate, rather than competitive tendering, and should reflect the new Public Services (Social Value) Act 2012 in their approach, which recognises the added value which not-for-profit agencies can often bring.
- Local authorities would not receive funding for their own services from the National Advice and Legal Support Fund.

Accountability

- Allocations to each area should be publicised by the Big Lottery Fund, together with details of which local authorities (if any) had not submitted plans and/or received allocations from the National Fund.
- Where the Big Lottery Fund does not make an allocation, it should provide feedback to the local authority and the advice sector as to the reasons.

- Where local authorities have not submitted a plan, the Big Lottery Fund should investigate the reasons for this and report back to the responsible minister in the Ministry of Justice.
- Local advice and legal support plans should be for a ten-year period (with detailed proposals for the first five years, followed by a broader outlook for the second five years), but should be reviewed every three years to ensure they remain relevant in a changing environment; local authorities should be required to publish a report every three years on achievements against planned outcomes.

Box 21

Content of local plans

Context

A local plan should demonstrate:

- how it contributes to the National Strategy for Advice and Legal Support;
- how it relates to other locally determined policy on information and advice giving;
- what measures are to be taken to improve the quality, accessibility and provision of advice and legal support in the area over the plan period;
- how it will be co-ordinated with local authorities' duties to ensure advice, information and advocacy services are available in relation to health and social care;
- how it will be integrated with the Department for Work and Pension's local service frameworks for introducing universal credit.

Content

The local plan should contain:

- an assessment of local need for legal advice and support, identifying where particular advice and legal support needs arise – eg for immigration advice in areas with large black and minority ethnic communities, housing advice in areas with low numbers of small dwellings or benefits advice in areas with high levels of deprivation;
- a statement of how and in what form commissioning and procurement will take place;
- a statement of where and in what form a member of the public could expect to access legal advice and support and the proposed changes to

this provision over the plan period;

- a summary of the consultation carried out to prepare the plan and a list of those organisations involved in the plan's preparation, as well as the results of user surveys about existing provision;
- the details of the planned provision and how this will change over time. Investment in public education and early intervention would be expected to impact on the need and provision of specialist services over the plan period;
- details of the role that different 'channels' and 'settings' provide and what provision there is for specific types of legal advice.

Coverage

- There is no prescribed coverage for a local plan, though it is anticipated that it is likely to be based on established local government boundaries.
- The plan could be prepared on a single authority basis, but the emergence in local government of combined authorities and other such arrangements may lend themselves to considering legal advice and support over wider geographical areas. In Wales, the six regional groupings of local authorities may be appropriate.
- The assessment of local need will be expected to include the needs of people living in institutions outside their 'home' local authority area.

Resource implications

As part of the process of planning future advice and legal support in the area, the plan should identify the resources required to fund:

- legal help and representation, as part of the continuum of information, advice and legal support;
- signposting to other sources of advice, including helplines and websites, as well as providing face-to-face advice for those who most need it;
- development of local IT initiatives, such as kiosks and use of smartphones and apps, as well as links to national IT provision;
- disbursements, such as medical reports;
- innovative approaches to provision;
- public legal education, including use of nationally funded provision;
- early action initiatives;
- development of 'systems thinking' approaches to explore how their own services can become better focused on the needs of users;
- feedback to the local authority and others, including national bodies, on how their systems and procedures could be improved;

- local co-ordination of advice agencies;
- measures to improve quality, including joint initiatives with partners and training for board members;
- user feedback surveys.

Funding

Local plans should prioritise their proposals and indicate where they envisage securing funding for them. This should involve:

- scoping the amount of funding already being received in the area, including from remaining legal aid;
- identifying the amount of money the local authority proposes to spend on advice and support, both in-house and through grants to local agencies;
- identifying plans for using the allocation the area hopes to be getting from the National Fund;
- identifying other funding to be secured for other parts of the plan.

The local plan should be phased, in order to demonstrate how funding early on could save resources at a later date; there should be flexibility of funding, eg from the National Fund, to allow for this.

R58: In England, unitary authorities and county councils should work with their local advice sector to co-produce ten-year local advice and legal support plans, to ensure the provision of a basic level of information and advice, including some face-to-face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund.

R59: In Wales, local authorities should work with their local advice sector to co-produce ten-year local advice and legal support plans, to ensure the provision of a basic level of information and advice, including some face-to-face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund (see para 6.1), as recommended in the Welsh Government's Advice Services Review, through a combination of local funding and support from the National Advice and Legal Support Fund.

R60: The English and Welsh Local Government Associations should support and encourage their members to engage with the local planning process.

- 7.8 We considered, but rejected, the idea of introducing a statutory requirement on local authorities to review and make provision for independent advice and legal support within the resources available, which we believe would not command support from either national or local government and would be contrary to the, so-called, ‘new burdens doctrine’ agreed with central government in June 2011.⁷¹ However, there is a duty in the Care Bill 2013 in England, which requires local authorities to ‘establish and maintain a service for providing people with information and advice relating to care and support for adults and support for carers’ (clause 2(1)). This duty provides a useful lever for advice agencies to use in their discussions with local authorities.
- 7.9 Following the implementation of the Health and Social Care Act 2012, local Healthwatch organisations are required to provide effective and accessible signposting services on all aspects of health and social care, including informing people on how they can make a complaint if things go wrong. In addition, from April 2013 upper-tier and unitary local authorities have been responsible for commissioning an NHS complaints and advocacy service to support people who wish to make a complaint about the NHS. All of these developments provide opportunities to embed advice in different local agencies. This should all be reflected in the local advice and legal support plans.

R61: Local advice and legal support plans should make clear how the area’s allocation from the National Advice and Legal Support Fund will be used to help implement this plan.

R62: Each local authority should publish a progress report on the implementation of the local advice and legal support plan every three years.

R63: The Big Lottery Fund and the Fund Manager for Wales should develop guidance for local authorities and the local advice sector on both the process for preparing local advice and legal support plans and on their content.

R64: The Big Lottery Fund and the Fund Manager for Wales should only allocate resources to an area where they and the Ministry of Justice are satisfied that the process for preparing the plan and the content of the plan meet with their guidance.

R65: The Big Lottery Fund and the Fund Manager for Wales should develop best practice principles for local authorities on commissioning and procuring advice and legal support.

⁷¹ *New burdens doctrine: Guidance for government departments*, Department for Communities and Local Government, June 2011; available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5960/1926282.pdf.

- 7.10 Our proposed delivery mechanism is significantly different from the former Legal Services Commission's initiatives for Community Legal Service Partnerships (CLSPs), Community Legal and Advice Centres (CLACs) and Community Local Area Networks (CLANs), in that we envisage most commissioning of advice and legal support services being undertaken by the local authority (mainly through grant programmes), but with a requirement to co-produce local advice and legal support plans with the local advice sector. In England, management and distribution of the National Advice and Legal Support Fund will be the responsibility of the Big Lottery Fund, which has extensive experience of funding the advice sector. In Wales, the Welsh Government will select an appropriate Fund Manager. This delivery mechanism is in keeping with the government's emphasis on localism (ie a bottom-up, rather than a top-down approach) and utilises existing bodies, rather than seeking to reinstate an old one, such as the Legal Services Commission, or creating a new one.

Box 22

Competitive tendering in Manchester

Manchester CAB was successful in securing the contract for the Community Legal Advice Service (CLAS) which operated in the city from October 2010 until 2013. The CLAS contract consolidated legal aid and council funding for advice services into one contract and led to reduced capacity among the Law Centres and other advice providers who were unsuccessful in bidding for the contract.

The competitive tendering process which was used to select the CLAS provider was described as 'hugely divisive' by many in the not-for-profit sector in the city. It seems that Manchester City Council wanted to consolidate advice services and this fitted with the Legal Services Commission's aim, which was to integrate advice provision better.

Early in 2011 the council announced the closure of its in-house service, Manchester Advice, which mainly dealt with welfare benefits, debt and housing cases. The council insist this was unrelated to the establishment of the CLAS, but was part of the council's cuts programme to balance its budget. A smaller scale in-house service, focused on appeals and supporting disabled people, has been retained by the council. The closure of Manchester Advice and the cut of £1.7m from the budget for advice services in the city meant that around 100 advice services jobs were lost. The service had dealt with 80,000–100,000 enquiries a year. One City Council employee said: 'With the closure of Manchester Advice 50 per cent of advice capacity in the city went overnight.'

From 1 April 2013, the Manchester CAB lost £800,000 in legal aid income due to the changes brought about by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012. The bureau was successful in securing some new contracts for housing work, and it successfully bid for one of the national contracts for the telephone advice run by Citizens Advice nationally. With the reduction in legal aid income, 23 specialist worker posts went and the bureau was forced to close three out of its six offices in the city. The bureau sub-contracted to two firms of solicitors and two other not-for-profit advice agencies, which will also have had to make reductions in staff.

The combination of the cut in legal aid and the closure of Manchester Advice severely reduced specialist social welfare law capacity in a city that had previously been well served by a large not-for-profit advice sector. The competitive tender process for the CLAS contract has left a legacy of distrust among many advice agencies. They argue that it undermined co-operation between agencies over client referrals and the better co-ordination of services.

8 Details of funding sources

Overall approach to funding

- 8.1 The social welfare law advice sector (not-for-profit and private) is faced with major cuts in legal aid for social welfare law (£89m pa) and local authority funding (c£40m pa). We therefore want to encourage a broader mix of funding than hitherto, including making full use of charging fees for those who can afford to pay; drawing on a range of national and local government funding sources; requiring those who contribute to the need for advice, such as the Department for Work and Pensions (DWP) (as a result of the welfare reforms and faulty assessments) and financial institutions (for contributing to indebtedness) to pay towards the cost of the advice they are causing a need for; mobilising a wider range of charitable funding sources; and pro bono and voluntary support. In particular, we believe there is the possibility of securing some increases in funding from the Money Advice Service (MAS), the local NHS, charities, housing associations, the Big Lottery Fund, lawyer fund generation schemes and trusts and foundations.
- 8.2 Advice and legal support services receive, or could potentially receive, funding from five different sources:
- 1) *national public sector funding* – including Ministry of Justice (MoJ) (legal aid and grants), Cabinet Office and other government departments, such as the DWP and the Department for Business, Innovation and Skills (BIS);
 - 2) *local public sector funding* – including local authorities, the local NHS and the local Prison Service;
 - 3) *voluntary sector funding* – including charities, trusts and foundations, housing associations and volunteering support;
 - 4) *commercial sector funding* – including sponsorship, fees, insurance, creditor contributions, pro bono support and community banking;
 - 5) *other sources of funding* – including Big Lottery Fund, MAS, social impact bonds and lawyer fund generation schemes.

Further details of each of these sources is given below and in Annexes 11–18.

National public sector funding

See Annex 11 for further details.

- 8.3 National Advice and Legal Support Fund. We propose that the National Advice and Legal Support Fund is financed by three different departments, reflecting the fact that we are talking about a spectrum of information, advice and legal support, rather than just legal aid:

- MoJ, as the lead department with responsibility for ensuring access to justice (and having made savings, including a reduction of £50m pa legal aid to the not-for-profit sector (LAG estimate), through the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 that are likely to be above those originally estimated);
- Cabinet Office, as the lead department for the not-for-profit sector, and as a current contributor to the Advice Services Transition Fund, which ends in 2015, as well as a past contributor through earlier initiatives, such as the Transition Fund (2010–12);
- DWP, as the government department that gives rise to most of the need for advice and legal support, both through the number of appeals against its decisions and through the welfare reform changes it is introducing (see para 3.2 above).

R66: The next UK government should fund the National Advice and Legal Support Fund through annual contributions from the Ministry of Justice (£16m pa), Cabinet Office (£18m pa) and Department for Work and Pensions (£16m pa), totalling £50m pa.

R67: The Ministry of Justice’s contribution to the National Advice and Legal Support Fund (£16m pa) should be funded from the £50m pa savings on civil legal aid funding for the not-for-profit sector.

R68: The Cabinet Office’s contribution to the National Advice and Legal Support Fund (£18m pa) should be a continuation of the £18m pa for 2013/14 and 2014/15 provided by the government to help the not-for-profit advice sector in England and Wales (which in England the Cabinet Office allocated to the Advice Services Transition Fund).

R69: The Department for Work and Pension’s contribution to the National Advice and Legal Support Fund (£16m pa) should be made in recognition of the advice needs it is creating through its welfare reforms and faulty assessments.

- 8.4 BIS provides (c£20m pa) core funding to support Citizens Advice’s work. Since Citizens Advice is the only national advice umbrella body to receive funding of this kind, we believe it is important that it shares the resources it is able to develop with this funding more widely within the advice sector (see para 5.41 above).

R70: The Department for Business, Innovation and Skills (BIS) should require Citizens Advice, as a condition of the funding it receives, to share its resources more widely and to exercise a stronger national leadership and co-ordination role (see para 5.41); alternatively, BIS should provide funding to the Advice Services Alliance to provide support to Citizens Advice in this co-ordinating role.

Local public sector funding

See Annex 12 for further details of local authority funding; and Annex 13 for details of advice and health funding.

- 8.5 Local authority funding. In the past, many local authorities have had welfare rights units of their own. The number of these has reduced considerably, although in Wales, every local authority has at least one welfare rights worker and five authorities still have units of five to six people. Instead, local authorities have increasingly supported not-for-profit provision, including Citizens Advice Bureaux, independent advice agencies and Law Centres. There is no definitive estimate of how much funding local authorities provide the not-for-profit sector as a whole in England, although, as part of its work for its *Review of not-for-profit advice services* (2012), the Cabinet Office estimated it to be £220m in 2010/11. It is still too early to say how much this funding is going to reduce as a consequence of the cuts in central government grant to local government, but the Cabinet Office's review estimated probable cuts of c£40m pa. One potentially positive development is the transfer of public health funding from the NHS to local government, as it is this element of former primary care trust funding that has often been used to fund advice services in health settings. We have therefore assumed that local authority funding will fall from £220m in 2010/11 to c£180m in 2015/16 (although with an average 40 per cent cut to local government from 2010/11 to 2015/16, this figure could be as low as £160m).
- 8.6 There is also considerable scope for integrating advice and legal support work into different local, but centrally funded programmes, such as the Troubled Families programme. The best way of doing this is to demonstrate where advice and legal support can best contribute, eg through helping reduce the impact of poverty on families and children, through helping prevent people becoming homeless and helping reduce domestic violence (see Box 15 on advice services in Coventry). Another opportunity is Healthwatch, the new consumer champion for health and social care in England, which local authorities are required to commission to ensure that local people's views are taken into account in the way health and social care services are planned and delivered. Local authorities also have to commission a complaints and advocacy service, which could be delivered by a local advice agency (see para 7.9 above).
- 8.7 Health and wellbeing boards in England and local service boards in Wales. These boards will have an important role in co-ordinating and developing strategies and commissioning policies for services to meet the needs of their areas. Healthwatch (see above) also sit on this body. Through playing the leading role on these bodies, local authorities can also play an important role in helping marshal local funds to support local advice and legal support plans, as part of place-based community budgeting approaches.⁷² In some areas they may wish

⁷² See footnote 70.

to use the health and wellbeing board as the forum for discussing and developing the plan. For all these reasons, the Commission sees local government continuing to be the most important funder of advice services in the future.

R71: As part of the process of co-producing local advice and legal support plans in their areas, local authorities should make appropriate financial provision for the delivery of the plan, using their mainstream budgets, public health budgets and their ring-fenced allocation from the National Advice and Legal Support Fund.

R72: As part of the process of co-producing local advice and legal support plans in their areas, local advice agencies in England should show how they can help their local authority comply with its duties under the Care Bill 2013 to provide information and advice (see para 7.8).

R73: The health and wellbeing boards in England and local service boards in Wales should be consulted regarding the local advice and legal support plans for their areas.

R74: Local authorities should use their local contacts and networks to help local advice agencies access other sources of local funding, such as the NHS and housing associations.

- 8.8 NHS clinical commissioning groups. Primary care trusts (prior to April 2013) and now clinical commissioning groups are an important funder of not-for-profit advice and legal support in England, both in community settings, such as GPs' surgeries, and in specialist settings, such as mental health trusts (see Box 23 Sheffield Mental Health CAB case study) and cancer clinics, where advice services sometimes form part of the patient pathway. In Wales, the Government's 'Better Advice, Better Health' programme has provided funding to Citizens Advice Bureaux to provide advice in health settings; the local health boards also provide some funding. The rationale for this funding is graphically spelled out in an evidence review of local benefits advice services prepared by Macmillan Cancer Support: 'One of the people interviewed even commented that financial difficulties were "more of a worry than the cancer".'⁷³ Debt and financial insecurity, as well as housing, homelessness and unemployment can be both a cause and a consequence of mental health problems. In the words of MIND's report *Still in the red*: 'Most people believed their debt had made their mental health worse and their mental health had made their debt worse.'⁷⁴ There is strong evidence to show how much income patients have secured as a result of

⁷³ *Local benefits advice services: an evidence review*, Macmillan Cancer Support, May 2012, p2; available at: www.macmillan.org.uk/Documents/AboutUs/Commissioners/LocalBenefitsAdviceServicesAnEvidenceReviewOctober2010.pdf.

⁷⁴ *Still in the red: update on debt and mental health*, MIND, 2011, p4; available at: www.mind.org.uk/media/273468/still-in-the-red.pdf.

receiving advice and growing evidence to show positive impacts on health and health costs. For these reasons, the Commission sees NHS funding as an increasingly important source of funding for advice work (see Annex 13 on advice and health).

- 8.9 Some members of the Richmond Group of Charities (a coalition of ten health and social care organisations in the voluntary sector), such as the Stroke Association, have questioned the legitimacy of health funds (or indeed charitable funds) being used in this way – but provided the health outcomes are clearly demonstrated, we feel there is a strong case and we recommend that the Richmond Group explores the potential for integrating advice into their service offerings with the help of NHS funding.

R75: The national advice services umbrella bodies in England should engage with key stakeholders at a national level – such as NHS England, Public Health England, Healthwatch England and the National Association for Voluntary and Community Action – to ensure that local commissioners understand the contribution that advice services can make to health and well-being. They should also help their local members develop appropriate service offerings to present to health commissioners.

R76: The national advice services umbrella bodies in Wales should engage with key stakeholders at a national level – such as NHS Wales, Public Health Wales, the Board of Community Health Councils in Wales and Wales Council for Voluntary Action – and help their local members develop appropriate service offerings to present to health commissioners.

R77: The Richmond Group of health and social care charities should explore the scope for securing funding for advice services for their users from the NHS and from local authorities, as well as from their own voluntary income.

R78: Clinical commissioning groups in England and local health boards in Wales should consider commissioning advice provision alongside other interventions.

R79: Clinical commissioning groups in England and local health boards in Wales should include advice provision in their health pathways (eg for cancer and for other conditions) and set up referral systems, which make it easy for health, social care and community workers to refer patients to appropriate sources of advice.

Box 23**Case study: Sheffield Mental Health CAB**

Sheffield Mental Health CAB and Advocacy Service has been in existence for over 35 years and is one of the highest ranked bureau in the country for quality of advice. The bureau was set up in 1976 inside the ‘Asylum’ on the outskirts of the city in order to enable people who could not access mainstream services, because of either their mental ill health, legal detention under the Mental Health Act or geographical isolation. This has meant providing a service ‘in-house’ on the wards of the Sheffield Health and Social Care Foundation Trust and to people who are using community-based mental health services. The bureau has evolved alongside the city’s mental health services – and has developed a strong collaboration with the NHS Foundation Trust who host it. The majority of funding for the organisation comes through contracts with the clinical commissioning group.

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

Low income and debt are associated with higher rates of mental illness. Studies suggest that the effect of low income on mental health may be largely explained by the effect of debt. Moreover, people with mental health problems are more likely to get into problematic debt. Rates of debt in people with no mental health problems are 8%. The rates of those with depression and anxiety are 24%, and for those with psychosis 33%.⁷⁵

This evidence has validated the approach taken by the service over the years. Unlike many neighbourhood services, it targets those who are most likely to need the service – people with a psychosis. These people, because of their poor mental health and vulnerability, are also often the most likely to find it difficult to access welfare rights services. People experiencing an acute mental illness episode are often socially isolated, experience discrimination and can require support from people with specialist

⁷⁵ *No health without mental health: A cross-government mental health outcomes strategy for people of all ages. Supporting document – The economic case for improving efficiency and quality in mental health*, Department of Health, 2011, p10, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/215808/dh_123993.pdf.

knowledge of their condition and the services that they are using. The service aims to ensure that at the same time as people are being supported by mental health services to get well, they are also being supported to resolve some of the causes of that poor health – such as people’s indebtedness and housing insecurity. The service also helps to provide advocacy to ensure that – should they wish it – the views of people who are receiving mental health services are heard and their wishes taken into account.

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

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

Voluntary sector funding

See Annex 14 for further details.

- 8.11 Charities. A number of national charities (often covering Wales, as well as England) raise income from the general public, which is then used to fund the provision of advice, either by the charity itself (as in the case of Shelter and Macmillan Cancer Support) or through contracts or grants to advice agencies. For example, the Royal British Legion funds Citizens Advice and AdviceUK to provide benefits advice to war veterans. The scale of resources charities allocate to advice can be very significant. Macmillan spends over £15m pa voluntary income on one-off grants and advice services. Shelter has to rely increasingly on its voluntary income, up to £10m of which is spent on advice services. Some national charities may be able to grow their voluntary income, given their fundraising capacity, but there is little prospect of local organisations being able to do this. National Voices and the Care and Support Alliance are both important coalitions representing the interests of many of these charities.

8.12 One particular type of charity that often provides advice on debt and benefits is benevolent societies – mutual associations that provide financial and social services to individuals, often according to their religious, political or trade affiliation. Occupational benevolent societies, such as Perennial, the horticulturalists' benevolent society, are increasingly giving advice on benefits to ensure that their clients are getting the benefits they are entitled to, before allocating grants to them from their own funds. Many benevolent societies are linked to Turn2us, who help people in financial need gain access to welfare benefits, charitable grants and other financial help – online, by phone and face-to-face through partner organisations. An alternative approach is for a charity to fund a post in a specialist advice agency – for example, the MS Society funds a post at the Disability Law Service to advise people with MS on benefits and other issues. Another approach is for charities to buy units of advice for its own beneficiaries from an advice agency.

R80: Members of National Voices and the Care and Support Alliance and other charities should consider how they can best use their own resources to meet the advice needs of their service users, including commissioning provision from specialist advice agencies.

R81: Benevolent societies should review how they can best ensure that their members have access to advice and legal support eg on debt and welfare benefits.

8.13 Trusts and foundations. Trusts and foundations are an important source of funding for advice services (estimated funding in 2011/12 was at least £7m). Most will focus their funding on helping develop new services, rather than providing ongoing core funding for current services, but there are signs that this is changing given the pressures on advice agencies. There are also a number of specialist trusts and foundations with a particular interest in the advice and legal support sector:

- the Access to Justice Foundation was set up to receive funds awarded by the courts for pro bono costs and distribute them to organisations that support those who need legal help but cannot afford it;
- the largest of the Legal Support Trusts is the London Legal Support Trust, which also raises voluntary funds from the legal profession through a series of fundraising initiatives, such as sponsored walks and other events, to support law centres and legal advice agencies in London and the South East;
- the newly formed Legal Education Foundation (LEF) has an endowment of c£200m following the sale of the College of Law, which will eventually yield an annual net sum of £6m for grants (although not all related to advice work). LEF's charitable objective is to promote the advancement of legal education;

- the Money Advice Trust works in the field of debt advice and has an income of c£10m pa. The major part of its income (£6.3m) is spent on the National Debtline.

8.14 Trusts and foundations have a very low profile in Wales. The Waterloo Foundation (set up by Admiral Insurance) is the biggest Wales-based foundation. Lloyds TSB Foundation funds a number of advice service projects across Wales. Wales Council for Voluntary Action (WCVA) led an initiative to try to interest England-based foundations in providing more funding in Wales.

R82: The Access to Justice Foundation, the London Legal Support Trust and the Legal Education Foundation should review how they can best support the recommendations in this report, for example through funding public legal education work.

R83: Other trusts and foundations should review how they can best help build the capacity of advice agencies to enable them to play the roles outlined in this report.

R84: Trusts and foundations that fund research should review how they can best support research into the impacts of the legal aid and funding changes to social welfare law provision on both the public and on providers (see para 1.30).

8.15 Housing associations. (See Annex 15 on advice and housing.) Housing associations (HAs) are charities, which in England currently house c5m people (about the same as local authorities), of whom about 70 per cent are on benefits. Of HA tenants, 14 per cent do not have a bank account, and as many as 24 per cent do not have direct debit facilities. HAs in England have a turnover of over £10b each year. They are increasingly becoming involved in wider neighbourhood services, including giving advice to more than 500,000 people in 2010/11.⁷⁶ HAs in Wales currently house around 280,000 people (around twice the number housed by local authorities) and have a turnover of over £650m pa. They are also increasingly involved in advice provision. HAs in England are represented by the National Housing Federation and in Wales by Community Housing Cymru. The current welfare reforms directly impact on HAs and their tenants – particularly the change to paying housing benefit monthly in arrears direct into tenants’ bank accounts (as part of universal credit), the so-called ‘bedroom tax’ on spare rooms and the overall cap on benefits. HA tenants in Wales are particularly hard hit by the bedroom tax, because much of the housing stock comprises three-bedroom dwellings transferred from the local authority.

⁷⁶ *Building futures. Neighbourhood Audit 2011*, National Housing Federation, 2012, p25; available at: <http://www.housing.org.uk/get-involved/neighbourhood-audit>.

- 8.16 From HAs' point of view these changes mean there is a risk of increased defaults leading to evictions, as well as increased management and court costs. From the tenants' point of view, many of whom are used to managing their finances on a weekly basis, there could be cash-flow problems, as well as the risk of getting into difficulties through spending their housing benefit to meet other competing demands, such as food, fuel and transport costs, instead of using it to pay their rent. Providing advice on these issues clearly makes sound business sense for HAs, as they want to sustain their tenancies and, as far as possible, avoid evictions. Since many local authorities no longer provide housing advice themselves, HAs are increasingly getting involved in this area. However, given the large geographical spread of many HAs, there will often be a need to commission services jointly with other HAs.

Box 24

Fair Money Advice

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

Fair Money Advice (FMA) is a service set up by Fair Finance (FF), a social business based in London. FMA provides an independent debt counselling service to tenants of HAs, with a clear 'client' centric focus. A dedicated advisor is allocated to a tenant facing eviction to provide intensive support through one-to-one financial counselling. This dedicated, independent support results in 70 per cent of tenants sticking to all repayment arrangements set up by FMA, and a 90 per cent rate of eviction action halted or prevented.

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

One of FF's clients, the HA Circle 33, said:

We previously funded another advice agency, but were not particularly satisfied with the results. Based on our discussions with Fair Finance (FF), we decided that the services provided, and flexibility in delivery, suited our residents needs more effectively. Moreover, the reporting and monitoring provisions within the FF contract, allowed us to effectively track the progress and effectiveness of the services delivered. There is clear reporting for top level analysis of outcomes. We have continued to work with FF, as the service is valuable to residents and provides direct access for our income recovery team. Overall we are satisfied with the quality of service and appreciative of the external challenges in which Fair Money Advice deliver the service.

R85: The National Housing Federation and Community Housing Cymru should promote the role of housing associations in funding the provision of independent advice, especially face-to-face advice, through publishing examples of good practice, including joint commissioning with other housing associations, while also stressing the need for advice to be seen as an integral part of the business of running a housing association.

R86: Local advice agencies in England and Wales should seek contracts with housing associations in their areas to provide advice and legal support to their tenants.

- 8.17 Volunteering support. Volunteers play a major role in providing information and advice. For example, there are 21,500 volunteers working in Citizens Advice Bureaux compared with 7,000 paid staff. The ability of voluntary organisations to harness volunteer support, as well as to access other sources of funding, is another reason (in addition to the 'independence' argument – see para 5.27 above) why they, rather than statutory bodies, should often be the provider of choice. Increasingly, volunteers are drawn from either those who have retired (who typically are able to stay with the agency for a substantial time) or from students (who may be keen to gain work experience, with a view to getting a paid job, and therefore may only stay for a few months). This requires more flexible approaches to involving volunteers, for example through offering evening roles or short-term project work. Involving volunteers requires infrastructure and training, which, again, is being affected by the cuts. One particular role that volunteers can play is that of McKenzie friends, who, with the approval of the judge, provide support and assistance to litigants in person in preparing for and appearing in court (see the case study in Box 26). However, training is essential for people undertaking these roles. Nevertheless, we believe that that there will

be more scope for involving volunteers in our model of provision, because of its focus on early intervention and public law education and its more flexible approach to provision.

Box 25

Making the most of local law student volunteers

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

Box 26

Personal Support Unit

Background

Personal Support Unit (PSU) volunteers provide information and practical and emotional support to people going through civil and family court proceedings without a lawyer. They don't give legal advice, but adapt the service to the needs of each individual, so clients can establish for themselves what might be the next best step. Volunteers help by sitting next to someone in court; tidying paperwork into a rational order and indexing it; signposting to information and specialist advice online; helping people access free legal advice from other organisations; or just by listening to people who are in the court system facing say, family breakdown, debt or eviction from their home. 16,000 people have been helped in nine court centres across England and Wales in the last 12 months between 2012 and 2013. (See: www.thepsu.org.)

Case study

I was at my wit's end – the litigation was breaking my heart. The office staff in Queen's Bench Listing saw that I was struggling with my defence, and suggested I go to the PSU. The nightmare began with a series of claims against me from an ex-colleague. Since then I've been to over 50 hearings – including committal applications against me – and each time I have to travel 300 miles to London. I wasn't entitled to legal aid. So £24,000 in

legal costs later, I had no choice but to represent myself. I've also had to pay around £20,000 in court costs.

He just won't give up his fight. He is so aggressive and bullying in court and outside. Although he's better behaved since that judge put pressure on him to get properly represented. The main problem is the fear. Real fear. I am physically scared of him and, of course, so worried about further costs. When you're that afraid it blocks your mind and you can't focus. I used to bring members of my family but it's not fair on them.

And that's where the PSU comes in. It's like there are two of me going into court now: the frightened one and the cool one who presents her case clearly. The volunteer looks after the anxious me so the other me can get on with the case. I used to break down in court but not anymore. Just because you are there. I've met so many of your volunteers and the calibre is incredible. I don't want advice – they respect my ability to cope. And I know I can go back to the PSU office afterwards and pour out all my feelings.

R87: The Civil Justice Council, as part of its self-represented litigants initiative, should continue to develop proposals for making greater use of McKenzie friends, including appropriate training and support.

R88: The National Council for Voluntary Organisations and Wales Council for Voluntary Action, together with the national advice services umbrella bodies, should review the current barriers to involving volunteers in advice and legal support work and develop proposals for addressing them.

Commercial sector funding

See Annex 16 for further details.

- 8.18 Sponsorship. Commercial law firms occasionally provide support to advice agencies through direct sponsorship. For example, in 2012/13 Linklaters provided the Mary Ward Legal Centre, who are located near them in London, with a grant of £90,000 (increased from £40,000 in previous years because of the LASPO Act cuts) towards their work. In her LAG annual lecture (December 2012), Lucy Scott-Moncrieff, the then president of the Law Society, called on the larger law firms to fund individual specialists where legal aid has been withdrawn and there is no private market, for example in the welfare benefits area, in order to preserve and develop these areas of expertise.⁷⁷ There may be

⁷⁷ *Where do we go from here?* Lucy Scott-Moncrieff, President of the Law Society, 2012 LAG annual lecture, December 2012, available at: www.lag.org.uk/magazine/2013/02/where-do-we-go-from-here.aspx.

some increase in sponsorship from the major law firms in response to this type of call, but this is only likely to result in modest sums – and they will tend to be London orientated.

- 8.19 There is also commercial sponsorship of advice from organisations that benefit from the capacity of individuals to pay for utilities and other services. National Debtline, run by the Money Advice Trust, has over 30 different commercial sponsors, including Barclays, British Gas and BT. There may be opportunities to seek additional corporate sponsorship of advice from utilities companies and financial institutions. However, it will be important to monitor whether large corporations choose to continue with voluntary funding of advice if they are also subject to levies by the Financial Conduct Authority (FCA) to fund the MAS.

R89: Major law firms and other national companies should consider whether they could sponsor some of the national initiatives in this report, as well as working in partnership with local advice networks in the areas where they are based.

- 8.20 Fees. Fee income is the main source of income for private practitioners other than legal aid. Although it is often difficult to charge fees for some aspects of social welfare law provision, such as debt or benefits, there is limited scope for charging some clients for aspects of immigration, employment, community care and special education work. Solicitor agencies in the not-for-profit sector, such as Law Centres, are now allowed to charge for advice through a recent change to the Solicitors Regulation Authority (SRA) Practice Framework Rules (2011), although this is new territory and organisations are exploring it with understandable caution. Nevertheless, Rochdale and Islington Law Centres are both running commercial arms, particularly focussing on immigration, employment and some aspects of debt. Agencies entering this arena need to ensure they have business planning experience – or access to those with skills in this area.
- 8.21 Insurance. Insurance can also be used to finance paid-for advice, particularly employment advice. One way of scaling up the availability of insurance would be for local authorities and housing associations to negotiate block insurance agreements on behalf of their tenants, which includes cover for legal expenses. Trade union membership often also includes insurance cover against employment disputes. At present, in the UK, there is very little use of before-the-event insurance, even when it is provided, so there would also need to be an awareness-raising campaign about the potential benefits of having this kind of cover – as well as a need to ensure that premiums remain affordable for those who are most likely to need them. In other European countries, such as Germany, France and Holland, legal insurance is widely used by over 60 per cent of households, whereas in the UK there is still an expectation that the state will provide (through legal aid and other forms of advice). Consideration could be given to a levy on household insurance profits, given that most policies

include insurance for certain kinds of legal help, but policyholders are often unaware of this and so this aspect of their insurance policy is often particularly underused.

R90: The Local Government Associations for England and Wales, the National Housing Federation and Community Housing Cymru should investigate the feasibility of making legal insurance cover available to social housing tenants.

- 8.22 Creditor payments. One particular source of funding for debt advice is the service charge received by debt advice lines such as StepChange and Payplan, which help people develop debt repayment plans, with the creditors paying the providers a percentage fee out of the payment they receive. This has the great merit of linking demand to capacity, thus enabling providers to respond to requests for advice in a sustainable way. This approach only has limited applicability, but it is an effective way of funding debt advice.
- 8.23 Pro bono. Lawyers acting pro bono – ‘for the public good’, providing their services voluntarily, without payment – already make a significant contribution to access to justice. However, it is unrealistic to consider that pro bono could ever replace publicly funded legal help and representation. At the same time as the need for pro bono help is increasing, cuts in legal aid and in funding from local authorities threaten the crucial infrastructure of general advice centres on which pro bono delivery to individuals depends. Many small high street firms that provide unsung unpaid help to their clients are also under threat. Leading pro bono law firms consider that there is unlikely to be any significant growth in pro bono hours in the foreseeable future and that the areas of social welfare law that are now out of legal aid scope are specialist areas that are difficult to replace with pro bono advice, due to the complexity of relevant laws and regulations.⁷⁸ Pro bono work is often mediated through one or other of the two main pro bono intermediaries – LawWorks (LW) for solicitors and the Bar Pro Bono Unit (BPBU) for barristers.
- 8.24 One of the challenges is to extend outside London, where most of the major firms are based. Northumbria Law School have helped develop a North East Hub, which is an important first step in regional development and which provides a model for others to follow. More generally, university law schools are becoming an increasingly important source of pro bono help, which is of mutual benefit both to clients and to the schools themselves. There is also potential for making better use of IT and telephony, in terms of unbundling cases into different parts, some of which the client could do for themselves, whilst others require the help of a lawyer, who could be based remotely, thus combining doing pro bono work with their own practice. (See Annex 17 for further details.)

⁷⁸ Submission from eight City of London major commercial law firms.

However, one barrier to pro bono work is the regulatory prohibition on aspects of in-house pro bono delivery, while an example of good practice is the Law Society funding of practising certificates for unemployed lawyers.

R91: LawWorks and the Bar Pro Bono Unit should develop initiatives for expanding the role of pro bono provision through the use of new technology.

R92: University law schools should work with LawWorks, the Bar Pro Bono Unit and Law for Life to further develop the ways in which law students can provide pro bono services, including public legal education.

R93: LawWorks and the Bar Pro Bono Unit should work with others in the pro bono community to develop pro bono services outside London and the south-east of England and to secure development funding for this, including the infrastructure required.

- 8.25 Community banking. Although not usually a source of funding advice services directly, community banking can assist people in getting access to finance, as well as areas like debt advice. Credit unions and other such institutions still only have a tiny share of deposits, but their profile is rising and with the right support and partnerships in place there is potential for them to go to scale and to stimulate positive competition across the financial services industry, which will help reduce levels of indebtedness. (See Annex 16 on commercial sources of funding.)

Other sources of funding

See Annex 18 for further details.

- 8.26 Big Lottery Fund. The Big Lottery Fund operates under an Act of parliament and is given policy directions by the English and Welsh governments. However, these directions are high-level and focused on outcomes, rather than on specific programmes. Since the lottery began in 1994, advice services have received more funding than any other part of the voluntary sector. The Big Lottery Fund also administers grant programmes for government, such as the current Advice Services Transition Fund (ASTF) for England, which means it has valuable experience both in managing funds and in the advice field. It is also matching the ASTF with its own resources, making an overall fund in England of £68m for 2013–15. The Big Lottery Fund has been reviewing its policy on advice funding and, potentially, could play a role in helping fund aspects of the Commission’s strategy. In Wales, the Big Lottery Fund has not prioritised advice as much as in England, but it is considering an anti-poverty programme, which could involve advice agencies.
- 8.27 From our discussions, the Big Lottery Fund has indicated that it is potentially interested in focusing investment in specific neighbourhoods with the highest

levels of problems and adopting a ‘whole person’ approach, involving a mixture of advice and non-advice services, with the aim of building resilience and a sense of responsibility, as well as collective skills, capabilities and support networks within neighbourhoods. This fits well with the Commission’s interest in promoting public law education work and building capacity at the local level. The Big Lottery Fund is also interested in implementing local ‘systems thinking’ solutions between voluntary sector services and local public agencies working in the specific neighbourhoods, with a view to developing closer co-operation and stronger networks. The Big Lottery Fund also favours working in partnership with bodies like AdviceUK, Law Centres Network and the Baring Foundation to take forward this type of approach.

R94: The Big Lottery Fund, in England and in Wales, should review how best it can support the recommendations in this report, eg through funding local public education work, supporting local advice networks in the most disadvantaged areas and helping organisations undertake work on failure demand.

- 8.28 Money Advice Service (MAS). MAS provides financial capability support via online, telephone and face-to-face services, as well as running a debt advice fund. All of MAS’s work is financed by a levy on financial services, which in 2013/14 is raising £80m, of which £36m goes on financial capability work and £34m on debt advice work. MAS is funded via a mechanism tied to the FCA. MAS will be seeking an increase in its budget for debt advice for 2014/15. Given continuing high levels of debt and the demand this creates for advice, we support MAS in its bid for an increased budget. The transfer of the regulation of payday loan providers from the Office of Fair Trading to the FCA in April 2014 should add further weight to this bid for an increased budget. We consider that an increase in the levy should be accompanied by a review of how MAS operates, including looking at how money is divided between financial capability and debt advice work. Such a review should be conducted in conjunction with other organisations such as Citizens Advice to avoid duplication and to ensure best use of resources.

R95: The Financial Conduct Authority (FCA) should increase its levy on financial institutions from £80m to £100m pa to reflect the high incidence of debt and the demand for advice this produces. The FCA should review how the Money Advice Service operates, including looking at how the funds are divided between financial capability and debt advice work.

R96: The Financial Conduct Authority should use its powers under the legislation to impose a levy on payday loan companies to fund debt advice services, when they take over the regulation of payday loan companies from the Office of Fair Trading in April 2014.

8.29 Social impact bonds. Social impact bonds (SIBs) are a financial mechanism for funding interventions that will result in savings to the public purse. Applying SIBs to advice and legal support services is more complex than other interventions, such as prevention of reoffending, because the metrics are harder to agree and apply, and it is also very difficult to create a control group against which to compare the intervention. Nevertheless, both the English and Welsh governments are keen to encourage this type of approach. There could therefore be a prospect of the Cabinet Office funding a pilot to test the approach in a selection of local authority areas.

R97: The Cabinet Office should fund a pilot to test the social impact bond's applicability to advice services.

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

- 1) the costs awarded for pro bono cases – these amounted to around £100,000 in 2012; the money goes to the Access to Justice Foundation;
- 2) dormant funds held by solicitors for clients who can no longer be traced;
- 3) dormant funds held by solicitors in relation to companies that have dissolved (so-called 'bona vacantia estates');
- 4) damages awarded as a result of collective actions in competition law, which remain unclaimed;
- 5) Interest on Lawyer Trust Accounts (IOLTA) scheme, which is the extra interest that lawyers can achieve through grouping together funds they hold on behalf of clients (eg mortgage deposits) and thereby getting a higher interest rate than they would on the individual sums. This scheme has been successfully introduced in the US, Australia and Canada, but so far has only operated on a voluntary basis in the UK, mainly with the larger law firms.

8.31 Given the financial challenges being faced by the advice and legal support sector, there is clearly potential for recommending that more of these schemes be implemented. This would require further discussion with relevant officials at the Cabinet Office, BIS and the Treasury, as well as with professional bodies, such as the Law Society, before drafting recommendations with any prospect of success. The London Legal Support Trust, which has examined these schemes in detail, considers schemes 3 and 4 to have particular potential, but would only support a voluntary IOLTA scheme (5). In their evidence to the Commission, the trust highlighted the fact that over the past five years, they have received over £200,000 from voluntary IOLTA-style arrangements. However, given its use in other jurisdictions, we support a compulsory scheme in the UK for firms with profits above an agreed threshold, which would raise much higher sums. There is also the recent legislation (Dormant Bank and Building Society Accounts Act 2008) allowing the government to use unclaimed assets from banks and building

societies for the benefit of the community (and subsequently used to help fund Big Society Capital), which provides a useful precedent.

R98: The Cabinet Office should agree an exemption for dormant funds held by solicitors in relation to companies that have dissolved (known as ‘bona vacantia estates’), so that they are paid to the Access to Justice Foundation, rather than to the Treasury.

R99: The next UK government should introduce legislation to make the Access to Justice Foundation the recipient of unclaimed damages in collective actions.

R100: The next UK government should introduce a compulsory Interest on Lawyer Trust Accounts (IOLTA) scheme for firms with profits above an agreed threshold with the proceeds of the scheme being paid to the Access to Justice Foundation.

9 What next?

- 9.1 After the publication of this report, subject to resources being secured, we plan to continue communications and influencing work relating to our report up to the 2015 UK general election. The main aim is to get the political parties to debate and, hopefully, adopt the ideas outlined by the report in the run-up to the general election in 2015 (for the UK) and in 2016 (for the Welsh Assembly).
- 9.2 Advisory group. An advisory group will steer this work, comprising the chair, Lord Low, and vice chair, Amanda Finlay, and some other commissioners and funders. The chair and vice chair will continue in their roles as figureheads for the Commission.
- 9.3 Wales. We will continue liaison with the Welsh Government's Advice Services Review and ensure that the two projects build on each other's work, where appropriate.
- 9.4 Evidence base. At the core of this work is the task of collating evidence about the impact on the public of the cuts in advice and legal support services. Also, the knock-on impact of the cuts on other public services and communities needs to be assessed. The timing of the Commission's report has meant that only some of this evidence was available in 2013. The continuation work will therefore seek to gather further evidence on the impact of the cuts, by collating and publishing existing research and initiating research where gaps are identified. A series of 'Low Commission – evidence reports' will be published. These reports will be used as centrepieces in the Commission's communications and public affairs work.
- 9.5 Communications plan. The aim will be to raise the profile of the Commission's recommendations and to communicate the findings of the Commission's continuing evidence gathering. Proposed activities are:
- a stakeholder conference, perhaps in conjunction with the Cabinet Office and the Baring Foundation, to discuss the report's recommendations and to advise on the strategy to take them forward. Participants would include government ministers and officials, the Local Government Association, advice sector umbrella bodies, commercial agencies, legal professional bodies and other professional societies, Justice, the Civil Justice Council and consumer groups. Part of the aim of the conference would be to identify 'champions' for the report moving forward;
 - building an alliance of supporters among charities and other organisations not directly linked to advice and legal services;
 - a public legal education event – perhaps to be funded by the Legal Education Foundation;

- media appearances, articles and other communications work to support the Commission's aims;
- co-ordination of individual case studies, examples and other evidence for media use.

9.6 Political parties and parliamentary work. A key task of the continuation project is to further develop the Commission's links with the political parties and parliamentarians. The launch of the Commission's report is an opportunity to engage with parliamentarians, civil servants and contacts in the advice and legal sector. In the run-up to the general election the Commission will look for opportunities to engage with parliamentarians on the issues around advice and legal support and to advocate for the Commission's recommendations. Proposed activities include:

- continuing work briefing ministers, shadow ministers, All-Party Parliamentary Groups, think tanks and other policy organisations;
- fringe events at the party conferences in 2014;
- meetings with civil servants to discuss the Commission's proposals and further evidence papers;
- meetings with the Local Government Associations in England and Wales to develop local authorities' interest and support;
- using the increase in MP surgery caseloads as a way of gaining MPs' interest and support.

APPENDIX 1

Background to the Low Commission

For further information on the Low Commission's background, establishment and aims, as well as biographies of members and secretariat, please see: www.lowcommission.org.uk.

Low Commission's tasks

- 1) Collate evidence about demand for advice and support on social welfare law and about the current pattern, availability, effectiveness and quality of provision, including examples of good practice.
- 2) Assess the impact of funding changes on current and future provision of advice and support on social welfare law and the resulting pressures on other areas of public expenditure.
- 3) Explore different options for future provision including earlier intervention to reduce demand, changes to referral systems, increased public legal education, better integration of current provision, investment in infrastructure and greater use of IT.
- 4) Explore different options for funding the services, including changes in the way current funding is administered, potential new sources of funding, potential new methods of funding, the potential of increased pro bono and other volunteering support and the role of local government and charitable trusts.
- 5) Develop a strategy for the future provision and funding of advice and support on social welfare law, which has the potential to command support from providers, central and local government, and other funders.
- 6) Make recommendations to government, providers, funders and other stakeholders around a strategy for advice and support on social welfare law.

Membership of the Low Commission

The Commission comprised the following people with experience in the field, but independent of government, political parties and providers:

- Lord Colin Low (crossbencher) (chair)
- Amanda Finlay (former legal services director at the Ministry of Justice) (vice chair)
- Bob Chapman (member of the Committee for Administrative Justice and Tribunals in Wales)
- Professor Mark Gamsu (professor and consultant in public health)
- Vandna Gohil (HealthWatch programme manager for Voluntary Action Leicestershire)

- David Hagg (chief executive Stroud District Council)
- Steve Hynes (director of Legal Action Group)
- Pam Kenworthy (legal director of Howells LLP Telephone Services)
- Vicky Ling (former member of Civil Justice Council and co-editor of the LAG legal aid handbook 2013/14)
- Susan Steed (New Economics Foundation and Centre for Market and Public Organisation, University of Bristol)

Low Commission secretariat

The Commission's secretary was Richard Gutch.

The Commission's research assistant was Sara Ogilvie.

Peter Hay has provided pro bono support on communications.

Low Commission funding

The following trusts and foundations have provided financial and other support:

- Baring Foundation
- Barrow Cadbury Trust
- Esmée Fairbairn Foundation
- LankellyChase Foundation
- Trust for London

Freshfields Bruckhaus Deringer LLP and Clifford Chance LLP have also provided support.

Low Commission timetable

- September 2012 to August 2013 – Evidence-gathering through interviews, meetings, group discussions, invited submissions and desk research
- 4 December 2012 – Launch of the Commission
- December 2012 to July 2013 – Six meetings of the Commission to hear from witnesses, review evidence and develop recommendations; publication of discussion papers for comment
- September 2013 – consultation meetings on draft report and receipt of written comments
- October 2013 – consideration of consultees' comments and sign off of the report by the Commission at its final meeting
- November 2013 to December 2013 – production of the report
- 13 January 2014 – launch of the report

APPENDIX 2

List of interviewees and consultees

A B Charitable Trust	British Red Cross
Access to Advice Manchester	Butler-Sloss, Baroness
Access to Justice Foundation	Cabinet Office
Administrative Justice and Tribunals Council	Cambridge CAB
Advice Lewisham	Cardiff and Vale University Health Board
Advice Portsmouth	Cardiff Council
Advice Services Alliance	Carers UK
Advicehub	Carillion Advice Service
AdviceUK	CCLA
Age Connects Wales	Central London Law Centre
Age Cymru	Centre for Human Rights in Practice, University of Warwick
Age UK	Centre for Justice
Age UK Coventry	Centre for Professional Legal Education and Research, University of Birmingham
Age UK Croydon	Charity Bank
Age UK Kensington and Chelsea	Citizens Advice
Allen & Overy LLP	Citizens Advice Cymru
Allen, Carl	Citizens UK
Aneurin Bevan Health Board	City of Westminster
Antoniw, Mick AM	Civil Justice Council
Anything Legal	Clifford Chance LLP
Association of Charitable Organisations	Cheshire West CAB
Asylum Aid	Child Poverty Action Group
Bach, Lord	Community Housing Cymru Group
Backhouse Solicitors	Community Law Partnership
Bail for Immigration Detainees	Community Legal Outreach
Bar Council	Collaboration Keele, Keele University
Bar Pro Bono Unit	Community Links
Baring Foundation	Connect Assist
Barrow Cadbury Trust	Consumer Focus Wales
BBC Children in Need	Co-operative Legal Services
BeatBullying	Cookson, Professor Graham
Beecham, Lord	Coram Children's Legal Centre
Beith, Sir Alan MP	Coventry City Council
Bichard, Lord	Coventry Law Centre
Big Lottery Fund	
BPP	
Bradshaw, Ryan	
Bristol Advice Network	

CPM21
 Mr Justice Cranston
 Cripplegate Foundation
 Cruddas, Jon MP
 Custody Minefield
 Debevoise & Plimpton LLP
 Department for Work and Pensions
 Design Council
 Detention Action
 Disability Action in Islington
 Disability Law Service
 Disability Rights UK
 DLA Piper LLP
 Drakeford, Mark AM
 Eastside Primetimers
 Edwards Wildman LLP
 Employment Lawyers Association
 Entitled To
 Equality and Human Rights Commission
 Fair Finance
 Ferret Information Systems
 Fovargue, Yvonne MP
 Freshfields Bruckhaus Deringer LLP
 FutureGov
 Garden Court Chambers
 Genn, Professor Dame Hazel
 Gilmore, David
 Giving Lab
 Gofal
 Goldsmith, Lord
 Grace, Clive
 Greenwich Housing Rights
 Hackney Community Law Centre
 Haldane Society of Socialist Lawyers
 Hannett, Sarah
 Harrow Law Centre
 Her Majesty's Courts and Tribunals
 Service
 Herbert Smith Freehills LLP
 Hodge, Margaret MP
 Hogan Lovells International LLP
 Housing Law Practitioners Association
 Hughes, Simon MP
 Huppert, Julian MP
 Immigration Law Practitioners'
 Association
 Independent Parental Special
 Education Advice
 Ipswich and Suffolk Council for Racial
 Equality
 Inclusion21
 Innovation Unit
 Islington Law Centre
 Just for Kids Law
 Keyhouse
 Khan, Sadiq MP
 King's Fund
 Kirklees Council Welfare Rights Unit
 Knowsley CAB
 Lahaise, Mark
 Lancashire West CAB
 LankellyChase Foundation
 Lasa
 Law Centres Network
 Law for Life
 Law Society
 LawWorks
 Leeds CAB
 Legal Action Group
 Legal Aid Agency
 Legal Aid Practitioners Group
 Legal Education Foundation
 Legal Services Commission
 Legal Services Research Centre
 Leonard Cheshire Disability
 Lewisham CAB
 Lewisham Clinical Commissioning
 Group
 Linklaters LLP
 Lister, Baroness
 Lloyds TSB Foundation
 Local Government Association
 London Borough of Barking and
 Dagenham
 London Borough of Greenwich
 London Borough of Hackney
 London Borough of Hammersmith and
 Fulham

London Borough of Haringey
 London Borough of Harrow
 London Borough of Hounslow
 London Borough of Islington
 London Borough of Lambeth
 London Borough of Lewisham
 London Borough of Merton
 London Borough of Newham
 London Borough of Southwark
 London Councils
 London Funders
 London Legal Support Trust
 London South Bank University Legal
 Advice Clinic
 Mackintosh, Nicola
 Macmillan Cancer Support
 MAP, services for young people
 Manchester CAB
 Manning, Margaret
 Mary Ward Legal Centre
 Maxwell, Elaine
 MBARC Research and Consultancy
 McNally, Lord
 Merricks, Walter
 MIND
 Ministry of Justice
 Money Advice Plymouth
 Money Advice Service
 Money Advice Trust
 Moorhead, Professor Richard
 Morgan, Julie AM
 National Association for Voluntary and
 Community Action
 National Autistic Society
 National Council for Voluntary
 Organisations
 National Family Mediation
 National Housing Federation
 National Parent Partnership Network
 National Youth Advocacy Service
 Neath Port Talbot County Borough
 Council Welfare Rights Unit
 Nesta
 New Economics Foundation
 Newport CAB
 Nicholson, John
 Nominet Trust
 North Lancashire CAB
 Office of Older People's Commissioner
 for Wales
 Office of the Parliamentary Counsel
 Partington, Professor Martin
 Passmore, Crispin
 Peabody
 Perennial Gardeners' Royal Benevolent
 Society
 Peterborough CAB
 Phillips, Lord
 Pitkeathley, Baroness
 Portsmouth City Council
 Praxis
 Public Health England
 Public Health Wales
 Public Law Project
 Refugee Action
 Refugee Council
 Relate
 Rights of Women
 Riverside Advice Service
 Royal British Legion
 Royal College of Nursing
 Royal College of Nursing Wales
 Royal Courts of Justice CAB
 Royal Courts of Justice Personal
 Support Unit
 Royal London Borough of Kensington
 and Chelsea
 Royal National Institute of Blind People
 Royal National Institute of Blind People
 Cymru
 Salford CAB
 Salford Council Welfare Rights and
 Debt Advice Service
 Samaritans
 Sheffield City Council
 Shelter
 Shelter Cymru
 Shepherds Bush Housing Group

Sigafoos, Jennifer
Singh, Karamjit
Slaughter, Andy MP
Slough Immigration Aid Unit
Smith, Roger
SNAP Cymru
Social Finance
Southwark CAB
Speakeasy
Stockton, Paul
Stoke CAB
Stroke Association
Sullivan, Sir Jeremy
Sunderland City Council
Sutton CAB
Tenovus
Thomas, Gareth MP
Toynbee Hall
Trust for London
Turn2us
UCL Centre for Access to Justice
UK Online Centres
Unite the union
University of Exeter
Wales Council for Voluntary Action
Wandsworth CAB
Warrington District CAB
Weil, Gotshal & Manges LLP
Welfare Rights Advisers Cymru
Welsh Government
Welsh Local Government Association
Welsh Refugee Council
Williams, Professor John
Women's Aid
Woolf, Lord
Young Legal Aid Lawyers
Young People's Support Foundation
Youth Access
YouthNet
Zacchaeus 2000
Zero-Credit

APPENDIX 3

Recommendations by audience

The recommendations below are in the following order: government (including local authorities); then the judiciary and the Civil Justice Council; then the advice sector; then funders (including managers of the National Fund); and then Wales.

UK government

- R7: The next UK government should set out and publish a National Strategy for Advice and Legal Support in England and Wales for the five-year term of the next parliament (2015–20), which should be cross-cutting across all departments and preferably have all-party support.
- R48: The next UK government should establish a National Advice and Legal Support Fund of £50m pa for ten years (£500m in total) for England and Wales to be used for funding national and local advice and legal support work, which will help reduce the costs to the state that would otherwise have occurred over the ten-year period.
- R51: The next UK government should place responsibility with the Ministry of Justice for national policy on access to advice and legal support. The Ministry of Justice should ensure that citizens have access to information, advice and legal support on social welfare law issues.
- R56: The next UK government should reach agreement with organisations who hold financial information through the Credit Account Information Sharing system for data on indebtedness to be shared at a local population level on an annual basis with planners and commissioners.
- R66: The next UK government should fund the National Advice and Legal Support Fund through annual contributions from the Ministry of Justice (£16m pa), Cabinet Office (£18m pa) and Department for Work and Pensions (£16m pa), totalling £50m pa.
- R99: The next UK government should introduce legislation to make the Access to Justice Foundation the recipient of unclaimed damages in collective actions.
- R100: The next UK government should introduce a compulsory Interest on Lawyer Trust Accounts (IOLTA) scheme for firms with profits above an agreed threshold with the proceeds of the scheme being paid to the Access to Justice Foundation.

Ministry of Justice

- R1: The Ministry of Justice should conduct a ‘sense check’ review of the matters excluded from the scope of the LASPO Act and consider reinstatement of some provisions to ensure that there are no inconsistencies between its stated aims and practice. In particular, we consider housing cases involving disrepair and the right to quiet enjoyment (protection from harassment and unlawful

- eviction); and advice on housing benefit should be restored to the legal aid scheme.
- R3: The Ministry of Justice should put in place a quarterly and annual mechanism for monitoring the full impact of the LASPO Act changes over time, and should publish the results on the uptake of the remaining aspects of legal aid quarterly and a more detailed impact review each year.
- R8: A minister in the Ministry of Justice should have the lead role in developing (the non-devolved aspects of) the National Strategy for Advice and Legal Support in England and Wales.
- R29: The Ministry of Justice should keep the costs of the increase in litigants in person under review, eg in terms of increased court time and slowing down the system; this could initially be done through surveying a sample of areas.
- R31: More generally, the Ministry of Justice should consider the innovative and effective elements of alternative dispute resolution – for example, expert assessors, inquisitorial fact-finding, telephone contact – whenever large blocks of social welfare law work are log-jammed in either courts or tribunals.
- R52: The Ministry of Justice should commission the Big Lottery Fund to manage the distribution of the National Advice and Legal Support Fund in England.
- R67: The Ministry of Justice’s contribution to the National Advice and Legal Support Fund (£16m pa) should be funded from the £50m pa savings on civil legal aid funding for the not-for-profit sector.

Ministry of Justice in conjunction with others

- R10: The Ministry of Justice and the Welsh Government should consult the Equality and Human Rights Commission on the development and implementation of the national strategies for advice and legal support to ensure that the needs of disadvantaged and discriminated against groups are taken into account.
- R11: The Ministry of Justice should develop further protocols with the Department for Work and Pensions, the Home Office, the UK Border Agency and other relevant government departments and agencies, about taking steps to improve the quality of decision-making so that fewer assessments are overturned on appeal. The Ministry of Justice should report annually on progress to the Public Accounts Committee and the Justice Select Committee.
- R12: The Department for Work and Pensions and the Home Office should be incentivised by the Ministry of Justice to get things right first time by improving their decision-making and dispute-resolution processes through a tribunal costs regime for those cases which it loses on appeal.
- R20: The Ministry of Justice and the Cabinet Office should identify areas for innovative law-making where legislation removes the need for disputes to be resolved in courts.
- R21: The Ministry of Justice should work with Advicenow and other national advice agencies on the review of forms recommended by the Civil Justice Council Working Group on self-represented litigants, in order to ensure that

its own process of continual improvement meets the needs of unassisted and unrepresented litigants, and should ensure that these reviews build on learning from the advice sector, from the Law Society, from its own counter and call-centre staff and from the judiciary.

- R22: The Ministry of Justice should work with the GOV.UK team, Advicenow and other national advice agencies to develop an information strategy for other departments whose decisions are appealed to tribunals so that their decision letters set out all the relevant information about the decision and how to challenge it.
- R27: The Ministry of Justice and the Department for Work and Pensions should conduct a cost–benefit analysis of funding independent duty specialist advice schemes along the lines of housing possession court duty schemes at busy tribunal centres during the roll-out of universal credit.
- R30: The Ministry of Justice and the Department for Work and Pensions should consider the lessons that might be learned from over two decades of dispute resolution by the Social Fund Commissioner (now abolished) and consider whether there are additional areas of benefit appeals where such an integrated model might be helpful in the efficient handling of appeals.
- R32: The Ministry of Justice should work with the Department for Education to integrate information about legal rights and responsibilities into the national curriculum programmes of study for citizenship.
- R35: In England and Wales, the Ministry of Justice and the Welsh Government should commit to the concept of national comprehensive helplines, with appropriate website support and with links to a variety of single-topic helplines, as well as to commercial and not-for-profit frontline advice agencies.
- R36: In England and Wales, the Ministry of Justice and the Department for Business, Innovation and Skills, and the Welsh Government, should review with the Legal Aid Agency and other relevant bodies, such as Citizens Advice, Law for Life and Money Advice Trust, how national comprehensive helplines with appropriate website support could best be developed. A feasibility study should then be conducted into their preferred approach, with the help of funding from the National Advice and Legal Support Fund and possibly in conjunction with a commercial partner.

Her Majesty’s Courts and Tribunal Service

- R25: In more complex cases, and where resources allow, Her Majesty’s Courts and Tribunals Service should check – by telephone if possible – before hearings, to make sure that litigants in person have all the material they need for the judge to make a decision, to avoid wasting precious hearing time. This telephone checking should also identify cases suitable for mediation – as happens already in the county court small claims mediation scheme.
- R26: Her Majesty’s Courts and Tribunals Service should review the welfare benefits appeal process to identify areas that might be suitable for a more inquisitorial,

possibly telephone-based, approach to establishing all the relevant facts and reaching a decision, building on the flexible approach to hearings already developed by the Traffic Penalty Tribunal and others.

Legal Aid Agency

- R4: The Legal Aid Agency should remunerate solicitors and specialist advisers for all applications for exceptional funding under section 10 of the LASPO Act. If there are classes of cases where it appears manifestly unfair that legal aid funding was not available except under section 10, then those areas should be brought back into scope. Funding for this should initially come from the unused budget for section 10.
- R5: The Legal Aid Agency should simplify the application process for LASPO Act section 10 funding to make it easier for people to use without recourse to legal assistance.
- R6: The Legal Aid Agency should publish case summaries where funding is granted under section 10 of the LASPO Act, so that there is greater clarity as to which applications for exceptional cases funding may succeed.
- R39: The Legal Aid Agency should retain peer review as a quality measure for organisations holding legal aid contracts and should update the ‘Improving Your Quality’ guides and post them on its website.

Cabinet Office

- R68: The Cabinet Office’s contribution to the National Advice and Legal Support Fund (£18m pa) should be a continuation of the £18m pa for 2013/14 and 2014/15 provided by the government to help the not-for-profit advice sector in England and Wales (which in England the Cabinet Office allocated to the Advice Services Transition Fund).
- R97: The Cabinet Office should fund a pilot to test the social impact bond’s applicability to advice services.
- R98: The Cabinet Office should agree an exemption for dormant funds held by solicitors in relation to companies that have dissolved (known as ‘bona vacantia estates’), so that they are paid to the Access to Justice Foundation, rather than to the Treasury.

Department for Work and Pensions

- R13: The Department for Work and Pensions should be required to make a strategic contribution to the National Advice and Legal Support Fund, in recognition of the fact that its policies create demand for advice services and require the support of advice agencies to ensure successful implementation.
- R69: The Department for Work and Pension’s contribution to the National Advice and Legal Support Fund (£16m pa) should be made in recognition of the advice needs it is creating through its welfare reforms and faulty assessments.

Other government departments, parliamentary or statutory bodies

- R18: Parliamentary Counsel's Office, as part of the good law initiative, should engage with Advicenow, advice agencies, the Civil Justice Council, Law Society specialist committees and the Civil Procedure Rule Committee, and should use this dialogue to help improve legislation by making it simpler and easier to understand.
- R19: The Department for Communities and Local Government should revisit the Law Commission's reports on housing dispute resolution.
- R49: Parliament's Public Accounts Committee and the National Audit Office should review periodically the effectiveness of the UK government's National Strategy for Advice and Legal Support and the National Advice and Legal Support Fund.
- R70: The Department for Business, Innovation and Skills (BIS) should require Citizens Advice, as a condition of the funding it receives, to share its resources more widely and to exercise a stronger national leadership and co-ordination role; alternatively, BIS should provide funding to the Advice Services Alliance to provide support to Citizens Advice in this co-ordinating role.
- R95: The Financial Conduct Authority (FCA) should increase its levy on financial institutions from £80m to £100m pa to reflect the high incidence of debt and the demand for advice this produces. The FCA should review how the Money Advice Service operates, including looking at how the funds are divided between financial capability and debt advice work.
- R96: The Financial Conduct Authority should use its powers under the legislation to impose a levy on payday loan companies to fund debt advice services, when they take over the regulation of payday loan companies from the Office of Fair Trading in April 2014.

Local authorities

- R2: Local advice and legal support plans should include provision for disbursements in order to support welfare benefits advice work.
- R14: Local advice and legal support plans should include early action initiatives which integrate information and advice services into mainstream service provision.
- R16: Local advice and legal support plans should include provision for advice agencies (with support from their national bodies) to work with relevant local public agencies, such as local authority housing departments and Jobcentre Plus, on ways of reducing preventable demand for advice by helping improve or redesign their processes.
- R34: Local advice and legal support plans should include training for key local community-based workers and volunteers to act as local problem-noticers, navigators of web-based information and community legal champions, using Law for Life training modules and guides, focused on capability.
- R58: In England, unitary authorities and county councils should work with their local advice sector to co-produce ten-year local advice and legal support

- plans, to ensure the provision of a basic level of information and advice, including some face-to-face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund.
- R60: The English and Welsh Local Government Associations should support and encourage their members to engage with the local planning process.
- R61: Local advice and legal support plans should make clear how the area's allocation from the National Advice and Legal Support Fund will be used to help implement this plan.
- R62: Each local authority should publish a progress report on the implementation of the local advice and legal support plan every three years.
- R71: As part of the process of co-producing local advice and legal support plans in their areas, local authorities should make appropriate financial provision for the delivery of the plan, using their mainstream budgets, public health budgets and their ring-fenced allocation from the National Advice and Legal Support Fund.
- R72: As part of the process of co-producing local advice and legal support plans in their areas, local advice agencies in England should show how they can help their local authority comply with its duties under the Care Bill 2013 to provide information and advice.
- R73: The health and wellbeing boards in England and local service boards in Wales should be consulted regarding the local advice and legal support plans for their areas.
- R74: Local authorities should use their local contacts and networks to help local advice agencies access other sources of local funding, such as the NHS and housing associations.
- R90: The Local Government Associations for England and Wales, the National Housing Federation and Community Housing Cymru should investigate the feasibility of making legal insurance cover available to social housing tenants.

The judiciary and Civil Justice Council

- R24: The Civil Justice Council Working Group on self-represented litigants, with the Ministry of Justice, should ascertain which types of cases most commonly have one or more litigants in person and should develop a series of checklists for both parties in these cases (eg landlord and tenant, consumer disputes with small businesses).
- R28: The judiciary should consider changes that might be valuable in enabling courts to deal justly with cases involving one or more litigants in person, in particular the extent to which more inquisitorial processes might be helpful.
- R87: The Civil Justice Council, as part of its self-represented litigants initiative, should continue to develop proposals for making greater use of McKenzie friends, including appropriate training and support.

Advice sector

- R37: The advice services umbrella bodies should ensure that their local members contribute to regional and/or local advice networks.
- R40: All publicly funded advice and specialist legal services should be accredited to an appropriate externally assessed quality standard: the Advice Quality Standard, Lexcel or the Specialist Quality Mark.
- R41: There should be further development of passporting between the various quality standards being used in the legal sector. To aid this:
- The Law Society should issue guidance for solicitors working in the not-for-profit sector when carrying out its review of the Lexcel standard.
 - The Advice Services Alliance should incorporate external peer review into the Advice Quality Standard.
 - The Advice Services Alliance should adapt the ‘Advice with Casework’ level of the Advice Quality Standard to cover specialist advice.
- R42: Other umbrella bodies and professional bodies with memberships should consider building on Citizens Advice and Age UK’s examples of passporting for their members.
- R45: Local advice agencies should explore the potential for sharing back-office functions or merging their organisations to reduce costs and increase sustainability – and thereby provide a better service to their users.
- R46: The various national advice umbrella bodies should work together more closely, sharing good practice (such as AdviceUK’s systems thinking work) and sharing their resources more, particularly those, such as Citizens Advice’s AdviserNet, that have been developed with the help of public funding.
- R47: Citizens Advice, with support from the Advice Services Alliance, should exercise a stronger national leadership role for the sector in England by working with the other umbrella bodies on ways of promoting efficiencies and effectiveness across the sector.
- R57: Advice agencies should share their intelligence more systematically with local planners and commissioners.
- R75: The national advice services umbrella bodies in England should engage with key stakeholders at a national level – such as NHS England, Public Health England, Healthwatch England and the National Association for Voluntary and Community Action – to ensure that local commissioners understand the contribution that advice services can make to health and well-being. They should also help their local members develop appropriate service offerings to present to health commissioners.
- R86: Local advice agencies in England and Wales should seek contracts with housing associations in their areas to provide advice and legal support to their tenants.
- R88: The National Council for Voluntary Organisations and Wales Council for Voluntary Action, together with the national advice services umbrella bodies, should review the current barriers to involving volunteers in advice and legal support work and develop proposals for addressing them.

- R91: LawWorks and the Bar Pro Bono Unit should develop initiatives for expanding the role of pro bono provision through the use of new technology.
- R92: University law schools should work with LawWorks, the Bar Pro Bono Unit and Law for Life to further develop the ways in which law students can provide pro bono services, including public legal education.
- R93: LawWorks and the Bar Pro Bono Unit should work with others in the pro bono community to develop pro bono services outside London and the south-east of England and to secure development funding for this, including the infrastructure required.

Managers of the National Advice and Legal Support Fund

- R15: The Big Lottery Fund should help spread the learning gained by advice agencies through their early action initiatives.
- R17: The National Advice and Legal Support Fund should support national not-for-profit agencies to do work on preventable demand, including funding for judicial review cases against national public bodies, as well as through its funding allocations to local areas.
- R23: The National Advice and Legal Support Fund, working in conjunction with the Ministry of Justice and other funders, such as the Money Advice Trust, should commission and fund relevant agencies to develop authoritative and independent self-help guides for all areas of social welfare law, including a review of all current guides; the aim should be to ensure that litigants in person know what is expected of them in the most common types of cases and know what evidence they need to produce.
- R33: The National Advice and Legal Support Fund should fund relevant agencies to develop web-based public legal education resources for the general public, based upon websites such as Advicenow.
- R38: The National Advice and Legal Support Fund should ensure that frontline agencies have access to the specialist support they need for working on complex cases through funding national specialist advice agencies.
- R43: The Big Lottery Fund should work with the national advice services umbrella organisations to develop a common outcomes framework which clearly articulates the value and impact of advice and includes outcomes from different types of advice work, such as prevention, early intervention and strategic use of the law.
- R44: The National Advice and Legal Support Fund should fund research into measuring the outcomes of advice services, including outcomes for people who access advice services online.
- R50: The National Advice and Legal Support Fund should allocate 90 per cent of the fund (£45m pa) to local authority areas in England and local authority regions in Wales on a ring-fenced, per capita basis in accordance with indicators of deprivation and levels of existing provision, with the remaining ten per cent (£5m pa) going to national initiatives.
- R54: The Big Lottery Fund and the Fund Manager for Wales should base

indicators of unmet need for advice and legal support on currently available data and should use them to determine each area's allocation from the National Advice and Legal Support Fund.

- R55: The Big Lottery Fund and the Fund Manager for Wales should publish the indicators used to allocate the National Advice and Legal Support Fund to different local authority areas.
- R63: The Big Lottery Fund and the Fund Manager for Wales should develop guidance for local authorities and the local advice sector on both the process for preparing local advice and legal support plans and on their content.
- R64: The Big Lottery Fund and the Fund Manager for Wales should only allocate resources to an area where they and the Ministry of Justice are satisfied that the process for preparing the plan and the content of the plan meet with their guidance.
- R65: The Big Lottery Fund and the Fund Manager for Wales should develop best practice principles for local authorities on commissioning and procuring advice and legal support.

Voluntary sector funders

- R77: The Richmond Group of health and social care charities should explore the scope for securing funding for advice services for their users from the NHS and from local authorities, as well as from their own voluntary income.
- R80: Members of National Voices and the Care and Support Alliance and other charities should consider how they can best use their own resources to meet the advice needs of their service users, including commissioning provision from specialist advice agencies.
- R81: Benevolent societies should review how they can best ensure that their members have access to advice and legal support eg on debt and welfare benefits.
- R82: The Access to Justice Foundation, the London Legal Support Trust and the Legal Education Foundation should review how they can best support the recommendations in this report, for example through funding public legal education work.
- R83: Other trusts and foundations should review how they can best help build the capacity of advice agencies to enable them to play the roles outlined in this report.
- R84: Trusts and foundations that fund research should review how they can best support research into the impacts of the legal aid and funding changes to social welfare law provision on both the public and on providers.

Other funders

- R78: Clinical commissioning groups in England and local health boards in Wales should consider commissioning advice provision alongside other interventions.
- R79: Clinical commissioning groups in England and local health boards in Wales

should include advice provision in their health pathways (eg for cancer and for other conditions) and set up referral systems, which make it easy for health, social care and community workers to refer patients to appropriate sources of advice.

- R85: The National Housing Federation and Community Housing Cymru should promote the role of housing associations in funding the provision of independent advice, especially face-to-face advice, through publishing examples of good practice, including joint commissioning with other housing associations, while also stressing the need for advice to be seen as an integral part of the business of running a housing association.
- R89: Major law firms and other national companies should consider whether they could sponsor some of the national initiatives in this report, as well as working in partnership with local advice networks in the areas where they are based.
- R94: The Big Lottery Fund, in England and in Wales, should review how best it can support the recommendations in this report, eg through funding local public education work, supporting local advice networks in the most disadvantaged areas and helping organisations undertake work on failure demand.

Wales

- R9: In Wales, the Welsh Government should develop the devolved aspects of the National Strategy for Advice and Legal Support, building on its Advice Services Review, in conjunction with the National Advice Network for Wales.
- R53: The Welsh Government should determine how it wishes to manage its share of the National Advice and Legal Support Fund in Wales.
- R59: In Wales, local authorities should work with their local advice sector to co-produce ten-year local advice and legal support plans, to ensure the provision of a basic level of information and advice, including some face-to-face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund, as recommended in the Welsh Government's Advice Services Review, through a combination of local funding and support from the National Advice and Legal Support Fund.
- R76: The national advice services umbrella bodies in Wales should engage with key stakeholders at a national level – such as NHS Wales, Public Health Wales, the Board of Community Health Councils in Wales and Wales Council for Voluntary Action – and help their local members develop appropriate service offerings to present to health commissioners.

