

Advisors v Legal Services Commission : which is the appropriate measure of quality advice?

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Published version

MARSON, James and FERRIS, Katy (2008). Advisors v Legal Services Commission : which is the appropriate measure of quality advice? Web journal of current legal issues, 14 (4).

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Advisors v Legal Services Commission: Which is the Appropriate Measure of Quality Advice?

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(Indent) "... for those people who face problems of social exclusion, and who may be least able to solve problems themselves, clear information and assistance may be vital to enable them to escape from civil justice problems that might well act to entrench or even worsen their predicament" (Buck et al., 2005, p. 230). (Endent)

(Heading) **Summary**

The not-for-profit (NfP) advice sector plays a vital role in ensuring the vulnerable and those in need of advice and representation have recourse to accessible, informed and quality advisors. Given the increase in social rights through legislative action and regulated benefits, the need for advocates who can assist individuals without the means to seek private legal advice is paramount in ensuring justiciable problems are resolvable. To secure that advisory agencies are providing 'quality' advice to their clients, the Government, through the Legal Services Commission (LSC), established a system of regulation. This involved State-funded agencies applying for accreditation through a system of 'Quality Marks' demonstrating the centres' level of expertise in areas of advice. This paper, from a wider study, considers how quality of advice may be identified, and undertakes this through examination of 'quality' from both the advisor's and the LSC's perspective. It concludes that quality may be a feature of advice that is not suitable to evaluation through audits and paper trails. Whilst well intentioned, attempting to offer a degree of transparency to advice and justifying public funding, clients are largely unaware of the 'Quality Mark' system and advisors have considered such regulation as a movement away from the philosophical underpinnings and ethos of the NfP sector.

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(Heading) 1 - Introduction¹

The Access to Justice Act 1999 was enacted, *inter alia*, to provide users with increased access to legal services (interpreted in this paper as advice centres providing information, advice and representation to clients who may then seek to access their rights). In the deliberations to the enactment of the legislation, concerns were raised as to how access to effective and professional advice could be achieved. As a consequence the LSC was established as the body responsible for administering the legal aid scheme of publicly funded services. The LSC was designated with authority for “establishing, developing and maintaining” the Community Legal Service (CLS) (s. 4) and the Criminal Defence Service (CDS) (s. 12), and it was bestowed with the power to administer the Community Legal Service Fund (previously civil legal aid). The fund encompassed a broad range of law including civil actions against the police, community care, consumer and general contract, debt, education, employment, housing, immigration, matrimonial and family, mental health and welfare benefits. The CLS’ objective was to “ensure that justice is provided to the most disadvantaged” and alleviate the social exclusion experienced by many, which has been acknowledged domestically by the Lord Chancellor’s Department (now Department for Constitutional Affairs) that had for many years developed policies to move individuals away from social exclusion (see Lord Chancellor’s Department (1998); Lord Chancellor’s Department and Law Centres Federation (2001); and Lord Chancellor’s Department; Legal Services Commission (2006)). Further, the European Council, at a meeting in Lisbon in March 2000, acknowledged that the extent of the social exclusion experienced by citizens of the EU could not be continued and mechanisms were required that would reduce this. As a consequence a timetable was established in a ten-year strategy to eradicate social exclusion by 2010 under the Open Method of Coordination.

As such, from 1st April 2000 the CLS was to bring together networks of funders (for example Local Authorities) and suppliers into partnerships (known as

Community Legal Service Partnerships (CLSP)) to provide the widest possible access to information and advice. The remit of the CLS is set out in the Access to Justice Act 1999 s. 4(2) and includes initial legal help and representation. Underpinning the CLS is the 'Quality Mark' (QM) Scheme, which demonstrates that the supplier of legal services can meet given standards for the type of service required. The QM is "the quality standard for legal information, advice and specialist legal services." Following the advent of the Scheme, Citizens Advice (2003a) remarked "consumers can now have much greater confidence in the quality of publicly funded advice."

(Heading) 2 - Reforms in the Advice Sector

The Access to Justice Act 1999 established a system for organisations that provide legal services to contract with the LSC. These contracts had two routes, one for the NfP organisations and one for solicitors' practices, and had the aim to "secure the provision of competent, quality assured, best value contract work in specified categories of work and from specified offices." The CLS sought to provide access to social welfare for the most vulnerable in society and coordinate the agencies in the NfP sector. There are a range of NfP agencies providing advice and information in local communities. The agencies are a mixture of independent and affiliated service providers. Some supply information and signpost or refer the client to another provider, others offer a more comprehensive service of specialist advice and representation in courts and tribunals. Further, there are agencies that specialise in advice to specific groups in the community such as single parents, people with disabilities or members of ethnic minorities with specific needs. With such diverse and separate service providers, which may act independently of other providers and therefore affect the ability for clients to be signposted or referred appropriately, the Advice Services Alliance was established to represent a number of advice agencies including Advice UK (previously known as the Federation of Independent Advice Centres),ⁱⁱ Citizens Advice, the Disablement Information and Advice Lines (DIAL UK), and The Law Centres Federation, to ensure the gamut of advice is known and available to clients.

(Heading) 3 - The Advice Centre Sample

The project from which the empirical evidence is based involved targeting NfP advice agencies, the majority of whom who contributed to the project were members of the CLSP and held General Quality Marks and Specialist Quality Marks (or were in the process of gaining those quality marks and awaiting an audit). These respondents were based in three geographical areas (Leeds (providing 5 participant centres) Manchester (providing 5 participant centres) and Sheffield (providing 7 participant centres)) and supplied advice services on a variety of matters. These included specialised advice agencies; general advice agencies offering a comprehensive service of advice and representation, including contracted and / or non-contracted agencies; and their employed and

voluntary non-legally qualified advisors offering legal advice in those centres. At the time of conducting the research Sheffield had approximately 44 advice agencies. These presented an interesting mix of independent and affiliated advice centres. In Leeds and Manchester the majority of advice centres were affiliated to larger organisations such as Citizens Advice and the Law Centres Federation. Leeds had a wide Citizens Advice Bureaux (CAB) network in and around the city.

Interviews were conducted with 47 advisors from these centres. The number ranged from 1 to 5 advisors in each centre, depending on the size and diversity of work undertaken by that particular agency. While the advisors tended to work mainly in the areas of debt, housing, immigration and welfare, this research also included advisors specialising in problems relating to one-parent families and those dealing specifically with people with learning disabilities. These advisors were representative of those working in advice centres across each area. The selection of advice centres was purposive and based on targeting a cross section of centre type: those that were independent and those affiliated to the larger organizations; different types of legal advice offered by that advice centre, from small to large advice centres, from those operating under LSC contracts and those not – to include those providing publicly funded advice and non-publicly funded advice. 28 advice centres were contacted and 17 centres agreed to participate.

Of the respondent agencies, eight centres had obtained the Specialist Quality Mark (SQM), and in the following areas – debt (5); employment (5); housing (4); immigration (4); and welfare benefits (7), (some of these centres had an SQM in more than one area of law) and they also tended to have obtained the General Quality Mark (GQM). Three agencies had obtained the GQM with Casework, with a further centre in the process of applying. Four centres had obtained the GQM with a fifth centre applying. One of the centres was providing its advice through the Information Quality Mark (IQM) due to the nature of its clients and its internet-based service.

(Sub-Heading) **3.1 - Research Instrument**

Semi-structured interviews were undertaken with the advisors which included questions to identify: the details of the advisor and advice centre they work for; the advisors' legal qualifications, education and training; any quality standards utilised by the centre (be they national, regional, or specific to the centre); the advisors' views on the issue of 'quality' and their ability to maintain standards set by internal and external bodies; their views on the standard of service they deliver; the signposting and referral policies used and the success of these; and methods incorporated into the centre to ensure quality standards were maintained.

(Heading) **4 - Effective and 'Quality' Advice for Clients**

Advisory agencies are increasingly considering client satisfaction as a means to measure the quality of the service they provide and to assist in the review and moderation of their product. Many legal professions are using systems such as Investors in People and the Law Society Practice Management Standards for this purpose. The LSC tests the data collected and maintained by the agencies to establish quality against its benchmark. Criteria are established for the maintenance of data required of the agencies and these enable an audit to be conducted and consideration of the service provided. Effective advice is a subjective term but has been used by the centres to include the understanding, by the client, of the advice that they have been provided, and their ability to act on this advice. In 2001, the Lord Chancellor's Department (now the Department for Constitutional Affairs) and Law Centres Federation stated "Poor access to advice has meant that many people have suffered because they have been unable to enforce their legal rights effectively, or have been unaware of their rights and responsibilities in the first place" (<http://www.dca.gov.uk/laid/socex/03.htm>).

To ensure that clients were provided with quality advice in the NfP sector, the LSC considered an effective method to achieve this was through quality standards that act as a benchmark and could be objectively tested through audits and reviews. This system created competence measures (which were hitherto lacking) such as the LSC's quality assurance provisions (known prior to April 2000 as the Legal Aid Board) that identified the suppliers of legal services that had been audited and had reached the required quality standards. Many agencies complied with the Legal Aid Franchise Quality Assurance Standard (from 1st April 2007 these have been replaced with Unified Contracts) and were awarded with a franchise to provide legal services. Since January 2000 the service providers who contracted with the LSC had to demonstrate they met the quality assurance standards established to obtain the contract for the specific area of advice. The LSC developed a number of QMs that identify, to clients and other advisory agencies, the providers' specialism in advice, and this impacts on the centre's ability to secure funding from sources other than the LSC.

As part of the quality standards, the LSC developed, and continues to develop, transaction criteria for areas of advice where the client's dealings with the advisor can be measured by a qualified or trained person to determine whether the advisor has acted competently (this system is similar to the provision that regulates solicitors' practices). These transactions enable elements of the advice provided, including the actions of the advisor, to be tested through a series of questions to evaluate the files that the agencies are obliged to maintain for the purpose of the audits. The transaction criteria are essential to qualify for the GQM and the SQM.

(Heading) 5 - CLS Quality Marks

The CLS created three levels for their QM standard that a centre can achieve depending upon their level of expertise and the assistance they can offer the client. The first is the IQM where the provider makes available sources of information and where it is intended that the client will access this material and seek further assistance under their own volition. Information is taken at a general level to include published materials such as leaflets and directories, and computer-based materials such as accessing information through websites. The providers of this service may or may not interact with the client. Those who do interact may have a dedicated information service with personnel available to further assist the client.

The second level is the GQM that incorporates two levels – those providers offering general help and those offering general help with casework. ‘General Help’ consists of diagnosing the client’s area of need; providing information and advice; advising the client of their options; and of providing basic assistance (completing forms for example). The client is assisted but remains in control and is responsible for any further action, beyond the initial interview with an advisor. ‘General Help with Casework’ is often used in areas such as consumer matters; debt; employment; housing; immigration; and welfare benefits. It includes the ability for the provider to undertake action on behalf of the client such as representations or negotiations and, by the nature of such a scheme, frequently includes follow-up work by the advisor. In order to achieve this QM the provider has to demonstrate that there is at least one person working in the relevant area of advice for a minimum of twelve hours per week. These hours can include training and updating knowledge in the area; supervision of staff; and interviews with clients and follow-up matters (this 12-hour requirement continues under the new Unified Contract Scheme at Annex F paragraph 14(b)). The highest form of the QM is the SQM which identifies that the relevant provider can provide advice and representation (in areas where representation by the advisor is permitted) on the more complex legal matters. By holding the SQM the provider could obtain monies from the LSC, however, even given the introduction of the LSC Unified Contracts and Fixed Fees from April and October 2007 (respectively), and its removal in the formal contract document, the quality features still remain relevant to this new form of contracting. The LSC has also developed QM’s in work for the Bar, a QM for Mediation and Websites, and standards for telephone advice.

The providers that have obtained a QM are placed on the CLS directory and the CLS Direct website. This enables providers (and clients) to identify agencies that offer advice in legal areas, and to the appropriate standard. The advisor may then refer or signpost a client to the most relevant source of help if necessary, with the assurance that the provider has obtained the applicable QM.

(Heading) 6 - The LSC’s Mechanisms for Assessing Quality of the Advisory Service

The LSC identifies (through its website) that under its obligations to measure the performance of the advisory services provided by solicitors and NfP advice centres in the civil justice sector that “The LSC is accountable to the government and the taxpayer for money paid out under contracts. We audit these contracts (both Solicitor and NfP) to provide assurance that contract work is: in line with the reasons why legal aid was granted; and being carried out according to the contract rules.” Therefore, under the various contracts that the LSC have with the service providers, a system of reviews exist to ensure that the work conducted is evidenced through the files maintained by the centre; that the costs incurred are reasonable; and that there is evidence that the SQM requirements have been met. These are achieved through a process of assessing the centre based on file reviews, including quality profiles; peer reviews; and file assessments.

(Sub-Heading) **6.1 - Quality Profiles**

The LSC has developed quality profiles to identify how effectively a provider has performed over a given period of time, which allows for similar periods in the year to be assessed (for the contracted areas of advice) and which produce comparable data. Using these data, trends can be observed such as the composition of the client users; factors that may give cause for concern (such as how frequently clients ceased to give instructions) and these are used in conjunction with the evidence from the peer review as an indication of quality. If there appears to be a problem, or the provider’s data fall out of sync from the others in the locality (or from previous years), then further investigation can be conducted to assess why this is the case. A key element stressed by the LSC is the requirement for effective reporting in the files and accurate case information being maintained, as this is the information that will be tested. Quality data are required which enable the LSC to “create new indicators of quality” (LSC website).

(Sub-Heading) **6.2 - Peer Review**

This peer review process is managed by the Institute of Advanced Legal Studies and occurs through an independent assessment of the individual provider’s quality of advice, and is carried out by experienced ‘peer’ practitioners. The reviewers access a sample of the case files held by the centre and use a set of criteria to rate the provider’s advice to the client. The assessment of the file includes assessing the communication between the advisor and the client – whether the advisor understood the client’s problems; the advisor’s ability to handle the case; whether they gathered all the appropriate materials; and an assessment of whether the client effectively understood the merits of their case. The assessment then considers the advice that was provided considering whether the advice was legally correct and appropriate to the client’s instructions; whether the advice was sufficiently comprehensive and provided in good time. The final aspect of the review considers the work undertaken / assistance provided and in so doing assesses if no further action was taken, was this

appropriate? If further work or gathering information was undertaken, was this appropriate? Did the advisor work to the aims of the client and what they wished to achieve? How effectively utilised were the resources of the centre; and did the advisor's actions in any way prejudice the client? These issues are scored on a '1 - 5' basis, with comments available to be made by the reviewer at the end of the case file.

(Sub-Heading) **6.3 - File Assessment**

File assessment is a mechanism whereby senior LSC caseworkers consider the value for money of the centre, and the quality of advice that has been provided. Under the new system (from 2007) of the Preferred Supplier Scheme, file assessment is an integral element of review and a 'pass' grade is essential in gaining such status. The principle behind the 'value for money' evaluation is to use criteria to objectively test the provider's performance against their contract, and to demonstrate that State funds have been properly managed. This information then leads to either a 'pass' or 'fail' and an assessment of risk identified through a Red, Amber or Green annotation. Under the 'quality of advice' element of the file review, peer reviewers assess a sample of case files and then award a pass or fail mark in the final report.

(Heading) **7 - The Quality Standards Utilised in the Advice Centres**

As the CLS has the QM Scheme of which many of the respondent advice centres were members, the research was interested to discover any additional / alternative mechanisms utilised. Citizens Advice operated a membership scheme identifying quality assurance standards that all Bureaux were expected to comply with. The scheme incorporated measurable standards which covered 1) a membership agreement; 2) the core advice services and social policy which included providing advice to clients and referral services; 3) quality of advice; and 4) organisational quality (National Association of Citizens Advice Bureaux (2000) Membership Scheme: Quality Assurance Standards. NACAB). This scheme established similar standards to those required by the CLS GQM. Advice UK used a Quality Assurance Framework, based on the Excellence Model recommended by the Voluntary Sector Quality Task Force, that was formulated through consultations between the Legal Aid Board, the Lord Chancellor's Department, and practitioners. This also is comparable with the CLS QM standards. 29 respondent advisors mentioned regional or national quality standards, other than the QM, of which their centre was subject to, but which had been subsumed by the wider CLS requirements. These included Advice UK, the Catholic Housing Association, Citizens Advice, City Councils, and Investors in People. Advisors further noted works handbooks (18); the centre's own internal quality standards (6) and various measures (such as advisory groups) that would ensure quality.

The centres undertook several mechanisms to test quality standards which included a system of regular workers' meetings where information and case management issues would be raised and considered, with best practice models being established (44); case conferences, where presentations of cases to an internal panel were analysed and outcomes assessed; peer reviews, with critical feedback using the files as a source for assessment (42); supervision and mentoring of advisors was adopted as a means of continuous improvement and source of critique and encouragement (32); annual appraisals that identified training needs (and attendance at regular training sessions – 45) and feedback between advisors and management (32); client satisfaction models (44), including a complaints mechanism (46); and an advisory group of professionals in the locality was also a means by which quality was evaluated (respondents mentioned more than one method).

The measures included a mix of formal and informal mechanisms. The LSC requires a centre to have a client feedback procedure as part of the QM (23 advisors noted the use of this measure), but many of the centres had their own questionnaire (22) and were allowed to use these if they were in conformity with the minimum required by the LSC. How these forms were issued varied between the centres, with one leaving the form on the reception counter for clients to pick up and complete, whereas other centres methodically sent the forms to the clients' home address. Further, a few centres had established a system of client profiles and would choose 2-3 weeks in a year, and send questionnaires to all the clients who had been seen during this time, and produce a report based on these findings. Informal measures included tabulating the number of recommendations (21) that the centre had received, general feedback from the clients (26), and the numbers of "thank-you" cards (24). It should be noted that many of the centres used more than one method, and just because they adhered to the LSC questionnaire did not mean they relied solely on this measure, supplementing it with these other mechanisms.

All the advice centres had a complaints procedure. Client satisfaction or "evaluation" forms were also used to maintain standards as well as measuring these, although these were administered in a variety of ways as discussed. Many respondents said that peer and file reviews were performed randomly and regularly. This varied from a continuous process, to once every two months, or annually. Depending on the structure of the centre, managers, supervisors or advisors randomly selected files and, using a checklist, audited the file. One advice centre explained that this function was performed for every file produced by a volunteer.

(Heading) **8 - Advisors Perception of Quality Advice**

(Indent) "A good quality service is crucial and all aspects of the advice service have to be tested to ensure a professional and quality service is offered. Just because we are a free service does not mean we can be complacent with our

work and therefore quality is the overriding principle.” (Advisor – Interview 32). (Endent)

The advisors were asked, from their practical experience, which characteristics they considered would be indicative of, or would establish, quality in advice. This question was crucial to an assessment of the issue of quality of advice as the LSC’s method of assessment focuses on the technical issues of advising a client. It was felt that the advisors might have consideration of the qualitative factors involved rather than the somewhat quantitative method adopted through the LCS review. Of the 47 respondents, the following factors were considered relevant: that the advice should be accessible to all groups which the centre serves (17); competent advice was an essential feature (6); the advisors should act in a professional manner (8) and have a knowledge of the law and procedures in accessing rights (9); and the advice centre should have the organizational infrastructure to provide the service required (12) (many of the advisors noted more than one criterion). In relation specifically to the organisational factors identified by the respondents, these included the centre possessing appropriate resources including sufficient and targeted funds, a sufficient number of advisors to deliver the service, and adequate supervisory mechanisms to maintain standards. In all cases, a holistic approach to the resolution of the client’s problem was considered the very essence of the advisory service.

When considering the characteristics an individual advisor should possess, the following were highlighted as important: Possessing the ability to communicate the law and advice to the client (18); a knowledge of the law and legal systems (18); being honest in the advice that was being provided and informing the client of the realistic chances of success in an action (13); taking the necessary time in order to establish a relationship with the client built on trust and confidence (10); the advisor must adopt a position of being non-judgmental in their approach to the client’s problem or attitude (9); the advisor must demonstrate empathy with the client and be able to understand their emotional and legal needs (9); the advisor had to have listening skills allowing them to ascertain the client’s problem and how they wished for it to be resolved, allowing the client to remain in control of their destiny (7); the centre must have a holistic approach to their service (6); the centre and the service provided should be approachable (5); the service should be individualized for the client and not prescribed by an external or internal procedure (5); the advisor should possess an analytical mind and be able to determine the best course of action for the client (3); and in achieving this, the advisor should have research and investigation skills pertinent to the task of providing high quality advice (3) (some advisors mentioned more than one main characteristic).

(Heading) 9 - Comparison between the LSC and Advisors’ View of Quality

The LSC is charged with ensuring advice is available to the most vulnerable in society (in part addressing the issue of social exclusion) and also policing how public money is spent and ensuring correct and timely advice is provided.

Procedures have to be adopted to assess the appropriate use of resources; ensure the correct legal advice is given to the client; ensure accessibility to all affected groups in society; and that the service contracted for is being delivered. However, this does concentrate on the organisation of the centre and the maintenance of files by the advisor, rather than the quality of the service and advice. The centres may consider the holistic service provided as being the most accurate determinant of a quality service, but if the advisor spends time with the client, offers them emotional support and understanding, and then provides ineffective or incorrect advice, this is no judge of a quality service. Therefore a middle ground is required, which regrettably, has not been provided with the changes to the advice service.

The criteria established through the CLS QM Scheme undoubtedly established good practice and ensures tangible evidence is produced and maintained, which allows external scrutiny and regulation to exist. Indeed, in the empirical findings to the wider project, the advisors recognised some positive aspects of the QM. It is also true that, as evidenced above, the QM began to supersede previous internal and external quality systems, and in the main, these previous systems of quality assurance did not require duplication but rather compartmentalisation of the results into the various quality bodies' files. There was, however, a level of criticism from many of the advisor respondents with regards to the influence of the CLS in forcing flawed standards of quality onto the agencies, which had little option to follow if they wished to continue obtaining funding. The QM was a prerequisite for government funding. Given the problems evident in independent advisory agencies obtaining funds, this was often a route that they were compelled to follow.

Given the information provided above, what is evident from the QM Scheme, and the maintenance of records which is an essential feature, is the overwhelming concentration on administrative practices, rather than an investigation of the advice which is provided; how this information is passed on to the client; and an assessment of the client's understanding of the advice and the actions taken to resolve the matter. True understanding of the advice, and empowerment to tackle the situation that is causing the problem, is not something that can be readily assessed through ticking the appropriate box on a questionnaire. Much greater identification of the nuances of the client's perception of the information imparted to them, and follow-up research to identify the outcome and the client's actions (or inaction) would be more persuasive evidence of effectiveness and quality. This is not to suggest that administrative practices required by the QM are not to be welcomed or be considered useful in their own right. They are a particularly effective measure of organisational skills and a methodical approach to the completion of tasks. The role of advice in the NfP sector, particularly for those who are vulnerable in society, and whose champion (the LSC) in eliminating social exclusion is tasked with the duty, is different. Quality is not necessarily aligned with administrative practices, and indeed, there is no definitive proof of the link between good administration and organisation, and

quality of advice or service. They are not mutually exclusive, but they are also indivisible.

A major finding from our research, and a key element in the responses from the advisors, was of the change occurring in the NfP advice sector. Greater regulation and, particularly, the transaction criteria imposed on the agencies, were creating tensions in the philosophy of NfP advice.

(Sub-Heading) 9.1 - The Competing Philosophical Approaches to Advice: Holistic v Specialist

There has to be a client-centred focus on individuals' real needs and circumstances, particularly for those disadvantaged and in poverty (Citizens Advice 2003a). It has further been demonstrated that accessible advice and information, and effective advice and representation, may have a positive impact in reducing social costs and prevent dependence on welfare benefits (Genn et al., 2004). This is best achieved through a holistic approach to solving clients' problems, with sufficient flexibility in funding, training and auditing criteria to enable effective front-line service providers to ensure holistic responses as appropriate for the clients' best interests. This includes access and availability of legal advice and assistance; access to the tribunals and dispute resolution; and representation of clients at hearings and in tribunals (Legatt Report, 2001), the lack of which can impact negatively on the outcome of the client's case (Genn, 1999).

Clients generally face more than one problem (Legal Services Commission, London Region, 2004), and examples of these 'clusters' can be seen in family issues of domestic violence, resulting in divorce, and problems relating to children; low income clusters of rented housing, leading to homelessness, leading to problems with the police; and employment clusters of dismissal, leading to shortage of money, leading to bills being unpaid, leading to credit problems and court action. At some NfP centres advisors would be available who could advise on each issue under the same centre. This has always been a factor which differentiated the NfP sector with firms of solicitors, although the criteria established by the LSC has made this more difficult for the NfP sector to maintain. It has, further, been considered that by providing legal advice and assistance, the clustering of problems may be prevented (see Buck et al., 2005). These problems invoke stress, emotional issues, sometimes threats of violence and retribution (as discovered in some of the cases dealt with by Law Centres, and the Housing Centres which assisted young mothers and vulnerable people) and often the client requires a friendly face and someone to speak to. It cannot be underestimated the importance of this facet of the advisory service and how NfP centres contribute to the advisory service and access to justice as a whole. As remarked by one client respondent "it was their concern for my issues that gave me confidence that the advisor cared and would help to resolve my problem."

The 'for profit' and NfP sectors of the advisory service available to clients had always been polarized in the industry due to what were seen as competing ideals. Whilst a lawyer would be able to assist in a particular area of law (such as a housing problem) and be in a position to represent the client in court, if a QM was not held in another of the 'cluster' areas in which the client faced problems, this could not be dealt with at the same time or necessarily by the same firm. The client would, as a consequence, have to find alternative source(s) of advice for the other areas. Even given the reforms to the legal profession in the 1980's and 1990's, where greater access to courts was given to non-lawyers, those in the NfP sector continued to view their 'unique selling point' as the ability to provide holistic advice. One advisor would be able to assist and 'stay with the client' through each of the problems which established the client's 'cluster.'

Even with the changes through the QM, and the requirement of a QM in each area of advice, it was generally easier for advisors in the larger advice agencies to continue to provide this holistic service as the centre would often specialize in areas of advice which inter-connected (such as advice in debt, housing and welfare benefits).

(Indent) "It's very important because there aren't many agencies who can provide advice in an holistic way. Clients can approach agencies that can provide advice on a particular problem but there aren't many who can look at a problem holistically. We are struggling to maintain this due to the franchise work because the LSC are pushing us to deal with certain aspects of work – that's probably against the ethos of what we as an advice centre are trying to do – we are fighting it all the time. It's not just about looking at the problem but pulling all the strands around the problem and if we are not able to do that then obviously we are not giving a good service." (Advisor - Interview 27). (Endent)

This system did negatively impact on the smaller and independent agencies that did not have the personnel or capacity to gain SQM's in each area (perhaps only one) and would then have to signpost or refer the client onwards.

(Indent) "I think the franchise criteria is all well and good for one specific area but people don't have just one problem and if you can get somebody who specialises in those areas to deal with it – it's more economical, quicker and the client goes away very happy. You can't advise people properly if you are short in a related area – you need to be able to sort out the overall picture." (Advisor - Interview 17). (Endent)

This tension was demonstrated through the comments of the advisors and that of the 47 respondents to the issue of the importance of the holistic approach to advice, 13 commented that it was 'essential'; 7 regarded this as 'very important'; and 20 stated it as being 'important' to their method of advice in the community.

(Heading) 10 - Impact of the CLS Quality Marks

The majority of the advice centres to this research were subject to the QM Scheme and the advisors were questioned as to the positive and negative effects on the service they provide. On reflection, most advisors were able to identify some positive effects, but only two specifically remarked that the scheme had improved the quality of the service in the centre, along with quality across the advice service through the partnerships. This appeared to be based on the audit that enabled a review of the centre's work, and the focus on the advisor's professional development. A manager of a centre further remarked that the professionalism created through the scheme enabled clients to obtain a free advisory service that would have cost them '£70-80' if they obtained advice through a solicitor.

Where most of the positive remarks were located was in the organisational and procedural changes introduced. These changes revolved around the review of the service, and a re-focusing of the direction of the centre. This enabled needs to be met, and the appropriate training for the staff that had improved the service for the clients, and also developed the staff, which produced a more professional and objective service. Three advisors stated that they thought the service had improved, evidenced through the above criteria, and a manager stated the 'true' importance of the scheme "I think it's positive for funding and the survival of the centre and I think it increases the self-worth of the advisors and their opinion of their job" (Advisor – Interview 42). Four advisors expressed that the training and infrastructure created had made them feel more confident in their dealings with clients and in the advice that they could provide. Indeed, one such advisor expressed that the clients they dealt with had chosen that centre due to their membership of the scheme and the quality assurance provided (this centre possessed the GQM). Whilst the CLS QM was to offer a security to the client that the centre had obtained accreditation to provide advice at a guaranteed level, and this would be evidenced through official stickers and advertisement demonstrating the CLS logo, almost none of the clients who were respondents to the wider research project was aware of the centres' QM status, or what it meant. Such findings were also found in Pleasance and Genn's (2002) research.

Having identified the positive elements of membership of the scheme, negative aspects did become evident, and the advisors were more vociferous when discussing the problems that the QM's had produced. The advisors overwhelmingly remarked that the bureaucracy created through membership of the scheme was a major drawback from their contact with clients and had created limitations in the service they could provide. The consequence of more paperwork and reporting data in the case files had reduced the opening hours of the services and the contact time between the advisor and the client ("it limits what we can do for clients"). Gathering the material is a very time consuming process, which has to be provided from the advisors' working hours, obviously removing time that may have previously been spent assisting clients. Such a

scenario was demonstrated in a research project specifically investigating access to advice (Pleasance et al., 2002) where it was reported that up to 25% of the respondent clients had made unsuccessful attempts to obtain advice for their problems. This impact on advisor accessibility had a negative result on the availability of advisors to assist clients when their problem required court action. Stein (2001) noted a lack of representation at courts / tribunals which removes the client's ability to voice their grievances, or access critical benefits and services.

Continuing on this theme, a specific problem noted by the advisors, corroborating previous research, was of the futility in much of the paperwork, and how this removed them from the very reason why they had initially entered the NfP sector and resulted in losing the "ethos of what the centre is about." Research undertaken by Citizens Advice identified the challenges to the CLS and that the providers of services were being 'discouraged and demoralised' by the dead weight of unnecessary bureaucracy (Citizens Advice, 2003a). An advisor to our research commented:

(Indent) "We are now in a situation where it's consuming us because the LSC are so prescriptive that they are stopping us providing a holistic service or stopping specialist advisors doing the generalist advice because they've not got the time because they're too engrossed in time recording... it's very similar to private practice. They want to make us now into solicitor type agencies. At the moment I think it's to the detriment of the service – it's time recording or what I call petty bureaucracy form-filling and we are beginning to question if this is the right direction for us – and I don't think we'll be the only organisation to be doing that." (Advisor - Interview 27). (Endent)

As quality of the advice has, as it's central principle, the impact of the advisory service on the clients, this factor has to be taken into account when critiquing which model is best placed to assess 'quality.' In a scathing assessment of the impact of the QM Scheme, Citizens Advice, through its research project in 2003 studying the views of over 200 CABx, found the impact of the CLS to be largely negative, with only seven per cent of respondents stating that the CLS had been effective in satisfying the needs of clients. It did not improve the delivery of advice; it did not make any tangible improvement to the provision of advice in the locality; it did not impact positively on the geography of available advice; it had not improved or increased advice services (indeed most of the respondents considered that the services had diminished as a result of the CLS); and these consequences were as a result of private legal practices withdrawing their services, and the bureaucracy of the CLS had taken time that would otherwise have been spent assisting clients (Citizens Advice, 2003b). In our research, the advisors' view of the impact on clients was somewhat mixed, with 14 advisors providing positive views, 13 identifying only negative impacts, and 11 reporting a mixed assessment of the impact.

(Heading) 11 - Assessment of the LSC's Quality Measures

It is evident from the LSC's mechanisms to assess quality that very important measures are being adopted that provide guidance as to the policies and procedures that are maintained in the advisory agencies. The evidence from the respondents to the empirical study did question, however, the effectiveness of these measures and those personnel charged with conducting the reviews. Underlying the concerns of the advisors was the lack of consensus of what the outcomes of the process of review was to achieve – a better quality of advice to the client, or simply a measure of the demographic of the clients, the numbers of clients processed, and the value for money which the centre provided for the taxpayers money.

There have been problems associated with those individuals who have been instructed with the task of carrying out the reviews on behalf of the LSC. Many centres reported their concerns at the qualifications of some auditors who possessed little or no prior experience of advice work, which affected the centres' view of the credibility of the findings from the review. The perceptions from some respondents was that if the personnel involved in peer reviews or file reviews were not actively advising in the NfP sector, their findings could be based on unrealistic aims, or lack an appreciation of the advisory process in the sector. It also negatively impacts on the feedback given to the centre and how this is received by the advisors. If the reviewer is out of touch with current practices, or they are a solicitor rather than a non-legally qualified advisor in the NfP sector, then feedback is likely to be considered as being from an 'outsider' and therefore viewed with caution.

This issue also led to problems when using the peer review and file review process to gauge the quality of the advice. As alluded to above, the peer review process is conducted through a review of the case report that is established for the advice to the client. This involves a series of questions to which a score is provided, and on the basis of the score the advisor either 'passes or fails' the evaluation. However, there are clear problems with such a course of action. The advice service involves legal advice (and possibly representation) and assisting a client, which by its nature is assessed qualitatively. To reduce this process and assessment to a quantitative score is a radically different method and will unlikely produce any meaningful results or conclusions. A report, highlighting good and bad practices, and explaining where improvements can be made to ensure the advisory service is as effective as possible, would be a far better use of the advisor and reviewer's time and would be a document that encourages improvement and service. This requires effective feedback to be provided that enables tangible improvements to be made, and encourages a dialogue between the reviewer (or LSC) and the centre (and individual advisor) who can discuss the outcomes and develop processes for future action. This goes beyond the appeal process that is available when the centre disagrees with the outcome of

the review, and fosters a cooperative relationship, with quality of advice and service at the heart of the review's function.

Assessing files may also lead to judgements that are not, of themselves, indicative of a quality service provided to the client. Using a series of case files, taking these away and assessing the materials contained, before preparing a report and issuing this to the centre, may demonstrate the legislation used in the advice. These may then be gauged against the client's problem(s) to determine if the correct laws and regulations have been noted, but this does focus on the true 'outcome' of the case. In assessing a quality service, the wider report from which this paper derived questioned the clients for their perceptions of the centre and advisor. This approach, which clearly would involve greater expense and resources, would be a more effective measure of quality and, used in conjunction with the other paper-based evidence, would ensure a more detailed picture of the service was gained, and conclusions more indicative of the entire service.

The files themselves are also of concern due to the time taken to fully complete. As these are the evidence which are taken by the LSC and assessed, unless they are completed by the advisor and maintained in as detailed a form as is possible, the results from the audit are likely to be less favourable than what is actually occurring in practice. Such an example is the detail contained in the debt transaction criteria. There are some 74 questions to be completed to gather information from the client; a further 44 questions on the advice provided and the process involved; there are 18 questions investigating the procedural and practical steps taken in the pre-proceedings beyond the initial advice; if proceedings have been issued against the client there are up to 22 questions that require completion; there are 2 questions involved in closing the case; and 9 questions if the file is transferred or referred to another advisor. The evidence here is very valuable and is good practice which enables an effective paper-trail to be accomplished, but may not be the best use of the advisor's time and will certainly remove the advisor from the 'front line' of the advisory service. The paper trail will also prove to be a dissatisfactory measure of a quality service where the client's problem may involve a distressing event and where sensitive information has to be given (typical examples involve asylum claims, or situations involving domestic violence). Often, the advantage of the NfP sector has been the time that was available to gather this information and build up the trust between the client and advisor that is beneficial in such situations. Paper-based evidence is unlikely to accurately determine the quality of the service that was provided without actually discussing the issue with the client personally.

(Heading) 12 - Conclusions

This paper intended to assess which measure of quality in advice was the most appropriate and relevant to providing clients with a quality service. Two approaches were compared, that of the State's body governing the provision of such services, the LSC, and advisors who provided the advice and interacted with the clients. Both the advisors and the LSC recognised the importance of

ensuring that individuals have access to quality advice and representation at as early a stage as possible in their dispute/problem. Without relevant action being taken, a spiral effect can quickly develop that may ultimately lead the individual into social exclusion and exacerbate an otherwise justiciable situation (see Buck et al., 2005).

Each approach was relevant and sought to identify key elements including the numbers and profile of clients; the areas of advice required and confirmation that the advisors could either provide the necessary advice or signpost/refer the client to a more appropriate source; an analysis of the outcomes of the advice; and collation, reflection and action following the clients' feedback. However, there were significant philosophical differences between what the LSC wished to achieve, and factors that the advisors considered were the most relevant and important. The QM Scheme was noted to have benefits and, indeed, many of the criteria for gathering data that could be objectively assessed provided important results. Further, as public funds were provided to advice agencies, some form of external scrutiny was essential to maintain standards, and this could only be achieved through the assessment of data maintained by the agencies.

Ultimately, the characteristics identified by the advisors were, qualitatively, likely to produce a more accurate and reflective indicator of 'quality' in advice. If adopted, this would require substantial additional costs for the LSC, but when the quality of advice (which is being paid from the public purse) and its value in alleviating and reducing social costs (Genn et al., 2004) is at stake, this may be of greater benefit than persevering with the current system of review.

(Heading) **References**

Buck, A., Balmer, N., and Pleasance, P. (2005) 'Social Exclusion and Civil Law: Experience of Civil Justice Problems Among Vulnerable Groups' *Social Policy & Administration*, Vol. 39, No. 3, June, pp. 320-322.

Citizens Advice (2003a) 'Geography of Advice: An Overview of the Challenges Facing the Community Legal Service'

<http://www.citizensadvice.org.uk/macnn/geogofadvicefeb04.doc>.

Citizens Advice (2003b) 'Potential Partnerships – Citizens Advice Survey of CABx Experience of CLS' Citizens Advice, December.

Community Legal Service and Sheffield Community Legal Service Partnership (2001) 'Draft Legal Services in Sheffield, Need and Resource Analysis: Executive Summary' Sheffield: Community Legal Service.

Genn, H. (1999) 'Paths to Justice: What People do and Think about Going to Law' Oxford: Hart Publishing.

Genn, H., Pleasance, P., Balmer, N. J., Buck, A., and O'Grady, A. (2004) 'Understanding Advice Seeking Behaviour: Further Findings from the LSRC Survey of Justiciable Problems' Legal Services Research Centre.

Johnstone, J., and Marson, J. (2005) 'Advice Agencies, Advisors and their Clients: Perceptions of Quality' Department for Constitutional Affairs, DCA Research Series 10/05, December.

Law Society: The Guide to Professional Conduct of Solicitors, London: Law Society.

Leeds Community Legal Service (2002) Draft Advice Strategy, Leeds.

Legal Services Commission, London Region (2004) 'A Framework for Developing the Legal and Advice Service Sector in London' September.

Legatt, Sir Andrew. (2001) 'Tribunal for Users, One System, One Service' London: Lord Chancellor's Department.

Lord Chancellor's Department (1998) 'Modernising Justice' Cmnd 4155, London: Her Majesty's Stationary Office.

Lord Chancellor's Department (1998) 'Resolving Disputes in an Information Age', LCD Consultation Paper, London: Lord Chancellor's Department.

Lord Chancellor's Department and Law Centres Federation (2001) 'Legal and Advice Services: A Pathway Out of Social Exclusion' London: Lord Chancellor's Department.

Lord Chancellor's Department; Legal Services Commission (2006) 'Making Legal Rights a Reality: The Legal Services Commission's Strategy for the Community Legal Service 2006-2011' Community Legal Service.

National Association of Citizens Advice Bureaux (2000) 'Membership Scheme: Quality Assurance Standards' NACAB.

Pleasance, P., Buck, A., Balmer, N., O'Grady, A. (2002) 'Summary of Findings of the First LSRC Periodic Survey of Legal Need' Interim Report to the Lord Chancellor's Department and Legal Services Commission, December.

Pleasance, P. and Genn, H. (2002) Legal Needs Periodic Survey, Presentation at Legal Services Research Centre International Conference, Oxford: LSRC.

Stein, J. (2001) 'The Future of Social Justice in Britain: A New Mission for the Community Legal Service' Paper 48, Centre for Analysis of Social Exclusion: London School of Economics.

ⁱ This paper draws upon a wider research project funded by the Department for Constitutional Affairs: (Johnstone, J., and Marson, J., 2005) whose funding and assistance are gratefully acknowledged. The views expressed are personal and errors and omissions remain with the authors.

ⁱⁱ See www.adviceuk.org.uk.