The Community Legal Service

The Advice Services Alliance’s response to the Lord Chancellor’s Department’s consultation

Paper
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PREFACE

ASA is the umbrella organisation for independent advice services in the UK. Its aims are to:

- champion the development of high quality information, advice and legal services;
- ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage;
- encourage co-operation between organisations providing such services;
- provide a forum for the discussion of issues of common interest or concern to advice organisations.

The following national advice networks are full members of ASA:

- Citizens Advice Scotland (CAS);
- DIAL UK;
- Federation of Independent Advice Centres (FIAC);
- Law Centres Federation (LCF);
- National Association of Citizens Advice Bureaux (NACAB);
- Scottish Association of Law Centres (SALC);
- Shelter;
- Shelter Cymru;
- Youth Access.

Other organisations and individuals concerned with the provision of advice and legal services are affiliated to ASA as associate or subscribing members.

ASA undertakes policy and development work in agreed areas on behalf of its members. Our current priorities for such work are:

- alternative dispute resolution;
- the civil justice system as it impacts on advice agencies and their clients;
- legal services, including co-ordinating advice network involvement in legal aid contracting;
- quality and standards of advice.

ASA is therefore pleased to have an opportunity to respond to the Lord Chancellor's Department Consultation Paper on the Community Legal Service. Our response is based on discussions between ASA network members involved in advice and legal services provision in England and Wales, and should be considered in conjunction with the individual responses submitted by those networks. The response seeks where possible to represent the consensus of opinion amongst network members on the Department's proposals in general, but its comments on specific proposals should not be taken in every case as necessarily representing the views of all networks.
EXECUTIVE SUMMARY

1. Overview of the Proposals

1.1 ASA has long called for a more strategic and co-ordinated approach to the planning, funding and delivery of information, advice and legal services. We therefore welcome the Government’s proposal to establish the Community Legal Service (CLS). We are however very disappointed at the lack of policy detail set out in the consultation paper. A coherent and practical policy framework needs to be developed if the new Service is to become a reality.

1.2 ASA believes that the primary aims of the CLS should be:

- to create a comprehensive referral network of providers;
- to give greater priority to addressing legal problems which particularly affect the least well off and socially excluded.

1.3 These aims cannot however be fully achieved unless the Government ensures that additional resources are made available.

1.4 Each element of the CLS has an important contribution to make to the development of a referral network, including through: local concordats governing relations between providers; funding national and regional strategic support services; establishing quality requirements governing referrals; and producing a directory of quality marked providers, available in both paper and electronic form.

1.5 There are however two hurdles to an effective referral network. Firstly, in many areas there is a lack of specialist provision, especially in relation to social welfare law. This highlights the need for additional funding. Secondly, in some areas there are cultural barriers, manifested in mistrust between providers and mutual ignorance of each other’s roles. A pro-active approach is required if this problem is to be overcome.

1.6 ASA supports the approach taken in the Government’s White Paper, which argues that an effective justice system is required to tackle social exclusion and proposes the following priorities for publicly funded legal services:

- social welfare law cases;
- other cases of fundamental importance to the individual, including child protection and protection against violence;
- cases involving a wider public interest.

1.7 Social welfare law should be defined broadly, to cover the categories traditionally recognised under the legal aid scheme, such as housing and welfare benefits, and also less mainstream or newly emerging areas of law, for example community care, education and human rights. There is an overlap between the categories of social welfare law and public interest cases, and for ease of reference, ASA’s response uses the term “social welfare law” to cover both categories.
1.8 ASA agrees that the CLS should be inclusive, covering a range of services and providers. We are however concerned that if its scope becomes too broad, the CLS will lack focus and direction. We would urge a cautious approach in the first instance, as this will best ensure the orderly development of the new Service. In considering scope, account should be taken of: the statutory framework set out in the Access to Justice Act 1999; the role of the new Legal Services Commission and local authorities in planning the CLS; and the aims of the CLS, especially greater priority for social welfare law cases.

1.9 The CLS should largely focus on publicly funded advice and legal services, and initially include the following types of provider:

- organisations providing services funded through the Community Legal Service Fund (which will replace legal aid);
- barristers and solicitors undertaking private client or pro-bono work in categories of law which are within the scope of the CLS Fund;
- independent not-for-profit sector advice agencies;
- local authority managed advice services and services run by housing associations and similar bodies;
- public bodies and not-for-profit organisations providing information on the law as a core or significant function;
- family and community mediation services.

1.10 ASA strongly disagrees with the consultation paper’s suggestion that there is no widespread unmet need for legal services. The analysis on which it is based is fundamentally inadequate and also appears to contradict previous ministerial statements on the CLS, which acknowledge the problem of unmet need.

1.11 The Legal Action Group’s response to the paper contains a comprehensive refutation of the Department’s analysis, inter alia providing detailed figures, largely from official sources, which demonstrate unmet need for social welfare law services.

1.12 The analysis also flies in the face of the advice sector’s experience that firstly, many agencies are hugely overstretched and secondly, where resources become available for additional services, the expanded capacity is rapidly filled.

1.13 Crucially, the analysis considers only raw supply, taking no account of the levels and quality of service offered by providers. The research evidence suggests that the quality of advice services is extremely patchy.

1.14 The consultation paper virtually ignores the role of legal aid and private practitioners in the CLS. This means that it has virtually nothing to say on legal representation, a worrying omission in the context of the paper’s suggestion that many people need “basic information and advice on their rights and responsibilities” and often “do not need to go to court to have their dispute or difficulty resolved”.

1.15 This assertion needs to be heavily qualified to take account of the complexity of the law, the frequent need for early intervention by a skilled adviser and the importance of equality of arms, particularly where an individual is pitted against a powerful opponent. All of this points to the need for expert services which can advocate a client’s case and provide formal representation where required.
1.16 Consideration needs to given to the role of alternative dispute resolution (ADR) within the CLS. It is questionable whether forms of ADR having an adjudicative function - for example ombudsman schemes - should be included, unless the CLS is to be defined very broadly to cover the civil courts and tribunals. As an initial step however, the CLS should incorporate family and community mediation. Providers of such services should be formally represented in Community Legal Service Partnerships (CLSPs), and an appropriate quality mark should be developed.

1.17 ASA believes that central government departments have a key role to play in helping to develop a national infrastructure of services, particularly through support to the advice networks. Current government support to the networks is very uneven, and the smaller networks in particular face continuing difficulties in securing funds to provide core services to their members.

1.18 The Government should therefore review departmental support of information and advice services with a view to establishing a national strategy for such support. The review should seek to identify specific responsibilities for funding various activities and consider options for greater inter departmental co-ordination, in order to make the best use of available resources for the benefit of the sector as a whole.

1.19 Central government also has a specific role to play in the funding of second tier support services providing consultancy, training and casework referral services to front line providers. Consideration should be given to establishing new second tier services in areas of law such as employment and welfare benefits, funded by the government department with the relevant policy responsibility.

2. The Community Legal Service Fund

2.1 ASA agrees that providers of services paid for through the CLS Fund should be subject to quality assurance requirements. We are however opposed to cash limiting and the replacement of entitlement by discretion, which will inevitably result in arbitrary rationing.

2.2 ASA welcomes the Government’s indication that most solicitors meeting the requisite quality standard are likely to be awarded a legal aid contract. This is necessary to ensure an acceptable balance between on the one hand, quality and resource efficiency, and on the other hand, accessibility and client choice. We also welcome the decision to set aside £20 million for not-for-profit sector advice and assistance contracts next year. We are pleased that this sum is seen as a floor rather than a ceiling, and hope that it will be increased in future years.

2.3 ASA supports a mixed economy of private practitioners and not-for-profit organisations in the provision of social welfare law services. In some areas of law, a strong solicitor presence is essential to ensure access to representation, and this should be taken account of in awarding contracts. The new Legal Services Commission should encourage the development of not-for-profit sector salaried solicitor services where there is insufficient coverage by private practitioners.
2.4 The prospects for refocusing legal aid resources to increase the level of social welfare law provision are likely to be limited, for several reasons:

- although savings may result from withdrawing personal injury claims from legal aid scope, there is debate over the level of such savings and concern that they may be clawed back - the Government should commit itself to reapplying any savings to the CLS Fund;
- it is right that solicitors meeting the required standard should get a contract, but this will reduce the funds available for new services;
- the effects of geographical redistribution of legal aid funds will be limited, and the process will result in winners as well as losers;
- unless the CLS Fund is ring-fenced, there is a real risk that it will in future be raided to shore up the criminal budget, which must remain demand led.

2.5 It is therefore difficult to see how contracting within a capped budget will address the issue of “advice deserts”, namely areas of the country where there is a shortage of lawyers and advisers specialising in social welfare law.

2.6 ASA supports legal aid funding for tribunal representation. We welcome the Legal Aid Board’s proposal that legal aid should be available for representation at Immigration Appeal Tribunals, and we hope that Employment Tribunals and hearings before Social Security Commissioners will be also be covered in due course. Funded representation should be subject to a merits test, and in the case of Employment Tribunals, consideration should be given to changing the cost recovery rules.

2.7 ASA supports legal aid funding for county court advice and representation schemes for housing possession cases, initially in the form of a pilot project.

2.8 ASA welcomes the Board’s Method of Delivery pilot, which will test out contracts for the provision of telephone, outreach and second tier services. These have a major role to play in the CLS, especially in rural and semi-rural areas and in relation to areas of law not generally covered by mainstream providers.

2.9 There are many other services which might be funded through the CLS Fund, for example ADR services, legal work with community groups, social policy work, legal education and legal information. Caution is however required in extending legal aid scope, as for every new service funded there will be less money for traditional services. Each extension should be considered on its merits, and potential new services researched, piloted and rigorously evaluated.

2.10 CLS Fund resources must continue to be targeted on specialist lawyers and advisers who are able to deal with cases in-depth. Diverting funds to basic information and advice is likely to lead to the duplication of work and the dilution of provision.

2.11 Early priority should be given to increasing financial eligibility for legal aid. ASA welcomes the Government’s intention to re-introduce a contributory tier for advice and assistance.
3. Community Legal Service Partnerships

3.1 The Access to Justice Act places the Commission under a statutory duty to co-operate with others in developing the CLS. There is however no reciprocal duty on local authorities to co-operate with the Commission. Nor is there any proposal to provide increased central government funding to enable local authorities to fund new services. ASA has major concerns over those authorities with little or no interest in advice and legal services, and as in the case of legal aid contracting, it is unclear how the current proposals will address the problem of advice deserts.

3.2 There is a need to raise the awareness of local authorities and other funders of the aims of the CLS and the role of CLSPs. Regional Legal Services Committees (RLSCs) will have an important role to play in this respect, and links should also be forged with the Department of the Environment, Transport and the Regions and the Local Government Association.

3.3 The Commission should report to the Lord Chancellor on the operation of CLSPs, including cases where local authorities are not fully participating. The Government will need to consider incentives and sanctions to be applied to recalcitrant local authorities. ASA believes that it will become necessary to impose a statutory duty on local authorities to plan and fund services in co-operation with the Commission.

3.4 The CLS must be considered as a national service, requiring the establishment of a national strategic framework setting out principles and guidance governing local planning. Without such a framework, the CLS is likely to develop in an ad hoc manner, with local authorities reinventing the wheel and pursuing diverse and inconsistent agendas.

3.5 The Commission is best placed to develop such a framework, drawing on the experience of the pioneer and associate pioneer partnerships, its own experience in planning services and the views of providers and other parties.

3.6 The purpose of a national strategic framework should not be to instruct local funders exactly how to spend their money or to impose identical models of provision. It is rather to ensure a nationally consistent and fair approach to planning and funding.

3.7 The framework should cover the following:

- guidance on establishing and running CLSPs;
- methodologies for assessing need and mapping supply;
- consultation procedures;
- a compact between local authorities and advice organisations;
- fair and transparent criteria and procedures for allocating funding;
- guidance on good practice.

3.8 Sufficient resources will be required to ensure the effective operation of CLSPs. The Commission should be adequately funded for this purpose, and local authorities should be expected to contribute to management and administration.
3.9 ASA is concerned that there is adequate advice network representation in CLSPs, reflecting the diverse nature of the sector. A national strategic framework should include guidance on the selection of provider members, emphasising transparency and fairness. There should be a minimum requirement for CLSPs to include at least two advice sector representatives from different networks.

3.10 ASA agrees that charitable funders should be involved in CLSPs. However, it is vital that they retain their independence and continue to support innovation and special projects, which may not be identified as priorities through the CLSP planning process.

3.11 CLSPs should assess the need for advice and legal services on the basis of nationally agreed methodologies, building and improving on the work undertaken by RLSCs. Needs assessment needs to be based on both quantitative and qualitative information. The latter is required to aid identification of needs which may not be reflected in official data.

3.12 Needs assessment is probably best undertaken at local level, and CLSPs will be well placed to carry out the basic groundwork. The Commission must however continue to take a strategic overview of need and provision in order to determine the application of its own funds, ensure public accountability and identify services which might best be provided on a regional or national basis.

3.13 Accurate mapping of the supply of advice and legal services requires a sound methodology. A national strategic framework must ensure that such a methodology is developed and applied on a consistent basis. Mapping exercises should seek to identify the range of services offered, the levels and quality of such services and the resources available to providers.

3.14 Experience suggests that accurate mapping of supply is difficult. In the longer term, the CLS quality mark should facilitate mapping. While the levels of service identified for the purposes of quality accreditation and mapping need to be compatible, the amount of detail required for the latter needs to be greater. We believe that CLSPs need to be able to identify the following levels of service:

- information not specifically tailored to the circumstances of individual clients;
- general advice on the law as it applies to individual clients - this largely involves diagnosis, basic explanation and setting out options, but it also encompasses work on behalf of clients, ranging from form filling and financial calculations to simple negotiation and even representation in relation to uncontested matters;
- specialist advice and assistance on complex legal problems - at this level, the service will be offered by a solicitor or an adviser specialising in a particular area of law;
- for the purposes of mapping, representation needs to be covered separately - a distinction should also be made between different types of representation, for example limited representation not involving a substantive legal dispute and full litigation requiring the involvement of a solicitor.
3.15 Defining levels of service is complicated by the fact that there is no straightforward relationship between the levels themselves and different types of activity, for example diagnosis, advice and representation. There are however a number of measurable indicators capable of distinguishing various levels of service, including: whether the service is offered by volunteers, paid advisers or solicitors; the number and working hours of paid advice staff; and the number and types of cases handled, including those involving proceedings.

3.16 A national strategic framework should provide guidance on how CLSPs should consult users and providers, building on the approach taken by RLSCs, and including general consultation as part of the ongoing work of each CLSP and publishing and consulting on a draft strategic plan.

3.17 A national strategic framework should explicitly tackle the issue of potential conflicts of interest involving local authorities, which are frequently unwilling to fund organisations which act against them. ASA supports the creation of a national compact between the advice sector and local government, safeguarding the casework independence of advice agencies. High priority should also be given to ensuring that clients in dispute with local authorities have access to CLS Fund supported advice, assistance and representation.

3.18 A more planned approach is likely to lead to increased rationalisation of services and greater competition for funds. Recent years have seen a more competitive environment emerge within the advice sector, due to funders’ increased expectations. ASA has two main concerns about these trends. Firstly, there is a need to preserve some diversity, in order to maintain a degree of client choice and ensure that the needs of all sections of the community are met. Secondly, we are opposed to crude price tendering, which is incompatible with the delivery of high quality services.

3.19 The planning process therefore needs to be controlled. A national strategic framework should seek to ensure a level playing field by setting out guidance on the allocation of local authority funds for services, based on clear and fair criteria.

3.20 Providers need a reasonable degree of certainty and stability. Subject to meeting agreed requirements, providers funded by local authorities should be guaranteed three to five year funding except in the case of experimental or other special projects.

3.21 Finally, a national strategic framework should incorporate the dissemination of good practice and ongoing guidance to CLSPs. Amongst the issues which might be covered are: referral networks; models of provision; user feedback; funding opportunities; and resource requirements for providing different levels of service.

3.22 The Commission will need to re-examine the role of RLSCs and the relationship of local authority funding to the CLS Fund. This raises two dilemmas. Firstly, a balance needs to be struck between addressing identified needs and supporting high quality services capable of providing in-depth help. It may sometimes be justified to fund an organisation with a proven track record even though its service has not been identified as a high priority.
3.23 Secondly, the Commission will need to strike a parallel balance between addressing need and taking account of local authority funded provision. It would not make sense to ignore (good quality) local authority funded services when considering the level of CLS Fund resources to be allocated to an area. On the other hand, targeting CLS Fund contracts on areas where there is little or no specialist provision risks rewarding those local authorities with a poor record of supporting advice and legal services while penalising those with a good record of such support.

3.24 In the medium term, some flexibility in approach is required in striking the right balance, but the Commission should not be required to compensate for the failure of local authorities to play their part in the CLS. In particular, if an authority imposes cuts on local advice services, the Commission should (as now) reserve the right to reduce or curtail its own funding.

4. The Community Legal Service Quality Mark

4.1 ASA welcomes the Government’s proposal to introduce a CLS quality mark. It should be based on existing standards, especially those developed by the Board, the national advice networks and the Law Society. In the first instance therefore, it will be largely input based, focussing on such matters as organisational management, client care and case management. In the longer term however, ASA would like to see a shift of emphasis towards monitoring outputs and outcomes.

4.2 ASA agrees with the consultation paper that the quality mark will need to be modular, reflecting different levels of service. It should contain three standards mirroring the levels set out below:

- **assistance**, covering solicitors and specialist advice providers - this standard should be linked to specified categories of law and be largely based on the Legal Aid Franchising Quality Assurance Standard (LAFQAS);
- **advice**, covering generalist advice providers - this standard should relate to the service as a whole rather than specific categories of law, and draw on both LAFQAS and existing advice network standards;
- **information**, covering providers such as libraries and telephone helplines - this should be a less detailed standard, concentrating on organisational requirements and client access.

4.3 Accredited organisations should be required to state what types of representation they are able to undertake. Signposting and referral must also be incorporated as essential quality mark requirements.

4.4 Each standard should contain a clear description, backed by auditable requirements, of the level of service which it seeks to cover. Organisations applying for the assistance standard should be required to demonstrate that the service is being provided by solicitors or specialist advisers. As a bare minimum, the requirement should reflect the present not-for-profit sector legal aid contract requirements that services are provided by specialist agencies or units, and by advisers working a minimum of twelve hours a week.

4.5 It may be acceptable for the information standard to be accredited and monitored on the basis of a self assessment process, provided that the Commission retains the right to undertake an external audit. The advice and assistance standards should be subject to continuous external audit.
4.6 For the foreseeable future, the Commission should directly accredit and monitor the assistance standard. This standard will provide the gateway to the CLS Fund and direct accreditation by the Commission will best guarantee that the process is independent and impartial.

4.7 Accreditation and monitoring of the information and advice standards by bodies other than the Commission may be acceptable, but this should be handled with considerable caution. The Commission should satisfy itself that any approved body is professionally competent and that the accreditation process will be run entirely independently of any other function of the body concerned. The Commission should closely monitor any approved bodies and retain the right to undertake direct audits of accredited providers as a check on performance.

4.8 It will not be acceptable for an advice agency to be required to seek accreditation from a network representing potential competitors. An independent accreditation route must be available to all providers, almost certainly via accreditation by the Commission itself.

4.9 The Board allows limited passporting against LAFQAS requirements (for example, Investors in People accreditation is passported against the management of people requirements). ASA supports this approach, which reduces the need for providers to operate multiple quality systems. The Commission should examine quality systems operated by providers, together with external schemes such as ISO 9000, and consider which specific requirements are of equivalent rigour to their CLS quality mark counterpart.

4.10 Some flexibility is required in the initial accreditation process, to take account of the fact that not all organisations will be able to achieve full compliance in the first instance. Support should also be made available to organisations applying for the quality mark, including: details of the different standards and the application process; a self-assessment pack; informal support from auditors; and technical support in the form of written briefings, telephone consultancy and training.

4.11 The proposed CLS quality mark carries with it significant resource implications, but the consultation paper is silent on the question of how the quality mark will be financed. It would be difficult to establish an equitable charging regime for not-for-profit organisations seeking accreditation, and ASA is pleased that this does not appear to be envisaged.

4.12 The experience of legal aid franchising lends support to the view that input based quality systems increase managerial and administrative efficiency and, through supervision and file review, improve the quality of the legal service provided. However, the input based approach is open to two major criticisms. Firstly it can be overly bureaucratic. Secondly, it provides no objective measurement of the quality of legal work.

4.13 ASA therefore supports continuing development of the quality mark, involving a move towards alternative measures. This should result in less emphasis on input measurement and a reduction in the administrative burden on organisations.
4.14. There are three main alternative approaches:

- **peer review**, which is probably the most promising way forward in terms of developing a direct measure of the quality of legal work - it requires a structured approach, using criteria drawn up in consultation with practitioners, and it should be used strategically rather than routinely, for example where general quality mark audits raise cause for concern;
- **practitioner accreditation**, for example Law Society Panels - in future, it may be possible for the quality mark to incorporate accreditation of advice agency staff should suitable schemes emerge from current network initiatives;
- **outcome measures**, ie assessing the result of the case for the client - the development of a comprehensive system of outcome measures is however likely to prove difficult, requiring further research and piloting.

5. **The Role of Information Technology**

5.1 ASA agrees that information technology has a huge potential to expand the delivery of legal services. In practice, there is likely to be an array of developments over the next few years, based largely on individual initiatives rather than government planning.

5.2 The growth of new technology in the home and at work is not uniform, and the socially excluded are less likely to have access to new electronically delivered services. This highlights the need for public access via kiosks and computer terminals located for example in libraries, shopping centres and advice agencies.

5.3 This should not however be primarily resourced through the CLS Fund. The Government should rather consider the role of new technology within the CLS as part of its overall strategy for the electronic delivery of public services, entailing cross-departmental thinking and co-operation. The Government should also consider the potential for partnership with both the private sector and public broadcasters in developing new services and the required infrastructure.

5.4 In the short to medium term, the Government and the Commission should concentrate on the following priorities:

- developing a CLS website;
- supporting an internet based public legal information service;
- exploring the role of new technology in supporting practitioners.

5.5 The primary aims of the CLS website should be: to provide basic information on the CLS itself; to disseminate information on national and local developments within the CLS; to enhance access and referral through a directory of CLS providers; and to provide links to other approved sites.

5.6 ASA does not believe that the CLS website should itself provide information or advice on substantive law and procedure. The best way forward lies in the development of an independently run dedicated public legal information website, sponsored by reputable national organisations working in the legal services field.
5.7 Such a service might be funded through a variety of sources, including government, charitable and commercial funding. Its initial focus should be the provision of high quality but basic information on legal rights and responsibilities, linked to a local referral directory of CLS providers. In the longer term, it might aim to provide more sophisticated and interactive services, for example more specialised information, pro-forma letters and form filling facilities.

5.8 Information technology has an important role to play in providing support services to practitioners. Most of the advice networks are involved in developing general support services using information technology. A cross-departmental strategy to provide support to the national advice networks should encompass information technology.

5.9 There are in addition a number of internet based specialist support projects providing specialist legal information to local providers and incorporating interactive features. These services represent a natural extension of traditional second tier support services, and are probably best provided in conjunction with such services. They merit funding through the CLS Fund, initially on a pilot basis.
SECTION 1: OVERVIEW OF THE PROPOSALS

Structure of response

1.1 ASA’s response to the consultation paper contains five sections. This section considers the aims and scope of the Community Legal Service (CLS). It also looks at the paper’s analysis of need and supply, and considers some issues not addressed by the paper: representation; alternative dispute resolution; and the role of central government departments in supporting advice and legal services.

1.2 Section 2 looks at the role of legal aid within the CLS. Under the Access to Justice Act 1999, family and civil legal aid services (including advice, assistance and representation) will be paid for through the Community Legal Service Fund. We consider the prospects for refocusing resources within the context of exclusive contracting and a capped budget, and also look at CLS Fund scope and eligibility.

1.3 Section 3 considers the role of Community Legal Service Partnerships (CLSPs). It looks at the constraints likely to operate on CLSPs in the absence of a statutory duty on local authorities to plan and fund advice and legal services. It argues for the development of a national strategic framework governing the work of CLSPs and briefly considers their relationship to legal aid planning and funding.

1.4 Section 4 looks at the proposed CLS quality mark. It argues that the quality mark should be based on existing quality schemes, especially those developed by the Legal Aid Board, the national advice networks and the Law Society. It calls for different standards within the quality mark, reflecting different levels of service. It considers the quality mark accreditation and monitoring process, and looks at issues for future development, including more direct measurement of the quality of legal work and of outcomes for clients.

1.5 Section 5 looks at the role of information technology within the CLS, and considers the proposed CLS website, the potential for an independent public legal information service delivered through the internet and the role of new technology in supporting practitioners.

Aims of the CLS

1.6 ASA welcomes the Government’s proposal to establish the Community Legal Service. We have long called for a more strategic and co-ordinated approach to the planning, funding and delivery of information, advice and legal services. We broadly agree with the critique of existing provision set out in paragraph 1.5 of the consultation paper, although we would add that in many areas of the country, the main problem is lack of adequate funding.

1.7 The most striking and disappointing aspect of the consultation paper is its lack of policy detail. Other than the proposed changes to the legal aid scheme, which are not considered in the paper, the new Service is clearly still at the visionary stage, and like all visions, it is open to very different interpretations.
1.8 The main task facing the Lord Chancellor’s Department and the new Legal Services Commission is therefore the establishment of a coherent, detailed and practical policy framework for developing the CLS. Until this begins to emerge, it is very difficult to assess the Government’s proposals.

1.9 The starting point for such a policy framework should be a clear definition of the aims of the CLS. ASA believes that its primary aims should be:

(a) to create a comprehensive referral network of providers, in order to increase access to information and advice and ensure that clients receive specialist legal help and representation where this is required for them to enforce their rights;

(b) to give greater priority to addressing legal problems which particularly affect the least well off and socially excluded.

1.10 These aims, which are considered in more detail below, provide criteria for judging the future success of the CLS. While the current proposals create a real opportunity to make progress in respect of both aims, ASA does not believe that they can be fully achieved unless the Government ensures that additional resources are made available for publicly funded advice and legal services.

A comprehensive referral network

1.11 The consultation paper describes three elements of the CLS: CLSPs, the CLS quality mark and the role of information technology. To this must be added a fourth, namely the CLS Fund and its associated planning process. Each element has an important contribution to make to the development of a comprehensive referral network, as follows:

- through the CLSP planning process, including mapping the supply of services (which we consider in detail later in our response), bringing providers together to increase mutual understanding of their respective roles and services and developing concordats governing local referrals;

- through the Commission’s planning process, which should inter alia identify the need for, and support the development of national and regional strategic legal services offering support, including a referral service, to local providers;

- through the CLS quality mark, which should set out detailed and stringent requirements governing signposting and referrals;

- through the production of a national directory of quality marked providers, setting out details of the types and levels of services offered, and available in both paper and electronic form;

- through the dissemination of good practice on referrals, building on and updating existing guidance, for example that produced in recent years by the North Western Legal Services Committee, the Law Society and ASA.
1.12 There are however two main hurdles to the development of an effective referral network. Firstly, in some areas there is a straightforward lack of specialist provision, especially in relation to social welfare law (we define this term in more detail later in this section). While new methods of delivery will have a role to play in addressing this problem, they are unlikely to be sufficiently resourced to fill major gaps in provision, for example in urban areas of high need. This highlights the need for additional funds to be made available.

1.13 Secondly, there are cultural barriers to referral. In some areas, providers have a history of co-operation, including established referral arrangements. In other areas, there is considerable mistrust between providers, for example between advice agencies and private practitioners or between advice agencies belonging to different networks. This is often based on lack of knowledge of the services offered by other providers, but is sometimes linked to real or perceived differences in ethos and values or to the fact that organisations view each other as competitors for funding.

1.14 In addition, the research evidence shows that some providers fail to recognise the need to refer cases which are beyond their competence, because they overestimate the level of service which they are equipped to provide. Worryingly, providers may fail to refer simply because they have not identified that the client has a legal case.

1.15 The development of an effective referral network therefore requires a change of culture amongst providers. This will take time, although it will be aided by the pro-active approach described in paragraph 1.11 above. Above all, providers need to recognise that an active referrals policy is a mark of quality and not of failure.

Prioritising social exclusion

1.16 Paragraph 3.4 of “Modernising Justice”, the Government’s White Paper, states:

“The Government is committed to tackling social exclusion. An effective justice system contributes to this aim by enabling people to uphold their rights and defend their interests when they need to so. Social exclusion would increase, and the rule of law itself would be threatened, if less well off people, as a class, were effectively excluded from justice.....By establishing the Community Legal Service..... (and through other Government initiatives)....., we will widen access to justice.”

1.17 The White Paper goes on to argue that it is necessary to establish priorities for publicly funded legal services. Paragraph 3.7 states that “the following areas should have greatest priority:

- social welfare cases, which help people to avoid, or climb out of social exclusion, for example, cases about people’s basic entitlements, like a roof over their heads and the correct social security benefits.
- other cases of fundamental importance to the people effected. This covers cases involving major issues in children’s lives (like care and adoption proceedings); and cases concerned with protecting people from violence.
cases involving a wider public interest. This category includes two types of case: those likely to produce real benefits for a significant number of other people, or which raise an important new legal issue; and those challenging the actions, or failure to act, of public bodies (including cases under the Human Rights Act), or alleging that public servants have abused their position or power.”

1.18 While the above analysis is concerned specifically with legal aid provision, ASA believes that it provides a firm foundation for the CLS as a whole. Alongside child protection and protection against violence, the CLS should aim to give greater priority to social welfare law and public interest cases (as defined above), both of which tend to impact disproportionately on the poor and socially excluded. The Lord Chancellor should maintain the approach of the White Paper in determining national priorities for CLS Fund expenditure, and it should also be used to provide guidance to CLSPs in relation to local authority and other public funding of advice and legal services.

1.19 Social welfare law should be defined broadly, to cover:

- the social welfare law categories traditionally recognised under the legal aid scheme: debt, employment, housing, immigration and nationality, mental health and welfare benefits;

- less mainstream or newly emerging areas of law, for example community care, disability, discrimination, education, health and human rights - under exclusive contracting, services in these categories will be provided by specialists operating under what are slightly misleadingly called “generic franchises”.

1.20 There is a clearly considerable overlap between the categories of social welfare law and public interest cases. For ease of reference therefore, the remainder of this response uses the term “social welfare law” to cover both categories.

Scope of the CLS

1.21 The Government clearly views the CLS as a very inclusive entity, covering a wide and diverse range of services and types of provider. ASA is not opposed to an inclusive approach, but we are concerned that if the scope of the CLS becomes too broad, it will lack focus and direction, as evidenced in the following examples:

(a) It would not appear to be sensible to include all solicitors and barristers within the CLS. We doubt whether practitioners dealing with commercial and corporate law would view themselves as providing a service to the community as it is usually understood.

(b) Similarly, it is far from clear that solicitors providing services to individuals in the traditional areas of private client work, for example conveyancing and probate, should be covered by the CLS. It is conceivable that some might seek accreditation under the proposed quality mark, but these services cannot meaningfully be covered by the planning arrangements to be operated by CLSPs and the Commission, as their supply is entirely market driven.
We do not believe that criminal legal aid practitioners should be part of the CLS. The Access to Justice Act has established two separate services - the CLS and the Criminal Defence Service - and conflating the two will only muddy the waters and create public confusion. We do however see merit in establishing a specific CDS quality mark (based on franchising) and producing a referral directory of accredited criminal practitioners.

Commercial para-legal services should be excluded from the scope of the CLS, at least until there is comprehensive and rigorous regulatory system in place for such providers. The Government is rightly concerned at the activities of some of these providers, for example in the fields of immigration and claims assessment, and involving them in the CLS in the absence of regulation risks backfiring on the Government and bringing the new Service into disrepute.

While information services should be included in the CLS, their membership should be contingent on them providing legal information as a core or significant function.

The above examples - and there are several others - demonstrate some of the difficulties in defining the scope of the CLS in a way that ensures both inclusiveness and clarity of purpose. It is surprising that this issue is not addressed in the consultation paper.

We believe that the Department and the Commission should initially take a cautious view on the scope of the CLS, as this will best ensure its orderly development. In considering scope, account should be taken of the following criteria:

- the statutory framework set out in the Access to Justice Act;
- the role of the Commission and local authorities in planning and co-ordinating the CLS;
- the aims for the service set out in paragraph 1.9 above, especially greater priority for social welfare law cases.

Assessing the potential involvement of services and types of provider against these criteria will ensure a clear focus for the development of the CLS, at least in its early stages. Our own view is that the following types of service and provider should initially constitute the CLS:

- barristers, solicitors and not-profit-organisations providing advice, assistance and representation services funded through the CLS Fund - in addition to those areas of law identified as priorities for the CLS, this will include services in family law, clinical negligence and consumer and general contract;
- barristers and solicitors undertaking private client or pro-bono work in categories of law which are within the scope of the CLS Fund;
- independent not-for-profit sector advice agencies;
local authority managed advice services and services run by housing associations and similar bodies - while these have a key role within the CLS, they should, as now, be ineligible to receive support from the CLS Fund, partly on the grounds that they cannot provide a fully independent service to clients and partly because local authorities as both funders and providers are in a position to manipulate the market, for example by cutting the funds of would-be competitors in the independent advice sector;

public bodies and not-for-profit organisations providing information on the law as a core or significant function, for example libraries, telephone helplines and some national charities and self help community organisations;

providers of family and community mediation or arbitration services - we consider the role of alternative dispute resolution in more detail later in this section of our response.

1.25 In summary, the CLS should largely though not exclusively focus on publicly and charitably funded information, advice and legal services.

Need and supply

1.26 ASA does not accept the consultation paper’s suggestion that there is no widespread unmet need for legal services. The analysis on which it is based is fundamentally inadequate and should not have been included in the paper.

1.27 We have had sight of the Legal Action Group’s response to the paper, which contains a comprehensive refutation of the Department’s analysis. LAG correctly points out that the National Consumer Council report on which much of the analysis is based did not set out to quantify the need for legal services. LAG’s response goes on to provide detailed figures and other information, largely from official sources, all of which indicate considerable unmet need for legal services in categories of social welfare law and none of which are considered in the consultation paper.

1.28 ASA accepts that current patterns of provision result in some duplication of effort and that some services may not operate to optimum efficiency. These are issues which will hopefully be addressed by the establishment of a CLS referral network and a CLS quality mark. It is however nonsense to suggest that resolving these problems will ensure that the need for legal services will be largely met. This flies in the face of the advice sector’s experience that firstly, many agencies are hugely overstretched and secondly, where resources become available for additional services, the expanded capacity is rapidly filled.

1.29 The consultation paper’s analysis is also methodologically flawed because it does not compare like with like, using as it does figures extrapolated from NCC’s report, Citizens Advice Bureaux enquiry statistics and legal aid green form bills. These are entirely different types of measure.
1.30 Crucially, the paper’s analysis takes no account of the levels and quality of service offered by providers. It appears to assume that the provision of an advice service in an area is normally sufficient to meet local needs for social welfare law services. The truth is that the quality of advice agency provision is extremely patchy, largely though not entirely due to resource levels. In particular, there is a shortage of specialist provision in many areas.

1.31 NACAB has undertaken two major studies of CAB provision, in relation to housing and employment cases. Both raised serious concerns over the quality of legal advice and assistance offered by many CABs, which outside of large cities are largely reliant on volunteer advisers. Other networks, such as FIAC, admit that similar concerns probably apply to some of their own members. This demonstrates the danger of considering raw supply without examining the quality and levels of service being provided.

1.32 Finally, the consultation paper’s analysis is at odds with ministerial statements on the CLS. In a speech delivered last year to the Holborn Law Society, the Lord Chancellor said:

"However, at present, the provision of legal advice, to enable people to fight for and secure their basic rights, is too fragmented. Some parts of the country have solicitors who specialise in social welfare law, high quality advice centres, active CABs or money advice centres. Many others are legal advice deserts where there is little or no help for those in greatest need. This is not just in rural areas. Most solicitors’ offices are highly concentrated in the more affluent areas of our towns and cities, leaving poorer areas with few - if any - local firms."

**Representation**

1.33 The consultation paper virtually ignores the role of legal aid. This is an extraordinary omission, not least because the single largest funder within the CLS will be the CLS Fund itself.

1.34 It may be that the Department considers issues of legal aid policy to be largely settled, through the introduction of exclusive contracting and the removal of personal injury claims from scope. This is not the case. The impact of the changes in scope remain to be seen, but ASA remains concerned that some clients with a meritorious case may be unable to obtain legal help under a conditional fee arrangement. Moreover, while exclusive contracting is here to stay, it is a starting point rather than an end in itself, and there needs to be a continuing and informed debate on the key issues of scope, financial eligibility and the rules and operation of the Funding Code.

1.35 The failure of the consultation paper to consider legal aid means that it has virtually nothing to say on legal representation nor for that matter on the role of private practitioners, who will remain the largest providers of such representation.

1.36 This is worrying in the context paragraph 1.3 of the paper, which states:

“People need basic information and advice on their rights and responsibilities - on issues such as housing, welfare and debt. Often, they do not need to go to court to have their dispute or difficulty resolved; and the earlier a dispute can be resolved, the better for all concerned”.

The Community Legal Service – ASA Response
1.37 At first sight, this statement might appear to be uncontentious. ASA agrees that in some cases, initial information and advice is sufficient to enable clients to resolve the issue themselves. We also agree that early intervention by an adviser or solicitor can often prevent a dispute from escalating and avoid the need for proceedings. Unfortunately however, the statement represents a huge oversimplification, and needs to be heavily qualified to take account of the following factors, none of which are considered in the consultation paper:

- the complexity of the law means that clients frequently need access to a specialist adviser to ensure accurate diagnosis - as stated earlier, any analysis of need and supply must consider levels of service and not simply raw provision;

- early resolution of a dispute frequently requires the intervention of a skilled and determined solicitor or adviser - it is often the clear and certain prospect that proceedings will be issued which concentrates the other side’s mind and leads to a just settlement;

- in most social welfare law cases, the individual client is pitted against a powerful opponent, such as a government department, local authority or corporate institution, which has both the experience and the resources to resist his or her claim - the principle of equality of arms should be at the heart of the CLS;

- clients may be defendants rather than plaintiffs in proceedings.

1.38 All of this points to the need for expert services which can advocate a client’s case and provide formal representation where required. The failure of the consultation paper to consider the role of representation risks creating the impression that the CLS is viewed as a cheap and cheerful, second class service for the poor, and the Government should correct this impression at the earliest possible opportunity.

**Alternative dispute resolution**

1.39 Both the White Paper and the Legal Aid Board’s draft Funding Code envisage that the scope of legal aid might in future be broadened to include direct funding of some forms of alternative dispute resolution (ADR). This raises the question of whether the CLS should incorporate ADR provision, and if so what types of ADR should be included.

1.40 It is questionable whether forms of ADR having an adjudicative function - for example ombudsman schemes and complaints systems - should be included in the CLS, unless the new Service is to be defined very broadly to cover the civil courts and tribunals. This issue requires further consideration, as it may be possible to distinguish different types or levels of adjudication for the purpose of identifying types of ADR which might be included in the CLS, for example binding arbitration, which unlike other adjudicative processes requires the consent of both parties to its use.
In view of the need to ensure that the CLS has a clear focus in its early stages of development, we would argue that only one form of ADR - mediation - should be initially incorporated. The focus should be on family and community mediation services provided by solicitors and not-for-profit organisations. Such organisations should be formally represented in CLSPs, while other ADR providers and indeed local courts and tribunals should be consulted through the CLSP and Regional Legal Services Committee (RLSC) planning processes.

It will be necessary to establish a separate and distinct quality mark for all CLS mediation services, although many of the issues for consideration in its development are similar to those applying to solicitors and advice organisations.

As is currently the case with family mediation, any extension of legal aid scope for community mediation or (as suggested by the Board) arbitration should be piloted and carefully evaluated. It is beyond the scope of this response to consider the relationship of ADR to traditional dispute resolution, but ASA is generally opposed to the introduction of compulsion in the use of ADR except where it can both offer a comparable remedy to that available in the courts and ensure genuine equality between the parties.

Central government co-ordination

The consultation paper is silent on the role within the CLS of central government departments other than the Lord Chancellor's Department. ASA believes that they have a major role to play in helping to develop a national infrastructure of services, particularly through support to the advice networks.

Current central government support to the networks is uneven. Some departments, notably the Department of Trade and Industry, make a significant contribution, but in general support is inadequate, unco-ordinated and frequently provided on a short term basis, resulting in lack of security for organisations.

Smaller advice networks in particular face continuing difficulties in securing funds to provide core services to their members, for example training, information and management support and development.

In developing the CLS, the Government should therefore undertake a review of departmental support of information and advice, with a view to establishing a national strategy for such support in the future. The review should seek to identify specific departmental responsibilities for funding various activities and consider the options for greater inter departmental co-ordination, in order to make the best use of available resources and minimise duplication. This should include examination of how individual network services might be shared to the benefit of the sector as a whole. In particular there should be a recognition that all networks require a minimum level of core funding.

Central government also has a specific role to play in the funding of second tier support services, providing consultancy, training and casework referral services to front line providers. Such services represent a cost effective means of improving the quality of advice and increasing public access to specialist assistance.
1.49 The Department of the Environment, Transport and the Regions currently funds Shelter to run a network of regional second tier services offering support to Citizens Advice Bureaux (and other agencies in London) in relation to housing and homelessness. The Commission intends to fund second tier services in the future, and these should cover both traditional and less mainstream areas of law. It is however likely that such services will be limited to providing support to CLS Fund contracted organisations serving financially eligible clients.

1.50 Generalist providers which are unlikely to obtain a CLS Fund contract have a particular need for specialist support, and consideration should therefore be given to establishing second tier services covering categories of law such as employment and welfare benefits, funded by the government department with the relevant policy responsibility.

1.51 Finally, the Government should consider how central government departments can make a wider contribution to the CLS, for example through legal education in secondary schools and the community at large.
SECTION 2: THE COMMUNITY LEGAL SERVICE FUND

Exclusive contracting

2.1 ASA responded last year to the Legal Aid Board’s proposals for exclusive contracting of advice and assistance, and we will not reiterate our detailed comments in this response. However, most of the issues and concerns raised in our response to the Board remain relevant and will need to be addressed by the Commission as exclusive contracting is developed within the context of the CLS.

2.2 In summary, we support the principle of exclusivity whereby legal aid funding for advice, assistance and representation is made contingent on the provision of a quality assured service. We are however opposed to cash limiting and the replacement of an entitlement based system by a discretionary one. The consequences of this are clearly spelt out in the Board’s draft Funding Code, which will replace the existing merits test for civil legal aid. The Code accepts that there may be cases where despite having met the criteria set out in the code - and these are rigorous - clients may be turned down for legal aid because the money has run out. In other words, a degree of arbitrary rationing is an inevitable consequence of a capped budget.

2.3 The other main dilemma raised by exclusivity is the maintenance of an acceptable balance between on the one hand, quality of service and efficient use of resources, and on the other hand, accessibility and client choice. As we argued in our response to the Board’s proposals, this balance will not be easy to achieve. Concentrating the bulk of legal aid funds on large and medium sized providers with a remit to provide a comprehensive range of services over an extended catchment area may on the whole best guarantee quality and efficiency, but risks seriously curtailing access and choice.

2.4 ASA was not persuaded that the Board’s original estimate of between 3,000 to 3,500 contracted providers would ensure an acceptable level of access and client choice, and we therefore welcome the Government’s subsequent indication that most solicitors firms meeting the Legal Aid Franchising Quality Assurance Scheme (LAFQAS) requirements are likely to be awarded a contract.

Refocusing of resources

2.5 As stated earlier, we consider that refocusing legal aid resources in order to increase the level of provision in social welfare law (in its broadest sense) is critical to the success of the CLS. Such refocusing should therefore be a key objective for the Commission in deploying legal aid resources through the CLS Fund, in line with the stated objectives of the White Paper.

2.6 ASA welcomes The Lord Chancellor’s decision to set aside £20 million for not-for-profit sector advice and assistance contracts next year. We are also pleased that this sum is seen as a floor rather than a ceiling, and may be exceeded if the Commission considers this to be justified. In the medium term, such a ring fenced budget is required in order to enable the advice sector to establish itself as a significant provider of legal aid services, and ASA would like to see it increased in future years.
2.7 We should however stress in this context that we do not see advice sector provision and social welfare law provision as synonymous. ASA supports a mixed economy in the supply of services, and in some areas of law, such as housing and immigration, a strong solicitor presence remains absolutely essential to ensure adequate access to representation. This may be achieved through solicitors in private practice or salaried solicitor services in Law Centres and other not-for-profit organisations.

2.8 The need for solicitor provision should explicitly be taken account of by the Commission and its Regional Legal Services Committee (RLSCs) in establishing priorities and awarding contracts for social welfare law services, and the Commission should take a pro-active role in encouraging the development of not-for-profit sector salaried solicitor services where there is insufficient coverage by suitably expert private practitioners.

2.9 In practice however, the Commission’s room for manoeuvre in relation to the refocusing of resources is likely to be limited. We briefly consider the major constraints below.

2.10 Firstly, there is clearly scope for longer term savings - probably in the order of tens of millions of pounds - as a result of the withdrawal of personal injury and certain other claims from the scope of legal aid. There is however debate over the precise level of such savings and concern that they may be clawed back by the Treasury. The Government should make a clear commitment to reapplying to the CLS Fund any savings achieved as a consequence of changes in legal aid scope. This commitment should indeed extend to any savings resulting from other initiatives, such as greater controls on the fees of barristers providing legal aid services.

2.11 Secondly, there will be savings as a result of the contracting process itself, as some solicitors will be excluded from undertaking legal aid work. However, in order to ensure an acceptable level of access to services, it is likely that most solicitors undertaking a significant volume of legal aid work and meeting the LAFQAS standard will get a contract. This is right in principle, but it will reduce the amount of money left for redistribution and refocusing.

2.12 Thirdly, there will be some redistribution of legal aid resources between different geographical areas. In most cases however, the sums involved are likely to be fairly small, and while some areas will benefit, there is no evidence of oversupply of legal aid services in those areas facing a reduction in their budget. Geographical redistribution is in our view a rationing exercise which is unlikely to result in a net increase in social welfare law provision.

2.13 Finally, and crucially, the CLS may be blown entirely off course if the Government decides to cut civil legal aid as a result of increases in spending on the criminal scheme. Criminal legal aid must as a matter of principle and law remain demand led, but without a clear commitment from Government to ring-fence the CLS Fund, there is a real risk that it will in future be raided to shore up the criminal budget. It is essential to the success of the CLS that this does not happen.
2.14 As things stand then, the prospects for refocusing legal aid expenditure to give greater priority to social welfare law services are at best modest. In particular, it is very difficult to see how contracting within a capped budget will address the issue of what the Lord Chancellor has called “advice deserts”, namely those parts of the country where there is an acute shortage of lawyers and advisers specialising in social welfare law.

2.15 ASA accepts that legal aid must compete with other public expenditure priorities such as education and health, but we believe that the Government will at some point need to examine how additional resources - ie new money - can be found if it is to fully realise its objectives for the CLS.

Tribunal representation

2.16 Along with many organisations concerned with the delivery of publicly funded legal services, ASA has long called for an extension of legal aid to cover tribunal representation, with priority being given to Employment Tribunals, Immigration Appeal Tribunals and hearings before Social Security Commissioners.

2.17 Public funding for representation is justifiable on the grounds of both the procedural formality of these jurisdictions and the legal complexity of many appeals. The research evidence demonstrates that appellants have a substantially better prospect of success if they are represented by a lawyer or adviser with an expert knowledge of the law.

2.18 We therefore warmly welcome the Board’s recent recommendation that legal aid funding should be made available for representation at Immigration Appeal Tribunals, and we hope that it will be accepted by the Lord Chancellor.

2.19 The detail of how and in what circumstances tribunal representation should be funded requires further consideration. We would expect it to be provided within the context of exclusive contracting and be subject to a suitably rigorous merits test. In the case of representation before Employment Tribunals, consideration should be given to changing the current cost recovery rules.

County court advice and representation schemes

2.20 Legal aid contracts for advice and assistance provide for “limited representation” in certain circumstances, including uncontested mortgage possession and rent arrears hearings. The Board has recently suggested that “in time, we can foresee limited representation developing into a kind of civil duty solicitor scheme, especially on days when large numbers of possession claims are listed.” (paragraph 6.11, draft Funding Code). ASA, which has an active programme of work around advice sector involvement in county court representation, and last year published a good practice guide on advice and representation schemes for housing possession cases, supports this view.

2.21 Advice and representation schemes already operate in around a third of the 230 county courts in England and Wales. Most deal with housing possession cases on the ground of arrears, with lay advisers and/or solicitors attending court on a rota basis. A handful of schemes have a permanent or daily presence at the court.
Lord Woolf has of course advocated the case for public funding for advice and representation schemes. Their purpose entirely squares with the aims of the CLS, and ASA considers that they should be supported through the CLS Fund, initially in the form of a pilot project. We consider the role of these schemes in more detail in the appendix to this response.

Methods of delivery

ASA welcomes the Board’s Method of Delivery pilot, which will test out contracts for the provision of:
- telephone advice and casework services;
- outreach services;
- second tier services.

Such services have a major role to play in the CLS, providing as they do a means of enhancing access to good quality advice, assistance and representation, especially in rural and semi-rural areas. Second tier services should also provide a means of ensuring that clients have access to expert help, including in areas of law not generally covered by mainstream providers, for example education and human rights.

Other extensions in scope

There is a long shopping list of other services which different organisations and individuals would like to see funded by the CLS fund, including:
- mediation, arbitration and similar ADR services (which were briefly considered in the previous section of our response);
- strategic legal work with groups in the community;
- legal campaigning and social policy work;
- legal education;
- information on the law.

ASA does not want to see artificial barriers being erected to such funding, and in particular would like to see further research into and piloting of strategic legal work with groups. However, the Government and the Commission should be cautious in embracing widespread extensions of scope as, in the context of a cash limited budget, for every new service funded there will be less money for traditional advice, assistance and representation services.

Each extension should therefore be considered on its merits, and potential new services researched, piloted on a tightly focussed basis and rigorously evaluated.

CLS Fund resources must above all continue to be targeted on specialist lawyers and advisers who are able to deal with cases in-depth. Diverting funds to basic information and advice is likely to lead to the duplication of work and the dilution of provision, resulting in the dumbing down of the legal aid scheme. ASA will not support such an approach.
Financial eligibility

2.29 Finally, there is no doubt that early priority should be given to increasing financial eligibility for legal aid. Most advice agency clients are poor, and yet many franchised agencies are having difficulty in meeting their contract volume targets, especially in relation to employment cases, because too few of their clients are financially eligible.

2.30 ASA therefore welcomes the Government’s intention to re-introduce a contributory tier for advice and assistance. This is clearly in clients’ interests, though it may raise issues for the advice sector, whose services have traditionally been free at the point of delivery.
Ensuring local authority participation

3.1 ASA has long supported a more integrated approach to the planning and funding of advice and legal services, and we therefore welcome in principle the Government’s intention to establish Community Legal Service Partnerships (CLSPs), involving both funders and providers.

3.2 However, as with legal aid, the Government’s starting point is that no new resources will be available to ensure an adequate supply of services. Moreover, and crucially, there is no guarantee that effective partnership arrangements will be developed across the country.

3.3 Section 4(6) of the Access to Justice Act 1999 provides that the Commission will:

“inform itself about the need for, and the provision of, (information, advice and legal services) and about the quality of the services provided and, in co-operation with such authorities and other bodies and persons as it considers appropriate -

(a) plan what can be done towards meeting that need by the performance by the Commission of its functions, and

(b) facilitate the planning by other authorities, bodies and persons of what can be done by them to meet that need by the use of any resources available to them.”

3.4 This provides the statutory foundation for the establishment of CLSPs by placing the Commission under a duty to co-operate with others in developing the CLS. In most areas of the country, the dominant funders of services will be the Commission itself and local authorities.

3.5 There is however no reciprocal duty on local authorities to co-operate with the Commission in setting up and participating in CLSPs. Their involvement will be purely voluntary. Nor is there any proposal to provide increased central government funding to enable local authorities to fund new services where required.

3.6 The level of interest in the pioneer and associate pioneer partnerships suggests that many local authorities will want to be involved in developing the CLS. Adopting a more strategic approach to the planning and funding of advice and legal services is consistent with Best Value, and in some areas the establishment of CLSPs will result in better co-ordinated and possibly even increased provision. However, ASA has major concerns over those authorities which have little or no interest in the delivery of advice and legal services - and there are many.

3.7 As in the case of legal aid contracting, it is unclear how the current proposals will address the problem of advice deserts. It is probable that a significant number of local authorities in such areas will make only a token commitment to the partnership arrangements, and in particular refuse to acknowledge that additional resources are required to address inadequate provision. At worst, some authorities may view the CLSP planning process as providing an opportunity to cut existing advice services, possibly in the mistaken belief that legal aid will provide replacement funding.
3.8 In the short term, the Department and the Commission will need to raise the awareness of local authorities and other funders of the aims of the CLS and the role of CLSPs. RLSCs will have an important role to play in this respect, and the Legal Aid Board’s monthly bulletin on the work of the pioneers and the associate pioneers should continue to provide a vehicle for the dissemination of information. Links should also be forged with the Department of the Environment, Transport and the Regions and the Local Government Association, both of which should be encouraged to provide guidance to local authorities on their role within the CLS.

3.9 The Commission should also monitor the work of CLSPs and report to the Lord Chancellor on their operation. In particular, it should report cases where local authorities are not fully participating in the work of the CLSPs and/or are refusing to provide adequate funding. Assuming that this is a significant problem, the Government will need to consider possible incentives and sanctions to be applied to recalcitrant local authorities. This is considered in more detail at the end of this section of our response.

3.10 ASA’s view is that in order to ensure adequate national coverage by the CLS, it will become necessary in the longer term to impose a statutory duty on local authorities to plan and fund advice and legal services in co-operation with the Commission. It is regrettable that the Government did not take the opportunity to incorporate such a duty in the Access to Justice Act.

The need for a national strategic framework

3.11 In the context of a cash limited legal aid budget and a lack of any compulsion on local authorities to fund advice and legal services, it is likely that CLS provision will vary considerably across the country, with comprehensive coverage in some areas and more basic services in others. This should not however be viewed as a reason for seeing the development of the CLS as primarily a matter for local determination. The CLS must be considered as a national service, and this requires the establishment of a national strategic framework, developed in consultation with funders and providers, which sets out principles and guidance governing local planning.

3.12 This is partly recognised in the consultation paper, which states that the Government will supply best practice guidance based on the work of the pioneer projects and the associated research project. The experience of the pioneers will clearly have much to contribute to this process, but ASA doubts whether it will be sufficient to establish a suitably rigorous framework.

3.13 The pioneer authorities have been issued with little concrete guidance on their objectives or how they should operate, and although they have been selected on the basis of their commitment to advice and legal services, this does not guarantee that they will identify let alone resolve the range of issues which need to be addressed if CLSPs are to operate effectively.
3.14 Early reports from the pioneer and associate pioneer partnerships indicate a real commitment to making the CLS a success, and a number of promising initiatives have been launched. However, issues are already emerging which need to be resolved at national level. To take just three examples:

(a) there appears to be little consistency regarding the membership of the partnerships - not getting this right risks creating distrust and resentment amongst providers as planning and funding decisions are taken;

(b) some partnerships are undertaking mapping exercises of existing supply without necessarily appreciating the difficulties of accurately assessing the range, depth and quality of advice and legal services;

(c) some partnerships are looking at the issue of quality standards, although the Department has established a Quality Task Force, whose remit is the development of a national CLS quality mark.

3.15 These examples highlight the need for a national strategic framework. Without such a framework, the CLS is likely to develop in an entirely ad hoc manner, with local authorities and indeed regional offices of the Commission reinventing the wheel, pursuing diverse and inconsistent agendas and on occasion adopting bad practice.

3.16 More generally, whereas local authorities have experience and expertise in planning a wide range of public services, their specific record in relation to advice and legal services is patchy. Few see the provision of such services as a core activity or priority. Provision is often driven by more general policy agendas, such as local income generation, or as an adjunct to other council run services. This is not necessarily wrong, but it is different from viewing advice, assistance and representation as major services in their own right. Moreover, many local authorities are unwilling to fund services which act against the authority itself.

3.17 All of this leads ASA to conclude that a national strategic framework needs to draw on a wider range of experience than that of the pioneers and associate pioneer partnerships. The Act places the Commission under a duty to establish, maintain and develop the CLS. The planning and funding of advice and legal services will be the core business of the Commission, and it will be able to build on the experience and expertise of its predecessor body, the Board. The Commission will have a national remit and will be the largest funder within the CLS. This makes the Commission the best placed body to take the lead in developing a national strategic framework governing local planning.

3.18 The experience of the pioneer partnerships and the findings of the research will provide one of the starting points for such a framework, but the Commission will need to take account of its own experience in planning legal aid services, other research in the field and the views of providers and other relevant parties.

3.19 The purpose of a national strategic framework should not be to instruct local authorities or other funders exactly how to spend their money or to impose identical models of provision in all areas. The latter is neither realistic or desirable, although some models of provision are better than others and there needs to be informed discussion on what works best. The purpose of a framework should be to ensure as far as possible a nationally consistent and manifestly fair approach to the planning and funding of the CLS at local level.
3.20 ASA considers that the framework should include the following:

- guidance on establishing and running CLSPs, including their membership;
- agreed and robust methodologies for assessing need;
- agreed approaches to mapping the supply of advice and legal services;
- agreed procedures for consulting users and providers;
- a compact between local authorities and providers funded by local authorities;
- fair and transparent criteria and procedures for allocating funding;
- guidance on good practice.

We consider these matters in more detail below.

**Establishing and running partnerships**

3.21 A national strategic framework should include clear guidance on establishing and running partnerships. This should include guidance on the issues raised in the recent LCD commissioned research report, “The Community Legal Service: Joined-Up Solutions”, which provides a very insightful analysis of some of the cultural dynamics of working in partnership. ASA endorses this analysis.

3.22 Guidance is required on the geographical scope of CLSPs, which will not be uniform. In urban areas, it is likely that CLSPs will normally correspond to individual local authority areas, such as a London borough, but in some areas it may be more practical to seek a partnership involving several small authorities. In rural or semi-rural areas, CLSPs are likely to regional in scope, for example county-wide. Account should be taken of population, levels of need, patterns of service delivery and transport links in deciding what constitutes a suitable area for a CLSP.

3.23 Sufficient resources will be required to ensure that CLSPs can operate effectively. The Commission will need to be adequately funded for this purpose, and local authorities should also be expected to contribute to management and administration.

3.24 The membership of CLSPs will be essential to their success. ASA believes that they must be as inclusive as possible, with all local providers able to participate in their work. This will in some areas raise difficult issues relating to membership structure, particularly where a CLSP covers several local authorities and/or a range of advice agencies. Too large a body may become unwieldy while too small a body is likely to be unrepresentative, a criticism which applies to RLSCs. Guidance is required on how CLSPs should be structured, which may involve the establishment of wider reference groups and the use of working parties to ensure inclusive participation.

3.25 ASA is particularly concerned that advice network representation on CLSPs is both adequate and inclusive. The advice sector encompasses a diverse range of services, policy perspectives and cultures, and this needs to reflected in the work of the CLSPs (similar considerations apply to barristers and solicitors, but at least they are represented by single organisations).
3.26 A national strategic framework therefore needs to include clear guidance on how provider members of CLSPs are to be selected, with an emphasis on transparency, fairness and acceptability to all parties. ASA believes that there should be a minimum requirement for CLSPs to include at least two advice sector representatives, drawn from different networks - in many areas it should be perfectly practicable to have more. What is not acceptable is for funders to arbitrarily approach a single network or agency to provide advice sector representation, which unfortunately seems to have happened in the case of some of the pioneer and associate pioneer partnerships. This will only sow the seeds for future accusations of conflicts of interest and deals behind closed doors.

3.27 ASA agrees that charitable funders should be involved in CLSPs. The National Lottery Charities Board has become a significant funder of advice, and involvement in joint planning would facilitate the work of the NLCB, enabling it to take a more strategic approach than hitherto. However, it remains vital that charities retain their independence as funders of the voluntary sector. They will rightly be wary of expectations that they should fund core provision which should be the responsibility of central and local government. Charities must continue to support innovation and special projects, which may not be identified as high priorities through the CLSP planning process.

Assessing need

3.28 CLSPs should assess the need for advice and legal services on the basis of nationally agreed methodologies. These should build on the work undertaken by RLSCs, although the planning process for exclusive contracting has thrown up significant inconsistencies in the approaches taken in different legal aid regions, which need to be addressed. In broad terms, needs assessment needs to be based on two components:

- quantitative information, drawing on the Board's models for needs assessment and on central government, local authority and independent research data;
- qualitative information, based on funders' own knowledge of the area and consultation with providers and users of advice and legal services.

3.29 It is probable that most of the recognised indices of deprivation (based on such factors as unemployment levels, income support claimants, housing conditions and ethnic minority populations) will tend to identify the same areas as having high levels of need and therefore high priority for services. The importance of supplementing quantitative with qualitative information is to aid identification of:

- pockets of need in more prosperous areas;
- need for specific services which may not currently be offered by existing providers in the area, for example to young people;
- need for services in categories of law less likely to be identified through traditional indices, such as education and human rights;
- emerging areas of need which may not yet be reflected in official statistics, such as the recent arrival of a refugee community or a downturn in the local economy, creating unemployment and debt.
3.30 Needs assessment is probably best undertaken at local level, and provided that consistent and rigorous methodologies are adopted, CLSPs will be well placed to carry out the groundwork to identify likely priorities for all services, including those which may be funded by through the CLS Fund. It would not be a sensible use of resources for RLSCs and CLSPs to carry out entirely separate needs analyses.

3.31 However, the Commission must continue to take a regional and national strategic overview of both need and provision in order to:

- prioritise and make decisions on how to apply its own funds - the Commission will clearly not be in a position to meet all needs identified by CLSPs;
- ensure adequate public accountability through the publication of regional and national strategies for CLS Fund expenditure;
- identify services which might best be provided on a regional or national basis, for example to address the needs of rural areas or less mainstream categories of law.

3.32 We consider the relationship between CLS Fund and local authority funding in more detail later in this section of our response.

**Mapping supply**

3.33 Accurate knowledge of the existing supply of advice and legal services is as important to the CLS planning process as needs assessment. It requires a thorough and soundly based methodology. A national strategic framework must ensure that such a methodology is developed and applied on a consistent basis by CLSPs.

3.34 Mapping exercises should seek to identify:-

(a) the range of services offered, both in terms of categories of law covered and specific services, for example to non-English speakers;
(b) the levels and quality of such services;
(c) the resources available to the provider - a small provider may offer an expert service which nevertheless cannot begin to the volume of need in a given geographical area.

3.35 The experience of compiling directories of solicitors and advice agencies suggests that accurate mapping is extremely difficult, especially in respect of levels and quality of service. Some RLSCs carried out such mapping exercises in drawing up draft regional strategies for the purpose of legal aid contracting, and the results were criticised as failing to provide an accurate picture of supply. The main reason for this is that providers were asked to assess themselves according to very general criteria, and perhaps understandably, many overstated the level of service being provided.

3.36 The issue of levels of service is common both to the planning process and the proposed CLS quality mark, and in the longer term the existence of a suitably comprehensive quality mark will facilitate mapping exercises. However, while the levels of service identified for the purposes of quality accreditation and mapping need to be compatible, the amount of detail required for the latter needs to be greater, especially in relation to the more advanced levels of service. We believe that CLSPs need to be able to identify four levels, as set out below.
Information

3.37 This covers organisations which provide information on the law not specifically tailored to the circumstances of individual clients, often but not necessarily exclusively in the form of leaflets and similar materials or through telephone helplines. Organisations such as libraries will clearly fall into this category, but it will also cover some community groups and advice organisations.

General advice

3.38 This covers organisations providing basic advice on the law as it applies to the circumstances of individual clients, but not offering detailed help or a full range of services in relation to complex legal problems. General advice largely involves diagnosis, explaining in broad terms the legal rights and responsibilities of the client and setting out possible options which the client may pursue. It may involve work on behalf of the client, for example filling in forms, carrying out financial calculations and obtaining information from third parties. It may entail an element of negotiation and even representation, for example in relation to debt claims not involving a substantive legal dispute. This level probably describes the work of the majority of advice centres.

Specialist advice

3.39 This covers services providing assistance on complex legal problems. It entails detailed advice, negotiation and advocacy on behalf of the client, and representation at courts and tribunals. At this level, the service will be offered by a solicitor or an adviser specialising in a particular area of law, who may be based in a solicitors firm, Law Centre, specialist advice centre or a specialist unit within a generalist agency.

Representation

3.40 For the purposes of mapping, representation needs to be covered separately. A distinction should also be made between the following types of representation:

- limited representation not involving a substantive legal dispute, for example arguing for mitigation in relation to an uncontested action for mortgage arrears or requesting an adjournment so that a client can apply for civil legal aid;
- representation in small claims arbitrations, which may involve substantive legal argument;
- representation before tribunals or similar bodies such as local authority housing benefit review boards, again involving substantive legal argument;
- full litigation, which necessarily entails the involvement of a solicitor (except in cases of litigants in person - ASA’s view is that would be litigants in person should be encouraged to seek expert legal advice).

3.41 The levels described above represent an accurate description of the range of different services provided across the advice and legal services sector. The description is complicated by the fact that there is no straightforward relationship between the levels themselves and different types of activity, for example diagnosis, advice, negotiation and representation. A suitably trained and supported generalist adviser may be able to represent a client in simple debt proceedings, whereas in many housing and immigration cases, even initial diagnosis is best handled by a specialist.
3.42 Despite these complications, there are a number of measurable indicators capable of distinguishing the various levels of service provided in each category of law, including:

- an initial self assessment of the level of service provided;
- whether the service is offered by volunteer advisers, paid advisers or solicitors;
- the number and full time equivalent working hours of solicitors and specialist advisers employed by the organisation, and the categories of law covered by these staff;
- the number of enquiries and cases handled, together with an estimate of the proportion of types of case within each category (for example landlord-tenant, homelessness and disrepair in the housing category);
- the number of cases (estimated in ranges, for example <10, 10-24, 25-49 etc) involving the issue of the various types of proceedings described in paragraph 3.40 above, together with an estimate of the proportion referred, settled or taken to trial.

3.42 ASA believes that this level of detail is required to provide an accurate picture of the levels of service offered by different providers. As part of developing a national strategic framework, more detailed work along these lines should be undertaken to develop a robust methodology for use by CLSPs.

3.43 In respect of the quality as opposed to level of service provided, future mapping exercises will be able to rely on the CLS quality mark as providing a guarantee that organisations have in place and are operating effective management systems, including for the training and supervision of staff and for client care (this is explored in more detail later in our response). Account can also be taken of other quality measures, for example membership of a recognised advice network or of relevant professional bodies such as the Immigration Law Practitioners Association or a Law Society Panel.

3.44 ASA is planning to undertake further work on levels of advice, and this is briefly covered in section 4 of our response.

**Consulting users and providers**

3.45 A national strategic framework should provide guidance on how CLSPs should consult users and providers, building on the approach taken by RLSCs.

3.46 In broad outline, ASA would like to see consultation take the following forms:

- general consultation, to take place as part of the ongoing work of CLSPs as they identify need, map supply and consider models of provision;
- publication of a draft strategic plan, outlining need for services, existing supply, priorities for future provision, possible means of delivery and potential funding responsibilities;
- formal public consultation on the draft plan, including meetings;
- publication of final plan.
3.47 It should be the formal responsibility of funders within CLSPs to agree the plan (and of course to make individual decisions as to which services they will support). However, from the outset the aim should be to attract the endorsement of providers - this will be dependent on building relations of trust within the partnerships.

Conflicts of interest and compacts

3.48 A national strategic framework should explicitly tackle the issue of potential conflicts of interest involving local authorities. Unlike most other local authority funded services, advice agencies and Law Centres are paid to bite the hand that feeds them, including through legal action. ASA considers this to be part and parcel of a healthy democracy, but this is not the view taken by many local authorities, which are unwilling to fund organisations which act against them.

3.49 We would like to see a nationally agreed compact between the advice sector and local government, similar to that agreed between the National Council for Voluntary Organisations and central government, which inter alia safeguards the casework independence of advice agencies and respects their right within the law to criticise local authority polices. Such a compact should also set down arrangements to enable providers and local authorities to discuss issues of mutual concern and attempt to resolve policy differences. This is in the interest of local authorities, as advice agencies and solicitors firms are well placed to identify policy and administrative failures resulting in complaints and legal disputes.

3.50 The issue of potential conflicts of interest involving local authorities should also explicitly be taken account of by the Commission in setting priorities for its own funding. High priority should be given to ensuring that clients in dispute with local authorities (for example housing, community care and education disputes) have access to CLS Fund supported advice, assistance and representation.

Criteria and procedures for allocating funding

3.51 The thrust of the consultation paper, which ASA endorses, is to promote greater co-operation between providers across all sectors and between providers and funders. However, it seems likely that a more integrated approach to the planning and funding of advice and legal services will lead to both increased rationalisation of resources and greater competition for funds. Planning entails change - if existing patterns of provision were adequate, there would be no need for planning. It will no doubt be possible in some CLSPs for funders and providers to agree a sensible division of functions which minimises the need for direct competition for funds. In other areas however, the planning process will result in winners and losers.

3.52 Recent years have in any event seen a more competitive environment emerge within the advice sector, as a result of increased expectations from funders concerning quality, efficiency and value for money. Many local authorities have moved away from a grant aid to a contract approach and this is of course the Legal Aid Board’s approach to its own funding of services.
3.53 ASA has two main concerns about these trends. Firstly, while a rationalisation of resources may reduce duplication and improve quality, there is also a need to preserve some diversity of provision, in order to maintain a degree of client choice and to ensure that the needs of all sections of the community are met. In particular, CLSPs should recognise the role of less mainstream, often smaller providers which work with targeted groups of clients, such as young people, ethnic minority communities and people with disabilities.

3.54 Secondly, ASA is opposed to crude price tendering for advice and legal services. The experience of other jurisdictions, particularly in the USA, is that price tendering is incompatible with the delivery of high quality services. To its credit, the Legal Aid Board has thus far not taken this approach and has for example recognised that advice organisations need to be adequately resourced if they are to meet the LAFQAS requirements. It is likely that in many areas, local authorities will need to increase the present level of funding for existing agencies in order to ensure that they can work to the standards of the CLS quality mark.

3.55 Subject to the above provisos, ASA recognises that a degree of competition and rationalisation may be an inevitable consequence of the operation of CLSPs. The important point is to ensure that these processes are controlled and that a level playing field is established.

3.56 A national strategic framework should therefore set out guidance on the allocation of local authority funds for services, along the lines of the criteria and procedures applying to exclusive contracting of legal aid services. Except where firstly, all providers have agreed a division of functions and funding and secondly, the local authority is satisfied that it does not need to attract a new provider into the area, any proposed reallocation of funds or funding for new services should be subject to an open tendering process based on clear and fair criteria. It is not acceptable for such decisions to be taken behind closed doors.

3.57 There also needs to be consultation on the terms and conditions of grant aid or contract funding. Local authorities have a right to expect that an efficient, cost effective and high quality service will be delivered, but unless funding terms and conditions allow for some flexibility, there is a risk that innovation will be stifled.

3.58 Once funding has been allocated, providers need a reasonable degree of certainty and stability. Subject to meeting agreed quality and any additional contractual or grant aid requirements, providers funded by local authorities should be guaranteed three to five year funding except in the case of experimental or otherwise special projects. This should be reflected in the CLSP planning cycle.

**Good practice**

3.59 Finally, the development of a national strategic framework should involve the dissemination of good practice and ongoing guidance to CLSPs. The Commission should take a pro-active role here, gathering information from CLSPs and other relevant organisations, publicising its own regional and national strategies and initiatives, and undertaking research.
3.60 Amongst the wide range of issues which might be covered in good practice guidance are:-

- developing and operating effective referral networks;
- the benefits and drawbacks of different models of provision;
- ensuring effective user feedback on services;
- funding, developing and monitoring new approaches to service delivery (for example using IT);
- funding opportunities in general;
- the estimated resources required to ensure that organisations are able to provide a service to the agreed level and quality standard;
- contract terms and conditions, including monitoring procedures.

The relationship of the Commission to CLSPs

3.61 There are other issues, not addressed in the consultation paper, which the Commission will need to resolve.

3.62 The Commission will need to establish suitable administrative structures to ensure as far as possible that CLSPs are established throughout the country and are co-ordinated effectively. This carries with it resource implications and may require an increase in the Commission’s administrative budget (which should not however be found from the CLS Fund).

3.63 The Commission will also need to re-examine the role of RLSCs. As stated above, RLSCs should be retained for a number of important reasons, but their work needs to be dovetailed to that of CLSPs, to avoid needless duplication of effort. This issue is complicated by the fact that CLS Fund resources will remain targeted on financially eligible clients, whereas this is not (and should not be) the case for other funders.

3.64 The Commission will also need to consider how its own funding, especially for not-for-profit sector services, should relate to that of local authorities. This raises two potential dilemmas, briefly considered below.

3.65 Firstly, the Commission needs to strike a balance between addressing need and supporting high quality services capable of providing in depth casework and representation. There is some evidence (for example from the needs assessment carried out by the Board for the purposes of the second phase not-for-profit sector contracting pilot) that such services tend to be concentrated in areas of relatively high need, which may largely resolve the dilemma. However, there are likely to be some instances where funding a solicitors firm or advice agency to provide a service not identified as having a high priority is justified on the basis of the organisation’s track record. Where such an organisation is handling a reasonable volume of cases, this will provide direct evidence that it is meeting a genuine need.

3.66 Secondly, the Commission needs to strike a parallel balance between addressing need and taking account of provision funded by local authorities. For example, on the basis of need, an area might be identified as having a high priority for welfare rights advice. In such a case it would not make sense for the Commission to completely ignore the existence of a well resourced local authority funded welfare rights unit when considering the level of CLS Fund resources to be allocated in meeting that need.
3.67 On the other hand, a policy of targeting CLS Fund resources to those areas of the country where there is little or no specialist provision risks rewarding those local authorities which are not prepared to support advice and legal services while penalising those with a good record of such support (not to mention the fact that the Commission may have problems in identifying organisations capable of delivering high quality contracted services in these areas).

3.68 There is no easy answer to this dilemma, and it needs to be explored as CLSPs develop. In the medium term at least, some flexibility in approach is required in striking the right balance. The Government is however entitled to expect that local authorities will play an active part in developing the CLS, by ensuring firstly, adequate core funding for advice services to enable them to reach the required quality threshold for general advice, and secondly, direct support for specialist services in areas of substantial need. If local authorities do not continue to fund specialist advice, the CLS Fund will simply become a source of replacement funding, with no net gain in provision.

3.69 The CLS should provide an opportunity for the Commission and local authorities to work in partnership in order to ensure the best possible provision of social welfare law services. Where however a local authority is unwilling to do so, the Commission should not be required to compensate for this failure by taking on full responsibility for funding the not-for-profit sector. In particular, the Commission should continue the current policy of the Board that in the event of a local authority cutting advice services, it reserves the right to reduce or curtail its own funding.

**Future development**

3.70 The proposal to establish CLSPs raises a range of complex policy issues requiring further research and development. ASA believes that in the medium term, the Commission should concentrate its efforts on:

- working with the established pioneer and associate pioneer partnerships in order to further identify the issues and explore solutions;
- establishing the required administrative structure to ensure effective co-ordination of CLSPs;
- developing a national strategic framework for CLSPs, in consultation with other funders, the advice sector, the legal profession and other interested parties.
SECTION 4: THE COMMUNITY LEGAL SERVICE QUALITY MARK

Introduction

4.1 ASA welcomes the Government’s commitment to ensuring the quality of advice and legal services through the introduction of a CLS quality mark. ASA began a National Lottery Charities Board funded programme of work in October 1998, which aims to develop quality standards across the advice sector, reduce duplication of effort and promote a common approach to quality by both funders and providers.

4.2 ASA believes that the quality mark should be based on existing standards, especially LAFQAS and quality systems developed by the national advice networks and the Law Society. This will build on best practice established in the advice and legal services sector and reduce duplication.

4.3 In the first instance, therefore, the quality mark will be largely input (process and system) based, reflecting the current state of development in the field. It should focus on:-

- organisational management - including governance, strategic planning, financial management, staff management and administration;
- client care - including access to the service, equal opportunities, user involvement, keeping clients informed as to progress, and complaints handling;
- enquiry and case management - including record keeping, file monitoring and progressing cases;
- supervision and ensuring the accuracy of work;
- signposting and referral.

4.4 The standards need to be comprehensive. In order to maintain the integrity and reputation of the quality mark it will be important to ensure that the organisation as a whole is operating competently, for example in relation to legal and financial requirements and staff management. Widespread problems relating to mismanagement, probity or poor employment practices will not only reflect badly on providers but risk bringing the quality mark itself into disrepute.

4.5 In the longer term however, ASA does not believe that an inputs based system alone is an adequate approach to quality, and we would like to see a shift of emphasis towards the monitoring of outputs (ie the quality of legal advice and help provided) and outcomes (ie results for the client). We consider this in more detail later in this section.

The quality mark and levels of service

4.6 ASA agrees with the consultation paper that the quality mark will need to be modular, reflecting different levels of service. This will require establishing different standards under the quality mark, albeit with a common structure and some shared elements.
4.7 In the previous section of our response, we considered the issue of levels of service in relation to the mapping of the supply. The definition of levels of service for the purposes of mapping and the quality mark need to be consistent with, though not necessarily identical to, each other. ASA considers that the quality mark should contain three standards mirroring the levels set out below:

**Assistance**

4.8 This standard should cover solicitors firms and specialist advice providers as described in paragraph 3.39 above. It should be awarded in respect of specified categories of law. The standard should be largely based on LAFQAS, which despite its limitations, is currently the most rigorous standard available for advice and legal services.

4.9 If a significantly different standard is to be adopted, LAFQAS accredited organisations should automatically be passported to the new standard for at least three years from the launch of the quality mark. It would be unreasonable to expect firms and advice agencies which have invested considerable time and resources in investing in LAFQAS to be forced to make major changes at this juncture.

**Advice**

4.10 This standard should cover general advice providers as described in paragraph 3.38 above. It should relate to the service as a whole rather than specific categories of law. Organisations should be able to be accredited against the assistance standard in respect of part of their service (for example a welfare rights unit) with the remainder of the service accredited against the advice standard.

4.11 The standard should draw on both LAFQAS and existing advice network standards, which, despite the disparate development of quality standards within the advice sector, share common features. The advice standard should cover broadly the same ground as that covered by LAFQAS, but should impose less detailed requirements in respect of such matters as case management and supervision. It must set out detailed referral requirements, to help ensure that more complex cases are handled by specialists.

4.12 As provided for under LAFQAS, mechanisms need to established for assessing the quality of advice provided by organisations accredited against the advice standard. The trigger for their use should be general concerns over quality raised at audit. Peer review by experienced specialists is the best measure of the quality of advice, and we consider this in more detail later in this section of our response.

**Information**

4.13 This standard should cover information providers as described in paragraph 3.37 above. This should be a less detailed standard, concentrating on organisational and management standards, client access and procedures to ensure that information is accurate and up-to-date.
4.14 Representation will in most instances be provided by specialist providers, but as stated earlier, more basic representation is sometimes undertaken by generalist advisers. While a separate standard for representation is probably unnecessary, accredited organisations should be required to state what types of representation (as set out in paragraph 3.40 above) they are able to undertake.

4.15 Signposting and referral are key to the network of services envisaged by the CLS, and must be incorporated as essential quality mark requirements. Signposting (basic information on sources of legal help) is more relevant to the information standard, whereas referral (a more active process of identifying and if necessary helping the client to access a suitable provider) is more relevant to the advice and assistance standards.

4.16 It will be essential for organisations to be accredited to the correct quality mark standard, to ensure that:

- organisations and individuals are acting within their competence, and providing the service that they say they are;
- clients can identify as far as possible which service is applicable to them;
- referrals can be made to suitably competent organisations.

4.17 Most agencies will correctly identify which standard is applicable to their service, but some may hold themselves out to be providing a specialist service that they are not equipped to provide. It would be anomalous and misleading to the public if organisations could obtain LAFQAS accreditation to provide a generalist service which the Commission would not itself wish to fund under a legal aid contract. Each standard should therefore contain a clear description, backed by auditable requirements, of the level of service which it seeks to cover.

4.18 Some key indicators of levels of service, relevant to the mapping of supply, are set out in paragraph 3.42 of our response. For the purpose of the quality mark, the most important distinction is that between generalist and specialist services. Specialist services normally employ paid staff who concentrate on one or two areas of law. The point here is not that an adviser is paid, but that he or she spends sufficient time on a subject to build up and maintain expertise, and this usually entails paid employment. Most volunteer advisers work limited hours and are expected to advise across a wide range of subjects, although there are some exceptions.

4.19 Organisations wishing to apply for the assistance standard of the quality mark should therefore be required to demonstrate that the service is being provided by solicitors or specialist advisers. At a bare minimum, the requirement should reflect the present not-for-profit sector legal aid contract (as opposed to LAFQAS) requirements that services are:

- normally provided by specialist agencies or specialist units within generalist agencies;
- provided by advisers working a minimum of twelve hours a week.

4.20 Some networks consider that these requirements should be tightened, and that advisers be required to work a minimum number of hours in the category of law which is being accredited.
4.21 As part of its own programme of work, ASA aims to analyse the main categories of social welfare law in order to draw up detailed indicators of the kind of work which is within the competence of a generalist adviser and that which should be undertaken by specialists. This exercise will also consider matching training and information resource requirements. The boundaries are likely to be at different points in different subjects. We would for example expect a generalist agency to be able to undertake a greater amount of work on a welfare benefits case than an immigration case before needing to refer to a specialist.

4.22 The results of this exercise (and similar work has already been undertaken by the Lord Chancellor’s Advisory Committee on Legal Education and Conduct in relation to immigration law) might have a number of uses, including:

- as guidance to providers;
- as an additional tool for identifying levels of service for the purposes of mapping supply and awarding the quality mark;
- as part of an accreditation process for individual practitioners;
- as criteria for use in peer review.

**Accreditation of the quality mark**

4.23 Quality standards have little value unless they are properly audited and continuously monitored. It may however be acceptable for the information standard to be accredited and monitored on the basis of a carefully designed self assessment process, provided that the Commission (or any other approved accreditation body) retains the right to undertake an external audit, for example if it has concerns about the provider’s performance.

4.24 The advice and assistance standards should be subject to external audit, both initially and as an ongoing check that the standards are being maintained. For the foreseeable future, the Commission should directly accredit and monitor the assistance standard. This standard will provide the gateway to the CLS Fund (although in the context of a cash limited scheme, not all accredited providers will necessarily obtain a contract), and direct accreditation by the Commission will provide the best guarantee that the process is independent and impartial. Any longer term move towards devolution of the LAFQAS accreditation process should be subject to separate public consultation and careful piloting.

4.25 Accreditation and monitoring of the information and advice standards by bodies other than the Commission may be acceptable in the short to medium term, but this should be handled with considerable caution, especially since some organisations of providers may wish to become accrediting bodies, raising potential conflicts of interest. The Commission will need to satisfy itself that any approved body has firstly, the professional competence to undertake the work (seeking confirmation for example that auditors are properly trained and supervised) and secondly, that it has procedures in place which guarantee that the accreditation process will be operated entirely independently of any other function of the body concerned. The Commission should closely monitor any approved bodies and retain the right to undertake direct audits of accredited providers as a check on an approved body’s performance.
4.26 Some national advice networks may wish to accredit their own members and/or other providers against the information and advice standards. Other networks may however not wish to take on this role or may lack the resources to do so, while some providers are not members of national advice networks. It will not be acceptable for an advice agency to be put in a position of having to seek accreditation from a network representing potential competitors, as this will raise serious questions of conflicts of interest. The Commission must therefore ensure that an entirely independent accreditation route is available to all providers. This route will almost certainly have to be accreditation by the Commission itself.

Passporting

4.27 The Legal Aid Board currently allows limited passporting against LAFQAS requirements. For example, members of certain Law Society panels are passported against the supervisor standards, Investors in People accredited organisations are passported against the management of people requirements and members of approved professional indemnity insurance schemes are passported against the PI requirement.

4.28 ASA would like to see an extension of such passporting, which will reduce the need for providers to operate multiple quality systems. Passporting is likely to be a two way process, as advice networks and other organisations seek to harmonise their own standards to that of the CLS quality mark.

4.29 Most advice networks have minimum conditions for membership, typically covering such matters as governance, organisational management, equal opportunities, confidentiality, complaints and professional indemnity insurance. Systems audits are generally undertaken by networks although some lack the resources to carry out compliance audits.

4.30 The Commission should examine quality systems operated by the advice networks and the legal profession, together with external schemes such as ISO 9000, and consider which specific requirements are of equivalent rigour to their CLS quality mark counterpart. Such requirements should then be approved for the purpose of passporting. It is probable that a greater number will be suitable for passporting against the information and advice standards than against the assistance standard.

4.31 In some cases, passporting may obviate the need to carry out either a systems or compliance audit in respect of a particular requirement. In other cases, the Commission may agree to passport the requirement but continue to audit compliance.

Lead in period

4.32 When the quality mark is introduced, many organisations are likely to face difficulties in meeting the full range of requirements at once. Some flexibility is required here, similar to that applying under LAFQAS, where not-for-profit sector organisations are given limited leeway at initial audit and are not required to reach full compliance until the end of the first year of their contract.
Support to providers

4.33 The importance of organisations “owning” the quality process is universally recognised by professional organisations working in the field, and this will entail the provision of support to organisations wishing to apply for the quality mark. Such support should include:

- a clear explanation of the purpose of the quality mark and its different standards;
- details of how to apply and of the assessment process;
- a self-assessment pack, to enable organisations to identify what standards they already meet and areas on which further work is required;
- an ability to raise issues and problems on an informal basis with auditors, in order to agree a way forward - this is key to the continuous improvement imperative;
- technical support and guidance on good practice in meeting the requirements, in the form of written briefings, telephone consultancy and training.

Frequency and depth of audits

4.34 There should be flexibility concerning the frequency and depth of audits. Where an organisation has a good track record of compliance, the frequency of full audits should be decreased. Conversely where there is cause for concern, organisations may be audited more frequently and in greater depth. Key indicators could be developed, similar to those for Best Value, to signal potential problems and identify good practice.

Resource implications

4.35 The proposed CLS quality mark carries with it significant resource implications, associated with the recruitment and training of auditors, the audit process itself, operating an appeals system, marketing, and general management and administration. There will also be costs associated with approving and monitoring other accrediting bodies. The estimated cost of auditing an organisation against LAFQAS is around £1,500 per annum. The consultation paper is silent on the question of how the quality mark will be financed.

4.36 ASA’s understanding is that not-for-profit agencies will not be charged for accreditation, although further clarification is required following the Lord Chancellor’s recent parliamentary statement. It would not be easy to establish an equitable charging regime which takes account of the different funding levels of not-for-profit sector providers and the different audit arrangements which may be put in place.

Developing the quality mark - issues for the future

4.37 There is much work in progress on quality standards in the advice and legal services sector. Most of the existing systems are based on input measures. These ensure that organisations have systems, policies and procedures in place and are following them. It is assumed that this should ensure the quality of the service being provided.
4.38 The involvement of advice agencies in legal aid franchising lends some support to this view. There is a broad consensus that working to the franchising quality requirements increases managerial and administrative efficiency and, through the supervision and file review requirements, improves the quality of advice and assistance. It is also agreed that franchising increases client confidence in the quality of an agency’s service.

4.39 However, the approach to quality which underpins franchising and similar input based quality systems is open to two fundamental criticisms. Firstly, it can be overly bureaucratic, requiring providers to devote a disproportionate level of resources to administration. Secondly, it provides no objective measurement of the quality of legal work. The Legal Aid Board uses transaction criteria as a proxy measure, but there is a general lack of confidence in this method, which relies on file inspection by auditors who are not legally expert.

4.40 ASA would therefore like to see a commitment to continuing development of the quality mark, involving a move towards alternative measures. This should result in less emphasis on input measurement, although there is always likely to be a need to monitor key organisational systems such as governance, financial management and certain aspects of client care. It should also reduce the administrative burden on organisations, giving them greater room for flexible and innovative practices.

4.41 There are three main alternative approaches: peer review, practitioner accreditation and outcome measures. These are considered briefly in turn below.

Peer review

4.42 Peer review is probably the most promising way forward in terms of developing a direct measure of outputs, ie the quality of legal work. ASA is pleased that the Board sees an enhanced role for peer review in franchising, and we look forward with interest to the findings of the current research being conducted on the Board’s behalf by the Institute of Advanced Legal Studies. Shelter has recently undertaken a major peer review exercise within its network of housing aid centres and NACAB is currently piloting peer review of CABx.

4.43 Peer review has sometimes been criticised on the basis that legal specialists frequently disagree with each other as to what constitutes competence in given category of case. This should not constitute an insurmountable problem provided that:

- agreed criteria are drawn up in consultation with practitioners, delineating different levels of competence;
- the agreed criteria cover a range of factors including accuracy of legal advice, choice of strategy, efficiency in handling the matter and use of referral;
- there are agreed criteria for the selection of peer reviewers;
- peer reviewers are trained in auditing.
4.44 Nor need peer review be prohibitively expensive, if it is used strategically rather than routinely, for example:-

- where general quality mark audits raise cause for concern;
- to provide an additional means of assessing rival bids for funding where potential providers have scored equally against other criteria;
- as an occasional random check on quality.

**Practitioner accreditation**

4.45 The Legal Aid Board’s decision to passport members of specified Law Society Panels against LAFQAS supervisor standards is a good example of how the CLS quality mark should take account of recognised accreditation of individual practitioners. The accreditation of police station duty advisers provides another example of this approach.

4.46 In the longer term, it might be possible to incorporate accreditation schemes for staff employed in non-solicitor agencies (or in solicitor agencies to the extent that not all subject categories are likely to be covered by Law Society Panels), should suitable schemes emerge from current advice sector initiatives in this area.

**Outcome measures**

4.47 The audit of outcomes, ie assessing the result of the case for the client, is in principle a powerful tool for measuring quality. In practice however, it raises a range of difficult technical issues, and the development of a comprehensive system of outcome measures is likely to prove difficult if not impossible. This is particularly the case in relation to acts of information, advice or assistance, which frequently do not result in a judgment or settlement. Moreover, a crude system of outcome measures may deter providers from taking on difficult but meritorious cases, for fear of being marked down on audit.

4.48 Outcome measures will therefore need to be rigorously researched and tested before being incorporated into the CLS quality mark. They may be more feasible in some categories of law or type of case than in others, and it is unlikely that they will ever be able to be used in isolation from other measures of quality.
SECTION 5: THE ROLE OF INFORMATION TECHNOLOGY

Introduction

5.1 ASA agrees with the consultation paper that information technology has a huge potential to expand and even transform the delivery of information, advice and legal services. Internet based legal information services are not limited by geography within a given jurisdiction and can be:

- relatively easily kept up-to-date;
- provided in a range of formats, for example enabling users to access different levels of complexity;
- interactive;
- specifically tailored to certain user groups, for example the young;
- provided in different languages.

5.2 Similarly, the use of e-mail and in the longer term, video links will increase direct public access to lawyers and advisers. As internet use and especially digital television ownership spread, so will the possibilities for developing electronically delivered legal services.

5.3 In practice, there is likely to be an array of developments, based largely on individual initiatives rather than government planning. Entrepreneurial solicitors, advice agencies and local authorities will establish new electronically based services. Various separate initiatives are being developed by the advice networks, both to support their own members and to provide services to the public. New commercial providers are almost certain to emerge.

5.4 Such diversity is an integral part of the electronic revolution and should not be feared, although it is inevitable that it will result in some duplication of effort and services of variable quality.

5.5 The rapid growth of new technology in the home and at work is not uniform. As the consultation paper points out, only 16% of those in social class C1 and 2% of those in social classes D and E have access to the internet at home. There is therefore a need to ensure public access to electronically delivered services, via kiosks and computer terminals located for example in courts, libraries, shopping centres, community centres and advice agencies.

Supporting new services and infrastructure

5.6 It is important for the Government and the Commission to take a pro-active role in harnessing new technology to the development of the CLS. This should include both support for new services and assistance in the establishment of an infrastructure to ensure adequate public access to such services.

5.7 ASA does not however believe that this should primarily be resourced through the CLS Fund, especially as far as the provision of legal information is concerned. As stated earlier in our response, the Fund should continue to be focussed on the provision of specialist legal services, although in due course this will include services delivered using new technology.
5.8 The Government should rather adopt a joined-up approach to the role of new technology within the CLS, placing it in the context of its overall strategy for the electronic delivery of public services. This will entail cross-departmental thinking and co-operation. The Government should also consider how partnership with both the private sector and public broadcasters might have a role in generating resources for new services and the required infrastructure.

**Early priorities**

5.9 As the consultation paper acknowledges, the full potential for using information technology to deliver information, advice and legal services will not be realised for some years yet. In the short to medium term therefore, the Government and the Commission should concentrate on the following priorities:

- development of a CLS website;
- support for an internet based public legal information service;
- exploring the role of new technology in supporting practitioners.

5.10 We consider each of these in turn below.

**CLS website**

5.11 The consultation paper states that the Government intends to launch a CLS website early next year. ASA’s understanding is that it will be run by the Commission. Our view is that the primary aims of the website should be to:-

- provide basic information on the CLS itself;
- provide more detailed information on the CLS to practitioners;
- disseminate information on national and local developments within the CLS;
- enhance access and referral to CLS providers through a directory;
- provide links to other approved sites.

5.12 The starting point for the website should be a straightforward description of the CLS and its various elements, for example contracting, the role of RLSCs and CLSPs and the CLS quality mark. It should also set out financial and general entitlements to help from the CLS fund.

5.13 The website should also contain more detailed information aimed primarily at practitioners. This would include the various CLS quality mark standards (and guidance on the accreditation process), the Funding Code, the documentation relating to exclusive contracting (including relevant forms) and other technical guidance.

5.14 The website will have an important role to play in disseminating information on the development of the CLS, as discussed in section 3 of our response. This might include updates on the work of CLSPs, the regional strategies developed by RLSCs, consultation papers and research reports. The website should also contain guidance on good practice, of the kind described in paragraph 3.61 above.

5.15 Key to the website should be a directory of CLS providers, setting out brief details of services offered and how to access them. It should also indicate the quality mark standard applying to each provider, together with other information relevant to levels and quality of service, such as membership of a Law Society panel.

The Community Legal Service – ASA Response
5.16 Finally the website should contain links to other approved sites, for example national advice networks, national organisations specialising in particular areas of law and a public legal information website.

**Public legal information website**

5.17 ASA does not believe that the CLS website should itself provide information on substantive law and procedure. Nor do we see its longer term focus as being to provide electronically delivered advice and legal services. Public confidence will best be ensured if these services are run independently of government by organisations with a proven track record in their delivery.

5.18 ASA therefore believes that the best way forward in the medium term lies in the development of an independently run dedicated public legal information website, sponsored by reputable national organisations working in the legal services field, including the advice networks and the professional bodies representing the legal profession.

5.19 Such a service, which should probably be developed on a pilot basis in the first instance, might be funded through a variety of sources, including government, charitable and commercial funding.

5.20 Initially, the focus of a public legal information website should be the provision of high quality but basic information on legal rights and responsibilities, linked to a referral directory of CLS providers. Ideally, the same directory would be available on both the CLS and the public legal information websites. The website would incorporate user feedback mechanisms and have links with other websites, including those providing more specialist information and the CLS website.

5.21 In the longer term, a public legal information website might aim to provide more sophisticated and interactive services, for example more specialised information, pro-forma letters and form filling facilities.

5.22 ASA and the networks are currently exploring the possibilities for a public legal information website, in discussion with other national organisations with an interest in the field. These discussions are at a very early stage, but there is clearly scope for future collaboration with the Department and the Commission, to ensure a degree of co-ordination and harmonisation of planned initiatives.

**Support for practitioners**

5.23 Information technology has an important and specific role to play in providing support services to practitioners. Most of the advice networks are involved in developing general support services using information technology, including for the provision of legal information, membership guidance and case management tools. As stated in section 1 of our response, the development of the CLS should include a cross-departmental strategy to provide support to the national advice networks, and this should encompass information technology.
5.24 There are in addition a number of internet based specialist support projects, including the Electronic Immigration Advice Network and RightsNet, run by the London Advice Services Alliance. These not only provide specialist legal information but are also interactive, enabling practitioners to contribute ideas and communicate with each other.

5.25 These types of service represent a natural extension of traditional second tier support services - telephone consultancy, training and case referral - and are probably best provided in conjunction with such services. They merit funding through the CLS Fund, initially on a pilot basis. The Commission should in due course extend the scope of its Methods of Delivery pilot, and work with established second tier providers to develop internet based support services.
COUNTY COURT ADVICE AND REPRESENTATION SCHEMES

1. It is well known that many tenants and homeowners facing possession proceedings fail to attend court hearings. In addition, many of those who do attend have not obtained independent advice beforehand. Last minute help at court is not a satisfactory substitute for early intervention on behalf of defendants or potential defendants. However, public funding of duty schemes providing advice and representation at court on possession days falls squarely within the aims of the CLS, for the reasons set out below.

2. There has been a rapid expansion of schemes in recent years, but their development has been very ad hoc. A more strategic approach is required.

3. Given the importance the Lord Chancellor attaches to social welfare law provision, including housing, whether tenants and homeowners can get help at court is too important an issue to be left to chance. This needs to be addressed when setting national priorities for the provision of publicly funded legal services.

4. All county courts collect statistics on the numbers of possession claims which they issue, and record whether defendants attend hearings. Some of the tools for assessing the need for duty schemes and identifying the levels at which they need to operate are therefore readily available.

5. The Court Service does not at present have an agreed policy on whether courts should host schemes. In addition, rights of audience for the lay advisers who staff the majority of schemes are in the discretion of the judiciary. Judges must ultimately retain that discretion, but there should be agreed minimum criteria which, if met, should lead to a presumption that courts and the judiciary should lend their support to schemes.

6. The vast majority of existing schemes have to rely on the ability of the agencies or solicitors firms taking part to absorb the costs into their main budgets. Lack of a secure funding base means many schemes have problems maintaining appropriate staffing levels and ensuring that advisers have access to the right training, reference materials and supervision. Lack of resources also raises questions concerning the quality of some schemes, and this should be addressed under the auspices of the CLS quality mark.

7. Many existing schemes are staffed by advisers from several agencies and solicitors firms, and this can lead to advisers having to complete two sets of paperwork - one for their own organisation and one for the scheme. Core standards are needed to ensure that appropriate case records are kept and the work of schemes can be properly monitored, whilst keeping the administrative burden to the minimum necessary.
8. Court based advice and representation schemes have potential for reducing unnecessary duplication of effort on the part of local advice providers. There will be significant numbers of cases where it is necessary, in the client's best interests, for the same adviser to see things through to their conclusion. But, particularly where agencies are based some distance from the court, it may often be a more efficient use of resources to arrange for clients who have received advice from an agency to be referred for representation at hearings by duty advisers;

9. Duty advisers are well placed to identify other advice needs which might otherwise not be met, for example debt, welfare benefits or other housing problems, and to offer referrals to local agencies or solicitors firms. They could therefore constitute an important element of the referral networks envisaged as being at the heart of the CLS.

10. Two points need to be made about sources of funding for advice and representation schemes. Firstly, some local housing authorities are becoming more directly involved, helping to staff as well as fund schemes in their local courts. This increases the potential for conflicts of interest. Central funding through the CLS Fund would be more likely to ensure the independence of schemes, as well as achieving more consistent coverage.

11. Secondly, many mortgage borrowers in particular fail the means test for legal aid advice and assistance. Unless schemes funded through the CLS Fund are to refuse to serve a substantial proportion of their potential clients, eligibility has to be extended by allowing advice and representation at court without means testing. Precedents for this exist in the criminal duty solicitor schemes and non-means, non-merits tested legal aid for parents in care proceedings.