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# **SOCIAL JUSTICE ON THE MARGINS: THE FUTURE OF THE NOT FOR PROFIT SECTOR AS PROVIDERS OF LEGAL ADVICE IN ENGLAND AND WALES**

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The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) has been described by many commentators as a dramatic curtailment of access to justice which is likely to impact disproportionately on marginalised groups and individuals. This paper seeks to set LASPO in its historical context - as a radical development, but nevertheless one that is consistent with the policy discourses of responsabilization and consumerism dominant from the 1990s. It uses research into the experience of the Not For Profit sector's involvement in legally aided welfare advice to frame this perspective. Key findings include the extent to which respondents (both managers and front line workers) felt that Legal Services Commission funding had transformed organizational practices and ethos but that the implementation of LASPO and the austerity programme represented a critical watershed for the sector and its capacity to fulfil what front line workers in particular felt was their 'mission'.

**Keywords:** NFP Sector; legal aid; responsabilization; access to justice; Big Society

## **Introduction**

The involvement of what is variously described as the Not for Profit (NFP), Voluntary or Third Sector in the provision of legal advice and assistance is paralleled by its broader engagement in welfare provision as a whole (Kendall, 2003; Kelly, 2007): a history of charitable or grant-aided provision in the interstices of the post-war welfare settlement was transformed from the 1980s onwards by an increasingly close relationship with government and a shift towards the contracted provision of direct services (Fenton, Passey and Hems, 1991; Bourn, 2005; NCVO 2005, 2008). For government and the Legal Aid Board, and its successor body the Legal Services Commission (LSC), the primary attraction of this relationship lay in local and national advice agencies' specialist expertise in areas of welfare law, such as housing and debt (LCD 1995, paras 3.7-3.8), which had come to be viewed both as areas of unmet legal need (Genn, 1999) and as contributing disproportionately to social exclusion (DCA 2001; Pleasence et al., 2006). The sector's appeal was enhanced by the perception that it offered both cheaper provision and a set of altruistic values that contrasted with the rent-seeking behaviour assumed to be characteristic of private solicitors' firms. Another factor, reflecting the appeal of communitarian ideas for both Conservatives and

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Labour (Sage 2012), was the ‘added value’ in the form of social capital which the sector was expected to bring.

The high water mark of the sector’s engagement in the provision of publicly funded legal advice was the period following the Labour Government’s Access to Justice Act 1999 (AJA), and the creation of the LSC and Community Legal Service.<sup>2</sup> However, a developing governmental discourse which constructed legal aid expenditure as a problem requiring radical solutions (Falconer 2007, cited in Sanderson and Sommerlad 2011), led to a cooling of mutual regard (Sommerlad and Sanderson 2009). The relationship has now reached a critical watershed as a result of the hegemony of the ‘Big Society/ small state’ discourse, and implementation of the austerity programme which includes the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Although rhetoric which described LASPO as the ‘end of legal aid as we know it’ might be exaggerated (Miller, 2012), it is nevertheless clear that in combination with the decline in other funding sources, its impact on the NFP sector and its clients will be drastic.

That this should occur just as the financial crisis has also exacerbated for most legal aid recipients the clusters of problems that the AJA 1999 was designed to address might appear a bitter irony, but our argument is that it is in fact far from coincidental. The statistical picture on current unemployment is confused, but it is clear that the last three years have seen a sharp rise in under-employment. However, the re-framing of the financial crisis as a fiscal crisis, the result of a bloated state, has legitimated the targeting of austerity measures on ‘benefit dependency’: both the June 2010 Budget and October 2010 Spending Review initiated steep cuts in benefits and tax credits which will be progressively implemented, while the Universal Credit combines current means-tested support for adults and children into one benefit for those who are out of work or low waged. There has therefore been a significant drop in the real income levels of both employed and unemployed (Bawden, 2011; Smith, 2012), and the Institute for Fiscal Studies has predicted that the rate of poverty will increase dramatically in the coming years (Brewer et al 2011). The conditionality of benefits has also been intensified, making accessing them more complex and burdensome.<sup>3</sup> Evidently, this complexity, together with the severity of the cuts and resulting

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2 In fact the NFP sector began engaging in legal advice work in the early 1970s. In addition to the long established CABx and emerging Law Centre movement, new agencies began to spring up. This development was part of a more general burgeoning of the advice sector, and was largely funded by grants from local authorities, whose role had similarly expanded at this time. CABx led the move to employ a small number of lawyers to support its lay workforce, and in the mid 1980s, following a proposal to a government Efficiency Scrutiny that significant savings would be made by transferring legal advice to the NFP advice sector, contemplated bidding for this work. The idea was dropped in part because of opposition to the idea from within the CAB (Smith 2011 p 12)

3 Since conditional entitlement is fundamental to the neo-liberal project, the move to these changes in benefits was initiated by the Thatcher government, and since then has been progressively extended and intensified. The manner in which all claimants of Incapacity Benefit have been re-tested – described by Levitas (2012: 323) as both incompetent and brutal - exemplifies the increasingly punitive and complex administration of benefits

rise in debt and homelessness, family breakdowns and mental health problems, has increased the need for specialist legally aided advice and assistance (LCF 2011; Morris 2012). Furthermore, as the Ministry of Justice (MOJ) has acknowledged ‘legal aid recipients are amongst the most disadvantaged in society, reflecting both the nature of the problems they face as well as their eligibility for legal aid’ (MOJ 2011: 13). However, the transformation of welfare rights into contingent benefits is fundamental to the displacement of what in the US was termed a ‘war on poverty’ by a ‘war on the poor’ (Katz 1990), entailing parallel restrictions on the capacity to make legal claims to those benefits. Thus despite the NFP sector’s ostensibly key role in the Big Society, its funding has been cut and its clientele stigmatised.

The paper has two objectives. The first is to draw on the findings of qualitative research conducted over a period of 3 years with front line workers and managers in the NfP legal advice and assistance sector to discuss their experience of the changing relationship with government and the LSC, and the impact of the funding cuts generally, and in particular of LASPO. Our second objective is to place these experiences in a theoretical frame which, firstly, uses the concepts, now widespread in social policy analysis, of the capture or colonisation of the NFP sector (Hogg and Baines, 2011, p. 345), and, secondly, highlights the significance of discourses of autonomisation, responsabilization (Mead 1986; Murray 1986; and see Garland 1991; Clarke 2005) and entrepreneurialism (see DTI/DfEE 2001; European Commission 2004; BERR 2008) in locating the causes of poverty in the individual rather than macro structural factors; transferring responsibility for welfare provision from the state to welfare recipients and the community generally, and marketising all service provision.<sup>4</sup> These discourses and the policies they spawn, summarised as moral regulation of the poor (Chunn and Gavigan 2004) and popular with governments on both sides of the Atlantic,<sup>5</sup> represent key components of the neo-liberal privatisation of the state and its underpinning free-market individualistic mythologies. This theoretical framing allows us to locate our discussion of the impact of LASPO, and the ways in which it is compounding the transformations in the culture, mission and practices of NFP agencies which contracting initiated, in a wider context of socio-political change. Accounts of the development of the neo-liberal challenge to the post-war welfare settlement usually begin with the election of the Thatcher government in 1979. However, following an outline of our methods, our discussion

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<sup>4</sup> Giddens (1990) and Beck (1992) see the increasing individualisation of responsibility for success and/or failure is inherent in late modernity. This focus constructs success as the result of an individual rather than in any way the result of structural positioning. Eekelar (1991) points out how the principles of ‘responsibilisation’ noted by Garland (2001) in relation to responses to the ‘crime control complex’ of late modernity are equally evident in moves to promote parental responsibility as being pre-eminently an individual responsibility thus absolving the state from a wider duty of care’

<sup>5</sup> See for instance Ilean and Basok, 2004. Collins and Mayer describe how, during the 1980s and 1990s, neo-liberal philosophies and practices peaked with the introduction of the Family Support Act in 1988 (Reagan Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (Clinton) in 1996.

of respondents' accounts and the policies and discourses leading up to the Big Society idea and LASPO will trace policy trajectories from the establishment of the legal aid scheme.

### **Methods and sample**

The study was conducted from 2009-12. The precarious and complex nature of the NFP sector's funding (Bull and Sergeant 1996), requiring it to maintain multiple income streams, has long been a defining characteristic, constraining what could be achieved (and see Davies, 2011, p. 644 on the issue of funding for the sector generally). Consequently, one of the attractions of LSC contracts was that they would provide a more secure financial basis for welfare advice. Nevertheless, concerns were expressed even in the early days of the relationship about the changes it would generate, both to practitioners' ways of working and their values. These values emphasised client empowerment and entailed the creative use of expertise in welfare law to challenge discretionary decisions and thereby hold both local and national government to account. Evidently, in order to fulfil this function agencies need to be independent, but close to, and credible in the eyes of, client communities.

Our previous research (Sommerlad and Sanderson 2009) indicated that for many agencies the growing significance of the LSC contract as opposed to recurrent grants income, and the increasingly interventionist nature of the contract, **did** have the effect of progressively undermining the sector's independence and changing its culture. By 2009 this process had been accentuated by ongoing downward pressure on the unit cost of contracted services, intensified by the introduction of fixed fees, and the shift by the LSC to what the sector perceived as a punitive form of auditing (ibid). A primary research aim was therefore to explore how these developments were impacting on the sector's practices, culture and morale. Conducted over a three year period, this was an iterative process; however, from 2010 onwards, the research aims widened to explore the impact of the Coalition austerity programme and in particular LASPO.

Using snowball sampling techniques, we recruited representatives from sixteen organizations, primarily based in London. These organizations included some of the biggest, national agencies, umbrella advice organizations, specialist agencies which only took test cases and offered expert support to the rest of the sector, individual law centres, and small, specialist advice centres. The sample therefore encompassed agencies that were solely dependent on legal aid funding, and ones for whom legal aid represented one element in a basket of income streams which varied in both their source and their character.

Our research methods included: participant observation at two conferences (2011 and 2012) focused on the impact of LASPO and the austerity programme in general, which were attended by representatives of a comprehensive range of advice agencies; a focus group (held in 2009) with members of the policy team of a national umbrella advice organization, and a total of 21 in-depth interviews with agency managers and also with individuals working in front line advice delivery. The questions for the policy group mainly focused on the adaptive strategies that its membership agencies were developing in order to deal with the new landscape of legal aid, which included the implementation of fixed fees, whilst the individual interviews also explored the impact of the reforms on the values, internal structure and practices of agencies and individual workers, and on clients.

The analysis of interview data was supported by documentary material to which agencies were kind enough to give us access, and also organizations' websites (such as Annual Reports and surveys). For reasons of confidentiality, we have not named the participating organizations, and as far as possible have avoided using any material that could identify groups or individuals involved (apart from a few agencies which specifically asked to be named). In the following section we discuss respondents' accounts of the impact of the progressive changes experienced by the sector, prior to LASPO, in the context of discourses and policies towards legal aid and welfare generally. It begins with a brief outline of the establishment of legal aid.

### **Legal Aid: from inception to 2010**

By the mid 1980s the UK could credibly claim to provide access to justice as a result of its extensive network of NFP agencies which, primarily funded by local authority grants, offered welfare advice, and a generous legal aid scheme. However, this generosity masked fundamental weaknesses which were largely attributable to the compromises made with the legal profession prior to the Legal Aid and Advice Act of 1949. Thus the difficulties in controlling the budget stemmed in part from the fact that until 1989 legal aid was delivered and administered by the profession (Goriely 1994) and, even after the transfer of responsibility for its administration to the Legal Aid Board, private practitioners remained its primary providers. The decision to adopt this 'judicare'<sup>6</sup> system precluded the fulfilment of Marshall's aim to address the 'law's democratic deficit' (Smith 1997: 1) by increasing the use of mediation, simplifying the law, and deploying salaried or volunteer advisors (on the model

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<sup>6</sup> The term judicare is a North American one, and is based on the idea that access to justice meant that lawyers' services should be available to everyone so that 'no one will be financially unable to prosecute a just and reasonable claim or defend a legal right and counsel and solicitors (would be) remunerated for their services' (Lord Chancellor 1948, cited in Smith 1997: 13)

established by CABx during World War II).<sup>7</sup> Instead, legal aid was targeted on traditional private practice specialisms (such as family law), and came to represent a significant part of many high street law firms' incomes, leading to the criticism that it had become 'a hostage to law firms' overheads, hourly rates and inefficiencies' (Dyer 1995). At the same time, as other critics pointed out, areas of need, such as advice on social welfare law and tribunal representation, were either neglected by private practitioners or not served at all (Smith 1997).

The Conservative Government's proposal to reform legal aid provision through a system of block contracts (franchising) (LCD 1995) could be seen to some extent as a response to this criticism, and consequently generated cautious support from some, especially in the NFP sector. The Legal Aid Group (LAG) applauded the focus on 'social welfare' law (Chapman 1996), and the parallels between the franchising scheme and elements of its own civil justice proposals (LAG 1992).<sup>8</sup> Particularly welcome were the plans to include in the contracts quality assurance measures and the requirement that providers possessed a degree of specialisation. The centring of the client (and deployment of the language of individual empowerment) represented another point of apparent agreement.

However, whereas for radical practitioners client empowerment signified a fundamental re-negotiation of the traditional professional-client relationship, for the Conservative administration consumer sovereignty was a key strand of the neo-liberal critique of 'producer power' in public sector professionalism (Perkin 1990) which it aimed to constrain and re-shape through the infusion of an 'entrepreneurial spirit' (Osborne and Gaebler 1992). The arguments of these ideologues of the New Right legitimated a policy designed to 'reinvent government' (ibid; and see Haque 1994) through a combination of measures including outsourcing, tight managerial control grounded in the introduction of internal markets, the concomitant monetisation and corporatisation of services, and financial retrenchment (summed up in the term New Public Management (NPM) (Hood 1991)). The conceptualisation of quality was therefore, like that of the client, ambivalent: applied to the legal aid sector, one dimension of it supported the narrative of the rentier public sector professional in which legal professionals exploited their monopoly status and specialist knowledge ('information asymmetry') to increase both the volume and price of their work

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<sup>7</sup> Marshall (1950), one of the visionaries of the welfare state, argued that post war socialized citizenship had initiated a transformation of the formulaic equality of liberal legalism into a more responsive and policy oriented forms of law and lawyering (Sommerlad, 2004) which he hoped would be fully realised in the tribunal system. It has been argued that even had this vision been fully realised, the problems inherent in a capitalist legal system – such as the dichotomy between legal and social justice and the resulting individualisation and de-politicisation of systemic problems - would have remained (see e.g. Abel 1985).

<sup>8</sup> LAG had long been critical of the fact that any High Street General Practitioner was allowed to deliver legally aided services whether or not they had specialist expertise in the client's legal need and without any effective external scrutiny; they therefore advocated greater control over legally aided services through a scheme which resembled franchising (LAG 1992; and see Hansen 1992)

(‘supplier induced inflation’) (Bevan 1996). Another dimension propagated an image of the vexatious (litigious) client who pursued unmeritorious claims (at taxpayers’ expense)<sup>9</sup> and whose interests therefore had to be subordinated to achieving value for money for the taxpayer (the true client) (Sommerlad 1995). The proposed remedies for these, intertwined, moral hazards were to cap the civil legal aid budget (LCD 1995) and model the quality assurance measures on a manufacturing conception of quality as ‘fitness for purpose’, thereby constraining professional discretion.

Although critical of Conservative policies towards the welfare state and legal aid while in opposition, once in government (1997-2010) New Labour first maintained and then increasingly developed many key elements. On the one hand, it persisted with the plan to focus on welfare law and erode private practitioners’ monopoly by shifting significant parts of social provision onto the NFP sector, a development which was enacted in the AJA 1999. The ‘Third Way’ for legal aid also involved the precise articulation of the concept of ‘unmet legal need’ based on innovative metrics which allowed the embryonic Community Legal Service to identify exactly how many matter starts in specific areas such as debt, housing and welfare advice, might be required in a given geographical area (Plesence et al. 2004; 2006). Further, respondents generally agreed that in the early days of the LSC there was real concern to raise the quality of the service, leading to peer review and the preferred supplier system; several attributed this in large part to the first LSC Chief Executive who was described as ‘open about protecting legal aid and protecting the sector’ independence’. (manager advice agency 2009)

On the other hand, despite official enthusiasm for the sector’s social capital, expertise and innovative ways of working, the Third Way approach entailed the application of competitive discipline to the tendering for contracts for the provision of legal advice. Many practitioners were uncomfortable about the market principles, and the primacy of efficiency and ‘best value’ which the contract culture introduced (Deakin 1996). Its inexorable and corrosive impact on a poorly resourced sector is captured in Benson and Waterhouse’s description of contracting as ‘a beast which needs feeding’ which therefore does not ‘leave much room for advice work’ (2001, 7). Stein, echoing Power’s discussion of the implications of the accounting logic, stressed the cultural shift that it was producing: ‘with a focus on high

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<sup>9</sup> Exemplified by the description of legal aid clients as ‘state funded rottweillers’ by Gary Streeter, Conservative Under Secretary of State at the Lord Chancellors Department, quoted in: ‘Streeter confirms legally aided litigants are rottweillers’ (1996) *New Law Journal*, 1378

output cases, franchising has denigrated thorough diagnostic work, preventive advice, community education and policy advocacy' (2001, 30).<sup>10</sup>

These concerns were seen as even more pressing by 2009: 'the whole notion of contracting is that there is no distinction between the voluntary sector and a private practice firm - you bid for a specification and you do it. You don't argue with them about what's necessary.' (Law Centre lawyer, 2009) And another Law Centre practitioner argued that: 'although New Labour use the language of increasing access to justice, the contracts are structured in such a way that they require a lot of robust financial discipline, which a lot of the sector didn't have at the time and are still struggling to get in place - partly because of lack of infrastructure – this is key to difficulties NFP sector faces because of inadequate investment '

Another respondent cited the extension to NFP practitioners of the distrust of the public sector professional, fundamental to the neo-liberal policy agenda, as a further important factor which progressively undermined the sector's capacity to maintain its traditional mission: 'there's been this big shift to "there's none of these people we can trust". They distrust the profession. They don't want to allow for professional judgements...this feeling has grown since \* (name of first Chief Executive) has gone' (member umbrella group 2009), and the reflections of a manager point up how this progressive devaluation of practitioners justified a hardening of LSC controls: 'at the beginning they were very in favour of the sector, it was wonderful, and then because, in their view, the work took so long, they started talking about how NFP people were all suffering from a Mother Theresa complex, there were these real cultural problems, etc. And one comment was, ' look, at the end of the day, we are not going to pay for somebody to hold people's hands and fill in forms''

This implicit portrayal of the client and advisor relationship as one of unnecessary (and unhealthy) dependency is linked to the neo-liberal discourse of parasitic and hence immoral benefit dependency. As state-Keynesian social democracy appeared decreasingly viable in the face of globalization New Labour's endorsement of this discourse, in which the welfare state figured as 'the arch enemy of freedom' (Hall 2011), became progressively dominant. The dual antinomies which characterise this discourse, and which we identified above, counterpose firstly the deserving and un-deserving, hardworking families and welfare recipients, reflecting the growing strength of 'cultural deficit' theory in New Labour thinking,

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<sup>10</sup> Over the course of New Labour's time in office more and more public services were contracted out to the NFP sector, doubling government spending on it to £11 billion a year (HM Government, 2009, p. 6). The policy reflected the enthusiasm for communitarianism and hence for the sector's contribution to civic cohesion, yet at the same time stigmatisation of the sector's clients and increasingly interventionist regulation combined to undermine its original values and morale (see, e.g. Morris and Atkinson 2003 for discussion of the loss of the negative impact on the independence and governance of the sector as a whole)

and laying the foundation for an argument for the absolute lack of entitlement for one sector of welfare recipients.<sup>11</sup> The second opposition between taxpayers and all welfare recipients, imposes a calculus on consideration of those benefits received even by the ‘deserving’.

This calculus was expressed in multiple ways including an increase in the conditionality of welfare generally<sup>12</sup> and specifically in the legal aid field through the imposition (2007) of fixed fees, more stringent auditing and the abandonment of quality measures such as the preferred supplier system. Together these measures sought to ensure that practitioners did no more for clients than was absolutely necessary, thereby obliging them to ‘make a business as well as a professional judgement when deciding whether to take a client’s case on, and when considering how to progress it - ultimately, the business judgement must trump your professional judgement.’ (Law Centre solicitor 2010).<sup>13</sup> In 2009 the policy group of one umbrella organization summarised these changes in the following way:

‘they are essentially about marketising the Legal Aid sector; in order to do this they are having to go through a process of commodification so that they can price the product, introducing standard fees. For our sector, the impact and the timescale have been very significant, because until last October (2007) Not for Profit agencies were paid – or most were paid – on an hourly basis, that is for the work that they did. This has now changed to a standard fee, different fees for different areas of law, with some get out clauses for (exceptional) cases that take three times the standard fee ‘.

The impact of fixed fees on the finances of agencies which relied on contracts was ‘catastrophic’ (London Law Centre lawyer; and see NEF Report 2010; LCF 2011):

‘We’re dependent on the LSC for 75% of our income. Fixed fees were announced October 2007; there was this transitional phase for the first six months but after that if you didn’t meet your targets they started chipping away at funding. That’s when everyone started hitting cash flow difficulties - because instead of getting paid in advance, by the hour, we get paid a (low) fixed fee when billed. We used to be guaranteed £90,000 a month from the LSC under the old system. This went down to

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11 Thus Labour MP Frank Field has argued that ‘even if the money were available to lift all children out of income poverty in the short term, it is far from clear that this move would in itself close the achievement gap’ [2010](#)

12 This intensification of conditionality was supported by the increasingly authoritarian aspect of New Labour’s communitarian thinking, for instance the emphasis in policy debates on the need for claimant responsibility (White 2000) and endorsement of the neo-liberal refrain that ‘benefits trap people into a lifetime of dependency’ (DWP 2006). The clear objective was a system where virtually everyone claiming benefit and not in work should have personalised support for a return to work, backed by compulsory work-related activity and sanctions. Hence the Welfare Reform Act 2007 which introduced employment and support allowance (ESA), a tougher medical test and increased engagement with personal advisers and work-related activity. The Welfare Reform Act 2009 aimed further to increase conditionality by enacting the 2008 review of conditionality (Gregg, 2008) which separated claimants into a work-ready group; a progression to work group; and a no-conditionality group.

13 There is an extensive literature on how neo-liberalism commodifies social welfare and social justice and generally, approaching the human relationships involved in terms of supply and demand (see, for example, Dominelli 1999 and Raewyn et al 2009)

half that, and we just couldn't bill in the same volume, moreover we'd only get it **when** we billed. In the early stages of this contract, Law Centre reserves were depleted by over 70%; a few places ended up 'in casualty' and had to be bailed out.'

These financial problems were compounded for agencies which tended to have complex cases and which remained committed to high quality (that is time consuming) work, as another Law Centre lawyer describes: 'fixed fees were so low – for example, £171 for a housing case, to cover about 3 hours advice. This is very little time to get instructions and act on them.' However the responsabilization discourse and its narrative of the symbiotic relationship between a disempowering advisor and (unnecessarily) dependent claimant entailed the construction of the typical client as someone who only needed minimal support and guidance, thereby legitimising both the new fee system and also the LSC's increasing emphasis on telephone and web-based advice (Sanderson and Sommerlad, 2011). But few of the sector's clients resembled this 'model' consumer of legal services, and therefore, as this Law Centre lawyer continued, the ease or difficulty with which a matter could be handled in the limited time granted by fixed fees depended 'on the complexity of case, language of client, their mental state etc.' And he explained that while in theory the system catered for this situation: 'if it qualifies as an 'exceptional' case - which means you do 3 times as much work – 12 hours – then you can stretch your profit costs up to three times the fixed fee', in practice, giving a case more attention was 'a gamble because a lot of cases fall in between – they take much longer than the basic fixed fee but not long enough to qualify as exceptional.'

The incentive initiated by the contracting process to focus on high output cases, identified by Stein (2001), cited above, was therefore increased by these later reforms. A further effect was to accentuate the sidelining of social policy, campaigning work because, in the words of a manager of an out of London agency, 'they imposed, which was one of the aims, business discipline on case workers and organisations where that didn't exist before'. One solution was to cherry pick cases: 'fixed fees have meant that the incentive is just not to do certain work on cases', and also to withdraw from whole areas of law, as this manager of a small London agency went on to explain: 'we've stopped doing some work in certain subjects because we couldn't make it pay – employment, immigration; as time's gone on, over the last 10 years private law firms, especially small ones, have also dropped out and that process is continuing'

Another solution was to deliver a lower quality service: 'the temptation is to strip it down to doing the minimum because if you take longer over a case that's your loss, your problem, it's not the LSC's.' (member of umbrella organization). The account of a small

London agency of dropping some work and increasing the volume of cases in other areas is illustrative of these various strategies: ‘We’ve faced a squeeze over the last few years with fixed fees, so we’ve had to pump up the volume as far as the number of cases that each case worker needs to see, so they can’t spend as long on a case. But even if we do that, you just can’t make some work pay - that’s one of the reasons we stopped doing asylum work because fixed fees make this sort of work uneconomic because you get paid the same whether you’re doing a very long complicated case or a short one’. Like other respondents, for this lawyer the model client who can take responsibility for their own case was a mythical beast: his agency’s clients, like those described by the Law Centre lawyer quoted above, ‘tended to have complications, quite a few of them have English as a second language or there were disability issues, so they needed incapacity benefit, so there were issues around providing social care and/ or explaining what was happening rather than just writing off the letters and that’s all you do.’

The reflections of one respondent on the shift in New Labour’s discourse and policy away from valuing the sector’s ‘social capital and envisaging it as having a real social policy role .. com(ing) up with strategies including test case, litigation strategies’, led her to argue that a process of incorporation had taken place: ‘Not for Profit agencies or political agencies have always claimed to have this mission. You can doubt it, but nevertheless it had some truth and it gave you a position from which you can say: “We know about this. This is what we’re about. We have a voice, and we’re going to say this” The state is now incorporating all that energy and ideology and is going to control it and more or less kill it.’

Her conclusion was that ‘it’s only going to be very brave, very strong organisations that are going to say, “we’ve got the contract but we’re still going to do what we’ve always done.” You are going to have a very robust governance and very robust ideology to be able to do that. I don’t think a lot of organisations are going to be able to do it.’ The evidence of individual practitioners, especially those based in larger, and/ or national organizations, of the changes generated by contracting and then fixed fees in governance, management and key personnel<sup>14</sup> suggested her pessimism was well founded. The description of one adviser of her large, national)organization were typical: ‘it has become a very managerial organisation – we’re now run by highly paid managers who know nothing about advising, with a completely different ethos who have instituted all these systems – targets and so on. There’s bullying and a lot of people have been ‘weeded out’.’

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<sup>14</sup> See Defourny and Nyssens, 2010; Hemmings, 2011; Emejulu and Bassel, 2012 for evidence of the same development in the NFP sector generally, both in the UK and internationally

Thus by the time of the 2010 election, the foundations for Coalition policy towards welfare and legal aid had been firmly laid. Further, the change in the relationship between government and the sector formed part of a wider re-shaping of the ideological and socio-economic terrain through a campaign, framed in a populist moral discourse, against redistributive taxation and welfare provision, described by one respondent as aimed at 'reassuring Daily Mail readers - civil law is not popular. Money being funnelled into helping hapless people who won't help themselves... asylum seekers, people who can't even keep a roof over their heads. So there's a kind of appeasement going on of middle England' As a result, the sector was, in the words of a solicitor, 'very demoralised - it used to be distinctive, ie Not for Profit, but then it got into bed with the LSC who began to require the standards of profit making organizations - I'm not talking about disorganised people, but about different cultures and also resources - I'm on the Committee of \* Advice Centre and it just didn't have the resources for all the bureaucracy so they had four very fraught years and then handed the contract back. Then there's the local Law Centre which is a very large player for the LSC but the staff don't like the business focus - incredibly good at what they do but very low morale'

Morale in the sector was clearly also affected by what one respondent described as New Labour's aim to cut legal aid 'down to a residual service'; Colin Crouch made the same claim about New Labour policy towards the public sector and welfare services generally (Crouch 2001; and see Bochel 2011:21). Such a policy precludes an adequate publicly funded right to access to justice to secure these services. Nevertheless, despite the continuities between New Labour and the Coalition (see, e.g. Davies 2011; Hogg and Baines, 2012) the current programme of 'rolling back the state to a level of intervention below that in the United States' has been described as 'unprecedented' (Taylor-Goodby and Stoker 2011:14) and 'the most radical, far-reaching and irreversible social revolution since the war' (Hall 2011: 23).

### **LASPO and the Big Society**

Clarke and Newman highlight the ideological work which has gone into reconfiguring the financial crisis as fiscal and political, and how this work has, in an echo of New Labour's authoritarian communitarianism, turned on a 'moral and social vocabulary of responsibility and interdependence' (Clarke and Newman 2012: 303). However the counterpart to the Coalition's refrain that the cure for Britain's 'atomised' and 'broken society' rests with the individual citizen and the community, is the allegation that the (New Labour) 'big state' has caused both the fiscal crisis and the erosion of the moral economy.<sup>15</sup> Clearly those whose welfare dependence has eviscerated their 'personal and social

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<sup>15</sup> Blond summarised the 'project of radical transformative conservatism' as 'nothing less than the restoration and creation of human association' 2010

responsibility' exemplify the 'selfishness and individualism' created by the big state (Cameron 2009: 1). Thus, while in the Marshallian form of social citizenship, the law, and access to it, was inextricably linked for both practical and ideological reasons to the establishment of welfare rights and responsive, accountable government, for Big Society citizenship, it is not only financially untenable but also positively immoral to make state welfare provision (especially of an unconditional kind).<sup>16</sup> It is therefore unsurprising that neither the overwhelming opposition to LASPO from a range of stakeholders in the justice system including the judiciary (Judges Council of England and Wales, 2011) and the Justice Select Committee (2011) nor evidence that the cuts are unlikely bring savings (Cookson 2011) could dissuade the government from its course.

So while it is possible to argue that in terms of the discursive framing of legal aid reform, there is continuity between New Labour and the Coalition, the evidence of a rupture lies in the both the extent and ideological thrust of the cuts. The areas from which LASPO has removed civil legal aid provision include decisions about Disability Living or Attendance Allowance; Incapacity Benefit; Income Support and other benefits; housing matters other than those concerning homelessness or serious disrepairs which threaten health and debt matters where the client's home is not at immediate risk. The MOJ has calculated that between 460,000 and 512,000 potential claimants will be affected, and LAG estimates that an additional 150,000 will lose entitlement. Further, despite denials that the legislation is discriminatory, the MOJ's own Equality Impact Assessment demonstrates that women and ethnic minorities will be disproportionately affected by many of the scope changes (MOJ, 2011). LASPO also imposes mandatory efficiency savings on the remaining civil provision: by 2016 another £70m will be removed from the budget (currently legal aid expenditure is just over £2bn a year). One respondent commented: 'the drive behind the AJA to bring the NFP agencies in to give advice under legal aid to the most vulnerable is being reversed, and this is having a hugely de-stabilising effect on the NFP sector just when its services will be most needed' (2010).

### **Respondents' accounts of the impact of the financial crisis and LASPO**

The MOJ estimates that its legal aid reforms will cut the income of the NFP sector by 92% (MOJ, 2011) and from the publication of the LASPO Green Paper 2010 onwards, the majority of respondents were primarily preoccupied with the impact that this and the austerity programme in general would have on their financial viability. The view that the sector would be 'virtually wiped out' was widely shared. Others focused on the increase in demand (which

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<sup>16</sup> This position forms part of a wider re-conceptualisation of the ideological basis for the state's engagement in other private civil law matters (Vogel 2005).

was already manifesting itself) and decline in capacity to meet it. The strategies discussed by agency managers and many NFP publications (see for instance Ellison and Flint n.d.) tended to revolve around the need to make a business case to potential funders, which then generated other strategies such as charging clients, increasing demands on the workforce, making redundancies, increasing use of volunteers, mergers and closure. The main concerns disclosed by practitioners ranged from intensification of managerial pressure of the kind identified by Hemmings (2011), job security, and the impact on clients. A common theme for all was the loss of the last vestiges of the sector's independence and mission.

#### *Funding and the Business Case: towards social enterprise*

As we concluded in our previous discussion of legal aid and the sector, Coalition policy may be seen as the culmination of thirty years of neo-liberal discourses and tight budgetary policies designed to shift public institutions and NFP agencies from a “spending model” to a business model. The austerity programme is therefore being implemented in a sector whose longstanding financial fragility has already been significantly accentuated. Reflecting on the likely effect of further cuts, respondents referred to this fragility, emphasising the precarious, complex, and often short term nature of existing funding arrangements. Moreover, as one manager explained, ‘most NFP organisations don’t actually make a surplus, it’s very hard to make the contracts work on the volumes we do’. By 2011 all agencies said they were either already experiencing, or anticipating experiencing, a financial crisis as all sources of income including funding from local authorities and other organizations such as the Equality and Human Rights Commission either declined or ceased. The following account by a London based Afro-Asian Advisory Service at the end of 2012 is exemplary:

We had an LSC contract for immigration and asylum which provided a third of our funding (£62000); this ends March 2013 as LASPO has taken all immigration out of scope. We’ve been granted another LSC contract for asylum and human rights, however it’s for only £45000; for that we have to do 103 cases/ matter starts – so we will have to work very hard for that money. Our other funding source is the local authority which traditionally provided us with around a quarter of our income - £53000. This was due to end January 2013, but they’ve extended it for 3 months during which time they will decide what to do in the future.’

This situation was exacerbated by the fact that specific lines of work were often subject to mixed or matched funding: ‘we’ve always got pots of funds from many different sources and then stitched them up into a package. Each strand relates to another. The problem is all

the funding sources are under attack now'.<sup>17</sup> The Under-Secretary of State for Justice, Jonathan Djanogly, recognised this state of affairs: 'the problem for those that give legal advice is that legal aid funding often merges with other funding schemes. CABx are funded mainly by local councils and the Department for Business, Innovation and Skills . removing one stream could have a knock on effect ..' (Legal Aid Reform Debate, 3 February 2011 <http://www.jonathandjanogly.com/content/legal-aid-reform-debate>).

The account by a manager in an umbrella organization confirms his judgement:

For some agencies, especially the Law Centres – for instance the Mary Ward Law Centre - legal aid is very significant proportion of their income and there are therefore fears about their sustainability. Even for other agencies less reliant on legal aid funding, it can / does pull in other funding, so if it goes, then it has a wider impact. But in fact virtually all other funding pots are under strain too. For instance the London Councils Grant, which is a collective grant of £27million to the sector, is being reduced to £5m a year. On top of that you have local authorities making cuts - greater in many cases (from between 20-40%) than the cuts imposed on them by central government.'

As a result, having become reliant on the contracts, 'the fact that they're stopping for everyone at the same time means that trying to find alternative funding, alternative work is going to be nigh on impossible because there will be a rush.' Another said: 'we're all scrabbling around for the same pots of money'.<sup>18</sup>

Consequently, as a member of an umbrella group said: 'you increasingly hear the terminology 'Business Model' – The Development Officer for \* (name of another umbrella organization) is pushing this really hard.' This was confirmed in an interview with this officer who began with the following comments: 'we must make the business case for funding welfare advice and legal aid' and continued by articulating the responsabilization discourse, 'we must show that the legal aid system is about getting out of the trench and trying to help people help themselves – in a way we're tired of helping people so want to help people help themselves – for instance 66% of CABx now do financial education', and another manager said 'the way forward is to promote capability and resilience – self help'.

The continuities with New Labour were pointed up by one manager who stated that 'commissioning had already begun to make us much more business minded and entrepreneurial', but whose subsequent comments indicated that the desperate financial

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<sup>17</sup> Examples agencies gave of these different 'pots' included the Financial Inclusion Fund; Big Lottery; EHRC; Lord Chancellor's grant; Local Authority grants. The Advice UK survey (December 2010) <http://www.adviceuk.org.uk/projects-and-resources> found that 89.5% of its members experiencing major cuts

<sup>18</sup> For the sector as a whole (inot just engaged in legal advice), it is estimated that the austerity programme entails £4.5 billion spending cuts (Ellison 2011).

situation meant that the business model had become absolutely hegemonic: ‘now we must demonstrate the financial case for everything – everything is about the cost benefits.’ The resulting pressure for more restructuring, adoption of commercial practices and shedding whatever remains of its traditional roles (such as campaigning) (Davies 2011:645) has been further intensified by the decision, emanating from the Conservatives’ market liberal wing, to open up many services to outsourcing (Wiggan 2011).<sup>19</sup>

Yet at the same time the Big Society agenda has emphasised not only shifting power from the state to local communities but also increasing social justice and reducing poverty (Ellison 2011: 45-6). The evident tension between these aims and the austerity programme and the primacy given to business is supposedly resolved in the concept of social enterprise.<sup>20</sup> One leader in the sector reflected on the success of this approach: ‘here we all are, talking about how we can become social enterprises, how we can find private partners’, and her point was demonstrated at an *Advice Now* conference (2011) where enterprise and the need to make a business case was raised by successive speakers and pervaded the literature distributed. Pamphlets with titles like ‘Social Enterprise Works’ and ‘Advice UK Pamphlet of Social Enterprise’ advised on how to transform an agency into an enterprise and develop a business plan in order to be able to ‘demonstrate .. there is a good market for your product ..’ and establish a brand image for key funders’, while ‘Managing in Tough Times’ offers ‘a model from the commercial world ..that can be easily used by Third Sector organizations’ (Ellison and Flint n.d.: 4). The presentation by one of the funders attending the conference reinforced this message: ‘we expect the sector will get its own act together and locally do what it can to reduce duplication, improve efficiency, make even better use of volunteers’ (Director Strategy & Improvement Kensington & Chelsea, 2010).<sup>21</sup> This pressure on the bottom line implied reducing specialist full-time staffing, and all agencies reported that either this or short term working was being implemented.

However, managers and advisors from a range of agencies also stressed the difficulties of competing in markets, especially with private business. These ranged from the expense and limitations of volunteers to the ‘general lack of infrastructure’ including the

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19 For this strand of the Conservative party it is not just the NFP sector which brings value but also the For Profit sector In the House of Commons debates over the Big Society, Tesco was cited by MP Christopher Chope as an example of the For Profit sector creating social capital.

20 The concept of Social Enterprise has been articulated by Hurd and Maude as follows: ‘a strategy to grow the social investment market giving charities and social enterprises access to new potentially multi billion pound capital.. cornerstone of the social investment market attracting more investment from wealthy individuals, charitable foundations and ultimately socially responsible everyday savers in social ISAs and pension funds’ (14/2/11 cited in House of Commons Justice Committee p 50). In practice, as Dufourny and Nyssens note, in the UK this formulation tends to place an emphasis on a business model (rather than the cooperative model embraced more commonly in continental Europe (2010)).

21 These demands chime with the vision for improving access to justice offered by Susskind who recommends that legal service providers embrace technology, commoditise services, become entrepreneurial, and market driven’ Susskind: 2011: 11; see too Ellison, & Flint 2010

obsolete nature of IT systems and lack of back up staff. One manager focused on how the collapse in funding had affected the capacity to plan ahead: ‘national, regional or local funding - it’s all over the place, and as a result, even though some cuts may not be coming in for 12-18 months, they are causing huge planning problems now. The uncertainty makes it difficult to compete.’

One widely discussed business strategy, unthinkable to many respondents until recently, was the introduction of charges (see for instance Advice UK survey on charging: <http://www.adviceuk.org.uk/projects-and-resources/Charging>). Some managers identified areas like employment where this might be a possibility because of the prospect of compensation for the client, but noted the fact that it would introduce a two-tier service. Further, the extreme vulnerability and poverty of most of the sample’s clientele limits the scope to raise money through direct charges as well being seen as completely contrary to the sector’s mission: ‘we have had two meetings about whether we should charge people – I’m against this because I started this organization with a certain ethos - free advice to all who need it. But I can see that we’re being pushed towards these business practices as otherwise we’ll have to serve fewer and fewer clients, make people redundant and ultimately close – or drop our standards.’ (Founder, asylum and immigration advice centre).

### *Mission Drift*

The pressure to introduce charging, the increase in funders’ already considerable influence over the internal policies and practices of NFP agencies,<sup>22</sup> and the general drive towards enterprise were deep concerns for most respondents. An agency manager said in 2010: ‘people tend to do this work because we’ve got a charitable aim to provide these services and think we can provide a service even if we’re not making money from it – a better service than say a private firm because we’ve got certain values, an ethos which is user centred. In two years time when LASPO comes in, the last bit of that ethos will vanish I think.’<sup>23</sup> Others, echoing the concern expressed by a member of an umbrella organization in 2009 that New Labour was incorporating the sector, saw the Big Society as transforming them into ‘an agent for the state.. it’s mission drift’. Another said ‘our ability to influence is diminished – we are being dragged into government ambit’.

These developments were also viewed as contributing to an erosion of the sector’s collaborative tradition, which had been predicated both on its independence from the state and its relative insulation from the market: ‘we are losing that sense of solidarity the sector had’;

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<sup>22</sup> LSC influence was enhanced through service level agreements as well as cost and compliance auditing (Sanderson and Sommerlad, 2009)

<sup>23</sup> The claim by the sector to deliver a better quality service than private practice is supported by the Moorhead et al (2001) study of quality

‘we are all now businesses in competition for very limited pots of money.’ And the new climate was seen as bringing competitive advantage to some agencies because they had a history of being less combative or were more politically acceptable; thus a Law Centre worker stated that ‘the CAB is the Tories’ preferred brand – it fits with the Big Society rhetoric so they tend to get support from local authorities’. Large national organizations like the CAB were also among the few agencies capable of competing with the For Profit sector.<sup>24</sup>

However a policy officer argued that ‘the CAB will be toothless without specialists ..they back up and give power to generalist advisors and set precedents’. A commonly articulated concern therefore was the loss of legal aid funding which had supported the development of a cadre of specialist advisors in many agencies: ‘one of the impacts of the legal aid cuts will be to remove about 1000 specialist posts – they will no longer be funded’. The government’s justification that welfare benefits advice did not require specialist expertise was contested:

‘it’s true that a lot of it **is** currently done by generalist and volunteers, but some of it does need to be done by specialists because benefit entitlements law is actually very complex and its interpretation is very tricky, and can involve other, complex areas of law; for instance, a housing case might turn on who owns the property – whether it’s held in trust by a member of the family – and you need to have some legal knowledge to spot that there is a complex legal issue involved – if only in order to refer it.

Nevertheless, it was predicted that agencies will ‘end up doing low level work, because we won’t be able to develop casework; that means the **capacity** to do case work will disappear as well’, and the loss of a collaborative tradition was returned to as this speaker went on to argue that this would destroy ‘the sector’s complex web of generalists and specialists’.

All of the above developments – such as the pressure to make a business case, the increased influence of funders, erosion of the capacity to do casework – combined to intensify the mission drift identified above as already underway under New Labour. The following comments by a front line worker articulate the shift in the kind of moral calculus in which organizations once engaged, which has been termed an ‘economisation of the social’ (Shamir 2008): ‘the danger is, if you monetise everything then it’s hard to make the case for other values such as the impact on mental health’. She went on to argue that this also legitimised the exclusion of democratic values and rights since they have no place in the business case: ‘how can you monetise what the government doesn’t want to hear - the value of holding it to account?’

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<sup>24</sup> In other parts of the sector (unconnected with legal services) contracts have increasingly been given to the ‘big hitters’ (Davies, 2011: 643).

Other respondents gave concrete examples of the distortions which the business case generated: ‘it’s difficult to balance the ethos of delivering a service with running a business. So for instance to evict people is to fail and once you’re out of social housing, that’s it, so we try to be flexible – but on the other hand now, since what we’re engaged in is effectively a business we can’t fail economically - so we must evict sooner than we would have before’ (social housing advice worker).

### *Responsibilization and ‘clients’ as consumer*

Discussions of ways of responding to the crisis always moved at some point to different ways of dealing with clients, from introducing charging to embracing the government’s strategy of responsibilization.<sup>25</sup> For some agencies this had resulted in a complete shift in focus, in which the client was now explicitly constructed as a consumer in the manner modelled by neo-liberal discourse (Baldock, 2003). The strategy which flowed from this paralleled the government’s devaluation of the welfare client: ‘within this team, already pretty thin on the ground after successive spending cuts, the production of new and expanded consumer information on our website has inevitably resulted in a diversion of resources from welfare rights.’ Other government decisions rooted in the discourse of responsibilization, such as expanding telephone advice lines and establishing universal credit as an on line benefit, increased the pressure for agencies to develop similar practices. Thus one agency manager said: ‘though we can shout about clients who won’t manage this, it is nevertheless what’s going to happen so we’re looking at new ways of delivering advice through, for instance, emails, social media.’ Other measures included ‘developing better on line information to help people to self help or so that people come to face to face interviews better equipped to understand their problems and the caseworker’s advice’ and ‘putting a couple of pcs in waiting rooms so that people can look up their problem before they’re seen.’ (Law Centre)

A recurring theme however was that many clients would be unable to manage this technology and in any event needed face to face advice: ‘I used to run a telephone line for Gingerbread, and every day we’d get people who, after a 40 minute interview, you would have to advise to go to a Law Centre, because on both an emotional and intellectual level dealing with it themselves was impossible.’ However, as this speaker went on to explain, the

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<sup>25</sup> Again the Coalition policy builds on the model of responsibilization developed by New Labour. It is a policy which is encapsulated in Susskind’s proposals to enhance access to justice: ‘citizens themselves must be appropriately empowered, so they can take care of some legal affairs on their own and work more productively with those who advise them ...’.

need for face to face advice was frequently also due to the (often hidden) complexity of a client's situation: 'It was often where you had these clusters of problems, and people's failure to take action early on, as identified by the LSRC research – so maybe someone coming in with an eviction letter, who, it would emerge, had complex levels of debt, which could in turn link to an employment issue.'

This speaker, reiterating concerns expressed above about New Labour's construction of 'a 'model' client', spoke of the idea of someone 'who is computer literate, with a mobile, able to understand advice, access information...' As she went on to say: 'Most clients aren't like that' In particular, advisors who worked with especially vulnerable groups like asylum seekers, identified how their own clients' characteristics differed from this 'ideal' profile: 'many of our clients aren't literate at all, especially those who are most vulnerable, and even those who are, may not have access to IT'; and again, 'many of our clients – English is their second language, they may have mental health problems, and their problems do cluster'. The following comments sum up the majority view:

'face to face advice rather than a telephone line or website is necessary because someone with a lot of complex poverty-related issues isn't just an ordinary person without money - they're in a completely different place not only economically and socially but also emotionally. The model of the standard client is someone with reasonable understanding who has problems around the margins of their life, whereas for some of our clients, it's the whole of their lives which is the problem, and they need a high level of advice, and repeat advice.'

The implications of the needs of such clients meant that, as the manager of a small agency said, 'areas such as welfare benefits have never paid for themselves because they involve very vulnerable individuals at a particular stage of their lives when you're talking about little amounts of money as far as, say, a solicitor is concerned. That kind of work I don't think can ever be done under the profit motive, it's never passed the sufficient benefit test spending two hours on a case which is worth £50 or £100 – you can't make the business case for it'. His subsequent remarks underline the devaluation of socially vulnerable groups and their problems entailed in the marketisation of legal services: 'so certain aspects of advice I don't think will ever stand up to a cold business analysis but **will** stand up to a value based analysis where you're saying that people have a right to access to welfare benefits, to live, to be able to meet certain basic needs of food and shelter when they're unemployed, sick or disabled .. and I don't think you can square that circle in terms of the business case .?'

In a similar fashion to this reference to fundamental rights, another respondent framed this question in terms of the wider contribution to the law which the sector made: ‘what we bring is about strategy and interpreting the law and that’s based on knowing what tends to happen at tribunals, how they tend to treat different parts of the regulations’. The data indicated that reduction of this legal work to the ‘provision of leaflets’ was further undermining the morale of a sector which New Labour policies had already demoralised.

#### *Morale and the crisis of sustainability*

All respondents agreed that the consequence of LASPO would be a crisis of sustainability for specialist advice, with a likely consequence of redundancies and a correspondingly increased reliance on volunteers. As noted above, the impact of economies of scale was more intense among smaller and more local agencies (exactly those which would appear most readily to match the template for the Big Society). The umbrella agencies pointed to the fact that several of their small members had already closed; one predicted: ‘what will be left will be the CAB, relying on volunteers’. However, while volunteers were often seen in the rhetoric associated with the Big Society as a cost-free resource, managers stressed the very considerable costs associated with their training and supervision: ‘the ratio of paid staff to volunteers is high because you need to check the quality and accuracy of the work that’s being done.’ Excessive reliance on volunteers also undermined the sector’s capacity to compete with private business because: ‘you cannot demand fixed hours, you often find a situation where a bureau empties around 3pm as they all go to pick up their children’. Many respondents also identified high levels of ‘churn’ amongst volunteers, which not only produced instability, but increased both training costs and the need for supervision. This represented a major challenge for smaller agencies with strong reputations in specialist areas which produced large numbers of word-of-mouth referrals, creating a demand which could no longer be met.

The pressure created by the inability to meet demand is illustrated by the account by the manager of an immigration, nationality and asylum centre, which was struggling both financially and ethically with the withdrawal from scope of immigration work: ‘when people come to reception we have to find out whether it’s asylum or immigration, and if it’s an immigration matter we have to tell them we can’t help them – which is terrible – it’s very stressful and distressing – there is also a rising level of abuse because people are desperate’. Other respondents spoke of their offices having to close their doors during normal office opening hours; one said: ‘In terms of the direct impact on our day to day work, it is also making open door sessions more difficult to manage. The agency nearby has reported that

arguments are breaking out in the waiting rooms because people are desperate to see an adviser. And obviously that makes working conditions more difficult.’

All foresaw demand increasing as a result of the huge savings being sought in the welfare bill by 2015. The range and complexity of welfare reforms such as Universal Credit, and the reductions in Department of Work and Pensions (DWP) workforce were seen as particularly likely to increase both the extent of poverty and vulnerability and also faulty determinations by administrative bodies, and hence the need for expert advice. Respondents argued too that the absence of specialist advisers to pursue challenges to faulty determinations would result in failures to clarify ambiguous areas of the law. There was therefore also deep concern about the intervention of the private sector.

#### *The true face of the market: unregulated private providers*

Managers and front-line workers expressed anxiety about the way in which they believed the ‘advice gap’ might be filled. Firstly, they argued that what DiMaggio and Powell refer to as ‘institutional isomorphism’ would lead to the telephone gateway taking on the form of a mass call-centre, even if it was not actually run by one, with a reduction both in the potential to undertake effective triage, and also the exclusion of many complex public interest cases where the nature of the problem might require sophisticated interviewing of the client. Secondly, citing the fact that one in five families in financial difficulty fall back on loan sharks, it was felt that the scarcity of publicly funded advice would open the way for the less scrupulous private sector operators like claims management companies, and debt advice companies with links to pay-day lending firms, to enter the field: ‘where properly funded advice disappears, more opportunities for the private sector such as claims management companies, debt advice companies, including those who engage in sharp practice such as loan sharks. It’s already happening, especially in debt’. Similarly, the manager of an asylum and immigration advice service pointed to the likely resurgence of many unscrupulous organizations and individuals who had given immigration advice a bad reputation at the turn of the century: ‘all of these cuts have of course encouraged the crooks. We know there is a lot of that out there because when we give advice of course we find out their history, and a lot of them have already spent money on useless advice.’

#### **Conclusion:**

We should be wary of generalising too broadly on the basis of a piece of qualitative research into a sector as varied and complex as the NFP advice sector. This is not least because the element of competition introduced by best-value tendering has accentuated pre-existing differences in function, scale and ethos, and in many cases crystallised these into

differences of interest. Larger scale organizations have achieved a competitive advantage in the field through economies of scale and a capacity to introduce managerialist internal reforms on a scale inaccessible to smaller and more localised agencies. These reforms have also produced a degree of internal differentiation of ethos in some agencies, with some core values and practices key to front line advisers' commitment eroded by the drive for efficiency. So the policy group of an umbrella organization described some agencies as 'culturally compliant' and others (especially most Law Centres) as 'culturally pugnacious', and identified in particular one of the largest national advice organization as standing out 'as having a very different feel, actually, a different culture', and, further, how within agencies '... you get the people who are fearful and in a way don't want to break the rules or don't want to get into trouble'.

Our aim has been to draw on the varied responses to provide a narrative of the NFP sector's experience of its changing relationship with government, which reflects the complexity of the field. We were concerned with the impact of the funding cuts generally, in particular of LASPO, and to place these experiences in the theoretical frame of the critique of the discourses of entrepreneurialism and responsabilization, noting how these have succeeded in progressively shifting responsibility for poverty away from the state and towards citizens and recipients of welfare themselves, and how this has entailed capture or colonisation of the sector. The data seems to us to reflect the way in which all agencies have been subject to incorporation in what we have argued is the culmination of 30 years discourse and policy, namely a business culture, based on the responsible consumer client. We would now like to conclude this narrative by exploring how participants in the sector have construed the broader political framing of welfare and legal aid reform as a project to reverse the post-war model of social citizenship or 'de-modernise' Britain (Harvey 2007).

Central to this project is precisely the removal of the capacity to challenge executive decisions, implicit not only in legal aid reform, but also the rhetorical assault on judicial review. This analysis echoes Brown's (2006) argument that neo-liberalism seeks to produce the 'undemocratic' citizen: one respondent said 'it may also be that they don't want people to be challenging government', and another described government strategy as 'part of a general weakening of civil rights and liberties. For instance you have the proposed changes in employment rights so that a worker has no rights against, for example, unfair dismissal before they have worked for that employer for two years'. He went on

'The suspicion has to be that there's a deliberate policy behind all this to cut down on the number of appeals against benefits decisions. Because of course specialist advice on welfare benefits makes it possible to challenge incorrect decisions and a cynic might

argue that this is a government seeking to reduce evidence of embarrassing problems. You could also argue that it's part of a general weakening of civil rights and liberties.' And, pointing to the replacement of the EHRC advice line by an information only telephone service, he argued: 'All in all it does feel like it's a multi pronged attack on human rights – especially when one considers that the Tories have made it quite clear that they don't like the HRA.'

This interpretation is supported in LCF Annual Report 2011 'Weathering the Storm' which speaks of the gathering strength anti Human Rights discourse, the attacks on equality legislation and on the EHRC. This was the kind of context that respondents saw as exacerbating their anxieties and the future capacity, quality and ethos of the sector: 'This government doesn't seem to be interested in the quality agenda at all. If you remove all the specialists so that advice is 'Big Society', delivered by volunteers, then it's even more important than now to have independent and clear quality thresholds – otherwise you're creating an advice sector which isn't knowledgeable'. Events were interpreted by others as 'an ideological attack on the sector', and that the government aim was ultimately to get rid of both the sector and its clients: 'the emphasis is to take out the demand side of things – the new logic is that if we remove the funding schemes the demand will dissipate and in some areas advice agencies will just go'. A similar reflection was made in connection with the introduction of a 'gateway telephone line - it's not just a help line, it's a mechanism for restricting access to justice – it's deliberately designed to limit the number of people coming through.' The reforms would therefore represent simultaneously a diminution of the idea of entitlement alongside a practical restriction on the capacity to realise those entitlements that remained.

Yet the Coalition government continues to proclaim its commitment to access to justice: "Access to justice is a hallmark of a civilised society. Legal aid is an essential tool in achieving equality of access for members of society who cannot afford legal advice and representation." (MOJ 2010) However, this statement can be read as simply illustrative of how in liberal democracies, particularly those where the law is thoroughly imbricated into everyday life, the provision of access to justice represents a key element in government claims to legitimacy (Held 1995). The question remains as to whether this rhetoric is credible in the face of policies that will, in spite of the claims that they are 'empowering', marginalise the poor, not merely reducing their access to public goods and the legal means to enforce their access to them, but convert them into 'flawed consumers' (Bauman 1998) and hence lesser citizens.

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