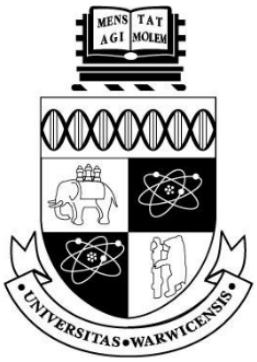

Exploring the impact of the cuts to civil legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act [2012] on vulnerable people: the experience of Law Centres

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DEDICATION

This thesis is dedicated to my Taid, Richard T Jones, who always supported in me in all of my academic endeavours.

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Finally, to my family- Nain, Grandad, Tom and most especially my long-suffering parents- I love you beyond measure and I promise to stop studying now!

DECLARATION

This thesis is submitted to the University of Warwick in support of my application for the degree of Doctor of Philosophy. It has been composed by myself and has not been submitted in any previous application for any degree

ABSTRACT

This thesis explores the impact of the cuts to civil legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act (2012) ("LASPO") on the ability of those who are vulnerable to access justice. In doing so it focuses on the experience of UK Law Centres, a network of not-for-profit providers of legal advice and representation. Law Centres were established in the 1970's as a response to acnowledged deficiencies in the legal aid scheme that existed at this time. Principal amongst these deficiencies was the failure of the scheme to provide legal assistance to those individuals who were *most* in need of it. Since their inception Law Centres have developed a reputation for specialising in the delivery of legal services to marginalised communities, making them an ideal lens through which to observe the impact of cuts to legal aid on the vulnerable. This thesis explores the relationship between the Law Centres movement and the legal aid scheme; characterising this as one of reluctant yet increasing dependency. By the time LASPO was introduced, contracts for the delivery of legal aid comprised 46% of the funding for Law Centres in England and Wales, leaving Law Centres highly exposed to the swingeing cuts brought about by this legislation.

The thesis seeks to understand the impact of LASPO on Law Centres as a movement, and in particular on their ability to deliver services to those individuals who are most vulnerable. In the absence of a consensus definition of what a Law Centre *is*, the thesis reviews the extant literature on the Law Centres movement to propose an "ideal type" framework of Law Centre values, which can be used as a tool against which to evaluate the impact of different strategies for surviving the cuts. It proposes a novel definition of vulnerability, to assist in assessing whether the strategies adopted by Law Centres in response to LASPO are likely to prove more or less effective in enabling the movement to prioritise delivering their services to those who are in greatest need. The thesis then uses these analytical tools to evaluate the three most popular funding models adopted by Law Centres in response to the cuts, drawing on original empirical research. The thesis concludes that if Law Centres wish to retain both their unique position within the landscape of legal service providers and their ability to support those in greatest need, their response to LASPO must by driven by cognisance of and fidelity to the values that render them distinctive.

1 INTRODUCTION TO THE THESIS

1.1 Introduction

This thesis is based on a study of UK Law Centres, a network of not-for-profit providers of legal services established in the early 1970s who specialise in the delivery of legal advice and representation in areas of civil law. Law Centres are recognised as having particular expertise in the areas of law commonly referred to collectively as "social welfare law": asylum, immigration, community care, debt, employment, housing and welfare benefits. Some also offer (or offered) advice and representation in consumer, family and public law matters. Law Centres emerged from the politics of the New Left, and the founders of the movement were concerned that structural and operational deficiencies in the legal aid scheme at the time were resulting in individuals in poorer communities being left unable to access legal advice and representation. For the founders of the Law Centres movement, the ability to access legal advice and representation was intimately linked to the ability to bring about social change in favour of those who were poor, marginalised and vulnerable: the founders of the movement believed that legal rights were a critical tool that could be marshalled to address poverty and disadvantage (Committee of the Society of Labour Lawyers, 1968:3). Further to this, the founders of the Law Centres movement believed that, in the context of the common law system of England and Wales, there was a moral imperative to ensure that individuals from all sections of society were able to pursue their problems through the legal system, to ensure that the law was developed in a manner that reflected the interests of society as a whole, rather than serving the interests of a privileged elite (Committee of the Society of Labour Lawyers, 1968:37). As such, they proposed a new model of legal services delivery, situating lawyers in poor communities, training them in the areas of law most likely to affect those communities, and encouraging residents of these communities to access legal services.

Unlike other not-for-profit providers of legal advice, such as the Citizens Advice Bureau, the Law Centres movement was not a centrally planned service with "articulated common goals" (Goriely, 1996:232). As such, there was, from their inception, considerable diversity within the Law Centres movement, with Law Centres differing from each other in terms of size, structure, functions and activities. Struggles with accessing sustainable, dedicated funding exacerbated this

diversity, as different Law Centres emphasised different functions depending on their ability to access funding, and the conditions imposed on the funding they received. Crucially, the founders of the Law Centre movement originally envisaged that Law Centres would be supplementary to the network of providers funded through the legal aid scheme, arguing that the cost of Law Centres should be funded by the government and provided with their own discrete, long-term funding stream (Committee of the Society of Labour Lawyers, 1968:47). As is described in Chapter 2 of this thesis, this funding failed to materialise, and as such Law Centres became increasingly reliant on funding from the legal aid scheme to support their work.

The research on which this thesis is based was conducted at a critical moment in the history of the Law Centres movement: shortly after cuts to public funding for legal services introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO") dramatically reduced the support available for the types of legal work that have historically been undertaken by Law Centres. These cuts threatened (and continue to threaten) the survival of Law Centres: prior to the introduction of LASPO, 46% of the funding for Law Centres in England and Wales was derived from the civil legal aid scheme (Randall and Smerdon, 2014:7). As a consequence of LASPO, by 2015, one-in-six Law Centres had been forced to close (Justice Select Committee, 2015:33). Those that remain face numerous challenges the most pressing of which is to develop new funding models to ensure their survival. This thesis presents a detailed study of the three most popular funding models adopted by Law Centres in the wake of the cuts, and explores their implications for Law Centres.

Section 1.2 below describes how the research approach was developed, and sets out the aims and objectives for the following study.

1.2 Approach to the research: the aims and objectives for the project and approach to addressing them

1.2.1 Project Aims and Objectives

This research was funded by the Economic and Social Research Council ("ESRC") through the University of Warwick Doctoral Training Centre as part of their collaborative studentships scheme. ESRC Collaborative Studentships are designed to give students the opportunity to undertake research in collaboration with the private, public or voluntary sector. Coventry Law Centre and the Law Centres Network were the voluntary sector partners selected for this project. The studentship was advertised (for text of advert please see Appendix A) and prospective candidates invited to submit an application before being asked to attend an interview. The overall topic of the PhD and some parameters for the research had already been set prior to the award of the studentship. The task I undertook was to design a research project that:

i.) Addressed the need for research that examines the actual impact of cuts to funding for legal advice services introduced by the Legal Aid, Sentencing and Punishment of Offenders Act [2012], particularly on the most vulnerable and disadvantaged.

ii.) Examined how legal advice providers are responding to these cuts to funding and the different models that are being developed to deal with these changes – with a focus on Law Centres.

iii.) Produced findings that would assist Law Centres as they continued to develop and refine their responses to the cuts introduced by LASPO.

These criteria may be considered the overarching aims and objectives for the research presented in the following thesis.

1.2.2 Approach to addressing the research aims and objectives

In designing a research project that met the above aims and objectives within the time and resources specified, a number of decisions had to be taken, both practical and conceptual, in order to limit the scope of the project. These included:

i.) Defining the object of study, namely, Law Centres, and developing a conceptual framework for understanding what a Law Centre is, in order to facilitate the drawing of conclusions regarding the impact of different funding models on Law Centres,

ii.) Developing a context specific definition of "vulnerability": Given the emphasis within the project aims on understanding the impact of the cuts on the vulnerable, it was decided that an important task was to develop a definition for understanding vulnerability within the context of the experience of civil law problems

iii.) Identifying and selecting models for responding to the cuts introduced by LASPO

The following discussion outlines the approach to undertaking these decisions, and sets out some of the key concepts that will be deployed throughout the thesis.

1.2.3 Defining the object of study: What is a Law Centre?

Given the nature of the studentship and the privileged access to Law Centres that the funding arrangement afforded, it was decided that the focus of the thesis should be on Law Centres rather than looking more broadly at the wider advice sector[1]. As such, an immediate priority was to develop a working definition of what a Law Centre *is*. A review of the literature on Law Centres immediately revealed the lack of a unitary definition and highlighted considerable diversity within the Law Centres movement, with Law Centres differing from each other in terms of size, structure, activities and practices. Previous studies of Law Centres have identified the lack of a: "comprehensive description of the Law Centres movement" (Lancaster, 2002: 52) and the relative scarcity of conceptual and theoretical literature on the movement (Burdett, 2004:69). As described in the introduction to this chapter, unlike other not-for-profit providers of legal advice, such as the Citizens Advice Bureau, the Law Centres movement was not a centrally planned service with "articulated common goals" (Goriely, 1996a:232). As stated above, one of the aims of the research was to deliver findings that would assist Law Centres as they continued to develop and refine their responses to the funding cuts introduced by LASPO. Given the

[11] Valuable wider context for the project was provided by the findings of a survey I conducted in early 2013 in conjunction with ilegal, the largest online community of individuals working in social welfare law and civil legal aid in the UK (www.ilegal.org.uk). In total, 674 individuals working in the advice sector in England and Wales responded to the survey. Whilst the sampling method used in the design of the survey meant that the sample of respondents was not representative and as such, the findings were not generalisable across the sector, the information provided by respondents was helpful in developing an understanding of the issues that professionals working in the sector were particularly concerned with in the run up to the cuts. The full report is available here: https://www2.warwick.ac.uk/fac/soc/law/research/centres/chrp/spendingcuts/153064_statesector_report-final.pdf

resource and time constraints of the project, it would be impossible to research the impact of LASPO on all 52 Law Centres. The heterogeneity of the movement, and lack of information on individual Law Centres from which to construct a sample frame meant that it would be difficult to select a smaller sample of "typical" Law Centres as representative of the movement and from which findings could be generalised. As such, it became imperative to develop a conceptual framework that could be used to draw out lessons that would have resonance for the Law Centres movement as a whole.

In constructing a framework for describing and understanding the object of study (Law Centres) it was decided that the focus should be on developing an "ideal type" of Law Centre. Following Coser (1977): "An ideal type is an analytical construct that serves the investigator as a measuring rod to ascertain similarities as well as deviations in concrete cases. It provides the basic method for comparative study". (Coser, 1977:223). An ideal type presents a composite picture of the components and characteristics of the phenomena under investigation. The ideal type as a methodological tool for the conduct of social research was developed by Weber, who stated that: "An ideal type is formed by the one-sided accentuation of one or more points of view and by the synthesis of a great many diffuse, discrete, more or less present and occasionally absent concrete individual phenomena, which are arranged according to those one-sidedly emphasized viewpoints into a unified analytical construct." (Weber, 1904:90). The decision to adopt this methodological approach still left open the question as to what type of individual phenomena should be captured within the ideal type. It was important that the ideal type included those phenomena that could be asserted and defended as the defining characteristics of a Law Centre. Given this, should the ideal type seek to comprehensively record the range of functions undertaken by Law Centres, and the way in which the literature indicates they perform them (e.g. Law Centres provide legal advice in an informal manner) or focus on developing an interpretive framework that captured their underlying values and ethos? In taking this decision, I was inspired by primary research I conducted in Australia[2], interviewing managers

[2] In the second year of my PhD studies I applied for and was awarded funding from the Warwick-Monash alliance to convene two workshops on comparative issues in Access to Justice, one in the UK and one in Melbourne, Victoria. Further details of the workshops can be accessed here: http://www2.warwick.ac.uk/fac/soc/law/research/centres/accesstojustice/

and staff across the network of Community Law Centres established across Victoria, and management within the Victorian Legal Aid Board. I was struck by the strength of the Community Law Centre movement in Victoria, the level of impact they were able to achieve and the way in which they had established a prominent position for themselves within the wider landscape of providers of legal services. It seemed to me that the one plausible explanation for the strength of the Community Law Centres movement, and the source of their distinctiveness, was not *what* they did (delivering legal advice in a variety of community settings) but *why* and *how* they delivered these services- in other words, their distinctive values and ethos and the way in which these were expressed through their work. As such, it was decided that the process for developing the ideal type should focus on analysing and interpreting the existing literature on Law Centres with a view to compiling a set of organisational values that, it could be asserted, plausibly encapsulate what a Law Centre is.

The academic literature on organisations uses the language of "values" to describe the core, irreducible components of organisational culture; beliefs that drive practices, functions, structures, behaviour and strategy (Hofstede et al. 1990:291). Hofstede et al. writing in 1990 argued that: "the core of [organisational] culture is formed by values" (Hofstede et al.1990:291). Organisational values may also be understood as a set of beliefs and aims that guide the behaviour of an organisation and individuals within it (Hyde et al. 2000: 10, Padaki, 2001). It has been remarked that values: "are often unconscious and rarely discussable, [they] cannot be observed as such but are manifested in alternatives of behaviour" (Hofstede et al. 1990:291). As such, any attempt to identify the values of a given organisation requires a degree of interpretation. In developing the ideal type Law Centre I reviewed and analysed the existing academic and grey literature on Law Centres, their history and development. Following Padaki (2001 and Rokeach, 1970, 1973) I structured my findings into "terminal" and "instrumental" values. "Terminal values" consist of overall aims, goals or outcomes such as "Law Centres change the law in favour of poor and marginalised groups". "Instrumental values" are best defined as sets of beliefs regarding the way in which the organisation should conduct itself in achieving the end states described by the terminal values e.g. "Law Centres do this through establishing themselves within communities with high levels of economic

deprivation, making it easier for people who are poor and marginalised to access legal services".

A further factor that mitigated in favour of developing an ideal type Law Centre based on values, rather than functions, was the desire to deliver a conceptual tool that would be of benefit to the Law Centres Network (addressing project aim iii above). There are compelling reasons for identifying and codifying a clear organisational values framework. In the late 1990s and early 2000s, researchers identified a positive relationship between the effectiveness and sustainability of organisations and the clarity of their organisational values (Collins and Porras, 1994; Ackoff 1994; Padaki 2001). In the context of NGOs, it has been observed that articulating and adhering to a clear values framework can be critical to securing funding: Hailey, writing in 2001 observed that: "*If NGOs, of various types, are to distinguish themselves from other recipients of…funding, they need not only to be seen to have sufficient organisational capacity and to use such funds effectively, but also to identify, articulate, and nurture their own core values and identity" (*Hailey, 2001:164*).* The Esmee Fairbairn Foundation, a UK philanthropic funder, supported the convening of an Inquiry investigating the role of values in the on-going sustainability of the voluntary sector, which established the importance of identifying, nurturing and adhering to organisational values in uncertain funding climates (Blake, Robinson and Smerdon, 2006). As such, it was hoped that researching, identifying and codifying an ideal type Law Centre based on values would confer practical benefits for the Law Centres Network, beyond the context of the PhD[3].

1.2.4 Defining "vulnerability"

As stated above, a critical aim of the PhD project was to address a gap in empirical research that: "examines the actual impact of cuts to funding for legal advice services introduced by the Legal Aid, Sentencing and Punishment of Offenders Act [2012], particularly on the most vulnerable and disadvantaged". In order to address this aim, it was decided that it was first important to define who "the most vulnerable and disadvantaged" are in the context of the experience of civil, administrative and family justiciable issues. The importance of advancing a definition of vulnerability specific to the context of the experience of civil,

[3] The Law Centre "ideal type" at Chapter 3 was presented to the Chief Executive of the Law Centres Network and has been used to inform the development of a new "theory of change" model for the Network as a whole.

administrative and family justiciable problems was emphasised by research conducted in order to arrive at the ideal type Law Centre- it became apparent that one of the "terminal values" or goals of the ideal type Law Centre was to deliver legal services to those in "greatest need". Whilst the broad focus on using the law to bring about social change in favour of those experiencing material deprivation was clear, within this category, the founders of the Law Centre movement had proposed an approach to identify those in "greatest need" which focussed on: "examining the types of situations in which legal services provide important advantages to the public and then… measure the extent to which real need in such situations is left unmet" (Committee of the Society of Labour Lawyers, 1968:4). The committee then listed six situations where they considered legal advice and representation to provide an important advantage: when facing criminal prosecution, when in the midst of a marriage breakdown, in the context of a civil dispute between two private individuals, when an individual may be entitled to claim a benefit under welfare legislation, when an individual wishes to make some use of his property and finally when a number of individuals wish to operate together for purposes beneficial to them as a group (Committee of the Society of Labour Lawyers, 1968:4-5). A further criterion to be considered was whether the situation was one in which: "the more affluent and the commercial and industrial sections of the community habitually seek the services of their family or company solicitor" (Committee of the Society of Labour Lawyers, 1968:5). Critics of this approach argued that: "…these arguments are only elaborations of the main argument that those who have a legal problem need a lawyer and one should be provided" (Lewis, 1973: 74). As such, it was argued, the Law Centres movement argued for a: "reconfiguration of organisation of the legal profession, not a radical reconceptualization of the legal system and its role in society" (White, 1973:6). Furthermore, basing a definition of "greatest need" or "vulnerability" on the notion that all individuals who experience legal problems and cannot afford to secure legal services are vulnerable and should be provided with a legal advice and representation, is of limited assistance to Law Centres in the immediate context of limited resources, and successive empirical studies that suggest the experience of justiciable problems greatly outstrips the supply of legal services (Genn, 1999, Pleasence et al. 2015).

This thesis argues that in order to develop a definition of "greatest need/vulnerability" that can be used by Law Centres to assess whether they are

achieving their aim of delivering their services to those who are in greatest need/most vulnerable, it is necessary to move beyond the conventional wisdom, espoused by the founders of the Law Centres movement, that those experiencing justiciable problems benefit from legal services, to explore why it is that this might be the case. What are the specific benefits that legal advice and representation are said to confer? This thesis argues, following the work of Professor Hazel Genn, that access to legal services is valuable to the extent that access to legal services facilitates individuals to secure just outcomes in relation to their justiciable problems. Writing in 1995, Genn observed: "The ability or willingness to secure legal or para-legal advice in order to initiate or defend a claim in court does not, of itself, ensure effective access to justice; it is only the beginning of the process. Effective access to just outcomes requires that litigants be able to make full use of the law and legal institutions and that the outcome of disputes and claims should be determined by the merits of the arguments of the parties" (Genn, 1995:394). As such, in Chapter 3, I review the existing theoretical arguments and empirical evidence detailing the specific mechanisms through which access to legal advice and representation is considered to render it more likely that an individual will secure a just outcome in relation to their justiciable problem. By identifying the specific skills, knowledge, attributes and experiences that research indicates are necessary or desirable in helping individuals to secure just outcomes within the framework of an adversarial legal system it is possible to work backwards to identify individual and situational characteristics that would make it less likely that a given individual is able to secure a just outcome. For example, research indicates that the ability to clearly articulate a claim is a critical factor in achieving a just outcome in the context of an adversarial legal system; as such, individuals with low levels of literacy, or who have difficulty processing, organising and articulating information (for example as a result of mental illness, drug addiction or cognitive impairment), or those who have English as a foreign language, are likely to be more vulnerable in the context of being able to secure a just outcome. The thesis argues that identifying these features in this way provides Law Centres with a set of principled criteria on which to base decisions about who should be prioritised for assistance, addressing aims i.) and iii.) of the project.

1.2.5 Identifying and selecting the different funding models for responding to LASPO

As stated above- a key objective for the research was to examine how Law Centres were responding to the cuts introduced by LASPO and gather descriptive and analytical data on the different models Law Centres had adopted to deal with the changes. In recognition of the fact that time and research constraints for the project mitigated against examining *all* of the different approaches adopted across the network of Law Centres, it was decided to focus attention on the most popular models adopted by Law Centres, in order to deliver findings that would be of most use to Law Centres. In order to identify these models, in November 2012 I attended the Law Centres Network AGM, where I gave a presentation on the aims of my research and distributed a questionnaire to attendees (see Appendix B). The questionnaire was also circulated electronically to all Law Centres via the Law Centres Network mailing list. The aim of this questionnaire was threefold: firstly, to gain a better understanding of the range of functions delivered by Law Centres across the network, secondly, to gain an overview of the likely implications of LASPO for individual Law Centres, and thirdly to explore the range of responses Law Centres were considering in the context of the funding crisis created by the cuts. A further aim of both my attendance at the conference and circulating the questionnaire was to gauge interest in participating in the research. The response rate was fairly low, at 33%, however, amongst this small sample the most common responses to the cuts being considered were charging for advice (under existing branding or through establishing a separate charging arm), bidding for funding from other sources/maximising grant income, and merging with other organisations. In light of the low response rate to the questionnaire I liaised with senior staff at the Law Centres Network in order to check that these models were indeed the most commonly adopted across the network. Law Centres Network were able to confirm that these strategies were those most commonly adopted in responding to LASPO, and assist in identifying Law Centres pursuing these strategies who might be willing to take part in the research.

1.3 Research questions, relationship to existing literature, research strategy and methodology

Section 1.2 above explains the aims and objectives for the research and sets out some of the key concepts that will be utilised throughout the remainder of the thesis. The following discussion begins by stating the research questions that will be addressed in the thesis, before moving to discuss the research strategy and methodology adopted to answer them.

1.3.1 Main research questions

1. What is a Law Centre? What are the organisational values that together constitute the ideal type Law Centre?

2. What was the relationship between Law Centres and the legal aid scheme prior to the introduction of LASPO?

3. What are the most common funding models adopted by Law Centres in responding to the cuts, why were they adopted and how do they operate in practice?

4. How have the different models chosen impacted on Law Centres? How do the different funding models impact on the ability of Law Centres to deliver the values set out in the ideal type Law Centre?

Subsidiary question

5. What factors should Law Centres consider when assessing who is most vulnerable/in greatest need?

1.3.2 Relationship to existing literatures

Given the complexity of the topic, this thesis draws on a number of literatures to provide answers to the research questions identified above. In order to answer question 1, "What is a Law Centre" I developed an ideal type Law Centre through reviewing and analysing the extant historical, conceptual and empirical literature on Law Centres from their inception to the present day- this is presented in Chapter 3 of the thesis. In order to understand the impact of the cuts to civil legal aid introduced by LASPO on Law Centres, it was important to first understand the

relationship between Law Centres and the legal aid scheme prior to the 2013 cuts (question 2 above). As such, I reviewed the literature on the operation of the legal aid scheme and charted Law Centres' increasing reliance on legal aid funding for their work through the academic literature on the history of the legal aid scheme and the history of Law Centres. Where there appeared to be important gaps I augmented this literature with expert interviews undertaken with Lord Carter of Coles and Steve Hynes, former Chief Executive of the Law Centres Network[4]. This material is presented in Chapter 2 of the thesis. In order to address subsidiary question 5, and arrive at a definition of vulnerability specific to the context of the ability to secure just outcomes in relation to civil, family and administrative law problems, I reviewed the extensive literature on the role and value of legal advice and representation in an adversarial legal system. In particular, I focussed on identifying the benefits legal advice and representation are purported to confer in terms of promoting access to just outcomes, and the theoretical literature underpinning arguments for the provision of publicly funded legal advice. In doing so, I drew on literature both from the UK and overseas, primarily the USA and Australia. I also reviewed existing relevant statute and case law, as well as publications reporting the findings of successive surveys of legal need in England and Wales. This is presented at Chapter 4.

In addition to the reviews of literatures presented in Chapters 1-3 I also sought to augment my empirical findings through reference to existing literature relevant to the most common models adopted by Law Centres in response to the cuts introduced by LASPO. In Chapter 5 I explore the history of charging for advice as a Law Centre and reference the wider literature on the impact of LASPO on providers of immigration advice and their clients. I also explore the literature on the ethics and motivations of public sector workers, and how they are impacted by the

[4] Lord Carter of Coles presided over the Carter Review of Legal Aid Procurement, which considered the means by which to deliver the Government's vision for procuring publicly funded legal services. The aim of this review was to recommend a procurement system that achieved maximum value for money and control over spending whilst ensuring quality and the fairness of the justice system. The reforms instantiated by the review were controversial, and largely recognised as having a detrimental impact on not-for-profit providers of legal aid, including Law Centres. He was selected for interview in order to better understand the rationale for the approach taken in the course of the reforms. Steve Hynes was Chief Executive of the Law Centres Network from 2002-2007 and presided over the creation of Kirklees Law Centre: he was therefore able to provide insight into the establishment of the Law Centre and the early stages of its operation. He has written several books on legal aid and austerity, and as such, was able to provide incisive and authoritative commentary on issues pertinent to this thesis.

introduction of strategies and techniques more commonly associated with profit-driven organisations. In Chapter 6 I draw on the wider literature on mergers in the not-for-profit sector in order to contextualise the experience of the Law Centre selected as a case study. In Chapter 7, I describe the existing limited literature on attempts by Law Centres to expand and diversify their funding base with project income from non-legal specialist funders, in addition to providing an overview of the operation of the Troubled Families Programme, a policy designed to improve outcomes for families experiencing complex and intractable problems, at a local and national level, through summarising the grey literature on this policy programme.

1.3.3 Research strategy and methodology

The following section sets out the approach to addressing the research questions set out above, and describes and explains the research strategy and methodology selected for the empirical stages of the project. The research began in October 2012 and the main-stage fieldwork for the project was completed in 2014.

1.3.4 Research Strategy: Case study approach

The case study approach has a considerable pedigree within both organisational research in general, and research into Law Centres in particular (Byles and Morris: 1977, Lancaster: 2002, Burdett: 2004). The case study approach has been described as: "a strategy for doing research which involves an empirical investigation of a particular *contemporary phenomenon* within its *real life context* using multiple sources of evidence" (Burdett, 2004:75 citing Robson, 1993:52). In this thesis, the model adopted in response to the cuts (e.g. charging for advice) is the "contemporary phenomenon" (the case) the Law Centre adopting the model is the "real life" context, and the ideal type Law Centre the methodological construct used to explore the implications of the model for Law Centres. The following discussion explains the selection of the case study approach as a strategy for answering the research questions identified above at 1.3.1. and argues that the case study approach is particularly suited to: the nature of the research questions, the context of the study, the need to gather data at a sufficient level of depth to meet the exploratory and explanatory aims of the project, and the desire to develop hypotheses regarding the relationship between the adoption of different funding models and Law Centre values.

1.3.4.1 The case study approach is particularly suited to both the research aims and questions and the context of the study

Yin (1994) writing in what may be considered the seminal text on undertaking case study research, states that the case study approach is particularly useful when the research questions focus on contemporary events and the researcher has little or no control over behavioural events (Yin, 1994:location 641). As such, the conditions under which this study was conducted reflect those that have been identified as mitigating in favour of the adoption of a case study approach. The adoption of a case study approach is held to be particularly appropriate when the research questions are "how" and "why" questions- such as questions contained within questions 3 and 4 listed above at 1.3.1. (Yin, 1994: location 788). Further to this, Burdett (2004) who adopted a case study approach for her thesis which explored the concepts of professional accountability and community control in the context of Law Centres, asserted that: "case studies have been used in organisational studies to explore organisational relationships, especially those involving professionals; to examine the effects of environmental factors including public policy initiatives, and to explain organisational… dilemmas" (Burdett, 2004:77). The case study approach has also been adopted extensively to explore the mechanisms of organisational change in professionalised organisations (McNulty and Ferlie, 2002; Pettigrew Ferlie and McKie 1992; Weick, 1979) and the impact of new organisational forms, such as public-private partnerships on public sector values (Klijn and Teisman, 2003, Davies and Hentschke, 2006, Reynaers, 2013:44, McCarty and Molina, 2015 and Reynaers and Paanakar 2016). As such, the case study approach is ideally suited to the aims, questions and context of the present study.

1.3.4.2 The case study approach facilitates the capture of data at a volume and depth capable of supporting the exploratory and explanatory aims of the project

The use of a case study approach has been held to be particularly appropriate when the research questions are of both an "exploratory" and "explanatory" nature (Bresnen: 1988, Yin: 1994, Burdett: 2004) In the academic literature, there is a degree of consensus supporting Yin's contention that: "…the distinctive need for case study research arises out of the desire to understand complex social phenomena" (Yin, 1994:location 688, Flyvbjerg, 2006:220). Case studies are thought to be both useful and appropriate when the issues under investigation are:

"complex, multifaceted, nonrepetitive and highly contextual" (Powell and Freidkin, 1987:183 cited in Burdett, 2004:76) as in the present study. The case study approach has been held to be particularly useful in facilitating the capture of data of sufficient depth and richness to support: "an analysis of the context and processes involved in the phenomenon under study" (Hartley, 1994:208-209, cited in Burdett, 2004). As stated above, a key aim of the research was to gather sufficient data to both:

i.) Provide a detailed description of the operation of the three most common funding models adopted by Law Centres in response to the cuts, in order to guide other Law Centres who might consider adopting these approaches (addressing question 3 and aim 3), and;

ii.) Analyse and explore the implications of the adoption of these models with reference to the ideal type Law Centre, in order to highlight potential implications of the adoption of the model for Law Centre values.

The adoption of the case study approach combined with limiting the scope of the empirical study to three cases facilitated the gathering of data at the depth and quality necessary to address these two aims within the resource and time constraints of the project.

1.3.5 The selection of the case studies

In deciding which Law Centres to include in the study, a number of inclusion criteria were applied. These were:

1.3.5.1 Exposure to the cuts introduced by LASPO

Law Centres had to self-report that they were exposed or highly exposed to the cuts introduced by LASPO. In the case of all the Law Centres selected for inclusion, income from legal aid was either their largest or the second largest source of funding prior to the cuts (see Appendix C for further information).

1.3.5.2 Adoption of one of the three most popular models for responding to the cuts

Law Centres included in the study had to state that they had adopted one of the three most popular models for responding to the cuts, in order that the research deliver findings that would have wider application for the Law Centres Network.

1.3.5.3 Located in England but outside of London

At an early stage it was agreed that all the Law Centres included in the study should be located in England, because, following Mayo, who completed a study of Law Centres in 2012: "of the potential complexities involved in studying Law Centres that were operating within…varying social policy frameworks (Mayo, 2013: 686). It was also decided to exclude Law Centres from London as, on reviewing financial information provided by the Law Centres Network, it was found that London Law Centres differ from their regional counterparts in a number of important ways. Firstly, London Law Centres tended to have a more diverse funding base than that of their regional counterparts: data collected by the Law Centres Network in 2012 for the period 2010/2011 demonstrated that the average number of funders per Law Centre in London (excluding the Legal Services Commission) was 8, compared to 5 funders per Law Centre for Law Centres located outside of London. Secondly, the absolute amount of non-legal aid funding secured by London Law Centres in 2010/2011 was higher than that secured by their regional counterparts: in 2010/11 Law Centres located in London secured £7,436,394 of funding from sources other than the Legal Services Commission, compared with the £4,700,629 of non Legal Services Commission funding secured by regional Law Centres. As such, London Law Centres tended to be wealthier than their regional counterparts: seven out of the ten Law Centres with the highest income levels in 2010/2011 were located in London. Thirdly, and critically for this study, London Law Centres tended, on average, to be less exposed to the impact of the cuts introduced by LASPO. For the period 2010/2011, on average London based Law Centres secured 63% of their funding from sources other than the Legal Services Commission, whilst non-London based Law Centres on average secured 40% of their funding from sources other than the Legal Services Commission. Additionally, data collected in 2010/2011 revealed that of those Law Centres who were reliant on legal aid funding for over half of their total income, 80% were located outside of London.

1.3.5.4 Agreement to participate in the study

A further (crucial) criteria for inclusion in the study was agreement to participate in the research. The Chief Executives of all three Law Centres included in the study confirmed their consent to participate in the study via email.

1.3.6 Information not available during the selection phase

As stated above, the project began in 2012 and the main phase of the empirical research took place during 2014. When the Law Centres included in the study were approached to take part in the research in 2012/2013, whilst they had confirmed their overall strategy for responding to the cuts, they were still in the process of designing and confirming the details of the models they were intending to adopt. Accordingly, at the time of selection, no information was available regarding the relative success of the models in terms of generating income for the Law Centres. As a result of this, the outcome of the strategy adopted in terms of generating income could not and did not form part of the selection criteria.

1.3.7 A single case study approach

As stated above, the aim of the empirical phase of the research was to collect detailed information on the operation of the three most popular funding models developed by Law Centres in response to LASPO, and to explore the implications of these models for the ideal type Law Centre. As such, it was decided that an inductive single case study approach (Eisenhardt and Graebner, 2007) would be adopted- this would facilitate the development of theoretical propositions regarding the implications of the different funding models for the ideal type Law Centre by facilitating the identification of: "patterns of relationships among constructs within cases and their underlying logical arguments" (Reynaers, 2014:44 citing Eisenhardt and Graebner, 2007:25). The complete absence of academic literature on both the development of the funding models studied in this project, and the impact of their adoption on the ideal type Law Centre, justified the adoption of an inductive single case study approach (Eisenhardt and Graebner, 2007). Initially it was intended that two examples of each model for responding to LASPO would be included in the study, however, at an early stage in the project it was decided that in order to gather data of sufficient depth and quality to answer the research questions within the financial and time constraints of the PhD project, the number of Law Centres studied should be limited to one per funding model. The limited number of Law Centres included in the study made it possible for multiple visits to be conducted

over a period of a year, as well as facilitating longer periods being spent based in each Law Centre (between 3-4 weeks per case study).

1.3.8 Generalisability of findings

As discussed above, one perceived strength of the case study approach is that it facilitates the development of: "theoretical constructs, propositions and/or midrange theory from case based, empirical evidence" (Eisenhardt and Graebner, 2007:25). Middle-range theories refer to limited classes of social phenomenon (Merton, 1949:39) and aim to integrate theory and empirical research. Merton (1949) described middle-range theories as: "theories that lie between the minor but necessary working hypotheses that evolve in abundance during day-to-day research and the all-inclusive systematic efforts to develop a unified theory that will explain all the observed uniformities of social behaviour, social organization, and social change" (Merton, 1949:39). The aim of this project, to identify and explore the relationship between the adoption of different funding models and the values of the ideal type Law Centre, may be considered an attempt to develop middle range theory, in the sense of: "developing constructs, measures and testable theoretical propositions" (Eisenhardt and Graebner, 2007:25) regarding the implications of adopting different funding models for the ideal type Law Centre. This project may be considered to present a series of three inductive case studies, aimed at identifying generalizable patterns or hypothesise that can be applied, refined, and tested in further research. The conclusions derived from the research are intended to be understood as hypotheses for the relationship between variables (the funding models) and constructs (the ideal type Law Centre) that are generalizable to the population of Law Centres who choose to adopt these approaches in response to LASPO. The observations derived from this set of three single case studies form the basis for studying the same phenomena in other cases (see Dooley, 2002 and Reynaers, 2014).

1.3.9 A qualitative approach to data collection

Qualitative research, broadly defined has been described as: "any kind of research that produces findings not arrived at by means of statistical procedures or other means of quantification" (Strauss and Cobin, 1990:17 cited in Golafshani, 2003:600). It has been stated that qualitative research aims to understand phenomena in context specific settings (Golafshani, 2003:600) and further that the

aim of qualitative research is to draw conclusions that can be "extrapolated to other settings" (Hoepfl, 1997). Qualitative research is associated both with thick description (Geertz, 1973) and detailed observational evidence. The aims of this project and the underlying assumption that it is possible to develop testable hypotheses and generalizable theory across settings, situate the study within a positivist philosophical orientation (Welch et al. 2011:745). The data gathered for this thesis is primarily qualitative in nature, derived from semi-structured interviews conducted with key stakeholders in the funding models developed by the Law Centres. This data was augmented by documentary and case file analysis, as well as additional interviews with experts who were in a position to contextualise the approaches adopted (see 1.3.9.3 below). Details of the number of interviews conducted, the roles of interviewees within their organisations and the interview guides developed for this project are listed below at Appendix D.

1.3.9.1 Why a predominantly qualitative approach?

The aims of this research, to gather detailed information on the operation of the three most common funding models developed in response to LASPO, and to explore the implications of their adoption for the values constitutive of the ideal type Law Centre, mitigated strongly in favour of a qualitative approach. Organisational values may be understood as a set of beliefs and aims that guide the behaviour of an organisation and individuals within it (Hyde et al. 2000: 9, Padaki, 2001). As such, it has been remarked that values: "are often unconscious and rarely discussable, [they] cannot be observed as such but are manifested in alternatives of behaviour" (Hofstede et al. 1990:291). Further to this, it has been stated that: "values are hard to locate and interpret because they are neither visible nor quantifiable, instead they are expressed through actions, decisions, preferences and attitudes (De Graaf, 2003, Reynaers 2014:44). As such, the nature of the object of study mitigated in favour of an approach to data collection that facilitated the gathering of 'thick' description and detailed observational evidence, from which the impact of the move to different funding models on the values proposed in the ideal type Law Centre might be evaluated. The following discussion describes the data collection techniques adopted, before moving to articulate the measures put in place to improve the validity and reliability of the findings, manage retrospective sense-

making and impression management, and to limit the impact of researcher bias on the findings.

1.3.9.2 Data collection techniques

Yin (1994) in his influential text on the case study approach, advised that case study evidence may come from six sources: documents, archival records, interviews, direct observation, participant observation and physical artefacts (Yin, 1994:location 2787/36%). The primary data collection technique utilised throughout this study was the semi-structured interview, augmented by observation, documentary analysis, archival records and case-file review. In designing the project, it was initially planned to adopt a mixed methods approach drawing extensively on case file analysis in order to measure changes in the vulnerability of clients seen by the Law Centres. The original intention was to review a representative sample of case files closed in the six months prior to the introduction of LASPO, and a representative sample of cases opened in the six months post the introduction of LASPO in order to derive quantitative data regarding the impact of the withdrawal of legal aid funding on the vulnerability of clients seen. This approach was piloted in two out of the three case studies. Unfortunately, the timing of the fieldwork and arrangements for "winding down" legal aid contracts meant that in the six months post LASPO Law Centres were still working on cases under their legal aid funding, limiting the ability to derive an adequate sample of cases. An additional issue was that the level of detail recorded in the case files was variable, making it difficult to apply the vulnerability framework consistently. Given the issues in both securing an adequate sample and the quality of the available data, this approach was abandoned.

As such, the primary data collection technique applied in this study was that of the semi-structured interview. Semi-structured interviewing is often used as the primary data collection strategy in research exploring organisational change and organisational values (Reynaers, 2013). It has been argued that: "as research…moves to… strategic phenomena…and strategic decision making, interviews often become the primary data source. Interviews are a highly efficient way to gather rich, empirical data" (Eisenhardt 2007:28). The semi-structured approach was favoured, as it provided more scope to explore the actions, decisions, preferences and attitudes of interviewees, in order to understand how the funding models adopted might impact on the ideal type Law Centre framework. Given the

novelty of the focus of the study, a semi-structured interview approach also suited the exploratory nature of the project. Semi-structured interviewing has been credited as enabling the researcher to: 'keep more of an open mind about the contours of what he or she needs to know about, so that concepts and theories can emerge out of the data'. (Seidman, 2006:12). In total, 42 interviews were conducted. All interviews were audio-recorded and fully transcribed. The transcriptions were then uploaded to NVIVO to facilitate thematic analysis. Also stored in NVIVO were relevant documents and field notes.

The approach to data collection varied between the three case studies. The detailed data collection strategy for each case study is presented below at Appendix E.

1.3.9.3 Improving the reliability and validity of findings

The chief strategy adopted to improve the reliability and validity of the findings presented in chapters 3-6 was that of triangulation- the notion of combining methods, data and sources in order to improve the validity and reliability the findings. This strategy has been cited to be of critical importance in qualitative research (Mathison, 1988, Healy and Perry 2000, Patton, 2002). In each of the case studies I combined interview data with data from other sources including direct observation and documentation. I also interviewed multiple informants, both internal and external to the Law Centres studied, in order to cross-reference accounts and sense-check findings. Where appropriate I sought out expert informants who were in a position to provide contextual information and comment on emerging conclusions. To ensure transparency, I used an audio-recorder to record every interview I undertook as part of the project. Each of the 42 interviews I conducted was fully transcribed and coded using NVIVO software, to ensure that other researchers might be able to follow and scrutinise my analysis.

1.3.9.4 Limiting bias

In qualitative research, bias can be introduced in a number of ways, including: (i.) researcher and instrumentation bias, and (ii.) the lack of ability to manage retrospective sensemaking and impression management. The following section describes the strategies adopted to limit the impact of these two forms of bias on the study.

1.3.9.4.1 Managing researcher and instrumentation bias

In qualitative research it has been stated that as: "…the researcher is intimately involved in both the process and product of the research enterprise, it is necessary for the reader to evaluate the extent to which an author identifies and explicates their involvement and its potential or actual effect upon the findings. (Horsburgh 2003:309). To this end, a full rationale for reflexivity statement is included at Appendix F. The goal of this statement is to enable the reader to assess the credibility of the findings through gaining a better understanding of the: "values, beliefs, knowledge, and biases" (Cutcliffe, 2003: 137) I brought to the project and the strategies I adopted for managing these throughout the research process.

In terms of managing instrumentation bias, my supervisor played a key role in approving draft interview schedules and assisting in the piloting of these research instruments. The methodology for the fieldwork was reviewed at my first year upgrade and approved by the chair of the departmental Research Ethics Committee.

1.3.9.4.2 Managing retrospective sensemaking and impression management in the research

One of the key issues in a study of this kind that is heavily reliant on interview data from participants is managing both retrospective sensemaking of events and the understandable desire of participants to manage the impression they make on the researcher and any future readers of the study. Interviewing participants in the research on multiple occasions, and timing the fieldwork to take place during or shortly after the funding strategies had been developed, was key to managing retrospective sensemaking. With regard to impression management, the Law Centre staff who agreed to take part were understandably keen for their work to be seen in a positive light. Those participants in management positions may have had concerns about the implications of taking part in a study of this kind for both their relationships with funders, and reputation amongst their peers across the Law Centres Network. Whilst all efforts have been made to anonymise individuals within the case studies, it was impossible to remove all identifying features of the individual Law Centres, without undermining the research aims and objectives. As such, it was important that participants in the three case studies understood that whilst they would not be named within the study, it might be possible to identify them from

details provided in the analysis. In this context, it became important to develop robust strategies for minimizing the effect of impression management on the research. As such, strategies for mitigating the impact of impression management on the study included: (i.) carefully explaining the aims of the research and clarifying the goals of the project, so that participants understood that evaluating their ability to develop successful income generation models was not an aim of the study; (ii.) establishing rapport and trust with interviewees, in order that they felt they could be honest in the interviews (iii.) combining interview data with observational research and documentary analysis and (iv.) in selecting interviewees, making sure that efforts were made to include interviewees who viewed the focal events from different perspectives. With regards to the latter, the strategy for selecting interviews was informed by the best practice approach identified by Eisenhardt and Graebner (2007) who state that a key approach to managing both retrospective sensemaking and impression management is:

"…*using numerous and highly knowledgeable informants who view the focal phenomena from diverse perspectives. These informants can include organizational actors from different hierarchical levels, functional areas, groups, and geographies, as well as actors from other relevant organizations and outside observers such as market analysts. It is unlikely that these varied informants informants will engage in convergent retrospective sensemaking and/or impression management.*" (Eisenhardt & Graebner 2007:28)

In order to ensure transparency in the approach adopted, and as stated above, information on the number of interviewees and their roles within the individual case are included at Appendix D. The following section provides a summary of the remaining chapters of the thesis, before moving to discuss the contribution to knowledge made by this research.

1.4 Summary of Chapters

Chapter 2 of the thesis describes the relationship between Law Centres and the legal aid scheme, tracing this relationship from the inception of the Law Centres movement to the present day. Drawing on the extant literature regarding the history of Law Centres and the legal aid scheme, the chapter argues that it was never intended that Law Centres should depend on legal aid funding for their income, and

that their later reliance on this form of funding was borne of financial necessity. As approaches to the administration of the legal aid scheme became more managerialist, driven by the ethos of New Public Management that came to dominate social policy in the late 1980s and 1990s (Moorhead 2001:552, Sanderson et al. 2011:184, Mayo et al. 2014:80) there was a greater emphasis first on containing and then on reducing the cost of legal aid to the public purse. Through their reliance on legal aid, Law Centres were increasingly affected by the need to deliver individual casework at scale in order to survive. The introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"), in ushering in extensive cuts to public funding for whole areas of civil and family law, represented an existential challenge for the Law Centres movement: research published in 2014 confirmed that in the period immediately prior to LASPO, legal aid funding accounted for 46% of the total funding received by Law Centres (Randall and Smerdon, 2014:7). The immediate impact of the dramatic reduction in public funding available to Law Centres through legal aid was to force Law Centres to reconfigure their services and devise new funding models in order to ensure their survival (LCN, 2014:4).

Chapter 3 presents the ideal type Law Centre that will be used throughout the thesis as a heuristic device to evaluate the different funding models developed by Law Centres in response to the cuts. Chapter 3 proposes a framework of five "terminal" and eight "instrumental" organisational values that are presented as constitutive of the ideal type Law Centre. "Terminal values" consist of overall aims, goals or outcomes, such as achieving social justice (Padaki, 2001: 195 citing Rokeach) whilst "instrumental values" consist of sets of beliefs about how best the organisation should conduct itself in achieving the end states described by the terminal values. The values framework proposed is derived from an analysis of the extant literature on the history and development of Law Centres, and the discussion in Chapter 2 seeks to justify the selection of these values for inclusion in the framework with reference to this literature. The five terminal values presented are as follows: Terminal Value 1: Law Centres improve the position of economically disadvantaged individuals and groups within the extant legal framework, Terminal Value 2: Law Centres deliver their services to those in greatest need, Terminal Value 3: Law Centres are staffed by specialist, expert, legal professionals, Terminal Value 4: Law

Centres are empathic allies of their clients and Terminal Value 5: The communities in which Law Centres are based and the clients they work with have higher levels of legal knowledge. Of these Terminal Values, it is argued that Terminal Value 2: Law Centres deliver their services to those in greatest need, requires further explication if it is to function effectively as a tool for evaluating the different funding models adopted by Law Centres in response to LASPO.

Chapter 3 takes as its starting point the approach to identifying those in "greatest need" proposed by the founders of the Law Centre movement, namely, that, in order to identify those who are in "greatest need", one should: "first examine(s) the type of situations in which legal services provide important advantages to the public and then… measure(s) the extent to which real need in such situations is left unmet" (Committee of the Society of Labour Lawyers, 1968:4). This approach can be crudely summarised as: "anyone who has a problem that could be resolved with recourse to the law should have access to legal services to assist them". Chapter 4 argues that the proliferation of laws (Genn, 2012:2) affecting individuals in their day-to-day lives has multiplied the scenarios in which legal services might be said to provide important advantages, to such an extent that a definition of "greatest need" based on this criteria is insufficiently nuanced to assist Law Centres to evaluate which individuals they should prioritise. In order to arrive at a principled basis for targeting services at those in greatest need, it is argued that it is important to review the existing empirical and theoretical literature detailing the benefits legal advice and representation bestows on individuals within the context of an adversarial legal system. Through identifying the exact nature of the benefit legal advice and representation is said to confer in terms of helping individuals to secure just outcomes, it is possible to deduce which individuals are most likely to be in greatest need of this form of assistance. For example, one of the benefits of legal representation reported in the literature, linked to the ability to achieve a just outcome in relation to a particular civil law claim, is improved articulation of the problem at hand (Engler, 2010a:75). As such, it may be hypothesised that individuals with lower levels of oralcy, who have English as a foreign language or who are cognitively impaired, might be said to be in greatest need of legal representation if they are to be able to successfully secure their rights. Following this approach, Chapter 4 reviews the extant empirical and theoretical literature and

from this derives a framework of factors that may be said to increase an individual's vulnerability or need for advice in the context of their ability to secure a just outcome in relation to their civil law problem. It argues that by targeting their services at individuals where one or more of these factors are present, Law Centres can deliver their Terminal Value of delivering their services to those in greatest need. This framework is used in the following chapters to explore the implications of the funding models adopted by Law Centres in response to LASPO for their ability to deliver this Terminal Value.

Chapters 5-8 report on the findings of the empirical research conducted for this project. The chapters follow a common format, with each chapter opening by situating the funding model adopted in the case study within its national context. The funding models adopted in each of the three case studies are then described in detail. The final section of each chapter is dedicated to analysing the implications of each funding model for the ideal type Law Centre value framework set out in Chapter 3. Chapter 5 describes a charging model developed by Avon and Bristol Law Centre, which focuses on offering legal advice and representation at below market rate for individuals with immigration law problems. Unlike other charging models, Avon and Bristol Law Centre opted to charge for advice under their existing branding, rather than setting up a separate community interest company. Chapter 6 presents a case study of a strategy of "merging to survive" as a response to the cuts. It details the experience of Kirklees Law Centre, who chose to merge with a local Citizens Advice Bureau in order to survive the cuts to funding introduced by LASPO. Chapter 7 reports on the experience of Coventry Law Centre, who chose to respond to the cuts by seeking to expand and diversify their funding base through attracting new, project-based funding from generalist and issue based funders, who may not have historically considered supporting legal services. In order to achieve this, the Law Centre changed the focus, delivery model and messaging around their service, shifting from: "the main focus being one of solving legal problems" (Bent, 2017:3) to making explicit the links between access to the services provided by the Law Centre and a range of outcomes in the areas of health, wellbeing, integration and deprivation.

1.5 Conclusion and contribution to knowledge

This research constitutes an original contribution to knowledge in a number of respects. Chapter 3 proposes a novel heuristic device for describing what a Law Centre *is*- what its core values are, and why it is distinct from other providers of legal services. As well as providing a lens through which to analyse the impact of the cuts introduced by LASPO on Law Centres, it is hoped that this framework will be of practical use in helping the Law Centres movement to identify and focus on those features that render them distinctive within the landscape of legal service providers, and to design funding and delivery models that support and enhance their distinctiveness. In addition, the framework presented in Chapter 4 is an original attempt to use the extant empirical and theoretical research detailing the benefits conferred by legal advice and representation in an adversarial legal system to develop a definition of vulnerability that is contextually sensitive and capable of being operationalised. Importantly, this framework defines an individual as more or less vulnerable to the extent that she is more or less capable of securing a *just outcome* in relation to her civil law problem *without* legal advice and representation (Genn, 1995:394). As such, it proposes a set of evidence-based criteria for prioritising the legal services delivered by Law Centres in the context of overwhelming demand and limited supply. The process of developing this framework also highlights gaps in the extant evidence base which future empirical research must explore: there is a lacuna of evidence relating to the factors that render an individual more or less likely to secure a just outcome in relation to their civil law problem- this stymies attempts to design effective approaches to help individuals to secure their rights. Finally, Chapters 5-8 of the thesis present original empirical research detailing the impact of cuts to funding introduced by LASPO on Law Centres. Law Centres themselves are an under-researched phenomenon (Burdett, 2002, Mayo 2014) and this thesis provides new insights into the challenges facing Law Centres as they seek to navigate a climate of chronic financial instability created by the cuts to public funding for legal advice and representation. To recognise why these cuts were so profoundly destabilising for Law Centres, it is important to understand the relationship between Law Centres and legal aid funding prior to 2013: this is outlined below in Chapter 2.

2 CHAPTER 2: THE HISTORY OF LAW CENTRES AND THEIR RELATIONSHIP TO LEGAL AID

2.1 Introduction

The following chapter outlines the relationship between the Law Centres movement and the Legal Aid scheme, from the founding of the movement to the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

The first Law Centre, North Kensington Law Centre was founded in 1970, twenty-one years after the passing of the Legal Advice and Assistance Act 1949 and twenty-six years after the Report of the Committee on Legal Aid and Legal Advice in England and Wales ("the Rushcliffe Report") was presented to parliament. The first articulation of the Law Centre model can be traced to a pamphlet published by the Fabian Society on behalf of the Society of Labour Lawyers in 1968 entitled "Justice for All". The authors of this document proposed Law Centres as a solution to acknowledged deficiencies in the existing provision of Legal Aid. As such, Law Centres were intended to be supplementary to, not reliant on, the Legal Aid scheme (Committee of the Society of Labour Lawyers, 1968:41). The vision for Law Centres was that they should exist as publicly funded organisations providing a mixture of casework, legal education and community organising within the communities in which they were based. However, a sustainable funding strategy for Law Centres based on central government provision failed to emerge. The following discussion charts the development of the Law Centres movement and in doing so describes Law Centres' increasing reliance on legal aid despite its questionable suitability as a source of funding for many of the activities Law Centres were intended to deliver. The chapter concludes by describing the impact of the cuts introduced by LASPO on Law Centres, and in doing so, establishes the context for the remainder of the thesis.

2.2 The emergence of Law Centres as a response to the deficiencies of the legal aid scheme

The legal aid scheme that existed in 1968 was created through the enactment of The Legal Aid and Advice Act 1949 ("The Legal Aid Act 1949"). The Legal Aid Act

1949 was based largely on the recommendations of the Rushcliffe Committee, which was appointed in 1944 to investigate deficiencies in the existing provision of legal services to individuals of limited means. The committee's conclusions were translated into legislation with few exceptions (Morgan, 1994:70) partly as a result of the cross party consensus achieved by the committee. The legislation which was to become the 1949 Act created a: "formally comprehensive system of state-funded litigation available to 80 per cent of the adult population, a system which at its inception was at least as comprehensive as any in the developed world and arguably the most advanced then in existence" (Morgan, 1994:73). However, concerns on the part of the government about "swamping" the legal profession and protracted negotiations with the Law Society regarding the function and administration of the scheme had delayed the enactment of the recommendations of the Rushcliffe Committee, by nearly five years. As a consequence, the enactment of the legislation coincided with a Treasury veto on spending following the sterling crisis of 1949-1950. Many of the most radical proposals, which related to the availability of funding for proceedings in the county and magistrates courts, were not brought into effect until 1956 (Morgan, 1994:73) and the scheme was not extended to the House of Lords or Privy Council until 1960 (Morgan, 1994:73). In addition, the section of the 1949 Act that concerned the provision of legal advice, and mandated the creation of state-funded legal centres in each centre of population, staffed by salaried solicitors, was not enacted (Paterson, 1972: 14). When, in 1959 the provisions relating to the legal advice scheme finally were enacted, the model adopted was very different from that envisaged by the Rushcliffe Committee. All mention of state-funded, lawyer-staffed legal advice centres had been removed, and instead, advice was to be provided by solicitors in private practice in their own offices. It was available only to the very poorest members of society. As a result, the numbers of people advised through the scheme remained low (Paterson, 1972:22) Outside of the scheme, legal advice, where it was provided, was delivered on a piecemeal basis: by charitably funded "Poor Man's Lawyers", Trade Unions, Newspaper Advice Bureaux and Citizens Advice Bureaux. (Paterson, 1972:24).

In January 1967, The Society of Labour Lawyers held a conference with the aim of discussing the state of the legal profession. At this conference, delegates expressed widespread concern that the system of Legal Aid and Advice as it was constructed

at this time, was failing to achieve the aims of the 1949 Act. Agreement was reached that a committee should be appointed, chaired by Maurice Finer QC, to investigate the issues and propose solutions. The report of the committee, entitled "Justice for All" was published in 1968, and provides a forensic analysis of the defects of the contemporary legal aid scheme. The committee concluded that: "Poverty, ignorance, fatalism and fear in combination with the present structure of the legal profession, result in the denial of legal services to many people and especially those living on low incomes in parts of our largest cities" (Committee of the Society of Labour Lawyers 1968, 60). The seventy-six page pamphlet produced by the committee identifies a number of areas of particular concern, including: (i.) the extent of unmet need amongst the poorest members of society, particularly those located in urban areas, (ii.) the scope of the scheme, particularly in relation to representation (iii.) the complexity of the rules regarding both coverage of and eligibility for the scheme (iv.) the way in which the structure of the scheme mitigated against early intervention in civil legal problems and incentivised the "cherry picking" of cases (v.) the lack of ability of alternative agencies operating outside the legal aid scheme to compensate for these deficiencies and (vi) the lack of research into the operation of the scheme hampering abilities to assess its efficacy. Much of the analysis present in "Justice for All" focuses on examining the barriers to accessing the legal system that disproportionately affect those from poorer backgrounds, particularly in urban areas. The authors of Justice for All identified a marked disparity between the recorded data on the numbers of people experiencing problems such as personal injury arising from road traffic accidents, issues with consumer transactions and rented housing and the number of people claiming legal aid for these matters, and cited this as evidence of unmet legal need (Committee of the Society of Labour Lawyers, 1968:59). This issue was, the committee argued, exacerbated by the emphasis given within the Legal Aid and Advice scheme to litigation arising from marital problems. Figures derived from so called Poor Man's Lawyer services, who provided free legal advice to individuals living in deprived areas, often through settlement projects, indicated that those living in poor urban areas had different legal needs from those of the general population. The committee reported: "While more than 80 per cent of all grants for civil legal aid are made for matrimonial proceedings, the experience of the three principal poor man's lawyer centres in London is that only some 15-25% of the matters referred to them involve

matrimonial problems. The legal aid statistics thus in themselves provide indirect evidence of unmet need in civil law situations and in particular under-represent the need for lawyers assistance in the county courts" (Committee of the Society of Labour Lawyers 1968: 59).

In addition to presenting an analysis of the problem, the report proposed a solution: the establishment of a network of independent legal advice centres, based on a model of community based legal service provision pioneered in the United States of America: Neighbourhood Law Firms. Neighbourhood Law Firms were developed and funded by the federal government in recognition of the importance of access to legal services in facilitating the achievement of the goals of the Economic Opportunity Act 1964. The experience of the development of Neighbourhood Law Firms provided justification for the beliefs of Law Centres founders in the importance of the law in delivering broader social goals such as economic empowerment and a more equitable society. Michael Zander, writing in the appendix of Justice for All states that whilst the Economic Opportunity Act: "made no specific references to Neighbourhood Law Firms or even to legal services for the poor… it soon became apparent that lawyers would be useful in the poverty programme and several such offices were founded by the Office for Economic Opportunity under section 205 of the Act" (Committee of the Society of Labour Lawyers, 1968: 63). The US experience demonstrated that through a combination of selecting and bringing test cases and the initiation of legislative action, significant law reform could be achieved, resulting in the transformation of substantive and procedural law, and the reform of administrative processes (Committee of the Society of Labour Lawyers, 1968:63). Additionally, through engaging in systematic study of the law as it related to the poor, the Neighbourhood Lawyer was expected to: "make suggestions for its improvement in the form of draft legislative proposals and even then to engage actively in winning support for the proposed reforms" (Committee of the Society of Labour Lawyers, 1968:63).

The original proposal for Law Centres articulated by the Committee of the Society of Labour Lawyers advocated the role of Law Centres as supplementary to the provision of legal advice and representation through the Legal Aid scheme. Law Centres were envisaged as: "a public service to operate alongside and in supplement

to the private profession (Committee of the Society of Labour Lawyers, 1968:41). Law Centres were not intended to rely on Legal Aid as a source of funding, as the authors of Justice For All felt that the means test and bureaucratic requirements of the scheme would impede the ability of Law Centres to target their services at need, as well as bringing Law Centres into unnecessary and unhelpful competition with the private sector. Further to this, the authors of Justice for All stated that: "it is central to the proposal for local legal centres that they should operate by way of extension, not incursion upon, the existing arrangements for legal aid" (Committee of the Society of Labour Lawyers, 1968: 41). Instead it was argued that a network of up to fifty Law Centres should receive funding from central government to enable them to carry out their work. This funding should be administered independently through a similar mechanism to that adopted to fund the BBC and the University Grants Committee (Committee of the Society of Labour Lawyers, 1968:46). The authors of justice for all argued that: "The cost should, in principle and in the long run, be borne by the government" (Committee of the Society of Labour Lawyers, 1968:47) although some funding from Foundations was thought to be acceptable in the "experimental stages" of the scheme (Committee of the Society of Labour Lawyers 1968:47). A national funding policy however, failed to materialise.

2.3 Law Centres and Funding: The Early Years: 1970-1987

In the absence of a national funding policy the first Law Centres were reliant on charitable funding (LCF, 1983:4). In 1973, Law Centres received public funding via the Urban Aid Fund distributed by the Department of the Environment and in 1974 the first grants from Local Authorities were made available (LCF, 1983:4) In the early years of the Law Centres movement, Law Centres were subject to significant criticism from The Law Society, concerned about the threat that Law Centres might pose to solicitors in private practice. The Law Society sought to use their power to refuse to waive the professional rules that prevented Law Centres from advertising and sharing fees to impose conditions on the way in which Law Centres operated (Smith, 1997:904). In a 1974 report on the legal aid scheme, the Law Society castigated Law Centres for: "stirring up political and quasi political confrontation far removed from ensuring equal access to the protection of the law" (The Law Society, cited in Smith, 1997:905). The then Lord Chancellor, Lord Elwyn Jones, was forced to intervene to compel negotiations between The Law Society and the Law Centres. Following negotiations, the necessary waivers were eventually

granted in 1977 on the proviso that Law Centres did not seek to compete with private practice in areas such as adult crime, matrimonial work, personal injury, probate or conveyancing (Royal Commission on Legal Services, 1979:79, Smith, 1997:905). The lack of a discrete funding stream for Law Centres led to issues with sustainable funding as early as 1974. By 1974 the Law Centre Working Group reported that Law Centres were financed partly through the Legal Aid Scheme on cases undertaken by them, and partly from other sources, including Local Authority grants, charitable grants, private donations and Urban Aid grants. Additionally, under the Labour government of 1974-1979, the Lord Chancellor instituted central government funding for eight law centres who were experiencing financial difficulties (Smith, 1997:905). The Lord Chancellor's Department however were at pains to state that this funding would not be available for any new Law Centres (LCF, 1983:3), and the Law Centres who were in receipt of this emergency funding were not provided with any guarantee of its long-term continuation (Prior, 1984:6).

In discussing the merits and demerits of the funding streams available to them, the working group argued that Local Authority grants are the most unsatisfactory because: "they are made by the very body which Law Centres most often find themselves opposing both in and out of court. Further a grant to a Law Centre from a Local Authority may be only as secure as the life expectancy of the political party in charge at the time when the grant is made" (LCWG, 1974:23). Charitable grants and donations were also thought to be inferior sources of funding as they only covered set up costs and come with restrictions. The Law Centres working group argued that: "Of the various forms of finance for Law Centres so far tried the urban aid grant has been by far the most satisfactory in that it is secure for a fixed period of time, it cannot be used by a local authority to threaten the independence of the Law Centre and gives those running the centre a high degree of control over its finances" (LCWG, 1974:24). The urban aid programmes run by the Department of Environment were instituted in 1968, with the aim of alleviating the special needs of urban areas and encouraging experimentation, supporting new approaches to tackling deprivation. Urban aid programmes were designed to provide a kind of "proof-of-concept" funding: "its rationale was that (the funds)…should serve a pump priming purpose and encourage the undertaking of new projects which would not otherwise have been undertaken with the hope that these projects…in due

course would be taken into the local authorities' main programmes" (Prior, 1984:5). Funding was provided in the form of an initial time-limited grant, after which point funding was reviewed annually, with no guarantee of continuation (Prior, 1984:6).

In light of the instability created by the uncertain funding climate, in 1979 the Royal Commission on Legal Services led by Lord Benson recommended that: "the time has come to move forward from a period of experiment to one of consolidation, characterised by continuity, orderly development, adequate resources and proper administrative and financial control." (Royal Commission on Legal Services, 1979:81). The committee proposed the subsuming of the extant network of Law Centres into a new national network of Citizens Law Centres, (Per Royal Commission on Legal Services, 1979:83 para 8.19,) on the proviso that Law Centres undertook to remove their political and community activist functions (Smith 1997:907) attempting to divest the movement of its relationship with left wing politics.

These proposals, resisted strongly by Law Centres, were never implemented due to the election of a Conservative government in 1979. The incoming Conservative administration did not take an: "overtly hostile view of the allegedly political role of the Law Centre" (Smith, 1997:908), but it did deny that Law Centres should be centrally funded, insisting instead that the responsibility for funding Law Centres should sit at local authority level. Labour-led local authorities were more likely to fund Law Centres than their Conservative counterparts (Smith, 1997:908), leading to uneven patterning of provision. Writing in 1984, Richard Prior, researching Law Centres on behalf of the Society of Conservative Lawyers, reported that: "Many Law Centres receive funds from their local authorities and are therefore always open to the risk of those funds being reduced or withdrawn altogether out of what may be parochial considerations. Four Law Centres were closed in London between 1978 and 1980 as a result of changes in political control at local authority level" (Prior, 1984:5). Despite the precariousness of the financial position many Law Centres found themselves in, Legal Aid was still not seen as viable source of ongoing income for Law Centres, a publication produced by the Law Centres Federation in 1983 entitled "The Case for Law Centres" stated that: " Law Centres are complementary to the legal aid system, not a substitute" (LCF, 1983:7). By the

early-mid 1980s, despite calls from across the political spectrum (Prior, 1984:23) for responsibility for Law Centres to be located in one government department and funding to be put on a permanent footing subject to conditions around accountability and control (Burdett, 2004:61), sustainable central government funding failed to materialise. Between 1981 and March 1987, all 24 Law Centres who were in receipt of funding through the urban programme found the on-going nature of that funding threatened. By 1984, it was reported that applications for funding for seven new Law Centres made to the Department of Environment had been frozen, pending a government decision on the future funding of Law Centres (Prior, 1984:6).

As a consequence, Law Centres began to experiment with Legal Aid as a source of funding. By the late 1980s the specialist literature on CLCs indicates that Law Centres were increasingly reliant on Legal Aid, a source of funding that tended to distort Law Centres work in favour of individualised casework and away from community development and education (Stephens, 1990:123, Burdett, 2004:61). Despite this, the rationale for securing funding through Legal Aid was expressed as: "in times of severe financial hardship, Law Centres must raise income wherever they can" (Stephens, 1990:125). In the context of restricted national and local government funding, and the pressure to secure income to survive, the changes made to the Legal Aid scheme by The Legal Aid Act 1988, and the franchising system developed thereafter further increased Law Centres reliance on Legal Aid as a source of funding.

2.4 The Legal Aid Act 1988 and the rise of legal aid funding for Law Centres

The Legal Aid Act 1988 transferred control of the Legal Aid Scheme from the Law Society to a newly created government quango, the Legal Aid Board (Goriely, 1996a: 238) and section 4 of the Act granted the Legal Aid Board wide powers to: "provide advice, assistance or representation 'by means of contracts with or grants or loans to other persons in England and Wales" (Goriely, 1996a: 239). The franchising devised by the Legal Aid Board in 1989 enabled them to issue franchises to applicants, who might be advice agencies or solicitors in private practice, providing that the applicants met certain quality controls. Franchises gave recipients

the powers to grant their own extensions and emergency certificates, and enabled them to receive faster payments (Goriely, 1996a: 240, Smith, 1996:574). Franchise contracts specified a five year term, generating an expectation that franchisees will continue to be involved in the work over the medium to long term (Goriely, 1996a: 241). The quality controls created by the scheme consisted in practice of checklists for transaction criteria, and the arrangement as a whole aped the model of "preferred supplier" often adopted in the private sector (Sommerlad, 2004:360). This followed the delinking, in 1987, of levels of legal aid fees from those charged to private clients. The 1988 Act introduced standard fees for legal aid work and sought reductions in spending on legal aid through instituting a direct reduction in eligibility (Sommerlad, 2004:360). The first franchises were created in 1995, and the Legal Aid Board experimented with awarding franchises to 42 not-for-profit providers of advice in the same year (Smith, 1996:575). The pilot programmes enabled non-lawyer providers of legal services to deliver advice through the scheme for the first time since its inception (Moorhead et al. 2003a: 774). The policy justifications for these changes centred on arguments around rectifying the lack of supply of legal services in social welfare law areas, providing better value for money through reducing bureaucratic oversight for non-lawyer agencies, supporting agencies to work with clients in a more holistic way and improving consumer choice (Moorhead et al. 2003a: 767). However, for the legal profession, these changes raised concerns that lawyers would be: "undercut by the not-for-profit sector in state-sponsored unfair competition". Some practitioners also raised concerns about the quality of services provided by not-for-profits (Moorhead et al. 2003a, 767). Importantly, these changes brought advice agencies into direct competition with private practice for the same work (Goriely, 1996a: 241) for the first time eroding the culture of cooperation between advice agencies and private practice that had been noted by researchers in the late 1980s. A study of legal advice and assistance published in 1989 observed that: "sophisticated patterns of advice and provision have evolved…advice and law centres and practice solicitors have developed their work so that there is a minimum of overlap" (Kempson, 1989 cited in Goriely, 1996a: 237). Through limiting funding and enabling providers of different kinds to apply for funding that had previously been restricted to lawyers on the basis of parity of quality, these measures pitted lawyers in private practice and law centre lawyers against non-lawyer led legal services for the first time.

2.5 New Labour, Legal Aid Funding and Law Centres

Whilst in opposition, the Labour Party had been critical of the introduction of a cap to the legal aid budget arguing that this approach: "signified the abandonment of an entitlement basis for the grant of legal aid based on merits" (Irvine, 1996: 5 cited by Sommerlad, 2004:360). However, once in office, the approach adopted to legal aid provision was characterised by a commitment to efficiency and cost reduction, which was to be brought about through three mechanisms- contracting, reducing the number of suppliers and prioritisation (charity sector wide). In 1997, the then Lord Chancellor Lord Irvine announced radical reforms to the civil legal aid scheme, including excluding claims for personal injury and most other claims for money and damages from the scope of the scheme. In addition, Irvine announced new contracts for fixed blocks of work, a tightening of the merits test, a cap on overall expenditure on legal aid and the creation of a Community Legal Service to "facilitate the refocusing of the legal aid scheme as a tool to help poor people solve social welfare problems by gaining access to the justice system" (Hynes and Robins. 2009:37). In order to bring this about, Lord Irvine sought to engage the not-for-profit sector, and under his chancellorship the number of franchises awarded to not-for-profits grew from 42 to over 400 by 2002-03 (Hynes and Robins. 2009:37) including many Law Centres. A leaflet published by the Law Centres Federation in 2000 reported that Law Centres were: "central to the new Community Legal Service being developed by the Legal Services Commission" (LCF, 2000:1). The aim of this activity was to rectify perceived deficiencies in the legal aid system, which it was felt, had led to a scheme characterised by "private lawyers 'ripping off' a system which simply paid bills for services" (Stein, 2001:3) and in doing so "restore accountability and legitimacy to a 50 year old programme that was, correctly or not, viewed as having run adrift" (Stein, 2001:3). In giving oral evidence before the Home Affairs Select Committee in November 1999, Lord Irvine stated:

> *I would be the first to admit that legal aid has not been the most popular public social service. What my party won the general election on was the proposition and the pledge that we put schools and hospitals first, not legal aid first. What I want to be is brutally frank with the Committee. Legal aid is synonymous in the public's mind with lawyers' bank balances and the public have a vision of restrictive practices, overmanning, overcharging, and, in high cost criminal cases, fees which appear to be grossly high. The big picture about*

> *the Access to Justice Act is that it will wipe out restrictive practices once and for all. Second, it will allow legal aid work, where it can be efficiently done in the public interest by the private sector at no cost to the taxpayer, to be done under conditional fee agreements and that of itself will bring millions of people into access to justice for the first time. By this means we intend to free up resources so they can be directed at the real needs of ordinary people in their daily lives. That is where the Community Legal Service comes in. The whole spirit of the Community Legal Service is partnership and it will be partnership arrangements operated locally, underpinned by concordats.* (02 Nov 1999, HC 882-I 1998-1999: q1)

The Access to Justice Act 1999 abolished the Legal Aid Board, replacing it with the Legal Services Commission and critically, introduced a hard cap on overall expenditure, an action which constituted formally: "ending an entitlement to legal aid" (Stein, 2001:2). This conceptual change in the scheme signalled a "replacement of entitlement with a scheme of prioritising cases and resources (rationing) as a way of meeting the needs of the general public within a limited budget" (Moorhead, 2001:550). The Act also changed the rules on conditional fee agreements, to facilitate their use by those who were now unable to access legal aid due to changes in the scope and eligibility of the scheme (Hynes and Robins 2009:39). The Legal Services Commission was tasked with establishing a new Community Legal Service for all civil legal advice and representation services. The 1998 White Paper, "Modernising Justice" described the Community Legal Service as: "the cornerstone of the government's pledge to protect everyone's basic rights" (16 Sept. 2003, HC 391-I) and argued for a focus on the issues that affect the day-to-day lives of the "disadvantaged and socially excluded" (LCD, 1998:3). The Legal Services Commission's corporate plan referred to the Community Legal Service as being a "component of a wider government programme aimed at creating a fair and inclusive society" (LSC, 2002: 9). The Law Centre's Federation, in partnership with the Department for Constitutional Affairs, published a paper that aimed to make explicit the links between social exclusion and the experience of civil legal problems (DCA, 2001). From the inception of the scheme, the CLS was criticised for its lack of clarity in setting out a strategy for the way in which community legal service partnerships would impact on social exclusion. In addition, successive reports produced by the Prime Minister's Social Exclusion Unit: "entirely ignore(d) the

roles of legal aid advocacy and independent advice agencies, as well as the Community Legal Service, in its comprehensive review of social exclusion problems and remedies for community regeneration and empowerment (Stein, 2001:9). There were concerns that the CLS was a scheme more concerned with cost control and efficiency than developing legal services as tool to combat poverty and inequality. (Stein, 2001:9).

The Community Legal Service was proposed as a means of: "integrating civil, general and legal advice services which had developed in parallel to the legal aid system into a seamless service" (Hynes and Robins, 2009:42) and matching the supply of legal services to need, by creating geographical "bid areas" along local authority boundaries and apportioning funding for different legal services on the basis of need in these geographical areas. As such, the Community Legal Service aimed at reducing fragmentation, coordinating services and funding and identifying and tracking local levels of legal need, facilitating a better fit between supply and demand (Hynes, 2009:65). The Community Legal Service Fund, established by the Access to Justice Act 1999, was the fund for all civil work administered by the Legal Services Commission, the successor body to the Legal Aid Board. This fund was to be one of the main sources of funding for legal services in each authority, although it was anticipated that other funders such as local authorities and charitable funders would contribute. Crucially, no new government money was to be made available to achieve a better match between advice needs and advice provision. Local authorities were not compelled to contribute additional funds to pay for the provision of advice under the scheme, instead, the Lord Chancellor hoped to enthuse local government as part of: "a crusade to persuade local authorities to do more" (02 Nov 1999, HC 882-I 1998-1999: q17) In the consultation paper announcing the new scheme the Lord Chancellors Department stated: "we are making better use of public money, by changing the legal aid system so that aid is targeted on the cases that really need it, not just on those which lawyers want to do" (LCD, 1999:1) before asserting that: "total public funding (of CABx and Law Centres) is difficult to estimate accurately but is probably about £250 million a year. On the face of it, this provision should be adequate to meet priority need." (LCD, 1999:2).

In 1999-2000 a group of six Pioneer Community Legal Service Partnerships were set up. These consisted of six local authorities spread across rural and urban areas who agreed to work with the Lord Chancellors Department and the Legal Aid Board to develop a best practice blueprint for Community Legal Service partnerships (Owers, 2000:152). The areas selected were Cornwall, Kirklees, Liverpool, Norwich, Nottinghamshire and Southwark (LCD, 1999:3). These "pioneer areas" were selected on the basis that their local authorities had demonstrated: "commitment to developing quality legal and advice services responsive to the needs of their local communities, and willingness to work with others to achieve this" (LCD, 1999:15). In these areas, partnerships brought together the local authority, the Legal Aid Board, other local and national funders and, where appropriate, local providers in order to coordinate services and funding (LCD, 1999:3). The aim of these pioneer partnerships was to discover the most successful models for: i.) assessing local need and priorities for information, advice and assistance ii.) establishing networks of local providers and designing effective referral pathways and iii.) coordinating the plans of the different funders of these organisations (Owers, 2000:152). It was argued that a Community Legal Service network should include services at three levels: i) information, targeted at a particular legal problem or category of problem, ii) advice, defined as "information about rights and obligations which is directly applicable to a person's individual circumstances, including suggestions for action and interpretation of the actions- or potential actions- of others" (LCD, 1999: 15) and iii) assistance, defined as support in taking action or an adviser acting on a customer's behalf through formal legal processes or informal channels (LCD, 1999:14). The initial evaluation of the Pioneer Partnerships identified a number of problems with the development of the partnerships, including: rivalry and distrust between suppliers, tensions between the centrally developed funding priorities set out by the LSC and locally identified need, difficulties in mapping both local need and local suppliers, the reluctance of other funders to adjust their aims and priorities and difficulties in establishing effective referral pathways (Owers, 2000:152).

Parallel to this, a Quality Task Force was established to develop a Quality Mark for each of three levels of service provision: information, general help, and specialist help. This project built on the Legal Aid Franchising Quality Assurance Mark

developed to augment the franchising arrangements pioneered by the previous government. All organisations providing legal advice and assistance under the Community Legal Service were required to meet the minimum Quality Mark Standard for the services they provided (Owers, 2000:154). The aim of this quality mark was partly to reduce the time spent by agencies demonstrating their ability to meet the quality criteria of different funders (LCD, 1999: 8) and partly to ensure that only agencies with appropriate levels of competence undertook cases under the legal aid scheme (Hynes et al. 2009:65). The contract also limited the number of cases that could be started by providers and consequently, the budget for legal aid. The principal effect of these changes was to reduce the supplier base for legal aid from 12,000 organisations to 5,000 by 2001 (Stein, 2001:26). The net effect of these changes was to extend what have been described as new public management controls over legal aid, and increase government control over the market for legal aid (Moorhead, 2001:552, Sommerlad 2004, Sanderson et al. 2011:184).

Hood, writing in 1991 identified seven doctrinal components present in most definitions and discussions of New Public Management. (Hood 1994:4). These are: i.) direct, professional management in the public sector, ii.) explicit standards and measures of performance, iii.) increased emphasis on output controls, iv.) shift to disaggregation of units in the public sector, operating on decentralised one-line budgets, v.) increasing competition between providers of public services, vi.) private sector styles of management practice and finally, vii.) an emphasis on discipline and parsimony in resource use, accompanied by rhetoric such as "doing more with less. (Hood, 1994:4-5). Crucially, New Public Management involves the repositioning of "citizens" as "consumers" (Brinkerhoff: 2002: 20) Critics of New Public Management techniques have implicated these practices as: "a gratuitous and philistine destruction of more than a century's work in developing a distinctive public service ethic and culture (Hood, 1994:4 citing Martin, 1988 and Nethercote, 1989). In the application of these techniques to the provision of legal aid, commentators have criticised both: "their capacity to erode trust and their incapacity to deal with 'soft' values crucial to the success of public services" (Moorhead, 2001:545, cf. Mayo, 2014).

By 2004, the findings of an independent evaluation of the Community Legal Service indicated that the scheme was failing in its aims. Implicated at the heart of this failure was the lack of a coherent vision for the programme, beyond simply providing people with legal services. The Community Legal Service was described by commentators as being: "bereft of a social justice mission" (Stein, 2001:1) and more preoccupied with efficiency than equality and ideals (Moorhead and Pleasence, 2003:2). The evaluators reported on the paucity of evidence that the Community Legal Service was contributing to a reduction in social exclusion, (Balmer et al. 2005:304) lack of coherent agenda for the service, and a vacuum of leadership at the top of the organisation (Hynes et al. 2009:66). There was evidence that the budget for criminal legal aid was impinging on funds for the Community Legal Service and further, that the contracting and quality assurance schemes were overly complex, burdensome, costly and bureaucratic (Hynes et al. 2009:66). With no additional funding available to support the working of the Community Legal Services Partnerships[5], providers were withdrawing. Legal need, once identified locally, had to be met from existing budgets or not at all. This led to increased pressure on providers, including Law Centres, who reported demand outstripping supply, and desperation amongst clients leading to rising tensions between advisors and clients (Hynes and Robins, 2009: 68). Sector representatives, Advice Services Alliance, raised concerns that by requiring the Community Legal Service Partnerships to make decisions about priorities and rationing of resources, the partnership structure risked pitting: "funders against providers and providers against each other" threatening any trust and partnership that had developed (Hynes et al. 2009:66). The Legal Services Commission Annual Report of 2004 registered a drop in the number of advice contracts awarded in the areas of law commonly considered to impinge upon social exclusion, such as welfare benefits, employment and housing. This data endorsed the findings of the independent review of the scheme which concluded that the legal aid contract changes had failed to refocus legal aid funding by directing it toward social exclusion (Balmer et al. 2005:305).

2.6 CLACs, CLANs and The Carter Review of Legal Aid

Against this backdrop, the Community Legal Service was rebranded and a new flagship policy proposed- Community Legal Advice Centres (CLACs) and

[5] With the exception of a £15million "Partnership Innovation Budget" allocated over three years, which awarded grants to organisations submitting successful bids for the "delivery of innovative advice and information services" (ASA guidance downloaded at: http://asauk.org.uk/wp-content/uploads/2003/09/CLS-partnerships-introduction.pdf)

Community Legal Advice Networks (CLANs). LSC support for Community Legal Service Partnerships was abandoned in 2006. CLACs and CLANs were described as the: "latest in a series of attempts in England and Wales to join up the commissioning and delivery of legal advice services in social welfare and family law" (Fox et al. 2011:204). Their aim was to provide an integrated, face-to-face advice service for individuals experiencing social welfare and family law issues. Service providers in specific geographical areas were required to join together in a single entity with a single physical location (if forming a CLAC) or create a consortium providing complementary services (if forming a CLAN) to be eligible for funding. CLACs and CLANs were funded through the pooling together of funding from the Legal Service Commission and Local Authorities (Fox et al. 2011:204). Evaluators of the first five CLACs to be commissioned found that the joining up of LSC and local authority funding streams: "posed profound challenges, both to the competing interests of funders and to the existing supplier base, who faced the need to expand and/or form consortia in order to compete for contracts, or risk effectively being forced to abandon mainstream social welfare law due to withdrawal of funding" (Fox et al. 2011:204). Several Law Centres applied to become part of a CLAN. Gateshead Law Centre partnered with a CAB to form the first Community Legal Advice Centre in the country in May 2007 (LCF: 2007:11). Timelines for submitting bids for the scheme were short, and some councils who decided not to pursue the CLAC/N route implicated the tight timescales in their decision not to develop a CLAC/N in their area. Others felt that doing so would undermine their existing attempts to build the capacity of the voluntary sector. (Tribal, 2010: 45).

A further challenge to providers such as Law Centres was presented by changes to the procurement of legal aid brought about by a review conducted by Lord Carter of Coles, entitled: "Legal Aid: A market based approach to reform." In the letter accompanying the report Lord Carter stated:

> *"I was surprised to discover at the outset that the relationship between the various legal aid stakeholders was often adversarial and sometimes hostile. This has resulted in a fragmented system that has not historically recognised a duty to deliver justice and an acceptable overall public cost…There must be a better understanding of the finite nature of resources, and the need for the taxpayer and government to secure better value for money from the funds it spends*" (Carter, 2007:iii)

Whilst the original focus was on criminal legal aid and containing, rather than cutting public expenditure, the reforms recommended were applied across the civil legal aid sector. The principal changes proposed by the review were a shift from payment by the hour to fixed fees for advice and representation and consolidation of the supplier base (Zander, 2007). The aim of these changes was to facilitate an eventual shift to best value tendering for legal aid work. (HC, Constitutional Affairs Committee, 2007:47). Reflecting on the recommendations, and their application to civil legal aid, Lord Carter stated:

> "*We didn't really have a lot to do with that to be honest, we just knew that the same rules should apply i.e. that you wanted to get people to start to focus. What was really interesting was when you talked to firms like Bindmans who did a lot of family and stuff it was clear, how the market tiered so, rather like a hospital, you've got the top end folk who do the complicated [work] who are going to stand a good chance and you've got what you might call just routine, and the interesting question was how you squeezed the routine and just made it more effective against all of that… what we offered was a very straightforward thing - alter the pricing, squeeze them together, make sure they really become efficient"* (Lord Carter, 2015).

The review also recommended a shift in the way not-for-profit organisations holding civil legal help contracts were funded. Up until 2006, civil legal help provided by not-for-profits had been remunerated on a "funded post model according to which the LSC funds fractional or one or more posts within a Not-for-Profit organisation for legal aid work" (HC, Constitutional Affairs Committee, 2007: 30). In his final report Lord Carter stated that the not-for-profit funding model: "since it pays the same regardless of the number of cases started, does not always incentivise effective working" (Carter, 2006:29). When reflecting on the review in 2015, and asked about the best strategy for incentivising effective working in the not-for-profit sector, Lord Carter stated:

> *"I think it's quite interesting I think it's called "sore tooth" Let me go back and answer that a slightly different way, if we had asked criminal legal aid solicitors practitioner whether they could actually suffer the level of cuts that have been imposed on them now*

> *they'd have said no. So the only way we got anywhere was just to take the money away, and I think, government calls it sore tooth, you keep cutting until it falls to bits, because it's quite hard otherwise, and then you refund it again I mean, and so, there it is- last man standing. At its crudest, we did not have a model for not-for-profits at all because we could never see anybody in criminal legal aid apart from the Citizens Advice Bureau obviously, being key players in the advice chain"* (Lord Carter, 2015)

The Constitutional Affairs Committee report concluded that the changes to funding would result in lower incomes for 44% of not-for-profit providers of advice, whilst the shift to payment in arrears for work completed could lead to not-for-profits spending down their reserves at the end of the transitional period (Zander, 2007). This element of the policy had a disastrous impact on Law Centres, who did indeed spend down their reserves: a study completed by the New Economics Foundation on behalf of the Law Centres Federation showed that at one point unrestricted cash reserves were reduced by 70% in twelve months (Randall, 2013:15 citing NEF, 2009). Combining a policy that heralded reductions in funding in the short to medium term, with plans that forced collaboration between organisations through the CLAC/CLAN model mitigated against the success of collaborative working. Academics have commented that: "the common notion that collaboration is a good way of reducing costs and making effective use of resources seems particularly questionable; rather, experience suggests that effective collaboration is highly resource intensive" (Huxham, 1996, 241, see also Fulop et al. 2002, Kail and Abercrombie, 2013). Milbourne, writing in 2009 argues that: "local commissioning arrangements, underpinned by competitive contracts and national planning and performance frameworks are damaging to collaborative work, sustaining mistrust of state strategies and obscuring the diverse approaches which could valuably be shared more widely" (Milbourne, 2009: 278). A report commissioned by the Local Government Association (2010) which aimed to record early lessons from councils who had decided to commission a CLAC/N stated that: "Jointly commissioning CLAC/Ns with the LSC can become a divisive issue" and further that: "voluntary and community organisations often find it difficult to collaborate within short timeframes as they face specific barriers such as separate funding streams and a lack of available capital to implement changes" (Tribal Group, 2010:iv).

Mayo and colleagues, in their 2014 study of Law Centres, explore the impact of over a decade of initiatives aimed at encouraging collaboration between advice agencies with the aim of reducing the overall number of suppliers. The study suggests that Law Centres, as they are normally smaller organisations: "tended to feel particularly vulnerable, fearful of being swamped by more powerful partners, afraid that partnerships would undermine their distinctive ethos" (Mayo et al. 2014: 76). The cumulative impact of CLAC/Ns and the Carter reforms was to create an environment where not-for-profit advice agencies were: "both competing and being encouraged to collaborate, while recognising that collaboration might turn out to be tokenistic or… undermining the weaker partner's distinctive identity and values along the line" (Mayo et al. 2014:77). The Carter reforms in particular are implicated in exacerbating existing tensions between agencies, as competitive tendering for diminishing resources generated mistrust between staff in different organisations, particularly: "in cases where larger advice agencies were seen as predatory" (Mayo et al. 2014:77). A former Chief Executive of the Law Centres Federation stated that the introduction of fixed fees for legal aid funded advice and representation created a situation that favoured the working practices of larger providers, who benefitted from better management systems, and the capacity to "triage" or "vet" larger volumes of clients in order to identify and work with those who were eligible for support through legal aid (Interview with Steve Hynes). According to his account, the Law Centres who survived this period were the organisations willing to adopt increasingly managerial practices to ensure they were able to maximise the number of cases they were able to complete. His remarks are echoed in Mayo's 2014 study, where it is suggested that: "The push to become more managerial, more entrepreneurial, and ultimately more business-like was not only in danger of radically changing the rationale of Law Centres. It was also fracturing the Law Centres movement" (Mayo et al. 2014:80). It was in this context of an already fragile movement, heavily reliant on legal aid and local authority funding that the Legal Aid, Sentencing and Punishment of Offenders Act was introduced, with potentially disastrous implications for Law Centres.

2.7 Law Centres and The Legal Aid, Sentencing and Punishment of Offenders Act 2012: The consequences of the reforms

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). On 1 April 2013, the cuts imposed by *LASPO* came into effect with the aim of cutting

the legal aid budget. Despite widespread opposition from many in the legal profession and Parliament, including the Law Society and the House of Lords, the cuts focused mainly on the areas of family law, immigration, welfare benefits, employment and clinical negligence. The reductions in spending were created through a combination of limiting the scope of the legal aid scheme by reducing the areas of law for which legal aid is available and implementing a more stringent means test—to qualify for legal aid a person's income and capital must be within specified and strictly enforced limits (Higgins 2014: 15).

Prior to the introduction of *LASPO,* all areas of civil law were within the scope of the legal aid scheme, unless specifically excluded under Schedule 2 of the *Access to Justice Act 1999*[6]. Since the cuts were implemented, the only areas that remain in scope are family law cases involving child protection and domestic violence, cases involving an application for asylum, cases relating to the treatment of patients with mental health problems, discrimination cases, and some cases relating to debt, welfare benefits and housing[7] (Comptroller and Auditor-General 2014: 10). In addition to these measures, some people who receive legal aid are required to make increased contributions to the cost of their case. In an attempt to reduce costs further, the Ministry of Justice implemented a telephone gateway for accessing advice and representation in some areas of law, thereby changing the way in which individuals with civil law problems access advice and representation (Comptroller and Auditor-General 2014: 10).

Compounding the measures introduced by *LASPO* were changes introduced in July 2013 that restricted access to judicial review and introduced fees of between £160 and £950 for bringing a claim before an employment tribunal. Shortly after the introduction of *LASPO*, further reforms to the sector were announced by the Justice Secretary. For example, in January 2014, the government altered the merits test to restrict legal aid for those cases where the prospects of success are

[6] Schedule 2 of the Access to Justice Act 1999 excluded certain types of cases including personal injury (apart from in respect of clinical negligence), conveyancing, and boundary disputes, amongst others, from the scope of the legal aid scheme.

[7] For example, under LASPO, it is possible to get legal help and representation for housing issues such as unlawful eviction and rent possessions. Advice is available both face-to-face and via a telephone line and through a Housing Duty Solicitor scheme. However, this advice is only accessible when the situation has reached crisis point i.e. a notice for possession has been issued. Importantly, no funding is available to provide legal advice in resolving issues with welfare benefits or employment that are often implicated in eviction proceedings.

'borderline'—this was met with objections from the legal profession, who claimed that cases with the potential to change existing law will likely be denied funding. From April 2014, legal aid in respect of Judicial Review cases was reformed, with lawyers being denied payment for work carried out on cases where courts decided not to grant permission for the case to proceed to a full hearing. Concerns have been raised that this decision will substantially reduce the capacity and willingness of lawyers to proceed with even low risk cases. These measures compounded reductions in the level of fees paid to civil legal aid lawyers that had been implemented in October 2011 and February 2012.

LASPO directly impacted on Law Centres by drastically reducing the amount of funding available to them. In their 2009-2010 Annual Review, the Law Centres Federation[8] (the membership body for the national network of Law Centres) stated that: "Law Centres' sustainability relies mainly on two different areas of funding: Legal Services Commission contracts for the provision of legal aid and Local Authority funding…" (LCF, 2010:4). Research published by the Baring Foundation confirmed this, stating that prior to LASPO, 46% of all Law Centres' funding came from legal aid (Randall and Smerdon, 2014:7). As such, Law Centres were highly exposed to the cuts introduced by LASPO. In evidence presented to the Justice Select Committee, the Chief Executive of the Law Centres Network Julie Bishop stated that one in six Law Centres had been forced to close as a result of the cuts introduced by LASPO- those that closed were reliant on Legal Aid for up to 80% of their income (Justice Select Committee, 2015:33).

In written evidence provided to the Justice Select Committee in 2014, the Law Centres Network outlined the immediate impact of the cuts introduced by LASPO on Law Centres, beyond the closure of a number of centres. Law Centres Network Chief Executive Julie Bishop reported that the cuts had threatened Law Centres ability to deliver specialist legal advice, resulted in sharp increases in demand for their services and threatened the ability to retain expertise in the areas of law formerly funded by legal aid, expertise that would be: "difficult to rebuild" (LCN, 2014:4). Further, Law Centres Network reported that: "all Law Centres have reconfigured services in light of the funding shortfall, however, the LASPO cuts

[8] (now renamed Law Centres Network)

have destabilised them" (LCN, 2014:4). It is this widespread service reconfiguration that forms the context for the remainder of the thesis.

2.8 Conclusion

This chapter has detailed the relationship between Law Centres and the legal aid scheme, arguing that Law Centres reliance on legal aid as a source of funding was a decision borne of financial expediency, driven by the lack of a coherent, sustainable and discrete public funding policy for Law Centres, rather than the fitness of purpose of the scheme for Law Centres intended activities. As the administration and ethos of the scheme became more focussed on cost containment and was increasingly underpinned by new public management controls (Moorhead, 2001:552, Sommerlad 2004, Sanderson et al. 2011:184), legal aid funding increasingly drove Law Centres towards a focus on delivering individual casework at scale and away from community development and education (Stephens, 1990:123, Burdett, 2004:61). The withdrawal of income from the legal aid scheme brought about by LASPO, has forced Law Centres to develop new funding models in order to continue their work. The following chapter proposes an ideal type Law Centre- a framework for understanding the values that render Law Centres distinctive: this framework will be used to evaluate the case studies of the most popular funding models adopted by Law Centres in response to the cuts.

3 CHAPTER 3: THE IDEAL TYPE LAW CENTRE- DEVELOPING A FRAMEWORK FOR EVALUATING THE IMPACT OF LASPO ON LAW CENTRES

3.1 Introduction

As was argued in Chapter 1, Law Centres were originally developed as a response to deficiencies in the operation of the legal aid scheme. The intention of their founders was that Law Centres should be publicly funded, salaried services with their own discrete source of finance. When this failed to materialise, Law Centres increasingly turned to legal aid funding to ensure their survival. However, as the administration of the legal aid scheme became increasingly focussed on cost containment, requiring contract holders to deliver individual casework at scale in order to render the possession of a legal aid contract economically viable, the suitability of this form of funding for many of the activities Law Centres were originally designed to deliver was brought into question. Evidence from successive studies of Law Centres indicated that a reliance on legal aid funding had distorted Law Centre priorities and values, with one academic study of Law Centres published in 2014 stating that: "The push to become more managerial, more entrepreneurial, and ultimately more business like was…in danger of radically changing the rationale of Law Centres." (Mayo et al. 2014:80). As such, it is evident that decisions made in relation to which sources of funding to pursue can have a radical impact on the ability of organisations to deliver their values.

The withdrawal of legal aid funding brought about by LASPO, has forced Law Centres to consider new options for funding their work. In doing so, it is argued, Law Centres should have a principled framework outlining those values that are constitutive of their distinctiveness, against which to assess the merits and demerits of potential funding models. The following chapter reviews the existing academic and grey literature on Law Centres and proposes a framework of five values that together constitute the ideal type Law Centre (see Figure 3.1 below). The ideal type Law Centre is both novel and open to debate- this is the first time the material on Law Centres has been marshalled in this manner. This framework will be used as a tool to evaluate the income generation strategies adopted in response to LASPO discussed in chapters 5-7 of the thesis.

3.2 The approach to deriving the ideal type Law Centre

Whilst "Justice for All", the pamphlet published by the Committee of the Society of Labour Lawyers in 1968 may be understood to be the founding statement of Law Centres: "unlike the CAB service, Law Centres were never a centrally planned service, with articulated common goals" (Goriely, 1996a:232). As such, there existed a considerable diversity in the models adopted by Law Centres from the earliest days of the movement (Byles and Morris, 1977, Goriely, 1996:232). The Law Centres movement has been described as "evolving organically" (Goriely, 1996:232) over the 46 years since the first Law Centre was opened. This lack of central planning, and consequent diversity in Law Centre models, structure, activities and goals, means that there is no one definitive statement that provides an answer to the question: "what is a Law Centre?" However, in order to understand the impact of LASPO on Law Centres, and evaluate the different funding models adopted in response to LASPO, it is important to develop a working conception of the object of study. This chapter reviews the extant literature on Law Centres with a view to developing an evidence-based set of statements that capture those features of Law Centres that might be said to define them. The chapter uses the language of "values" in an attempt to reach beyond the diversity of models and activities adopted by Law Centres, to understand those aims, goals and beliefs that together distinguish Law Centres from the wider landscape of legal service providers.

This chapter constructs an ideal type in the Weberian sense[9], it presents a selection of features or elements that have been considered significant, essential or exemplary (Psathas, 2005:147) of Law Centres. Like all ideal types, the framework developed in this chapter is a heuristic construct developed for a particular purpose. It does not claim to be a fully complete depiction of all Law Centres, rather it is a methodological tool for organising, systematising and prioritising the "discrete particularities" (Psathas, 2005:147) of a network of up to sixty organisations. The term "organisational values" refers to a composite set of values that are both internally consistent and drive organisational behaviour (Padaki, 2001; Rokeach,

[9] Weber's focus on substantive empirical historical and comparative problems led him to select the ideal type as a methodology suited for making comparisons between the type and empirical reality.

1970,1973). Each of the organisational values presented here may be considered a spectrum, with individual Law Centres embodying and operationalizing each of these values to a greater or lesser extent. Padaki, following the psychologist Milton Rokeach argues that organisational values can be divided into "terminal" and "instrumental" values. "Terminal values" consist of overall aims, goals or outcomes, such as achieving social justice (Padaki, 2001: 195 citing Rokeach) whilst "instrumental values" consist of sets of beliefs about how best the organisation should conduct itself in achieving the end states described by the terminal values. The remainder of this chapter argues that five terminal values, each supported by a number of instrumental values, may be considered to be constitutive of Law Centres distinctiveness (see Figure 3.1 below). The following discussion presents the case for each of these values, based on the extant literature on Law Centres.

Figure 3-1: The Ideal Type Law Centre: A Framework of Law Centre Values

Terminal Value 1	**Law Centres improve the position of economically disadvantaged individuals and groups within the extant legal framework**
Instrumental value(s)	(i) Law Centres deliver legal services to those who are economically disadvantaged with particular reference to those who are in greatest need (see Value 2 below) helping them to secure their rights under the existing law and working to extend and reform the law where their existing rights are inadequate. (ii) Law Centres undertake strategic litigation that has the potential to reform the law in favour of the economically disadvantaged (iii) Law Centres identify and unite groups of individuals around the experience of particular justiciable issues and use these groups as vehicles for engaging in law reform activities e.g. research, campaigning, responding to consultations etc.
Terminal Value 2	**Law Centres deliver their services to those in greatest need**
Instrumental value(s)	Within the broad category of individuals and groups who are economically disadvantaged, Law Centres operate a two part definition of need, with individuals and groups being identified as needy to the extent that: (i) The extant legal framework does not serve their interests or extend to their protection ("Need Type 1"), or, (ii) The extant legal framework does in theory serve their interests and/or extend to their protection but they are vulnerable in the context of being able to successfully secure their rights, protection and fair treatment under the legal system as it stands. ("Need Type 2")
Terminal Value 3	**Law Centres are staffed by specialist, expert legal professionals**
Instrumental values(s)	(i) Law Centres recruit, develop, and retain staff with specialist expertise in the areas of law most relevant to their clients (ii) Law Centres recruit, develop and retain staff with the skills and knowledge necessary to engage in the full spectrum of law reform related activities
Terminal Value 4	**Law Centres are empathic allies of their clients**
Terminal Value 5	**Law Centres imbue both clients and local communities with high levels of legal knowledge**
Instrumental value(s)	(i) Law Centres provide legal education to individuals and groups with the aim of improving their ability to identify and understand their rights, protection and fair treatment.

3.3 The case for Terminal Value 1: Law Centres improve the position of economically disadvantaged individuals and groups within the extant legal framework

The following discussion argues that a defining value of Law Centres, constitutive of their distinctiveness, is their aim to use the law as a tool to improve the position of economically disadvantaged individuals and groups within the legal framework. This belief, that law can be harnessed as a tool to bring about social change, can be traced to the foundations of the movement. The lawyers who first proposed the establishment of the Law Centres evinced a belief in the centrality of law within society, its importance and its inherent malleability. The literature on Law Centres is replete with references to the Law Centre movement's commitment to using the law to bring about social change in favour of economically disadvantaged individuals and groups: this value can be traced back to the publication "Justice For All" (Committee of the Society of Labour Lawyers, 1968) which first proposed the development of Law Centres. The authors of "Justice for All", who may be considered the founders of the Law Centre movement have been described as radical lawyers who were disappointed in the failure of the welfare state to eradicate poverty and deliver a more equal society (Leask, 1985, Smith, 1997). As such, Law Centres may be properly understood as a practical expression of the politics of the New Left. (Leask, 1985:61, Smith 1997: 902).

"Justice for All" adopts the language of the New Left, describing law as an: "instrument both of social order and reorganisation, including the distribution of wealth and other advantages" (Society of Labour Lawyers, 1968:3). The New Left rejected traditional structuralist-Marxist thought which: (i.) neglected law as a discrete object of study (Hunt, 1991:104), (ii.) promoted an understanding of the law as an ideological cloak whose function was to mystify and conceal the dominant power relation of class and economic inequality (Lloyd, 1979:734, Engels, 2004:79) and (iii.) posited the law as the direct instrumental expression of the interests of a dominant class (Hunt, 1990:111). In contrast to structural-Marxists, writers of the New Left argued that the law had the potential to be malleable, responsive to changing: "contexts and pressures" (Hunt, 1990:111) and could therefore be properly understood as a site of struggle. As such law and legal process had the

potential to: "change the relative positions of legal subjects within social relations: in this basic sense law is a distributive mechanism" (Hunt, 1990:110). Whilst it is relatively uncontroversial (Hunt, 1990:125) to state that the aggregate effect of the law in modern democratic societies operates to the systematic disadvantage of the least advantaged class: "the content, procedures and practice of law constitute an arena of struggle within which the relative positions and advantages of social classes is changed over time" (Hunt, 1990:125). The extensive emphasis in "Justice for All" on encouraging a wider range of individuals, particularly those living in poverty, to pursue claims through legal processes may be understood as arising from a belief in law as a site of struggle within which meaningful gains might be made on behalf of the marginalised. Practical encouragement was provided by the example, referenced in "Justice for All" of community based legal service provision pioneered in the United States of America: Neighbourhood Law Firms. Neighbourhood Law Firms were developed and funded by the federal government in recognition of the importance of access to legal services in facilitating the achievement of the goals of the Economic Opportunity Act 1964. The experience of the development of Neighbourhood Law Firms provided justification for the beliefs of Law Centre founders in the importance of the law in delivering broader social goals such as economic empowerment and a more equitable society. (Committee of the Society of Labour Lawyers, 1968: 63).

The continuing focus of Law Centres on using the law to assert the interests of economically disadvantaged individuals and groups with the aim of bringing about social change is repeatedly referenced in the literature (LCWG, 1974, Royal Commission on Legal Services, 1979; Prior, 1984; Stephens, 1990; Burdett, 2002). The Law Centres Working Group, in a report published in 1974 asserted that the object of Law Centres was to: "combat the deprivation of certain communities by means of the provision of legal services" (LCWG, 1974:26). The role of Law Centres in challenging policies they perceived as promoting inequality and arguing for social change was repeatedly implicated as a barrier to securing sustainable funding from central and local government (LCWG, 1974, Royal Commission on Legal Services 1979, Prior, 1984:15). Prior, writing in 1984, cites an article published in "The First Voice", the official newspaper of the National Federation of Self Employed and Small Businesses Ltd, in which the following statement of policy by

Law Centres is quoted: "*We recognise that the problems brought to us are symptoms of an unacceptable social and economic system. In a system of massive unemployment, poor housing etc., we define the Law Centre's role as a practical one: To obtain for people their rights, which may be enshrined in law or laid down by public policy and to work for changes in public policy where they seem wrong or inadequate"* (Prior, 1984:14).

In a publication printed in 1983 entitled "The Case for Law Centres", the Law Centres Federation characterised the work of Law Centres as: "negotiate(ing) with bureaucracies on behalf of the individual, groups of individuals and small organisations, and often thereby achieve(ing) not only remedy for those immediately concerned, but also reforms which extend the benefit to more people" (LCF, 1983:4). This view of Law Centres, as a "new breed of community lawyer, work(ing) with the law to secure community goals" was confirmed in a study published by Harlow and Rawlings in 1992 (Harlow and Rawlings, 1992:6). Burdett, in a thesis on Law Centres submitted in 2002 argued that Law Centres cannot properly be understood without reference to their commitment to using the law to bring about social change in favour of the economically disadvantaged, arguing that understanding this is: "*fundamental to understanding…the approach which Law Centres have to their work…the types of cases they originate and defend…the kinds of arguments they deploy in challenging established legal opinion; and… the legal processes they utilize….in representing the interests of weaker members of society, Law Centres challenge dominant social and legal norms"* (Burdett, 2002:36). Mayo, writing in 2013, argues that Law Centres are "characterised by (a) commitment to social justice…and equalities agendas" (Mayo, 2013:682). In order to deliver this "terminal value" of using the law to bring about social change, Law Centres developed a set of instrumental values or modes of working: i); Law Centres deliver legal services to those who are economically disadvantaged with particular reference to those who are in greatest need (see discussion of Terminal Value 2 below) helping them to secure their rights under the existing law and working to extend and reform the law where their existing rights are inadequate. ii.) undertaking strategic casework that has the potential to reform the law in favour of those who are economically disadvantaged and iii.) identifying and uniting groups of individuals around particular justiciable issues and using these groups as vehicles for engaging in law reform activities. The following sections present the evidence for characterising these approaches as instrumental values.

3.3.1 The case for instrumental value 1.1*:* Law Centres deliver legal services to those who are economically disadvantaged with particular reference to those who are most vulnerable/in greatest need (see Terminal Value 2 below) helping them to secure their rights under the existing law and working to extend and reform the law where their existing rights are inadequate.

As is argued above, the founders of the Law Centre movement believed in both the centrality of law to the social order and its power as a tool to advance the interests of marginalised members of society and deliver social change. For this reason, they were greatly concerned that the mechanism established to deliver equality of access to the law and legal services - the legal aid scheme enshrined in The Legal Aid and Advice Act 1949 - was failing to live up to its promise to make: "the theory, that the doors of the courts are open to everyone, rich and poor alike, a greater reality than it has been in the past" (HC Deb (1949) 465 col. 1369). On the account of the New Left, Law offers the possibility of change, through its power to transform social interests into rights-claims. Interests that have the greatest prospect of being transformed into rights claims are those that are capable of being translated into a language of individual rights and those that are compatible with existing rights categories (Hunt, 1990: 126). The founders of Law Centres believed that by encouraging individuals from a wider range of backgrounds to resolve their problems through formal legal processes (White, 1973:54-55) they could both shape the law to be more representative of a range of interests and illuminate oppressive structures or instances where the law as it stood was failing to protect a wide range of interests. Once illuminated, these oppressive structures and failings could be challenged. As Lewis, writing on legal services for marginalised groups observed in 1973: "the extension of the activities of lawyers and the increased use of lawyers as a means of solving problems and asserting claims would be, if it came about, intimately connected with the possibilities of institutional changes"(Lewis, 1973:96). Through encouraging individuals to resolve a wider range of social issues through legal processes, Law Centres can address the problem that: "generally speaking the dispriviliged themselves tend to recognise as legal problems only the traditional ones… a vicious circle emerges, where the law does not do much about social

change unless it is in the interests of its own class, nor do the poor make demands in this direction" (Morris, 1973:54). Through this lens, the proposal for the establishment of Law Centres can be understood as directly linked to the desire to harness the democratic potential of law through encouraging and assisting those who are economically disadvantaged to transform their social interests into rights claims.

The model of Law Centres proposed in "Justice for All" (1968) emphasises the importance of designing Law Centres in such a way as to make them accessible to people who would not ordinarily access Law Centres. The authors argued that: "we must do more to reach out to the least fortunate members of the community who, because of economic, educational and social disadvantages are the least able to make use of the rights and remedies afforded by the legal system. Unless we make some more positive effort to help those who cannot…help themselves many must be effectively deprived of the benefit and protection of the law. This we believe to be fundamentally unjust" (Committee of the Society of Labour Lawyers, 1968:37). It is the desire to extend legal services to the economically disadvantaged that drives a number of the recommendations around the location of law centres and the working practices of Law Centres- the authors identified a number of barriers that they felt impeded people from a wider range of backgrounds accessing legal services and designed proposals to ameliorate them, these include the geographical distribution of legal services away from poorer areas, extended opening hours, and delivering services in a client centred fashion (see further Terminal Value 4 below) (Committee of the Society of Labour Lawyers, 1968:38-39). It has been observed that the main goal of the first Law Centre (North Kensington Neighbourhood Law Centre) was to: "open up access to the law for individuals" (Stephens, 1990:33). Four years into the operation of the first Law Centres, the Law Centres Working Group further emphasised the importance of extending legal services to a wider range of individuals, albeit through promoting a different way of working, and in doing so critiquing the traditional tenets of legal professionalism that acted as a barrier to undertaking the types of class action seen in the US context (LCWG, 1974:6). By 1983, a publication produced by the Law Centres Federation declared that: "Law Centres are unique…in the way in which they extend the benefits of their legal skills to the greatest number possible" (LCF, 1983:4). This emphasis, on

extending legal services to the economically disadvantaged (LCN, 2016:19) persists to the present day. As such, it is argued that there is ample evidence to support the argument that the extension of legal services to individuals and groups who are economically disadvantaged, with an emphasis on reaching those who are most in need (see Terminal Value 2 below) is an instrumental value adhered to by Law Centres to facilitate the delivery of their terminal value: bringing about social change in favour of marginalised individuals and groups.

3.3.2 The case for instrumental value 1.2: Law Centres undertake strategic casework that has the potential to reform the law in favour of the economically disadvantaged

In addition to extending legal services to a wider range of individuals and groups, a key instrumental value developed by Law Centres is the use of strategic litigation as a tool to bring about social change in favour of the economically marginalised. The Committee of the Society of Labour Lawyers argued that: "it is fundamental to our concept that local legal centres must be staffed by lawyers of energy, imagination and competence and the work offered must be such as to attract men of that calibre" (Committee of the Society of Labour Lawyers, 1968:42). In researching the operation of the first Law Centres, Byles and Morris (1977) reiterated the importance of "creative lawyering" to the delivery of the Law Centre vision and mission. Byles and Morris (1977) argue that the benefits of creative approaches to law were twofold as: "By using law to assert rights in their contexts which at first sight appear to be non-legal, there is likely to be a growing awareness amongst those helped that the law can indeed be used for their benefit, and that it does not act exclusively to the advantage of the rich." They continue: "equally importantly, law reform and the opening up of new areas of law and new techniques for applying it may all bring about important changes in the training of lawyers and in the attitudes of the legal profession" (Byles and Morris: 1977:59), creating a virtuous circle whereby new members of the legal profession could be encouraged to develop skills essential to delivering the mission of advancing social change. One such skill, repeatedly referenced in the literature on Law Centres is the ability to successfully conduct strategic litigation.

The emphasis on strategic litigation partly arose from the influence of the experience of the US Neighbourhood Law Firms on the development of Law Centres. Law Reform was considered a primary aim of the Neighbourhood Law Firms. Reporting on the US experience, Zander observes that: "The American system, like the English, is based on the adversary process…(which) has been too frequently limping for want of the representation of the economically weaker party." (Committee of the Society of Labour Lawyers, 1968:64). A consequence of this was the paucity of decisional law in many areas affecting the poor- Zander reports that where this law did exist it tended to mitigate against the individual of limited means. As such emphasis was based on developing skills in identifying test cases, which had proved successful in: "improving the lot not merely of the individual litigant but of the whole community of the poor." (Committee of the Society of Labour Lawyers, 1968:65)

By 1974 the Law Centres working group had developed a clear priority for the movement around strategic litigation and casework, stating that: "Casework together with the other work of the Centre is increasingly being applied to areas where maximum leverage can be achieved either in terms of obtaining rights under existing legislation for classes of clients, or exposing instances of poor quality service from Local Authorities and agencies" (LCWG, 1974:11). Writing in 1985, Grace and LeFevre emphasise the strategic approach taken by their Law Centre to maximise the impact of their work. In an article entitled "Draining the Swamp", in reference to the importance of retaining a focus on tackling the underlying causes of social problems, they report on their decision to: "accept cases that would have an impact beyond the individual client, first in the areas of housing and employment and more recently in the field of immigration and nationality" (Grace & LeFevre, 1985:103). A leaflet published by the Law Centre Federation in 2000 emphasised their involvement in strategic and group litigation, citing an action for underpayment of wages against Aberdeen Steak Houses undertaken by Central London Law Centre (LCF, 2000:1). In respect of a case brought by Tow Law Centres which established that Local Authorities have a duty to provide basic services to asylum seekers with no other means of support, LCF stated that: "Law Centres are well-placed both to develop a strategic approach and to embark on test cases as they are not subject to the same limitations of the need to make a profit as

private practice is" (LCF, 2000:2). Mayo's 2014 study of both internal and external stakeholders in the Law Centre movement found that that the ability to conduct strategic litigation remained a key point of difference, differentiating Law Centres from other Legal Service providers and advice agencies (Mayo, 2014:45).

3.3.3 The case for instrumental value 1.3: Law Centres identify and unite groups of individuals around the experience of particular justiciable issues and use these groups as vehicles for engaging in law reform activities

The emergence of a role for Law Centres in identifying and uniting groups of individuals experiencing similar issues as a tool to bring about social change can be traced to a report published by the Law Centres Working Group in 1974 entitled "Community Law Centres - Towards Equal Justice". The report reflected the experience of the working group who, reflecting on the first four years of work undertaken by Law Centres felt that solely focusing on servicing individual casework at scale was insufficient to bring about social change. The Law Centres Working Group were concerned that basing the activities of Law Centres on the traditional model of legal services was a barrier to achieving the goals of the Law Centre movement, stating that:

"*There is in our view a…fundamental barrier preventing…Law Centres from fully meeting the needs for legal services in poorer and working class communities…it is a barrier which will not be removed by setting up numbers of solicitors offices… which are free, accessible and sympathetic and energetic in the way in which they work. This barrier was not fully recognised until the first few Law Centres had found that from the moment they opened their doors they were flooded with individuals seeking help with their cases, and the doubling and trebling of staffs did nothing to eases the burden of pressing casework…The difficulty arises out of the structure of the legal profession and its traditional style of operation which is deeply rooted in the solicitor client relationship"* (LCWG, 1974:6).

The Law Centres Working Group were concerned that the traditional model of legal professionalism, which mitigated against the ability of solicitors to work for multiple clients experiencing similar problems, would fail to bring about the goals of

the movement. The Working Group argued that: "the involvement of lawyers and the provision of legal services in areas of concern to the poor and working class involves not merely a quantitative change in legal services but also a qualitative one" (LCWG, 1974:7). The Law Centres Working Group cited with approval the experience of the Director of the San Francisco Neighbourhood Legal Assistance Foundation J. Carlin who stated: "The legal problems of the poor… characteristically arise from systemic abuses embedded in the operation of various public and private agencies affecting large numbers of similarly situated individuals. Effective solution of the problems may require the lawyer to direct his attention away from the particular claim or grievance to the broader interests and policies at stake and away from the individual client to a class of clients in order to challenge more directly and with greater impact certain structural sources of injustice" (LCWG, 1974:7). The Working Group argued further that Law Centres should focus their efforts on helping to bring together individuals experiencing similar issues and assist them in forming organisations: "which enable them to settle amongst themselves any minor conflict of interest" (LCWG, 1974:87) before providing them with legal services in a similar fashion to those provided to organisations. The working group asserted that Law Centres should provide legal services to community groups in the same manner that: "landlords, the DHSS and employers have needed access to lawyers and have obtained it for their own benefit" (LCWG, 1974:8). Law Centres embraced this approach to varying extents: The Royal Commission on Legal Services (the Benson Commission), writing in 1979 stated that:

"*At present, some law centres concentrate on community work and for this purpose, employ one or more community workers without legal training or qualifications. These centres like to work for the community at large or sections of it, rather than for individuals. They often seek to attack the roots of problems by organising groups to bring pressure to bear on landlords, local authorities, and central government, either to improve working, housing or living conditions or to urge changes in priorities of public expenditure so as to meet urgent needs or to promote changes of a similar character. They become a focus in the neighbourhood for campaigns on behalf of the community*" (Royal Commission on Legal Services, 1979:83)

Grace and LeFevre, managers at Brent Law Centre writing in 1985 argued that: " The lawyer, qua Law Centre worker, should not be an activist, but an instrument for community activists…providing the essential skills by which unorganised groups of people can come together and generate instructions sufficiently clear and stable to be implemented" (Grace and LeFevre, 1985:100). The academic literature on Law Centres repeatedly references the adoption of group working strategies such as community organising. Burdett (2002) has argued that the specialist literature on Law Centres, community work and community development: "characterise (the) community as heterogeneous, powerless and pauperised and suggest that the object of professional work within this framework is to create and strengthen groups, and solidarity between them, for action and social change." (Burdett, 2002:43). Stephens has asserted that the literature on CLCs suggests three distinct definitions for "client community", the latter of which is intimately connected with the adoption of a group working ethos- "a sense of belonging (affective, intrinsically-valued social relationships), locality (as in neighbourhood) and a particular target group that might serve as a vehicle for social change" (Stephens, 1990:80). In 2000, a leaflet published by the Law Centre Federation reported that: "Helping groups to organise and supporting them in their work is a much more efficient use of Law Centre time than doing individual casework. Groups may come to the Centre already formed and simply requiring clerical or company secretary skills from the Centre, or they may be set up by the Centre in response to a particular problem in the area, in which case the Centre will play a nurturing role" (LCF, 2000:2).

In comparison to instrumental value 1.1 (extending legal services to the economically disadvantaged) and value 1.2 (undertaking strategic litigation), community organising and group working appears to be less consistently embraced across the Law Centre movement. Byles and Morris, who conducted the first evaluation of Law Centres funded by the Nuffield Foundation, reported that group working was a feature of two of the three models of Law Centres that had emerged by 1977, arguing that: "*At present we have three 'models' of a Law Centre: 'A' A traditional service similar in structure to that provided to middle class clients by private practitioners. Needs are defined by the clients, in response to what they see as the type of service offered. Management and control are vested in the "predominantly" legal staff, jointly with representatives of community agencies. 'B' A multidisciplinary service in which the skills of the lawyers are made available to the*

community either on an individual or a group basis. Needs are defined partly by the clients and partly by the staff of the Centre. Management and control are vested in the staff, jointly with representatives of community organisations. 'C' A comprehensive service in which the skills of a wide variety of professional workers are placed at the disposal of the community. The community is encouraged to articulate its own needs by the development of co-operative self-help, to act to meet these needs. Management and control are vested in the local residents." (Byles and Morris, 1977)

In a study published in 1990 Mike Stephens reported on a division in the Law Centre movement between "reactive" and "proactive" Law Centres. According to Stephens, "reactive" Law Centres: "have an open door policy, which allows citizens to pursue in an effective manner their awareness that they may have a legal complaint. Each individual citizen coming into the Law Centre will be seen on a one-to-one basis by a member of the Law Centre staff" (Stephens, 1990:13). In contrast, following Black (1973) proactive Law Centres engage in community based research to identify "patterns of illegality" and explore the legal options for pursuing a wider range of interests without the initiation of an individual citizen (Stephens, 1990:15). Stephens observed that Law Centres were organisations under strain, suffering under: "excessive individual casework" (Stephens, 1990:139). Stephens reported that the strain of excessive individual casework had affected the ability of Law Centres to deliver on the community development activities (such as public legal education, strategic litigation, movement building and advocacy) that are thought to be essential to bringing about social change. Further to this, Stephens stated: "The British Law Centre movement has only ever contained a small number of Law Centres with a significantly proactive style of operation" (Stephens, 1990:70). Writing in 2002 Burdett observes in the Law Centre literature suggestions of an "inherent incompatibility" (Burdett, 2002:57) between individual casework and community research, education, development, organising and campaigning work. Nevertheless, it is argued that the type of community organising circumscribed by instrumental value 1.3 is referenced sufficiently to merit its inclusion in the values framework and further, that it is a mode of operating that distinguishes Law Centres from other legal service providers.

3.4 The case for Terminal Value 2: Law Centres prioritise the provision of their services on the basis of need

Central to the rationale for the development of Law Centres was the aim to prioritise the provision of their services on the basis of need, rather than ability to pay, arguing that: "…the object of the scheme is to help the underprivileged and those who at present fail to help themselves" (Committee of the Society of Labour Lawyers, 1968:41). Whilst there is little doubt that the founders of the movement felt that poverty was a basis for determining whether an individual was in need of a Law Centre's assistance, they eschewed the imposition of a formal means test, arguing that: "the existence of a means test…could exclude too many who should be able to benefit from the service" (Committee of the Society of Labour Lawyers, 1968:41) arguing instead for the imposition of the somewhat more ambiguous: "working rule that anyone who can obtain the help he needs from the ordinary facilities ought to be referred on" (Committee of the Society of Labour Lawyers, 1967:41). From the earliest days of the movement, Law Centres reported being "swamped" with demand for their services (LCWG, 1974, Byles and Morris 1977, Stephens, 1990), necessitating the development of a principled means of prioritising their services. As such, it is argued, that the literature reveals two distinct criterion that Law Centres developed and applied in order to prioritise the provision of their services based on the principle of devoting their resources to those individuals and groups who might be considered most "in need" with individuals and groups being identified as "in need" to the extent that either (i.) the extant legal framework does not serve their interests or extend to their protection (henceforth referred to as "Need Type 1"), or, (ii.) the extant legal framework does in theory serve their interests and/or extend to their protection but they are vulnerable in the context of being able to successfully secure their rights, protection and fair treatment under the legal system as it stands ("Need Type 2"). The following discussion presents the evidence for the application of this two-part conception of need by Law Centres.

3.4.1 The case for instrumental value 2.1: Law Centres consider individuals or groups to be "in need" to the extent that the extant legal framework does not serve their interests or extend to their protection (Need Type 1)

One of the arguments underpinning the development of Law Centres in the 1970s was that the existing legal framework inadequately reflected the interests of the poor and marginalised, and that in order to remedy this, poor and marginalised individuals and groups needed to be provided with the opportunity to access legal services. Implicit in the language used by the authors of Justice for All was a set of beliefs regarding the way in which the law could be altered to better reflect the interests of economically marginalised individuals and groups- namely, through highlighting deficiencies in the law as it stood through encouraging people to try to address their problems through legal means. Some of the early commentators on the Law Centre movement argued that: "On the whole those who advocate neighbourhood Law Centres are concerned that people who have legal problems and need lawyers but would not go to a solicitor in private practice should have a lawyer nearby that they will recognise as one to whom they can go. They also have it in mind that the legal problems of the poor require different knowledge from that possessed by lawyers who usually act for middle class clients, so a form of specialisation is desirable. Essentially however, these arguments are only elaborations of the main argument that those who have a legal problem need a lawyer and one should be provided" (Lewis, 1973: 74). As such, it was argued, the Law Centres movement represented a: "reconfiguration of organisation of the legal profession, not a radical reconceptualization of the legal system and its role in society" (White, 1973:63). However, as the movement evolved there was increasing evidence of a shift in the way in which Law Centres prioritised their services, increasingly targeting those individuals whose interests were not reflected in the extant legal framework, with the aim of securing and developing new rights on their behalf. Some examples include: the development of a new remedy for tenants suffering from ill health due to housing disrepair and damp under section 99 of the Public Health Act 1936 (LCF, 1983:9), extending the legal aid scheme to parents in care proceedings: "a step which would not have been taken if Law Centres had not pioneered work in this field" (LCF, 1983:10), extending the rights of tenants to be given the same rights of security as private tenants in Brent (Grace and Lefevre,

1985:99), pioneering representation before administrative tribunals (Smith, 1997:901) and "pioneering" the development of whole areas of welfare law (Smith, 1997:904). The Royal Commission on Legal Services (the Benson Commission), reporting in 1979 stated that: "Law Centres have become clearly identified as a source of help for those at any kind of disadvantage as being willing to side with citizens against authority" (Royal Commission on Legal Services, 1979:82)

A report published by the Law Centres Federation in 2000 references the role of Law Centres in "opening up new areas of law" (LCF, 2000:6) including disability, education and environmental law, as well as human rights law. Recent evidence suggests this approach has persisted, in her 2014 study of Law Centres Mayo reports: "Law Centres are able to use legal remedies to enforce rights- and to test and further develop rights- in ways which were beyond the scope of other advice agencies, a unique selling point in terms of their abilities to contribute to social justice agendas more widely" (Mayo et. al. (2014:44). As such, it is argued that there is sufficient evidence to suggest that Law Centres consider the extent to which client's interests are reflected in the extant legal framework as part of the criteria for allocating their services on the basis of need.

3.4.2 The case for instrumental value 2.2: Law Centres consider individuals or groups to be "in need" to the extent that the extant legal framework does in theory serve their interests and/or extend to their protection but they are vulnerable in the context of being able to successfully secure their rights, protection and fair treatment under the legal system as it stands (Need Type 2)

In arguing for the development of a national network of Law Centres the authors of "Justice for All" framed the argument in terms which accorded with the definition of need described here as "Need Type 2", contending that society has: "a duty to ensure that its members are enabled to conduct their lives within the law, receive justice when the law is enforced against them, and take advantages of the benefits which the law confers upon them"(Committee of the Society of Labour Lawyers, 1968:3). In defining those who were in need of assistance from Law Centres, the committee proposed a definition of legal need that started from the extant law and

scheme for provision of legal services and worked backwards. They argued that the correct approach to identifying legal need was one which: "first examine(s) the type of situations in which legal services provide important advantages to the public and then… measure(s) the extent to which real need in such situations is left unmet" (Committee of the Society of Labour Lawyers, 1968:4). The Committee put forward a list of six situations in which legal advice and assistance may prove advantageous, when facing criminal prosecution, when in the midst of a marriage breakdown, in the context of a civil dispute between two private individuals, when an individual may be entitled to claim a benefit under welfare legislation, when an individual wishes to make some use of his property and finally when a number of individuals wish to operate together for purposes beneficial to them as a group (Committee of the Society of Labour Lawyers, 1968:4-5). A further criterion to be considered was whether the situation was one in which: "the more affluent and the commercial and industrial sections of the community habitually seek the services of their family or company solicitor" (Committee of the Society of Labour Lawyers, 1968:5). Whilst framed in different language, this final criterion may be seen to embody elements of the "equality of arms" arguments deployed by contemporary Law Centres in explanation of the value of the service they offer.

The committee argued that integral to the delivery of legal services to those in need was the location of legal services - Law Centres should be based within easy reach of the individuals they aimed to help. The committee argued that Law Centres should be based in deprived inner city areas; on the basis that it was the poorest sections of the community in densely populated urban areas that were failing to access legal advice and representation under the existing Legal Aid scheme. The cause of this, they argued, was the fact that the Legal Aid scheme: "relies too heavily on the individual's capacity to perceive his own best interests and to take the initiative in seeking professional legal assistance" (Committee of the Society of Labour Lawyers 1968:59). The committee asserted that this defect had become more pronounced due the proliferation in laws that had been characteristic of the post-war period. They added: "We do not wish to suggest that the problem affects only the poorest section of the community: in some respects it affects consumers generally. But it is most widespread and most damaging to those who are in the

greatest material need" (Committee of the Society of Labour Lawyers 1968:23). As such, material need was both an indicator of and a proxy for legal need.

The reliance of Law Centres on funding from the Legal Aid scheme to support their work further increased the emphasis on material need as a catchall proxy for the type of need described above as Need Type 2. The removal of legal aid has removed the means test as a proxy for identifying those individuals who may be considered most vulnerable in the context of being able to secure their rights, protection and fair treatment. It is argued that a new framework is needed to ensure that Law Centres meet the needs of those who are most vulnerable in this context. Chapter 4 takes as its starting point the procedure for identifying need proposed in Justice for All in 1968, where the Committee of the Society of Labour Lawyers argued that in defining need Law Centres should "first examine(s) the type of situations in which legal services provide important advantages to the public and then… measure(s) the extent to which real need in such situations is left unmet" (Committee of the Society of Labour Lawyers, 1968:4) and reviews the academic literature published since 1968 to arrive at an updated framework indicating the criteria that should be taken into account when assessing the relative need of clients and groups. The complexity of this issue, the extent of the theoretical and empirical literature that has been developed on this subject and the novelty of combining and arranging the literature in this manner, justify the devotion of a separate chapter to this topic. Additionally, and in contrast to the material presented in this chapter, which derives the values constitutive of the ideal type Law Centre from existing material on the history of Law Centres, the framework presented in Chapter 4 is future oriented, in the sense of being developed to assist Law Centres to make difficult decisions about how to ensure they direct their services at the most vulnerable going forward.

3.5 The case for Terminal Value 3: Law Centres provide specialist, expert legal advice

Central to the case for Law Centres made by the authors of Justice For All was that the current structure of the legal profession and legal aid scheme was failing to create lawyers with the expertise and specialism necessary to deliver their mission of using the law to bring about social change in favour of the marginalised. From the

literature it is clear that a Terminal Value of Law Centres, and a feature that distinguishes them from the wider advice sector, is their ability to provide specialist, expert, legal advice. Prior, writing on the Law Centres movement in 1984 argues that: "Although Law Centres can take many forms, their speciality is the provision of legal advice and assistance. Prior to 1970 there had been numerous part time legal advice centres spread throughout the country but the distinguishing mark of the new Law Centres was their employment of full-time and fully committed legal and ancillary staff" Prior (1984:4). In order to deliver this Terminal Value, Law Centres developed two instrumental values: (i.) Law Centres recruit, develop, and retain staff with specialist legal expertise in the areas of law most relevant to their clients, and (ii.) Law Centres recruit, develop and retain staff with the skills and knowledge necessary to engage in the full spectrum of law reform related activities

3.5.1 The case for instrumental value 3.1: Law Centres recruit, develop, and retain staff with specialist legal expertise in the areas of law most relevant to their clients

The initial vision for Law Centres emphasised that these new organisations should seek to attract and retain lawyers with considerable expertise in the areas of law that traditionally impacted on those whose interests were under-represented. As such, Law Centres should, through their recruitment and training seek to promote specialisation in dealing with: "legal problems which most directly affect the lower income groups" (Committee of the Society of Labour Lawyers, 1968:61). The early Law Centres were keen to attract staff with a range of abilities beyond those possessed by lawyers in private practice. The Law Centres Working Group, writing in 1974, stated that: "Many solicitors in private practice are unfamiliar with those parts of the law which most affect working class people. The profession has never devoted itself to acquiring skills for which the people who need them are unable to pay, so the result is a lower quality of service for those working class people that do consult solicitors. This helps to create and reinforce (and indeed justifies) the low opinion which many have of the profession when they do seek advice". (LCWG, 1974:3). Writing in 1985, Leask, observes that a defining feature of Law Centres is that they privilege: "specialist, legal advice" (see Leask 1985: 62) From the late 1970s and early 1980s onwards the literature on Law Centres reports increasing specialisation within the Law Centres network emphasising the expertise of Law

Centres in the areas of housing tenancy and repair, employment and welfare entitlements (Stephens, 1990:17). Smith, writing in 1997, credits the Law Centre movement with pioneering the development of social welfare law, asserting that: "until the early 1980s, Law Centres were the only major providers of advice, assistance and representation in the fields of social welfare law" (Smith, 1997:897). This observation is borne out by Mayo, who in 2014 reported that the majority of casework conducted by Law Centres is in the area of social welfare law (housing, employment, debt, welfare benefits and immigration).

3.5.2 The case for instrumental value 3.3: Law Centres recruit staff with the skills and knowledge necessary to engage in the full spectrum of law reform related activities

Given the Terminal Values identified above, to use the law to bring about social change and to target services on the basis of need, it is vital that Law Centres develop and retain lawyers with a range of related expertise, and the skills and knowledge necessary to engage in the full spectrum of law reform related activities: strategic litigation, individual casework and community development (LCWG, 1974:14). The Committee of the Society of Labour Lawyers argued that: "it is fundamental to our concept that local legal centres must be staffed by lawyers of energy, imagination and competence and the work offered must be such as to attract men of that calibre" (Committee of the Society of Labour Lawyers1968: 42). As stated above, Law Centre lawyers must be expert in the areas of law that affect those whose interests are marginalised within the extant legal framework. In order to identify opportunities to develop the law in the interests of the vulnerable, Law Centre lawyers must be dynamic, enthusiastic, creative and possess skills in identifying wider social problems and developing legal responses to address these- the Law Centres Working Group argued that Law Centres: "are and should be employing personnel with a wider range of skills than is traditional than in the case of lawyers' offices" (LCWG, 1974:14). In 1983, the Law Centres Federation published a report which argued that Law Centres: "…can offer more than a traditional lawyer, by negotiating with bureaucracies…publishing injustice, pursue (ing) legal rights for which legal aid is not available: they experiment with new legal remedies and extend old remedies to new problems" (LCF, 1983:8) Law Centre

lawyers must be capable of working in a manner that encourages individuals who may have multiple and complex needs to seek their services- they must possess a particular kind of expertise in working with clients (see Terminal Value 4 below). Retention and development of specialist expertise is vital in order that Law Centres are able to provide expert advice and representation in these areas of law that most affect the members of their communities whose interests are under-represented by the law as it stands. Law Centres lawyers must be able to effectively diagnose, campaign and litigate to win cases in the areas of law that most affect those who interests are underrepresented. The possession of expertise in a range of legal skills and techniques such as litigation, batch casework, law reform and campaigning (LCF, 2000:2) is repeatedly referenced as vital, in order that Law Centres are able to deliver the range of Terminal and Instrumental values presented above.

3.5.3 The Case for Terminal Value 4: Law Centres work with clients in a manner that expresses empathy and solidarity

As is discussed above at Terminal Value 1, from their inception, Law Centres were designed to pioneer working with clients in a different manner than that which had been dictated by the tenets of traditional legal professionalism. For the authors of Justice for All, working in a client centred manner, locating in areas convenient for marginalised and vulnerable individuals to access, dressing informally, were a means of overcoming the reticence to consult lawyers that the Committee argued stemmed from: "a vague fear of lawyers or of looking foolish in the surroundings of a professional man's office, especially in working clothes" (Committee of the Society of Labour Lawyers, 1968:22). The earliest articulation of the Law Centre model argued that Law Centres should provide parity of service in the spirit of the best tradition of private practice. Clients should be able to seek out the lawyer of their choice within the centre and maintain a continuing personal relationship with him in the English tradition of the "family solicitor" as: "it is a professional man in such a position of trust who is best placed to assist the individual to deal with his problems, whether or not they are likely to lead to litigation" (Committee of the Society of Labour Lawyers 1968:39) Whilst representatives of the first Law Centres agreed that Law Centres and their workers should be focused on clients' needs, they argued against the paternalistic, individualistic model of service provision proposed

by the Committee members in "Justice for All" (1968). The Law Centres Working Group were highly sceptical of those who argued that the needs of the poor and working class could ever be met by centres providing free advice staffed by "accessible, sympathetic and energetic" advisers. (LCWG, 1974:6). However, a reputation for working with clients in a non-stigmatising, empathic and partisan manner quickly became emblematic of the distinctiveness of Law Centres within the landscape of legal service providers.

The Committee of the Society of Labour Lawyers argued that Law Centres should move away from the traditional model of professional services to proactively seek out unmet legal need in the communities in which they operate. They should provide a client centred service, accessible outside of normal working hours to enable people to attend (Committee of the Society of Labour Lawyers 1968:39). This service should be both free and de-stigmatising. Stephens (1990), in his book "Community Law Centres: A Critical Appraisal" reports that a defining feature of Law Centres is that they deliver a client centred service in relaxed and informal surroundings. He notes the continuing emphasis placed on employing staff with people working skills- that is staff who "through the communication of information and the sharing of insights attempt to help the client help himself…" (Stephens, 1990:23 citing Bennett and Hokenstad, 1973:23). This emphasis on delivering a client focussed, empowering service was also observed by Mayo in 2014 who typifies the Law Centre client care model being driven by approachability, informality, unashamed partisanship (Mayo et al. 2014:42). Mayo reports that Law Centre lawyers work in a holistic fashion, both in terms of addressing the totality of the clients' needs and addressing underlying problems, referring clients to specialist support agencies where necessary. (Mayo, 2014:43). Mayo argues that patience and a specialism in dealing with the most vulnerable clients are central to the client care ethos of contemporary Law Centres. Providing a positive experience is critical to the goal of encouraging individuals who traditionally may have felt intimidated by or alienated from the law and legal processes to access legal services. Prior, writing in 1984 stated that: "It should also be said that Law Centre staff have proved to be very empathetic towards their clientele and their relaxed, informal and even sympathetic political disposition has secured them an acceptance, particularly among young blacks, that otherwise they would not have had" (Prior, 1984, 10).

Law Centres challenged traditional models of legal professionalism by holding themselves accountable to a management committee comprised of lay members drawn from the local community (LCWG, 1974:15). Law Centres adopted a deliberate policy of recruiting individuals from their client communities to their staff and management committee. The Committee of the Society of Labour Lawyers repeatedly emphasised the importance of the relationship between Law Centres and the communities they serve, this was seen as critical to ensuring that Law Centres were able to meet the needs of the community effectively. The committee argued that: "effective means, both institutional and personal for ensuring that the centres respond to the real needs of the community are vital and their establishment and maintenance must be a first principle of the service" (Committee of the Society of Labour Lawyers 1968:47). In 1974, a report of the Law Centres Working Group emphasised the importance of employing people who live or who have lived in the area of operation of the Law Centre. The original structure of Law Centres mandated that Law Centres should be managed by and accountable to a committee of representatives from the local and client community. This desire, to be managed by individuals who are not lawyers, may be considered as a rejection of one of the tenets of traditional professionalism and the surrender of a source of professional power. In discussing the elements of professional power, Freidson argues that: professional power lies in the ability of professionals to control their work, to exercise autonomy in contrast to their work being controlled by outside sources (Freidson, 1994:31). According to his definition, professions with total power to control their own work are: *"organised by associations that are independent both of the state and of capital, [who themselves] organise and administer the practice of an unambiguously demarcated body of knowledge and skill or jurisdiction which their members monopolise…the professions serve as the ultimate authorities on those personal, social, economic, cultural and political affairs which their body of knowledge and skill addresses. Their modes of formulating and interpreting events permeate both popular consciousness and official policy"* (Freidson, 1994: 32).

The history of the Law Centre movement is replete with references to tension between Law Centres and the Law Society, and Law Centres and successive governments (Smith, 1997, Goriely 1996). A thesis completed by Lancaster (2004) was focussed on analysing the role of professional power in limiting the

development of Law Centres. Law Centres' refutation of the tenet of traditional professionalism that requires lawyers to "monopolise" an unambiguously demarcated body of esoteric knowledge and skill, through upskilling and training individuals in their local and client communities, promoting self-help (LCF, 1983:2) and assisting them to form into groups (LCF, 2000:2- see further Terminal Value 5 and Instrumental Value 1.3) and the partial surrender of autonomy implied by their decision to be managed by and accountable to lay members of their client community, situates them as directly opposed to traditional models of legal professionalism.

3.6 The Case for Terminal Value 5: Law Centres improve the legal knowledge their clients and local communities

The role of Law Centres as public legal educators was afforded primacy in the original description of their functions. It was considered essential that Law Centres should advertise the services they offer and promote: "public knowledge of the legal system and the rights of the individual" (Committee of the Society of Labour Lawyers 1968:61). The purpose of this education was, for the founders of Law Centres to encourage the uptake of legal services. However, as Law Centres developed, their commitment to this role expanded, and it is repeatedly emphasised in the literature on Law Centres as a distinctive feature of their purpose and values up until the present day (Stephens: 1990, LCF: 2000, Mayo: 2014), justifying its inclusion as a terminal value.

3.6.1 The case for instrumental value 5.1: Law Centres provide legal education to individuals and groups with the aim of improving their ability to identify, understand and secure their rights, protection and fair treatment.

By 1974, the emphasis placed by the Law Centres working group on community development and community action meant that the Public Legal Education based activities of Law Centres were given prominence. The Law Centre's Working Group conceived of public legal education as: "community development with an emphasis on law and legal skills" (LCWG, 1974:11) arguing that: "the powerlessness of residents to control their own life situation and to benefit from law and local and central Governments policies is seen to be related partly to the limited availability of

information"(LCWG, 1974:11). The working group stated: "Law Centres in one way or another are working with groups in their communities providing information, helping them to organise and enabling them to gain access to necessary skills and expertise and finally acting as their advocates" (LCWG, 1974:12). This is achieved through a number of strategies. Firstly, providing one-to-one casework and advice has an educational function. Secondly, through inviting individuals receiving advice to attend appointments accompanied by a community representative, Law Centre workers can maximise the educational impact of the advice encounter. The community representative can assist in clarifying legalistic language and learn from the experience of the person involved in the case, with the aim of disseminating this experience amongst the wider community. Thirdly, Law Centre workers educate through giving talks to local community groups and disseminating information leaflets, either those produced by Law Centre staff or community produced resources. Finally, they can help build capacity to resolve legal problems within the community through assisting local agencies to provide a comprehensive service. By "upskilling" local agencies they can spread expertise so that it is distributed throughout the community, rather than simply taking over " legal" areas of work and creating silos of legal knowledge. The Working Group stated that: "By these and other means Law Centres can hope not only to make people aware of their existing rights but also to give them the knowledge and confidence to enforce them" (LCWG, 1974:13). In 1983, a leaflet published by the Law Centres Federation entitled "The Case for Law Centres" reported that Law Centres: "provide community education by means of talks and training courses for the general public and for those whose job it is to advise others" (LCF, 1983:2). However, as the funding climate became more restrictive, Law Centres found it increasingly difficult to deliver this function.

The specialist literature on Law Centres reports that the ability of Law Centres to undertake Public Legal Education activities has been compromised by the demand of delivering individual casework. In 1984 Law Centres Federation recognised that extra funding was needed to pursue projects that were not related to individual casework, this formed part of the rationale advanced for central funding of Law Centres by: "an appropriate government department or intermediary body" (Stephens, 1990:145). In 2000, a leaflet published by the Law Centres Federation

stated that: "It is an integral part of Law Centres work to spread knowledge of legal rights, remedies and duties. There is an ever-increasing demand from schools and clubs of all descriptions for talks from Law Centres" (LCF, 2000:6). A recent study of Law Centres conducted by Mayo in 2014 reported that Law Centres still espoused a commitment to their role in delivering PLE, in spite of the difficulties in securing funding for this work (Mayo et al 2014:49). As such, the provision of legal education merits inclusion as an instrumental value.

3.7 Conclusion

The above discussion has proposed a framework of Law Centre values which, taken together, are constitutive of Law Centres distinctiveness within the wider landscape of legal service providers. It has reviewed the extant literature on Law Centres, providing evidence to justify the selection of these values. This values framework, in conjunction with the updated framework for identifying and prioritising need presented at Chapter 4, will be used to evaluate the impact of the adoption of the different funding models presented at chapters 5-8.

4 CHAPTER 4: DEVELOPING A FRAMEWORK FOR PRIORITISING LAW CENTRES SERVICES BASED ON NEED

4.1 Introduction

In Chapter 3 above, it is argued that a value constitutive of Law Centres distinctiveness is the way in which they prioritise the provision of their services namely, on the basis of need. According to the Values Framework outlined above, Law Centres define individuals or populations as needy according to the extent that they fulfil one of two criteria: (i.) the extant legal framework does not serve their interests or extend to their protection ("Need Type 1"), or (ii.) The extant legal framework does in theory serve their interests and/or extend to their protection but they are vulnerable in the context of being able to successfully secure their rights, protection and fair treatment under the legal system as it stands. ("Need Type 2"). The founders of the Law Centre movement writing in Justice For All in 1968 proposed a definition of what is referred to here as Need Type 2 based on the following criteria: they argued that the correct approach to identifying legal need was one which: "first examine(s) the type of situations in which legal services provide important advantages to the public and then… measure(s) the extent to which real need in such situations is left unmet" (Committee of the Society of Labour Lawyers, 1968:4). Since 1968 however, there has been an expansion in the empirical and theoretical literature aimed at exploring the precise benefits conferred by legal advice and representation, as well as an acknowledged proliferation in the laws affecting individuals in their everyday lives (Genn, 2012:2) This chapter reviews the updated evidence relating to the types of situations in which legal services have been found to confer important advantages in the context of securing just outcomes, in order to arrive at a model for understanding which individuals or groups might be considered in greatest need of legal services. This model will them be used in conjunction with the Values Framework presented above at Chapter 3 to evaluate the funding models presented in chapters 4-6.

4.2 Exploring the mechanisms through which individualised legal advice and representation assists individuals in achieving just outcomes

As detailed above, the following discussion reviews the existing literature on the benefits conferred by individualised legal advice and representation (e.g. knowledge of the law, relational expertise, social capital) in relation to improving the ability of individuals and groups to secure just outcomes. The discussion is used to build a definition of "vulnerability" or "need" that is context specific. It is argued that those individuals who possess or are able to acquire the benefits conferred by legal advice and representation independently should be considered less needy or vulnerable than those who cannot.

4.2.1 Legal advice as legal education

Individualised legal advice can fulfil an important role in educating individuals about their rights, and helping them to understand their obligations and entitlements. Genn (1999) reporting the findings of her ground-breaking study of legal need, identified that 47% of those individuals who sought legal advice in relation to a specific problem cited the desire to understand their legal rights as a motivating factor (Genn, 1999:69) In addition, individualised advice may be seen to act in the first instance as a sort of "legal triage", whereby individuals who are experiencing a justiciable problem, which they may or may not recognise as admitting of a legal solution, can be made aware of the legal dimension of the particular problems they are experiencing and directed to the appropriate course of action to achieve a "just" outcome. The role of legal advice as legal education may be seen to be particularly critical for individuals whose social networks do not include legal professionals or those who have previous experience of achieving just outcomes in respect of justiciable problems (see Barkun's (1973) theory of the acquisition of legal knowledge, which posits socialisation as key to the attainment of legal knowledge). If individuals only socialise with other individuals with similarly low levels of knowledge, or if they are isolated (for example, as a result of mental illness) their ability to acquire legal knowledge may be compromised (Denvir, 2013:607). In addition, research has indicated that individuals from minority groups (BME groups, gypsies and travellers, refugees and asylum seekers, and members of the LBGT community) are less likely to possess the requisite legal knowledge to enable

them to identify and act upon justiciable events (Mason et al., 2009:56). As such, individuals within minority groups may be especially in need of programmes of legal education tailored to their needs (for example, located in an accessible area, resources translated into appropriate languages)

4.2.2 Legal advice as dispute transformation

A critical role fulfilled by a system of individualised legal advice is the way in which interaction with a legal advisor can enable an individual experiencing a justiciable event, to re-formulate that experience in such a manner as to make it amenable to recourse through the legal system. An influential study authored by Felstiner et al. (1981) attempted to analyse the way in which disputes become legal. Felstiner proposed a tripartite model of pre-legal processes resulting in legal disputes, whereby individuals perceive an experience as injurious ("naming" the experience), attribute "blame" for the experience to another party and proceed to claim through litigation.

The amount of time taken to translate or transform a particular experience into a legal problem is contingent on two factors, firstly, the complexity of the legal matter at stake, and secondly, the complexity of contextual factors relating to the individual client and her circumstances. Clients with lower levels of literacy, those with mental health problems, individuals with little awareness of the extant legal processes or simply those who experience their problem as especially distressing may require additional time and support than their counterparts during the process of translation. As such, it may be asserted that the value of legal advice for individuals in these circumstances increases, both proportionally to the complexity of the legal problem experienced and in relation to the contextual factors that impinge on the clients ability to translate their experience of particular events into justiciable problems.

It is important to note here that there exists evidence to support the claim that individuals from black and ethnic minority backgrounds have an increased tendency to report receiving advice that is of lower quality and less useful to them in addressing their problems than their white counterparts (O'Grady et al, 2006:632, Mason et al. 2009: iii). Research has also identified that individuals from minority groups experience greater barriers in seeking advice, are less likely to seek advice in

relation to justiciable events, and less likely to be satisfied with their experience of receiving advice when they do access it. A wealth of literature developed in the context of the US legal system explores the way in which the lawyer client relationship can act to subordinate and displace client narratives, particularly in instances where the client belongs to an ethnic minority group (Alfieri, 1991a, 2111). If this experience were found to be reflected in the UK context, it would help to explain why individuals from minority groups report receiving advice that is not useful or relevant to them. Alfieri (1996) proposed a new ethic of professional responsibility for lawyers engaged in poverty law practice based on the values of race consciousness, contingency and collectivity (Alfieri, 1996:802). This ethic entails recognising that race and racial difference is an essential part of the client's identity, promoting an understanding of the client and their choices as socially contingent, and further, acknowledging and accepting responsibility for dominant social and legal narratives which posit the client and their community as deviant or other (Alfieri, 1996: 804). Alfieri argues that by adhering to a doctrine of race blindness i.e. in asserting the legal process and procedure is colour blind, and refusing to mount arguments in favour of their client which draw on their racial and community identity, legal advisors are complicit in denying the identity politics intrinsic to the legal process, and in further alienating those who already perceive the legal system as unjust by refusing to acknowledge clients lived experience. This argument suggests that the process of dispute transformation must be carried out with greater care, attention and reflexivity on the part of the legal advisor where the client belongs to a minority group.

4.2.3 Legal Advice as empowerment

Several arguments have been advanced for the proposition that legal advice operates to empower those individuals who receive it in respect of their civil law problems. These include: (i) that the psychological impact of the relationship between client and advisor is, in itself empowering (ii) that the encounter between client and advisor is one which enables the client to access and harness the social capital of the adviser in asserting his or her claim.

4.2.3.1 The psychological importance of the adviser/client relationship

Sandefur's (2006) research explored the rationales offered by those on low and low-moderate incomes who chose not to act to resolve the justiciable problems they had experienced. The reasons proffered by participants for failing to take action were i) shame, ii) a sense of powerlessness, iii) fear, gratitude and a sense of frustration, the latter generated in response to previous experience of civil law disputes (Sandefur, 2006:123). Feelings of powerlessness in a given situation were related to respondent's perceptions of the authoritativeness of the opponent, or the ability of their opponent to access resources (including legal advice and representation) that far outweighed their own. As a result, respondents were more likely to consider the matter settled in spite of their belief that they were being treated wrongly (Sandefur, 2006:124). Access to legal advice, through alleviating this sense of powerlessness, may be an important component in enabling individuals to assert their rights.

4.2.3.2 The adviser as a source of social and cultural capital

The concept of social capital, first developed by Pierre Bourdieu, may be defined as: "the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalised relationships of mutual acquaintance or recognition" (Bourdieu 1985, 248). Professional legal advisors, both through their membership of a professional formalised network, and through their repeated interaction with other agencies often implicated in civil law problems (such as Housing Associations, welfare benefits offices, local authorities etc.) possess considerable social capital which places them at an advantage in negotiating favourable settlements. This social capital is related to, but distinct from, the arguments made later in this section about the advantages conferred by the possession of relational expertise in litigation. Advisors can leverage this social capital on behalf of their clients to achieve outcomes that individuals without these networks would be unable to access. An example of this leveraging of social capital is detailed in research produced by "Justice for All" (2011) which highlighted the importance of legal advice in enabling individuals to enforce their rights in employment cases. In a number of cases identified as part of this briefing, the defendant in employment claims is unresponsive when approached by their employee regarding issues such as unpaid wages, or withdrawal of statutory sick leave. Intervention by a legal advisor, in the form of writing letters explaining their client's legal entitlement and threatening to issue a claim, has been reported as

effective in settling the matter before it reaches a tribunal (Justice for All, 2011:2). The explanation for why the intervention of legal adviser should have this effect, when the actions of the client expressing the same substantively valid claim do not, is closely related to the status of legal professionals in society. The nature of the position and influence possessed by members of the professions has been a fruitful source of sociological enquiry since the beginning of the twentieth century. Talcott Parsons, writing in 1939 relates this influence to the possession of technical competence, the limiting of technical competence to a particular field (what Parsons refers to as "specificity of function") and institutional authority (1939:460). The membership of a particular profession (through for example, qualifying as a solicitor or barrister) connotes the former and confers the latter: other parties in disputes are more likely to engage when a legal professional intervenes because i.) the intervention of a legal advisor, as an acknowledged specialist, lends credence to the veracity of the claim of the client and ii) the legal advisor is vested with the institutional authority to issue proceedings and marshal the coercive power of the extant legal framework.

4.2.4 The value of individualised legal representation

The value of legal representation for individuals with civil law problems is intrinsically linked with the structure of the justice system in England and Wales. It has been argued by numerous commentators (Genn, 2012, Assy, 2011, and others) that the adversarial nature of the justice system in England and Wales presents particular problems for those who approach the court without representation. As has been noted above, there exists a paucity of programmes educating individuals about their substantive legal rights; this lack of public legal awareness extends to the procedural norms of the court system. An adversarial system has been described as one in which three fundamental conditions are met. Firstly, an adversarial system necessitates that the parties involved in the dispute have both the freedom and responsibility to present evidence and construct arguments in relation to their claim, secondly, the evidence and argument must be presented before a decision maker who is both passive and neutral and thirdly, the evidence and argument must be presented in a highly structured setting where rules governing evidence, ethics and procedure are enforced. It is argued that a flaw in any one of these components is likely to undermine the functioning of the system (Assy, 2011:269).

In considering the features of the adversarial system as described above in conjunction with what is already known regarding a.) the lack of public education regarding the procedural rigours of the court system, and b.) the level of public knowledge of the substantive law, it seems relatively uncontroversial to suggest that individuals who approach the civil justice system unrepresented may be at a disadvantage. Interestingly, a meta-analysis of the impact of representation on trial outcomes published by Sandefur (2010) demonstrated that, for the range of problems studied[10]: "lawyers' impact is largest when lower status people appear in hearings where perfunctory treatment of cases is standard operative procedure or the court's adherence to the law is ad-hoc. In these settings, lawyers appear to assist their clients, in part, simply by assisting courts in following their own rules." (Sandefur, 2008:45). In addition, Sandefur reported that the impact of representation was greatest when the procedural complexity involved in the case was average or above average (Sandefur, 2008:39).[11] The perceived importance of procedural complexity in acting as a barrier to those who represent themselves has been recognised in the latest report from The Judicial Working Group on Litigants in Person (July 2013) which urgently recommended further work to assess the merits of three proposals which aim at reducing the complexity of procedures where one or more of the parties involved in a case is unrepresented.

In addition, the case law developed on the relationship between Article 6 of the ECHR and the right to legal assistance emphasises the importance of the complexity of the law engaged in determining whether an individuals rights have been breached. The case of *Airey v Ireland*[12] is widely considered to be the leading case concerning Article 6 of the ECHR and the right to legal advice and representation in civil law matters. The facts of the case were as follows. Mrs Airey had spent eight years attempting to negotiate with her husband to secure a separation agreement. Having failed to do so she sought a decree of judicial separation from the Irish High Court. At the time of the case, the Irish constitution did not provide legal aid for the purpose of seeking a judicial separation or for any

[10] Ordinary litigation in the lower courts and administrative tribunals

[11] Be careful- still under review and only available online in pdf form…

[12] *Airey v Ireland* (App No 6289/73) (1979-80) 2 EHRR 305

other civil legal matter.[13] Securing a decree of judicial separation would require Mrs Airey to navigate the complex procedures of the Irish High Court and prove the grounds for a separation agreement with reference to substantive law and the calling and cross examining of witnesses. Whilst the High Court did permit parties to conduct their case in person, an investigation by the Commission revealed that, without exception, in each of the 255 separation proceedings initiated in the six years prior to 1978 a lawyer had represented the petitioner[14]. Mrs Airey did not have the means to employ the services of a lawyer for this purpose. Mrs Airey, in application to the European Commission on Human Rights, alleged that these facts constituted violations of Article 6 (right to a fair hearing in the determination of civil rights) and Article 8 (right to respect for private and family life). The European Court of Human Rights, in discussing the merits of the case, made reference to a number of factors, including; the complexity of both the procedures of the Irish High Court and the substantive legal issues raised by Mrs Airey's case, the requirement for her to prove grounds for the separation which might entail her providing expert evidence and calling and cross examining witnesses, her ability to navigate these difficulties as mediated by her humble background, the fact that her husband would be legally represented and further, that "marital disputes often entail an emotional involvement that is scarcely compatible with the degree of objectivity required by advocacy in court".[15]

The Court held that Mrs Airey's right under Article 6(1), to access a court for the purposes of determining her civil rights and obligations, was violated on the facts of the case, as the possibility of appearing before the High Court without representation did not provide an effective right of access, for the reason that without representation, Mrs Airey would not be able to present her case properly and satisfactorily.

As legal academics, including Miles (2011) have observed, successive cases brought against the UK in relation to the lack of legal aid for actions relating to defamation have proved instructive in elucidating the instances in which Article 6 might require that the individual be provided publicly funded legal advice and representation. In

[13] *ibid* p5
[14] *Ibid* per para 11
[15] Ibid, para 24

deciding *McVicar v UK*[16] which concerned a journalist appearing to defend a defamation action, the Court noted two of the factors that had contributed to the requirement of legal aid in *Airey*, firstly Mrs Airey's background and limited experience of employment which impacted on her ability to navigate the complex procedural rules of the Irish High Court and secondly, the importance of the issues at stake in the case, with particular reference to the impact of the outcome on any children of the family. The later case of *Steel and Morris v UK*[17] was also instructive on this matter, with the Court stating that: "The question of whether the provision of legal aid is necessary for a fair hearing must be determined on the basis of the particular facts of the case and will depend, inter alia, upon the importance of what is at stake for the applicant in the proceedings, the complexity of the relevant law and the applicant's capacity to represent him or herself effectively".[18] In addition, the Court in this case made reference to the importance of equality of arms, in stating that each side must be "afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis an adversary".[19]

This focus on the importance of legal representation in helping individuals to navigate procedural complexity, ensuring that the courts follow the rules set out in both substantive law and legal procedure and in assisting individuals in articulating their concerns points to a distinctive role for legal representation in ensuring individuals are able to vindicate their rights. Research published by Engler in 2010, which sought to review the existing data on the impact of representation in the US context, revealed that litigants who are unrepresented are often unable to vindicate their claims even when the substantive law supports their position (Engler, 2010:75). Engler posits that litigants' inability to articulate their claims was a determining factor in their failure to achieve outcomes that accorded with the substantive law. Accordingly, in seeking to clarify the value of legal representation for individuals with justiciable civil law problems, it is instructive to look beyond arguments which attribute the value of representation merely to superior knowledge of the substantive law, and explore the other mechanisms through which it might be

[16] *McVicar v UK* (App No 46311/99) (2002) 35 EHRR 22
[17] *Steel and Morris v UK* (App No 68416/01) (2005)
[18] I*bid, per para [61]*
[19] *Ibid, per para [62]*

said that legal representation confers a benefit on individuals who are able to access it.

4.2.4.1 Legal representation as a source of relational expertise

"Relational expertise" refers to the possession of an understanding of: "the social distribution of knowledge and professional and paraprofessional discretion within the specific human relationships through which professional work takes place" (Sandefur, 2008: 9, citing Barley, 1996). In the legal context, relational expertise may include knowledge of the patience levels of particular judges, which court clerks are most understanding, and even the attributes and skills of opposing counsel. Relational expertise is context driven, and as such, cannot be taught as part of an explicit curriculum of professional training. Many commentators have suggested however, that relational expertise can be essential for the successful conduct of legal work (Sandefur, 2008:10 citing Barley 1996, Eisensteen and Jacob 1977, Feeley 1992, Kritzer 1998, Monsma and Lempert 1992, Sullivant et al. 2007; Szmer, Johnson and Sarver 2007:281). A legal representative with relational expertise may therefore prove to be an invaluable source of assistance to their client, particularly if the client has no prior experience of the court system.

This notion, that the value of legal representation is linked with the level of relational expertise possessed by the legal representative, may be seen to be related to Galanter's (1979) extremely influential theory which seeks to understand those actors who utilise the court system as situated on a spectrum between two ideal types, the "repeat player" and the "one-shotter" (Galanter, 1979:98). Galanter describes the ideal type repeat player as a unit which: "has had and anticipates repeat litigation, which has low stakes in the outcome of any one case, and which has the resources to pursue its long term interests" (Galanter, 1979:98). In contrast, a: "one-shotter" is described as: "a unit whose claims are too large (relative to his size) or too small (relative to the cost of remedies) to be managed routinely and rationally" (Galanter, 1979:98). Galanter asserts that repeat players are able to access considerable advantages in litigation. These include, firstly the advantage of foresight: as the repeat player expects to engage in litigation, they set the terms of any arrangement with a "one-shotter" e.g. drafting a contract at the outset of an

interaction. Secondly, repeat players are able to access specialist advisers and can use economies of scale to secure cheaper services from them e.g. large banks often have panels of recommended lawyers who act for them at a discounted rate as a result of the repeat business they receive from them. Thirdly, repeat players are able to develop informal relationships with those within the system e.g. housing association staff may be familiar with the court staff and judiciary who they come into contact with through initiating repeated applications for possession notices. Fourthly, the repeat player may be said to have reputational concerns in relation to their bargaining position that the "one-shotter" does not. For example, a housing association may be concerned to be seen to maintain consistency in the settlements they accept from an individual tenant, for fear of undermining their status as being uncompromising in relation pursuing to unpaid rent. Fifthly, the repeat player is able to adopt longer- term litigation strategies that enable them to take risks or adopt positions that a "one-shotter" would not. According to Galanter, "one-shotters" will adopt a litigation strategy that seeks to minimise the risk of them incurring maximum losses, for example, accepting a smaller settlement in order to avoid the risk of having to pay the costs of the other party. Repeat players, who have access to both increased resources and who are less personally invested in the outcome of the case, can afford to litigate strategically, pressing their case in the knowledge that they can bear even the maximum costs in one case, if the judgment would results in minimising costs in other similar cases. In addition, unlike the "one-shotter", who is primarily interested in the immediate outcome of their case, the repeat player may be more concerned with changing the substantive law in a particular area through litigation. This enables them to adopt litigation strategies that the "one-shotter" would not countenance or indeed, be less interested in if setting new law meant risking the outcome in their particular case. (Galanter, 1979: 99-101)

If we consider the majority of matters that are litigated within the civil law, it becomes clear that many would fit Galanter's model of the repeat player pitted against the "one-shotter". Medical negligence, welfare benefits claims, employment claims, housing claims and community care claims can all be viewed as cases where

the repeat player[20] (insurance companies, the government, companies, housing associations etc.) is pitted against the one shotter (the injured individual, the claimant, the tenant, etc.). As such, it would seem that the value of legal representation may be measured according to the extent to which such representation can assist in ameliorating the disadvantages experienced by the "one-shotter". The experienced legal representative, who is possessed of the relational experience described above, combined with experience of opposing repeat players, may be able to assist the claimant by furnishing them with knowledge of litigation strategies that their legal adversary is likely to adopt or advising them regarding which aspects of their case should be pressed most forcefully.

4.2.4.2 Legal representation confers benefits of improved articulation of a particular claim

Whilst, as has been discussed above, it is the legal adviser who is primarily charged with transforming the lived experience of the civil dispute into an account that is amenable to processing through the mechanisms of the justice system, it is the legal representative who is tasked with advocating on behalf of the claimant. The process of training to become a barrister or solicitor with higher rights of audience requires the trainee to develop skills in advocacy. In addition, the process of legal qualification places emphasis on the ability to articulate matters clearly and using particular "legal" forms of language. As such, a qualified legal representative may be said to possess advantages that are not accessible to the majority of the public, and particularly those who are poor, lacking in formal education, have a low standard of written and verbal English or who are cognitively impaired. The disparity noted by Engler (2010) between the veracity of the claims of unrepresented litigants in relation to the substantive law, and the outcomes achieved in the housing courts, has in part been attributed to the inability of the unrepresented litigant to articulate their case effectively (Engler, 2010:75). As such, it may be hypothesised that those individuals with the types of vulnerabilities identified above, may have the greatest need of legal representation.

[20] This is not to say that each repeat-player possesses all of the advantages described to the same degree: smaller businesses for example, may not have the resources to hire litigators, or the resilience or interest to litigate strategically.

4.3 A model for evaluating need/vulnerability in the context of prioritising legal services

Having discussed the manner in which evidence suggests legal advice and representation acts to assist individuals in achieving just outcomes, it is now possible to summarise what this evidence tells us about who is most vulnerable in this context and therefore should be prioritised in terms of receiving legal advice and representation. Table 3.1 below summarises the evidence from each section

Figure 4-1 : Summarising the evidence: What does existing evidence tell us about who is most vulnerable and therefore most in need of legal advice and representation?

Benefit conferred by legal advice and representation	What does existing evidence tell us about who is most vulnerable and therefore most in need of legal advice and representation?
Section 4.1 Legal education	Whilst levels of both substantive legal knowledge and knowledge of legal procedure are low across the population as a whole, evidence suggests that those who should be prioritised in terms of receiving legal education are: - Individuals on low incomes or who are otherwise lacking in economic capital - Individuals whose informal networks do not include individuals with legal expertise - Individuals with low levels of literacy, or whose first language is not English - Individuals with low levels of formal education - Individuals who have difficulty processing and organising information (for example, as a result of mental illness, drug addiction or other cognitive impairment). - Individuals who are isolated - Individuals who belong to minority groups
Section 4.2 Dispute transformation	- Individuals whose disputes are particularly complex - Individuals who experience their justiciable event as particularly distressing - Special attention should be given to the way in which the process of dispute transformation is carried out in relation to individuals who are members of minority groups.
Section 4.3- 4.3.2 Empowerment	- Individuals with previous negative experiences of the civil or criminal legal system - Individuals with low levels of social and cultural capital - Individuals who exhibit low levels of trust in their relationships with agencies and representatives of the state - Individuals whose cases involve an obvious disparity of means, power, social capital
Section 4.4 Ameliorating procedural complexity and ensuring that courts adhere to their own rules	- Individuals whose cases are particularly complex - Individuals with little previous experience of the civil justice system - Individuals who are denied representation as a result of the changes introduced by LASPO.
Section 4.4.1 Relational expertise	As above, individuals whose cases are complex, involve opposing a "repeat player" and who have little previous experience of the civil justice system should be prioritised.
Section 4.4.2 Improved articulation of claim	As above, individuals who are: Inexperienced in matters of civil justice, have low levels of educational attainment, who experience their justiciable problem as particularly distressing, who have impaired cognitive abilities, or have difficulty articulating their claims and forming arguments.

It is apparent from Table 4.2 that certain factors, both situational and inherent, impact repeatedly on the extent to which individuals require certain aspects of the service legal advice and representation provides. Table 4.3 below attempts to combine these factors into a model for understanding vulnerability in relation to its impact on the ability of individuals to achieve procedurally just outcomes without legal advice and representation.

Figure 4-2 Factors which increase individuals vulnerability in the context of pressing their civil law claims

Attributes possessed by the individual
- Low income or otherwise lacking in economic resources - Belonging to a minority group - Low levels of literacy, or first language other than English - Low levels of formal education and educational attainment - Difficulty processing, organising and articulating information (for example, as a result of mental illness, drug addiction or other cognitive impairment).
Psychosocial factors relating to the individual
- Low levels of social and cultural capital - Low levels of trust in their relationships with agencies and representatives of the state - Previous negative experiences of the civil or criminal legal system - Informal networks do not include individuals with legal expertise - Socially isolated - Little previous experience of the civil justice system (lacking in relational expertise)
Other Factors relating to the individual and their justiciable event
- A justiciable event involving an obvious disparity of means and resources (including social capital and relational expertise) - A justiciable event which is complex, or engages with complex areas of substantive law - A justiciable event that is experienced as particularly distressing by the individual involved

The factors presented in Table 4.3 are not equally weighted, with some factors presenting greater barriers to the ability to achieve procedurally just outcomes than others. For example, it is possible to envisage a scenario where an individual is so distressed (i.e. during a child custody case) that this impairs their ability to engage effectively with the civil law to a far greater extent than someone who has both low levels of formal education and little previous experience of the civil justice system. It is further important to note that each factor may be present to a greater or lesser degree of severity in a given case. For example, one individual may have low levels of formal education, without that significantly affecting their ability to participate effectively in legal proceedings, whilst another individual may find their lack of

formal education a significant barrier to engaging with and understanding the civil law and related processes. As such, the severity of each factor or attribute is to be calculated according to the extent to which the presence of this factor impairs the ability of the individual concerned to present their case effectively. Whilst in general it may be said that the level of *individual vulnerability* increases according to the number of factors or attributes listed in Table 3 that apply to an individual in a particular case, the relationship should be considered as geometric, rather than arithmetic, as the presence of multiple factors may compound the individuals inability to present their case effectively. As such, the cumulative impact of the presence of multiple barriers to the achievement of formally just outcomes results in a valuation of *individual vulnerability* that is greater than the sum of its parts.

4.4 Conclusion

The above discussion has reviewed the evidence indicating the types of situations in which legal services have been found to confer important advantages in the context of securing just outcomes, in order to arrive at a model for understanding which individuals in groups might be considered in greatest need of legal services. This model will be used in conjunction with the values framework presented at Chapter 3 in evaluating the funding models presented in chapters 5-8.

5 CHAPTER 5: RESPONDING TO LASPO- CHARGING FOR ADVICE

5.1 Introduction

Charging for advice was one of the earliest strategies proposed to supplement the income of Law Centres and other Not-for-Profit providers of legal services in a post LASPO landscape. As early as 2011, Law Centres were considering the options available for launching fee charging projects, in an attempt to both develop a sustainable source of income and diversify funding models that were reliant on income from legal aid contracts. Key funders[21] and supporters[22] of the not-for-profit legal sector hosted workshops, convened meetings, and funded pilot projects to assist those Law Centres who were keen to adopt this strategy as a means of surviving the cuts to legal aid. In theory, charging for legal services seemed like a plausible solution to a number of the problems created by the reduction in public funding for legal services; it would enable Law Centre's to retain staff with expertise in areas of law no longer financed by the Legal Aid Agency, help them to support clients who could no longer access legal aid funded legal advice, and supplement the income of Law Centres, providing them with much needed unrestricted funds. However, at the time of writing, the early promise of this strategy as a means of mitigating the impact of LASPO on Law Centres has yet to be realised. Despite a considerable amount of assistance both financial and in terms of business planning and consultancy support; a recent review of charging projects conducted by sector specialist consultants DG Legal found that only five out of thirteen agencies that had attempted to introduce charging had broken even or were on track to break even (Gilmore and Howgate, 2014: 37). Whilst supporters of this strategy for surviving the cuts argue that it is still too early to draw firm conclusions regarding the on-going viability of this approach, the early experiments in charging have highlighted a number of salient factors which should be taken into account in evaluating the efficacy and/or desirability of this model as a means of generating sustainable income for Law Centres in response to LASPO. The chapter begins by

[21] Such as the Baring Foundation and partners in the Future Advice Fund Programme- see chapter five for further details, and BIG Lottery administered Transition Fund

[22] Including London Legal Support Trust, Hogan Lovells Solicitors

outlining the history of charging for advice within the Law Centres movement. The strategic and operational issues that are raised by the move to charging for advice are then discussed; drawing on original empirical data collected as part of a case study of a fixed fee-charging pilot for immigration advice developed by Avon and Bristol Law Centre. The chapter then identifies the implications of the adoption of this strategy for the ideal type Law Centre values framework developed in Chapter 3.

5.2 The History of charging for advice

The first Law Centre to attempt to develop a charging arm was Islington Law Centre, who began discussions to develop this initiative in 2011 (Gilmore, 2014: 2)[23], although the debate about the potential for trading from the Law Centre began some ten years previously (LCN, 2014a: 1)[24]. The Solicitors Regulation Authority (SRA) at this time prohibited Law Centres from charging for advice: accordingly Islington Law Centre applied both for a waiver to enable them to charge and authorization to incorporate as an Alternative Business Structure (ABS), a new legal entity established under the Legal Services Act 2007[25]. The SRA stated that it would decide on the waiver before considering the ABS application (Gilmore, 2014:2). After a protracted period of negotiation (Baksi, 2013[26]) it was decided in December 2012 that the waiver would be granted, at which point Islington Law Centre abandoned its application to become an ABS. Originally the SRA planned to consider waivers for individual Law Centres on a case-by-case basis, before issuing a blanket waiver that enabled Law Centres to charge across the board.

Once it was established that the regulatory framework would permit Law Centres charging for advice, two dominant models for charging developed: charging for advice under Law Centres' existing corporate identity under the SRA Waiver (referred to hereafter as "charging in-house") and setting up a separate legal entity to charge for advice. In the case of Islington and Rochdale Law Centres, it was decided that the most efficient model for doing this was to establish a separate trading arm: Islington settled on a model whereby the trading arm of the Law

[23] STVS Future Advice Bulletin No. 5

[24] Law Centres Network, (2014) "Report on the Islington Community Law Firm: Setting up a Law Centre Trading Arm-Strategies and Challenges" Law Centre Network Guides available online.

[25] An ABS is an entity that must have a non-lawyer owner or manager; and at least one lawyer manager.

[26] http://www.lawgazette.co.uk/analysis/features/law-centres-picking-up-the-pieces/5042728.fullarticle

Centre is both a Company Limited by Guarantee and a Community Interest Company, whereas Rochdale Law Centre decided to set up as a solicitors firm regulated by the SRA (Robins, 2012). Both Rochdale's charging arm (Rochdale Legal Enterprise) and Islington's charging arm (Green Roots- ILC's Community Law Centre) are owned by the Law Centres involved, and any profits made are reinvested or returned to the Law Centre. In the case of Green Roots, Islington Law Centre is the sole shareholder (Gilmore, 2014:2) whereas Rochdale Legal Enterprise is owned by the directors of Rochdale Law Centre, with a written agreement that all profits are reinvested or passed to the Law Centre (Gilmore, 2014:3). Both Rochdale Legal Enterprise and Green Roots occupy separate premises, and are branded and marketed separately. Both Rochdale Legal Enterprise and Green Roots recruited new solicitors with private sector experience to work alongside existing staff employed by the Law Centre. Law Centre staff at both Rochdale and Islington Law Centres undertake work for their respective charging arms on a consultancy or secondment basis. This staffing arrangement has provided flexibility as the new charging models establish their reputations and build their client base. In the case of Green Roots (the charging arm of Islington Law Centre), it is planned that in future years, staff will work either for Green Roots or the Law Centre, not both, in recognition of the different skills that each organization requires (LCN, 2014:5).

The regulatory issues that beset Law Centres who wished to charge until 2012 mitigated against Law Centres setting up charging pilots under their existing corporate identities. However, once the waiver was granted, it became clear that Law Centres could experiment with charging under their existing branding. This led to the development of two distinct models for charging for advice. The main differences between the two charging models described are summarized at Table 5.1 below.

Figure 5-1 Key differences between charging models

	Separate Charging Arm	Charging in-house
Premises	Generally occupy separate premises to the Law Centre	Occupy the same premises as the Law Centre
Branding	Branded separately to the Law Centre	Branded with Law Centre branding.
Staffing	Employ new staff with private sector experience, supplemented by support from Law Centre staff as needed.	Work generally undertaken by existing Law Centre Staff in addition to their Law Centre caseload.
Regulation	Regulated by the SRA, the Community Interest Companies Regulator (if a CIC) and OISC (if providing immigration advice)	Regulated by the SRA, The Charities Commission and OISC (if providing immigration advice).
Marketing	Marketed as a separate project with a separate budget set aside for this purpose.	Marketed alongside the Law Centre's other services.
Change to Law Centre's constitution required?	No.	Possibly, in order to facilitate charging under Charity Law.

Having outlined the key features of the two different models Law Centres have adopted, the following discussion explores some of the drivers for and challenges to Law Centres charging for advice. The themes and questions identified are drawn both from the existing literature on Law Centre charging models and original empirical material collected as part of research undertaken at Avon and Bristol Law Centre. In order to incorporate a wider perspective, and contextualise the experience of Avon and Bristol Law Centre, an interview with a sector expert management consultant who has been involved in supporting a number of law centres to develop their charging models is also cited. The following section provides an overview of the development of the Avon and Bristol model, and

explores some of the operational issues that may impact on attempts by Law Centres to establish these models.

5.3 Charging in-house: the experience of Avon and Bristol Law Centre

Avon and Bristol Law Centre ("ABLC") was established in 1984 and is based in central Bristol. ABLC was established and run as a collective, (as were many Law Centres set up during this period) until 2012. ABLC's major sources of funding prior to the cuts were their Local Authority funding and the contract they held with the Legal Services Commission for provision of legal aid funded advice. In a post LASPO funding landscape, ABLC's major source of income is the funding they receive from Bristol City Council, which expires in 2016. They have also successfully bid for and won funding from various charitable funders and the Advice Services Transition Fund. Gloucestershire county council also provides the Law Centre with funding for delivering services to individuals from their local authority.

In early 2014, ABLC began developing plans for a charging pilot that was scheduled to commence in May 2014. Under this pilot, clients would have the option to pay for immigration advice and representation which now fell outside of the scope of legal aid. Immigration has been identified across the Law Centres Network as an area of law in which it is both suitable and feasible to develop fee -charging models. Of the other Law Centres who pursued a charging model- Rochdale Legal Enterprise Community Interest Company has a specific focus on immigration matters that are no longer in scope, as does Green Roots Law, the Community Interest Company established by Islington Law Centre. At ABLC it was planned that the fee-paying work would be carried out by the existing immigration team of Law Centre staff (one full time solicitor, one trainee and one caseworker), who would undertake this work alongside their work for non-fee paying clients.

The launch of the pilot was hampered by delays resulting from regulatory confusion. In 2012, when the first Law Centres were considering setting up charging functions, the regulations set by Solicitors Regulation Authority prohibited Law Centres from charging fees for legal services. In July 2012, the Legal Services

Board published an opinion stating that this ban should be lifted. At first it was communicated by the regulators that Law Centres wishing to charge for their services would have to apply individually for a waiver from the Solicitors Regulation Authority. However, in April 2013, to coincide with the introduction of cuts to legal aid, the Solicitors Regulation Authority published a blanket waiver enabling not for profit agencies employing solicitors to charge for providing legal advice. ABLC originally applied for an individual waiver from the SRA, before the blanket waiver from the SRA allowing Law Centres to charge for advice was issued. Once this was in place, ABLC were able to commence with their charging pilot.

Operational issues also impacted on the ability to commence the pilot. Chief among these were issues around payment systems- investing in a chip and pin machine proved too costly, so the potential for taking payments online was investigated. This was eventually ruled out on the basis that there was a risk that clients could withdraw their money before it was processed. This specific issue highlights a problem with a move to charging for advice that might be considered more widespread across the network- for Law Centres, whose processes and systems have been established to facilitate not for profit working, moving to charging for advice from their existing premises and under their existing branding may require significant operational changes to be made. These can include setting up new methods of payment (as in the case of ABLC), investing in different case management software, or updating their information technology infrastructure. The experience at ABLC demonstrates the importance of factoring the time and resource to dedicate to resolving these issues into the business planning process. For example, Law Centre managers reported that difficulties in deciding on the most appropriate payment system for charging clients created delays of nearly two months:

"It didn't start on (predicted start date) we had a number of really dull practical problems around payment systems… initially we were going to just get a chip and pin machine but that turned out to be quite expensive, then we were going to do online payments but then you realise that doing an online payment the client could actually withdraw that.. we thought: "well that's a bit of a risk, we don't really want to do that" so then we came up with something called isettle which is just an app basically, so we bought a tablet that's got an app on it and it's easy and cheap and seems to be working but it's just the nature of these things: there are all sorts of little issues that you don't think there are going to be…" Interview with ABLC CE

Investing in IT and other infrastructure that may be considered necessary to support a move to charging is expensive, and, it can be difficult to justify the up-front expenditure in a climate of straightened budgets and financial uncertainty. One sector expert management consultant who has supported a number of Law Centres to develop charging arms, when interviewed argued that charging under existing branding, rather than setting up a separate charging arm, was, in his view, the better model for Law Centres to pursue:

"*I think if I was running a Law Centre with the experience that I have now I'd have a slightly different view than I had two years ago when I was first thinking about this…I think, based on what I have observed, if I was in a Law Centre I wouldn't have it in a separate office under a separate name because I think when you're looking at financial risk and cost, the cost of setting up a separate arm in potentially a separate building and doing all the branding is potentially very expensive, and I think it's a more safe option to potentially start that project under the same building at the same brand etc.*"

Interview with DG

The experience of ABLC identified that even when charging under their existing branding, investment of resources may be necessary in order to deliver a service that would enable the Law Centre to compete with private practice. In interviews with staff tasked with undertaking the fee-paying work, the issue of appropriate resource allocation to the project was frequently raised.

Staff involved in running the charging pilot reported feeling that they were under-resourced, and further that the infrastructure of the Law Centre was insufficient to support the development of the charging model. The following extract reflects commonly identified issues:

Well obviously the building's not suitable, I don't really like the Law Centre in general, sort of the fabric of the building, the equipment, the IT, all of those things, you know in a super duper firm would be running 24 hours a day, we don't have that luxury here, [if]the photocopier jams it's 48 hours out of use, and if you're here at 10pm at night it's not much use. People have done them at home, just to get them in you know because the photocopiers and printers don't work.

Interview with ABLC ITL

A further resourcing issue highlighted in the experience of Avon and Bristol Law Centre, concerned the need to ensure that staff were given the support to manage their fee generating work alongside their existing, grant-funded caseloads.

In common with all other Law Centres who had chosen to develop charging models, including those that decided to set up a separate charging arm to deliver services, ABLC decided to price their services at below market rate. The following excerpt from an interview with ABLC management, explores the rationale behind this approach:

"*We've had quite a lot of debates about whether it fits with our charitable objectives [00:20:03], how we're perceived by the outside world, so you know we're putting together some sort of statement for our newsletter and things "this is what we're doing and why" and it's actually about the fact that LASPO has made us unable to help these clients but we feel we still want to and we've out in a reasonable fee scheme which is less than you would get from a private solicitor to enable us to do the work so it's going to be, just trying to manage [expectations] because we're a Law Centre people think that they can come here and get advice for free how do we manage that? There are also quite a few discussions around who will we allow to pay us, will we allow a millionaire to pay us? How will we know? Do we do a means assessment, all those sorts of things, so we're just going to do a six month pilot and see what sort of clients we get coming here and what sort of issues that flags up because we don't want to be seen to be giving cheap legal advice to people that can actually afford to pay it and stopping people that really need it accessing it.*"

Interview with ABLC CM

In light of this, it was decided that the fee paying work undertaken by the Law Centre would be restricted to immigration and human rights applications- no asylum or appeal work would be undertaken at the pilot stage due to the complexity involved in the latter types of cases. Clients would be charged on a fixed-fee basis rather than on an hourly rate. Within the plans for the pilot, private work would be capped at a maximum of twenty five per cent of the total caseload, and all profits would be ploughed back into the Law Centre, enabling the Centre to retain its charitable status. Fees were set at below market rate (within the Bristol area), to ensure that they were affordable for less advantaged people. In terms of defining a

target market for these services, the Law Centre decided to aim their services at less advantaged clients who would not be able to afford to access legal services offered by other private immigration firms in the Bristol area. In this manner, it was hoped that the charging pilot would enable the Law Centre to meet some of the unmet demand for legal services created both by the withdrawal of legal aid for immigration matters, and the withdrawal of key providers of immigration advice from the sector, most notably the Immigration Advisory Service. However, by the end of the pilot in May 2015 only seven cases had been completed for fee paying clients and by 2016 the decision had been taken to end the existing charging pilot in favour of developing a social enterprise company in collaboration with other Law Centres and not-for-profit providers.

In developing the model described above, ABLC aimed to unite two objectives: i.) generating profit, and therefore creating a sustainable source of unrestricted funds for the Law Centre and ii.) meet unmet need through targeting the services at migrants on low incomes, creating a for-profit service delivered in the spirit of Law Centre values. However, is there an inherent conflict between these two aims? Can it be resolved and if so, which motive will dominate? These tensions are arguably magnified if a charging pilot intends to charge for advice under the Law Centre's existing branding. The following section evaluates the charging model developed by ABLC against the Law Centre values framework developed in Chapter 3.

5.4 Charging for advice and Law Centre Values

In evaluating charging for advice as a model in the context of Law Centre Values, two key questions arise. The first is, is it possible to design a charging for advice model focussing on immigration law that is congruent with Law Centre values? The second question is, can such a model, if devised, generate sufficient profits to ameliorate the impact of LASPO and create unrestricted funding that can be used to advance Law Centre values in other areas of law? The following discussion considers these issues in greater depth.

5.4.1 Charging for Advice and Terminal Value 1: Law Centres improve the position of economically disadvantaged individuals and groups

In the values framework described above at Chapter 3, it is argued that the first of the values that render Law Centres distinctive concerns the way in which they use the law, namely, to bring about social change in favour of economically disadvantaged groups. The literature on Law Centres indicates that they aim to do this in three key ways: i.) by extending the availability of legal services to as wide a range of people as possible, with particular reference to those individuals who experience barriers to accessing the law; ii.) by taking on complex and strategic casework that has the potential to reform the law in favour of the marginalised and iii.) through identifying and uniting groups of individuals with common interests and working with them to bring about social change. The following section considers how far the charging model developed by ABLC has the potential to deliver this value.

5.4.1.1 Charging for advice and instrumental value 1.1 Law Centres deliver legal services to those who are economically disadvantaged with particular reference to those who are in greatest need (see Value 2 below) helping them to secure their rights under the existing law and working to extend and reform the law where their existing rights are inadequate.

There is strong evidence to support the contention that the interests of individuals with irregular immigration status are marginalised within the UK: successive commentators have observed that the United Kingdom is perceived as having: "particularly hostile attitudes towards immigration compared to other countries" (Somerville and Katwala, 2016:1). While recent research based on opinion polling (Somerville and Katwala, 2016) has indicated that the position of the majority of the public may be more nuanced, particularly in respect of skilled migrants, politicians have responded to this perception of the views of the British public by introducing increasingly punitive legislation, with the express aim of reducing net migration to the UK. This situation is likely to be exacerbated by the decision to leave the European Union, taken in June 2016.

Charging for advice and representation in respect of immigration law, particularly in certain types of complex cases where changes to legislation have marginalized the interests of migrants by removing the right to appeal against removal, forcing individuals who believe they have a valid basis for remaining in the UK to seek judicial review, may be seen to be mission congruent. Mission congruence is achieved in these circumstances by virtue of the degree of the status of the client as marginalised and the mechanism of the law that is engaged - judicial review - may be characterized as: "the rule of law in action' (Moffat and Thomas, 2014:237) and as such pursuing cases through this mechanism offers the opportunity to use the law to bring about change through exposing the decision making of the government, mandating reform of administrative processes and providing opportunities for campaigning and policy work. One of the seven cases undertaken and won by staff at ABLC as part of the pilot was a Judicial Review, (Interview with ABLC ITL) demonstrating the potential for cases of this kind to be undertaken within the context of a fee-paying environment.

There is consistent evidence that the withdrawal of legal aid for immigration law matters has restricted the availability of legal services, particularly for those on low incomes. The private sector is unlikely to develop solutions to meet this need, due to the low levels of profit involved. The experience of ABLC provides a case in point: expanding demand for services correlated with a downturn in supply. Whilst the overwhelming majority of Bristol residents (at 2011 census) were born in the UK (some 85.3%), the number of new arrivals to the UK resident in Bristol increased rapidly from 4,021 individuals who arrived 1981-1990 to 8,885 individuals who arrived between 1991-2000. Post 2000, the number of newly arrived individuals in Bristol continued to increase, with 12,207 individuals who arrived between 2007-2009 reported resident in Bristol at the last census[27]. This expansion in new arrivals was combined with a reduction in the number of advice services available. The closure of first Refugee Migrant Justice (in 2010) and then the Immigration Advisory Service (Bowcott: 2011) [28] restricted the availability of advice for immigration related matters.

[27] 2011 Census: Year of arrival in UK comparing Bristol with England and Wales, Source: Table QS801EW 2011 Census Office for National Statistics, Crown Copyright 2012.

[28] Bowcott, O, [11 July 2011] "Tens of thousands lose support as Immigration Advisory Service closes" published in The Guardian available at http://www.theguardian.com/law/2011/jul/11/immigration-advisory-service-closes-blames-government (Accessed on 29 June 2015).

The Avon and Bristol Advice Centre Network ("ACFA") published a report in 2012 which stated that ABLC were only able to take on 20% of the potential clients who contacted the Centre through their drop in service, due to high volumes of demand (ACFA 2012). The pressure created by the high demand for immigration advice services at ABLC was emphasized by all those staff that were interviewed:

"the demand for free immigration advice since legal aid cuts has been massive, so we're very oversubscribed, every single week we're turning away half the people at least, so we can't see them."

Interview with ABLC IA

"We've turned a lot of immigration clients away [00:37:32] the only place for them to go is to private solicitors so they have to pay if they can afford to otherwise they get turned away to go nowhere."

Interview with ABLC CM

This trend, has been reflected in the experience of not-for-profit providers of legal services across the country. A report by the National Audit Office stated that: "70 per cent of not-for-profit providers could meet half or less of the demand for legal assistance from people not eligible for legal aid". (Justice Select Committee, 2015:32). A charging for advice model that targets services at low income migrants in return for an affordable fee could assist in ensuring that migrants on low incomes are able to access expert advice and representation.

5.4.1.2 Charging for advice and instrumental value 1.2 Law Centres undertake strategic litigation with the potential to reform the law in favour of the disadvantaged

There is some evidence that charging for advice in respect of immigration can create capacity to undertake strategic casework. The highly politicised nature of immigration policy means that immigration law changes rapidly (Thomas, 2015:676) creating uncertainty and complexity, a position that is likely to be exacerbated by the decision to leave the European Union. Immigration law has been described as operating in the context of: "chronic administrative difficulties within the Home Office and often intense and politically driven short-term pressures" (Thomas, 2015:652). As such, it is perhaps unsurprising that immigration law has been

described as the: "largest area of mass use of judicial review, regularly accounting for over 80 per cent of all claims lodged" (Thomas, 2015:652). A study published in 2015 stated that 35% of the Judicial Review cases that reached final hearing between July 2010 and February 2012 concerned Immigration and Asylum matters, with Immigration only cases accounting for 16% of the cases reaching final hearing during that period (Bondy, Platt and Sunkin, 2015:12). The same research reports that 38% of the immigration only cases that reached final hearing were allowed (Bondy, Platt and Sunkin, 2015: 15).

Certain types of immigration law matters with the potential for law reform affect individuals who may have the ability to pay something towards the cost of advice and representation. For example, recent changes to legislation have marginalized the interests of migrants by removing the right to appeal against removal, forcing individuals who believe they have a valid basis for remaining in the UK to seek judicial review. The Immigration Act 2014 introduced new removal powers, repealing and replacing section 10 of the 1999 Act. The new removal powers: "completely abolished the historic distinction between over stayers and illegal entrants and removed the need for separate removal directions to enforce removal" (Yeo, 2014:6). The elimination of the requirement to issue removal directions means that any person "who requires leave to enter or remain in the UK but does not have it" ((The Immigration Act 2014, s10 (1)) can be removed without advance warning and without the right to appeal under the authority of the secretary of state or an immigration officer.

A bizarre quirk of this legislation is that the Act withdraws the right to appeal against removal from lawful migrants who contend that they do satisfy the terms of the immigration rules. Overstayers and illegal entrants will have a right of appeal, as they will be relying on human rights applications and grounds. This change represents an expansion in the discretionary power of the Home Office and immigration officials and reduces the opportunities for their decision making to be scrutinized- as such it can be argued that the introduction of the Immigration Act 2014 constitutes a direct attack on the interests of migrants through intentionally creating a: "hostile environment for immigrants" (Thomas, 2015:674) as well as a threat to the rule of law. In respect of the now withdrawn appeal rights, empirical

data analysed by Thomas (2015:675) demonstrated that, in spite of their considerable advantages in terms of resources and repeat-player status, over the period 2007-2014 the government lost 34% of appeals based on entry clearance grounds, 42% of appeals based on family visitor grounds and 47% of appeals based on managed migration grounds. This would seem to indicate serious flaws in the application of the law by government, and the removal of the appeal process threatens the transparency of decision-making in this area of law.

The only remaining course of action for an individual who believes that they are likely to be removed under this power, either because they are detained awaiting removal or have happened to receive notice, is to apply for: "judicial review and a declaration that he or she does in fact possess leave or to secure an injunction while making out some other basis for remaining in the UK, such as on human rights or international protection grounds" (Yeo, 2014:7). As such, it has been argued that: "much of the appeal caseload may simply re-emerge as judicial reviews… increasing resort to judicial review" (Thomas, 2015: 677). Moffat and Thomas (2014) argue that the cumulative effect of changes to legal aid for immigration advice and representation under LASPO, reforms to payment for judicial review under Civil Legal Aid (Remuneration) (Amendment) (No.3) Regulations 2014 (SI 2014/607) and the introduction of the Criminal Justice and Courts Bill 2014 will: "create a chilling effect, discouraging representatives from taking all but the most certain cases, this in turn will generate an increase in litigants in person and/or migrants will be placed at a higher risk of exploitation as they seek to secure private funding for legal representation, and the overall effect will be to insulate bad decision-making within the Home Office" (Moffat and Thomas, 2014:250). These circumstances, combined with the findings of empirical research which indicate that the majority of appellants under the now withdrawn rights of appeal were business people, students and family members (Thomas, 2015:675) may serve as justification for charging for advice in this area of law. If the assumption holds that those individuals who previously appealed under the now withdrawn rights are similar in characteristics and means to those who will now wish to challenge removal through judicial review, this group may be able pay something towards the cost of immigration advice and representation. As such, charging for the provision of high quality advice and representation at affordable rates in respect of judicial review cases, may be seen as

a practical solution enabling Law Centres to both advance their mission and purpose and target their services at groups whose interests are undermined by the existing legal framework, exposing the failings of the extant legal framework. Such an approach however, would require the cherry-picking of cases, and would require investment in staff to create sufficient capacity to service this need at scale.

5.4.1.3 Charging for advice and instrumental value 1.3 Law Centres identify and unite groups of individuals around the experience of particular justiciable issues and use these groups as vehicles for engaging in law reform activities

Charging for advice may provide the flexibility to bring together groups around a common interest or need that other sources of income cannot. Under a charging model, Law Centres can, in theory, set their own criteria for the clients they choose to represent, including setting criteria to enable them to build specialisms in particular types of cases. Most sources of income outside of Legal Aid currently utilized by Law Centres (funding from Local Authorities, or from charitable funders) are restricted, in the sense that they are tied to the performance of particular services, the provision of services to clients on the basis of geography, or both. This can restrict Law Centres from allocating their resources on the basis of greatest need, or building a body of casework dealing with clients with similar issues as they are restricted in the types of clients they can offer assistance to. This excerpt from an interview conducted at ABLC elucidates this point:

"Well we're limited by our funding, so we've got core funding from Bristol, our legal aid contracts are procurement area based so some of them are South West [00:36:14] whereas the upper tier tribunal is for South West and Wales. It's unlikely they'll actually travel here, they'd either use an agent or they'd do it by telephone or email, and if people ring up and say "I'm in Plymouth can you help me" we say "no" because we haven't got any funding for it… North Somerset, who we're not funded for we have people from BANES (Bath and North-East Somerset) who we're not funded for…so sometimes they do actually turn up and say "we're from Catesham" which is BANES and we say: "we can't help you." I mean for things like Community Care we have enquiries from Swindon and Oxford occasionally because [00:37:05] there isn't that many providers there with a legal aid contract"

Interview with ABLC CM

Those Law Centres based in geographical areas where there is a paucity of other services feel the frustration of these restrictions more acutely, as they are forced to turn away needy clients or carry out work pro-bono. For ABLC, who operate in the South West of England, an area with very few remaining providers of legal advice and representation in immigration law, this issue has become particularly stark. Developing a charging model has the potential to create the flexibility to allow the Law Centre to undertake remunerated work for clients that they are currently unable to help. Whether the model of individualised advice and representation developed through the charging pilot creates the internal capacity (and willingness amongst clients) to build communities of interest around particular issues, with the view to undertaking law reform activities remains to be seen.

5.4.2 Charging for advice and Terminal Value 2: Law Centres deliver their services to those in greatest need

In Chapter 3, it is argued that in targeting their services at specific individuals or groups, Law Centres are guided by a twofold definition of need: individuals or groups are needy to the extent that either: i) the extant legal framework does not serve their interests or extend to their protection (need type 1) or, ii.) the extant legal framework does in theory extend to their interests and/or protection but they are ill-equipped or vulnerable in the context of being able to successfully access their rights under the law as it stands (need type 2). Chapter 4 proposes a refined definition of vulnerability, in recognition of the fact that whilst Law Centres and indeed the legal aid scheme historically relied on poverty as a proxy for vulnerability, the class of individuals for whom legal advice and representation is unaffordable is now so wide that a principled focus is required in order to ensure that Law Centres deliver on this value. In the context of individuals on low incomes who have migrated to this country, it can be argued both that i) the law does not adequately serve their interests and extend to their protection and ii.) where the legal framework does in theory offer migrants rights and protection these are increasingly difficult to access.

5.4.2.1 Charging for advice and meeting need type 1: those whose interests are not served by the extant legal framework

As discussed above at 5.4.1.1, it is relatively uncontroversial to state that UK law does not adequately serve or protect the interests of migrants, particularly those on low incomes, who, whilst on low incomes, may be able to contribute something towards the cost of advice and representation. In substantive areas of immigration law, Sirreyeh (2016) argues that new immigration rules, such as the 2012 Family Migration Rules and the Immigration Act 2014 represent an: "explicit focus on class and income" (Sirriyeh 2016:6) to the detriment of lower income, lower skilled migrants. As such, there is a principled, need- based argument for providing affordable immigration advice for individuals falling into this category.

Research conducted by The Migration Observatory at the University of Oxford has highlighted the rapid increase both in the volume of immigration offences defined in law and their enforcement. A report by Alvierti (2013) identified that: "since 1999 British immigration law has added 84 new types of immigration offences, compared with only 70 that were introduced between 1905 and 1998" (Alvierti, 2013:2). Where prosecutions do occur and individuals are found guilty the majority are for three crimes: assisting unlawful immigration to a member state, seeking leave to enter or remain or postponement of revocation by deception and being unable to produce an immigration document at a leave or asylum interview (Alvierti, 2013:6). The increase in criminal prosecutions for immigration offences has been far exceeded by the number of administrative actions pursued against migrants in the form of enforced removals and refusals of entry at ports- Alvierti (2013:7) reports that in 2011, 30,763 people were subject to these actions. The proliferation of law in this area, combined with its inherent instability- a function of the political forces in play in this arena (Thomas, 2015:676) renders entitlements under immigration law difficult to discern, the following excerpt from an interview with an immigration caseworker at ABLC highlights these issues.

You've got the rules you've got the legislation you've got the policy you've got the guidance and the you've got all the case law on top which is constantly changing and effects, I don't know I think it changes more and subtler changes than a lot of other areas of law, it's just constantly evolving, and

if you just followed the rules you might think you're not going to qualify for something but if you look at the interpretation in case law you might, and you have to make the argument persuasively because the Home Office caseworkers aren't trained in the law, they are trained to follow the guidance and if you want to make an argument that is slightly outside the guidance or the rules but follows case law you're going to have to lay that out very quickly or you haven't got any hope at all. You have to teach them all the time "This is how you should be doing this, this is how it fits in" and this is how they correspond to each other. So yeah, on your own you're pretty stuck."

Interview with ABLC IA

As discussed above, it has been observed that frequent rule changes are brought about with the express aim of changing: "the rules of the game" (Thomas, 2015:676) in favour of the government, to facilitate reductions in levels of net migration. Historic data on immigration litigation indicates significant levels of success on the part of appellants, indicating deficiencies in the application of existing law (Thomas, 2015:676). Providing low cost, expert immigration advice and representation may increase the likelihood of the law being applied in a manner that better serves the interests of migrants.

5.4.2.2 Charging for advice and meeting need type 2: those who do have rights under the existing framework but are vulnerable in the context of being able to secure them.

The withdrawal of legal aid for immigration law brought about by LASPO exacerbated the vulnerability of migrants in terms of their ability to secure just outcomes in respect of their justiciable problems- both directly, by removing legal advice and representation for the poorest individuals through the introduction of LASPO, and indirectly, by removing a proxy for quality that helped migrants to identify sources of quality advice and representation. Low income migrants with immigration problems may already be considered amongst the most vulnerable according to the vulnerability framework advanced at Chapter 4. The complexity and mutability of immigration law means that low income migrants are at risk of having low levels of legal knowledge, their status as low-income means they are at greater risk of having low levels of social capital, they are more likely than others to have English as a second language and there is an obvious disparity of means and resources between individuals with immigration law problems and their opponent in these matters, the Home Office. As such, there is a principled need-based rationale

for targeting affordable immigration advice and representation at this group. Even within the context of the broader category of low-income migrants, there are certain groups that research indicates may be considered more vulnerable than others: children and young people, individuals with learning difficulties or other cognitive impairments, and individuals with prior negative experience of attempting to resolve their immigration law problems.

5.4.2.2.1 Children and young people

The government's own Equality Impact Assessment, conducted prior to the introduction of LASPO, indicated that children and young people were likely to be disproportionately affected by adverse consequences as a result of the removal of legal aid funding for immigration advice. Successive research reports[29] have identified the absolute number of individuals living with unresolved immigration status in the UK as particularly problematic, with the effects being experienced as particularly pernicious by the children of migrants with irregular status. Young people often only become aware that they do not possess regularized status when they come to apply to University or for employment opportunities (see the work of Just for Kids Law in developing the campaign "Young, gifted and blocked"). Interviewees at ABLC reported seeing increasing numbers of this type of case, as the following interview describes:

"We've got Nigerian clients who were also sponsored over, Zimbabwean clients, who our government went over and paid for them to come here, but their children don't have status, so a lot of those children then will find out later on, when the go to college, University – [that they] can't. [00:04:28] Even things like getting jobs, they can't do it, it's really sad.

And where do they go for help, to sort that out?

Some come here, and some we can take on, but we have limited resources, so it's usually the most desperate."

[29] e.g. Sigona, N. & Hughes, V. [2012] " No way out, No way in: Irregular migrant children and families in the UK" Published by the ESRC Centre on Migration, Policy and Society, University of Oxford; Dorling, K. [2013] "Growing up in a Hostile Environment: The rights of undocumented migrant children in the UK" Report by Coram Children's Legal Centre available at (http://www.childrenslegalcentre.com/userfiles/Hostile_Environment_Full_Report_Final.pdf Accessed 29 June 2015) and most recently Bawdon, F. [2014]" Chasing Status: The 'Surprised Brits' who find they are living with irregular immigration status" Published by Legal Action Group.

Whilst it is impossible to accurately quantify the number of individuals living in the UK with irregular immigration status, the most recent figures available estimate the irregular resident population across the UK at the end of 2007 at 618,000 people, with a range of 417,000- 863,000 (Gordon. I et al., 2009: 6). Irregular immigration impacts detrimentally on individuals in leaving them unable to access benefits, housing and healthcare. A study by COMPAS, an immigration focussed think tank based at the University of Oxford, estimated that there are up to 120,000 children in the UK with unresolved status, representing 0.9% of the UK's total population of under-eighteens (Sigona, 2012: 22). Leading children's rights charity Coram Children's Legal Centre, giving evidence before the Justice Select Committee in 2015, stated that children who have been trafficked or otherwise separated from their families were particularly negatively impacted by the changes to the Legal Aid scheme. For these young people, a representative from Coram stated: "*representing themselves is often not possible due to [their] young age, language barriers and significant vulnerabilities, and the extreme complexity of immigration law and the Immigration Rules.*" (Justice Select Committee, 2015: 23) The committee further noted that Coram Children's Legal Centre: "*experienced significant frustration in this area because, while the Centre could identify the legal issues in a case, the child involved was then unable to act on that advice."* (Justice Select Committee, 2015:23). Early evidence from the charging pilot indicated that the local authority was willing to pay ABLC to resolve immigration issues for young people under their care- indicating that this might be a market for affordable legal services.

5.4.2.2.2 Individuals with learning disability

The government's Equality and Impact Assessment also cited migrants with learning disabilities or those experiencing mental health issues as particularly vulnerable in the context of the cuts to legal aid. The Exceptional Cases Funding scheme was set up by the government to act as a safety net, in order to enable vulnerable individuals to access legal aid in exceptional circumstances where individuals' human rights were at risk. Evidence indicated that this scheme was not operating as effectively as it should be, with far fewer individuals than predicted accessing legal advice and representation through this scheme. A case brought by

Public Law Project in 2014, *Gudanaviciene and ors v Director of Legal Aid Casework and the Lord Chancellor* [*2014] Civ 1622 (Admin)* established that the guidance being followed by decision makers was unlawfully restrictive. In the case of "IS", the Official Solicitor sought exceptional funding to access specialist immigration advice for a male Nigerian client (IS) who suffered from both physical and learning disabilities. IS was unaware of the nature of his own immigration status, and without being able to access support to regularize it he was unable to access community care support from his local authority. His disabilities were so severe that without community care support he was cognitively incapable of looking after himself, and had been surviving through a combination of begging and small hand-outs given to him by a relative. The Legal Aid Agency only agreed to provide funding for IS to be represented once they had been defeated in the High Court. The later systemic challenge (*I.S. (by his litigation friend the Official Solicitor) v Director of Legal Aid Casework and the Lord Chancellor [2015] EWHC 1965 (Admin))* established that the Exceptional Case Funding scheme was operating unlawfully as it gave rise to an unacceptable risk that an individual would not obtain funding where a failure to do so would breach their rights under the European Convention on Human Rights or under EU law. However, in May 2016, the Court of Appeal overturned the decision in IS (*The Director of Legal Aid Casework, The Lord Chancellor v IS (a protected party, by his litigation friend the Official Solicitor [2016] EWCA Civ 464; W.L.R 4733 (CA (Civ Div))* finding that the criteria adopted by the Exceptional Cases Funding Scheme were lawful. In the period July-September 2016, 479 applications for Exception Cases Funding were received, the highest single quarter since the scheme began (MoJ, 2016:32). Of these, 255 were made in relation to immigration, making immigration the most requested category of law. 147 of the 255 applications received were granted by the Legal Aid Agency (MoJ, 2016:35). Despite the increase in applications, numbers are still well below those predicted pre LASPO.

5.4.2.2.3 Individuals with prior negative experience of attempting to resolve their immigration law problems

Failed claims and incorrectly submitted applications remain on an individual's immigration history and have the potential to prejudice future claims for status. As such, individuals who have previously attempted to handle their case alone unsuccessfully may be considered especially vulnerable in the context of being able

to secure their legal entitlements. The following excerpt from an interview with a Law Centre worker highlights this issue:

"*People often come in after they've messed something up, so an application's been refused or an appeal. We've had a lot of people that have gone to appeal on their own and because they were unrepresented failed to do something that has had serious consequences. We had someone recently, it was a family visit visa, they failed at any point in the application or the appeal to mention Article 8 and therefore couldn't appeal upwards even though they would have had a chance at the upper tribunal but their reconsideration request was refused because they'd never raised Article 8, of course, they didn't know to because they were unrepresented.*

Interview with ABLC IA

The impact of failed claims on the prospects of individuals who, if properly advised, may have had a stronger case was reiterated in the following interview with a different immigration adviser working at ABLC:

"…There are so many types of compassionate cases that just people don't fit within these rules…people's lives don't fit into these rules, and if they don't they're out…I've had the most educated type of people who, who can find it very difficult to fill out forms…so just preparing a whole application, the types of evidence you need and the quality of evidence that you need, that advice from a solicitor they just don't get…We just had a lady, who has come in today and she's tried to make so many applications on her own, been refused several times, with the very little money that she has pretty much gone, she's got a disabled child, another child: we're trying to help her, it's a domestic violence case but she was trying to get leave some other way as well she doesn't fit in the rules which would mean that she would get Legal Aid funding, but the children are the ones who are having to, to hack this, they're acting like adults already.

Interview with ABLC ITS

The client in the above example would originally have been able to afford to pay for immigration advice, but chose to go it alone to save money. By the time she reached the Law Centre she had spent the money she had on the fees entailed in submitting multiple failed claims. As such, the ability to provide quality immigration advice that is affordable to low income migrants before they submit claims may be considered imperative. Reaching vulnerable migrants earlier is also critical, as without lawful immigration status migrants are not entitled to work, claim housing or other

benefits, leaving them reliant on support from friends and voluntary organisations, or forced to work illegally, placing them at greater risk of exploitation and creating a negative spiral in vulnerability. Prior to LASPO's introduction, organisations with experience of working with migrants warned that cuts to Legal Aid could result in vulnerable people being exploited as they attempted to secure funds to pay for advice, this excerpt from a publication by the Immigration Law Practitioners Association typifies the concerns expressed: *[i]t is highly likely that the effect of legal aid cuts will not be wholly or immediately visible. It is not uncommon for migrants, their families or friends, to now seek to pay for immigration advice and representation in circumstances where legal aid ought to be available. The risk is that this continues or increases with the withdrawal of legal aid; and others may be lured or forced into dangerous or exploitative situations in seeking to secure money to pay for advice.*[30] Evidence provided to the Justice Select Committee established to examine the impact of changes to legal aid introduced by LASPO confirms that the concerns voiced prior to the cuts have materialized. Organisations have reported individuals putting themselves at great personal risk in order to access advice in relation to their immigration status. The organization Bail for Immigration Detainees reported that: *"a lawyer who BID regularly refers cases to has informed BID that she has represented destitute women who are working in prostitution in order to pay legal fees."* (Justice Select Committee: 2015, 22).

As stated above, the complexity of immigration law means that migrants are more likely to have low levels of correct legal knowledge, and placing them in a poor position to evaluate whether advice they receive is of high quality. The criteria for applying for a Legal Aid contract prior to LASPO mandated that firms and not for profits demonstrate the quality of their work- resulting in a quality mark. The possession or absence of this quality mark could help vulnerable migrants identify whether the advice they were receiving was from a reputable provider. In the absence of Legal Aid funded providers of immigration advice, vulnerable migrants are at risk of exploitation by unscrupulous advisers. An interview with an expert consultant tasked with evaluating alternative models for the provision of legal advice in the wake of LASPO argued that the risk of exploitation of vulnerable migrants by low quality or unqualified advisers presented a compelling moral case for the establishment of charging models:

"If you're providing immigration services in let's say Rochdale or Manchester you will almost certainly have lots and lots and of cowboys providing that very low quality advice at a very high price, so it helps the community first and foremost. Secondly, if done properly it aids the viability of the Law Centre and backs up the previous argument of having a Law Centre is better than having no Law Centre and three it's, it reflects the times that we live in, i.e. that we've elected a government that doesn't want to spend money on public services and there are going to be further cuts, and therefore if you want to survive you have to adapt and change like people do in the private sector."

Interview with DG

Throughout the fieldwork undertaken, staff at ABLC reiterated concerns about the cumulative impact of the withdrawal of legal aid for immigration advice and the closure of organisations expert in providing immigration advice on the quality of services being provided to vulnerable, undocumented individuals. The following interview excerpt demonstrates this issue:

Sometimes with fresh claims, if, depending on what the client's been told about the fresh claim, you know some clients don't have fresh claims but they need to do something, they've been told by the voluntary sector agencies that the only way you're going to get housing you know some shelter and some money is if you put in a fresh claim… And they come with no evidence and expect you to produce a fresh claim. And we can't do it. But some firms will do it because you can claim it under legal aid and a claim, a "nonsense claim" as we call them goes in, and then obviously it's refused, and the client's back in the situation but with a damaged immigration history because they've put in a failed fresh claim. So that's not the Home Office's fault, that's the vulnerability of the client, that's probably society's fault really for not looking after people properly that's led them to be homeless and so desperate that they'll say anything just to get a... I've had a, one of my clients, you were saying about bad representation, his claim was based on a religious issue, he was told "but political issues work in your country not religious issues" so he put in a political claim and obviously it was refused. And then he came to me to say "that's not my issue, it's religious, not political…I helped him, you know, explained to him what sort of evidence he would need to show that it's religious, rather than "here's my baptism certificate" it's not enough you know you need this lever arch folder full of evidence and then we can submit it. He was very, very surprised because

his previous rep had told him: "no, no what you should do is put in a political issue, say you want political asylum, that's how you get asylum for Iran". Obviously, not. But in the meantime it's [what's] now on his record, is a failed application.

Interview with ABLC

IA

All of the above points to a compelling need-based case for establishing a model facilitating the provision of high quality, affordable, immigration advice. Migrants on low incomes, with low levels of skills and English language proficiency and complex cases are unlikely to be served by the private sector, due to the marginal profits working for this group would entail. Successive commentators have argued that the cumulative impact of changes to the law in respect of immigration, legal aid and judicial review will result in "cherry picking" (Moffat and Thomas, 2014:251) of the easiest cases, at the expense of the poorest and most vulnerable migrants. Providing a mechanism whereby this group can access expert, low-cost legal advice therefore, seems intuitively congruent with the aim of Law Centres to target legal services at underserved groups. However, as stated above, there is a pressing question as to whether this focus would enable Law Centres to run a charging arm that is successful in terms of generating a profit for the Law Centre. It should be remembered that the original purpose of adopting this strategy was to generate income for the Law Centre, and in doing so contribute to ameliorating the impact of LASPO and create unrestricted funds to support the other activities of the Law Centre. In commenting on a strategy of targeting services at those on very low incomes in the context of a charging pilot, the sector expert consultant who was interviewed stated:

"…If your aim, was to develop a sustainable source of income, unrestricted funds which they could use for other areas…if that's your aim, why would you go for, given that you have the expertise, why would you go for a market that can only ever afford to pay marginal fees where you're still going to have to do a lot of work because for a lot of them, particularly for immigration, there's a lot of vulnerability in the client group, why not go towards mid income level?...To restrict services to that degree, is not going to work… this just comes back to fundamental problem, that people are…guided by their political views or their cultural views…and that just doesn't work with business."

Interview with DG

One danger with attempting to combine the aim of meeting the unmet demand created by legal aid with generating income for the Law Centre, may be that Law Centres who opt to charge for advice end up working on cases where the profit margins per case are low. As such, they may need to take on large caseloads in order to generate the level of income necessary to break even, let alone make a profit that can be invested back into the Law Centre to support the provision of services that are free at the point of delivery. This danger is arguably particularly pronounced where Law Centres are attempting to charge under their existing corporate identity, and the fee paying work is being carried out by Law Centre staff who are attempting to balance this aspect of their role with their duties to non-fee paying clients. In this environment, it is easy for the fee paying work to be "squeezed out" by time pressures, or for staff to feel conflicted about how best to prioritise competing aspects of their work, as this interview excerpt demonstrates:

"*The demand is there, I've got previous clients, from [previous employer], who need extra help now, asking if I'll help them, help their friends, from Birmingham, even from Jamaica, or Leeds, but I just have to say I can't, I'm really sorry guys but I can't, on a daily basis we're getting enquiries through the internet accessible scheme asking can we help all these people and can we give advice, we can't cover that, there's not enough resources in our team to be able to respond to all of those. We can give generic advice as in, see a local solicitor, please make an appointment, yes we may be able to assist you privately but we can't respond by email to every single enquiry. We get in about 30 per week, 40 per week, even people saying, "I can pay you, please can you help?" At the moment we can't take them on so my caseload should be about sixty for the law centre and I'm on about one hundred and thirty."*

Interview with ABLC ITL

Given the small scale of the pilot, and low number of cases undertaken by ABLC staff, it is too early to conclude definitively whether there is an inherent and insoluble conflict between using charging for advice to generate funding at scale and designing a charging arm in such a manner that it supports, rather than detracts from the Law Centre value of designing services around vulnerability. However, the decision to discontinue the pilot in favour of setting up a separate social enterprise as of 2016 may provide a partial clue as to the conclusion reached by ABLC.

5.4.3 Charging for advice and Terminal Value 3: Law Centres are staffed by specialist, expert legal professionals

One impact of LASPO repeatedly referenced during the fieldwork for this thesis was the likely implications of the cuts to legal aid for the retention of legally expert staff in the sector. In the specific case of immigration law, many in the sector expressed concerns prior to the introduction of LAPSO that the removal of legal aid for immigration law would lead to a reduction in the availability of specialist advice in the related area of asylum law, where legal aid remains available.

There is considerable interaction between asylum and immigration law. One impact of the cuts to legal aid for immigration has been to render the retention of asylum law services commercially unviable for many firms who previously specialised in this area of law. Legal Aid contracts for the provision of asylum law advice and representation are small and difficult to run in a profitable manner. Firms have reported that asylum contracts are insufficient to support the retention of staff with expertise in this area of law now that funding for immigration advice and representation is no longer available. Many of those with expertise in asylum law were those individuals who had expertise in immigration law, and as such the loss of these individuals from the sector has created a dearth of individuals with expertise in immigration advice. This issue was discussed in the Justice Select Committee. In giving evidence to the Committee, the Civil Justice Council stated that: " we understand some of those with contracts are not using these to the full, as the contract is hard to run, and time spent interviewing potential clients who turn out not to be in scope is not funded." (Justice Select Committee, 2015:31). In addition, the Immigration Law Practitioners Association stated that it had become increasingly difficult to find solicitors willing to take on legal aid funded cases that require specialist asylum and immigration advice (Justice Select Committee, 2015: 31). The net effect of the removal of legal aid for immigration issues combined with the nature of the contracts provided for asylum advice is likely to result in firms moving away from the provision of services in these areas of law, resulting in the loss of many years of expertise from the sector.

5.4.3.1 Charging for advice and the ability to recruit, develop and retain staff with specialist expertise in the areas of law most relevant to their clients

In the context of the position outlined above, the prospect of developing a charging arm for immigration advice and representation proved intuitively attractive from the point of view of enabling Law Centres to recruit, develop and retain staff with expertise in both immigration and asylum law. In following this model, Law Centres were following a model prevalent in private practice. The following excerpt from an interview with a senior immigration solicitor at ABLC highlights this point:

Speaking about my previous colleagues who I used to work with in my previous firm, a lot of them work for [private practice firm] who are the biggest Legal Aid law firm, but they also do a hell of a lot of private work, and that basically subsidises their legal aid work, so even if you get the clients in through legal aid and your reputation is good then the private clients will come to you, if you win cases"

Interview with ABLC ITL

In addition, enabling lawyers to continue to work on immigration cases was felt to be critical to supporting Law Centre staff to retain their expertise in immigration law. Relational expertise was highlighted as particularly important in this area of law. As discussed in Chapter 4 above, relational expertise relates to knowing the how to navigate legal systems and processes, and is intimately linked to repeat player status. In the context of rapidly changing policies and systems, it is vital that immigration lawyers continue to work on cases, in order that this expertise is not lost. The following interview excerpts illustrate this point:

"Immigration Law changes all the time, and now it's become so complex: looking at the rules, the guidance, the types of evidence that you need, and the websites changed as well which doesn't really help… when clients come and ask you very, very complex matters you're dealing with the factual complexity of their history and on top of that you're dealing with changes in the rules all the time, and what's challenging is you're looking at a cross-section of so many areas: EA Law, we're looking at the Immigration Rules, Asylum, the family sides of the rules. It's huge and each area is huge in itself. Just keeping on top of it all and being able to provide the quality advice that you want to at a drop in is, is tremendous"

Interview with ABLC ITS

"(Expertise is) Completely vital, you can't do it without it, you just can't… particularly in the drop in because people can come in with any question, and it's a constant case of looking things up

and finding the correct information, and that's when you actually know what you're doing- if you don't know what you're looking for you don't know what you're missing [00:11:19]… Although everything in theory is publically available, it's almost impossible to find things, I mean really really difficult and people don't necessarily know what's there, so they might find the application form but they don't even think to look for guidance on that form, or you know they follow the immigration rules to bring in a spouse but they don't look at the financial evidential rules in the appendix, so if you don't really know what you're doing, and when it comes to things like European Law you think it's really quite straightforward but there are quite a few odd exceptions that are in there that people don't know about"

Interview with ABLC IA

A further perceived advantage of developing an income stream through charging for advice, was the potential it offered to provide a sustainable and predictable source of income over the medium to long term. This income, it was argued, could be used to plan and offer longer-term security to staff, helping to retain expertise. Law Centres, in common with many not for profit agencies who rely on a combination of public and grant funding to provide their services, often have difficulties in offering longer-term security to their employees. The following quote illustrates this point:

"One of our problems is that it's impossible to plan, and all voluntary sector organisations will say that, so this is one thing that we can do to hopefully have a long term source of income of some description."

Interview with ABLC CE

Without being able to plan for the future, it is difficult to retain expertise, provide training for staff to further their skills, and recruit new lawyers into the sector and offer career progression to senior lawyers. This excerpt from an interview with a Law Centre solicitor highlights this issue:

"The problem is, the wages don't go up, so you're kind of stuck, and in private practice there's lots of development opportunities, or you can move on, whereas here there is nothing, and that is an issue, trying to keep staff in the Law Centre, because the pay's not good."

Interview with ABLC ITL

Additionally, the way in which legal education is currently structured means that without the ability to retain expert staff within organisations, the prospects for training the expert lawyers of the future are limited, as experienced lawyers are needed to trainee lawyers to enable them to complete their training contract. As such, the retention of expert staff is intimately connected with the ability to develop and train new staff. The prospect of a sustainable income, generated through charging for advice is therefore doubly attracting, in that it offers Law Centres the opportunity to access unrestricted income to invest in training and recruitment of new solicitors, and maintain sufficient experienced staff to provide that training.

5.4.3.1.1 Charging for advice- a threat to staff recruitment and retention?

Charging for advice arguably necessitates a shift in working culture, with emphasis placed on meeting targets, and generating profits, as in private practice. This raises a question as to whether changing the working culture might change the way Law Centre workers understand their role, affecting their job satisfaction and undermining the attractiveness of the Law Centre as an employer. How would the culture of working for a fee charging Law Centre, differ from private practice? When asked about their reasons for choosing to pursue a career at the Law Centre, the following responses from staff at ABLC typify those provided:

I spent 10 years in private practice and got a bit disillusioned with that, and wanted to work in the voluntary sector particularly around the delivery of social justice which I didn't really feel private practice was doing anymore and that led me quite naturally to a job at the Law Centre.

Interview with ABLC CE

"I need just to be able to have clients again, rather than just worrying about money all the time… the fact that we get funded by Bristol City Council… means we can take on cases that would not be commercially viable at all. So for example here we can take on clients who are exceptionally vulnerable, who will need extra support, in addition to just providing instruction, a witness statement might take 4-5, 6 hours, they'd need to come back for several days, in a law firm those are the type of clients that would be sent on, someone else can deal with them, because you just don't have the time, so that's a good thing."

Interview with ABLC ITL

Various studies have been conducted into the motivations, ethics and commitments of public sector professionals (LeGrand, 2003; Hugman, 2005) and Law Centre workers in particular (Mayo, 2014). This research typically identifies the incursion of private sector based strategies for improving productivity (such as establishing a system of targets) as alienating and undermining to the motivations of those who work in the public service professions (Mayo, 2014:113). In Mayo's 2014 study, Law Centre workers are reported as being motivated to join Law Centres as a result of disillusionment with practising law in the private sector (Mayo, 2014: 119). According to trait theories, professions are characterised and distinguished from other forms of occupation by: "the monopolisation of particular forms of expertise, the erection of social boundaries around themselves through entrance qualifications and extended training, and an ideology of public service and altruism- that is, they claim to serve higher goals than mere economic self interest" (Abbott et al, 1998: 3). In Mayo's study, it was found that Law Centre workers were particularly motivated by the latter of these traits, with one interviewee commenting that he would feel "ashamed" to enter private practice, as working in a Law Centre, with its particular public service ethos, had become part of his "self-image" (Mayo, 2014:115). As such, there is a risk that the move to charge for advice, and the attendant processes which may be required to facilitate the success of this move (such as working to targets, limiting time spent per client in order to deliver a profitable service) may alienate existing staff, and diminish their enjoyment of and commitment to their role. Furthermore, might the knowledge that Law Centres require their employees to charge a subset of clients for advice reduce their appeal as a prospective employer? It is an area of concern that should be monitored when and if more Law Centres move to charging for their services.

A further threat to staff retention and morale is also posed by the prospect of moving to a system where some staff are fee-earning whilst others are not. In this context, a further issue that bears consideration when developing a charging model relates to the impact of any redistribution or new investment of resources on inter-departmental dynamics within the Law Centre. If only one department is to be involved in charging for services, and they require additional resources in order to set up and deliver the model, it is essential that all departments in the Law Centre

agree with both the principle of charging and any re-alignment of resources that is necessary in order to ensure that the charging model is appropriately supported. The following excerpt from an interview with a senior management consultant and sector expert involved in supporting Law Centres to develop charging models expands on this theme:

If it was private practice what they would do, and Law Centres don't usually do this but private practice do [00:10:01] you'd do a cost allocation exercise in order for you to have a separate internal profit and loss account for each department …you would expect them to understand and expect that some categories of law are more viable than others and that they're there for the general good of the community so I would probably, if I were in the management team there, want to discuss that at a team meeting or an away type scenario because you can't have two different teams or attitudes you've got to be one cohesive unit and you've got to decide as a team what it is that you're there to do.

Interview with DG

In the absence of consensus amongst all stakeholders within the Law Centre, tensions may arise between those departments involved in generating income for the Law Centre and those departments whose work is funded through other income streams, particularly if it appears that scarce resources are being diverted towards the fee-charging department in the initial phase. Careful management of the transition to fee charging is therefore essential in order to avoid un-necessary conflict between departments that may prove damaging to staff morale. In the case of ABLC, there was some early evidence of conflict between the immigration law team and other departments, as the immigration team felt that they were "carrying" non-fee earning departments.

Given these challenges, Law Centres who wish to charge for advice may prefer to set up a separate entity and hire new staff to deliver services to fee paying clients. In this manner, a charging arm could operate like a charity shop, where profits from the sale of goods unrelated to the charity's primary purpose are used to generate income to support the charity's aims.

The drawback to this model, where new staff are brought in to undertake fee paying work, is that this strategy potentially limits the ability of the charging model to meet

a further aim, that of retaining expertise in areas of law no longer funded by legal aid within the Law Centre. Whilst advice and representation in asylum matters is still funded by legal aid, immigration is not, in spite of the fact that many individuals with asylum claims may also have related issues that fall under the purview of immigration law, and a knowledge of the law across both areas may be seen to be critical to delivering a high quality of service in asylum matters. If new staff are hired to undertake fee paying immigration work, and clients with immigration issues are referred from Law Centre staff to the fee charging arm, could this result in the de-skilling of Law Centre staff? In deciding whether to use existing staff to carry out the fee paying services this concern should be balanced with the potential for using existing staff to do both to resulting in staff feeling conflicted and overstretched. Instituting staff secondments between the charging arm and the law centre may provide a means of mitigating the threat of de-skilling but at the time of writing there has been no evaluation of the impact of such arrangements, if and where they exist.

5.4.4 Charging for advice and Terminal Value 4: Law Centres are empathic allies of their clients

One of the biggest concerns raised by the prospect of charging for advice has been the perceived conflict between this strategy and the distinctive manner in which law centres aspire to work with their clients. A recent research study conduced by Mayo et al. (2014) surveyed Law Centre staff, management committee members and trustees to try to elucidate the precise qualities that epitomise the distinctive ethos of law centre working. Many of those interviewed highlighted the way in which their personal politics influenced their decision to work for a Law Centre, with interviewees citing a personal commitment to socialism, equality, anti-racism and social justice, amongst other motivating beliefs (Mayo, 2014:41). Similarly emphasized, was an understanding of the decision to undertake a career within a law centre as a "vocation" (Mayo 2014:41). Law Centres were characterized as working with clients who were "vulnerable" (Mayo, 2014:43), had overlapping needs, were unable to secure help elsewhere (Mayo 2014:41) and whose claims were often for amounts that private firms would consider trivial. The manner in which Law Centre workers spoke about their approach to clients, emphasized patience, dealing with the client in a holistic manner, and providing a quality service that was expressly

client focused (Mayo, 2014:43). The history of ABLC is deeply rooted in this tradition of working with clients in a holistic and emphatically partisan manner.

Avon and Bristol Law Centre was founded in 1984, when the Bristol Resource Centre changed its name to Avon and Bristol Community Law Centre. It was run as a collective, with full parity pay and a flat management structure, up until 2012. The chairperson's introduction to the first ever annual report prepared by Avon and Bristol Community Law Centre, emphasized the distinctive features of the Law Centre. Notably, it is stated in this document that: "there has always been strong resistance within the Centre to using the majority of staff time for individual case work" (Edwards, 1984:2). The Law Centres values, as expressed in this document, are expressly political, with "fighting racism and sexism" (Edwards, 1984:2) identified as priorities for the Centres work. There is a strong emphasis on community development and campaigning work: "…the Centre recognizes the importance of such work, recognizes the gaps in provision for such groupings of people. A Law Centre is not a community solicitors office, it should be a resource for the community…The narrow attitudes of the legal profession, its inaccessibility to those most in need, has no place in a Law Centre." (Edwards, 1984:2). In interviews with the managers at ABLC, it was emphasized that the recent transition away from a collective model of working, and associated restructuring of the organisation had been challenging, with one staff member stating that:

" There was parity pay, so everybody in the organisation was paid the same amount of money regardless of what they did from the Director to the Cleaner. All decision making was joint, collective decision making so I guess it chugged a little bit along like an old steam train and nothing much happened and I guess the other thing that happened was that there wasn't a lot of ownership or responsibility for things so getting things to happen was difficult. So this is where we are now, it isn't without it's problem's because we still have a number of people who were part of the collective who have had to move to a new way of thinking…There are quite a lot of new people [00:03:16] too because as a result of the restructure there were a number of redundancies so about half of the staff have been here less than eighteen months so it's been quite an interesting couple of years really for the Law Centre" [00:03:29]

Interview with ABLC CM

Interviews with management repeatedly highlighted the difficulties involved in encouraging Law Centre staff at ABLC to balance the desire to provide the best service possible for clients with the need to ensure that the Centre generated sufficient income from its legal aid and local authority contracts. It was repeatedly emphasised that when staff are particularly client focused, and attempting to work with clients who have complex needs in a holistic manner, it can be easy for the time spent on cases to exceed the amount that the Law Centre is paid for them, as the excerpt below demonstrates:

"We certainly do spend quite a lot of time and certainly more than most private firms because we aren't trying to make a profit, but if we look at our time recording on almost any legal aid case we've always spent more time than we're paid for. Always, and sometimes it's double at least. So there's a lot of challenge just with trying to keep up with everything [00:03:06]"

Interview with ABLC IA

Management at the Law Centre attributed this difficulty in part to the working culture amongst Law Centre staff, and the legacy of an ethos that has historically subordinated financial considerations and instead, privileged providing client centred services:

I'm not sure people generally have a, what's the word I'm looking for, people are really interested in just getting on with the work for the client, and they don't have a business type head on, when you say to them "Could this be a certificate?" they'll often say " Well I suppose so, but can I be bothered, because I can just do the work [anyway]" Because we haven't got that profit motive, so in the past we've just been able to do [that], but I think we have now started to recognise that it's all about cash flow and getting…if we can be paid higher rates for things why are we just carrying on doing them for a fixed fee when we could actually get other funding for it so it's just about being a bit more savvy about that. But I just think that it's cultural, that people haven't, because we offer things for free the whole idea of trying to bring in more money is sort of a little bit of a conflict for people."

Interview with ABLC CM

As with the Unified Contract for legal aid work, generating income through charging for advice using a fixed fee model requires Law Centre staff to adopt new ways of working with clients,. Under a fixed fee scheme, with fees set at levels

designed to be accessible to people on lower incomes, profit can only be generated through handling a large volume of cases, or selecting cases where the complexity of the individual's circumstances is low. For Law Centre workers who are used to and enjoy working with the most vulnerable clients, in a client-centred manner, this transition in approach may prove challenging. The specific context of ABLC, with its recent history of collective management, cultural commitment to working holistically with extremely marginalized and vulnerable clients combined with a lack of commercial focus reported as evident in the working practices of some staff members, might seem to create circumstances that would particularly mitigate against the success of a fee charging pilot. However, the debates raised by the proposition of Law Centres venturing into charging for advice are reflected across the network of Law Centres. This excerpt from an interview with a consultant who has been advising Law Centres on developing sustainable funding models post LASPO, highlights the most commonly expressed concerns amongst Law Centre staff:

"Yes of course, to give you a couple of examples, some staff in Law Centres have said look, this is not what we joined for, we joined to give vulnerable people free advice [00:01:57] at the time that they need that advice, we didn't come here to privately charge vulnerable clients, so that's one cultural objection. I do remember once a couple of years ago when LCN got a lot of Law Centres together and I think we were at, probably Allen and Overy, and it was a time when someone was retiring from Hackney Law Centre, and he was saying "over my dead body, this is just shocking and shameful and helping the government to bring in its cuts agenda", you know if we go down the charging avenue"

Interview with DG

The importance of staffing any charging model with commercially oriented staff is something that the management of ABLC were clearly cognisant of. The management felt that the private sector background of the staff they had in place to run the charging pilot mitigated in favour of the model's success, as the following excerpt demonstrates:

I think that's just about getting the right sort of people to do it and the person that we've got doing it here is from a private practice background so the idea that you've got to make some money this

year is not a wild and crazy idea for her …they have a budget, they have targets and this is one of them, so that's not really a problem for us to be honest [00:06:24]

Interview with ABLC CE

As such, Law Centres wishing to pursue charging for advice as a mechanism for generating unrestricted funds using their existing staff may have to think carefully about whether developing this income stream requires them to fundamentally alter the way in which they have traditionally sought to work with clients, and whether this is a sacrifice worth making.

5.4.5 Charging for advice and Terminal Value 5: The communities in which Law Centres are based and the clients they work with have higher levels of legal knowledge and are better able to secure their rights

Historically, Law Centres have evinced a commitment to their role in delivering legal education as part of providing preventative, community based services. However, reliance on Legal Aid, particularly in the period from 2007 onwards, had depleted the reserves and unrestricted funds of many Law Centres. The introduction of fixed fees (see Chapter 1), and the move to the Unified Contract ushered in a new method of payment that had a detrimental affect on Law Centres' cash flow and reserves, and consequently their capacity to undertake legal education activities. As stated above at Chapter 2, a study of Law Centres in 2014 reported that Law Centres had largely subordinated their legal education function. Mayo observed that many Law Centres have: "shifted away from this because of the pressures of the funding system for legal aid, even if they still espoused this wider role in principle" (Mayo et al 2014:49). A report produced by the Ministry of Justice in 2009[31] highlighted the impact of the introduction of fixed fees on the ability of not for profit legal aid providers to carry out community based activities, such as identifying and publicizing local issues, providing second tier support to other agencies, and carrying out preventative and educational work (MoJ, 2009: 64), stating:

[31] Ministry of Justice, [2009] "Study of Legal Advice at Local Level" accessed at: http://www.justice.gov.uk/publications/docs/legal-advice-local-level.pdf on 15 June 2015

"*The purpose of the fee (and of legal aid) is to help people who are unable to pay privately to deal with legal problems when they arise. On this basis, all the above activities are rightly and properly outwith its scope. Nevertheless, they form an important part of the activities of many of the NfP organisations providing legal advice services, and may provide direct benefits in terms of reducing both social exclusion more generally, and the incidence of legal problems.*" (MoJ, 2009: 64)

Mayo, in her 2014 study stated that legal education was mainly facilitated by separate project funding from charitable sources where it was still being carried out. As such, an issue implicated in the move to charging for advice is the impact that doing so may have on existing sources of funding, specifically income from charitable trusts, local authority grants and fundraising from the general public. Many charitable funders have a policy of only awarding grants to organisations with charitable status. Whilst Law Centres who charge for advice under their existing branding are able to retain their charitable status, there is a concern that if the perception spreads that Law Centres charge individuals for the advice they receive, this may affect funder willingness to consider them for grants. At ABLC, senior management were fully cognizant of this concern, and anxious to monitor the impact on the organisation's reputation as the pilot continued:

I think we still have some concerns, I mean, one of the my biggest concerns is that it will damage our reputation as a charity if people see that we're charging for services and that's something that we really need to keep a close eye on

Interview with ABLC CE

An additional concern expressed was the potential for the charging pilot to add to the confusion about explaining what a law centre is and what it does. As has been discussed in earlier chapters, public recognition of Law Centres, the services they provide and their place in the landscape of advice providers is relatively low, compared with other jurisdictions, such as Canada and Australia (Smith, 1997: 896). Lack of understanding of the work carried out by Law Centres and the way in which their aims may align with other organisations working in the area of poverty alleviation by charitable trusts continues to pose a problem for Law Centres who wish to draw on these funds.

"I think we need to be really clear about what it is that a Law Centre is for and what it does, and I think, there's much, as you say it's complicated to talk about what we do anyway because we do a lot of different things and its all a bit messy and difficult so if you start complicating it more by saying: "well you know, we do some free stuff but we charge for other stuff" I think it just confuses the message even further, in what is already quite a confusing message, so I feel quite strongly that the way we are doing things now, to test the water"

Interview with ABLC CE

As such, unless charging for advice is able to generate profit at a level to fill both the gap left by the withdrawal of legal aid, and create unrestricted funding for legal education, Law Centres who wish to pursue this strategy should consider the impact of this strategy on other sources of funding, and devote both time and resource to managing messaging and relationships with funders.

5.5 Conclusion

Charging for advice in an area of law where legal aid is no longer available seems intuitively appealing as a strategy for responding to the cuts introduced by LASPO- it enables Law Centres to retain expertise in an area of law for which they no longer receive public funding and provide affordable legal advice and representation to an indisputably vulnerable client group. However, designing and delivering a charging model that is congruent with Law Centre values may not generate profit at scale for the Law Centre. Whilst ABLC is distinct from other charging pilots where Law Centres have decided to set up separate legal entities to conduct their fee charging work, many of the lessons from this case study are likely to be applicable to other Law Centres, particularly where they have focussed on delivering services at below market rates to clients whose legal issues are no longer funded through the legal aid scheme. If charging for advice is to succeed as an income generation strategy providing funding at a level necessary to meet the funding shortfall created by LASPO, Law Centres may have to follow the market in the way in which they design their model- "cherry-picking" the less time intensive cases, delivering casework at scale and setting fee levels that enable them to make a profit. Designing services around profit, rather than need, appears to conflict with a number of ideal type Law Centre values, particularly Terminal Value 2: the ability to deliver services to those in greatest need and Terminal Value 4, the ability of Law Centres to

position themselves as empathic allies of their clients. The introduction of charging may also affect the culture within a particular Law Centre and therefore undermine the ability to retain staff (Terminal Value 3). There is a risk that in charging for advice, Law Centres may undermine the mission and values that render them distinctive, although much depends on the way in which this strategy is deployed.

6 CHAPTER 6: MERGING TO SURVIVE: THE EXPERIENCE OF KIRKLEES LAW CENTRE

6.1 Introduction

In the debates prior to the introduction of LASPO in 2011, merging with other advice providers emerged as the government's recommended solution for those not-for-profit advice agencies likely to be impacted by the cuts. Government ministers argued that the cuts to funding introduced by LASPO provided an opportunity to improve efficiency and reduce duplication of services (see HC Deb (2011) 521 col. 142). The then Justice Secretary, Kenneth Clarke stated that: "We are working with the sector… to ensure that the Governments reforms help to improve the efficiency and effectiveness of the advice services available to the public" (HC Deb (2011) 530 col. 994). The Conservative- Lib Dem coalition government's championing of this approach was in keeping with the policies of previous administrations who from the mid-2000s onwards had implemented policies with the aim of reducing spending on Legal Aid by incentivizing efficiency and compelling providers to collaborate (see Chapter 2 above). The continued emphasis on this approach by the coalition government belied the evidence that these policies and their implementation had served to weaken the not for profit advice sector and threaten its ongoing sustainability.

For those Law Centres considering merging as an option in the wake of the cuts, Citizens Advice Bureaux would seem to be an obvious choice as a partner. This chapter presents a case study of a merger between a Law Centre and a CAB, and seeks to elucidate lessons from this merger for other Law Centres considering this strategy. From the earliest days of the Law Centres movement, closer working relationships between Law Centres and CABs were contemplated. The proposals contained within "Justice For All", which may be considered the founding document of the Law Centre movement (Committee of the Society of Labour Lawyers, 1967) references collaborations between Law Centres and Citizens Advice Bureau as potentially promising. The authors of Justice for All argued that Law Centres should provide second tier support to Citizens Advice Bureau (CABs) and their workers, accept referrals from them and further suggested co-location so that CABs might function as a: "screening system, [ensuring] that the time of lawyers is not taken up with non-legal problems that could be handled more appropriately by

others" (Committee of the Society of Labour Lawyers. 1968:45). Law Centres and Citizens Advice Bureau fulfil functions that, whilst distinct, may be considered complimentary and in recent years, arguably overlapping. Citizens Advice Bureau have a much stronger brand identity and higher media profile than Law Centres (a function of the history and mission of the CAB movement), and their treatment in the debates around LASPO by government officials was largely complimentary, with the then Justice Secretary Kenneth Clarke stating that: "*I agree with the hon. Lady about the value of good CABs… the best are very good. I am anxious for us to do what we can to strengthen CABs, as are my colleagues in other Departments: we are considering what we can do to help them across Government."* (see HC Deb (2011) 521 col. 176). This positive treatment may be considered a function of the less contentious nature of CABs work, in contrast with the reputation garnered by Law Centres (Goriely, 1996:234). Indeed, the annual report and accounts published by Citizens Advice[32] for the year 2014/2015 demonstrated that the national charity receives up to sixty per cent of its income from government sources (Citizens Advice, 2015:51). As such, the prospects of accessing public funding (from both central and local government) might seem to be materially improved by Law Centres choosing to merge with CAB's.

In spite of the incentives to merge listed above, merging to survive has proved an unpopular strategy across the not for profit advice sector as a whole: a 2015 survey of not-for-profit advice agencies commissioned by the Ministry of Justice found that only 5% of respondents had opted to merge or amalgamate with another agency in response to the cuts. Within the Law Centres Network, only three Law Centres have taken the decision to merge, and of these three, only one has pursued this strategy of its own volition. The following chapter begins by describing the national picture for merging to survive as a response to LASPO, before moving to consider the factors that mitigate in favour of a successful merger between not for profit agencies. In doing so, the discussion draws on empirical data gathered at Kirklees Law Centre: the only Law Centre who proactively initiated a merger with a Citizens Advice Bureau in order to survive the cuts. The chapter explores the distinctive history of Kirklees Law Centre and its position within the local advice

[32] Citizens Advice is a national charity with 307 local Citizens Advice members which are all individual charities in their own right. Together they make up the Citizens Advice service.

sector in order to contextualise this decision, and elucidate those factors that were predictive of the mergers success. The chapter then moves to explore the implications of the merger for the Law Centre's distinctive values, arguing that whilst the merger has been successful in terms of allowing the Law Centre to retain specialist expertise across a number of areas of law (Value 3) and that the careful and intelligent way in which the merger was conducted has broadly enabled staff to continue to work with clients in a manner that expresses empathy and solidarity (Value 4), there are early indications that the merger may alter the way in which the Law Centre works to bring about social change (Value 1), impact on the type of need the Law Centre is able to address (Value 2) and have a neutral effect on the Law Centres capacity to undertake public legal education activities (Value 5).

6.2 Merging to survive: The national picture

In the parliamentary debates leading up to the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, emphasis was placed on merging as a potential survival strategy for not-for-profit providers of legal advice and representation in the UK. The government's contention was that there was duplication in the system that could be remedied by partnership working strategies. The then Parliamentary Under-Secretary of State at the Ministry of Justice, Jonathan Djanogly, speaking in parliament in 2011 stated:

"The core funding for legal help, for instance, typically comes not from the Ministry of Justice, but from the local authority. We have to make up for a decade of people overlooking the need to co-ordinate funding, by seeing what the funding streams are and ensuring that they work in the way that they should. That will involve ensuring that there is no duplication. There is currently a lot of duplication in the system." (HC Deb (2011) 521 col. 142)

In order to incentivise partnership working and support the not-for-profit advice sector to adapt to the changes introduced by LASPO, the Big Lottery Fund UK, in partnership with the Cabinet Office announced that £67million would be made available to frontline advice services under the Advice Services Transition Fund. In announcing the first projects awarded funding through the programme, Nick Hurd, the then Minister for Civil Society stated: "At a time of big change, it is important that people can continue to access high quality local advice. The partnership fund is designed to help local providers come together and deliver a better coordinated and

more sustainable service."[33] A review of the Not-For Profit advice sector produced by Cabinet Office set out the principles guiding the way in which this fund would be distributed. This document repeatedly emphasised the importance of local partnership working to meet local needs (Cabinet Office, 2012:16). This focus was designed to address government concern that the community-based nature of advice services had resulted in fragmented sector consisting of a: "multiplicity of organisations" (Cabinet Office, 2012:11), that in turn led to inefficiencies and the proliferation of preventable problems. Implicit within the review, was the allegation that despite the fact that not-for-profit providers of advice services had historically relied on both central and local government funding to support their services, they were lacking sufficient ability, collectively or individually, to demonstrate how their services contributed to "local and national public policy objectives". The authors of the review stated that that sector: "will have to adapt and the funds allocated in the Budget 2012 will be aimed at facilitating the transition toward more effective and cost efficient advice services" (Cabinet Office, 2012:10). The review set out five key principles that applicants for funding should adopt in designing the projects they sought funding for. These were: (i) collaboration- between advice organisations, other voluntary sector and civil society organisations and public bodies with the aim of building sustainability and improving the efficacy of services, (ii) early intervention, addressing the "root causes" of demand for advice, (iii) resilience and innovation, diversifying funding and adapting more sustainable service delivery mechanisms, (iv) focusing on outcomes and impact- organising around needs and using information on outcomes to refine and develop the models adopted and (vi) exploiting remote channels, such as telephone and online technologies to deliver advice (Cabinet Office, 2012:16).

The conditions of the programme stipulated that all projects must meet two outcomes: firstly, advice organisations must collaborate effectively with each other and other agencies to improve service outcomes for clients and secondly, applicants must use the money to diversify their funding sources, with special mention being given to developing enterprising business models. Just 25% of the total fund was allocated for delivery of frontline services, and such activities would only be funded in the context of "a broader plan for adaptation and sustainability" (Cabinet Office,

[33] https://www.biglotteryfund.org.uk/global-content/press-releases/england/140513_eng_astf_advice-services-for-better-future

2012: 16). Only partnerships comprising not-for-profit advice organisations could apply, although non-advice giving not-for-profits could be included in partnerships if it was felt that their involvement improved the prospect of the stipulated outcomes being achieved. All applicants were required to submit a formal partnership agreement to BIG Lottery for their approval before the project could commence. The funders stipulated that partnerships should normally be comprised of organisations working across a second tier local authority area, although applications would be considered from local partnerships that operated in a different way, for example, across a local authority boundary or in smaller settlements within a single area. Grants of between £50,000 and £350,000 were awarded to successful partnerships with a stipulation that they be spent over two years. In total, 228 partnerships received funding through the programme. However, a survey of the partnerships funded through the ASTF conducted by Advice Services Alliance found that only 4% of partnerships that responded were considering merging as a strategy to improve efficiency and deliver more effective working practices (Advice Services Alliance, 2014: 8), making a merger the least popular strategy adopted. This apparent reluctance to merge is reflected in the findings of a 2015 survey of not-for-profit providers of advice services commissioned by the Ministry of Justice. (Ministry of Justice, 2015:35). The 2015 survey of not-for-profit providers found that of the 718 not-for-profit advice agencies that responded, only 5% had opted to merge or amalgamate with another organisation since the cuts introduced by LASPO. This compares to the 36% of responding organisations who had invested in new technology, 16% of responding organisations who had expanded the geographic reach of the services they provide and the 8% of responding organisations who had introduced fee charging for some types of problem. (Ministry of Justice, 2015: 35). Given the considerable incentives provided to encourage the merging of advice organisations, this finding may be considered surprising. A partial explanation for this apparent reticence may be found in the history of the funding of the not-for-profit advice sector, and the way in which successive reforms to Legal Aid funding designed to incentivise partnership working instead led to disillusionment with the concept (Hynes, 2009:66) and created a culture of competition, rivalry and distrust between providers (Owers, 2000:152). Successive studies of third sector organisations have revealed that the factors inhibiting collaborative working include: "inflexibility in

statutory organisations, competitive bidding for funds, dominance of quantifiable performance measures, differential power relations and a lack of trust" (Milbourne 2009, citing Kimberlee, 2002 and Milbourne et al. 2003). The changes to funding for legal aid over the period 1998-2010 outlined above at Chapter 3 instantiated some of these factors and arguably compounded existing tensions.

In this context, it is perhaps unsurprising that merging to survive has proved a relatively unpopular strategy amongst advice agencies as a whole and Law Centres in particular. Of the three Law Centres who have merged in response to the cuts introduced by LASPO, Kirklees is the only one to have instigated this strategy of their own volition. The particular history of Kirklees Law Centre, it's relative "new-ness" and collaborative relationship with other not for profits in the area, worked to create an environment that the literature on not-for-profit mergers indicates is highly predictive of a successful outcome. As such, the experience of Kirkless Law Centre may be considered to represent the absolute best-case scenario in the context of not-for-profit mergers. The following section explains the history of Kirklees Law Centre and its relationship with other agencies, before moving to describe the merger and the factors that mitigated in favour of its success.

6.3 The history of Kirklees Law Centre

Kirklees Law Centres was one of five Law Centres created as part of a programme of establishing and directly managing Law Centres undertaken by the Law Centres Federation. As part of this programme, the Law Centres Federation established new Law Centres in Bury, Stockport, Trafford and Devon. In 2002 the Law Centres Federation (now the Law Centres Network) received a grant from the Community Fund to fund two new posts in their Regional Development team, one of which was dedicated towards establishing new Law Centres in areas of need. The role of the Regional Development team was twofold, firstly they were tasked with working with Local Authorities and the Legal Services Commission to secure funding for new Law Centres and secondly, to directly manage the Law Centres until a local management committee could be put in place. At the point of securing a local management committee the Law Centre would be "spun-off" and become an autonomous entity.

Kirklees had previously been served by a Law Centre based in Huddersfield, which had closed due to issues with the centres management (Interview with SH). In the summer of 2002 Kirklees Metropolitan Council put a consultancy contract out to tender for a new Law Centre to serve the local community. The Law Centres Federation bid for this contract and were successful in securing it. A local steering committee was set up, consisting of representatives from the Local Authority, Citizens Advice Bureau, other charities and the Disability Rights Commission (Interview with NW). The Disability Rights Commission representative ensured that disability issues were incorporated into both the Law Centre's business plan and service delivery, and trained all caseworkers in the provisions of the Disability Discrimination Act. The LCF were successful in securing two contracts from the Legal Service Commission for the provision of advice and representation worth a total of £100,000 annually. The local authority committed to match this with an annual grant of £100,000 per annum. Metin Kemal, Regional Development Manager for the Law Centres Federation, in announcing this news, stated: "For the first time in many years we were in a position to establish a Law Centre which would not only be able to carry out work under LSC contracts but would also be in a position to engage in the sort of activities that distinguish a Law Centre from private practice such as work with ineligible clients, tribunal representation, legal education, community and social policy work…the Law Centre should be operational by January 2005 and will be on sound financial foundations thanks to the generous and progressive thinking of the local authority" (LCF, 2004:13). Difficulties in recruiting staff (LCF, 2004:13) initially delayed the opening of the Law Centre however, a Chief Executive and caseworkers with the ability to provide services in employment, housing, community care, mental health, welfare benefits, immigration and asylum and nationality law were in post by the time the Centre opened in October 2005. The Law Centres Federation directly managed the Law Centre for a year before its running was transferred to a local management committee, who took over the lease of the building. The Chief Executive originally recruited to the post remains in service, and is now Chief Executive of Kirklees Citizens Advice and Law Centre, the entity resulting from the merger between Huddersfield and Dewsbury Citizens Advice Bureau and the Law Centre. The Chief Executive had previously been employed by the Legal Services Commission, and used his experience in this role to design a service that closely resembled the

Community Legal Advice Clinic model, negating the need for Kirklees Council to tender for the creation of a CLAC. Reflecting on this, the Chief Executive stated:
"*I think, perhaps because I'd come from the LSC I understood the policy there I could see the CLACs and CLANs policy coming in and so one of our aims was to try to create something like a CLAC but on our own terms so that we wouldn't get shoved down that road…. effectively we wanted something where we could say this is one point of entry for everybody, that was the fundamental thing behind CLAC so that people didn't have to go here there and everywhere but as I say, if we could do it with the funding that we had, we could develop it in the way that we wanted to and not be constrained by having to do all the other CLAC-y things … We really wanted to avoid that sort of tendering exercise and the risk of having some sort of private firms come in you know the A4E type thing which you know, the council didn't want either, they were very keen to keep that at bay but once you let it in they suddenly become required to open up tenders it just becomes very difficult.*"

Interview with KCALC CE

As such, the Law Centre quickly established common cause with the other established advice agencies whose funding may have been threatened by the development of a CLAC.

When asked to reflect on the challenges of establishing the Law Centre, particularly those resulting from the entry of a new advice agency into a wider landscape of established providers, the Chief Executive highlighted the importance of the presence of established providers of advice on the steering group for the Law Centre, stating: "*From [the] start up with the Steering Group which included the other agencies in it…I guess everybody sort of felt that they've had a stake in the Law Centre from the start and we've worked closely, I guess through having people on management committee but then just working together"*(Interview with KCALC CE). The decision was taken that the Law Centre would co-locate with other advice agencies, in order to place the service at the heart of the existing network of agencies operating in Kirklees. The Law Centre was opened in a large building opposite the council offices that also housed Kirklees Citizens Advice Bureau, a Housing Rights Advice Centre (Fusion Housing) and a publicly funded service representing the interests of users of Health and Social Care

Services (formerly LINk[34], now Healthwatch). After the Law Centre opened, the organisation managed to secure funding to redevelop the premises with the aim of creating a single reception and waiting area for all services located in the building: this was manned by Citizens Advice Bureau staff and volunteers. Prior to the merger the reception was open between the hours of 9.30am and 4.30pm daily. Clients could telephone and make an appointment with the Law Centre or walk in and wait. The CAB staff would triage clients and disperse them to the appropriate agency.

Since the Centre was established, it has consistently employed between 6-12 full time staff. In 2013, Kirklees Law Centre employed three solicitors, one trainee solicitor, and two senior caseworkers on a FTE basis. Prior to the cuts introduced by LASPO, the Law Centre derived 60% of its income from the legal aid scheme. Whilst the Law Centre initially held contracts for housing and mental health advice and representation, these areas were abandoned prior to LASPO, and the Law Centre developed a reputation for working in discrimination. Reflecting on this, the Chief Executive stated:

"*We started off with benefits, immigration and asylum, community care, mental health…then we dropped housing quite quickly because… the only reason we had housing was because the guy from LCF who was setting it up was from London and he was absolutely convinced that the only way you could run a law centre was to do housing work but… [Kirklees] council have quite good housing stock there isn't a great deal of disrepair which is really where the money is so it's not a big money earner and it didn't make sense to be competing with one of our partners so we just dropped that quietly. [00:22:18] Mental health didn't really work out, we did try doing that, but it just didn't really pick up. I think the contract we had was too small and I think you really need somebody full-time doing it, and I think you need someone who's experienced and we were really trying to train somebody into it. It didn't really happen. So those two sort of fell by the wayside, and the discrimination work came through initially having a contract with the Disability Rights Commission and then we got legal aid contracts from that and they sort of developed and, really like doing discrimination work it's a really big thing for us. We've had some quite big cases.*"

Interview with KCALC CE

[34] LINk stands for Local Involvement Networks. Healthwatch was established in 2012 as part of measures introduced by the Health and Social Care Act 2012. Healthwatch England operates at national level to enable the collective views of health and social care "consumers" to influence national policy, advice and guidance. It provides leadership and support to local Healthwatch organisations. Local Healthwatch operate at local level. Their role is to gather and represent the views of service users, investigate issues where they arise and communicate community priorities to clinical commissioning groups.

As stated above, prior to the cuts introduced by LASPO Kirklees Law Centre received approximately 60% of their funding through the legal aid scheme. The Law Centre attracted praise from the former head of the Law Centre's Federation for their ability to manage their legal aid contracts successfully, stating that the Law Centre was very lucky to have: "a good manager… good caseworkers who could basically run the legal aid contracts and make them pay" (Interview with SH). The Law Centre had developed considerable expertise in employment and discrimination cases: prior to LASPO the centre employed three full time staff to provide employment law and opened around 300 cases per year. Once the cuts to LASPO were introduced, two staff were made redundant and the number of cases taken on (under Local Authority funding) was around 35. Post LASPO the centre managed to retain contracts in asylum, community care and upper tier welfare benefits cases. The remainder of their funding, approximately £90,000, was provided by Kirklees Metropolitan Borough Council, who funded the Law Centre to deliver some employment and benefits casework, and to operate a telephone advice line for residents experiencing employment law related problems. The Law Centre was also awarded funding from the Council to support individuals pursuing complaints against the NHS. As part of the Kirklees Advice Partnership, a network consisting of members of all voluntary and statutory advice providers in addition to organisations that give information as part of their service and key stakeholders, Kirklees Law Centre received funding from the Advice Services Transition Fund, which it used to deliver benefits and employment casework. Delays of five months with the receipt of funding from the Advice Services Transition Fund resulted in the Law Centre spending down its reserves in order to continue to pay its wage bill. During this period (May-September 2013) the Chief Executive took a 50% pay cut, in order to enable the Law Centre to continue to operate. Additional funding was derived from compromise agreements, costs orders, and income from the Law Centre Federation for providing support to the Equalities Advice and Support Service. However, it is relatively uncontroversial to state that by late 2013 the financial position of the Law Centre was precarious and the Chief Executive was exploring all available options for funding in order to ensure that the Law Centre remained viable. Figure 6.1 on the following page sets out the timelines for the merger

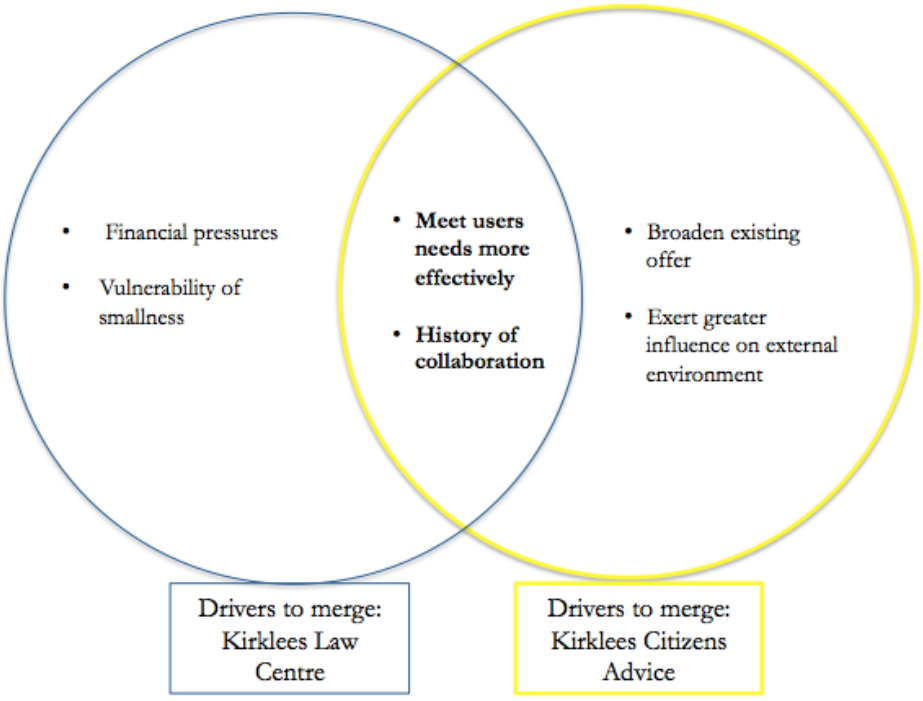
Figure 6-1 Timeline for merger

December 2012	April 2013	February- March 2014	March/April 2014	November 2014	March/April 2015	May 2015
Kirklees Citizens Advice announces plans to explore the possibility of merging with Kirklees Law Centre in Annual Report.	Legal Aid, Sentencing and Punishment of Offenders Act comes into force. The Law Centre begins to run down it's contracts for areas that have fallen out of scope. Percentage of budget provided by legal aid falls from 60-40% during this financial year. Money from the Advice Services Transition Fund that is meant to arrive in April does not arrive until September. The Law Centre spends down its reserves to cover salaries, leaving them with zero reserves at the end of the financial year to 2014.	Kirklees Citizens Advice and Law Centre Merge. Former Chief Executive of Kirklees Citizens Advice Appointed Chief Executive of the new organisation- Kirklees Citizens Advice and Law Centre. Former Chief Executive of Law Centre appointed Deputy Chief Executive of new organisation.	Kirklees Council brief Kirklees Citizens Advice and Law Centre, advising the organisation to expect funding cuts of 40-50% from 1 April 2015. This equates to a loss of £365,000 (check total budget). Executive Team begin to discuss plans for a radical redesign of the service.	Voluntary redundancy programme opens, and legacy planning begins. Aim to preserve two contact points- one in Dewsbury and one in Huddersfield. Savings to be made from reducing "generalist advice" i.e. clients being seen by an adviser whatever the nature of their problem- this is controversial from the point of view of Citizens Advice	Kirklees Citizens Advice and Law Centre announces the voluntary redundancies of the Chief Executive and a number of managerial and administrative staff. Emphasis placed on retaining specialist staff, and training volunteers to carry out more basic support tasks, such as form- filling. Service redesigned following council guidance regarding making services "digital by default"- receptions at both locations equipped with telephones and computers for clients to use with the assistance of volunteer guides. The aim of this service is to triage clients so that only the most vulnerable receive face-to-face support.	New service opens.

6.4 Merging to Survive: The drivers to merge

Research published by the Institute of Voluntary Action Research in 2011 identified seven major reasons why voluntary organisations consider merging that may occur individually or in combination. These are: i.) the vulnerability of smallness, ii) financial pressures iii.) governance problems, iv) to exert a greater influence on the external environment v) to meet users needs more effectively, vi.) to broaden the organisation's offer and vi) having a history of collaboration (IVAR, 2011:11). The diagram below at Figure 6.2 demonstrates the distribution of these drivers to merge across both the Law Centre and Citizens Advice Bureau.

Figure 6-2 Drivers to merge across KCAB and KLC



Kirklees Citizens Advice was a long established organisation with a seventy-five year history: CABs had served Kirklees residents since 1939 (interview with Chief Executive of CAB). The Chief Executive of Kirklees Citizens Advice has been involved in the development of the Law Centre from the beginning, even sitting on the trustee board in the initial period after the Law Centre was founded. The Law Centre and Citizens Advice had worked together since the Law Centre was created, and Kirklees Citizens Advice had subcontracted with the Law Centre since 2009. In

addition, the Chief Executive of Citizens Advice had previous experience of successfully delivering a merger, having already presided over the merger of North and South Kirklees CAB, moving from South Kirklees CAB to become the Chief Executive of the newly formed Kirklees Citizens Advice in 2009. The history of that merger was as follows. In the mid 2000s Kirklees Council funded the five advice providers in Kirklees (including Kirklees Law Centre) through awarding five individual, annual grants. In order to make efficiency savings they decided to move to offering one, three year grant. The Council approached the advice organisations they funded with a proposal that would enable them to avoid the contract going out to open tender. As the Chief Executive of Kirklees Citizens Advice recalled: *"they basically came to us and said: "If you can agree amongst yourselves how you're going to run this we'll give the contract to you so it won't go out to open tender"…so obviously there's a big incentive there to do that…So I persuaded colleagues in other agencies that the model we should adopt was having a lead body and what effectively were sub-contractors though I may have omitted to call them that at the time" [*Interview with KCAB CE*]*. Rather than adopt a consortium model, it was decided that South Kirklees Citizens Advice should act as the lead body and subcontract with other advice agencies, including the Law Centre. Once South Kirklees Citizens Advice was established as the lead body, it was decided that the best interests of North Kirklees Citizens Advice Bureau would be served by the merging with South Kirklees CAB, to become Kirklees Citizens Advice. At the time of this merger the Chief Executive of Kirklees Citizens Advice had been keen to simultaneously broker a merger between the Law Centre and the newly formed Kirklees Citizens Advice in order to take advantage of the specialist skills offered by the Law Centre. Reflecting on his motivations for merging the Chief Executive of Kirklees Citizens Advice stated: "*I thought the Law Centre would make us complete as a unit, because we were all about generalist advice, we didn't have a lot of specialist advice apart from debt, and the Law Centre was the opposite really they had loads of specialist advice and no generalist advice so, you know it was an obvious fit"* [Interview with KCAB CE]. At the time, the trustees felt that this would create too much complexity, and so they rejected the proposal, however, the Chief Executive's conviction that merging with the Law Centre would enhance the offering they were able to provide remained constant so that when the Law Centre announced they were looking for potential candidates to merge with in 2012: *"they talked to a lot of people, they did the job properly but*

the obvious fit was always going to be us, looking at the other candidates it just didn't make sense really or as much sense as it would do for us". [Interview with KCAB CE]

Whilst the financial imperative might explain why the Law Centre was keen to merge with Kirklees CAB, it is arguably less clear why Kirklees CAB, with it's more stable financial position and long history of operating in the area, would be keen to merge with the Law Centre. However, the literature on mergers states that disparities between the positions of the two organisations involved are relatively commonplace, and that larger, more financially stable organisations are likely to merge with non-pecuniary benefits in mind. In 2011 Wilder Research reviewed the extant literature relating to mergers between non-profit organisations. Their findings state that mergers are unlikely to occur amongst equally powerful organisations. Organisations that are financially stronger and or more stable as well as older organisations are more likely to merge, to take advantage of the specialisation of the smaller organisation or to increase capacity, without losing autonomy (Wilder, 2011: 23 citing Campbell 2008 and Kohm & LaPiana 2003). This finding seems to be mirrored in the present case, with Kirklees Citizens Advice keen to capitalise on the Law Centres specialist skills to deliver a better service for their clients.

As such, whilst financial expediency may be seen to be a motivating factor in the decision to merge, it is not the only or defining factor- a history of working in partnership, shared premises, shared values for what constitutes an effective service and an atmosphere of mutual respect and regard between the two Chief Executives are also key drivers. This is important as the literature indicates that the reasons for merging can be predictive of the success of the merger- in a 2002 study of three mergers it was found that "mission driven" mergers, where the organisations are merging to anticipate future demands are the most likely to result in an effective process (Benton & Austin 2011:462 citing Golensky & DeRuiter, 2002) whereas mergers chosen as a last resort by organisations experiencing financial problems are more likely to be marked by fraught processes. Additionally, maintaining an atmosphere of respect and collaboration, where partners are treated as equals regardless of their relative size in terms of staff, budget or geographic scope is seen to be key to successful mergers in the not for profit sector (LaPiana, 2005:12). The

fact that these elements were present in the decision to merge, mitigate in favour of the mergers success.

6.5 The process of merging: factors predictive of success

The literature on non-profit mergers identifies a number of factors, the presence or absence of which can impact on the outcome of the merger. These include, strong leadership with a common sense of purpose, sufficient time built into the process, similar or compatible organisational cultures and positive relationships between the executive teams of the organisations that are merging. There was clear evidence of the presence of all of these factors in the merger between Kirklees Law Centre and Kirklees Citizens Advice: the following section explains how these features manifested, relating them to the extant literature on mergers in the not for profit sector.

6.5.1 Strong Leadership

One factor mitigating in favour of the success of the merger is the fact that one of the parties had previous experience of leading their organisation through this process. Benton and Austin define competent leadership in a merger situation as consisting of knowledge of: "what to expect during a restructuring process, the organisational culture issues, the time required for successful change and the nature of the organisational change processes needed to address staff issues" (Benton and Austin, 2010:463) Importantly, the Chief Executive of Kirklees Citizens Advice had previously presided over the merger between his CAB (South Kirklees CAB) and North Kirklees CAB. As such, he was aware of the potential pitfalls, and positive about his ability to navigate them, stating: "*all of my career has been about change and managing change [00:09:44], (I like it) otherwise I've got nothing to manage you know" (*Interview with KCAB CE*)*. This positivity about the merger, and confidence that it could be managed successfully, is again, a strong predictor of the success of the strategy. Research indicates that mergers that are led by executive directors with a shared sense of mission are more likely to be successful: the importance of this shared enthusiasm this is commonly cited as the most important factor in predicting the success of the merger (Wilder, 2011: 24 citing Golensky and DeRuiter, 2002, also see La Piana (1994) and Ricke-Kiely et al 2013:159) Leaders should have the ability to articulate how the merger advances the mission, focussed on the way in

which the merged organisation will facilitate improved provision of services to beneficiaries (IVAR, 2010:25). When interviewed about the merger the Chief Executives of both organisations described it as a positive development, the Chief Executive of the Law Centre stating: *"I think for us it feels just like a natural development. I think... we went down to Derby and we spoke to them and theirs was much more of a sort of I think they were just required by the Local Authority to do it and it was bit like (blows through lips). But it's worked out OK for them [01:00:43]. Sheffield similarly they've had to merge. But I think ours is, it feels better in that it's a voluntary thing that we're driving so that's good…I think it would be a good thing for a lot of Law Centres, we'd certainly encourage it in places where it feels right to do it."* (Interview with KCALC CE*).* This positivity is important, as research indicates that senior management have a critical role in positioning themselves as champions of change, expressing support for a merger and framing it as an opportunity rather than a threat (Benton and Austin, 2010: 464, citing Deetz et al. 2001 and Marks and Mervis, 2000).

6.5.2 The importance of personalities- positive pre-merger relationships

Positive pre-merger relationships between and amongst the executive leadership of organisations that are intending to merge are cited as a critical factor in predicting the success of a merger, particularly in the initial stages. The absence of "egos" (Ricke-Kiely et al. 2013: 159) is cited as a necessary precondition of successful mergers, and personality clashes are frequently cited as a determining factor in merger failure (Charity Commission, 2009:7). This positive working relationship and lack of "ego" was clearly manifested in the relationship between the two Chief Executives in the case at hand. The Chief Executive of Citizens Advice stated: "*one of the key things in that is the relationship that [KCALC CE] and I have, you know, that's the key to it because if you have two CEOs that are butting up against each other, usually male CEOs but not necessarily, could be female CEOs, then that is not going to produce a merger because they're all kind of, they'll all be looking after their own position and that sort of thing. But we've always had, I don't know that we've fallen out over anything yet so when you've got a good relationship like that you just know it's going to work, and I always knew it was going to work and it was a matter of convincing the trustees…we don't always agree and he comes up with different, you know perspectives because he has a different background but we always compromise and find a way forward. But as I say it's that lack of competitive edge between us personally that enables us to work together."* For his part, the Chief Executive of the Law Centre

expressed distaste for the way in which personal relationships could act to impede successful collaboration, and it was clear that he spent a great deal of time developing positive working relationships with his peers. When asked to comment on the barriers created by competition and rivalry between advice agencies he stated: "*Yes, yes and it's a, it's a hard one. I think it's something people have to get over…you see some places and it's so destructive and it takes up so much time and for so little purpose that…you just want to say 'just stop it' but, but sometimes it's not that easy you've got to have the those personal relationships that work out…I think if you have that mind-set that you want to work with other people it's better"* Interview with KCALC CE. It was clear that the working relationship established between the two Chief Executives was respectful, friendly and functional, factors that mitigated in favour of the success of a merger between their organisations. In the literature on not for profit merger it was observed that mergers are particularly likely to success when extant working relationships have been developed through the prior (successful) completion of shared projects (Wilder et al. 2011:24 citing Dewey and Kaye, 2007 and Ferronato and Perryman 2003). This precondition for merging was also clearly present in the current case study.

6.5.3 Ensuring sufficient time is built into the merging process

A further factor implicated in the success of any merger is the ability to build in sufficient time to conduct due diligence and consider the structure of the newly created organisation. Research indicates that where the merger is viewed by the organisations involved as a constructive opportunity, not: "something to be done quickly or in haste" (Ricke-Kiely et al 2013:159 citing Norris-Tirrell 2001) it is more likely to be successful. Charity Commission (2009) and IVAR (2010) guidance reiterate the importance of building in enough time for merger, in order to ensure stakeholder "buy-in". Guidance provided by the Charity Commission states that rushing the process or failing to provide realistic targets for the merger are two key reasons why mergers fail. Benton and Austin note that: "while there is often a desire to minimise the transition time, there is also a need for a thorough and deliberative process" (Benton and Austin, 2010:464). As stated above, the merger between the two organisations had been in contemplation since 2009, and talks had commenced in 2012. As such, sufficient time was built into the process to ensure that it was communicated to stakeholders effectively. The close working relationship that

existed between the two parties prior to the merger ensured that the process was conducted at a pace that was suitable for the organisations involved.

6.5.4 Compatible organisational cultures

Many researchers believe that "culture fit" is what makes or breaks a merger. Critical to the success of mergers is the ability to: "integrate the existing cultures into a new one and to formulate a common value system and shared vision" (Giffords & Dina, 2003:76, Cartwright & Cooper, 1993). The definition of organisational culture provided by Schein (1985) remains one of the most influential and frequently cited articulations of this concept (Benton & Austin, 2010:467). Schein states that organisational culture is: "a pattern of basic assumptions- invented, discovered or developed by a given group as it learns to cope with its problems of external adaptation and internal integrations- that has worked well enough to be considered valid and, therefore, to be taught to new members as the correct way to perceive, think and feel in relation to those problems" (Schein, 1985:9, cited in Benton and Austin, 2010:467). It can comprise elements such as office attire, policies and procedures, staff-management relationships and decision-making style (Benton and Austin, 2010:467 citing Kohm & La Piana, 2003). Cartwright and Cooper, writing in 1993 elaborate on this conception, stating that: "…Organizational culture concerns symbols, values, ideologies, and assumptions which operate, often in an unconscious way, to guide and fashion individual and business behaviour. Culture is often defined as: "social glue." It serves to bind individuals, and creates organizational cohesiveness. Organizational culture, like societal culture more generally, maintains order and regularity in the lives of its members, and only assumes salience in their minds when it is threatened or disturbed" (Cartwright & Cooper, 1993:60). It is further noted that fundamental differences between employees in their thoughts, behaviours and actions may hinder the implementation of goals" (Giffords & Dina, 2003:75, citing Olie, 1994).

In the immediate case, the close working relationship between the Law Centre and the Citizens Advice Bureau prior to the merger meant that both organisations were familiar with the other's culture. As stated above, prior to the merger a number of the advice agencies that served the Kirklees community were located in the same building- Kirklees Citizens Advice, Fusion Housing, Kirklees Benefits Advice

Service and Healthwatch. All agencies shared a common reception that was staffed by Kirklees Citizens Advice, who were responsible for triaging clients and dispersing them to the correct agency (Interview with KCALC CE). Kirklees Citizens Advice delivered specialist advice on debt, using funding from the Money Advice Service and Citizens Advice UK. If an individual presented with a complex matter in another area of law they would be referred to the Law Centre or to one of the other advice agencies- Fusion Housing if it was a housing matter or Kirklees Benefit Advice Service if the matter concerned benefits. Kirklees Benefit Advice Service may themselves refer the clients on to the Law Centre if the matter related to an Upper Tribunal Appeal, or if the individual wished to have a student volunteer support them at a first tier tribunal relating to a benefit awarded on the basis of disability. Initially, post the merger; the functional distinctions between the organisations were largely extant. The Chief Executive of the Law Centre described the situation as follows:

"*For each area of law you've got different dynamics so for the asylum team for example, all of their work comes in through the New Asylum Model rota, through refugees come into the country they get sent up to here they get referred on to us they don't go through any sort of triage they are just straight in. We've got an employment team then, who run a telephone advice service, so yes they get referrals through a CAB helpline, they also get direct calls in and so we've got volunteers staffing that line and they may refer things through for casework, but effectively everything comes through to them and they work out how to deal with it. If it's a debt matter, it doesn't come to anyone here, and there's a specialist team in the CAB. As we merge more and more, I'm expecting those distinctions to even out and then the debt team will be another team like…the employment team and gradually you'll lose that distinction between the Law Centre and the CAB. So yes it's all different. Benefits has always been the most complicated, so for benefits things you've got people come into CAB or who might see currently a generalist advisor well they'll see somebody at a gateway, they'll get triaged, they may go and see a generalist advisor they may have an appeal matter in which case they get sent to Kirklees Benefits Advice Service which is run by the council but again they sit in with the CAB, so they do all the appeals work. That service may refer it through to us to do a Upper Tribunal case if it doesn't succeed at first tier, but also the triage may refer things through to our students who are doing disability benefits work and really if that comes through to us if that went to appeal we may carry on and do the appeal there and so, there are different pathways"* [Interview with KCALC CE]. In interviews about the merger it was observed that because the two organisations performed complimentary functions,

rather than performing identical roles, tensions that can be created when two organisations that are providing the same service through different working practices were avoided.

As outlined above, the preconditions for the merger and history of the Law Centre mitigated strongly in favour of the mergers success. In many regards, the experience of KCALC may be considered the best case scenario for mergers of this kind: the newly formed organisation may be considered to meet many of the factors traditionally identified as being salient when assessing the success of a merger (see Owen et al, 2011:7). However, it should be noted that the decision to merge, of itself, has not created additional capacity within the Law Centre or enabled it to fully replace the funding lost in the introduction of LASPO: whilst the financial position of the new organisation is stable, the service it is able to offer has not expanded, although management are hopeful that the new corporate identity and access to sources of funding through the citizens advice network might improve this.

Research cited above emphasises the high level of risk involved in undertaking to merge, and the threat that merging poses to the distinctive values of the organisations involved. It is notable that the news of the Law Centre's merger with CAB was greeted by some in the Social Welfare Law Sector as heralding: "the demise of Kirklees Law Centre" (ilegal, 2015). This statement was robustly refuted by the manager of the Law Centre, however, it is evident from the fieldwork that the decision to merge has impacted on the ability of the Law Centre to deliver the values identified above at Chapter 3. The following section explores the implications of the merger for these values.

6.6 Merging with a CAB to survive and the impact on the ideal type Law Centre's values

It is impossible to assess the impact of the merger on Law Centre values without considering the history and organisational culture of the organisation the Law Centre chose to merge with. In merging with a CAB, the Law Centre chose to merge with an organisation that is part of a network with a very different history, culture and mission to its own. Citizens Advice Bureau emerged immediately prior to the beginning of the Second World War, with input from the Ministry of Health,

the National Council of Social Service and the Family Welfare Association (Goriely, 1996a: 220). Their purpose was to help individuals manage their "war-time worries" and included dealing with: "every kind of domestic and personal problem ranging from what to do if one cannot keep up instalments on a wireless set to how to obtain compensation if evacuees damage one's home" (Goriely, 1996a: 221). They were funded by central government, staffed by volunteers and immediately popular: one newspaper reported that from September 1939 to January 1940 the network of 950 bureaux dealt with over 4million issues (Goriely, 1996a, 220).

The Citizens Advice Bureaux were conceived in terms that were emphatically non-legal in character, neither the Law Society, nor the Lord Chancellors Department had any role in establishing the scheme. They were staffed by lay volunteers, not lawyers, espoused their mission as: "providing friendship and sympathy to all who are in need of it" (Goriely, 1996a: 221) eschewed a means test, and offered general, non-specialist advice across a wide range of issues. They were a: "centrally planned service, with common goals" (Goriely, 1996a: 232), one of which was to: "collect information on the kind of problems which are at any specific time causing difficulty and distress and to bring such problems to the notice of those who have the power to prevent or solve them" (Goriely, 1996a: 221, citing the National Council for Social Service, 1941). Whilst the subject matter of the problems raised might relate to the law, the methods of raising awareness were emphatically non-legal in character, and mainly revolved around the dissemination of information, including arranging BBC broadcasts to provide information to the public on specific issues. (Goriely, 1996a: 221).

Whilst Citizens Advice Bureaux were not immune to the funding scarcity that pervaded the advice sector during the 1950's: from the 1960's to the 1980's they re-emerged and flourished, their numbers almost doubling (from 473-869) and the number of enquiries they dealt with more than quadrupling from (1.3 million to 6.8 million) (Goriely, 1996:231, Smith, 1997: 906). In the 1980s-1990's CABs increasingly specialised in: "the chronic problems of severe poverty, first in the area of social security and then of debt" (Goriely, 1996: 234). This specialisation brought with it a new relationship with the legal profession, as Jean Richards, in her history

of the CAB movement describes. In the describing the early days of CABs, Richards states:

> "There was for many years a piece of paper which was supplied to all bureaux as they opened, warning against the danger of purporting to give legal advice or acting as a solicitor. This made many bureau workers nervous and contributed to the feeling that there was an almost mystical character in the law as a profession. Contrasting with this deferential attitude towards lawyers… there was a strong feeling that lawyers were not really much use. The reasons for this second, gut reaction were rooted in two facts (i) the number of complaints made about the inefficiency…of solicitors (some of which were undoubtedly justified) and (ii) the lack of knowledge shown by many solicitors of the areas of law which impinged most painfully on the clients coming into bureaux…" (Richards, 1989:149; cited in Goriely, 1996:235).

This increasing awareness of their own specialist insight into issues around poverty and social welfare gave CABs new confidence in their dealings with the legal profession, as Goriely, writing in 1996 states: "Many did not just believe that they understood social security law better than many solicitors, they *knew* it" (Goriely, 1996:235). In the 1970s some CAB's began experimenting with employing solicitors, by 1977 ten CABs employed lawyers and the national association of CABs resolved to develop more posts (Smith, 1997:906). The 1970s also saw attempts to combine CABs with Law Centres, with two combined CAB/Law Centres opening during the period 1973-1976 (Smith, 1997:906). In spite of the reported success of these ventures (Goriely, 1996:235) the scheme failed to expand. Goriely (1996) argues that this failure can be attributed to a combination of funding problems and perhaps: "an inbuilt suspicion of lawyers" (Goriely, 1996:235). In the mid-1980s it was observed that Law Centres and the advice sector had embarked on different courses, with the majority of CABs focussing on the provision of general, rather than specialist legal advice.

By the mid-1990s the number of Citizens Advice Bureaux outlets in the UK stood at 1,000, in comparison with 52 Law Centres (Smith, 1997:916). The national

government grant awarded to the National Association of Citizens Advice Bureaux (NACAB) stood at £12million, compared with the £67,000 grant to the Law Centres. Unlike Law Centres, with their distinctive focus on community control (Smith, 1997:916 and Burdett, 2002) Citizens Advice Bureau are held to national standards, and the national association is tasked with pursuing a lobbying role in relation to government, guided by the aim of exercising: "a responsible influence on the development on social policies and services, both locally and nationally." (Smith, 1997:916 citing Chapman, 1995).

In the early to mid-2000s however, Citizens Advice expanded the specialist legal advice services they provided. By 2008, Citizens Advice reported that the Citizens Advice Service consisted of over 400 independent advice agencies delivering advice from more than 3,000 locations. At this point in time, 242 bureaux had contracts with the Legal Services Commission to deliver legal advice and casework in categories of law, 20 bureaux employed solicitors engaged in the conduct of litigation, over 100 CABs offered services in County Courts and 94% of bureau offered advice and representation services in tribunals (Citizens Advice's Response to the Legal Services Board's discussion paper "Wider Access, Better Value, Strong Protection", 2009:1). In spite of this increase, funding received from the Legal Services Commission was dwarfed by funding from central and local government, a press release published by Citizens Advice in 2011 stated that 14.6% of individual bureau's total funding came from the Legal Services Commission, compared with 42.7% from local government.

In the debates immediately preceding the introduction of LASPO, the then Justice Secretary Ken Clarke remarked that: "*only 15% of CAB funding comes from my department, and about 50% of CABs receive no legal aid funding at all*" (HC Deb (2011) 521 col. 176). In spite of this low level of exposure compared to Law Centres, who prior to LASPO received 46% of their funding through Legal Aid (Randall and Smerdon, 2013), Citizens Advice Bureau were mentioned by name by the Justice Secretary in promising support, emphasising the virtue of the non-adversarial approach they adopted (HC Deb (2011) 521 col. 176). In 2011, the then Justice Secretary Ken Clarke stated that: "*I am anxious for us to do what we can to strengthen CABs, as are my colleagues in other departments: we are considering what we can do to help them across Government. I am doing my best, and we will settle on some support*" (HC Deb (2011) 521 col. 176). No

such promises of support were forthcoming for Law Centres. As described above at section 2 of this chapter, in the aftermath of the cuts, funding was made available to the advice sector through the Advice Services Transition Fund. Over eighty per cent of this funding (£54million) was awarded to Citizens Advice Bureaux.

6.6.1 Merging with a CAB to survive and Terminal Value 1: Law Centres improve the position of economically disadvantaged individuals and groups

In the values framework described above at Chapter 3 the first of the values proposed concerns the way in which Law Centres use the law, namely, to bring about social change in favour of marginalised groups. The literature on Law Centres emphasises the pursuit of strategic litigation as a key approach through which Law Centres seek to reform the law in favour of the marginalised. The following section considers the impact of the merger on the ability of KLC use strategic litigation to bring about change in favour of marginalised groups.

6.6.1.1 Merging with a CAB to survive and instrumental value 1.2: Law Centres undertake strategic litigation that has the potential to reform the Law in favour of the economically disadvantaged

In the following discussion it is argued that merging with a CAB, whose approach to bringing about policy change is primarily based on the provision of information, individual casework and engagement with government, rather than a combination of strategic litigation and campaigning has implications for the way in which the Law Centre delivers its objective of using the law to bring about social change. As per the discussion in Chapter 3, it is widely recognised that: "the deployment of an assertive and challenging litigation role…distinguish[es] Law Centres from the rest of the not-for-profit sector." (Smith, 1997:916). Prior to the merger, Kirklees Law Centre had a reputation for using this approach, undertaking strategic cases of national importance, particularly in relation to discrimination law. However, there are early indications that the merger, and the selection of partners that has been driven by the priorities of the new organisation may have impacted on when and whether KCALC deploy this strategy in the future.

Prior to the merger, KLC had a reputation in conducting complex casework in areas of discrimination law, garnering national media coverage in the process and sometimes setting them in opposition to the council, threatening their funding in the process. In *Azmi v Kirklees Metropolitan Borough Council* [2007] IRLR 434 (EAT) the Law Centre represented a teaching assistant who brought a claim for discrimination under the Employment Equality (Religion or Belief) Regulations 2003, after she was refused permission to wear her full veil (niqab) when teaching alongside male members of staff, or for the timetable to be changed so that she did not have to work alongside male teachers. The head teacher observed Mrs Azmi and concluded that she did not carry out her role as effectively when wearing her veil: Mrs Azmi was tasked with providing support to children with English as a foreign language who were at risk of underachieving and it was felt that facial expressions and non-verbal communication were critical to the successful conduct of this post. The Employment Tribunal dismissed three of Mrs Azmi's claims but awarded her £1000 for "injury to feelings". Mrs Azmi appealed to the Employment Appeals Tribunal, where her case was dismissed. The case sparked a national debate on multiculturalism in Britain with then Prime Minister Tony Blair and other government ministers commenting on the case: their interventions were criticised by the tribunal who branded their comments "most unfortunate" and *sub judice* (Press Association, 2006, Herbert, 2006). The government's race minister, Phil Woolas, called for Mrs Azmi to be sacked stating that she was: "denying the right of children to a full education because her stand meant she could not do her job and insisted that barring men from working with her would amount to "sexual discrimination" (Press Association, 2006). Negative press coverage from the right-wing media included a front-page headline in the Daily Express stating: "She loses discrimination case but Veil Case Teacher Costs Us £250,0000": the accompanying editorial accused Mrs Azmi of having a "warped agenda" and of being "a politically motivated extremist who is doing terrible damage to [moderate Muslims] in the eyes of the long-suffering British public" (Daily Express, 2007[35]). Law Centre workers received death threats from right-wing extremists as a result of the case (ilegal, 2015). The decision to undertake the case on behalf of Mrs Azmi brought the Law Centre into conflict with the Local Authority: in 2008 the Council announced that it was considering defunding the Law Centre. The Council Leader at the time spoke

[35] https://www.express.co.uk/news/uk/3226/Veil-row-teacher-loses-fight-over-sacking Accessed on 30 December 2017

to the local press in 2008 stating "For a long time, we have, as a group, questioned whether council money should be given to the Law Centre… there is a lack of clarity between council objectives and what services the law centre provided[36]". This "longstanding questioning" of the appropriateness of awarding council funding to the Law Centre seems surprising given that the Centre had been commissioned by the Council only four years prior to this statement being made (see Interview with SH).

Post LASPO and during the merger the Law Centre continued to take on further high profile cases, including successfully arguing against a reduction in housing benefit for a disabled couple who were subject to the rules introduced in April 2013 regarding under-occupancy (the so called "bedroom tax"). This case was brought by the Law Centre using funding from Kirklees Council. The Law Centre won at First Tier Tribunal in June 2014 and attracted praise from legal commentators for their skilful deployment of existing case law in this area (Peaker, 2014). In the statement of reasons provided, the tribunal judge was critical of the operation of the Discretionary Housing Payments scheme by Kirklees Council, stating: "I cannot see how the operation of DHP's by Kirklees Council "plugs the gap" for the majority of appellants who appeared before me. If anything the operation of the policy creates unnecessary distress to disabled persons living in accommodation subject to regulation B13 and does not provide a safeguard against the clear discriminatory effect of that regulation" (Statement of Reasons, 2014:9[37]). In March 2014, the Law Centre successfully brought a case for discrimination in the provision of goods and services against a public house on behalf of a transgender client. The Law Centres Network, announcing the decision, stated that: "this is the first time that a case of transgender discrimination in the provision of goods and services has been heard in a British court" and as such, represents a new development in equalities law and practice (LCN, 2014).

In contrast, the Chief Executive of Kirklees Citizens Advice Bureau was reticent to endorse an adversarial approach that combined litigation and publicity to bring

[36] http://www.thepressnews.co.uk/press-news/kirklees-revisit-veil-teacher-firm-support/ Accessed on 30 December 2017

[37] Statement of reasons published at: http://431bj62hscf91kqmgj258yg6-wpengine.netdna-ssl.com/wp-content/uploads/2014/08/Gresham-Decision-280714.pdf Accessed 30 December 2017.

about social change, particularly when the Local Authority would find itself on the receiving end of these tactics. In discussing the CAB's relationship with the Local Authority, the Chief Executive stated that: "*we regard ourselves as partners of the Council*" and issued a damning critique of what he described as the old-fashioned "*agitprop*" tactics that, he argued, were often associated with the voluntary sector and when deployed, resulted in outcomes that were not in the best interests of either the organisation or the client:

"*I suppose there was, I think there was a tendency for, yeah, let's caricature, [a charity] would receive a grant from the council, they would have councillors sitting on their board, yet they would feel absolutely no problem about slagging the council off, dragging them into court over some issue, possibly using the client to do so in order to win a point. I think a more modern view would be to say: we understand that the council are funding us and that doesn't mean to say that they get to do anything they want but we try to resolve things outside of the press, outside of the courts, because it's better for the taxpayer, it's better for the client, it's better for everybody really.*"

This suspicion of the law and legal processes as an effective mechanism for bringing about change resonates strongly with the position of the CAB movement in relation to the law as outlined above. The Chief Executive of the CAB appeared deeply wedded to the idea that negotiation and the wielding of "soft-power" (Nye, 1990) were the most effective approaches to achieving change, although, when asked to comment on the value of lawyers in general and the Law Centre in particular, he expressed that having the ability to deploy legal strategies in certain circumstances, magnified the ability to bring about change:

"…It's having that facility to be able to take things further up the legal chain, it's to take the big issues, and that is another way of effecting change. Sometimes that can be a sledgehammer but sometimes it is the right thing to do, to create precedent and we can't do that without lawyers so we have to…If we're a CAB we probably wouldn't embark on that, we wouldn't go that far, so the Law Centre can go much further than we can and that again is why you know, it magnifies our ability to change things, by having the Law Centre as a part of us."

KCAB CE

How far the Law Centre would be able to continue to advance this role once it was brought within the umbrella of the CAB movement remains to be seen. In

interviews, Law Centre staff reported that they had had to: "*pull our horns in considerably*" as a result of the cuts to legal aid and subsequent merger. Is there a danger that in merging with the CAB, an organisation that has historically been reticent to engage with strategic litigation, and pursuing partnerships with organisations that are similarly cautious, the Law Centre might find itself unable to deliver on an organisational value that has been considered core to the ethos of Law Centres? In the case at hand, it might be considered too early to reach a definitive conclusion, but the potential for this issue to arise should be factored into the decisions taken by other Law Centres in deciding whether to merge with other organisations.

6.6.2 Merging with a CAB to survive and Terminal Value 2: Law Centres deliver their services to those in greatest need

For Law Centres, individuals and groups in need are those whose interests are not adequately represented by the law as it stands, either because i) the extant legal framework does not serve their interests or extend to their protection (need type 1) or, ii.) the extant legal framework does in theory extend to their interests and/or protection but they are ill-equipped or vulnerable in the context of being able to successfully access their rights under the law as it stands (need type 2). Chapter 4 proposes a refined definition of vulnerability, in recognition of the fact that whilst Law Centres and indeed the legal aid scheme historically relied on poverty as a proxy for vulnerability, the class of individuals for whom legal advice and representation is unaffordable is now so wide that a principled focus is required in order to ensure that Law Centres deliver on this value. The following discussion considers the impact of the merger the ability of the Law Centre to prioritise their services on the basis of need, and ensure that they are reaching the most vulnerable in their community.

6.6.2.1 Merging to with a CAB to survive and meeting need type 1: targeting services at those individuals whose interests are not served under the extant legal framework: Individuals on low incomes experiencing employment problems.

Whilst in the course of the merger the Law Centre was able to preserve specialist legal advice in a range of areas of law including community care, welfare benefits and asylum and immigration, the provision of employment advice at the level

provided prior to the cuts introduced by LASPO was not preserved. The failure to preserve advice in relation to employment is problematic: there is a growing consensus that the interests of non-unionised low-income workers are not adequately represented under the extant legal framework (TUC, 2014: 6, Busby et al. 2015:7). The combined impact of the withdrawal of public funding for advice and representation in employment matters and the introduction of tribunal fees, ranging from £160 to £950 for a single case (MoJ: 2016 12). The latter of these measures, the introduction of Employment Tribunal Fees, was introduced with the express intention of deterring individuals from using Tribunals to settle disputes, the consultation document that introduced the proposals for fees stated that: *"…it is recognised that fees can influence the behaviour of those who might become involved in employment tribunal proceedings by encouraging them to resolve their dispute by other means (e.g. in the workplace, via mediation or conciliation)…Ensuring that tribunals, along with courts, are seen as an option of last resort is essential to improving the way disputes are resolved and encouraging reasonable behaviour*" (MoJ, 2012:12 Charging Fees in Employment Tribunals and the Employment Appeal Tribunal, CP22/2011) Since their introduction, the combination of these measures has been recognised as impacting disproportionately on individuals in temporary employment or on low incomes. In the results of a survey conducted by the TUC, three-quarters of respondents on temporary employment contracts reported that a fee of £250 would deter them pursuing a case and sixty-five per cent of respondents with an annual income of less than £10,000 would not pursue a meritorious case to tribunal (TUC, 2014:5-6). Busby et al. (2015) writing on behalf of the Institute of Employment Rights in a submission to a consultation issued by the Law Society, state that:

"The IER is concerned about a legal framework that excludes many people from legal rights…Certain sectors, typically those involving low-paid, non-unionised workers are greatly under-represented amongst tribunal claimants; examples are many service industries and small employers…In other areas, regulations designed to promote fairness are probably irrelevant in practice because almost no claims are in fact brought: the Agency Worker Regulations 2010, designed to protect agency workers against discriminatory treatment, are probably a recent example" (Busby et al. 2015: 7).

The claim that Employment Tribunal Fees have impacted disproportionately on low paid workers is seemingly corroborated by evidence provided to the Justice Committee by The Council of Employment Judges, who stated that:

"*Prior to the introduction of fees, money claims were often brought by low paid workers in sectors such as care, security, hospitality or cleaning and the sums at stake were small in litigation terms but significant to the individual involved. There are few defences to such claims and they often succeeded…there has been a particularly marked decline in claims for unpaid wages, notice pay, holiday pay and unfair dismissal, the types of cases brought by ordinary working people*" (Justice Committee, 2016: 28)

These concerns have been validated in the recent judgment in the Supreme Court (R *(on the application of UNISON) (Appellant) v Lord Chancellor (Respondent) [2017] UKSC 51* per para 41) which held that employment tribunal fees were unlawful. Prior to LASPO the Law Centre employed three full time employment advisers, after the cuts and the merger this was limited to one part time adviser supported by volunteers. The remaining employment adviser at the Law Centre stated:

"*There are now no paid posts in the entire of Leeds, as you know, it's a big catchment area, a huge catchment area…statistically it's the biggest legal centre outside of London is Leeds, if you believe it. There's a big central Citizens Advice Bureau down by the markets in Leeds, that doesn't have a paid employment worker, they have 4-5 satellite bureaus around the city, none of them has an employment worker, none of them. The other bureau in Leeds, because they're independent are CAB's, Chapeltown bureau, that doesn't have a paid worker and they used to. There aren't any [jobs], not in the not for profit sector, if you go into the commercial firms and even there it's very difficult, but certainly not in the not-for-profit sector you may as well be looking for a needle in a haystack as find a paid employment post. And it [paid employment advice] always seems to go first…. the [Chief Executive of the combined organisation] is saying he's talked to the Council and they've said "well we don't need employment [advice] really do we?*"

KCALC ES

The Council's position, if reported correctly, seems confusing given the socio-economic context of Kirklees. In 2016, Kirklees Council published their strategy for Tackling Poverty, which states that: "in work poverty is a common problem for people in our communities" (Kirklees Council, 2016:3). In Kirklees wages are lower than the national average, figures from the Office of National Statistics demonstrate

that at April 2016 the average median gross weekly pay for individuals resident in Kirklees was 10% lower than the national average (Kirklees Council 2016a: 15). Roughly one third of the working age population of Kirklees lives on low to middle incomes, and wage increases have failed to keep pace with the Consumer Prices Index, resulting in lower standards of living. (Kirklees Council, 2016: 5) Data published by Kirklees Council in 2016 reported that 1 in 3 households in Kirklees live in poverty and 1 in 4 households have an annual income of less than £10,000, (Kirklees Council, 2016: 7) despite levels of unemployment being at their lowest since 2005, at around 2% (Kirklees Council, 2016a: 15). Amongst families living in Kirklees in receipt of child benefit, 30% receive both child tax credit and working tax credit and just under 1 in 5 children in Kirklees live in poverty (18%) (Kirklees Council, 2016: 7). In Kirklees, 16% of those in employment work in manufacturing: the ONS Business Register and Employment Survey (BRES) reports that the percentage of Kirklees residents employed in manufacturing is double that of the UK population. After this the most common occupations are healthcare, education and retail: 13% of Kirklees employees work in health and social care, 12% work in education (3% higher than the UK population) and 11% of work in retail (Kirklees Council: Kirklees, 2016a: 15). Manufacture, health and social care and retail have been identified by the government as low pay sectors (BIS, 2016), whilst the Resolution Foundation recently reported on pressing and on-going concerns about unlawful underpayment in the care sector- citing a recent case where a single care provider was forced to repay 3,000 staff over £600,000 in arrears of pay (Gardiner, 2015:2).

In this context, it is unsurprising that four of the fifteen policies proposed as part of Kirklees Council's strategy to tackle poverty in Kirklees focus on changing the behaviour of employers. Given these socio-economic factors, it is likely that a legal needs assessment of the community in Kirklees would identify unresolved, justiciable employment problems, which, if dealt with successfully, could help to ensure workers receive the payments and benefits they are entitled to and disincentivise poor behaviour on the part of employers. The following interview excerpt from an interview with the employment supervisor at KCALC expands on this reasoning:

"There are employers, and I think you've probably heard examples this morning, who are very exploitative: someone who's just had a lady come in downstairs who was told that she was going to be paid at the national minimum wage and they said: "oh no, you actually volunteered" and forged her signature on a document to try to prove that she had volunteered with them and not paid her for 2 months (she had decided not to go to University on the basis that she could go straight into a job with this company). There [are] a number of areas of employment that are on our top ten most wanted list. Care work, care homes, that sort of thing, provision of care in people's homes is a typical example. We are continuously; I would say something like forty per cent of the calls we get are from care workers you know a huge number from that sector. Security guards. In this particular area, there are… about 40 firms around this area that manufacture bedding, they are: particularly bad employers…I had two clients call in, as a drop in, two young Asian men called in and one of them started talking and said "I work in a factory in Dewsbury I don't particularly want to say which one", and said "we're having problems at work with regard to holidays etc." [00:07:37] and I said "you work in bedding don't you?" And you can tell, because of their build, because it's really hard work is bedding, and these guys were muscular you know, big guys, and I said, you work in bedding don't you and they said: "yeah, that's right, I don't want to particularly say which one, but yes". You get repeat offenders, time after time because nobody's doing enough about it"

KCALC ES

Given the evidence of unmet need identified in Kirklees in respect of employment law, it is concerning that the merger has not enabled the Law Centre to prioritise this area. In interviews at the Law Centre, it was expressed that the CAB tended to focus on the provision of advice in welfare benefits and debt, with housing coming a close third and employment being neglected as a priority. Whether it is the decline in availability of resources, or the strategic priorities of the CAB that has driven this resource allocation decision is difficult to discern, however, Law Centres looking to merge should be mindful that the organisation they choose to merge with has a compatible strategy for allocating resources.

6.6.2.2 Merging with a CAB to survive and meeting need type 2: Delivering services to those whose interests are recognised under the extant legal framework, but who are vulnerable in the context of being able to successfully secure their rights, protection and fair treatment.

Unlike Law Centres, Citizens Advice Bureau have significantly invested in delivering services via telephone and online; mediums of advice delivery that are being adopted by the combined CAB and Law Centre post the merger. The following

section discusses the potential implications of delivering services in this manner for Law Centre Value 2.2 and in the context of the vulnerability framework proposed in Chapter 4

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6.6.2.3 The move to telephone triage and the ability to meet need type 2

One important consequence of the merger has been to limit the face-to-face advice that is provided to clients. Research indicates that this reduction in face- to- face advice and the move to a telephone triage system may impact detrimentally on the ability of the Law Centre to target their services at the most vulnerable. Unlike Law Centres, CABs have developed a comprehensive online offering, and it is not unusual for CABs to make use of telephone triaging in order to limit the face-to-face services they provide. In 2015, Jo Swinson, Minister for Business Innovation and Skills provided a written answer to parliament which states that the number of unique clients seen by CABs was declining due to:

"…work undertaken to expand delivery through alternative channels; by phone and via the Adviceguide website. Clients are demanding more access to the service via these alternative channels and Kirklees bureau is reacting to this change in demand patterns." (HC Deb 29 February 2015 vol 592 c222637W).

Unlike Law Centres, who have only recently begun to explore digital options for delivering advice, and whose members have often highlighted the inadequacy of online and telephone provision for meeting the needs of the most vulnerable (see Law Centre's Network Written Evidence to the Justice Select Committee HC 311 (2014: LAS 57:4), CABs have developed an extensive online offering and operated telephone advice services funded by the Money Advice Service and the Department of Business, Innovation and Skills. Post-merger, in keeping with this tradition, the newly formed KCALC reduced face-to-face general advice services, moving instead to a system whereby clients are "triaged" over the phone or encouraged by volunteers to self-help using computers. The aim of this was to restrict face-to-face general advice to the most vulnerable clients who would otherwise be unable to access services. The following interview excerpt with the Chief Executive of the Law Centre describes this new approach:

So we're looking at trying to maintain two access points in Dewsbury and Huddersfield: the front end bit if you like will probably be access to computers to try to get information there, or to telephones [00:09:22] to telephone through to the telephone front end. And then we'll try and keep face to face really for only those people who absolutely couldn't access services any other way. [00:09:43]

KCALC CE

One immediate concern is that this model of advice provision may prevent the most vulnerable claimants from coming to the attention of the service in the first place. If clients are unable to use the telephone to access the triage service, how will the law centre recognise their vulnerability and prioritise them for face-to-face advice? One Law Centre worker explained the challenges a move to telephone advice poses for vulnerable clients:

"If you're giving somebody advice on the phone you're expecting them to pick up the phone and tell you exactly what's happened and they've got all the papers in front of them and they're going through all the costing and quite a lot of clients they might not be able to read the paperwork or they don't have the paperwork a lot of them don't open their post. I had one client who, his way of dealing with his post was to put the letters under the carpet and they letters would just sit under the carpet, so until somebody goes into that house and gets the letters from under the carpet you're trying to get information from an individual who doesn't have the knowledge or the capacity to give you the information that you need in order to be able to help them."

KCALC CC NQS

As discussed above in the framework developed at Chapter 4, those who belong to a minority group, have English as a foreign language, experience difficulty processing, organising or articulating information (as a result of mental illness, learning disability or drug dependency) should be considered more vulnerable than others in the context of being able to achieve a procedurally just outcome in relation to their justiciable problem. Research indicates that these factors also put individuals at greater risk of service exclusion if the provision of the service is via a telephone (Balmer et al. 2012:6 citing Pearson & Davis 2002, George 2002, McKinstry & Sheikh 2006, Griffith & Burton 2011). Balmer et al.'s 2012 study of telephone advice also indicated that those with mental health issues were far less likely to use

telephone advice (Balmer et al. 2012:21) A separate study published in 2013 (Smith et al. 2013:264) indicated that young people aged 16-24 were less likely to use the telephone to access advice. As such, there is some evidence to justify a concern that the introduction of telephone triaging may deter some of those individuals who are most vulnerable or dealing with the most complex cases from accessing the advice and support that they need- diminishing the ability of the Law Centre to address the needs of the most vulnerable.

6.6.2.4 Individuals from BAME backgrounds and workplace discrimination

Busby et al. (2015) writing on behalf of the Institute of Employment Rights in a submission to a consultation issued by the Law Society, repeatedly emphasise the disproportionate barriers facing low- income workers experiencing employment problems, including discrimination. The inadequacy of the fee remission scheme, the high burden of proof in evidencing discrimination and low levels of successful enforcement of judgements once made (Busby et al, 2015:7-9) have the authors argued, contributed to a situation where:

"the actual enforcement of employment rights has become the exception, not the norm, restricted to those few highly paid individuals for whom legal costs and fees are not a significant burden… There is no evidence that fees have deterred weak or vexatious claims, instead they have deterred all types of claims, but especially those important claims for low amounts or which are hard to prove" (Busby et al. 2015:9)

Those who are at risk of certain types of workplace discrimination, (women, individuals from BAME groups, individuals with mental or physical disabilities) are disproportionately represented in low-income occupations (Clarke and D'Arcy, 2016). Certain protected characteristics under Equality Law, intersect with the criteria identified as constituting vulnerability in the framework developed at Chapter 4. Poverty may be considered to exacerbate the factors that render an individual vulnerable in the context of being able to pursue a legal claim successfully. Poverty is not distributed equally across ethnic groups in Kirklees: a higher percentage of BAME residents in Kirklees live in households with annual incomes of less than £10,000 (38% versus 21%) (Kirklees Council, 2016: 5) Nearly

half of black and mixed ethnic group residents in Kirklees reported worrying about money most or all of the time. (Kirklees Council, 2016: 10). The council's Tackling Poverty strategy reflects the intersection between poverty and other factors, stating their commitment to: "addressing issues such as discrimination, which reduce opportunities for some groups". In this context it is particularly troubling that data gathered at the Law Centre indicates that the changes to the way in which legal aid funding discrimination law advice is accessed, may be detrimentally impacting on the ability of individuals with justiciable, meritorious claims for discrimination to access the legal advice and representation they are entitled to. As stated above, the merger was unable to preserve capacity in face-to-face specialist employment advice at the level it had existed at prior to the cuts. In the context of this reduced capacity, there is a concern that the Law Centre is impeded from targeting their support at those who are most vulnerable in the context of accessing the rights that are afforded to them under the extant legal framework.

6.6.3 The impact of merging with a CAB to survive on Terminal Value 3: Law Centres are staffed by specialist, expert legal professionals

On the part of the Law Centre, the immediate impetus to merge was provided by the uncertain financial circumstances the Law Centre found itself in, and the pressing desire to secure funding to facilitate the retention of specialist legal expertise within the Law Centre. The following excerpt from an interview with the Law Centre Chief Executive explains his reasoning prior to the merger:

"*We're hoping really that the merger will give us some financial stability, that's a big plus for us because CAB have a reasonable level of reserves and we have none so it makes life easier that way. We should be able to integrate some higher level management roles and we should be able to make some sort of efficiency savings around things like finance worker, insurances, and those sort of joint costs so there may be some savings there".*

KCALC CE

In addition, it was hoped that being part of a larger organisation would open up new opportunities to secure additional funding, as the Law Centre Chief Executive explained:

"*We did apply for a contract with [00:56:19] Citizens Advice in Hampshire, for, basically as a support service for their employment teams across the whole region …though it went down quite well we didn't, we didn't get it on, on cost in the end but it was the only one we'd applied for and really had no idea, but there may be some more things like that and I'm thinking once we'll be inside Citizen's Advice it may be easier to pick up on things like that.".*

Interview with KCALC CE

It was also felt that the relative longevity of the Citizens Advice brand and their existing relationship with the Local Authority would help to protect the Law Centre from future cuts, as this excerpt from an interview with a Law Centre employee demonstrates:

"I think it will make us a lot more, we'll be more identifiable particularly with the local authority because I know that the local authority are very closely connected with the CAB and it's very unlikely that the local authority are going to let go of the CAB. There's always going to be some sort of element of support so because we're in with that, that makes a big difference. I also think the CAB's visibility and its brand and it's nationally recognised, if I say to somebody "I work for a community law centre" they'll say- "oh what's that?" if I say, oh we work with the CAB they automatically know."

KCALC CCTL

Throughout the process of merging the Chief Executive of KLC prioritised the retention of specialist, expert legal advice. Where redundancies were called for as part of the merger the Chief Executive chose to keep more expensive, expert staff at the expense of advisors who provided general (as in, non-legal) advice, as the following interview excerpt explains:

"The thinking is to try to keep people with the highest levels of knowledge and I guess lose people with lesser skills and replace them with volunteers who can be skilled up or mentored or trained supported you know all those things but it does mean yes, a lot of volunteers replacing existing paid staff.

Interview with KCALC CE

The Chief Executive of KCALC was also committed to maximising the efficacy of the specialist expertise retained through building a team working approach to undertaking casework, contrasting with the traditional model of individualised

casework that is an accepted tenet of traditional legal professional practice. The Chief Executive of KCALC saw this team working approach- whereby a multidisciplinary team within the Law Centre "owned" the client and their case, rather than the case being owned by an individual solicitor or caseworker, as a means of delivering a holistic approach for clients whilst ensuring that the time and skills of each team member were being put to the most effective use. The following excerpt describes this approach:

"We're hoping that… [the approach means] we can get the people who are specialists, who have the real sort of knowledge to deal with those cases and those bits of cases that need those skills, and that experience and that knowledge to supervise people dealing with less complicated things and also to have those other people supporting so that if somebody's perhaps got a complex case but part of that case, what we find is that people come in anyway, they're seeing a solicitor but they still come in and say oh I've had this letter from the DWP and they've stopped my benefit because I didn't send a sick note, that doesn't need a solicitor to look at it that just needs someone to say "well go and get a sick note" but: "If you need me to I'll send it off for you". You don't want a solicitor doing that so it's about trying to get a good enough team operation that you can get people to deal with stuff at an appropriate level that client doesn't belong to a particular person a or solicitor it's the team's case and somebody will deal with it."

Interview with KCALC CE

In addition to retaining expertise, KCALC had historically been effective at developing and building the legal expertise and skills of its staff, in order to develop solicitors with the expertise in law and client working most valuable to the Law Centre. Prior to the merger KCALC had committed to providing a training contract to one of their employees who was about to qualify as the merger took place. The Chief Executive of KCALC planned to retain her post merger as a newly qualified solicitor in their Community Care team. Reflecting on her experience of her training contract and the importance of the legal skills she had learned at the Law Centre she expressed that the training she had received with KCALC had encouraged her to see herself as part of a "bigger picture" adopting a creative, problem solving approach to lawyering, and feeding back lessons from her practice to groups involved in policy work and lobbying for changes in the law:

I also think that there's a very analytical way of thinking when you're taking in problems and your looking for solutions for how to [00:33:42] effectively get your client from one end to another end, it's something you learn from your training [and] quite often on the LPC it's not really from academia it's about going through this process, how you start this process, how you get to the end and all the steps that you've got to go through in between, for whatever area of law that it is that you're doing, so it's a problem solving approach with a personal touch too. I guess we can feed that through to policy groups and to wider groups that campaign for social change and to give them those statistics, those case studies, those examples of how [the law is] really put into practice and how things can be effective and how things need to change. I know that we feedback a lot of our decisions to CPAG and campaign work like that which in turn lobby government so we're part and parcel of that bigger wheel.

Interview with KCALC CC NQS

The deliberate strategy of prioritising the retention of expertise through the process of the merger and restructure is indicative of a management that is cognizant of and committed to the values that make Law Centres distinctive. It must be emphasised that this is not an inevitable function of the strategy of merging to survive, but rather a deliberate and tactical approach to navigating a process that could have proved detrimental to Law Centres values- as such it may be seen to attest more to the abilities and awareness of the Chief Executive of KCALC than to the strategy of merging in general.

6.6.4 The impact of merging with a CAB to survive on Terminal Value 4: Law Centres are empathic allies of their clients

One immediate impact of the merger on the way in which Law Centre staff were able to work with clients was the move to a telephone triage system, the implications of which are discussed above at 6.5.2 However, it was evident from the fieldwork that the merger had not changed the way in which Law Centre staff related to the clients that they were able to work with face- to- face, having been referred through the triage system.

The culture of the Law Centre management, perhaps as a function of the distinctive history of the Law Centre, it's relative "newness" and it's historic reliance on legal

aid funding, meant that the atmosphere in the Law Centre prior to the merger was more akin to that of a traditional solicitors office. Commenting on the distinctive culture of the Law Centre, the Chief Executive of Kirklees Citizens Advice stated:

"Law Centre, I think, the clue is in the word "law" centre…it kind of feels like a solicitors office. I think the other thing about the Law Centre that I've found is that the culture there is very much that [Law Centre CE and Law Centre Supervising Solicitor do all the management stuff and the other people just focus on clients and do their casework and they don't bother themselves about the running of the place by an large- that's not true in a CAB, the volunteers, as I've had today, they're all very interested in what you're up to and so yes, much more interest throughout the organisation … So those are the differences I would say". Interview with KCAB CE

As previous chapters have discussed, this "corporate" management style is atypical within the Law Centres movement (Mayo et al. 2014:108). It is possible that this distinctive style developed as a function of the way in which the Kirklees Law Centre was established- in discussing the factors that facilitated the survival of Law Centres who generated their income through legal aid contracts, the former Chief Executive of the Law Centres Network stated:

"…every law centre…, well not long into my time with LCN, had at that point taken up Legal Aid contracts but not all of them had embraced the whole, not so much management culture but I think basics of running a legal practice, having the office manual, having the systems in place and everybody working to the same systems and having the supervision. And the most important thing, I always thought, was proper file supervision…that sort of thing, and not every law centre adopted that, it was a struggle but each Law Centre had its own individual way of doing things.. **[***KLC Chief Executive] came from the LSC he'd been partnership manager at the LSC so he was very able, very good on running the contracts…We didn't have very many problems at all actually at Kirklees in terms of managing it, getting the contracts up and running, recruiting the caseworkers, they were very fortunate they got a good manager in [KLC Chief Executive], they got good caseworkers who could basically run the legal aid contracts and make them pay" [Interview with SH].*

However, whilst the management style might have had more in common with private practice, it was apparent that the training provided at KCALC had helped

staff to develop skills in working with extremely vulnerable clients in an empathic and supportive manner. This expertise in working with the most vulnerable clients in a manner that conveys understanding and solidarity is key to delivering the Law Centre Value of being empathic allies of their clients. In the following interview extract the interviewee describes the approach the she adopts in relation to Community Care casework and expresses her views regarding the importance of being able to conduct face-to-face outreach work with clients with Community Care needs:

I think for quite a lot of the community care clients in particular they don't know what 's wrong they're not happy, they're not coping but they don't understand what it is that we can do to help them. They don't know what their rights are, quite often they've always lived the way that they're living or it's become normal, so it's very difficult for them to tell me what they want or what they need [00:16:43] so I think it's quite important that I can take the time with them to try and work out what's happened to them and to get a bit of background and to go through things and to try and identify what might be the problem... And it's really straightforward, but I can't see how you can give quality advice that's effective and that's going to be long term if you're not getting the right information to start with, and when your starting point is that individual client you've got to do your damnedest to get that from them and for me it tends to be going into people's homes and literally going through their papers, and that's something they've got to allow me to do and feel comfortable with me doing, and asking questions that they might not necessarily know the answer to or might not even have occurred to them"

KCALC CC NQS

This attitude permeated staff attitudes throughout the organisation: from trainee level to the supervising solicitor, as the following excerpt attests to:

"*Our senior solicitor, his motto is "I will appeal anything, I will appeal everything" so any decision that comes through [senior solicitor] will take that decision and he will analyse it and he will pull it apart and he will challenge it regardless, I mean obviously he's doing it for his client so we're doing it from a one sided approach but before I came here, particularly before I came to the Law Centre I would never stand up and challenge a Judge's decision, I would not go to a first tier tribunal and come back and say "oh that judge was wrong" and he's taught me that people in higher positions of authority, that governments, that local authorities can make decisions that are wrong and you have*

to…look at that decision and be able to pick it out for errors in law and challenge it and I don't think that that's something that a support worker or somebody without that legal background would, it might not even occur to them- it didn't occur to me before coming here" KCALC CC NQS

From the above evidence it may be observed that KCALC is, at present, highly effective in providing training that promotes the development of the types of legal and client expertise that are intrinsic to Law Centre values. It is perhaps too early to predict whether merging with the CAB, whose culture and approach to casework is characterised as less adversarial, will impact on the ethos and skills of the lawyers trained within the joint organisation.

6.6.5 The impact of merging with a CAB to survive on Terminal Value 5: The communities in which Law Centres are based and the clients they work with have higher levels of legal knowledge and are better able to secure their rights protection and fair treatment

The fieldwork raised relatively few lessons regarding the impact of the merger on the ability of KCALC to carry out community education about the law. The strategy of working in partnership with other agencies, adopted to create referral pathways in the immediate aftermath of the merger, provided opportunities for Law Centre staff to demonstrate the potential role of the law in solving social problems-. The access to funding opportunities through the CAB network, and in particular their work on financial capability and inclusion, might provide the opportunity for the combined CAB and Law Centre to develop the education aspect of their work at a later date. Post the merger- the combined Law Centre and CAB continued to support a partnership with Huddersfield University, training law students to represent clients in welfare benefits tribunals, this may be considered a form of community legal education, albeit a more restricted one than the original founders of the Law Centre movement might have envisaged.

6.7 Conclusion

The case study described above may be considered to exemplify best practice in mergers between not for profits: the two organisations involved manifest all of the

features that the academic literature on organisational mergers identifies as being critical to a successful outcome. In this respect the experience of the Law Centre may be considered relatively unusual. The excellent leadership, positive pre-existing relationship and thoughtful approach demonstrated by the heads of the two organisations prior to the merger meant that many of the pitfalls identified as commonly experienced in voluntary sector mergers were avoided. As such, the case study may be considered useful for Law Centres wishing to consider the potential impact of merging with another organisation on their ability to deliver their values even when the outcome of the merger is positive in its own terms.

The decision to merge with an organisation that is culturally and historically less comfortable with undertaking activities aimed at challenging, reforming and/or extending the law to improve the position of those who are disadvantaged by the legal framework as it stands, may have implications for the ability of Law Centres who adopt this strategy to deliver Ideal Type Law Centre Terminal Value 1(Law Centres improve the position of economically disadvantaged individuals and groups within the extant legal framework). Further to this, it is unlikely that two organisations will share all the same priorities, as such, merging may require one or both organisations to compromise on their values. In the case of Kirklees Law Centre, there is some evidence to suggest that the decision to merge with an organisation that has not prioritised the retention of specialist legal advice in employment law, despite evidence of local need and is committed to digital and telephone triage, may impact on the ability of the Law Centre to target their services at the most vulnerable clients, potentially undermining their ability to deliver Law Centre Ideal Type Terminal Value 2 (Law Centres deliver their services to those in greatest need). However, merging with an organisation that is both financially stable, and a member of a large, comparatively well -resourced network with a distinctive brand identity and a track record of accessing government funding does offer the new organisation the opportunity to stabilise its financial position and retain many specialist staff, to a greater extent than would otherwise be possible. As is stated above, this is not an inevitable function of the merger but rather a deliberate strategy driven by the Law Centre management: as such Law Centres considering adopting this strategy should ensure they prioritise this in merger discussions in order that they remain able to deliver Law Centre Ideal Type

Terminal Value 3 (Law Centres are staffed by specialist, expert legal professionals). The timing of the fieldwork, which was conducted shortly after the merger had taken place and before the restructure had been completed made it difficult to assess the impact of the merger on Law Centre Ideal Type Terminal Value 4 (Law Centres are empathic allies of their clients) and Law Centre Ideal Type Terminal Value 5 (The communities in which Law Centres are based and the clients they work with have higher levels of legal knowledge and are better able to secure their rights). In the case of the former whether the newly combined Law Centre is able to deliver this value is contingent on the ability of the new organisation to retain it's existing staff and train new staff to work in the manner adopted by the current staff. In the case of the latter, the extent to which the newly formed organisation will be able to deliver legal education to improve the legal knowledge of the community and clients depends on their ability to secure funding to develop this function- as this does not flow naturally from the strategy.

7 CHAPTER 7: EXPANDING THE FUNDING BASE FOR LAW CENTRES WITH PROJECT FUNDING - THE EXPERIENCE OF COVENTRY LAW CENTRE

7.1 Introduction

As described in Chapter 2 above, by the time the LASPO cuts to funding for Legal Aid were introduced in 2013, the majority of Law Centres were heavily reliant on two sources of funding: contracts for delivering legal aid, and grants from local authorities for providing legal advice and assistance. The way in which these funding streams were structured, broadly speaking, meant that payment was contingent on demonstrating that units of advice had been delivered to individuals who met particular criteria: as such, the funding was both legal services specific and focussed on outputs, rather than outcomes. As a result, Law Centres on the whole were not used to collecting data on the range of ways in which timely legal advice and representation can ameliorate complex social problems. The lack of data demonstrating the impact of legal advice and representation on a range of outcomes for individuals made it harder for Law Centres (and legal aid lawyers more generally) to make the case for the value of their services to general audiences (beyond the legal profession and those who had previous experience of accessing legal services). The following chapter describes the experience of Coventry Law Centre, who adopted a strategy for responding to the cuts that sought to address this problem and in doing so, expand the range of funding sources available to the Law Centre. In describing the strategy, the Chief Executive of CLC stated that: "We've made significant changes to how we deliver our work, the outcomes we expect to achieve and how we measure our impact. We've made a shift from the main focus being one of solving legal problems, to a wider view that now also embraces a greater concern for the lives of our clients…We know we can't take for granted that everyone considers access to expert social welfare legal advice to be as important as access to healthcare or education, so we have made it our business to be able to show it" (Bent, 2017:3). In practical terms, this strategy entails shifting to project based funding, secured from funders who may not be used to funding legal advice and working in partnership with other agencies to demonstrate the impact of access to legal advice and representation on a range of outcomes, such as health, wellbeing and poverty.

This approach of expanding the range of potential funders, which necessitates the positioning of access to the law as a tool, rather than an end in itself, is highly congruent with the vision of role and value of the law subscribed to by the founders of the Law Centre movement. However, in the context of low levels of public understanding of the law and legal system (Pleasence et al. 2015), negative publicity regarding the cost-efficacy and indeed integrity of lawyers and a culture of nervousness around the rules on campaigning for charitable trusts- how scalable is this approach? Does designing projects with the aim of attracting funding from generalist funders risk subordinating specialist legal casework and strategic litigation in favour of activities that generalist funders are familiar with and more readily able to understand and justify to their trustees? This chapter reports on the first project that Coventry Law Centre undertook to trial this strategy: embedding a legal advisor in a team of social workers working with families as part of the Troubled Families Programme. In 2012, CLC received £75,000 funding from a coalition of charitable funders through the Future Advice Fund Programme, coordinated by The Baring Foundation. This money was used to finance CLC to deliver a tiered model of embedded advice to families being supported by Coventry City Council's Troubled Families Team, who were tasked with supporting and "turning around" families with multiple and complex problems. The Troubled Families Programme was designed to operate on a payment by results basis. CLC reached an agreement with Coventry City Council that if they could demonstrate the value of the provision of this advice to both the Troubled Families Team and the families they worked with as part of the scheme, the Council would agree to continue funding the work of CLC after the philanthropic funding ended. The Future Advice Fund Programme provided funding for an evaluation of the impact of the project on both the operation of the Troubled Families Team and the families worked with as part of the scheme. This evaluation was used to successfully demonstrate the value of the scheme to Coventry City Council, who took over the funding of the model when the philanthropic funding expired. As such, the case study of the Troubled Families project represents the "holy grail" of grant-making for the philanthropic funder- a project that delivers its agreed outcomes, demonstrates substantial benefit for client, transitions along a: "path to sustainability" (Grossman et al. 2013:3) through securing next stage funding and is potentially scalable. The project was shortlisted

for The Lawyer magazines' Ethical Initiative of the Year Award. In 2016, the Chief Executive of CLC credited the Troubled Families project with: *"unlocking a new way of thinking about things to attract new income and replace legal aid funding. We haven't shrunk. We've grown."* The adoption of this income generation strategy means that CLC has now completely replaced lost legal aid funding with new sources of funding. By 2017, CLC had attracted support from 30 different funders, including a range of foundations and trust funds, the private sector and local universities (Bent, 2017:1).

The chapter begins by exploring the national context for the strategy of growing the sources of funding for legal advice and representation through project funding. It then describes the operation of the Troubled Families project, before moving to explore the implications of working in this manner for Law Centre values, drawing on evidence from the evaluation of the Troubled Families project. It describes the significant benefits of this model, including the way in which working in this manner can both help to extend legal services to vulnerable individuals who might otherwise fail to access them, and reinforce the relationship between the client community and the Law Centre. The chapter concludes that whilst working in this manner appears to be largely congruent with Law Centre values, there are risks, especially in relation to the ability to use the law to bring about social change and the retention of specialist legal advice.

7.2 Growing the funding base- the national picture

Prior to 2010, Law Centres were heavily reliant on legal services-specific public funding to finance their work. The three mains sources of Law Centre income were legal aid, local authority grants and funding from the Government Equalities Office. In their 2009-2010 Annual Review, the Law Centres Federation[38] stated that: "Law Centres' sustainability relies mainly on two different areas of funding: Legal Services Commission contracts for the provision of legal aid and Local Authority funding…" (LCF, 2010:4). Research published by the Baring Foundation confirmed this, stating that prior to LASPO, 46% of all Law Centres' funding came from legal aid (Randall and Smerdon, 2014:7). Grants from local authorities for the provision of advice constituted the majority of the remainder. Many Law Centres also

[38] (now renamed Law Centres Network)

received funding from the Equalities and Human Rights Commission: from 2009 the Commission provided £3.2million of funding to support a programme of face-to-face legal advice for non-legal aid eligible individuals facing discrimination. Reflecting the funding landscape of the time, prior to 2010 the work of the Law Centres Federation Development Support Team primarily focussed on supporting the network of Law Centres to secure and manage legal aid contracts and assisting members to build their capacity to participate in public procurement processes (LCF, 2010:9).

The election of a Conservative-Liberal Democrat government in 2010 and their commitment to austerity policies aimed at reducing public spending heralded a rapid decline in the availability of public funding for legal advice and representation. In addition to the changes to legal aid funding ushered in by LASPO, drastic cuts to local authority budgets were announced- a memorandum submitted to the Public Bill Committee by Law Centres Federation in response to LASPO stated that members were experiencing an average 53% cut in funding from local government (LCF, July 2011). In 2012 the Government Equalities Office took the decision to defund the Equalities and Human Rights Commission administered programme of face-to-face legal advice, a move that impacted severely on Law Centres already beleaguered budgets. As such the availability of legal service specific public funding, both national and local, was declining rapidly, with stark implications for the future of Law Centres.

Responding to the new funding climate, in 2014 Law Centres Network amended their strategic goals, to include: "*finding new sources of funding for Law Centres, taking the lead on attracting funding where appropriate such as with European Union funding and forging new partnerships with non-legal agencies so that clients get a more holistic service*" (LCN, 2015:5). Priorities set by Law Centres Network for 2014 included: "*obtaining more funding for Law Centres including at the European level*" (LCN, 2015:2) and: "*increasing collaboration between Law Centres and a new focus on working with non-legal agencies*" (LCN, 2015:2). Key partners in helping Law Centres Network to develop this area of work were Trust for London and the Future Advice Fund- a coalition of funders[39]

[39] Comic Relief, The Diana Princess of Wales Memorial Fund and Unbound Philanthropy (a private foundation which makes grants in both the US and the UK)

brought together by the Baring Foundation to help support the advice sector in the wake of successive cuts to their traditional sources of income. The Future Advice Fund programme awarded grants to both Law Centres Network and individual Law Centres to develop new income streams. The programme distributed resources with the aim of supporting: "*the building of a series of bridges to a future system of effective social welfare legal advice services*" (Smerdon and Randall, 2013:2). The Future Advice Fund programme accepted applications for funding from organisations seeking to: i) attract new sources of income, ii.) make the most effective use of resources, iii.) strengthen their organisations to become sustainable in the face of an uncertain funding environment, iv.) make strategic use of the law, v.) build the evidence base for advice and vi.) advocate and campaign for the importance of advice (Smerdon and Randall, 2013:2). The Future Advice Fund Programme was divided into three strands: i) The Providers Fund- a grants programme of up to £2million over three years to: "(a.) help frontline advice providers to develop and implement ideas for restructuring and organisational development that will put their organisations on a more sustainable footing; and (b.) generate tools, resources and lessons on the future sustainability of advice services that are of benefit to the wider advice sector". Coventry Law Centre received funding for their work with Troubled Families from the Providers fund. The other two streams of the Future Advice Fund Programme were the Strategic Fund, which made grants and commissions of up to £2million over three years in order to bring about: "a more supportive policy and funding environment for advice" (Smerdon and Randall, 2013:2) and The Learning Programme which aimed to support grantees to systematically capture, report and disseminate learning from the grants awarded under the Future Advice Fund Programme.

The funders involved in designing the Future Advice Fund programme placed specific emphasis on the importance of Law Centres and other advice agencies being able to demonstrate the impact of their services on a range of other social problems. A significant portion of the strategic fund was spent on exploring the evidence base linking the provision of legal advice with improved health outcomes. From the mid 2000's onwards, researchers and civil society organisations began exploring the links between the experience of legal problems and a range of other

social issues, including financial well-being, family breakdown, experience of mental health, unemployment, criminality and homelessness (Muller, P. et al. 2011: 2 see also Legal Services Research Centre; 2010, Scope; 2011, Youth Access; 2011; Centre for Mental Health; 2013). The funders involved in designing the Future Advice Fund programme were committed to funding research and initiatives with the potential to: "demonstrate the different positive benefits advice has" (Smerdon and Randall, 2013:12) with a view to using this evidence to convince funders who had not previously funded legal advice and representation to fund in this area. The strategy paper that articulates the goals of the Future Advice Fund Programme specifically references local authorities, health agencies, the department of work and pensions, the department of communities and local government, the home office, EU bodies, housing associations and non-advice charities working in relevant fields such as mental health, criminal justice and poverty as potential sources of "new" money for the sector. Coventry Law Centre received a grant from the Future Advice Fund Programme to "seed-fund" the initial twelve months of the Troubled Families project discussed below: this project has been held up as an exemplar of what can be achieved through designing projects that demonstrate the impact of legal advice to non-traditional funders. The following section describes the genesis of this project.

7.3 Expanding the pool of funders through project funding- the experience of Coventry Law Centre

Coventry Legal & Income Rights Trust was established in 1976 to provide free, specialist legal advice and representation to disadvantaged individuals and groups resident in Coventry. In 2001 Coventry Law Centre Ltd was formed, acquiring the assets of Coventry Legal & Income Rights Trust. Coventry Law Centre Ltd. is both a company limited by guarantee and a registered charity, and continues the work of the Trust in accordance with the purpose expressed in the company's memorandum of association. This states that the purpose of CLC Ltd is:

i) The relief of financial hardship and other forms of distress among the people of the City of Coventry in England and others through the provision of legal and other advisory, representation and information services which they could not otherwise obtain through lack of means

ii) The advancement of education of the public by the improvement and diffusion of knowledge of the law and the administration of justice,

having regard especially to those areas of the law which are of particular concern to poor people or are directed to the relief of poverty

iii) To promote such other charitable purposes as are for the benefit of the people of the City of Coventry" (CLC Annual Accounts, 2014:4)

As such, CLC's mission and purpose expressly positions legal advice and representation as a means to achieving other social goals, rather than an end in itself. When asked to describe the distinctive feature of the Law Centre's work, the Chief Executive emphasised this view of legal services as a tool, rather than an end in themselves, stating:

"…Specialist legal knowledge… that's our unique selling point… The other part of our unique selling point is actually caring about people: wanting to use the law for good and actually wanting to get alongside people and understand their situation and for me it's those three things that make us powerful."

Coventry Law Centre ("CLC") offers advice, representation and advocacy across a range of areas of law, including: Community Care, Debt and Money, Discrimination, Employment, Family Law, Housing, Immigration and Asylum, Public Law and Welfare Benefits. CLC employs a staff of 26 solicitors, experienced advice workers and community workers. It has continued to recruit trainees using funding provided by The Legal Education Foundation's Justice First Fellowship- Coventry Law Centre now holds two traineeships funded through this project. Prior to April 2013, the Legal Services Commission (now the Legal Aid Agency) provided CLC's second largest source of income after Coventry City Council. As such, CLC was highly exposed to the effects of LASPO- the impact of cuts to legal aid on CLC was highlighted as a major risk factor in the 2014 annual accounts. In 2014, CLC's annual accounts reported that: "the most significant risks to the charity are reduction or loss of funding from the Legal Aid Agency or the charity's other main funder, Coventry City Council…the trustees have planned for this and have adopted a strategy of bidding for funding from other sources" (CLC Annual Accounts, 2014:3). Instead of restricting themselves to seeking income from funders with a history of funding legal advice and representation, CLC's leadership deliberately adopted a strategy of diversifying their funding base through applying for project funding. In an article published by New Philanthropy Capital entitled:

"How we faced swingeing cuts but came out swinging" (Bent, 2017) the Chief Executive of CLC stated: "our strategy has been to stay true to our values and to our belief that specialist legal expertise is critical in preventing and tackling problems faced by people who are disadvantaged in society…" (Bent, 2017:2). In designing projects, CLC pioneered approaches that demonstrated the role and value of legal services in resolving complex social problems and applied to funders whose objectives related to finding a solution to these problems. As the Chief Executive of CLC stated in 2017: "To find funding and create capacity for [our] work…we've had to form new alliances and reconsider the way we use our legal expertise…We've found other organisations that are prepared to buy our expertise in these areas because they can see it helps them achieve their own goals" (Bent, 2017:3). The genesis of this approach lay in a project that embedded a legal adviser within the Children's Services Department at Coventry City Council, as the Chief Executive of the Law Centre explains: "Our journey of change began with successfully securing funding from The Baring Foundation to pilot working alongside the local authority Children's Services department, who were seeking to meet the outcomes defined within the Government Troubled Families agenda" (Bent, 2017:2). The Chief Executive expanded on the rationale for developing this project in the following terms:

"I suppose the thing in my head was, well if the Ministry of Justice isn't going to pay for this work, we have to start thinking, "who else does it matter to?" How can we persuade people who have got other targets that they are trying to achieve, that actually access to specialist legal advice and getting and having specialist legal advice is important for the client group that they are trying to work with, and if that's removed by the removal of Legal Aid, the activity that they're interested in, the goals they are trying to achieve for those clients are going to be undermined? Troubled Families was…the first opportunity I saw that made me think "That's actually our client group"- we know that they have legal need, it's new money and the thing to do would be to persuade the government that its critical, in terms of the targets they are trying to achieve with those families [to have access to legal advice]. So it came from those two little seeds really and it was the opportunity that it was going to be new funding that made me think: "Right, well that's what we should do"

Interview with CLC CE

The following section describes the operation of the Troubled Families Programme at a national and local level, and demonstrates the way in which the structure of the

programme leant itself to the design of a project capable of demonstrating the value of legal advice in terms that enabled the Law Centre to make the case for sustainable, on-going funding.

7.4 Understanding the Troubled Families programme

The Troubled Families Programme was jointly announced in December 2011 by Prime Minister David Cameron and Communities Secretary Eric Pickles[40] with the aim of incentivising local authorities to work with those families whose problems were most complex and intractable and therefore, according to the government, most costly to the state. The scheme operated on a payment by results basis and provided new resource to local government to work with families in a more holistic manner. The programme was developed in order to fulfil the current Prime Minister's commitment to ensure that 120,000 "Troubled Families" are 'turned around' by 2015 (although the programme has now been extended to 2016). Households are classed as "Troubled Families" qualifying for this programme if:

a. They are involved in crime and anti-social behaviour;
b. Have children not in school
c. Have an adult in receipt of out of work benefits.
d. Incur high costs to the public purse

The Department for Communities and Local Government stated in March 2012 that the cost of these 120,000 Troubled Families to the state is approximately £9billion per annum, the vast majority of which is spent on reacting to problems experienced by these families after they have occurred[41].

The Troubled Families Programme introduced a payment-by- results model to *"incentivise and encourage local authorities to grasp the nettle: to develop new ways of working with these families, which focus on lasting change."*[42] In December 2011, Local Authorities across England were provided with figures detailing the indicative numbers of

[40]https://www.gov.uk/government/news/tackling-troubled-families

[41]Department for Communities and Local Government [2012] "The Troubled Families programme: Financial Framework for the Troubled Families programme's payment-by-results scheme for local authorities, p2 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11469/2117840.pdf

[42]Ibid.

Troubled Families in their area. This figure represented the number of families that Local Authorities were required to 'turn around' by 2015. Local Authorities were then requested to compile a list of the families known to them who met the compulsory requirements of the scheme.

7.4.1 Identifying "Troubled Families"

Local authorities were asked to identify "Troubled Families" that they would be working with according to three compulsory criteria: households containing young people involved in crime and/or families involved in anti-social behaviour, households affected by truancy or exclusion from school, and, if these two criteria are met, households which also contain an adult on out of work benefits. The programme mandates that all families who meet these three criteria should be included in the programme. In addition, local authorities were invited to add a "local discretion" criterion for inclusion, enabling them to add families to the programme who meet two of the compulsory criteria and are a cause for concern for other reasons. In determining the local discretion criteria for inclusion, local authorities were asked to have regard to the amount of resource spent on families meeting this criteria, in order that the programme continue to target those families who cost most to the public purse. Examples of this additional criteria provided in the programme guidance include: "families with a particular subset of health problems", or "families subject to frequent police call outs". Local authorities were asked to have identified one third of the "Troubled Families" they intended to work with in 2012/13 and the majority of the families by 2013/14.

7.4.2 The payment by results model

As stated above, the Troubled Families Programme operated on a payment by results model, where local authorities were paid a percentage of the funding for working with Troubled Families as results based payment in arrears, contingent on their ability to demonstrate measurable improvement against the inclusion criteria (see Figure 7.1 below). In recognition of the upfront costs associated with restructuring services to cater to the needs of the Troubled Families, and to minimize risk, the Department for Communities and Local Government offered a percentage of the funding as an attachment fee, for commencing working with the families. However, the number of attachment fees available will reflect only those

who the Local Authority works with successfully (rather than every family that the Local Authority commences working with)[43]. In recognition of the fact that Local Authorities "may not succeed in turning around every family" local authorities were encouraged to work with more families than their indicative numbers.

Figure 7-1: Attachment fee versus payment by results [44]

Total funding available per family =£4000		
Year	% Of payment offered as upfront attachment fee	% Of payment offered as a results- based payment in arrears
2012/13	80%	20%
2013/14	60%	40%
2014/15	40%	60%

Figure 7-2: Results based payment from central government [45]

Result	Attachment Fee	Results payment	Total
They achieve all 3 of the education and crime/anti-social behavior measures set out below where relevant: **1. Each child in the family has had fewer than 3 fixed exclusions and less than 15% of unauthorized absences in the last 3 school terms; and** **2. A 60% reduction in anti-social behavior across the family in the last 6 months; and** **3. Offending rate by all minors in the family reduced by at least a 33% in the last 6 months**	£3,200 per family	£700 per family	£4,000 per family
If they do not enter work, but achieve the "progress to work" (one adult in the family has either volunteered for the Work Programme or attached to the European Social Fund provision in the last 6 months)		£100 per family	
OR			
At least one adult in the family has moved off out-of-work benefits into continuous employment in the last 6 months (and is not on the European Social Fund Provision or Work Programme to avoid double payment)	£3,200 per family	£800 per family	£4,000 per family

[43]Department for Communities and Local Government [2012] "The Troubled Families programme: Financial Framework for the Troubled Families programme's payment-by-results scheme for local authorities, p8 Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/11469/2117840.pdf

[44]Ibid.

[45]Ibid.

7.5 The Operation of the Troubled Families Programme in Coventry

Coventry City Council's Troubled Families Team sits alongside their Children and Families First Team and forms part of their Children and Families First Service (see Appendix G below). The Children and Families First Team works with families where it has been identified that a child within the family fits within the Level 2 or Level 3 descriptors of the Common Assessment Framework, and therefore requires "super light" or "light to intensive" intervention to minimize negative outcomes for the child. In August 2012 CLC began to provide embedded legal advice to the wider Children and Families First service. The intensive work with the Troubled Families Team began in January 2013.

Coventry City Council opted to add three additional local criteria to the predetermined national criteria for inclusion in the Troubled Families Programme (see Figure 7.3 below) Figure 7.4 demonstrates the way in which the local discretionary criteria operate to prioritise those families who meet the National Criteria for inclusion in the scheme. The inclusion of the local discretionary criteria chosen by Coventry City Council further increased the likelihood that the families participating in the scheme would be experiencing one or more justiciable problems, that would adversely impact on the ability of the Troubled Families Team Key Worker to deliver the improvements necessary to receive the payment by results portion of the available funding.

Figure 7-3: Local inclusion criteria for Coventry

Domestic Abuse	Household in which there has been domestic abuse within the last twelve months
Parental Mental Health	Household in which there is an adult with poor mental health
Priority Neighbourhood	Household located within one of the eight Police Priority Neighbourhoods

Figure 7-4: Understanding eligibility for the Troubled Families Programme in Coventry

Family satisfies Crime and ASB National Criteria	Family satisfies Education Criteria	Family satisfies worklessness criteria	Eligible for Intensive Family Support?
■	■	■	Yes- Will be allocated to Troubled Families Team; can be prioritized using local criteria.
■	■		Yes- will be allocated to Troubled Families Team if high risk or requires sanctions. Can be prioritized using local criteria.
■		■	Yes- will be allocated to Troubled Families Team if high risk or requires sanctions, can be prioritized using local criteria.
	■	■	Yes, but will be worked with by the Children and Families First Team (L3 CAF)
■			Not eligible, but could be allocated to Children and Families First Team if meets L3 CAF Thresholds.
	■		Not eligible, but could be allocated to Children and Families First Team if meets L3 CAF Thresholds
		■	Not eligible, but could be allocated to Children and Families First Team if meets L3 CAF Thresholds

The following discussion describes the project designed by CLC in detail, before moving to explore the findings of the initial evaluation of the project.

7.6 Describing the project: elements of the tiered embedded advice model

The tiered embedded advice model consists of a full time legal advisor, employed by the Law Centre. The legal advisor is embedded in the sense that they are tasked with working exclusively with the clients of the Troubled Families Team at Coventry City Council. They also attend training and meetings alongside the TFT key workers where this is appropriate. Critically, the cost of the scheme is calculated in such a way as to support the salary costs of both the embedded legal advisor and one 50% FTE solicitor posts at the Law Centre The intervention was designed as a tiered

model- to provide some of Coventry's most vulnerable families with timely and effective access to legal advice delivered by the Embedded Advisor, and the option of priority access to specialist legal advice where necessary delivered by solicitors and specialist advisors at Coventry Law Centre. The following section describes some of the key features of the model.

7.6.1 Outreach

The outreach nature of the model is particularly significant; the legal advisor visits the client in his or her home and screens the client to identify whether or not the client is experiencing problems that may admit of a legal solution. The embedded legal advisor is based predominantly at the Law Centre, and travels to visit the clients of the Troubled Families Team when requested to do so by the family's Key Worker. The process through which the legal advisor is involved with a particular family is detailed below at Figure 7.5. The embedded legal advisor will also travel to the client's home and provide transport to and from the Law Centre for appointments where necessary or desirable. This feature of the intervention is designed to minimize non-attendance at appointments, and reduce barriers to accessing specialist advice in a formal setting. The embedded legal advisor will support the client through the appointment at the Law Centre when requested to do so.

Figure 7-5 : Referral pathway

Step 1	Family referred to TFT- Embedded Advisor contacted by TFT worker and invited to attend first or second home visit.
Step 2	Embedded Advisor uses questionnaire to screen family members for civil law problems i.e. through conducting a benefits check, enquiring as to levels of indebtedness etc.
Step 3	Having identified civil law problems, Embedded Advisor decides whether to refer client to Coventry Law Centre for specialist advice or undertake to advise the client in their home (or a mixture of both). If specialist advice needed, Embedded Advisor supports the client to access it.
Step 4	Embedded Advisor monitors client's case until all issues are resolved. The Embedded Advisor does not 'close' the case when issues are resolved so if further problems occur, TFT Key Worker or client can contact the Embedded Advisor at any point for additional legal advice, representation and support. The advisor forward diarises predictable events that may be likely to cause further problems for the family and makes contact to check if they are successfully navigating these events.

7.6.2 Continuity and accessibility

The embedded legal advisor is designed to provide a consistent point of contact for the TFT Key Workers and the families that they support. The embedded legal advisor is accessible by telephone during working hours, Monday- Friday. The embedded legal advisor is also accessible by email and text message.

7.6.3 Information sharing and independence from the TFT

The embedded legal advisor is independent from the Troubled Families Team. As such, information about the problems experienced by the families working with the TFT Key Workers is only shared with the Embedded Advisor where the family has given written consent. Information provided to the embedded legal advisor by the families is kept confidentially, unless the families provide written consent stating that the embedded legal advisor can share this information with the TFT Key Worker. Families who are being supported by the embedded legal advisor are asked to sign an authority form, stating which information may be shared with other agencies and under what circumstances this will occur.

7.6.4 Line management and offloading

The embedded legal advisor is managed directly by a supervising solicitor with expertise in Debt and Money at CLC. The embedded legal advisor meets formally with her manager on a bi-monthly basis. The embedded legal advisor is also able to discuss any issues or problems she is experiencing with her line manager on an informal basis, and is able to access peer support.

7.7 The findings of the initial evaluation of the model

As part of the research for this thesis an evaluation of the impact of the tiered advice model on the TFT workers and the families that they worked with was conducted. To better understand the benefits and drawbacks of the tiered embedded advice model, it was decided to interview workers at Warwickshire County Council's Troubled Families Team, who did not have access to an embedded advisor, to explore their experience of working with Troubled Families to resolve their justiciable problems (Warwickshire County Council disliked the terminology "Troubled Families" and so renamed their team the "Priority Families Team"). The key findings of the evaluation are outlined in the discussion below.

7.7.1 Improving engagement with the Troubled Families Team.

The Troubled Families Team Key Workers do not have the power to compel families to engage with them, Families in the programme engage with the workers on a voluntary basis. TFT Key Workers reported that being able to offer their families priority access to advice and support from CLC, a recognised and trusted provider of legal advice and representation, provided an incentive for families to engage. Additionally, having an embedded tiered advice worker who could deal with issues spanning the full range of complexity on behalf of clients, without the need to refer externally, was seen as a benefit of the scheme. Sustaining a positive relationship with the families is therefore critical to delivering the outcomes necessary to fulfil the payment by results criteria. The TFT Key Workers expressed concerns that referring clients to external agencies for assistance poses a risk in this context, as if the client has a negative experience with the agency they are referred to they can lose trust in the Key Worker who referred them to this service. CLC is recognised in Coventry as a provider of quality, expert advice and representation, and having priority access to their services was felt by the Key Worker's interviewed

to enhance the credibility of the Troubled Families Team. Being able to offer families enrolled in the programme a priority service with access to a high quality provider of legal advice was reported as providing an incentive for families to engage with the Troubled Families Team.

7.7.2 Reducing stress and improving the ability of Troubled Families Team Key Workers to focus on delivering their primary function

Interviews conducted as part of the evaluation indicated the high prevalence of social welfare law problems amongst families supported by both the TFT Key Workers and the Priority Families Team, particularly in the areas of Debt, Housing and Welfare Benefits. Few of the Key Workers interviewed as part of this study had experience of either debt, housing or welfare benefits issues. Key Workers at Warwickshire Priority Families Team reported that attempting to resolve the social welfare law problems experienced by their families was extremely time consuming, and detracted from their ability to address other issues that the families may be experiencing. In contrast, TFT Workers at Coventry stated that they felt able to concentrate on their primary role of supporting the families, and better placed to use their specific expertise to assist the families in reaching the targets mandated by the payment by results scheme. One interviewee commented that:

" I just think that it's an absolutely fantastic support not just for the families but for us as a team and without it we would struggle to guide families in the right way and we'd be lost without it."

TFT Key Worker 1

A report published in 2013 by the Think Tank "Policy Exchange" identified that high levels of long term exhaustion and diminished interest in work mean that the average working life of a social care worker[46] is 11.4 years (Holmes et al, 2013: 46 citing Curtis et al, 2009:10). This is considerably lower than the average working life of individuals working in comparable roles, such as nurses (Holmes et al. 2013: 46) The structural issues repeatedly implicated in this trend are high levels of stress, high caseloads, low levels of support and lack of potential for career development

[46]Social Care Workers are defined as "social workers and social work managers, residential and day-care managers, youth and community workers, housing/welfare workers, care assistants/home carers and career advisors/vocation guidance specialists".

(Holmes et. al 2013: 47). Given this evidence, the role of the Embedded Advisor in reducing stress and supporting the TFT Key Workers in fulfilling their role may prove critical in helping Coventry City Council to save resource which might otherwise be spent recruiting new workers to the role.

TFT Key workers were unanimous in stating that the support provided by the Embedded Advisor was critical to reducing their stress levels and helping to reassure them that they were providing the best possible service to the families they worked with. The following interview excerpts typify remarks made by the TFT Key Workers interviewed when asked to comment on the impact the support of the Embedded Advisor had on their ability to cope with the demands of their role.

I'd have been stressed. I mean we deal with stress anyway on a normal level but it would have been ten times higher. I would have had to probably work longer hours because it would have been; it is a whole other role being taken on. And the families would have been affected by that as well because I wouldn't have been able to dedicate the intensive time to their problems...

TFT Key Worker 1

Q. Do you have a sense of what you would do if [Embedded Advisor] wasn't there?

I would panic.

TFT Key Worker 4

"I think you just feel more supported really, you know that if something comes up, you know who to turn to and you know who's going help"

TFT Key Worker 6

As such, the introduction of the Tiered Embedded Advisor model may be considered to confer numerous benefits, those that are immediately quantifiable in terms of savings made in worker time and travel costs, and those that are less immediately tangible and warrant further research such as the impact that the support provided by this intervention has on the stress levels, resilience and retention of TFT Key Workers. As stated above, when the twelve month grant provided by the Future Advice Fund drew to a close, Coventry City Council took

the decision to continue funding the tiered embedded advisor model, in recognition of the benefits this way of working had conferred on the Troubled Families Team.

7.8 Implications of expanding the funding base for Law Centres through project funding for Law Centre Mission and Values

In evaluating a strategy for surviving LASPO that is predicated on securing funding for particular projects, from funders who are not necessarily traditional funders of legal services, a number of questions arise in relation to Law Centre values. What impact does a shift to project funding have on the ability to use legal mechanisms to bring about social change? Can project funding, particularly funding derived from generalist, rather than law specific funders (e.g. charitable trusts) be secured to deliver specialist legal services? The following discussion explores these issues in greater depth.

7.8.1 Expanding the funding base through project funding and Terminal Value 1: Law Centres improve the position of economically disadvantaged individuals and groups

In the values framework described above at Chapter 3, it is argued that the first of the values that render Law Centres distinctive concerns the way in which they use the law, namely, to bring about social change in favour of economically marginalised groups. The literature on Law Centres indicates that they aim to do this in three key ways: i.) by extending the availability of legal services to as wide a range of people as possible, with particular reference to those individuals who experience barriers to accessing the law; ii.) by taking on complex and strategic casework that has the potential to reform the law in favour of the marginalised and iii.) through identifying and uniting groups of individuals with common interests and working with them to bring about social change. The following section considers how far project funding demonstrates the potential to deliver this value.

7.8.1.1 Expanding the funding base through project funding and the ability to deliver legal services to those who are economically disadvantaged with particular reference to those

> *who are in greatest need, helping them to secure their rights under the existing law and working to extend and reform the law where existing rights are inadequate.*

Project based funding can offer the freedom and flexibility to deliver the legal services in new ways, helping Law Centres to move away from a "reactive" (Stephens, 1990) approach to legal services delivery. Indeed, one feature of the move to project based funding might be that Law Centres are *required* to deliver their services differently. As Griffin, the evaluator of the Future Advice Fund notes in her 2016 evaluation of the fund: "*new income streams change the scope of the work an organisation does…Attracting new sources of funding requires advice providers to do things differently. Attracting new income sources to deliver the same sort of work that legal aid once covered would appear to be much less likely*" (Griffin, 2017:33). Whether or not Law Centres are able to extend legal services to a wider range of people than would normally access them very much depends on the way in which projects are devised. In designing projects, Law Centres should have a clear understanding of the demographic and social characteristics of those clients who are at risk of not accessing services, and the extant evidence on the relationships between the experience of justiciable problems and other social and environmental factors (see Genn 1999, Balmer 2010. Pleasence et al. 2007, 2012, 2015), in order to ensure that the partners they work with and the funding streams they access facilitate their ability to reach this group. It would seem that projects designed as partnerships between Law Centres and public services or voluntary organisations who work with clients that are socially and materially disadvantaged and/or difficult to engage, might be particularly fruitful in the context of enabling Law Centres to deliver this value.

The Troubled Families Embedded Advice project is an excellent example of the way in which projects can be designed to reach individuals who, research indicates, are socially disadvantaged and might otherwise fail to access legal services. That those participating in the Troubled Families programme were at greater risk of failing to access legal services would seem to be borne out by the observations of TFT Key Workers: the following interview excerpt encapsulates the prevailing view:

A lot of them wouldn't go, for a start (if they were required to attend the Law Centre themselves)….I should imagine that where there's been an expectation that a parent will go (alone) that they've had a lot of missed of missed appointments. …for some people it's just getting out that front door, the thought of getting onto a bus for some people having all these people around them is, is just too much, depending on where, where you are with your mental health really.

TFT Key Worker 1

Further to this, research indicates that this non-attendance amongst clients who may be considered socially disadvantaged (Balmer et al. 2010) has profound implications for Law Centres mission, creating a negative spiral where groups who are disadvantaged fail to see legal processes as a tool that they can marshal to resolve their problems- potentially leading to widespread disengagement with the law amongst these groups. Research conducted by Pleasence et al. (2015) demonstrated that of those respondents to the Civil and Social Justice Survey who took no action to resolve their legal problems, 21% reported that they chose this course of action because they believed that any action they took would make no difference to the outcome. As Pleasence observes: "some respondents may have been right, but without the benefit of advice they may have been wrong" (Pleasence et al. 2015:104). The data linked beliefs around the lack of efficacy of taking action to resolve legal problems with higher levels of social deprivation. The Law Centre movement theory of change (as articulated in chapter 3 above) recognises this cycle (i.e. people who live under circumstances of social and material disadvantage do not engage with the legal system because they don't believe that doing so will make a difference to the outcomes they experience, problems common to particular social groups are not processed through the legal system and so the law is not developed in the interests of the those who are socially and materially disadvantaged, reinforcing and validating the perception that the Law is not a tool that can assist disadvantaged groups to secure better outcomes) as a challenge to their ability to use the law to bring about social change. As such, securing project funding for work with an outreach component might be seen to be an important way of Law Centres delivering this value.

7.8.1.2 Project based funding and the ability to undertake strategic litigation that has the potential to reform the law in favour of the economically disadvantaged

In shifting from legal service specific forms of funding (such as Legal Aid) to project funding, particularly where such funding is drawn from funders who do not have a history of funding strategic litigation, the ability to undertake complex, strategic litigation and casework may be undermined. The reasons for this are as follows: i.) funders believe that strategic litigation is disproportionately costly as a mechanism for achieving social change, ii.) low levels of public understanding of the law in general and strategic litigation specifically inhibit ability of Law Centres to communicate the value of strategic litigation to non- law specific funders, and of funders to communicate the value of this approach to their boards iii.) funders are concerned about the reputational risk involved in adopting this approach, iv.) funders are concerned about the implications of undertaking strategic litigation for sustainability, particularly where the target of the litigation is central or local government and sustainability is reliant on the ability of the project to secure public funding and iv) undertaking strategic litigation in UK courts can be a lengthy process, and rules and policies around grant duration mitigate against the funding of this type of approach. These issues are explored in greater depth in the following discussion.

7.8.1.2.1 Funder perceptions around the cost- benefit of funding strategic litigation as a mechanism for achieving goals mitigates against the funding of strategic litigation.

Strategic litigation, when compared with other strategies for bringing about change, may be considered by funders to be disproportionately expensive. Assy, writing in 2015 states that: "the costs of litigation in England and Wales are excessively high, unpredictable and frequently out of proportion to the amount claimed" (Assy, 2015:202). In discussing the decision making strategies employed by private actors when seeking to bring about social change through either lobbying or litigation in the context of EU law, Pieter Bouwen and Margaret McCown observed: "At the most basic level, the initiation of litigation strategies is costly and, thus, interest groups with more material resources are advantaged, relative to those with fewer, in

using this approach." (Bouwen et al. 2007:427). Although others, including Lisa Vanhala (2011) have argued that: "the assumption that litigation will always be the most expensive route to successfully influencing policy has not been demonstrably confirmed across a wide range of policy fields" (Vanhala, 2011:23), even Vanhala herself concedes that: "I am not arguing that the use of a litigation strategy is not expensive, in most cases it will be both costly and time consuming" (Vanhala, 2011:23). In addition to this, there is a question as to what success looks like in the context of funding strategic litigation with a view to bringing about change. A recent report published by The Freedom Fund entitled: "Fighting impunity, funding justice: Investing in strategic litigation to end modern slavery" (2016) argued that donors funding in this area should have:

> *…an expansive understanding of success. Even courtroom losses can serve a powerful end by putting the issues in the media spotlight and starting a public debate. In some instances, the mere threat of legal action can galvanise change. However, these effects are less tangible than a courtroom win and can be difficult for some donors to square with their usual methods for measuring impact. (Freedom Fund, 2016:9)*

As such, generalist funders, when comparing applications for funding that centre on strategic litigation, rather than policy advocacy or service delivery, may find it difficult to justify or articulate the relative benefits of this approach internally, compared with other strategies for addressing the needs of the groups they are concerned with. If Law Centres are to target generalist funders for support for their services, they must recognise the difficulties in conveying the relative value of strategic litigation approaches.

However, there is some evidence that funders with an interest in particular types of issue are embracing the potential of strategic litigation. The environment is one issue that has seen funders engage with strategic litigation as a tactic to a greater extent than others. The Children's Investment Fund Foundation (CIFF), a private foundation with an endowment of $4.6billion and a mission to improve children's lives, implicated climate change as the: "…single biggest threat to the future of today's children". As part of their efforts to support the global transition to a zero-carbon society, CIFF awarded a multi-year grant of $9,461,800 to Client Earth, an organisation staffed by activist lawyers with a mission to fund the conduct of strategic litigation around clean air, energy and coal and to encourage the business

and finance sectors to take into account climate risk and impact in their management and investment decisions (CIFF, 2017). In 2015 Client Earth used this funding to challenge the British government on the illegal levels of air pollution witnessed in the country. London and several other British cities have failed to meet EU standards on nitrogen dioxide levels since 2010. The Supreme Court unanimously found in Client Earth's favour and ruled that the next environment secretary must draw up a plan to meet EU rules by the end of 2015 (see R (on the application of ClientEarth) (Appellant) v Secretary of State for the Environment, Food and Rural Affairs (Respondent) [2015] UKSC 28. The resultant Air Quality Plans produced by the Government, were of such low quality that Client Earth brought a further judicial review in October 2016 (*ClientEarth (No 2) vs Secretary of State for the Environment Food and Rural Affairs [2016] EWHC 2740 (Admin))* – the Judge found in ClientEarth's favour- the second victory the NGO had secured against the government on this issue in two years. The scale and duration of this grant is striking, and testament to the commitment the funders have to the importance of this approach. Whether Law Centres (individually, or as a network) could access funding at this scale is a question that remains unanswered at this stage. The implications of Brexit, yet to be determined, may also close down the space for strategic litigation to generate effective outcomes to the extent that work of this nature has expanded in the UK context, this has been greatly facilitated by the expansion of law through the European Union and the Human Rights Act [1998].

7.8.1.3 Project based funding and the capacity to identify and unite groups of individuals with common interests and work with them to bring about social change

Project based funding offers the potential to access funds for community organising in a manner that traditional sources of funding, such as legal aid and even local authority funding, do not. The failure of the "judicare" system funded through the Legal Aid Scheme to support Law Centres to develop their work in organising communities around particular issues has been well documented (Mayo, 2014, Hynes and Robins, 2009:18). In the immediate example of the Troubled Families project, it is unclear whether the model facilitates this type of community organising activity.

TFT Key Workers repeatedly stated that the benefit of the Embedded Advisor's involvement was that clients could delegate the legal aspect of problems to her, leaving them to focus on other issues. Is there a danger therefore, that models of this kind build a culture of dependence on the service, rather than empowering and educating communities about the law? Subsequent project funding secured by the Law Centre aims to fill this gap: in 2016 CLC were awarded funding for the RIPPLE project, a project that is based on the establishment of a series of groups of Adult Social Care services and their carers. The project aims to nurture a rights based culture: "*by working with the groups to identify issues that are of current concern and explore whether there may be legal solutions e.g. by analysing Adult Social Care budgets and policies, supporting them in responding to consultations and challenging individual and policy decisions where there are relevant legal rights in play.*" The combination of strategic casework and community development planned as part of this project demonstrates the potential of project focussed funding to support activities of this kind.

7.8.2 Expanding the funding base through project funding and Terminal Value 2: Law Centres deliver their services to those in greatest need

In Chapter 3, it is argued that in targeting their services at specific individuals or groups, Law Centres are guided by a twofold definition of need: individuals or groups are needy to the extent that either: i) the extant legal framework does not serve their interests or extend to their protection (need type 1) or, ii.) the extant legal framework does in theory extend to their interests and/or protection but they are ill-equipped or vulnerable in the context of being able to successfully access their rights under the law as it stands (need type 2). Chapter 4 proposes a refined definition of vulnerability, in recognition of the fact that whilst Law Centres and indeed the legal aid scheme historically relied on poverty as a proxy for vulnerability, the class of individuals for whom legal advice and representation is unaffordable is now so wide that a principled focus is required in order to ensure that Law Centres deliver this value through their work. The experience of the Troubled Families Project demonstrates the potential of project based funding to enable law centres to target their services at individuals experiencing both types of need, as the following discussion demonstrates.

7.8.2.1 Instrumental Value 2.1 Expanding the funding base through project funding and meeting need type 1: the case of individuals in receipt of welfare benefits.

Through designing a project that aligned the delivery of specialist legal advice with the Troubled Families programme, the Law Centre proactively delivered services to those individuals whose interests might be considered to be increasingly marginalised through changes to the welfare benefits system, and increased the likelihood of reaching claimants who might not know when they had grounds to challenge a decision made against them. In describing the rationale for developing the project, the Chief Executive of Coventry Law Centre stated: "Troubled Families was probably the first opportunity I saw that made me think: "That's actually our client group"- we know that they have legal need". The national and local inclusion criteria for the Troubled Families Programme meant that the client group worked with as part of the scheme were more likely than others to be reliant on welfare benefits for all or part of their income. Welfare benefits stands out as an example of an area of law where rapid policy change from 2010 onwards, accelerating trends that emerged under the Labour Government (Hamnett 2014: 491) has had the effect of marginalising the interests of those individuals who are in receipt of benefits. This marginalisation was given effect by the policies instantiated under the Conservative- Liberal Democrat coalition government elected in 2010. Upon election the Conservative-Liberal Democrat government chose to pursue a programme of cuts to public expenditure- a key vehicle for this reduction in public spending was through the process of reducing access to benefits (Etherington et al. 2015:5). Cuts to welfare benefits and local authority funding designed to ameliorate the position of people living in poverty accounted for 50.8% of total cuts- evidence indicates that these cuts have disproportionately impacted on deprived areas and communities (Etherington et al. 2015:6). Commentators have observed that the welfare reforms introduced under the coalition government have served to penalise and stigmatise those in receipt of welfare benefits. Slater, writing in 2012 argues that: "Whilst the political creation of an undeserving welfare residuum has a very long history in British social policy, the White Paper (Universal Credit: Welfare that Works, 2010) marks a new development…towards an American-style system, one that comes down exceptionally hard on those whose "idleness" is seen as a creation of the welfare state" (Slater, 2012:958) An ESRC funded review of the cumulative

impact of changes to the welfare benefit system entitled: "Welfare Reform, Work First Policies and Benefit Conditionality: Reinforcing Poverty and Social Exclusion?" (Etherington et al. 2015) continues this theme, arguing that: "The central narrative that underpins the Coalition Government policy is the 'attack' on benefit 'dependency' which has involved an almost relentless assault on the idea of benefits as a positive and essential element of social welfare" (Etherington et al. 2015:10)

In terms of the way in which this sentiment has manifested in the extant legal framework, it can be argued that the interests of those in receipt of welfare benefits, are marginalised through four interconnected mechanisms: i.) reductions in the overall level of benefits available, through the imposition of a benefit cap, ii.) the introduction and application of a regime of sanctions for those who fail to comply with conditions surrounding their benefits, iii.) the increasing role of discretion in the award of certain types of benefit, iv.) reduced funding to enable individuals to access to advice and support in relation to welfare benefits problems. There is evidence to indicate that families with multiple children, women experiencing domestic violence and the disabled have been particularly adversely impacted by the changes (Meers, 2015:38). The inclusion criteria for the Troubled Families Programme means that those families included in the scheme are also likely to be those at risk of marginalisation under the reforms to the welfare benefits programme.

The final mechanism through which it might be said that the extant legal framework does not serve the interests of those in receipt of welfare benefits, is through the withdrawal of funding for advice in relation to welfare benefits issues, directly, through LASPO, and indirectly through cuts to local authority funding, a traditional funder of advice for welfare benefit claimants. Etherington et al. (2015) argue that claimants of welfare benefits should have a right to representation and advice services, stating that: "Advice services play an important role in meeting the needs of claimants who have to navigate their way through an increasingly complex and constantly changing system. This fact needs to be recognised in terms of funding" (Etherington et al. 2015:47). Whilst legal aid for legal help remains for appeals to the Upper Tribunal, The Court of Appeal or Supreme Court on a point of law in

respect of welfare benefits, the lack of funding to provide advice earlier in the process means that vulnerable claimants are at risk of not identifying when they have a case that should be appealed to Upper Tribunal. Legal Aid for advocacy in relation to welfare benefits is only available in the Upper Tribunal or above through the Exceptional Cases Funding Scheme- from the period October 2015-September 2016, only 5 welfare benefits cases were awarded exceptional funding (MoJ & LAA, 2016): this in itself may be seen to provide partial evidence of the issues created by the lack of availability of funding for legal advice at an earlier stage.

7.8.2.2 Instrumental Value 2.2: Expanding the funding base through project funding and meeting need type 2

The Troubled Families Embedded Advice Project is an example of a project designed with the express aim of reaching individuals who experience justiciable problems, but are vulnerable in the context of being able to successfully secure procedurally just outcomes in relation to these problems. This approach to project design, starting from the intended client group, and tailoring the service to meet the particular needs of that client group, is emblematic of CLC's broader approach. Through focussing on the needs and characteristics of their clients, rather than the type of service they provide, Coventry Law Centre have successfully attracted funding from non-traditional funders of legal services and brokered partnerships with non-legal organisations. The Chief Executive of CLC articulates the Law Centres conception of its target client group in the following terms:

Well obviously we start with people who would be eligible for legal aid so people living in poverty, that's a general kind of catch all for the people we are aiming our services at but alongside that then we're looking at who are the people that really, without our face to face intervention won't be able to resolve the problems that they have that have legal solutions in fact they probably don't know that those problems have legal solutions, and layering on that, who are the people who have multiples of those. And many people do, but there are some groups of people who tend to have bigger multiples, so people who really can't navigate through life very well, so people with mental ill-health or people with learning disabilities, they are likely to get themselves into a spiral of problems. And I suppose there are people for who a life event triggers problems, but, if they're made aware of their rights, they are able to navigate their way out of it, so our target group are the people who an online service or a telephone service, isn't really ever going to be adequate and it isn't really ever going to get to the root

of the problem and it isn't going to give them the confidence that they need to be able to manage a bit better going forward.

The criteria for inclusion in the Troubled Families Programme adopted by Coventry City Council directly map onto the conception of need outlined above by CLC's Chief Executive and the vulnerability model outlined above at Chapter 2. The project is particularly successful in assisting the Law Centre to reach clients that research suggests are likely to have multiple vulnerabilities in the context of being able to secure procedurally just outcomes, particularly i.) individuals experiencing mental ill health and ii.) individuals who have low levels of trust in their relationship with representatives of the state and/or previous experiences of the civil or criminal legal system.

7.8.2.2.1 Individuals with mental health problems

The inclusion of mental health morbidity as a criterion for participation in the Troubled Families Programme is particularly salient in enabling the project to reach individuals who might be considered to be the most vulnerable in the context of securing just outcomes. Research has demonstrated that mental health morbidity increases vulnerability to a range of justiciable problems, including employment, housing, welfare benefits and domestic violence (Pleasence et al. 2003a: 552-553). The experience of the workers involved in the Troubled Families Scheme would appear to reinforce these findings: when interviewed, all of the Coventry Troubled Families Workers reported that their clients experienced problems with debt and housing, and the majority reported that their clients experienced problems with welfare benefits. Data collected by CLC demonstrates that, of the 61 cases opened in the first year of the project, 21 concerned Welfare Benefits (34%), 23 related to Housing (38%), 13 related to debt (21%) and 4 were concerned with family law (7%). The experience of mental health problems may also be seen to increase the risk of experiencing discrimination and mental health law related issues (such as conditions of hospital discharge) (Pleasence et al. 2003a: 554).

In addition, research has also linked the experience of mental ill health with lower levels of capability to resolve justiciable problems. Research published by Pleasence et al. (2015) based on the findings of the Civil and Social Justice Panel Survey

indicates that the demographic factors that are highly associated with low legal capability include being affected by physical, mental and or stress related health problems. (Pleasence et al. 2015:xiii). The same study reported that: "inaction is more common among the problems of lower capability respondents, and handling alone far less common" (Pleasence et al. 2015:xiiii). This would seem to be borne out by the observations of TFT Key Workers, reporting on their experience of assisting clients to access legal advice and representation, and the value of having a legal advisor attend the client in their own home:

Right. A lot of them wouldn't go, for a start (if they were required to attend the Law Centre themselves). And I should imagine that where there's been an expectation that a parent will go (alone) that they've had a lot of missed of missed appointments. I have to say on the occasions where I've needed a parent to go to the Law Centre I've actually taken them to make sure that they get there because to me that's a waste of valuable time for, for workers at the Law Centre, and at the end of the day it still needs to be done and sometimes it is about a little hand holding. I try not to do it because I much prefer to empower parents but if it needs to be that I put them in the car and we go then that's what we, that's what we do…for some people it's just getting out that front door, the thought of getting onto a bus for some people having all these people around them is, is just too much, depending on where, where you are with your mental health really.

Failure to act to resolve justiciable problems may create a negative spiral of increasing mental ill health. Empirical evidence indicates that lower capability individuals are far more likely than their higher capability counterparts to report adverse consequences accruing as a result of their civil law problem (Pleasence et al. 2015:xiiii). Pleasence reports that: "Stress-related ill health as a consequence of problems was particularly common for lower capability respondents, being reported on over one-third of occasions. Moreover, negative impacts on education, other mental health problems, drink/drug problems, physical ill-health, family relationships, and assault/being physically threatened and having to move home were all reported more than twice as frequently in relation to problems reported by lower capability respondents than problems reported by higher capability respondents." (Pleasence et al. 2015:xiiii). As such the tiered embedded advice model, working with and alongside a programme aimed at the most vulnerable may confer a range benefits on the individuals who receive support through the scheme,

and potentially avert the negative consequences research indicates are likely to accrue from the experience of civil law problems. Further research should be conducted into the longer- term outcomes for clients resulting from initiatives of this kind.

7.8.2.2.2 Individuals with low levels of trust in the state and/or previous experience of the civil or criminal justice system

Under the national and local criteria for the Troubled Families Programme, all of the families worked with as part of the scheme will have had some involvement with the civil or criminal justice system, as a result of issues with school non-attendance, anti-social behaviour, or child welfare issues. In the case of Coventry, the families worked with through the Troubled Families Programme were already well known to social services. As a result, families involved in the scheme may have pre-existing negative perceptions of the role of law and the legal system. In a study exploring families' experience of involvement with multiple services (on both a voluntary and involuntary basis), Morris (2013) identified persistent themes, including: (i.) families awareness of and resistance to professional narratives around their caregiving practices (families tended to emphasise their own "ordinariness" and the closeness and persistence of their bonds with each other, whilst professionals descriptions of the families focussed on need, adversity and dysfunction; (ii.) families reluctance to disclose the extent of the problems they were experiencing out of fear of losing custody of their children (Morris, 2013:202). In researching the operation of the Warwickshire Priority Families team as a comparator to the Coventry Troubled Families Team, Key Workers with the Warwickshire Priority Families Team were asked whether the families they worked with experienced problems with issues such as getting the right benefits, problems with social services, discrimination, housing, employment. The response given by the Key Workers tended to reflect their own judgment of the families circumstances, rather than the families perception of their situation. This was particularly evident in relation to issues involving discrimination and disputes with social services. Comments included:

"Q: Problems - and I guess what I mean is...a difficult relationship with Social Services?

A: OK, I'd say they'd say yes but personally I don't think it is.

Priority Families Worker 69

I've got some that are having supervised contact with their children but that actually seems to be alright, I mean they'd say that, parents would see that as an issue but actually it's in the plan... it's on-going so it is not an issue to us but it is to the parents because they obviously want the children back.

Priority Families Worker 68

[00:02:39] I've got a family with a hearing impairment so they'll often say that professionals are discriminating against them. Sometimes I do think professionals could do more for them, being honest. But I think it's a hard one.

Priority Families Worker 69

In addition, the relationship between client families and the welfare benefits system was often characterized as "chaotic family versus unyielding system". The majority of interviewees spoke of their clients being unable to "manage the systems to access benefits": no mention was made of assisting clients to challenge the decisions of the Department for Work and Pensions in respect of welfare benefits, including in cases where those decisions had resulted in sanctions for clients. These findings were not replicated in interviews with the Coventry Troubled Families Key Workers, who had the benefit of the Embedded Legal Advisor. Further research is necessary to explore the reasons for this disparity, but these findings do indicate a further possible benefit to having an independent source of legal advice attached to, but distinct from, the Key Workers operating as part of the Troubled Families Teams.

A complicating factor is that the very fact of a family's inclusion in the Troubled Families Programme may compound their existing low levels of trust in the State. In most local authorities the Troubled Families Team sits alongside the social work teams responsible for working with families where there are existing concerns about

the children in the household which, if escalated could result in the children being removed from the home. The threat of this happening, however remote, could understandably create wariness on the part of the family. In addition, the framing of the Troubled Families Programme has attracted criticism from commentators as being the latest expression of an "underclass discourse" that: "locates 'troubles' or 'problems' in the family itself and emphasises behaviour as the target of action without regard to wider social or economic considerations" (Lambert & Crossley, 2017:87). In this context, the ability of the Embedded Advisor to establish their independence from the Troubled Families Team Key Workers may be seen to be critical in ensuring that families feel able to engage.

In the case of Coventry, the embedded advisor was at pains to emphasise her independence from the Troubled Families Team. After the first introduction visit where the Embedded Advisor accompanied the Troubled Families Key Worker, any additional visits were undertaken independently. The Embedded Advisor went to great lengths to ensure that families understood her role, emphasising that she would not share information with the Troubled Families Team Key Worker (unless under specific agreed circumstances) and that she was there for the sole purpose of assisting them with their Social Welfare Law problems. A number of Troubled Families Team Key Workers reported the success of the Embedded Advisor in encouraging individuals to disclose information that they would not initially reveal to the Key Worker- the following excerpt is indicative of a general trend:

"When I did the assessment no mention of any debt. They don't look like they're in any debt… so this was a real revelation. And it turned out that there was four thousand pounds worth of debt there, but there was almost seven thousand pounds worth of debt in other areas. [After] introducing her to [Embedded Advisor], Mum quickly opened up and said, "I've got a shoebox full of shame," and [Embedded Advisor] went round and took the shoebox away and copied it all out and this is where I know it's in safe hands now but I don't know exactly what's going on. [Embedded Advisor]'s dealing with it."

TFT Key Worker 6

Any Law Centre project designed to align services with a social programme that might be seen as stigmatising or perpetuating negative perceptions of the role of law

and the state in peoples' lives (e.g. aligning Public Legal Education with the British Values Agenda in schools) must be managed carefully, in order that Law Centre Values are not undermined. However, initial evidence from the Troubled Families Embedded Advisor project indicates that, if managed carefully, the presence of an independent legal advisor alongside such programmes can help to empower vulnerable individuals in a manner that is highly congruent with Law Centre Values.

7.8.3 Expanding the funding base through project funding and Terminal Value 3: Law Centres are staffed by specialist, expert legal professionals

When interviewed about the strategy of expanding the base of funding available to Law Centres through project based funding from generalist funders, the Chief Executive of Coventry Law Centre implicated the issues involved in funding the retention of a range of specialist expertise as a particular deficiency of the approach, stating:

I think the other risk with the model is that, what I've tried to do is to get funding for programmes of work which rely on a key person to deliver…the person that links with the client but also to seek funding for specialist legal casework as part of that programme, that's quite hard in that people have multiple legal needs and you've got a pot of money for legal casework that on its own doesn't buy you a legal caseworker. So ultimately it would work brilliantly if we got loads of those projects and that was going into a pot that could then buy a caseworker or a pool of caseworkers, we've in truth probably got one more specialist caseworker than we might have… It's difficult, the common thing is that people need benefits and debt advice, and the other stuff is kind of mixed, so it wouldn't even justify having an extra caseworker but it creates an extra workload. So I guess the weakness for other people trying to follow the model is that if they don't benefit from local authority funding in the way that we do that is unrestricted in that it's not for a specific project it's for delivering casework so having extra funding to combine with that makes it work for us, but the model would probably be difficult to pull off if you didn't have that.

CLC CE

In the immediate case of the Embedded Advisor Project, the project funding was designed facilitate the retention of specialist support at the Law Centre- funding was provided for 50% FTE post at the Law Centre to support the retention of expert

solicitors, in addition to funding for the Embedded Advisor to carry out the outreach work with the families. The tiered nature of the scheme, and the access to a range of specialist expertise it conferred, was highlighted as a particular strength of the project. Without the combination of the input of the embedded legal adviser and the back-up expertise provided by the other experts within CLC, clients may not be able to access the specialist help that they need to resolve their social welfare law problem before it escalates. Additionally, the ability to offer in-house referrals (within the Law Centre) to expert, efficient, reliable staff with the skills to deal with complex problems was found to be a further benefit to the scheme, in contrast to a previous experience with an advice worker at Citizens Advice who did not have in-house access to specialist legal advice. The following interview excerpt describes this:

"Our first port of call for a while was [worker name] at Citizen's Advice, She was amazing, she wholeheartedly believed in what she was doing, the service that she was giving, and while you were actually dealing with [worker name] it was great, [00:16:29] the moment [worker name] had to pass it on to one of her colleagues it sort imploded. That doesn't happen with the Law Centre because…[CLC Embedded Advisor will say]"Right, I've got an expert on that so I'll bring her in" and it's done. We made the arrangements, job done, I was there with the parents to support because [they've] got mental health problems and away we went."

TFT Key Worker 1

As such, this model of legal advice delivery can be considered a holistic service for clients. Through employing an experienced advisor with a detailed understanding of social welfare law problems, issues are diagnosed quickly and correctly. The fact that the advisor has immediate access to expert legal advice and representation in the form of qualified solicitors at the Law Centre, enables her to secure the appropriate level of support for clients at the earliest possible stage. In addition, the fact that the advisor is based primarily at the Law Centre, and can therefore retain ownership of the case until it's conclusion, overcomes issues associated with information sharing, reduces confusion and improves the experience for both the client and the TFT Key Worker supporting them. The reputation of the Law Centre as a provider of expert legal advice enhances the ability of the embedded advisor to negotiate on behalf of clients. The ability of this scheme to circumvent the need to refer, greatly improves its efficacy. The ability to demonstrate and convey the importance of

maintaining a range of specialist advisors to generalist funders is critical, in order that project funding is able to support the Law Centre to employ, develop and retain expert staff. In order to ensure that specialist staff are developed and retained, funders may have to develop different models of funding, as short-term grants will undermine the ability of the Law Centre to plan. Reliance on project funding may also require Law Centres to employ full time fundraisers to apply for and manage grants, in order to ensure that there are enough projects at any one time to retain specialist legal staff.

Additionally, a shift to project based funding where advice workers are required to work on an outreach basis with extremely vulnerable clients with multiple and complex needs may have implications for the ability of Law Centres to retain staff, if the physical safety and mental wellbeing of staff are not supported. The Embedded Advisor working on the project expressed that at times, she had felt concerned for her physical safety in carrying out the role, and that the mechanisms in place to protect her were inadequate, stating that:

"I was in a house of multiple occupancy and they phoned me and my phone it was on but it never rang and they'd been trying to get me for almost an hour. Anyway, I went out and I answered the phone and this very relieved gentleman said "Oh [embedded advisor], this is the Coventry City Council here, it's the lone worker scheme" and I said "Oh, hi!" and for some reason my phone had set the scheme off and they'd been trying to get me. They had tried to phone the Law Centre and they had tried to phone the two people who were named on the list and they couldn't get any of them. That was an hour later. So I don't think, it's not robust enough…"

CLC TFT EA

Additionally, the Embedded Adviser felt that she would benefit from more emotional support in carrying out her role. Whilst the embedded advisor is working with the families involved in the Troubled Families Programme in a different capacity to the Troubled Families Team Key Workers, both the Troubled Families Team Key Workers and the embedded advisor stated that the embedded advisor was exposed to many of the distressing and stressful situations experienced by the Key Workers. The Key Workers receive extensive one-to-one emotional support from their line manager and group sessions with a clinical psychologist to discuss

any issues that they might be experiencing. It was felt that it would be beneficial for anyone undertaking the embedded advisor role to have access to similar offloading mechanisms, although this would obviously impact on the cost of the scheme, and therefore its potential attractiveness to funders.

7.8.4 Expanding the funding base through project funding and Terminal Value 4: Law Centres are empathic allies of their clients

A key benefit of a move to project based funding is that it offers the potential for Law Centres to redesign the way they deliver services, moving away from the "judicare" model mandated by the structure of legal aid contracts, and potentially creating opportunities for Law Centres to engage more fully with their client communities. In 2014, Margerie Mayo visited Law Centres with a view to exploring the impact of the Carter Reforms to Legal Aid and the emphasis on New Public Management ideologies on Law Centres across England and Wales. Mayo's research highlighted the negative features of reliance on legal aid funding from the Legal Services Commission, particularly once the Unified Civil Legal Aid Contract was introduced. The Unified Contract introduced fixed or graduated fees for all work, proposed a minimum contract size of £25,000 or £50,000, treated not-for-profit providers in the same manner as private practitioners and introduced best value tendering for all contracts (Hynes, 2009:55). Importantly, under the terms of the Unified Contract payments were made in arrears, forcing Law Centres to spend down their reserves in order to continue to deliver casework. Fixed fees impacted most detrimentally on providers who worked with very vulnerable clients, as organisations ceased to be compensated for the extra time working with these individuals entailed. Mayo reports that: "under LSC funding systems there was less scope for preventative work or for policy work, community work or public legal education, unless funding could be obtained via separate sources" (Mayo et al, 2014:49) Mayo's study, which included interviews with staff at 43 Law Centres and key stakeholders, linked the adoption of funding streams such as Legal Aid that privileged individual casework with evidence of anxiety about a "possible loss of vision more generally… and fears that in struggling to meet the requirements of the current funding system Law Centres were shifting away from their original mission" (Mayo et al. 2014:49). A move to project funding, particularly where projects are designed to promote closer involvement with the client community, may be seen to go some way to redressing this shift. The value of moving to an outreach model in

terms of promoting solidarity with the client community, improving trust and encouraging disclosure was highlighted in interviews around the operation of the Troubled Families Team Embedded Advisor Project. Troubled Families Team Key workers reported numerous benefits arising from the outreach nature of the project, including encouraging clients to disclose information which they might otherwise have withheld, and address problems that they might otherwise ignore.

"…having them in their own home it's a power balance for the families. They're in their own homes, it's a safe environment... whereas going to appointments that's when they start to not attend and not deal with the issues."

TFT Key Worker 3

Interviewees reported that many families were reticent to engage with services, or intimidated at the thought of visiting an advice agency, and that the outreach nature of the scheme helped to overcome these barriers:

"I think she's been able to quickly establish those relationships because they are in the people's homes. I haven't had one occasion where it's felt intrusive, it felt like it was the right place to do it because it was contained. Would the parents have felt the same if they had come here? I think they would have felt like they were being judged…"

TFT Key Worker 4

In addition, the outreach element of the project was felt to be of importance in establishing trust between the embedded advisor and clients who were often very vulnerable. The depth of the relationship established encouraged clients to call on the Law Centre for future issues:

"The more she builds the relationships, which she does, they tell her more and they ask for help. I have families that ring her up now about financial problems…they're confident enough to ring straight through to her."

TFT Key Worker 3

Since the empirical research for this project concluded Coventry Law Centre has used the evidence from its work with the Troubled Families Team to secure further project funding from Lankelly Chase, a generalist funder whose mission is to: "to establish the underlying causes of social disadvantage and to address those

causes." This funding led to an even bigger grant of £1.5million, awarded by the Early Action Neighbourhood Fund[47]. This five-year grant supports a partnership between Coventry Law Centre, local learning disability charity Grapevine, a children's services department and a housing management service in Coventry, who are working together to both build community capability and resilience and redesign the way in which public services engage with individuals with multiple and complex need- helping them to intervene earlier to resolve problems before they escalate. This experience demonstrates the potential of project funding to facilitate working in ways that reinforce the relationship between Law Centres and their communities.

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7.8.5 Expanding the funding base through project funding and Terminal Value 5: The communities in which Law Centres are based and the clients they work with have higher levels of legal knowledge and are better able to secure their rights protection and fair treatment

A shift to project funding offers the potential for Law Centres to deliver legal education in a manner that was not possible under Legal Aid Funding (Mayo et al 2014:49). There is evidence that the Embedded Advisor Project enabled the Law Centre to assist vulnerable clients to build the knowledge and resilience to manage their own social welfare law problems in the future. The following excerpt from an interview with the Embedded Advisor provides an example of this:

"Well it's not all about the numbers and stuff. I've got a client at the moment who has really surprised me because when I first met her she's got really, really bad anxiety and mental health problems and she suffered with it for 20 years, she's very nervous etcetera, never engaged with me, didn't really have any eye contact and everything,... I asked her if she could do something for me, it was just to make a phone call but that's massive for her and she did it and the next time I went to the appointment she told me the outcome and she'd actually followed it through. So I think it's about, the success for me is…getting them in a better place"

CLC TFT EA

In addition to educating the clients about accessing legal services and legal rights, there was some evidence that the presence of the Embedded Advisor may impact

[47] A collaboration between grant makers that aims to show national and local government how acting early on problems can save public money now and later on.

on the legal awareness of Troubled Families Team Key Workers. In comparison with their contemporaries at Warwickshire Priority Families Team, it was found that Troubled Families Key Workers at Coventry City Council evinced less confusion over what constituted a justiciable problem, and were more accurate in their understanding of the different types of social welfare law problems that exist. Three out of the four Priority Workers interviewed expressed the belief that their own lack of knowledge around social welfare law was a barrier to finding timely and effective solutions to their client's social welfare law problems (Byrom, 2014:25). The Chief Executive of the Law Centre stated that an on-going aim of the projects run by the Law Centre was to improve the legal awareness of workers in the public sector, in order that they could provide a better service and ensure that their decision making upheld the rights of their clients.

"…Through our IGNITE programme, we're still showing, and there are still people who are surprised, how poor the knowledge of peoples legal rights is amongst the public sector and how much they tie the clients or their customers hands behind their backs because they don't help them to get those rights upheld."

CLC CE

As such, there is an on-going need for project funding to facilitate Law Centres to deliver legal education in their communities, a function that has been historically underdeveloped and arguably, hindered, by a reliance on legal service specific forms of funding such as legal aid.

7.9 Conclusion

The case study above details the experience of a remarkable Law Centre that has expanded, rather than reduced its services in the face of the cuts, through adopting a strategy of proactively building the funding base for its services. The Law Centre has achieved this through focussing on carefully designing projects that enable them to demonstrate the role of specialist legal advice in tackling complex social problems. The confidence of Law Centre management and staff in the role that the resolution of legal problems can play in improving a range of outcomes for clients has enabled them to proactively identify when a funder is attempting to improve outcomes for individuals who are likely to experience unmet legal need, and advocate for the role of their services in helping the funder to deliver these

outcomes. In designing projects, the Law Centre is careful to ensure that the project design is driven by their values and expertise, rather than adapting their priorities and services to fit funder requirements. In designing projects in this manner, the Law Centre has been able to expand the funding base for their work whilst also delivering their values. It is important to note that unlike some other Law Centres, Coventry Law Centre has the enthusiastic support of its local authority, the large on-going grant provided by the council afforded a level of security that enabled the management of the Centre to experiment with other approaches to securing funding whilst retaining a core staff of specialist lawyers across a range of areas of law. That is not to say however, that the support from the local authority is a happy accident- management at CLC devote time and energy to maintaining this relationship and demonstrating the value of the work of the Law Centre. As such, the scalability of this strategy across the movement is dependent to a great extent on the ability and skill of Law Centre management in building relationships with funders, developing partnerships with statutory and voluntary agencies and developing and evidencing a convincing narrative around the value and importance of legal advice and representation as a tool to achieve a range of positive social outcomes. However, there are risks in adopting this strategy- in shifting from specialist funders of legal services to generalist funders such as trusts and foundations, who may not understand the law or be ideologically committed to using law as a tool to improve the position of their beneficiaries, Law Centres may risk undermining their ability to deliver Law Centre Ideal Type Terminal Value 1 (Law Centres improve the position of economically disadvantaged groups within the extant legal framework). As discussed above, of particular concern is the ability to secure support for the strategic litigation activities that have been considered synonymous with Law Centres approach to law reform. Relatedly, the case study demonstrates that a strategy of shifting to securing project funding from generalist funders may undermine the ability of Law Centres to retain a full range of specialist, expert legal professionals (Law Centre Ideal Type Terminal Value 3), due to the relatively high cost of supporting these roles, the need to retain a range of experts who can be called on intermittently and the short-term nature of most project funding from charitable trusts and foundations. However, project funding from generalist funders can free Law Centres to design ways of delivering their services that enhance their engagement with their community, ability to target the most

vulnerable (Law Centre Ideal Type Terminal Value 2), and their capacity to act as empathic allies of their clients, enabling them to deliver Law Centre Ideal Type Terminal Value 4 (Law Centres are empathic allies of their clients) to a greater extent than might be possible under traditional funding streams that mandate a "judicare" model. Similarly, project funding has the potential to facilitate public legal education and awareness raising about rights to a greater extent than other, traditional forms of funding, provided that funders can be convinced of the value of this endeavour.

8 CONCLUSIONS AND RECOMMENDATIONS FOR FURTHER RESEARCH

8.1 Introduction

This research has sought to explore the impact of the cuts to civil legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act [2012] on vulnerable people through understanding the impact of these cuts on Law Centres. The thesis began by explaining the history of the relationship between Law Centres and the legal aid scheme, characterising this as one of growing dependence by the former on the latter (see Chapter 2). This increasing dependence, borne of financial necessity, meant that Law Centres were highly exposed to the impact of cuts to legal aid funding: as a consequence of LASPO, by 2015, one-in-six Law Centres had been forced to close (Justice Select Committee, 2015:33). Those that remained faced numerous challenges the most pressing of which has been to develop new funding models to ensure their survival. This thesis has proposed a principled framework for understanding what a Law Centre is (Chapter 3), suggested a set of criteria that Law Centres might use to ensure that their services are reaching those who are most vulnerable (Chapter 4) and used the findings of original empirical research (Chapters 5-7) to explore the implications of the most popular strategies adopted by Law Centres in response to the cuts for their ability to deliver their core values. Accordingly, the thesis set out to address four main and one subsidiary research questions:

1. What is a Law Centre? What are the organisational values that together constitute the ideal type Law Centre?

2. What was the relationship between Law Centres and the legal aid scheme prior to the introduction of LASPO?

3. What are the most common funding models adopted by Law Centres in responding to the cuts, why were they adopted and how do they operate in practice?

4. How have the different models chosen impacted on Law Centres? How do the different funding models impact on the ability of Law Centres to deliver the values set out in the ideal type Law Centre?

Subsidiary questions

5. What factors should Law Centres consider when assessing who is most vulnerable/in greatest need?

Question 1 has been answered in chapter 3, question 2 in chapter 2, question 5 in chapter 4 and questions 3 and 4 have been substantially addressed in chapters 5-7. In this concluding chapter I aim to draw out comparative lessons arising from the three case studies, before moving to recommend areas for further research that have emerged in the context of this project.

8.2 Comparative lessons arising from the case studies

The following discussion summarises the implications of the three strategies discussed in Chapters 5-7 for the Ideal Type Law Centre Values described above at Chapter 3. Taking each of the Ideal Type values in turn, the following sections explores the lessons that can be drawn from comparing the findings in each of the case studies and their implications for future research.

8.2.1 Terminal Value 1: Law Centres improve the position of economically disadvantaged individuals and groups within the extant legal framework: lessons across the case studies

In the framework set out above at Chapter 3, it is argued that Law Centres deliver this Terminal Value in three ways: i.) by delivering legal services to those who are economically disadvantaged, helping them to secure their rights under existing law and working to extend and reform the law where existing rights are inadequate; ii.) by undertaking strategic litigation that has the potential to reform the law in the interests of those who are economically disadvantaged and iii.) through uniting groups of individuals around the experience of particular justiciable issues and using these groups as vehicles for initiating law reform through research and campaigning. As the preceding discussion has demonstrated, all three strategies adopted by the Law Centres studied have the potential to support Law Centres to deliver their

services to those who are economically disadvantaged, provided they are operationalised with this goal in mind. In the case of ABLC, who adopted a strategy of charging for advice, which might intuitively seem the least capable of *directly* supporting this goal, there is an argument that can be made that by setting fees at a marginal rate, the Law Centre is still able to deliver this value. However, of the three strategies considered, charging-for-advice is most likely to act as a barrier to reaching the most economically disadvantaged, and therefore the least able to support Law Centres to deliver this value.

The strategy adopted by Kirklees Law Centre, of merging with a CAB, should enable the Law Centre to continue to reach the most economically disadvantaged clients, provided that reaching these individuals remains a priority for Citizens Advice. Whilst (as is discussed above at Chapter 6) the Citizens Advice Bureau began as an emphatically generalist service: both in terms of the issues they advised on and the target population for their services (Goriely 1996a: 221) by the 1980's the movement had established a reputation for and expertise in working on issues of poverty and social welfare (Goriely, 1996a:235). Whilst this remains the case, a strategy of merging with Citizens Advice Bureau is likely to continue to support Law Centres to deliver their services to the most economically marginalised. In relation to the approach taken by Coventry Law Centre, that of expanding the base of funders for Law Centre's work through seeking project funding, whether or not this strategy supports Law Centres to reach economically marginalised individuals is dependent on the design and focus of the project. Law Centres wishing to follow the approach undertaken by Coventry Law Centre must pay careful attention to the design of the projects they seek funding for and the funders they approach in order that they are able to deliver this value.

In comparing the three strategies adopted in the case studies included in the thesis, one common challenge is finding funding to support Law Centres to deliver this value through strategic litigation. The experience of Avon and Bristol Law Centre indicates that a fee charging model, with prices set at below market rate and accepting only those cases where i.) the area of law implicated is no longer covered by legal aid and ii.) the case is complex or strategically important, may provide the

opportunity for Law Centres to continue to use this approach to reform and extend the law in the interests of those who are economically disadvantaged, provided that clients are able to afford to pay for this. Whether a fee charging model designed with these strictures would prove economically viable is another matter. In both Coventry and Kirklees, the strategies developed rely on securing funding from organisations and funders who have not historically engaged in or supported strategic litigation. In the case of Coventry Law Centre, at the time of writing no strategic litigation has been undertaken through the Troubled Families Project. Whilst this does not mean that, in the future, clients with appropriate cases could not be identified through this work, the design of the project did not include funding for strategic litigation approaches. As discussed above at Chapter 7, in choosing to merge with an organisation with a cultural suspicion of litigation and lawyers (Goriely, 1996:235) whether or not Kirklees Law Centre will be able to continue to undertake high profile strategic litigation remains to be seen. In the case of the strategies adopted by both Coventry Law Centre and Kirklees Law Centre, cultural suspicion of litigation and funder reticence regarding the role of these approaches may present on-going barriers to securing funding for this work. Making the case for the value of strategic litigation as a tool to improve the position of economically disadvantaged individuals and groups remains challenging, especially where funding for this work is sought from funders who do not have a history of engaging in these activities. Across the Law Centres Network, developing sustainable funding models that support the conduct of strategic litigation is likely to prove problematic. Further research is needed both to monitor the impact of the cuts to funding for Legal Aid on the volume of strategic litigation conducted, and to build the evidence base for the efficacy of strategic litigation in securing law reform in the interests of the economically marginalised.

8.2.2 Terminal Value 2: Law Centres deliver their services to those in greatest need

Across the three case studies included in the thesis, it is apparent that of the three models, the approach adopted by Coventry Law Centre appears most likely to succeed in facilitating Law Centres to deliver their services to those in greatest need. The ideal type Law Centre values framework presented at Chapter 3 above proposed two definitions of need: "Need Type 1", where individuals are vulnerable

or needy because they do not have rights under the existing legal framework, and "Need Type 2", where individuals are needy despite being afforded rights under the existing legal framework as they are unable to secure them. The project funding approach developed by Coventry Law Centre was designed from a "Need Type 2 first" perspective: Law Centre management were looking for funding to support their work with individuals with high levels of legal need, identified that there was a partner organisation (in this case, the Local Authority) with new funding who were interested in improving outcomes for a target group likely to have high levels of legal need, and designed a project demonstrating that the partner could meet their non-legal need related targets more effectively through funding the Law Centre to address the legal needs of this group. Proactively identifying a group with high levels of Need Type 2 was essential to the efficacy of this strategy- if the individuals involved in the project had been less vulnerable in the context of securing their rights, then the impact of the Law Centre's work on the partner organisation's non-legal need specific targets would have been reduced, and the funding would have been discontinued. The efficacy of this strategy in supporting Coventry Law Centre to deliver Terminal Value 2 is therefore contingent on the design of the project- Law Centres wishing to develop the strategy of securing project funding from generalist funders[48] must ensure that the projects they design enable them to reach individuals and groups who are both of interest to these funders and have high levels of legal need if they are to deliver this value. Given the established relationship between deprivation, various types of health morbidity, and unmet legal need, this should not be a difficult task.

Chapters 5 and 6 detail the ways in which the other strategies explored: charging for advice and merging to survive could be delivered in a manner that improves their ability to reach individuals who are more vulnerable (for example, in the former, through setting low fee rates and restricting charging to areas such as immigration, where individuals are particularly at risk of not being able to secure their rights and, in the latter, through merging with an organisation that works with individuals with multiple vulnerabilities in the context of being able to access their entitlements). However, both of these approaches to funding have resulted in delivery structures

[48] Non-legal specialist specific philanthropic and public funders

that operate in the manner of "traditional solicitors service" (Stephens, 1990:33-4), whereby the onus is on the individual to identify that they have a problem that may admit of a legal solution and proactively seek out the Law Centre for assistance. This delivery model arguably mitigates against reaching the most vulnerable or needy individuals (i.e. those who have a justiciable problem but do not recognise it as such). In the case of the charging model developed at ABLC, the limited resources available for undertaking fee paying work, and the necessity of undertaking those cases capable of yielding a profit, mitigated against targeting those with the highest levels of need. In the case of Kirklees, the merger and the resultant decision (driven by the priorities of the CAB) to move to telephone based initial advice may also prevent the new organisation from reaching those most in need..

8.2.3 Terminal Value 3: Law Centres are staffed by specialist, expert, legal professionals

Across all of the strategies explored as part of the thesis, there were worrying indications that securing sufficient funding to retain, develop and train specialist, expert legal professionals is likely to prove challenging. Charging for advice can provide opportunities to enable Law Centres to retain staff who otherwise would be redundant, but may threaten the desirability of the Law Centre as an employer, as the introduction of for-profit motives might change both the nature of the work and the culture of the working environment. Merging with organisations such as CAB, who may not see the value in retaining expensive, specialist legal advisors across a range of areas could threaten the ability to retain such staff, particularly when doing so would be at the expense of larger numbers of generalist advice workers. Securing project funding from charitable funders often results in fixed term contracts of relatively short duration, making it difficult for Law Centres to offer security and career progression. As such, the loss of specialist legal expertise from Law Centres and other organisations that formerly delivered advice and representation funded through the legal aid scheme may prove the lasting legacy of the LASPO cuts. However, if Law Centres are successful in demonstrating the value of specialist legal advice and representation in addressing various forms of deprivation and disadvantage, they may be able to expand the range of funders interested in supporting their work. For example, if Law Centres are able to

demonstrate that the provision of specialist legal advice that leads to the resolution of legal problems is an effective method of improving individual health and wellbeing, they may be able to secure funding from organisations and funders who are interested in promoting population health. In the USA, the US Department of Veterans Affairs are a key funder of medical-legal partnerships (Houseman, 2015:13) which enable veterans to access advice and representation in relation to their civil law problems[49] at the same time as accessing healthcare, in recognition of the role of legal support in improving outcomes for veterans that impact on the determinants of health e.g. access to housing, welfare benefits and employment. This approach, if successful, could deliver sustainable funding at scale for social welfare law specialists.

8.2.4 Terminal Value 4: Law Centres are empathic allies of their clients

As with Terminal Value 2 above, whether or not the strategy of expanding the funding base for Law Centre's work with project funding supports the ability of Law Centre staff to deliver this value is dependent on the way in which the project is designed- in the case of the Troubled Families Project described at Chapter 7 the way in which the project was formulated enhanced the ability of Law Centre staff to work as empathic allies of their clients. In the case of this project, it was clear that the Embedded Advisor provided valuable independent support to individuals who may well have felt stigmatised by their inclusion in the Troubled Families Programme (see Chapter 7 above) and that the mode of delivery adopted in the project facilitated working with clients in a manner that was empathic and supportive. In the case of ABLC, discussed in Chapter 5, whilst arguably there is not an intrinsic contradiction between charging for legal advice and representation and being an empathic ally of clients, the realities of the requirement to generate a profit under a fixed fee scheme may create tensions where Law Centre staff equate being an "empathic ally" with providing a holistic, client-led service. These tensions may be exacerbated where the target market for the fee-charging service is individuals on low incomes who are not able to access advice from private practice. Whether or not the strategy of merging to survive (see Chapter 6) impacts on the ability of Law Centres to act as empathic allies of their clients depends greatly on

the culture and ethos of the organisation(s) that are being merged with. In taking a decision to merge, Law Centres who are considering pursuing this strategy must consider the congruence of their values with those of the organization they are seeking to merge with. Where staff from both organisations are to be retained, it is important to ensure that the working practices and attitudes of staff align, in order that the combined organisation is able to deliver on this value.

8.2.5 Terminal Value 5: Law Centres imbue both clients and local communities with high levels of legal knowledge

The case studies explored provided little insight into the ability of the funding models developed to support Law Centres to deliver effective legal education activities. This is relatively unsurprising, given that the most recent study of Law Centres (Mayo 2014) reported that the ability of Law Centres to deliver community legal education activities had declined as their reliance on restricted funding increased. All of the Law Centres studied as part of this project evinced commitment to this value, and in each location there were examples of on-going legal education activities. For example, in 2014, Coventry Law Centre held 25 road shows attended by 400 people to prepare disabled people for Work Capability Assessments (Coventry Law Centre, 2014:14) and addressed meetings of local General Practitioners to help them to better understand their role in enabling victims of domestic violence to access legal aid. ABLC contributed to local radio and news outlets, providing information and advice on a variety of issues. Kirklees Law Centre worked with their Local Healthwatch to help them to understand the law in relation to a decision by NHS England not to provide an alternative vaccine for individuals who were unable to accept porcine products on religious and cultural grounds. However, the funding models considered did not directly support these activities. Further research is required to: i.) identify best practice in public legal education; ii.) develop standardised measures to assess improved legal knowledge and iii.) identify funding models capable of supporting this activity.

8.3 Conclusion

The cuts to legal aid introduced by LASPO have created a hostile funding environment that poses an existential threat to the network of UK Law Centres.

The magnitude of the impact of these cuts is a reflection of the extent of Law Centres' reliance on the legal aid scheme for funding in recent years. This thesis has argued that the increasing conditionality of this form of funding impeded the ability of Law Centres to deliver the values that are constitutive of their distinctiveness. As such, the withdrawal of this form of funding creates an opportunity for Law Centres to consider which funding models are best suited to support them to deliver their values. Each of the funding models presented above has strengths and weaknesses, and they should not be considered mutually exclusive, indeed, one of the lessons that might be drawn from the case studies is the importance of developing a diversified funding base. Each case study demonstrates the impact of funding on the ability to deliver values, and the role of local factors such as local authority support on the ability of Law Centres to experiment with different models.

The circumstances described by the authors of "Justice for All" in 1968 as evidence of the imperative to create a network of Law Centres resonate strongly with those of today. The need for a robust network of organisations that work to improve the position of those who are economically marginalised and under-represented within the extant legal framework is as pressing today as it has ever been. The proliferation of law, expansion of administrative decision-making and under-investment in public legal education has created an environment where many individuals are vulnerable in the context of being able to secure just outcomes in relation to their justiciable problems. In this context, the need for strong, sustainable organisations with the ability to deliver the values of the ideal type Law Centre described at Chapter 3 could not be greater. In considering their options for future funding, it is vital that Law Centres reflect on and adhere to their values, mission and purpose, in order that a distinctive movement emerges from this historical moment.

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APPENDIX A: ADVERT FOR PHD STUDENTSHIP

03/12/2017 PhD - legal advice services

ESRC Collaborative Studentship Investigating Cuts and Changes to Legal Advice Services

Overview

This ESRC-Funded Collaborative PhD will examine the impact of the imminent cuts to legal advice services, particularly on the most vulnerable and disadvantaged. It will examine the different models that are being developed to deal with these cuts by particular legal services providers – with a focus on Law Centres.

The project is a collaboration between the Centre for Human Rights in Practice in the School of Law at the University of Warwick, the Law Centres Federation and Coventry Law Centre. It will involve working closely with these institutions. The academic supervisor will be Dr. James Harrison.

Background

The Legal Aid, Sentencing and Punishment of Offenders Bill (currently passing through Parliament) will introduce up to £350 million of cuts to funding in legal aid services in April 2013. The Bill is likely to cut funding for advice on debt, employment, housing, family, immigration, welfare bene ts and some other areas. It will also impact who can get legal aid, by asking people on low incomes to pay more towards their legal advice and by reducing the lowest fees for civil advice. Many legal service providers, such as Law Centres, are also facing cuts to other sources of funding (e.g. from local authorities).

This PhD will help to address the need for research which examines the *actual* impact of these cuts to legal advice services, particularly on the most vulnerable and disadvantaged. It will examine how legal advice providers are responding to these cuts to funding and the different models that are being developed to deal with these changes.

The PhD will build upon the expertise developed by the Centre for Human Rights in Practice in research which uses the norms and standards of human rights and equality law in order to analysis the impacts of policies and practices – click here for a full list of projects and publications.

Particularly relevant to the current project is the work of the Centre on the human rights and equality impacts of the public spending cuts on women in Coventry, which includes analysis of the potential impacts of cuts to legal advice services. Click here for more information on these projects. It is expected that the current PhD project will build on the methodologies and approaches used in that work.

The Subject of the PhD Research

This PhD will focus on the issues of housing, welfare bene ts and debt advice (social welfare law). These are often legal issues which the poorest and most vulnerable individuals face at the same time and so they naturally t together within the same research project.

The PhD research will investigate the impacts of cuts in these areas and different models for dealing with them. The PhD research will focus upon the impact of cuts on legal advice services provided by Law Centres. Law Centres focus on providing legal services to people who may be marginalised in society or who are experiencing discrimination. They also work closely with local agencies and organisations who provide other advice and assistance to vulnerable individuals (e.g. homelessness organisations, disability support groups etc.). They are therefore in a unique position to both understand the more complex impacts of cuts to legal advice funding and to develop models for reducing the impact on the most vulnerable and

disadvantaged individuals.

Tel: +44 (0)24 7652 3075Email: law@warwick.ac.ukSchool of Law, University of Warwick, Coventry CV4 7AL, United Kingdom

APPENDIX B: QUESTIONNAIRE FOR LAW CENTRE STAFF

1. Would you be willing for me to contact you to follow up on the answers that you have given? If so please provide contact details:

Name and law centre	
Email	
Telephone	

2. What areas of law do you currently provide advice and representation in?

Debt and money		Welfare Benefits	
Housing		Family	
Community care		Employment and discrimination	
Immigration		Mental health	
Public law		Education	

3. How many staff do you employ at your law centre at each of the following levels?

Qualified solicitor	
Trainee solicitor	
Specialist advisor	
Law graduate	
Legal executive	
OISC accredited advisor	
General advisor	
Volunteer	

4. How many of the following impacts do you predict your law centre to experience as a result of the cuts? (tick as appropriate)

Staff redundancies	
Reduction in areas of advice offered	
Reduced hours of opening	

Reduced time to spend with clients	
Reduced ability to offer representation in areas where this is still available	

5. At present, what do you consider to be the **most important** aspect of the work that you do? (please tick all that apply)

Ability to spend time with clients assessing the totality of their problems and providing support	
Ability to act on behalf of clients to challenge decisions that are	
Providing advice to clients on the problems they are facing	
Helping clients to navigate complex bureaucratic processes	
Ability to provide advice that is free at the point of delivery	
Ability to influencing the outcome in court cases	
Being able to provide face to face advice	
Being able to improve outcomes for individuals through working with the other agencies that engage with them	
Encouraging client engagement with other agencies/bodies e.g. social services, benefits office, housing association, local council etc.	

6. What aspect(s) of your work have I missed in the table above?

7. How will the funding cuts impact on your work?

8. What models are you considering for sustaining the activities of the law centre beyond April 2013? (Tick as appropriate)

Setting up a separate charging arm	
Charging for advice	
Seeking support from your local authority	
Bidding for money from other sources e.g. lottery,	
Other	

If other please specify:

9. Do you have any other comments?

APPENDIX C: LAW CENTRE INCOME TABLE

Law Centre	Established?	Funding prior to April 2013	Funding strategy adopted post- April 2013 for evaluation in this study[50]	Largest source of income post LASPO?	Exposure to LASPO?	Training contract provider
Coventry Law Centre	1976	Largest grant from Coventry City Council, Second largest source of income LSC funding.	Using grant funding to seed fund projects prioritizing vulnerable groups, which, if successful, have the potential to be funded on an on-going basis by statutory agencies.	Coventry City Council	High	Yes
Avon and Bristol Law Centre	1974	Largest grant from Bristol City Council, Second largest source of income LSC funding	Charging for advice in order to generate unrestricted income.	Bristol City Council	High	Yes
Kirklees Law Centre	2004	Largest source of funding LSC, second largest source of funding Kirklees Council.	Merging with CAB to survive.	Kirklees Council	Extremely high	Yes

[50] Each Law Centre studied has adopted a number of approaches to generating funding, this table highlights new approaches/models adopted in response to LASPO that form the focus of this study. This is not to infer that each Law Centre has only adopted a single strategy to mitigating the impact of the cuts.

APPENDIX D: INTERVIEWS CONDUCTED AND INTERVIEWEE ROLES

Expert Interviewees

	Name	Role	Coded in text as
1	Lord Carter of Coles	Presided over the Carter Review of Legal Aid: "Legal Aid: A market based approach to reform" in 2007	Interview with Lord Carter
2	Steve Hynes	Former Director of the Law Centres Federation 2002-2007	Interview with SH
3	David Gilmore	Director of DG Legal, management consultancy specialising in the legal aid funded legal services sector. David also founded and regularly contributes to LegalVoice, a not-for-profit online magazine for legal professionals	Interview with DG

Avon and Bristol Law Centre: Interviewee Roles

	Role	Coded in text as	Notes
1	Law Centre Chief Executive	ABLC CE	Leadership Team
2	Law Centre Contracts Manager	ABLC CM	Leadership Team
3	Senior Solicitor (and Employment and Discrimination Lead)	ABLC SS	Leadership Team
4	Immigration Team Leader	ABLC ITL	Leadership Team
5	Immigration Adviser	ABLC IA	
6	Immigration Trainee Solicitor	ABLC ITS	
7	Welfare Benefits Caseworker 1	ABLC WBCW1	
8	Welfare Benefits Caseworker 2	ABLC WBCW2	
9	Housing Team Leader	ABLCE HTL	
10	Mental Health Solicitor	ABLC MHS	Leadership Team
11	Community Care Solicitor	ABLC CCS	
12	ASTF Project Lead 1	ABLC ASTF 1	
13	ASTF Project Lead 2	ABLC ASTF 2	

Kirklees Law Centre and Kirklees CAB Interviewee Roles

	Role	Coded in text as	Notes
1	Law Centre Chief Executive	KCALC CE	Leadership Team
2	Citizens Advice Bureau Chief Executive	KCAB CE	Leadership Team
3	Senior Solicitor Welfare Benefits	KCALC JP	Leadership Team
4	Immigration Team Leader	KCALC ITL	
5	Immigration Adviser	KCALC IA	
6	Employment Supervisor	KCALC ES	
7	Community Care Team Leader	KCALC CCTL	
8	Community Care NQS	KCALC CCNQS	

Coventry Law Centre Interviewee Roles

	Role	Coded in text as	Notes
1	Law Centre Chief Executive	CLC CE	Leadership Team
2	Law Centre Senior Solicitor/Employment and Discrimination Specialist	CLC SS	Leadership Team
3	Law Centre Welfare Benefits Solicitor	CLC WBS	
4	Law Centre Family Solicitor	CLC FS	
5	Law Centre Immigration Supervisor	CLC IS	
6	Law Centre Housing Solicitor	CLC HS	
7	Law Centre Trainee Solicitor	CLC TS	
8	Troubled Families Embedded Adviser	CLC TFT EA	
9	Troubled Families Key Worker Coventry City Council	TFT Key Worker 1	
10	Troubled Families Key Worker Coventry City Council	TFT Key Worker 2	
11	Troubled Families Key Worker Coventry City Council	TFT Key Worker 3	
12	Troubled Families Key Worker Coventry City	TFT Key	

	Council	Worker 4	
13	Troubled Families Key Worker Coventry City Council	TFT Key Worker 5	
14	Troubled Families Key Worker Coventry City Council	TFT Key Worker 6	

Warwickshire Priority Families Interviewees

	Role	**Coded in text as**	**Notes**
1	Priority Families Key Worker Warwickshire County Council	Priority Families Key Worker 1	
2	Priority Families Key Worker Warwickshire County Council	Priority Families Key Worker 2	
3	Priority Families Key Worker Warwickshire County Council	Priority Families Key Worker 3	
4	Priority Families Key Worker Warwickshire County Council	Priority Families Key Worker 4	

APPENDIX E: DETAILED DATA COLLECTION STRATEGY

Case Study 1- Charging for Advice

Email agreement to participate in the study was secured from management at the Law Centre in April 2014. Staffing changes at management level whilst the Chief Executive was on maternity leave delayed the process of gaining access. An initial one-day visit was undertaken in May 2014 during which a range of interviews with senior law centre staff were undertaken. The visit also provided an opportunity to collect documents relevant to the Law Centre's history and the model they were adopting in response to LASPO. It also provided an opportunity to build relationships that would be critical to gaining access for the mainstage fieldwork. The focus of the initial interviews was to explore the impact of LASPO and the rationale for the approach they had chosen in responding to the cuts, as well as to develop rapport with Law Centre staff. The following day a telephone interview with the Chief Executive of the Law Centre was conducted, where it was agreed that the Law Centre would participate in the research. The charging pilot was at a fairly nascent stage at this point, so it was decided to postpone the fieldwork until the charging pilot was operational. A further follow-up visit to meet with the Chief Executive of the Law Centre in person and to understand the progress that had been made in developing the charging pilot was conducted in July 2014. Following this conversation, it was agreed that the mainstage fieldwork, consisting of 3-4 weeks spent at the Law Centre, would take place in September 2014. In September 2014 I was based at the Law Centre for three weeks. During this time I conducted semi-structured interviews with all staff working at the Law Centre, reviewed case file data and documents relating to the charging pilot, sat in on external meetings between the Law Centre staff and other advice agencies in the area, and observed procedures for managing casework. Subsequent to the mainstage fieldwork, it was decided to supplement the data with an interview conducted with a expert informant who had extensive experience of working with not-for-profit advice organisations to develop new income streams. The expert informant had written guidance on developing fee-charging models as a not-for-profit in response to

LASPO, and was therefore in a position to contextualise the findings emerging from the case study.

Detailed Data Collection Strategy – Case Study 2- Merging to Survive

In January 2014 I contacted the Chief Executive of the Law Centre by email to secure agreement to participate in the study. An initial one-day visit was conducted in February 2014- the main activity conducted at this point was an extended interview with the Chief Executive and tour of the Law Centre premises. As in Case Study 1 above, the aim of this visit was to gather contextual and background information, understand the strategies being considered for responding to the cuts introduced by LASPO, to access documentary evidence and build rapport with Law Centre staff. At the first visit, the merger with the CAB had not yet taken place- this was finalised in April 2014. A second visit was arranged and conducted in August 2014, on this visit a further interview was conducted with the Law Centre Chief Executive, relevant documents were collected and a strategy for identifying and interviewing key informants outside of the Law Centre was agreed. The visit also provided an opportunity to confirm the dates of the mainstage fieldwork, which was scheduled to be conducted in November 2014. In November 2014 I was based at the Law Centre for a period of three weeks. During this time I interviewed all Law Centre staff, reviewed case files and spoke with volunteers at the Centre. During this period I also interviewed the outgoing Chief Executive of the combined CAB/Law Centre who, prior to the merger had been Chief Executive of the CAB and instrumental in pioneering and concluding the merger. I also interviewed senior staff at other agencies who had longstanding working relationships with the Law Centre both prior to and after the merger (see Appendix D for interview guides and interviewee roles).

Case Study 3- Expanding the funding base for Law Centres through project funding

The data collection strategy for understanding the funding model adopted in Case Study 3 differed considerably from that used in the other two case studies. Data collected and presented in case study three is derived from an evaluation of a project embedding a Law Centre worker in the Troubled Families Team at

Coventry City Council. This project had been cited by the Chief Executive of the Law Centre as emblematic of the wider strategy: expanding their funding base through applying for project funding. This evaluation was conducted on behalf of the Law Centre and funded by The Baring Foundation. The evaluation was designed to draw together lessons from the project regarding the impact of the provision of the Law Centres services on the operation of the Troubled Families Team, with a particular focus on the potential cost-savings delivered by the project. As such, the strategy involved interviewing the staff at a comparator Troubled Families Team who did not have access to the dedicated, embedded legal advice service provided by the project.

In November 2013 interviews were carried out with the Chief Executive of the Law Centre and with the Embedded Advisor currently in post at Coventry Law Centre, to strengthen existing understanding about the way in which the intervention operates, and to illuminate areas of potential importance to the study. The data collected as part of this interview was used to develop the set of questions posed to the Troubled Families Key Workers.

In December 2013 interviews were conducted with eight Key Workers from Coventry City Council's Children and Families First Service. Of these, six were Troubled Families Key workers, two, although classed as CFF workers, had received assistance from the Embedded Advisor in resolving civil law issues experienced by their clients. To ensure transparency, where their responses have been included in the analysis, a note has been made. A copy of the questions posed to all interviewees is available below at Appendix D. There were a number of difficulties in negotiating access to Warwickshire County Council's Troubled Families Team, which delayed the progress of the research significantly. In May 2014, I was granted access to interview four Key Workers; the questions posed to these workers are listed below at Appendix D. A further interview was conducted with the Chief Executive of the Law Centre in order to explore the relationship between this project and the wider funding strategy adopted.

APPENDIX F: RATIONALE FOR REFLEXIVITY: RESEARCHER-AS-INSTRUMENT STATEMENT

1. *Experience with the topic or population of interest*

My first experience of the role and value of expert legal advice came from my voluntary work with the homeless and vulnerably housed. From 2003-2008 I volunteered at two drop-in centres: Fireside Charity (now SIFA Fireside, based in Birmingham) and Wintercomfort (based in Cambridge). The client group served by these Centres experienced multiple and complex legal need, and part of my role involved referring clients to local advice agencies for legal advice. In 2008 I worked in early resolution patient complaints for Birmingham and Solihull Mental Health Trust, where many of the patients reported experiencing issues with debt, securing welfare benefits and housing as well as issues with understanding and challenging decisions made in relation to their care. In 2010 I volunteered with the Dudley Commission for Racial Equality, I worked as a mentor for individuals who had recently been granted indefinite leave to remain in the UK. I was paired with a gentleman from Zimbabwe, and through him became involved in the wider Zimbabwean community. I assisted in organising the launch event for the Zimbabwe Community Group in Coventry, whose remit included providing peer support for individuals with irregular immigration status. In these roles I gained an appreciation of the value of timely legal advice, and the impact that the provision of expert legal advice and support could have on individuals material circumstances and wellbeing. My empathy for the client group served by Law Centres, and concern with how they would fare if the availability of free legal advice declined, was a key factor in motivating my application for the PhD studentship. Immediately prior to accepting the PhD studentship I worked as a research assistant on the Legal Education and Training Review, a national review of legal education and training. In this role I interviewed Young Legal Aid Lawyers and also members of Legal Action

Group. I have never practiced as a lawyer (although I did study law as part of my undergraduate degree).

2. *Training and experience in qualitative methods*

In 2009-2010 I undertook an LLM in Socio-Legal Studies at the University of Warwick, graduating with distinction. As part of this course I undertook an ESRC accredited module: Qualitative Methods in Social Research. Through my study of Qualitative Methods in Social Research I acquired an understanding of the role and importance of research design within the context of the qualitative research process and the ability to conceptualise and operationalise qualitative research questions. I was also able to build upon my existing skills in applying a range of qualitative research techniques, including interviews (structured, semi- structured and unstructured), participant action research and discourse analysis. I acquired a working knowledge of the synergies between qualitative and quantitative research methods, for example the manner in which qualitative data can be used to inform the design of questionnaires for use in gathering pertinent quantitative data. I also developed skills in applying computer technology ("NVIVO") to the analysis of qualitative data securing. I secured a distinction for this course. Prior to undertaking the PhD, I worked as a Research Assistant on a National Institute for Health Research funded project researching the potential for networked communication technologies to be used to support young people living with chronic conditions. In this role I designed and conducted qualitative research with patients and expert informants.

3. *Assumptions, expectations and biases brought to the investigation*

I am sympathetic to the mission and values espoused by the founders of the Law Centres movement. My previous experiences meant that I approached the research with an underlying assumption that the provision of free legal advice and representation constitutes a public good, and with the expectation that the reduction in public funding for this advice would impact negatively on vulnerable people.

4. *How reflexive processes affected the analysis*

I met regularly with my supervisor throughout the PhD process, speaking at least every two weeks during the fieldwork phase. I transcribed all of my interviews verbatim, and kept a record of my observations throughout the fieldwork process. Using NVIVO to code the material upon which my analysis is based means that my coding is transparent, and can easily be viewed by external observers who might wish to check for bias. I discussed my findings extensively with my academic supervisor, who helped me to reflect critically on my conclusions.

APPENDIX G: UNDERSTANDING HOW THE TROUBLED FAMILIES TEAM FITS WITHIN THE WIDER LANDSCAPE OF SERVICES