

The Baring Foundation

Social Welfare Legal Advice and Early Action

Joe Randall, Baring Foundation

The Baring Foundation

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Joe Randall is Research Officer at the Baring Foundation

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Summary

In 2012, the Baring Foundation's Strengthening the Voluntary Sector grants programme launched a new theme called Future Advice (Smerdon and Randall, 2013).

This programme focuses on not-for-profit legal advice agencies working in social welfare law – the catchall term for advice in welfare benefits, debt, housing, immigration, employment, community care and other areas of public law.

Under this programme the Baring Foundation is interested in approaches that can help advice providers to cope with the challenging climate in which they currently find themselves. Preventative action has been suggested by a number of recent reviews as an approach to both government policy and voluntary sector activity, with the potential to produce better social and financial outcomes for society (Allen, 2011a; b; Early Action Task Force, 2011; Coote, 2012; Scottish Parliament Finance Committee, 2011; Commission on the Future Delivery of Public Services, 2011; New Philanthropy Capital, 2012).

Early action is a term used for similar purposes to the terms *prevention* and *early intervention*. As a concept, it does not focus exclusively on the early years, but on timely interventions to avoid or arrest the development of problems throughout people's lives. The concept is useful in understanding and promoting citizens' ability to avoid or overcome law-related problems.

Particularly relevant to the advice sector are the benefits identified for using early action as a principle for service delivery. At a time when advice services face large-scale funding cuts and greatly increased needs, early action offers a way to alleviate future demand by:

- Reducing the number of people needing advice, through people avoiding problems, and being better able to deal with the early stages of problems by themselves;
- Reducing the intensity of presenting demands, from specialist to general advice needs, and from general to information;
- Reducing the numbers of problems which become serious advice needs;
- Getting the right decisions sooner, thereby avoiding costly appeals or drawn out advice processes;
- Reducing repeat or "revolving door demand";
- Reducing "referral fatigue".

This report identifies four themes, around which a model for a future advice system which acts earlier could be built:

i. Citizen Capability

This builds on the work of the Public Legal Education and Support (PLEAS) Task Force, and its successor organisations, plenet and now Law for Life. A foundation level of legal capability would not mean that citizens have detailed knowledge of social welfare law,

but that they recognise the role of law in everyday situations; know at what point and where to go in order to get help with law-related problems; have skills essential for dealing with conflict, particularly communication and self-confidence; are active citizens, understanding that the law is not set against them and that laws can be improved, and possessing the confidence and belief that they can participate in that process.

ii. Intervening at the right time

Advice agencies can look to provide advice “one-step-sooner”, seeking out new ways to stop problems becoming more serious. Whilst constantly attempting to intervene sooner, advice providers must be sure that they are acting at the *right time*, not only acting early, but providing high quality support from the earliest effective point right through to the resolution of the client’s problems.

iii. Delivering advice differently

Advice providers can look to deliver advice in a manner which addresses the needs of the whole person. This means that advice must be of high quality, and provided in such a way as to ensure that:

- Clients with multiple advice needs get all their problems resolved so that they do not simply come back when their secondary problems develop to crisis point (“revolving door demand”);
- Clients are effectively and efficiently referred to those advice providers best able to help them (preventing “referral fatigue”);
- Clients are provided with capabilities through the advice process so that they are better able to solve problems themselves or identify them earlier in future (preventing ‘repeat demand’).

iv. Better feedback and learning processes

Advice providers can work to address demand generated by the failure of agencies, statutory services and others to get it right first time for their clients. Key to this are outward-looking advice agencies, which operate with a collaborative instinct, seeking out new ways of working with partners (including community groups, health bodies, local voluntary sector networks, national and local statutory services) in order to act on the drivers of demand.

Barriers stand in the way of the advice sector being able to implement an early action system not least finding the capacity to adopt new ways of working at the same time as dealing with rising levels of acute need and reductions in unrestricted funding. The direction of public funding policy towards focusing what funding remains on dealing with crisis points also mitigates against acting earlier.

Many of the principles and qualities of early action already exist in the best advice providers today and they will be the key to driving the sector to work in new ways, constantly seeking out the optimum points at which to intervene to resolve clients’ problems.

Section 1

What is 'early action'?

Early action is a term used for similar purposes to the terms *prevention* and *early intervention*. The Early Action Task Force has worked to develop a consistent language around this concept, and this paper will follow them in using *early action* for two reasons. Firstly, unlike the term *prevention*, which is negative and presupposes failure, *early action* is concerned with the opportunities for success (Early Action Task Force, 2011). Secondly, there is confusion surrounding the term *early intervention*, which has come to be largely regarded as synonymous with interventions in the *early years* (Allen 2011a; b).

Early action does not focus exclusively on the early years, but on timely interventions to arrest or even wholly avoid the development of problems throughout the lives of people across the population. It is positive, emphasising the opportunities that empowered individuals have to contribute more, socially and economically. In particular early action concentrates on people's ability to thrive throughout the difficult transitions, both universal and particular, that they face in their everyday lives.

According to the Early Action Task Force, early action is an umbrella term for two forms of intervention. The first – broad 'enabling services', are not problem-specific, but equip individuals with the skills required to flourish in life and to cope with its potential difficulties. The second type – 'prompt interventions', are those which 'pick up the first signs of difficulty and respond to them' and are targeted at those in need, with problems 'which, if not forestalled, could, in many cases, lead to more serious difficulties' (Early Action Task Force, 2011, p.8).

Early action does not exclusively refer to the early stages of an individual's problem. Here we use the term to describe activities that deliberately attempt to forestall more serious problems, as well as actions which tackle the system or environment causing problems to arise in the first place.

Another way of looking at early action...

The new economics foundation (2012) use a typology analogous to the distinction in health policy between primary, secondary and tertiary levels of intervention, in order to distinguish between different types of preventative policy:

1. **Upstream interventions** – "aim to prevent harm before it occurs, which usually address whole populations and systems";
2. **Midstream interventions** – "address harm that has already occurred to mitigate the effects, which are usually targeted at groups or areas considered 'at risk'";
3. **Downstream interventions** – "cope with the consequences of harm that has not – or cannot be – avoided, which are concerned with specific cases."

Why focus on early action?

The Early Action Task Force's first report (2011), drew attention to what it termed the 'triple dividend' of early action: the social benefits of citizens who are 'happy and capable and ready for everything'; the reduced costs to the state and society of dealing with problems early rather than letting them develop; and the stronger economy resulting from better human and social capital. Early action has, therefore, been identified as a principle on which cost-effective, socially beneficial, services could be delivered.

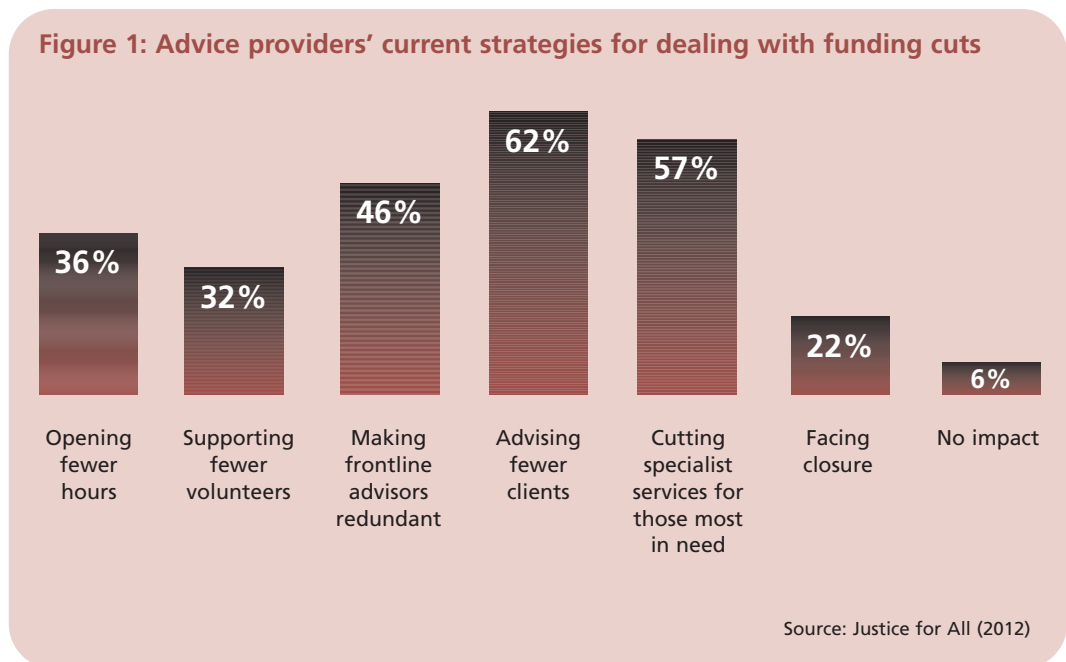
The current climate for the advice sector poses challenges on two fronts. Due to continuing economic instability, and the enduring effects of the recent recession, demand for advice is likely to remain at high levels in the medium term. In addition to this, radical cutbacks in

welfare entitlements and the large-scale reorganisation of the administration of benefits are likely to push up otherwise avoidable demand for advice. (Smerdon and Randall, 2013; AdviceUK and nef, 2011).

Alongside increasing demand, the supply of advice services is being severely squeezed. At the national level this is largely due to cutbacks to the scope of legal aid in social welfare law, and at the local level, most local authorities are holding still or cutting back on funding for advice (Smerdon and Randall, 2013).

Cuts can be fought through campaigning, however the basic supply and demand problem is unlikely to disappear. A recent survey found that 81% of advice providers predict that they will be able to help fewer clients in the next year, and a similar survey of AdviceUK members found in late 2011 that 70% of respondents were cutting services. (Justice for All, 2012).

Advice providers are now facing a stark choice: either reduce the extent of their service provision, or find ways to do more with less. As Fig. 1 indicates, most providers at the moment appear to feel no option but to do the former. It is imperative for the sector to reverse this trend, and instead identify ways to do the latter.



Prevention and early action have been proposed as one way for public and voluntary services to act more efficiently and to cope with these challenging times. Intervening in problems before they become more costly, it is claimed, will bring social as well as economic benefits. Considering the application of early action principles to the advice sector is, therefore, a priority.

Section 2

What could an early action advice sector look like?

We have identified several characteristics of a future advice sector that is built upon the principles of early action, and is stronger in the face of current challenges. Most of these are skills, competencies and practices that already exist within many advice organisations, and we seek here to develop these ideas, and argue for their wider application. In a future like this:

- Citizens are equipped with a foundation level of legal capability;
- Advice services adopt measures to provide services earlier, in line with a ‘one-step-sooner’ approach;
- Advice services are provided differently: greater collaboration across the whole system, every action taken in order to provide maximum value to the client; and clients are equipped with legal capability throughout the advice process;
- There are greater feedback and learning processes in place across the sector and statutory bodies. Advice providers communicate lessons and experiences externally where unnecessary demand is being created.

Bridging the gap from today’s environment to this future advice sector will require advice agencies to be innovative, bold, and in possession of a collaborative instinct. These qualities, which already exist in many of the best advice providers today, will be the key to driving the sector to work in new ways, constantly seeking out the optimum points at which to intervene to resolve clients’ problems.

Core legal capability

This aspect of future advice builds upon the work of Law for Life – an organisation which promotes and develops public legal education (PLE) approaches. Law for Life emerged out of the Public Legal Education and Support (PLEAS) Task Force (2006-7), which developed proposals for how to promote and improve PLE in the UK. The Task Force was supported by the Department for Constitutional Affairs, and included members from across the education and advice sectors, in addition to legal professionals and civil servants.

‘PLE provides people with awareness, knowledge and understanding of rights and legal issues, together with the confidence and skills they need to deal with disputes and gain access to justice. Equally important, it helps people recognise when they may need support, what sort of advice is available, and how to go about getting it.’

‘[PLE] has a key role in helping citizens to understand the law and to use it more effectively in their daily lives, bringing many different individual and social benefits. PLE is the missing element in the creation of the legally-enabled citizen.’

PLEAS Task Force (2007)

The term ‘public legal education’ encompasses a variety of aims and methods. PLE can be delivered across many different settings, at varying degrees of intensity, and at various stages in the development of a law-related problem. For future advice, however, it is not simply the delivery of more units of legal education that is important. Law for Life have convincingly argued that instead what we should be concerned about is citizens possessing greater levels of *legal capability* (Jones, 2009).

In taking a capabilities approach to citizens' ability to exercise their legal rights, we move beyond trying simply to increase an individual's knowledge (of rights, or of legal processes). Instead, we prioritise the skills and attitudes that the legally capable citizen should be equipped with when facing a law-related problem. If we consider legal capability from an early action approach, it rapidly becomes apparent that what is of greatest importance is not detailed knowledge of rights, entitlements and processes, but what Law for Life call the 'foundation level of capability'.

This concept recognises that as law-related problems are episodic, and that high information costs are associated with preparing for such problems, simply pre-loading people with legal knowledge is unlikely to work. Building upon the educationalist notion of 'just-in-time learning', Law for Life argue that people do not operate by storing up detailed knowledge of what to do when faced with unexpected events, but require targeted and apposite knowledge at the *right time* as they experience a problem.

The 'foundation level' of capability therefore describes those skills and attributes that are required to effectively respond to a developing problem, and seek out the additional knowledge that will be required. Jones (2009) suggests that these core capabilities should equip individuals to:

- 'recognise the role of law in everyday situations';
- 'know when and where to find out more and get help';
- 'communicate effectively and confidently'; and
- 'be an active citizen'.

In an ideal future advice system, all citizens would possess these core capabilities from an early point. This would also mean that the advice provided when problems arise would be very different, and would have significant consequences for advice providers seeking to do more with less. While today advice provision tends to be in the form of intensive casework and face-to-face advice, a more legally capable clientele would more often be in need of less intensive further capability-building. This could mean 'just in time' information to guide clients through the resolution process, or help with the key skills required to deal with a particular type of problem.

Clearly, if demands made of advice services are less intensive, providers would be able to deal with a greater number of problems. Proponents of PLE have also pointed out that economies of scale are offered by this approach – it will be far more cost effective to produce and distribute high quality learning and information resources, or replicate evaluated PLE programmes, than it is to provide advice tailored to individuals' circumstances (Barendrecht, 2010; Wintersteiger, 2010). If access to justice is based on a PLE-style information model, there may also be further cost reductions due to information and learning being passed on citizen to citizen (Barendrecht, 2010).

For the benefits of this less intensive, more information-oriented model of access to justice to be felt, the *type* of information provided is crucial. It is now widely recognised that advice literature must be of high quality, and studies have indicated that much of what exists today is not good enough (PLEAS Task Force, 2007; Advicenow, 2007). To be effective, and to have an impact on demand for advice, information must provide even the highly capable with a route to a solution; it should be attractive and written in an easy-to-understand way; and it should be integrated with other services (Advicenow, 2009).

Even with a more information-oriented strategy for resolving law-related problems, advice services as they currently exist will remain key to ensuring access to justice. There is a recognised tension between self-help literature that facilitates successful immediate outcomes, and the desire to 'empower' clients through information and advice provision (Lawler, Giddings and Robertson, 2009). In addition to this, even with highly capable citizens, qualified legal and face-to-face advice will always be required for many circumstances. This much is clear: an early action advice sector does not (and cannot) mean current services withering away to nothing because of the rise of the home-grown amateur lawyer.

Maintaining advice services as they currently exist will be especially important for disadvantaged groups. Civil and Social Justice Survey evidence indicates that for people who handle problems alone, those with greater knowledge – who tend to be ‘more affluent, ... not in receipt of means-tested benefits and ... not suffering from mental health problems’ – achieve superior outcomes (Balmer et al., 2010, p.6). This contrasts with evidence that when advice is actually obtained, an individual’s knowledge of their rights made very little difference to their ability to meet their objectives (ibid, p.43). The implication of this is that different types of intervention should be targeted at different groups, depending on their levels of knowledge and legal capability (ibid, pp.57-8).

Advice services already provide a significant amount of information to those in need, however advice workers are not necessarily best equipped to undertake the kind of PLE work aimed at providing these broader capabilities. Law for Life (Jones, 2009, p.8) have pointed out that

‘the education world is well positioned to address the foundation level and ... there is a real opportunity to use the capabilities approach to inform the citizenship curriculum in schools and to develop and extend learning around civil law in adult education.’

Educational settings are by no means the only environment for the delivery of PLE, which can be provided in a multitude of settings and through a variety of media. However face-to-face methods are the best way to develop skills and enhance confidence, and as it is crucial that foundation capability is established early, schools are likely to be a crucial setting (PLEAS Task Force, 2007).

Although existing advice workers may not always be the people best placed to deliver PLE, an outward-looking, collaborative advice sector will be crucial to the design and implementation of a system of PLE which provides a broad level of capability.¹ A capability approach could only be strengthened by the input of advice workers, who gain first-hand experience of the problems that a lack of skills and knowledge cause their clients every day. Using pro-bono lawyers in projects to enhance legal capability could also be valuable, even at the foundation level, imparting the soft skills inherent in the work of the legal profession (Wintersteiger, 2010).

Key early action aims:

- To reduce the number of people needing advice by increasing citizens’ ability to avoid problems, and deal better with the early stages of problems by themselves.
- To reduce the intensity of presenting demand for advice, freeing up specialist advice capacity for those most in need.

Intervening at the right time

Early action advice provision doesn’t stop at changes in what happens before advice is sought, but also the timing and manner in which advice providers intervene. The Early Action Task Force (2011) has challenged third sector funders and service delivery organisations ‘to consider the optimum point for any given intervention, and to justify their choice, asking of every service ‘Is this at the right time?’ and, if not, ‘how might we next engage one step sooner?’

For advice providers, acting early can help to lessen demand by preventing problems from arising, but crucially it can also forestall their development, stopping them becoming more serious, socially damaging, and costly to unravel. Acting sooner in this way could mean a range of interventions, from having a duty solicitor present in a county court to give last-

¹The importance of collaboration has been highlighted by Professor Lois Gander and Dr. Diane Rhyason in the experience of delivering PLE in Alberta, Canada. ‘The Radical Promise of Public Legal Education’, presentation given to the Plenet Legal Empowerment Conference (Feb 2009).

minute legal advice to self-representing litigants; placing advice workers in GPs' clinics to access hard-to-reach groups; or targeting intensive capability-building PLE interventions at those who have bypassed it earlier (such as asylum seekers or teenagers excluded from schools). Through such interventions, acting sooner may not always prevent problems from arising in the first place, but can help to prevent even greater advice needs later on.

Case Study: The Solihull Pilot and the Early Legal Advice Project

The Solihull Pilot was a joint Legal Services Commission and UK Border Agency (UKBA) initiative which integrated quality legal representation into the asylum decision-making process. It ensured that the full factual basis of an application for asylum was established early and provided to the asylum decision maker. This required paying to 'front-load' the provision of quality advice as well as better and earlier communication between the legal representative and the asylum decision maker. One of the motivations for the pilot was to address the high number of successful asylum appeals i.e. to make the correct decision sooner and so avoid incurring preventable expense.

The evaluation found that the pilot produced faster, higher quality and more sustainable asylum decisions, enabled the UKBA to exceed its target for completing cases and showed potential to generate costs savings overall (Aspden, 2008). The outcome of the pilot encouraged Ministers to roll out the approach under the Early Legal Advice Project which started in October 2010. The evaluation of this Project will be published in January 2013.

Engaging sooner does not necessarily mean that the core working practices of the advice sector need to radically change, or that there is a prescriptive list of 'best interventions' that can be followed. The ways in which advice workers can intervene in clients' problems earlier are well-established, and the list of interventions above is far from comprehensive. In order to intervene earlier, advice agencies need to re-engage in, and protect, their preventative initiatives, which are so often the first to be cut. To sustain a future advice sector which delivers the triple dividend of early action, it is vital that the 'one-step-sooner' mentality of advice workers, always looking for new and sensible ways to intervene earlier in the problems that they see, does not become subordinate to the day-to-day struggle to maintain any service at all.

It is difficult to strike a successful balance between, on the one hand acting early, and on the other maintaining a service which copes with the demand presenting on agencies' doorsteps. While engaging sooner is vital, intervening early clearly cannot come at the expense of primarily helping those in greatest need. In this context it may be better to consider the ability of advice providers not just to act *early*, but to act at the *right time* according to the client's position. Simply providing rights-based information will likely be of little use to clients in acute need of intensive casework, whereas face-to-face advice can be a costly way to resolve problems if they are only just beginning to surface and could be resolved by timely, informed action on the part of the individual.

In order to push advice work 'upstream', and enable advice providers to effectively target advice needs at the earliest possible opportunity, successful interventions must be built around evidence of where unmet needs and particular vulnerabilities exist. In the main, however, targeting different types of advice at different levels of need, will require greater collection and sharing of this evidence than currently occurs.

Good relationships and open dialogue with community organisations, statutory bodies, elected representatives and others who have a day-to-day contact with local populations, are likely to be the most effective way for advice providers to gather the evidence they require to effectively target local needs. Not only will an outward-looking advice agency, rooted in its community, be more aware of local needs, but it is more likely to be known and have clients 'signposted' to it by these third parties before their problems develop to crisis point.

Even with strong evidence of needs, and a robust local network, the most important factor in an advice agency's ability to act at the right time is the freedom for staff to act imaginatively. In part, of course, this is a question of having the necessary resources. However, it also relies on advice workers with the skills to do so, and a broader funding and regulatory environment that encourages new ways of working.

Key early action aims:

- To reduce the numbers of problems that become serious advice needs
- To get the right decisions sooner, thereby avoiding costly appeals or drawn out advice processes

Delivering advice differently

In a future advice sector based on the principles of early action, not only would problems be prevented or arrested sooner, but services would be provided differently. Ideally, this would comprise three distinct areas of action:

- Advice would be provided with an eye to reducing repeat demand by clients and used as an opportunity to increase capability.
- Advice would be provided with a focus on quality rather than the volume of transactions completed.
- In order to prevent an individual failing to resolve a problem because of overly complex advice or referral processes, advice providers would work closely together in order to resolve all of a client's problems.

Of course, these ways of providing services are common in the sector, and we are by no means arguing here that advice organisations as a rule must undergo wholesale reform. However it is important to unpick the importance, from an early action perspective, of these particular elements of best practice.

i. Enabling advice

While acting earlier to provide citizens with core legal capabilities could have implications for the nature of advice demand downstream, the way in which advice is provided also affects the future levels of demand. It is already recognised that high quality advice not only delivers short term solutions to people's law-related problems, but the process of delivering the advice also builds the client's ability to address problems in the future (nef and AdviceUK, 2010, p.5; nef, 2008, p.5). If capabilities are strengthened through the advice process, a client who might previously have needed intensive casework advice, may require only a little extra information for a future problem.²

Whether 'enabling' or ensuring 'resilience' is the correct function of advice is a contentious issue. An important question is whether this actually leads to reduced demand for advice downstream. The evidence for this proposition is not overwhelmingly optimistic. Individuals' problem-solving strategies are generally persistent from one problem to another, regardless of problem type (Buck, Pleasence and Balmer, 2008, pp.674-5). Shifting these entrenched patterns of behaviour is notoriously difficult, and to find an effective way of doing so has been described as 'the holy grail' (Balmer et al., 2010). Nevertheless, there are pointers for how to provide advice in such a way as to lessen a client's need for advice for future problems.

One subset of the literature emphasises the importance of a quality relationship between the advice worker and their client. As the Council on Social Action (CoSA, 2009; see also

² Anecdotal evidence of this is given by nef and AdviceUK (2010), for example in the case of 'Ruth' – who had a housing benefit problem, after advice was given 'she reported having a clearer understanding of how her benefits payments worked and having the confidence to make basic phone calls to the housing benefits office (although she would access advice again if the situation was more complex).'

Bell and Smerdon, 2011) have argued, 'giving and receiving advice can either be a transaction whereby information is transferred, or it can be a deeper relationship with the potential to change someone's life.' In practice the quality of a relationship is not something which can easily be transposed by applying prescriptive models or interventions, however CoSA identify certain prerequisites:

- The client must have adequate time with the advisor;
- Relationships must be built from 'the earliest opportunity';
- Advisors must hold certain values, particularly respect for the client;
- Advisors must have certain attitudes, particularly proactivity and tenacity;
- Advisors need the skills required to fully understand, listen and communicate with the client;
- Advisors must be able to 'deal with clients as people not as cases'.

A 'deep value' relationship between advice workers and clients has advantages beyond just building up clients' capabilities. It may also help to bring down the incidence of costly (to the client and the state) and ineffective appeals. CoSA (2009, p.3) summarise this process:

Where good relationships are achieved, even if the eventual outcome of the advice is not what the client wanted, the resulting deeper understanding that clients have of the case and the confidence that everything has been done to pursue the case rigorously helps clients to accept this outcome more readily. Where relevant, this may mean that costly appeals are avoided.

Again, there are tensions in the model for future advice being presented here, particularly in our emphasis on 'enabling' advice. As has been noted, the desire for information and advice which 'enable' the client is not always wholly compatible with information or advice which is effective, easy-to-follow and which achieves direct outcomes for a particular problem (Lawler, Giddings and Robertson, 2009). In addition to this, there is a possible tension between popular client-facing approaches to the advice process, and a desire to 'enable'. It could be that elevating the client's perspective of what constitutes 'value' in advice provision, and improving the service from the client's perspective, will *entrench* rather than *change* advice-seeking behaviour.

ii. Quality advice

A focus on quality is vitally important to giving accurate and effective advice, and, in particular to tackle what AdviceUK and nef (2011) define as 'revolving door demand.' This is where the client's problems are unresolved in the medium term, where they have not been equipped to resolve the remainder of their problems by themselves and therefore they are led to quickly return to the advisor.

AdviceUK and nef (2011) point out that this poor quality advice has cost implications that fall beyond the advice agency – driving up stress and anxiety in the people accessing advice, and leading to 'knock on costs' for other state services. Their conclusion is that in order to resolve this problem, 'commissioning for quality is crucial'.

Research, originally commissioned by Refugee and Migrant Justice in 2009, has identified the key elements of quality advice in the asylum field (this has significant read-across to other categories of advice as well). The research defined quality as comprising (i) professionalism and expertise, (ii) effective one-to-one relationships between representative and clients, and (iii) sufficient time to carry out quality work. A similar correlation between advice time and outcomes was also identified in the LSC's research into cost and quality, which examined the effect of different funding models on the service provided to clients (LSC, 2001). The implications in terms of the aims of an early action advice sector are clear: quality advice solves problems sooner and helps to prevent costly and unnecessary additional work.

iii. Joined-up advice

The MoJ (2009) recognised that the best advice outcomes in an area are produced by an 'ecology' of advice provision in which different providers possess specialisms across social welfare law, and are able to support clients at varying levels (from information through to complex casework and representation). One way of ensuring that this system works well, and that advisors are confident in referring clients to others with different expertise, is to create good lines of dialogue and partnership working across local advice agencies.

Umbrella bodies for advice organisations such as AdviceUK offer support for groups of organisations which seek to form closer networks. Successful advice networks, with joined-up referral procedures and information sharing, have emerged in various areas. These include organisations such as Advice Nottingham, Advice Services Coventry, and Advice West. Working in partnership with other point-of-contact organisations in order for them to act as 'gateways' to advice, is a creative and potentially robust model for early advice provision. An example of such an approach is advicehub in Cambridgeshire, which combines the use of touchscreen self-help 'kiosks' in community locations, with a partnership forum that draws together over 50 local agencies.

Not only can better links between advice providers bring benefits, but organisations in the local community are important partners too. There is evidence to suggest that referrals to advice providers are most likely to be made where good relationships exist between individuals in community groups and advice agencies, and where agencies' capacity to take on work is clearly and frankly communicated (Advice Services Alliance, 2009).

Key early action aims:

- To reduce repeat or 'revolving door demand'.
- To reduce 'referral fatigue', where, because they are sent from agency to agency, clients lose contact with their advisor(s) before their problems can be fully resolved.

Feedback processes and communicating lessons

The Early Action Task Force (2011) state that:

Earlier Action isn't always directed at the individual. Sometimes it is the systems or the processes which cause the problem and which need to change.

Collaboration and collective advocacy by advice providers is of paramount importance in reducing the external drivers of advice demand. Just as providers' ability to map effective earlier advice interventions relies upon a thorough understanding of the whole system – encompassing advice need, demand and the processes of advice provision; so too does action to reduce the drivers of demand.

Nottingham Systems Thinking Programme

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

- 30% of that demand was a result of 'preventable failures in public services' (AdviceUK and nef, 2011);
- a further 12% was deemed broader 'failure demand' generated by the failure of agencies themselves or others to get it right for their clients (AdviceUK, 2009).

Not only was demand analysed, but the flow of advice enquiries through the system was precisely mapped and analysed in order to understand which steps in

the process constituted 'value' for the client, and what actions were taken that were unnecessary 'waste'.

Resulting from this mapping exercise, 'system conditions' that cause waste were identified, and a pilot project between advice agencies and Nottingham City Council's Housing and Council Tax Benefits service was undertaken to identify and implement changes by which closer collaboration could improve service delivery. This Benefits Pilot produced striking results (Fox and Sefton, 2012, pp.47-62; AdviceUK and nef, 2011):

- Analysis of the issues with which customers presented, showed that approximately 60% of issues within the Pilot were preventable.
- The Pilot cases required, on average, less than half the adviser time of comparable cases, and the average number of actions required to resolve a case fell by over 30%.
- The average time taken to resolve cases began at 100 days, fell initially to 23 and then later in the Pilot fell further to just 5. On average, cases in the Pilot were closed within a quarter of the time taken for other comparable cases.
- All cases in the Pilot 'were resolved without the need for further challenge, review or appeal.'

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

The type of collaborative and evidence-led approach to advice provision undertaken in Nottingham has clear implications for the ability of advice providers to cope with the current challenges they face. Even where the resources are not available to conduct rigorous mapping and redesign exercises, it is crucial for advice providers, in order to act earlier, to work closely with other organisations across sectors and communicate the lessons they learn about drivers of the advice demand that they encounter.

Advice providers' work to communicate failure and address the feedback loops which drive demand by no means end with building more productive relationships with local authorities. Other failures within the advice system include:

- inefficiencies in the process of referral between different specialist agencies for clients with multiple needs, leading to problems remaining unsolved – 'referral fatigue';
- agencies closing cases before problems are fully resolved so that clients simply return for more advice – 'revolving door' demand (AdviceUK, 2008).

Collaboration between advice agencies in a local area, and outwards with local partners such as health bodies, community organisations, local voluntary sector networks, can lead to the development of more effective and consistent working practices, reducing these drivers of unnecessary demand.

Advice providers that are firmly rooted in their local communities and that have good connections to other local groups and stakeholders may be better able to fulfil wider strategic roles in influencing policy development locally and nationally. This role is widely recognised as a crucial element of the social and economic value provided by independent legal advice providers (nef, 2008).

Strong local advice networks can bolster this effect: larger, less divided stakeholder groups are better equipped to influence local decision-makers than are isolated advice providers. Strong networks enable more than just better advocacy for advice services, but also provide

an important means for collecting local data on the role played by the advice sector, understanding the significance of local advice needs, and effectively communicating these findings to public bodies.

The independent evaluation of the Nottingham Systems Thinking Programme (Fox and Sefton, 2012) has shown how difficult implementing feedback processes and expanding collective working can be. It highlighted the difficulties that arise in collecting and coordinating data, ensuring that agencies share understanding and expectations of such processes, and attempting to implement redesign processes across an entire local advice economy. Despite successfully demonstrating the potential of a systems thinking approach, the evaluation highlighted the importance of engagement with commissioners in creating successful feedback processes. Ultimately it concluded, however, that 'there is little evidence of the programme having an impact on commissioning practice' in Nottingham.

Key early action aims:

- To act on the drivers of 'failure demand'
- To reduce 'revolving door demand'

Section 3

The barriers to an early action advice system

As we have argued, the skills, experiences and practices of an advice sector that intervenes earlier, already exist. So what is stopping these approaches becoming more widely adopted?

The shift across the voluntary sector in recent years away from public funding by grant aid, toward the greater use of competitive procurement, has limited the ability of advice agencies to act early. Our previous paper *Rights with Meaning* (Smerdon, 2009) examined the impact that market-based reform, contracting, and inefficient public administration has had on advice agencies. In it we argued that prevention and early action by advice agencies have been undermined by these changes, which have led to:

Increased direction and eroding distinctiveness: advice organisations have increasingly been forced to provide services that better meet the specifications of commissioners and government than the needs of users. The standardisation required by commissioning has often led to the erosion of the individuality, innovation and flexibility of local independent advice organisations, and opportunities to act earlier have been lost.

Difficulty maintaining quality: government's understanding of what 'value for money' means in advice services is weighted too far towards what is cheapest and easiest to count, rather than being outcomes-focused, and responsive to needs. In the absence of responsive, quality advice, little can be done to prevent 'revolving door' demand being felt heavily across the advice economy.

Undermining of advice agencies' policy roles: advice agencies that feel squeezed lack capacity to give meaningful feedback to government. This could mean that failing policy continues unchallenged, and administrative systems that unnecessarily drive up demand remain unreformed.

Increased competition: competitive tendering, especially in local services, reduces the capacity for and likelihood of collaboration by advice providers in strategic initiatives, data sharing and service delivery. It also favours larger organisations that can use contracts as loss leaders and cope with the administrative burden of commissioning, thereby driving out expert, locally rooted providers.

Diminishing unrestricted funding: the need to subsidise legal aid contracts, and increased competition on price, means that organisations use reserves and other income to maintain services. This reduces capacity for social policy work, unfunded and innovative service development, and preventative action. A study for the Law Centres Federation showed that unrestricted cash reserves at one point were reduced by 70% in twelve months (nef, 2009).

More recently, the coalition government's current approach to legal aid is directly at odds with an early action approach, and is aimed quite explicitly at rationing legal assistance only to those with problems which have reached crisis point.

"We also recognise the argument that withdrawal of legal aid for any issue could lead, by a chain of events, to serious consequences. ... However, our view is that the limited public funds for legal advice and representation should be focused on those cases where the client faces serious direct consequences. Therefore, we do not propose to devote these limited public funds to less important cases on the basis that they could indirectly lead to more serious consequences for that person."

Lord McNally, 18 January 2012)

Not all the barriers to early action are the result of external pressures – one structural barrier is the way in which advice agencies tend to draw on a number of different funding sources. While this can lend stability by spreading the risk of cuts, it can also have severe implications for the ability of the organisation to redesign its services (Fox and Sefton, 2012, p.38). Multiple ring-fenced funding streams with different delivery and reporting conditions mean that advice providers are often not in a position to unilaterally redesign or move upstream the services they offer.

Another barrier has more to do with the risks and potential resistance to changes in service delivery. The advice sector has been characterised as 'conservative' in the way in which many agencies organise and deliver their services (Fox and Sefton, 2012, p.43), and it may well be that established ways of working have to some degree constrained early action. However, even if this is true, the risks associated with new, untested models of service delivery are only made more salient by a lack of cash reserves, and an uncertain funding climate.

Transition is a problem with early action, in whatever social policy arena it is applied. In the short term, an increase in outreach and public legal education activities may well simply raise awareness of the advice service, leading to increased rather than decreased demand. There are also issues of scale and coordination. In order to achieve savings from early action advice, it is likely that initiatives would have to be implemented at a wider scale than simply within one advice agency or local network. There is no easy answer to either the transition or the problem of scale, however though these objections may apply to some, they certainly don't apply but to all early action interventions.

The final barrier is that early action approaches to advice are not always wholly consistent. For example, a question arises when weighing up the need for an efficient system of advice based around customer demand, against a system that 'enables' the client through the advice process, but is not necessarily the service the client *wants*. For example the Systems Thinking approach, piloted in Nottingham, is based around the principle that the client 'pulls' the service they need, rather than the service which is 'pushed' at them (Fox and Sefton, 2012). By identifying and removing failure demand and waste in the advice process, this approach can be highly preventative. However, it is not necessarily preventative in the sense that it equips clients with future skills and capabilities.

Ultimately a balance has to be struck between maintaining current capacity for acute advice needs, utilising existing skills and expertise within the sector in the most productive way, and building upon ways of lessening future advice needs. These are not easy aims to accomplish, however what is clear is that they would be made easier if those barriers to early action that have been identified here are considered carefully, and where appropriate, lessened.

Section 4

What else could early action in advice deliver?

So far this paper has focused on the potential of an early action approach to inform the workings of a more efficient and effective future system of advice. However, as noted above, the benefits that people claimed that early action can produce are wide-ranging and extend beyond simply enabling advice providers to do more with less. In this section we examine ways in which an early action approach to the advice sector could deliver broader benefits to government and to society.

The Early Action Task Force argue that three 'dividends' result from earlier action across society: social benefits, reduced costs, and increased growth. Could an early action approach to advice produce these outcomes?

i. Social benefits.

The social benefits gained from earlier action in advice range from the avoidance of certain problems altogether, to fewer social costs incurred from drawn out problem resolution processes. The MoJ (2009, p.35) has in the past explicitly recognised the social benefits of earlier intervention through legal advice:

Early intervention with good advice for problems that arise can prevent the involvement of courts and can reduce hardship for a large number of people.

In addition to the benefits brought by a quicker advice process, qualitatively better outcomes would be produced for clients. These would include a whole range of softer outcomes beyond the actual solution of a particular problem. Examples of these include greater confidence and assertiveness in clients, as well as better decision-making, planning and communication skills. At a broader level, an early action advice system could help to change the way in which society relates to and understands the role and value of the law in their everyday lives.

ii. Reduced costs.

The cost implications of earlier action in the advice sector are somewhat problematic to pin down. The sector is in the unusual position of providing a service funded largely by agencies of the state, yet it exists largely to enable individuals to enforce their rights and entitlements against the state. This picture is complex – identifying 'savings' for advice agencies or for certain statutory actors, impacts in various ways on the budgets of a multitude of different agencies working within their own silos. This complexity makes it hard to determine a precise 'dividend' in the sense implied by the Early Action Task Force, however some attempts to do so have produced interesting results.

Savings

- Research undertaken by Citizens Advice (2010) indicates that for every £1 of legal aid expenditure, the state saves between £2 and £9.
- Using an SROI approach³, nef (2008) have estimated that an investment of £1 in a Law Centre's legal education and prevention work, produces £6 of social value. The socio-economic benefit to cost ratio identified for a case study of a Law Centre's case work function was even greater – in excess of ten-to-one.
- Applying an SROI approach to four case studies of different types of housing and debt advice, nef and AdviceUK (2010) demonstrated a social return of approximately £9 for each £1 invested.

³ The calculation of the 'social value' of an intervention includes asking clients to identify a monetary value for outcomes of the intervention, in addition to attempting to calculate the real economic savings produced by the intervention.

There are also more general difficulties in locating savings from upstream interventions in terms of identifying and attributing downstream affects to those interventions. This attaches a further risk to making the savings argument a fundamental part of the case for early action, namely the possibility that advice needs already outstrip supply. If this is so, it may be that demand will appear inelastic and no costable savings will result. This scenario is not a remote contingency as advice services at present are already highly selective in the cases they will take on, and prioritise those with the highest need.

It is crucial to note, however, that this is not a reason to abandon early action – fulfilling demand which currently goes unmet could reduce costs elsewhere in the system, for example by reducing the proportion of non-advised self-representing individuals at tribunals, and will still mean that advice providers can do more with less. However, it nevertheless *is* unclear that the ‘dividend’ of reduced total costs will be produced by taking an early action approach to advice.

iii. Increased growth

There are two dimensions to the question of how an early action advice sector might contribute to growth: national and local. Nationally, the creation of a more legally capable citizenry would have wider implications on the soft skills and broader abilities of individuals, which could be expected to translate well into employability, and national prosperity.

‘The knowledge, skills and confidence people gain through PLE are of value not only for one specific situation, but also for other times and problems. Once people have had a positive experience of resolving one problem, they come to expect that they can secure positive outcomes in other situations. Transferability of knowledge, skills and confidence is a key feature of good PLE.’

PLEAS Task Force (2007)

The local argument is more robustly evidenced than the national one. A local population which incurs lower financial and social costs from everyday problems, places less of a burden upon local public services, and claims its full financial entitlements from central government, is likely to enjoy greater local prosperity. Numerous studies show that high quality advice, by ensuring that people access their entitlements, significantly benefits the local economy (Ambrose and Stone, 2003; Fraser of Allander Institute, 2003; London Borough of Newham Social Regeneration Unit, 2005).

Section 5

Priorities for the Baring Foundation

The Baring Foundation's report *Future Advice* details how we are taking forward our focus on advice. The Future Advice programme from 2012-2015 comprises two distinct funding streams, the Providers Fund and the Strategic Fund. These programmes build on an earlier pilot called the Restructuring Fund, which awarded grants at the end of 2011. We have made grants throughout 2012 from the Strategic Fund, and in September we completed our first round of yearly grants from the Providers Fund. In this section we map our grant-making activity so far to the four aspects of early action and advice set out above.

Citizen Capability

£39,950 to Law For Life, to work with advice agencies to test the Public Legal Education Evaluation Framework and to advance knowledge and awareness of the value of PLE.

£37,000 to Wythenshawe Advice Centre to carry out a programme of financial management workshops and early intervention activities in collaboration with local housing associations.

Intervening at the *right time*

£30,000 to Coventry Law Centre to develop and test a new model for advice delivery, using 'community powered advocacy'. This will involve increasing collaboration between advice agencies and community groups to identify problems early.

£75,000 to Community Links to expand a pilot project delivering earlier advice interventions from community centres in east London.

Grant to Wythenshawe Advice (see above).

£10,000 to Asylum Aid to develop new service models for the delivery of quality assured legal advice and representation to people seeking asylum in the UK and to carry out policy advocacy on the importance of rolling out the Early Legal Advice Project.

£75,000 to Coventry Law Centre to integrate specialist legal advice into intensive work by the city council's 'Troubled Families' team, to resolve complex human problems.

£70,500 to Mancroft Advice Project to measure the impact of social welfare advice on the mental health and wellbeing of young people, and engage health commissioners.

Delivering advice differently

£93,272 to Avon and Bristol Law Centre to work with Gloucester and Wiltshire Law Centres to develop and implement a south-west regional structure.

£73,426 to Southwark Law Centre to develop a triage model for south east London asylum advice providers, enabling agencies to match clients to the best placed organisation.

£191,113 (2008) and £150,000 (2010) to Advice Services Coventry to strengthen individual partners, and to implement and evaluate a mixed economy model of community based advice delivery.

Better feedback and learning processes

£40,042 to AdviceUK to advance the case for systems thinking in advice services, building on extensive previous work, supported by the Foundation, in Nottingham and Coventry.

£89,896 to Cardiff-based advice organisations to implement a *Systems Thinking* approach to planning and delivering advice services.

Finally, cutting across these different categories, the Foundation has also made a contribution of £50,000 to Legal Action Group to support the Low Commission on the Future of Advice and Legal Support. The role of early action in advice will form part of the Commissions deliberations and recommendations.

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