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## The impact of cuts in legal aid funding on charities

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This article focusses on the specific impact of the cuts in legal aid funding on the charitable sector. The sector plays a significant role in advice giving. Some charities have the provision of legal advice as their sole purpose, whilst the work of other charities includes the giving of legal advice. Funding comes via a number of sources including legal aid, local authorities and charitable trusts. Whilst this volume highlights the legal aid reforms that will lead to significant cuts in funding, this article notes that charitable providers of legal advice have also suffered major cuts from their other traditional funding sources. Against this background, the article considers the serious and often unforeseen consequences for charities of the legal aid reforms, which go far beyond the impact on the high street law firm and access to justice for claimants.

**Keywords:** charities; legal aid; funding

### Introduction

This article will focus on one particular aspect of the legal aid reforms that form the subject of this special volume and this concerns the specific impact of the cuts in legal aid funding on the charitable sector.

Before turning to look at some of the specific impacts of the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) for charities, the first section of this article provides some context in which to place this discussion. In particular, it considers the composition and regulation of the charitable sector, the sector's role in advice giving and the funding of this charitable work. It briefly sets out how both the legal aid reforms and other funding cuts are affecting charities and their regulator. Having set the scene, the main section of the article considers the effect of the legal aid reforms on charities. It will be seen that the consequences for charities are significant and, arguably, largely unforeseen. They have certainly not been high on the agenda for policy makers who have been focussed on the impacts of the reforms on private law firms and on concerns for access to justice for claimants. The article concludes by suggesting that charities will survive the reforms. Charities will gain some assistance from Government by way of transitional funding but they will mainly survive by relying on their time-honoured characteristics of resilience and innovation.

### The context

#### *The charitable sector*

The Charity Commission's latest facts and figures reveal that there are 162,624 registered charities, whose total annual income is £58.578 billion (Charity Commission 2012). Over 75% of these charities have annual income of less than £100,000 and nearly 43% have

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annual income of less than £10,000. It is important to identify what charities are, as compared to other third sector organisations, as this article deals with charities in the strictest sense. Charitable bodies are distinct from the voluntary sector at large. They are registered with and regulated by the Charity Commission and enjoy the fiscal and other advantages associated with charitable status. To be eligible for registration, such organisations must be of charitable character: they must have as their object a recognised charitable purpose, must be for the benefit of the public and be wholly and exclusively charitable (Charities Act 2011, s 2). The National Council for Voluntary Organisations (NCVO) *UK Voluntary Sector Almanac* (2012) reports that the voluntary sector, of which the charitable sector forms part, receives income from two main sources: individuals and statutory bodies. Whilst individuals are still the sector's main source, providing £14.3 billion in 2009/10 (39% of total income) via donations and purchases, contracts and grants from statutory bodies, worth £13.9 billion, generate almost as much of the sector's income (38%). Together, statutory bodies and individuals account for just over three-quarters of the voluntary sector's income. The proportion of the sector's income that comes from statutory sources has steadily increased from 32% in 2004/05 to 38% in 2009/10.

The Charity Commission is the regulator of charities in England and Wales. Since the 1990s, the Commission has developed into a modern regulator, significantly increasing its activities to include conducting a wholesale review of the charities on the Register, publishing a wide range of guidance for trustees, and carrying out a programme of charity visits and investigations. It has also gone fully online, with all its information published on its website, together with the Register of charities. Its statutory objectives (Charities Act 2011, s 14) include: the increasing of public trust and confidence in charities; the promotion of compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities; and, the promotion of the effective use of charitable resources. One of its statutory general functions (Charities Act 2011, s 15) is to encourage and facilitate the better administration of charities and in connection with this function, the Commission may give such advice or guidance with respect to the administration of charities as it considers appropriate. Such advice or guidance may be in any appropriate form and may relate to charities generally, or a class or a particular charity.

### ***The sector's role in the provision of advice***

One element of the charity sector comprises bodies that provide legal and related advice. Charitable purposes are now codified in section 2 the Charities Act 2011 and include (a) the prevention or relief of poverty and (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage. The provision of money management and debt counselling advice are examples of the ways in which charities might help prevent poverty. Charitable purposes that are directed towards the relief of those in need, by reason of youth, age, ill-health, disability, financial or other disadvantage include the relief of financial hardship by the provision of free legal advice and assistance to persons who, through lack of means, would otherwise be unable to obtain such advice.

Most of the charitable advice providers are community-based charities, some of which exclusively provide advice, whilst others provide a number of services including advice (Cabinet Office 2012, p. 6). Some of these charities are part of a network of national organisations. A Cabinet Office report on the advice-providing charitable sector found that, in addition to some national charities (including Shelter and Age UK) that have traditionally provided advice, the sector it is made up of Citizens Advice Bureaux (CABx),

Law Centres and members of the AdviceUK network (Cabinet Office 2012, p. 6). CABx deliver advice services from over 3500 community locations in England and Wales, run by 382 individual charities (Citizens Advice Bureaux 2011). Citizens Advice itself is also a registered charity, as well as being the membership organisation for bureaux. The income of CABx totalled £178 million in 2010/11, and this came from local authorities, the Legal Services Commission, Lottery funds, primary care trusts, charitable trusts, companies and individuals (Citizens Advice Bureaux 2011). In addition, there are around 50 local independent Law Centres (Cabinet Office 2012), which are registered charities specialising in social welfare law, offering free legal advice, casework and representation to individuals and groups. The previously mentioned AdviceUK is the largest network of independent advice agencies in the UK. It is itself a charity that supports around 860 community based organisations that give free advice to members of the public (House of Commons Justice Committee 2011, Ev W 77).

Many of these charitable bodies have been funded in the past to provide legal advice, including legal aid, which is not the sole province of private law firm providers. CABx are one of the main providers of legal aid-funded advice, as well as other types of advice that in some circumstances might be an alternative to legal advice. In 2009–2010, the Legal Services Commission (LSC) provided around 15% of income for CABx, providing £27 million funding (House of Commons Justice Committee 2011, Ev 95). As an example of an individual charity funded to provide legal aid, Shelter is a leading national provider of specialist social welfare law advice, which has helped over 25,000 people each year under legal aid contracts and which has employed over 200 advisers and 40 solicitors to give legal aid advice to the public (House of Commons Justice Committee 2011, Ev 104).

### *The nature of the legal aid reforms*

The reforms are discussed in detail elsewhere in this volume, but, for present purposes, from April 2013, LASPO 2012, s 8 and Schedule 1 mean that legal aid advice will be abolished for all welfare benefit matters (para. 15, Part 2), debt, employment (except discrimination cases under para. 43(1) and (3), Part 1) and all housing cases except those that involve disrepair issues that pose a serious threat to health (para. 35(1) Part 1) or where a person's home is classified as being at 'immediate risk' such as eviction proceedings (para. 33(1) Part 1) or assistance with homelessness (para. 34(1) Part 1). The charitable sector will be heavily hit by these reforms. The Ministry of Justice's own initial impact assessment revealed that the reforms were likely to result in a massive 92% reduction in legal aid income for charities (Ministry of Justice 2010, Table G). Compared to private law firms, a larger proportion of charities' advice work is taken 'out of scope' due to the categories of law in which they are more likely to work, for example, welfare benefits. This partly explains the disproportionate impact on the sector. It is also because charity providers currently undertake very little representation and so would not benefit from the exceptional case funding mechanism (Ministry of Justice 2010, p. 15).

### *Funding cuts affecting charities*

These are not the only cuts in funding that charities are currently experiencing, as they are not immune from the impacts of the recession. Like private organisations, charities have administration and staffing costs, including the management and training of a volunteer workforce alongside paid staff, and, despite some limited tax reliefs and exemptions, the sector make a significant contribution to public finances, estimated at £1.35 billion for the

year 2007/8 (NCVO 2009). Unlike many private companies, however, they have few or limited cash reserves to weather economic adversity, as ‘most charities live hand to mouth’ (NCVO 2011, p. 29). Funding comes from a variety of sources, including fundraising by private donation, but charities cannot simply ‘fundraise’ themselves out of financial trouble – money raised from individual donations fell by nearly £1 billion between 2008 and 2009 (Wilding 2010) and there are no signs of a recovery to date (NCVO 2011, p. 29).

Typically, a significant source of funding for advice-providing charities has come from local authorities. As a result of deep cuts to local authority budgets and the tough funding environment generally, charities are now suffering from significant reductions in local authority funding and a decline in grants from national government sources and other funders. Combined with cuts to legal aid funding, such charities are suffering a ‘double whammy’. Financial support is being decimated, whilst the demand for services increases as a result of the impacts of the recession on the general public. In addition, local authority cuts are also affecting general charities for whom advice provision is one part of their service, again leading to extra demand on the charitable advice sector. A survey of London’s voluntary and community sector found that the services most commonly reported to have seen an increase in demand in 2011–2012 were advice services (LVSC 2012). This repeats the findings from an online survey of advice charities by Justice for All (2012), which reported increased demand for advice from 86% of respondents. In fact, current demand is likely to increase as changes to benefits entitlements (including the introduction of universal credit) are implemented: ‘As unemployment continues to rise and with major changes in the benefits system and employment rights in the foreseeable future, the need for advice is continuing to increase. This puts additional pressure on advice providers who are struggling to sustain and maintain their current (or reduced level) of service as a result of government policies’ (LVSC 2012, p. 40). The Justice for All (2012) survey found local authority funding to be the biggest source of income for half of advice charities, usually funding core running costs and generalist advice. Following cuts, nearly one quarter of respondents were facing closure and most were making major cutbacks to frontline services.

The NCVO (2011) estimates that the UK voluntary and community sector will lose around £911 million per year in public funding. This means voluntary and community sector stands to lose £2.8 billion from Government over the current spending review period running from 2011–2016. Service providing charities, including those providing advice services are already suffering as a result of general funding cuts. Recent research (Compact Voice 2012) into the extent of spending from local authorities to the voluntary and community sector through grants and contracts, including changes to levels of funding, found that around half of local authorities are continuing to see the voluntary sector as a soft target for spending cuts, with disproportionate cuts common. This is in line with an earlier report produced by the Association of Chief Executives of Voluntary Organisations (ACEVO), based on data provided by 1725 organisations that applied to the Office for Civil Society Transition Fund, intended to support civil society organisations facing public spending cuts. This suggested that it is highly likely that public sector agencies are passing on disproportionate cuts to charities (i.e. higher cuts to charities than they themselves are facing) (ACEVO 2011, p. 3). Another more recent survey, commissioned by the Charities Aid Foundation, found that one in six charities believe they could face closure in the coming year (Charities Aid Foundation 2012).

The ‘Voluntary Sector Cuts’ website (Voluntary Sector Cuts 2013), maintained by the NCVO on the impact of these public sector cuts, makes for grim reading. Of the 530

reported cuts (as at 20 January 2013), 80 relate to the provision of advice services directly, with the result that many services are being decommissioned as alternative funding is not available.

### ***Changing role of the charity commission***

Charitable organisations are not the only ones feeling the pinch. Their regulator, the Charity Commission, has also had its budget significantly decreased. As a result of a 33% budget cut over the current spending period, the Charity Commission, which will lose about 140 staff, is reducing its one-to-one advice to charities and its interventions in individual cases, as it focuses on its key regulatory priorities (Charity Commission 2011). This new strategy will see charities becoming heavily reliant on professional advisors and, perhaps, their own umbrella bodies. In fact, the Charity Commission now has as one of its two strategic priorities ‘developing the self-reliance of the sector’, moving to a position where ‘the Commission is not seen as the first or only point of call for those who need tailored advice’ (Charity Commission 2011b, p. 4).

Clearly, charities will not have the luxury in the future of seeking advice and reassurance from the Charity Commission as they deal with governance and other issues. They will either have to muddle through themselves or incur expense in the acquisition of specialist advice.

### ***Demands of the Big Society***

At the same time that they must contend with straitened financial circumstances, charities are also under pressure to become fully fledged members of the Big Society by being commissioned to deliver public services. Earlier research has shown (Morris 2012) that whilst this may be beneficial and appropriate for some charities, the legal and regulatory framework within which charities operate impedes their role in some of the key planks of the Big Society. Specifically, certain legal constraints, which are inherent characteristics of charities, such as the need to maintain their independence and to act in line with their objects, suggest that there could be significant difficulties for many charities, especially smaller ones that lack capacity to engage with the Big Society ideals.

### ***Adapting and surviving***

A characteristic of the charity sector is its ability to innovate and be flexible and it is expected that charities providing advice will find ways through their current funding difficulties. The recent London Voluntary Service Council (LVSC) survey found that, every year between 2009–2012, the majority of surveyed bodies continued to take action to adapt to changes, affirming the flexibility and innovation of the sector in striving to ensure that it can continue to provide services and better meet the needs of the most disadvantaged (LVSC 2012, p. 45). The changes in legal aid funding are the latest in a long line of reductions in funding with which charities have had to contend. Crisis management is often the norm, when, for example, within the contract culture, charities have often received little or no notice of non-renewal of contracts despite efforts in the past to ensure that government funders did not act in this way (see HM Government 2010, para. 4.4 which requires a minimum of three months’ notice in writing when changing or ending a funding relationship).

It is important that charities providing advice do survive. Those people approaching them for advice, whether that be legal or other advice, are often already in crisis and rely on charities to assist them when they have exhausted all other possibilities. It is in the general public interest that charities find the means to continue to carry on this important work.

It has already been noted that the legal aid reforms are only one part of a package of tripartite cuts that impact on charities giving legal (and other) advice; the removal of direct financial support through the swingeing Public Sector cuts and the withdrawal of supportive activities for charities by the Charity Commission, in its refocused role as regulator, together forming the other two elements. Such charities are not also enjoying a commensurate reduction in the demand for their services. In fact, the general economic climate, coupled with the introduction of the welfare reform programme with its cap on benefits, mean that the demand for charities to provide advice services is likely to increase. It is within this context that the specific impact of the implementation of LASPO on charities must be considered.

### **Effect of legal aid reform on charities**

In addition to the direct loss of funding for the provision of social welfare services, the sharp divisions made in the new funding regime are difficult to explain and may lead to creating more extreme need, rather than helping meet existing need. A good example lies in the housing sector, with the distinction between legal aid being available to contest possession proceedings but not for welfare benefit or debt advice.

One of the key triggers for a landlord to start an eviction action is rent arrears, and for those within social housing through poverty, the principle cause of rent arrears is problems with Housing Benefit payments (Barr 2007). It is an accepted fact that the administration of Housing Benefit is both slow and unreliable, and that it can be very difficult either to challenge an incorrect, initial assessment or to resolve difficulties in a timely manner before or at the time of possession proceedings (Hunter *et al.* 2005). The complexity of benefit issues means that this requires specialist advice to resolve, given by appropriately trained staff and this is expensive to provide. It is here that CABx and charities such as Shelter have provided such advice in the past, assisted by the legal aid funding which will now be removed from this area of work. It is darkly ironic that, should the Housing Benefit issue remain unresolved and lead to a possession claim, aid for advice and support becomes available, at the point where costs, both financial and human, increase and, by which time it may be too late to resolve the issues. Prevention here would be better than cure, yet the new funding regime does not support this. Similarly, taking legal aid funding away from general advice on debt management may lead to more individuals falling prey to the consequences of mismanaged debt, such as losing their home through the build-up of mortgage or rent arrears. Legal aid now only responds at the point of crisis.

A failure to fund preventative measures is already evident in the sector, as a result of the general cuts in charity funding. The LVSC survey showed that preventative services are being disproportionately cut compared with curative or crisis services, and that this is expected to continue in 2012–2013 (LVSC 2012, p. 56). Whilst investment is diverted from more preventative services to achieve short-term solutions to funding cuts, the risk is that the demand to address complex longer-term problems that are more expensive to resolve will continue to increase. Research on the impact of spending cuts on communities across Greater Manchester came to the same conclusion: ‘Austerity dictates that scarce resources are dedicated to the ongoing crisis, thereby directing resources away from

preventative services. According to many of our respondents, this means that increasingly people are being allowed to drift towards crisis before qualifying for services' (GMCVO 2012, p. 4).

The most obvious impact of the cuts will be a severe reduction in the private solicitor's legal aid work portfolio. Inevitably, whatever role charities seek to play, these cuts will mean that individuals in crisis cannot get legal advice and/or representation. This will lead to more individuals, some of whom are the most vulnerable in our society and who may well lack the capacity to engage effectively with the justice system, seeking to represent themselves. These citizens often have complex lives, with inter-connected legal problems (Cabinet Office 2012, p. 7). For example, marital breakdown can lead to debt problems, which, if not tackled early enough, can lead to homelessness. This will lead to poor quality litigation in complex areas (such as welfare benefits or employment law). A report from the Civil Justice Council (2011, p. 8) predicts that self-represented litigants will become 'the rule rather than the exception'. This is clearly going to require significant changes to the way that litigation is currently undertaken so as to ensure some kind of equality of arms between the represented and unrepresented party. As Baroness Hale recently put it: 'The adversarial procedure which we adopt is heavily dependent upon lawyers preparing, presenting and arguing the case' (Hale 2011, p. 12).

It is clear that CABx or other advice charities may no longer be able to meet increasing need as the services are supported by the same funding stream as for legal professionals. The direct impact of the loss of funding from legal services is estimated at over £20 million per annum (Citizens Advice Bureau 2012). The need is also great – in 2010–2011, CABx dealt with 2.3 million debt-related advice problems, serving 550,000 clients across their network. Housing disputes, already served by other specialist advice providers such as Shelter, still saw CABx dealing with over 270,000 clients in the same period to resolve some 500,000 issues. Demand is increasing, as the social welfare issues now excluded from legal aid provision 'tend to 'cluster' around vulnerable people with multiple problems, leading to adverse consequences such as . . . debt and loss of employment – the compounding issues of poverty and exclusion' (CABx, 2012).

There are a number of more specific consequences that arise from the changes to legal aid as they affect charities. These are considered below.

### *Nature and quality of advice changes*

One response to the withdrawal of funding for advice through legal aid for social welfare issues is for charities to provide a different type of advice than is available through current services, such as a move to a more general advice service. This would be cheaper to administer than a more specialist service and would seem to be a sensible response to maintaining service rather than simply disestablishing advice services altogether. The direct result would be that charities would not be giving the advice they previously gave, either in nature or quality.

This is entirely understandable. Dealing with complex issues in employment disputes, for example, or solving difficult questions about the legal status of an occupation agreement and the rights arising from that agreement (Barr 2007) require legal expertise, and appropriately trained staff. The package of cuts facing charities means that training budgets for staff are already under threat. Research undertaken by Lasa (a provider of services to the charity sector, including advice and training on welfare rights and the use of technology) found that, of those 446 charity sector professionals surveyed, 76% felt that training and professional development were absolutely necessary to discharge the



requirements of their jobs, yet 49% of those surveyed said charities did not have the budget for staff training, with 34% unsure whether resource was available (Lasa 2012). The key finding of the research was that 86% felt the quality of support and advice given by charities would deteriorate, with 61% suggesting that charities would not be able to help as many people due to a shortage of suitably qualified staff.

If the advice provided by charities to those in need is not of sufficient quality, or is perceived not to be, this could harm charities. Charities trade on trust as a major component of the charity brand – the NCVO has called public trust ‘the voluntary sector exchange rate’ (NCVO 1998). Advice is often sought by those most in need and they approach charities, often as a last resort, for answers. Such people will be disappointed if they are sent elsewhere for specialist advice, or, worse still, find that no advice is forthcoming. Similarly, the public tend to trust legal advice given by specialists – it is unlikely that this would extend to untrained volunteers attempting to provide such advice. Charities may damage their reputation in trying to give advice that they are seen not to be qualified to provide. If such issues are sustained, ultimately they could have adverse consequences on fundraising by charities following from the damage caused to reputation by media interest in such failings. This may set up a vicious circle, as any reduction of funding would necessarily impact on the ability of the relevant organisation to carry out its charitable purposes. Any change in the nature of advice services therefore needs to be carefully managed, and hard decisions will have to be made following careful planning of the potential impact of such choices.

### ***Increased use of ADR***

It is not only advice services that charities may have to reconfigure as a result of the legal aid cuts. If funding is not available to private legal professionals to fund legal action on social welfare issues for people in crisis, then it is unlikely that charities will be able to make up the shortfall to do so.

Many charities already have recourse to methods of Alternative Dispute Resolution (ADR) as a means to assist claimants, with the aim either to resolve issues of dispute without the expense in time and money of the court system or to find a less expensive alternative to full legal action (Morris 2003). It may be that the constraints of funding will lead to increased use of ADR and a seemingly welcome boost in the accessibility of such services.

ADR has its limits, and it is not always as effective as might be expected. The quality of the service is variable; specialist services may not be available in the necessary quantity or in the relevant locality and some disputes, by their nature, are not suitable for ADR methods because they require the exercise of legal power to resolve (Morris and Warburton 2006).

Even where ADR is successfully employed, it has one significant weakness compared to full legal suit; it addresses the particular issue at hand but creates no binding precedent by which similar issues can be decided in the future. This could ultimately lead to a lack of clarity in the law around pressing social welfare issues, such as the calculation or availability of welfare benefit schemes. It highlights, again, the latent unfairness in the nature of the legal aid reforms. A charity or other body might be able to assist someone in contesting an eviction claim through legal aid, but would not be able to help a claimant who has been evicted with questions about entitlement to social housing under a local authorities’ homelessness duties, or about whether they are eligible within the new listing scheme exclusions under the Localism Act 2011 (through amendment to Part 6 of the

Housing Act 1996). Such questions need legal answers, to clarify interpretations of complex statutory provisions and duties. In the absence of funding from legal aid, the threatened lack of clarity around important issues of social welfare law is a pressing concern, not a distant possibility.

### ***Losing their voice***

Charities may also lose the ability to challenge public bodies on the execution of social welfare duties through legal action, viewed as a significant check on the public sector and benefit of the operation of the charitable sector (Blackmore 2004). Indeed, the Charity Commission permits charities to take reasonable steps to apply pressure to secure additional funding for services where they are inadequately provided (Charity Commission 2007, p. 26); a painful irony in the context of the legal aid cuts. The loss of legal aid thus has both a direct and indirect impact on the ability of charities to assist potential litigants with social welfare disputes.

### ***Pro bono support as an alternative***

If charities cannot carry out advice work themselves, due to lack of funding, one option might be to direct individuals to pro bono support. The pro bono activity of law firms (and others) has increased in recent years. The legal profession is giving this area of activity much more prominence. Both the solicitors' branch of the profession (LawWorks) and barristers (Bar Pro Bono Unit) have their own pro bono groups that aim to provide free legal help to those who cannot afford to pay for it and who are unable to access legal aid. One problem in accessing such services might be lack of knowledge on the part of the front-facing charities, whom members of the public approach for advice. Charities that have not hitherto been used to dealing with advice provision may not know of the availability of pro bono support or how to access it. As would be expected, the charitable advice sector already enjoys a close partnership with pro bono providers (see, e.g., ProBonoUK.net 2012, p. 12). The converse problem here may be that, whilst there is widespread *knowledge* of such support, the current *supply* of pro bono work is unlikely to satisfy the need. A recent LawWorks survey found 'widespread concern about the impact of the legal aid, Sentencing and Punishment of Offenders Act 2012 but almost no planning or appetite for moving into new areas of pro bono work to fill the gaps' (LawWorks 2012, p. 3).

### ***Planning for change***

Adaptability is a key asset of charitable bodies and, historically, a major response to changes in funding regimes has been for organisations to reorganise to meet the new demands created. In the social housing sector, for example, charities moved from being the only providers of housing services, to partners in helping housing associations discharge social housing, either through providing housing itself or specialist services to bolster general housing services (Glover Thomas and Barr 2009). Hence, charities may decide, either individually or through discussion with local partner organisations, to change the nature of the service that they provide and to address the lack of legal aid funding for welfare in this way.

There are a number of pitfalls in doing so. It is important that a charity is appropriately governed, and two key hallmarks of effective charities are they are 'clear about their

purpose and direction' as well as 'fit for purpose' (Charity Commission 2008). Changes in activity should not be undertaken lightly, whatever the perceived need, and a charity has a responsibility to make sure that any change contemplated is sustainable, so risk must be a relevant consideration in making a major change of direction. Similarly, to meet the needs of fitness for purpose in governance, an organisation must give due consideration to 'protect its reputation in all aspects of its work' (Charity Commission 2008, p. 8).

One real risk in changing to provision of advice in social welfare issues is that, as already discussed, it requires appropriately trained and qualified staff. This may well provide a significant stumbling block for charities in seeking to provide this type of assistance. Addressing staffing needs will require time and money, and until they are met a charity runs a dual risk of creating a significant backlog of work and a loss of reputation in failing to give appropriate, high quality advice. One feeds the other, so that the reputation of the charity may be damaged. In addition, unless other organisations are quick to fill the gaps left by the charity changing focus, there will be gaps in underlying provision that will potentially damage the reputation of all charities working in the area, thus undermining the charity brand. A lack of performance indicators, such as charity league tables, means that any loss of service becomes the focus of damage to the brand (Hankinson and Rochester 2005).

Charitable bodies reorganising in this way are also working against a background of uncertainty, not just in predicting the scale of need and the scope of change necessary to meet it effectively, but also in terms of legal compliance. The Charity Commission, as regulator, is no longer providing individual advice about the legal compliance issues relating to changes of purpose or mission, so charities are either acting on their own, or relying on advice from charities who support the sector, such as NCVO or having to pay private organisations (such as legal professionals) to assist. Those umbrella bodies that support the sector have to step up to the changing needs, but due to the general funding crisis, they are themselves short of money and may not have the resources to provide the services that they would like to provide at best, or, at worst, cannot provide appropriate support services.

The potential risks, both in changing to an effective service without damaging reputation and in making sure that changes are legally compliant, mean that fundamental changes to the activity of the charity will need to be carefully considered and managed, and should not be taken lightly.

### ***Changing activity through drift***

Conversely, changes in the nature of the activity of a charity may instead happen in practice, without being planned or managed in any accepted sense. The increased demand on advice services, and the potential loss of services elsewhere in the sector, mean that the core business of many charities might change. A housing provider, for example, whose focus was on providing housing to those in need, might find that they are giving ever more advice to people who approach them due to their expertise as housing practitioners, in the absence of free access to advice from the legal profession. They may also be giving advice to other charities, for similar reasons of the benefit of their experience. While at the start this may be a distraction from core activity, over time it could become the core activity of the charity. This is a form of 'mission drift', and it comes with an inherent danger. Charities are constrained by their stated charitable purposes, and, if they act outside those purposes, may find themselves in breach of their legal obligations, which could lead to investigation by the Charity Commission. If these matters are not resolved, serious

consequences for the charity and, ultimately, the loss of charitable status, may ensue. Also, the issues already identified in the potential damage to the charity brand with unplanned change are likely to have a greater impact here, as staff roles, for example, change through necessity rather than through a supported transition. Such unplanned changes in service delivery could have consequent impacts on attracting funding; a funder is unlikely to continue funding for the 'core' work of a charity that is instead carrying out purposes that should be ancillary as its primary function.

Such changes in activity are not a theoretical concern. They are already happening. The recently conducted Greater Manchester Centre for Voluntary Organisations (GMCVO) survey found as follows: 'The survey evidence overwhelmingly suggests that a gap is beginning to open up in advice and advocacy services. It is worth noting that the evidence does not primarily come from organisations such as Citizens Advice Bureaux, whose main remit is advice, but also from other types of organisations, such as community centres, specialist infrastructure organisations and service providers. There is an indication that in view of general advice services having been cut and/or being in a transition due to the legal aid reform, people are increasingly turning for advice to any organisation that they happen to know, many of them community centres.' (GMCVO 2012, p. 14). As one respondent wrote: 'Services cut [elsewhere] ... have increased demand for services from the community centre as they have nowhere to go to for these services.'

It is also possible to envisage an advice charity becoming a service provider in order to survive, as funding for the advice has been removed with the legal aid cuts, or to imagine a charity removing advice from the range of activities carried on by the organisation. Many organisations may, in the face of adversity in funding, reduce services to the very core, which will, in most cases, be the relief of those in need. This is also 'mission drift', as the change is one driven by what is perceived as necessity, and it will have an impact on the quality and availability of provision for those in need.

Even if mission drift does not occur, it is likely that charities will see increased demand to offer a full suite of services. This has already happened in the health sector on the basis of changes to the funding regime. An infrastructure organisation in the health sector commented on the increase in demand for advice and advocacy despite not being a service provider: 'We have seen an increased demand on us for information, advice, signposting, support to challenge decisions' (GMCVO 2012, p. 15).

### ***Charities changing legal structure***

Another response to the difficulties of changing activity is that charities are considering reconstituting with different legal structures. For example, the Advisory Centre for Education was a charity that helped needy parents to navigate the complex changing landscape of education law surrounding exclusion from school, bullying, special educational needs and school admission appeals. After operating for over 50 years, it closed in 2012 having lost its Department for Education grant (Third Sector 2012b). In its place, a new community interest company (CIC) and a limited liability partnership have been formed with the intention, ultimately, to provide the same kind of services as those previously provided by the charity. As a CIC (which is not a charity) the entity will be able to charge fees without having the same concerns that charities have in relation to the provision of public benefit (see e.g. *Independent Schools Council v Charity Commission* [2011] UKUT 421). The CIC was introduced as a new hybrid legal form in July 2005. Whilst it is a type of non-charitable company, it is nevertheless designed for social enterprises that want

to use their profits and assets for the public good. The two main features that distinguish CICs from 'normal' companies are the asset lock (Companies (Audit, Investigations and Community Enterprise) Act 2004, s 30 and SI 2005 No. 1788, regs 17–25) and the requirement to satisfy the community interest test (Companies (Audit, Investigations and Community Enterprise) Act 2004, s 35. See also SI 2005 No. 1788, regs 26–29).

Another example of a charity restructuring its affairs as a result of cuts in advice funding and again using the CIC format is the charity, RAD (formerly the Royal Association for Deaf People, established in 1841) which runs a Deaf Law Centre. It provides deaf-friendly advice for the deaf community. The charity has seen a 'dramatic increase' in claims since the economic crisis and has lost its funding from the Equality and Human Rights Commission (*Law Society Gazette* 2012a). As well as delivering legal advice in the traditional areas of law usually associated with Law Centres, RAD Deaf Law Centre also provides legal advice in relation to will-writing, conveyancing, family law, business support, employment and HR services through its sister company RAD Deaf Legal Enterprise CIC. In doing so, the charity is addressing the gap in the provision of affordable professional mainstream legal advice directed at deaf people. In addition, income generated through fees paid to RAD Deaf Legal Enterprise CIC will go back to RAD Deaf Law Centre to fund its pro bono activities (Royal Association for Deaf People 2012). This seems like a good option that will provide a specialist service to a particular user group and will hopefully provide some funds to the connected charity so that it can continue to provide legal advice without cost.

The LVSC survey found evidence of much strategic planning in response to the cuts, such as developing new business models, diversifying funding sources, redesigning services, making greater use of ICT or social media and working in collaboration, including with the private sector, funders and commissioners (LVSC 2012, p. 50). In the most recent survey, 10% of respondents had merged and one other organisation was seriously considering merger, while in the previous year's survey, of the 3% of organisations that mentioned mergers, none mentioned concrete plans to take this forward (LVSC 2012, p. 50). A number of CABx have merged in recent years as a result of tighter funding regimes. The Charity Commission register of mergers (which lists certain charity mergers since 2007) lists 14 CAB mergers. Mergers are a complex and often costly business for charities and are not to be entered into without careful consideration (Morris 2001).

As a result of the funding crisis, some law centres are considering whether it would be appropriate for them to charge those clients who can afford to pay something towards the cost of their legal advice, whilst continuing to provide free legal aid advice to those who cannot afford to pay. In some cases, restrictions on such activities are imposed by the bodies themselves or their umbrella organisations. There have also been some regulatory restrictions that prohibit charging. For example, the Solicitors Regulation Authority (SRA) does not currently allow solicitors in special bodies/non-commercial organisations to charge for advice, but this is likely to change in the future (Legal Services Board 2012). Islington Law Centre in London has applied to the SRA for alternative business structure (ABS) status to enable it to charge clients for some legal services (*Law Society Gazette* 2012b). The ABS for law firms, introduced in the Legal Services Act 2007, allow non-lawyers to own or invest in law firms, subject to regulatory approval. The first licences were granted in 2012. Rochdale law centre has set up a CIC to provide fixed fee services for immigration and employment work (*Law Society Gazette* 2012b). The law centre in London's Tower Hamlets has formed a co-operative with other organisations in the borough (*Law Society Gazette* 2012b). The idea of using arms' length paid-for legal services to cross-subsidise free legal advice has been recommended by the Cabinet Office

(2012, p. 14), which referred to the Islington centre's funding model as an example of 'innovation and entrepreneurship'.

Many charities, including those giving advice, are getting involved in multi-agency working. This way of working can provide many benefits for beneficiaries, including the potential for improved quality of service. CABx are already heavily involved in collaborative working (see the examples in *New Philanthropy Capital* (2011) for ways in which CABx participate in 'impact networks'). This model works particularly well with people with multiple or complex needs, which will often be the case for those people who need to seek legal advice. However, these arrangements do make for a more complex funding environment for advice-providing charities that are trying to survive and at least maintain some level of provision. This complexity can make sustainability of services difficult, as the interdependency between the various agencies can be fragile; something that charities working in housing the mentally vulnerable are well aware of (Glover-Thomas and Barr 2008).

### *Closure of charities*

The most extreme and visible impact of the cuts in the funding of legal advice provision for advice-giving charities is that some bodies may no longer be able to carry on operating. The homeless charity, Shelter, has concerns that it may need to close eight offices as a result of the cuts, which will cause a 50% reduction in its face-to-face advice services (Third Sector 2012a). Shelter offices provide independent advice on housing, debt and benefits and largely rely on legal aid funding to undertake their work. One of the locations in which closure is likely is Gloucester, where the chief executive of a local homelessness charity noted that 'Shelter is the only place that provides some kind of legal services to people who are having problems with housing' (*Gloucestershire Echo* 2012). The same report noted that the county council had recently remodelled its homeless provision so that there were now 13 fewer emergency beds available in Gloucester. Hence, as the demand for advice and protection of welfare rights grows, its availability shrinks.

Birmingham CABx have been hit particularly hard. In 2011, as a result of cuts to local authority funding, one branch closed and the opening hours of the four others were reduced. In October 2012, it was announced that Birmingham CABx may have to close two of its four remaining branches in the city (BBC 2012). The picture is likely to extend nationwide, given the severity of the operating environment for charities. With the closure of these services, there is nothing to replace them. This is not an argument of commercial economies of scale, but a reduction in the ability to meet very real and increasing need.

### **Conclusions**

It is almost trite to suggest that these are very challenging times for charities. It was always going to be difficult to be positive about the exclusion of most social welfare issues from legal aid funding, but it has been demonstrated that there are many serious and unforeseen consequences that go far beyond the impact on the high street law firm and access to justice for claimants. Despite legal aid funding only being one stream of funding for charities, its importance cannot be under-estimated, and it is simply not realistic to believe that charities have limitless reserves to call upon through beneficent donors to weather the storm.

The issues raised in this article are not scaremongering. It is very likely that many of the suggested consequences will materialise. Earlier changes to the funding of legal aid gave rise to similar outcomes for some charities. For example, reforms to legal aid in 2007

introducing fixed fee payments and then payment only on completion of case stages led to a cash flow crisis for many advice-giving charities, in areas where they had previously been paid for giving legal advice on account and on an hourly rate. The well-established and respected charity Refugee and Migrant Justice (formerly Refugee Legal Centre), which was the UK's largest specialist provider of legal assistance for immigration and asylum seekers, was forced into administration with a backlog of payments of £1.8 m owed by the Legal Services Commission (Third Sector 2010). Its demise was followed one year later by the Immigration Advisory Service, a legal advice charity for immigrants and asylum seekers that employed about 250 people, facing the same fate (Third Sector 2011). Whilst changes to the funding of legal aid affect all providers, late payment has had an unequal impact on charities because they generally do not have large reserves and cannot get bank loans to finance the cash gap.

The Government is not entirely blind to the financial issues raised in this article. In October 2012, the Cabinet Office and Big Lottery Fund announced a £65 m transition fund for advice charities affected by cuts to legal aid and other advice service budgets (Big Lottery Fund 2013). The Advice Services Transition Fund will provide funding for two years from 2013/14 and will require applicants to modernise, collaborate with other organisations and form partnerships to ensure their long-term sustainability. They must have plans in place to 'improve efficiency, resilience and quality of service over the long term'. The launch of the Transition Fund was accompanied by the publication of a review of not-for-profit advice services in England. The report concludes that the Government has a role to play in supporting the sector to adapt to the new funding realities, but advice providers will also need to take the initiative and change the way they work. The report recommends that advice organisations should: collaborate more; take early action to prevent the problems which cause people to seek advice; diversify their funding streams and service provision; demonstrate their impact more effectively; and, use all appropriate channels to reach those in need of support (Cabinet Office 2012, p. 16). These tenets are easy to state, but difficult to follow, not least due to the damaging cuts to funding across the charity sector and, as demonstrated in this article, the various factors that can impinge upon a charity's ability to plan mean that they may not have either the capacity or the interest to bid for such funds.

The advice-giving charities of the kind discussed in this article epitomise the Big Society ideals: localism, community, volunteering (Morris 2012). Yet their position is being made untenable by funding changes and it is tempting to count what is happening as further evidence of the failure of the concept of local communities and local organisations working together to find the best solutions for those in need. At the very least, it suggests that the removal of social welfare issues from the legal aid funding pot has been ill-thought through, though it is unlikely to be reversed given the continuing impact of the financial crisis in Britain, Europe and the Western World.

Hope comes from the fact that, as stated, facing adversity and finding solutions to overcome it is what charities do best. Solutions may well be found that address or avoid some of the key concerns about the quality of provision and diminution in the charity brand identified in this article, but the legal aid reforms have exacerbated difficulties for those in need, rather than helped to resolve it. The fact that the interpretation and clarity of law in this country in relation to social welfare provision may well suffer as a result of these changes to legal aid, by removing the ability for issues to be contested and developed through precedent, may, perhaps, be the most damning and unforeseen legacy of the alterations in the practice of advice-giving charities. Time will tell.

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