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Cultures of professional knowledge and competence: issues in the training and regulation of legal advice providers in the U.K.

Peter Sanderson¹

Hilary Sommerlad²

Abstract:

The last two decades have seen a rapid transformation of the professional structures relating to the provision of publicly funded (legal aid) legal advice and support in the U.K. Market control theorists have seen this process as a symptom of the withdrawal of State shelter for exclusive practice rights, while other commentators have seen the process as a 'renegotiation of professionalism' whereby lawyers have been drawn into a new relationship with stakeholders. The wider context for these developments has been the growth of New Public Management, and the contractualisation of relationships between public service providers and 'consumers'.

This process took a new direction with the development of the Community Legal Service, and the extension of support by the Legal Services Commission to advice agencies in the Not For Profit (NFP) sector, as part of a programme of legal aid reform. This reform, it has been argued, has been characterised by the residualisation of civil legal, the marginalisation of legal aid lawyers working in the sector, and a drive to substitute Alternative Dispute Resolution, and advice, for civil litigation. This paper traces the history of these developments before exploring in detail the implications of the increasingly diverse character of advice providers in the sector, from professional solicitors in private practice, through paid advice workers in advice agencies to volunteer workers in Citizen's Advice Agencies. Aspects of the different cultures within which the professional knowledge and competence of workers are deployed are discussed, such as the client-centred ethos of the NFP sector, for example time-work cultures. The development of a Quality Assurance system for all publicly funded legal advice workers is discussed in terms both of its effect on these cultures, and as an example of significant change in the relationship between the State and NGOs. The drive towards knowledge capture and standardisation, associated with a concern with regulation and training appears increasingly likely to erode differences between work cultures and knowledge domains.

Introduction

This paper considers aspects of the transformation in the delivery of publicly funded legal services brought about by the development of the Community Legal Service (CLS) in England and Wales, with its concomitant extension of funding support to a range of Not for Profit (NfP) service providers over the past decade (Steele and Bull, 1996; Francis, 2000) but particularly since 2000. A primary reason for involving the NfP sector in the provision of legal services, in addition to its benefits in terms of shifting the balance towards welfare advice, as well as reduced public expenditure, is its relationship with 'civic virtues', and its potential to support a more activist form of citizenship. The paper will focus, therefore, on the apparent dichotomy

¹ School of Education, University of Huddersfield

between the approaches to training and regulation of the For Profit (FP) and NfP sectors, and the possibility that the latter's explicit commitment to an ethos of empowerment and social need, as opposed to 'rule rationality', could lead to a more ethical form of training for this sector, or whether the pressures of New Public Management (NPM) will produce a different form of convergence.

For those unfamiliar with the system in England and Wales, we will begin with a very brief introduction to the developments over the past five years.

The Community Legal Service was prefigured in the Labour Party Manifesto of 1997, and initiated in the Access to Justice Act of 1999, itself the product of widely trailed concern over the costs and operation of Legal Aid. The judicare model operated by the Legal Aid Board was felt to result in an uneven pattern of meeting legal 'need': uneven in the sense that large areas of need were 'unmet' (for example in welfare law), and in the sense that the diverse range of potential providers were not regulated to a common standard. Further, the advent of the CLS signalled a recognition of the local spatial dimension to need. The system which was consequently proposed to meet this weakness was distinguished by the following intended characteristics:

- The development of local planning mechanisms designed to gear funding to need, with an increased emphasis on previously neglected areas such as Debt, Mental Health and Welfare advice
- Contracting for the provision of services to meet local need with both the FP, and the NfP sectors, as perceived appropriate 'to secure the provision of competent, quality assured, best value contract work and from specified offices'
- The development of what has become known as 'the seamless web' of advice at the local level, designed to ensure that clients receive the appropriate advice at the right level, from agencies qualified to give advice at that level and in the appropriate specialism: in this approach the key instruments were to be systems of signposting and referral between agencies, and quality assurance mechanisms which operated not just at the contracted level of agency, but also at those 'lower tier' levels which would be referring clients on to the contracted firms or agencies
- These quality assurance mechanisms, known as the Quality Mark (QM), have attempted to act as a guarantee of compliance with organizational and procedural good practice, and give rise to one of two strands of audit in the CLS system
- The other form of audit is concerned with performance standards in terms of the volume of starts undertaken and the extent to which the service meets expected time standards

² Professor of Law and Society, Leeds Metropolitan University

- The development of Community Legal Service Partnerships (CLSPs) at the local level, composed of key interested stakeholders, with responsibility for the planning and coordination functions.

Our intention in this paper is to review these developments, and in particular their implications for regulation and training, in the light of some long-standing theoretical debates about professionalisation, de-professionalisation, and professionalism. The system has been the subject of much critique (for example Stein 2001) and a major critical independent review (Matrix, 2004). Much of the criticism has focused on the degree to which the CLS's role and effectiveness in addressing social exclusion has been clearly defined and understood, and whether the mechanisms for local involvement functioned effectively. However, rather than approach the CLS from the perspective of evaluating its effectiveness, we propose rather to explore the significance of its attempt to draw together the FP and the NfP sectors in the service of meeting legal 'need', particularly in terms of understandings of professionalisation and professionalism, and a long-standing stream of ideological anti-professionalism. The two sectors have distinguishing features, but these also cloak some similarities. One of the major differences, to which the Clementi Review has drawn attention, is the extent to which the sectors are regulated, and, it could be argued, the mode of regulation.

Regulation in the professions has been intertwined with the nature of the exclusive licence to practice granted by the State. The right and obligation to self-regulate has been seen by many commentators as the root of professional claims both to moral authority and independence from the State, a status which Evetts and Dingwall, for example, identify as a key element in professionals' role in civil governance overall (2002): in the case of solicitors, their role as gatekeepers to the legal system and as mediators of state power (Seneviratne, 1999, p 24). This justification could be referred to as the 'legitimation' argument for regulation. The 'regulatory bargain' also finds a theoretical justification in the failure of the market to provide a perfect mechanism for the provision of legal services, as a result of the information asymmetry which market analysts see as being of such significance: this in turn finds a further rationale in the limitations on numbers of suppliers of legal services resulting from professional monopolies (Seneviratne, 1999, p 23). There is a tension between the 'legitimation' and 'market failure' justifications for regulation: the moral basis of professions' claims to authority has been challenged by a host of writers, largely drawn from the 'market control' critics of the professions (most significantly in the case of the legal profession, Abel, 1988; 2003), but Evetts and Dingwall on the other hand argue that a redefinition of professionals as purely market actors may 'severely compromise the ability of professions to supply legitimacy to nation states' (op. cit., p 165), and Evetts, amongst others, has argued for a recognition of the significant moral and normative elements in professionalism which may impinge on the relationship between professional and consumer/client (2003, p 410).

Regulation has traditionally been thought of as the process of controlling economic activity, but as Julia Black argues (2002), this may be seen as too restrictive a definition in a society where, following Foucault, we can see the capillaries of control stretching in interactions at the micro-social level, and where the eventual goal is self-regulation. Black discusses the usefulness of the concept of 'de-centred regulation', counterposed to 'command and control' (CAC) regulation, and argues that: 'analyses of the patterns of ordering and control in contemporary society mean that state-centred conceptions of regulation will not suffice, and those that simply have an "add-on" to allow for self-regulation are too limited, not least because there is no commonly accepted usage of "self-regulation".' (2002, p 27).

The traditional CAC approach to regulating professions has been concerned with two principal areas:

- Dealing with the regulation of the professional market – who can perform the services.
- Regulation of actor behaviour – how these services should be performed: this clearly includes ethical behaviour and issues relating to conflict of interest. Seneviratne points out that whilst the claim to self-regulation of conduct is a major element in the profession's claim to an exclusive mandate, concrete self-regulation arrived comparatively late in its history (1999, p 18; Sugarman, 1996, p106). Regulation of professional behaviour through complaints and disciplinary procedures remains one of the main areas of weakness perceived in the regulatory framework³.

In comparison, the NfP sector may appear to be very much under-regulated in CAC terms, for obvious reasons. Creating regulatory barriers to entry in a voluntary organisation is likely to deter the actual volunteers, and may impose burdens on paid staff and small organisations which they may not wish, or be able, to bear. However, it would be a mistake to view the regulation of this sector solely from the CAC perspective. A 'de-centred' view would be able to take into account some of the strong forces influencing behaviour in the NfP sector, such as mission and organisational ethos, and the way in which reciprocal networks function to enhance organisational efficiency and the effectiveness of training.

Another element in this discussion is to explore the significance of ethos, and consequentially the ethics of professionalism, in the agencies and areas of work now supported by the CLS, and to see how, or whether, ethos is reflected in the training regimes of the FP and NfP sectors. A widely held assumption (which may be open to challenge) is that there is a marked distinction between the two sectors in ethos, apparent both in the NfP sector's sense of

³ In a recent attempt to address this, the Law Society has established a Practice Standards Unit, expanded the Investigation and Enforcement team and set up a new Consumer Complaints Service which is designed to operate alongside the Compliance Directorate (all to be instituted April 2004)

'mission', and in approaches to training, with the FP sector engaging in training centred around portable human capital, while the NfP sector is characterized by training which is collective in its aims and to a degree in its delivery mode. We will later identify some ways in which the intervention of the State, in the form of the CLS, in the NfP sector may be transforming ethos and behaviour in some subtle and not so subtle ways.

Illich and Market Control critiques of the professions: the roots of change

The market control critique of the professions became, over the course of the 1970s and 1980s, the new orthodoxy in terms of our understanding of the forces driving occupational status and change in a whole range of settings. The original neo-Weberian writings of Johnson (1971) and Larson (1979) found their echo in the work of Abel on the legal profession, illustrated sharply in his two major works on the legal profession in England and Wales (1988: 2003). More recently this perspective has begun to be challenged, but we will return to those challenges later.

For the time being we wish to pick up on the extent to which the market control thesis also became significant as a cultural, or counter-cultural, phenomenon. A paradigm case is the work of Illich, whose critique of professional institutions embraced most vividly education and medicine, but more broadly portrayed professions not simply as concerned with claiming market share, but also with expropriating the essential capacity of ordinary citizens to learn from each other and manage their own affairs and problems.

'Professionals tell you what you need and claim the power to prescribe. They not only recommend what is good, but actually ordain what is right. Neither income, long training, delicate tasks nor social standing is the mark of the professional. Rather, it is his authority to define a person as a client, to determine that person's need and to hand the person a prescription' (Illich, 1977: p 17)

A key element in this critique was the identification of the credential explosion in Western capitalism as an essential element in the disempowerment of the masses. Credentials are the end point of a process whereby professionals appropriate a monopoly of knowledge to themselves, and use this monopoly to create need: a version of the 'supplier-induced demand' thesis.

Whilst disempowerment was seen as a universal product of professionalism, the cultural root of this ideology and form of human practice was the education system:

'Everywhere the hidden curriculum of schooling initiates the citizen to the myth that bureaucracies guided by scientific knowledge are efficient and benevolent.

Everywhere this same curriculum instills in the pupil the myth that increased production will provide a better life. And everywhere it develops the habit of self-defeating consumptions of services and alienating production, the toleration for institutional dependence, and the recognition of institutional rankings' (1971, p 77)

Illich's critique of professionalism formed part of a wider counter-cultural movement from the 1960s to the 1980s which was concerned with empowerment, based on the self-activity of marginalized groups; the breaking down of the barriers separating professionals from their clients; and the desire where possible to dispense with the services of professionals altogether. In the field of Education this gave rise to the short-lived Free School movement, whilst in the field of Law, it saw the battle for the recognition of Mackenzie friends, the growth of Law Centres, and the growing profile of the Legal Action Group (LAG) (LAG, 1992 pp 3-5), and the development of the NfP sector, which was characterized less by lobbying and advocacy and more by self-activity, user control and a rights agenda. An associate of Illich in the 1970s argued that the dependence on lawyers could only be removed by the transformation of the justice system into an informal 'boardroom' justice, the greater availability of reference material on the law, and the encouragement of litigants in person, at the same time cautioning that trust in the staffing of the judicial element of the system was a crucial element to its success (Caplan, 1977). An essential element of this counter-cultural movement was its profound scepticism concerning the professions' claims to any moral authority based on an ethical commitment to clients.

Elements of the NfP sector therefore can be seen as constituted precisely by and through its oppositional stance towards traditional professional control, although, of course, the NfP sector is no more monolithic in form and ethos than the FP sector. The history of the charitable voluntary sector has been intertwined with that of the Welfare State in a whole range of areas, for example housing (Garside, 2001; Davis Smith et al, 1995), and under the rubric fall a wide range of ideological and organizational forms, from the charitable through the mutual aid sector, to the radical activist, and from service provider to policy generator. The 'sector' is also, clearly, subject to the forces of historical change: in particular, the organizational change consequent upon growth can dilute the moral core of the 'mission' (Ahrne, 1998). At the same time, it is worth noting at this point that Illich could be equally scathing about the vanguard of the NfP sector and the development of what he described as 'professionalized clients': 'the professional dream of rooting each hierarchy of needs in the grassroots goes under the banner of self-help' (1977, p 37). Voluntary and self-help organizations he saw as just another example of the industrialization of need and the commodification of the self.

Illich argued that the broad application of a 'deschooling' approach to society, and the substitution of an approach based on 'learning webs' would transform society from one

characterized by dependence and professional dominance to one characterized by what he described as 'conviviality'. Learning webs would be constituted by four elements (1971, p 81):

- Reference services to educational objects – the development of systems to increase the accessibility of information
- Skill exchanges
- Peer-matching: a communication network which would enable those with similar or complementary interests to contact each other
- Reference services to 'educators at large' a directory service which would enable citizens to access expert services, and which would include poll data from former clients

There is a homology between Illich's model and the dominant modalities of training in the NfP sector, where, even though formal accredited training exists and is on the increase, the significance of networking, informal exchanges and collaborative working is apparently greater than in the FP sector. We will explore these distinctions in greater depth below.

Anti-professionalism and public policy

The assault on professional privilege from the left found its echo within mainstream political culture in the Thatcherite suspicion of 'experts' and 'fat cat' professionals lining their pockets at the taxpayers' expense by inducing demands for services run to suit their needs rather than those of their clients. However, the empowerment this project had in mind was not the empowerment of the citizen against the State and the powerful, but the empowerment of the consumer in the marketplace, and the product of this rhetoric was the development of a regulatory State capable of controlling and disempowering the professionals. The substantial achievement of the Blairite succession to Thatcher has been the merger of these two seemingly diametrically opposed rhetorics. The application of this Third Way synthesis to the Legal Aid sector has been the subject of a substantial body of work which we do not propose to replicate here. What we are concerned with now is to explore the way in which current policy on legal provision seems to attempt to draw together these two sectors, which appear initially to be separated by an unbridgeable ideological gulf, and to speculate on the extent to which either sector can survive the experience intact.

The development of CLSPs and the argument for new forms of legal service provision and governance

Critics of the judicare model of legal aid, based on individual legal service delivery predominantly through the private sector, have tended to point to the alternative offered by neighbourhood law centres and independent advice agencies, as possessing advantages in terms precisely of the ethical core of the mission and culture seen as characterizing the NfP sector: for example, the Consumers' Association identified the strengths of the NfP advice sector in terms of the communications skills of workers, but also the dedication and the client-centred approach (2000).

CLSPs could, it has been argued, represent a new modality for the meeting of legal need, one which overcomes the 'lack of trust and even mutual hostility between different sectors of suppliers, especially between the NfP sector and the solicitors' profession' (Moorhead 2001, p 557) and which in some senses addresses the adverse effects of the regulatory regimes (which have proliferated in the era of New Public Management (NPM)) on the morale of service providers. A more ambitious claim still is that Partnerships represent a new form of governance with enhanced relationships between users, service providers and stakeholders and a 'direct engagement between administrative, professional and other values' (Moorhead, 2001, p. 561). This claim can be linked to the increasing emphasis in social policy on the attempt to build social capital (Putnam, 2000), and the emphasis on voluntary associations as repositories of civic virtue and trust (Anheier and Kendall, 2000).

The attempt to forge a new alliance between these sectors, drawing on the greatest strength of each is, we would argue, challenged by a number of factors. The mutual suspicion and distrust identified by Moorhead is grounded both in competitive market position, and in the distinct constructions of professionalism generated by the two sectors. As we have indicated above, these constructions differ in their ethical base, and in exploring this distinction we can identify three social processes:

Autonomic recruitment

The processes of occupational selection at the sectoral level are still obscure because of the limited amount of research undertaken in this area. However logic suggests that the financial disincentives for working in the public sector or in the publicly-funded private sector can only be compensated by a pre-existing affinity with their client base or their organizational mission. Similarly, whereas commitment and a strong justice-based service ethic is written into the self-image and social and organizational practices of many legal aid firms, with what might variously be described as a 'political', 'critical' or 'cause' stance (Trubek & Kransberger, 1998; Sommerlad, 2001), these elements are the *fons et origin* of the entire NfP sector. Hence

those working in the sector might appear likely to bring a strong ethical basis to their occupational commitment with them. Whilst the comparative merits of the two sectors have been tested on the grounds of quality and cost (Moorhead, Sherr & Paterson, 2003), the ethical underpinnings of actor behaviour have not been explored in the same way.

Training

'Professions' are predicated on the central relationship between professional and client, and the fact that these categories are theoretically mutually exclusive: the whole point of clients being that they can't do what professionals do. Hence the high barriers to professional entry, and the construction of what Illich regarded as the mystificatory corpus of professional knowledge. As Thornton argues, the technocentric character of the legal curriculum has the precise object of displacing any ethical concerns other than loyalty to clients, financial propriety and avoidance of conflict of interests (1998). This focus on technical knowledge 'enables professional workers to deny the real significance of the work in which they are engaged.' (1998, p 380). By contrast low entry barriers in the NfP mean that the core distinction between client and worker is not so clear-cut, and in fact the policy of some agencies of empowering the client through encouraging her to volunteer, means that it is possible for some clients to make the journey to worker in a comparatively short period of time.

Another key distinction between the sectors is the fact that, where it obtains in the FP sector (and we must remember the large amount of legal work undertaken by untrained para-legals) training is organized around the principle of individually portable human capital in the form of professional qualification, whereas in NfP sector it is centred on organizational mission-related needs. This general distinction hides areas of similarity – advice specialists in, say, welfare rights may be able to move from an organization with one specific client to another, or to a more generalist agency like CAB, while the absence of qualifications ties many untrained paralegals to their firm. Training is largely determined by the needs of the organization, and is used both to generate the skills-base necessary to undertake the work, but also the combination of ethical base and practice mode which constitutes the organizations 'way'. The type and provision of training obviously varies across the sector according to the remit of the agency, whether the adviser is voluntary or paid, and the level of service delivered. For instance Shelter's provision ranges from 'front line' advice and help to specialist back up for other agencies.

Nevertheless, there exist many common features across the NfP sector, which distinguish it from the FP sector, most notably an emphasis from recruitment onwards on community involvement / accessibility, competences and skills including relational skills (for instance Age

Concern places an emphasis on body language), experiential and reflexive styles of learning, and co-operative learning and working. This approach is exemplified by the Shelter model of learning and working: 'The best housing aid services are those which take steps to allow and actively encourage a work style and culture in which ad hoc and day to day discussion of casework between advisers is the norm. In addition, advice services should develop informal networks of support both locally and beyond so that more difficult problems can be talked through with other practitioners' (Stevenson et al, 2003)

These distinctions indicate potential tensions between the NfP and the CLS. Problems delineated tend to stretch across the sector and include concerns that there is a degree of lack of fit between CLS standards and those of the voluntary sector, and that this might produce 'self-censorship' in order to ensure fit; that the CLS does not adequately reflect the community / client centred ways of working, especially the social policy aspects of voluntary sector work and also that the CLS has not addressed the impact of lack of resources and uncertain funding. This last problem is summarised by a YIACS (Youth Access) comment on training needs: 'many of the services .. located in the voluntary sector .. have developed on an ad hoc basis with histories of uncertain and often short-term funding .. the quality available has also been subject to similar ad hoc standards .. These difficulties were further compounded by the more general lack of professional regulation in the fields of advice and counselling. It is only in the past few years that nationally accredited training in advice and counselling has become available. However, the qualification structures are only slowly becoming available to providers in the voluntary sector. Few agencies are able to attract funding that allows them to make a substantial investment in training and developing staff; a situation which will need to be remedied if services are to offer consistent levels of help' (Youth Access, Getting it right: ensuring quality in young people's information, advice, counselling & support services' Youth Access, 2001, 2)

Occupational socialization and regulatory constraint

We have already referred to the 'anti-professionalization' stance of and rationale for the NFP sector, realized in key core values such as empowerment and 'user' (rather than client) involvement. As noted above, these feature prominently in the training programmes of NfP sector, and in the quality standards regimes being developed (partly in response). This ethical culture is the subject of some considerable comment in the literature on voluntary associations. Just as professions tend to claim for themselves a unique relationship with the client, many organizations in the NfP sector place great stress on a relationship with the 'user' which is distinctive: this is most pronounced in advice agencies which have a special interest base, such as MIND, Age Concern, Youth Access. The fact that user involvement is written into the management specifications for many of these agencies is viewed as standing in stark

contrast to the emphasis on post hoc complaints systems which is characteristic of those disciplinary and complaints systems traditionally applied to the regulation of professionals, which have been the subject of such consistent criticism. The extent to which these, and other, forms of ethical imperative are built into the functioning of the NfP sector can be seen by undertaking some 'reverse mapping' (a term we owe to Youth Access) of QM standards and the Membership quality standards applied by some NfP organizations.

However, the ethical discourse of practitioners on the ground in each of the two sectors may have far more in common than is suggested by this comparison: a specialist Immigration solicitor's firm may equally dissociate itself from the bulk of their professional peers, and may equally find that the QM is unable to capture the essence of what they are committed to. Specialist panels offer a form of peer network analogous to the model which predominates in the NfP sector, though more formalized. However, the organizational form of the private partnership which envelopes solicitors' firms tends to develop a form of ethics which is expressed in a localized form.

Before moving on to look at the effects of current influences on both sectors, it is worth briefly summarizing the nature of the ethical discourse which is laid claim to by committed practitioners in both FP and NfP

- The 'social justice' mission versus the consumer model: practitioners tend not to construe themselves as providing a service but as striving towards broader social goals, which may be more or less specific depending on the nature of the agency. This mission is sometimes couched in the language of 'reducing social exclusion' but the agenda is often more radical
- Commitment: 'going the extra mile for the client', 'doing the best we can'
- The holistic approach: recognizing that a client's presenting problem may not be the real one they want to see someone about, and that for the poor and marginalized, problems tend to be clustered.

Quality Assurance and National Occupational Standards: Convergence at a Cost?

The involvement of the NfP sector in the provision of legal services can be seen as part of a much wider renegotiation of boundaries between the State, the NfP sector and the FP sector. This development has been seen as world-wide in both the privatization, or contracting out of services, and the contracting in of voluntary providers. One major reason for seeking to involve the voluntary sector is its relationship with 'civic virtues', its capacity to mobilize community resources, and its potential as a channel for user involvement (Nowland-Foreman,

1998), all of these latter factors representing a perceived morally superior resource to statutory provision (Kidd, 2002). It has also been argued that in a post-Fordist welfare state, voluntary associations offer greater flexibility and accountability as a result of their decentralized character (Hirst, 2001), and, further, that they render possible a form of mediation between moral and economic codes (Siisiainen, 1998). These are in addition to the equally obvious potential benefits in terms of reduced public expenditure. There has been scepticism about the extent of these claims for the voluntary sector, particularly in its role as direct service provider (Ware and Todd, 2002), but of equal concern is the effect on NfP sector of contracted involvement with the State.

It is widely recognized in the literature on NGOs and voluntary associations that the task of maintaining the organization can have a major effect on adherence to the original organizational mission. Success in attracting institutional resources may depend on factors other than the perceived value of the mission (Fontes and Eichner, 2001). In particular, the politics of social partnership have led to anxieties in the voluntary sector in many countries about the costs, for example in terms of the ability to pursue a rights-based policy agenda (Murphy, 2002). Further, the extent to which the voluntary sector, based as it is on a substantial degree of trust, can maintain behaviour which reinforces trust in market situations, such as those created by bidding for matter starts in a CLSP area, has been the subject of extensive debate:

'People appear to learn rapidly, and can adapt their behaviour according to the moves of other players and what they perceive to be the norms of the situation. They can learn to act pro-socially and selfishly, depending on the cues that the rules of the game and their co-players behaviour provides, a situation characterized by "real fragility". So, whether or not trust can flourish depends on how the relevant actors perceive their environment.' (Anheier and Kendall, 2000, p 15).

The NfP sector is characterized by the fact that recurrent funding is difficult to obtain, and is liable to be the victim of short-term political decisions. Increased dependence on funding which is competitive in nature may be seen as likely to reduce the scope for cooperative action in signposting and referral on which the CLSP principle depends.

Evidence tends to suggest that, after initial suspicion, the QM regime has been greeted by practitioners in both sectors as a useful development, acting as a catalyst for the introduction of systems such as supervision and file review that were not always in place previously, though the costs of auditing QM are regarded as excessive. Certainly the tendency has been for quality standards in the Advice sector to converge around QM and then extend it to meet the needs of the specific organization.

The process which appears to be the greater cause of dissatisfaction is that of auditing time standards for cases, both because the process works unidirectionally in favour of cost recovery, and because of the fact that it decontextualizes problems and renders a holistic

approach to clients untenable. As has been noted by many commentators, modern regulatory regimes tend to substitute confidence for trust: the processes by which confidence is assured may be corrosive in terms of the relationships and self-images current within the NfP sector. In addition, social partnerships between the State and the 'Third Sector' tend to shift the emphasis of these organizations towards direct service provision and away from the policy-related aspects of their work. As Kendall and Knapp argue:

'Efficiency, equity, economy and effectiveness of services are probably necessary but not sufficient criteria for understanding "production" in the third sector. It is also important to examine the roles of third sector organizations as agents of social and political change (*advocacy*) and as vehicles for wider *participation*. Other criteria whose achievement could be seen as means to ends, or valued in their own right, include the promotion of *innovation* and the encouragement of *choice and pluralism*.' (2000, p 7)

The need to account for time also distorts the organizational interface between the funded worker and her colleagues (CLS funded workers can not see clients in satellite centres unless clients have a mobility problems, and therefore can not mix or cascade down their expertise to lower tier workers), and the fundamental motivation for mundane tasks, which are undertaken on the basis of their funding potential rather the worker's perception of intrinsic need.

Finally, it is worth exploring changes which are taking place at the level of the individual actor. The literature on the voluntary sector has begun to note changes taking place in the motivations of those entering the sector. Younger volunteers are seen as motivated more by individual pragmatic ends, such as building their c.v. for future entry to the 'real' labour market (Price, 2002), and this theme of self-development has also been identified as a motivating force for those taking on leadership roles (Markham, Walters & Bonjean, 2001). This could be a sign of the 'professionalization' of the voluntary sector (already noted in studies of international NGOs), and this appears likely to be exacerbated by the transformation of training in the sector. Accreditation of in-house training by external bodies has become an increasing feature in the voluntary sector, but this development is on the point of being overtaken by the development of National Occupational Standards for the Advice Sector.

This development, which has arrived comparatively late to the advice sector forms part of a wider policy agenda relating to freeing up labour markets across the economy, an agenda in which the demand therefore has been for a system:

- which is universally recognized, so that employers can recruit from a wide range of sources whilst remaining assured of the quality of their recruits

- designed in stages, so that employees are not 'over-trained' and therefore rendered more expensive than they need be,
- designed so that the lower levels incorporate a high degree of 'transferability' of skills, so that movement between sectors does not mean replicating expensive training
- genuinely based on the demands of the occupation, so that there is not a mismatch between demand and supply

The transformation of occupational training to meet this template commenced at the lowest level of the occupational training ladder with the incorporation of Competency-Based Education and Training into the Youth Training Scheme (YTS) in the early 1980s. The delineation of the skills and competencies required by the various 'Occupational Training Families' for which YTS was designed was grounded in research carried out by the then Institute for Manpower Studies for the Manpower Services Commission. The approach supplanted traditional time-served apprenticeships, and was eventually, in a modified form, used as a model for all vocational training. The universality of qualifications is currently underpinned by the National Qualifications Framework, which provides a 5 level structure into which qualifications can be dropped, and the relevance has been guaranteed by the fact that the Occupational Training Standards (or National Occupational Standards (NOS)) are designed generally by National Training Organisations (previously Lead Bodies). A definition of NOS is that they:

“describe performance – what individuals are expected to do in their daily work. They are practical statements of levels and types of individual competence that workers should meet.”

Originally competence based standards were developed almost in opposition to traditional academic qualifications, so the principle was that they described what workers could do, not what they knew. They were therefore criticized as being reductionist and atomistic, and weak guarantors of competence, in that they took no account of the need to apply skill or competence to different situations and contexts (some of which might not previously have been experienced). Critics like Hyland argued that they were particularly inappropriate for assessing the quality of professional work. ⁴

Subsequently, the concept of competence has been modified to recognize the importance of the following issues:

- 'under-pinning knowledge' – the view that certain competences are unachievable on a consistent basis without theoretical knowledge;

⁴ See too the work of Webb et al in relation to legal education

- context – the view that competence can only be established in relation to specific contexts, and that different contexts create different demands (e.g. interviewing an articulate and knowledgeable middle class client is clearly less demanding in many senses than interviewing a client whose first language is not English, or who has a specific learning difficulty ⁵) In the field of assessment of competence, this led to the need to make ‘range’ statements about the contexts in which a competence could legitimately be assessed.

One important factor which emerges from this discussion is that the idea of ‘standards’ in training and quality assessment is far from unproblematic. The use of the term ‘standard’ in the literature on assessment acknowledges a degree of ambiguity. Ideally, standards should be criterion-referenced: that is to say that they should be capable of having their achievement judged against objective descriptions on a yes/no or pass/fail basis. The ideal type of such a judgement would be the measurement of the number of correct key depressions per minute achieved by a data entry operator. Very few occupational tasks however, particularly in the professional sphere, are susceptible to this form of objective description, and most require some form of normative qualifier when defined (such as ‘**appropriate** level of inter-personal skills’). The presence of a normative element in the specification therefore demands the exercise of some central authority over the process, known as ‘verification’, of local judgements. Verification in turn demands the presence of material evidence which can be inspected by the verifier. This had led to the criticism, analogous to that levelled against quality regimes (see for example, Benson & Waterhouse), that the education and training process begins to focus narrowly on the production of evidence, rather than on the ‘real’ object of the education or training.

The natural trend of NOS is to embrace ever more occupational areas, and this has been reinforced by the rapidly increasing development since the Further and Higher Education Act of 1992 of the accreditation movement to support the incorporation of varied instances and forms of training, such as programmes recognising the skills of underachieving young people (Youthtrain), in-house training (Coca-Cola’s considerable NVQ programme), within the National Qualifications Framework. Of those agencies with which we are concerned, NACAB has used an accreditation agency for adult education, the Open College Network, to accredit for its advice worker training. This approach has the benefit of providing specialised training in advice sector work in a flexible mode, also going some way towards achieving individual portability whilst at the same time embodying core values perceived as central to the NACAB mission. The primary emphasis of NOS is on those competencies which are transferable from one employment site to another, and while there is said to be space for ‘value

⁵ A point specifically addressed in the NfP sector’s various quality manuals and training schemes; see for instance Advice UK course on advising difficult clients.

statements' in amongst the competencies, the more precise these are, the less NOS will perform its economic role.

It is this latter principle which is in a sense most important: freed from dependence on their specific employer by NOS, workers will be freer to sell their skills in the labour market. Increased flexibility combined with standardized verifiable qualifications should decrease employers' recruitment costs whilst enabling the worker to obtain the proper price for their labour. The impact of this development on the voluntary sector, and on the internal labour markets of small firms is difficult to calculate. The potential transformation from a collective to an individual motivation is easy to identify, as is a likely diminution in organizational loyalty, whether this is on the part of an unqualified paralegal worker to a small firm, or a NfP worker to a specific organization. One effect of an increasingly mobile workforce has been in other sectors of the economy, a correspondingly increased reluctance to invest resources in the training of staff who may use that training to enhance their labour market position and move on. The costs of assessment of achievement add to this disincentive.

Perhaps the greatest anxiety in the sector is about whether the standards can encompass the essence of what good advice workers actually do. As is the case with quality standards, training standards will tend to measure what can be measured, and there are obvious, and ineluctable problems about the measurement of value positions or ethical behaviour. The NfP sector would argue that the most important aspect of their work is that which is embedded in qualitative aspects of their mundane practice, the process of 'developing a case' in CABx

Conclusion

This paper has attempted to explore aspects of the transformation the work of firms and agencies in the new publicly funded legal advice sector. We have attempted to identify the influence of the anti-professional movement, epitomized in the work of Illich, on the development of alternative modes of 'meeting need' in the NfP sector, and in radical niches of the FP sector. These modalities of practice, it can be argued, are characterized by respect for the user ('client' is not a preferred term in much of the NfP sector), working with a principle of empowering the users to act for themselves, and involvement of users in management structures. The ideal type of this ethical approach extends to agency organization and training, with a greater emphasis on collaborative work in less obviously hierarchical organizational structures, and an approach to training which is less individualistic and more determined by strategic organizational need. This modality of practice is clearly suited on one level to achieving the aims of the CLSPs in terms of the creation of a seamless web based on partnership between diverse organizations. There are however contradictions embedded in current developments in the sector which may lead the culture of practice to develop in directions which would not be so welcome. There is a degree of ambiguity over whether local

CLS sectors are partnerships or markets: the extent to which agencies of firms perceive themselves to be in competition for scarce resources will limit their willingness to be involved in collaborative practices such as signposting and referral. Cost control related audit creates pressures within organizations to isolate CLS funded workers from the cultures of collaborative exchange which nurture distinctive NfP missions, and also negate the desire of these workers to operate holistically.

Developments in training are also working in the direction of convergence between the two sectors. Just as the Law Society is moving in the direction of a flexible, outcomes-based mode of professional training and qualification, allowing for different balances of academic and work-based activity, so the development of NOS for the NfP sector is beginning the process of professionalizing and standardizing practice. We would argue that it is very much open to debate whether these developments will enlarge or eliminate the space available for ethical practice in both the FP and the NfP sectors.

References:

- Abel, R (1988) *The Legal Profession in England and Wales*, Oxford: Basil Blackwell
- Abel R (2003) *English Lawyers between Market and State*, Oxford: Oxford University Press
- Adeagbo, A (2004) 'Rules of Engagement', *Community Care* 1512: 36
- Ahrne, G (1998) 'Civil Society and Uncivil Organizations', in J Alexander, *Real Civil Societies: Dilemmas of Institutionalization*, London: Sage, pp. 84-95
- Anheier, H K & Kendall, J (2000) *Trust and voluntary organizations: three theoretical approaches*, Centre for Civil Society, Civil Society Working Paper No 5, London: London School of Economics
- Caplan, J (1977) 'Lawyers and Litigants: A Cult Reviewed', in I Illich (ed) *Disabling Professions*, London: Marion Boyars, pp 93-109
- Consumers' Association (2000) *The Community Legal Service: Access for All?*, London: Consumers' Association
- Evetts, J & Dingwall, R (2002) 'Professional Occupations in the UK and Europe: Legitimation and Governmentality', *International Review of Sociology*, 12, 2: 159-171.
- Fontes, B & Eichner, K (2001) ' Sobre a estruturacao de redes sociais em associacoes voluntaries: estudo empirico de organizacoes nao governamentais da cidade do Recife', *Sociedade e Estado*, 16,: 186-221.
- Francis, A (2000) 'Lawyers, CABx and the Community Legal Service: A new Dawn for Social Welfare Law Provision?', *Journal of Social Welfare and Family Law*, 22, 1: 59-75.
- Hart, I (2001) 'Deschooling and the Web: Ivan Illich 30 years on', *Education Media International*, 38: 69-76.
- Hirst, P (2001) 'Can Associationism come back?', *Critical Review of International Social and Political Philosophy*, 4,1: 15-30.
- Illich, I (1971) *Deschooling Society*, Harmondsworth: Penguin
- Illich, I (1977) *Disabling Professions*, London: Marion Boyars
- Johnson T J (1971) *Professions and Power*, Basingstoke, Macmillan.
- Kendall, J & Knapp, M (2000) 'The Third Sector and welfare state modernization: inputs, activities and comparative performance', Centre for Civil Society, *Civil Society Working Paper No 14*, London: London School of Economics
- Kidd, A (2002) 'Civil Society or the State?: recent approaches to the history of voluntary welfare', *Journal of Historical Sociology*, 15, 3: 328-42.
- Legal Action Group (1992) *A Strategy for Justice*, London: Legal Action Group
- Markham, W; Walters, J & Bonjean, C M (2001) 'Leadership in Voluntary Associations: the case of the "International Association of Women"', *Voluntas*, 12,2: 103-30
- Matrix Research and Consultancy (2004) *The Independent Review of the Community Legal Service*, London: Department for Constitutional Affairs.
- Moorhead, R (2001) 'Third Way Regulation? Community Legal Service Partnerships', *The Modern Law Review*, 64,4: 542-62.

- Moorhead, R; Sherr, A & Paterson A (2003) 'Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales', *Law & Society Review*, 37,1 : 765-808.
- Murphy, M (2002) Social Partnership – is it “the only game in town”?, *Community Development Journal*, 37: 80-90.
- Nowland-Formen, G (1998) 'Purchase-of-Service Contracting, Voluntary Organizations and Civil Society', *American Behavioural Scientist*, 42,1: 108-23.
- Price, B (2002) 'Social Capital and Factors affecting Civic Engagement as reported by leaders of Voluntary Associations', *The Social Science Journal*, 39: 119-27.
- Putnam, R D (2000) *Bowling Alone: the collapse and revival of American Community*, New York: Simon Schuster.
- Seneviratne, M (1999) *The Legal Profession: Regulation and the Consumer*, London: Sweet & Maxwell.
- Siisainen, M (1998) 'Voluntary Associations and the theory of autopoietic systems', Paper delivered to the International Sociological Association.
- Sommerlad, H (2001) "'I've lost the plot": an everyday story of the "political" legal aid lawyer', *Journal of Law and Society*, 28,3 :335-60.
- Steele, J & Bull, G (1996) *Fast, Friendly and Expert?: Legal Aid Franchising in Advice Agencies without Solicitors*, London: PSI
- Stein, J M (2001) *The Future of Social Justice in Britain: A New Mission for the Community Legal Service*, CASEpaper 48, London: Centre for Analysis of Social Exclusion.
- Stein, J M (2001a) 'The Community Legal Service: Justice for All?', *Consumer Policy Review*, 11, 2 : 34-41
- Thornton, M (1998) 'Technocentrism in the Law School: Why the Gender and Colour of Law remain the Same', *Osgoode Hall Law Journal*, 36,2: pp369-98
- Tonkiss, F & Passey, A (1999) 'Trust, Confidence and Voluntary Organisations: Between Values and Institutions', *Sociology*, 33,2: 257-74
- Ware, P & Todd, M J (2002) 'British Statutory Sector Partnerships with the Voluntary Sector: Exploring Rhetoric and Reality', *Social Policy Journal*, 1,3: 5-20.