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The Rise of Nonlawyers: Experience from England and Wales

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The rise of nonlawyers: experience from England and Wales
Lawyers, nonlawyers and professional service in a contested domain.

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Government legal aid policy in England and Wales has, in recent years, encouraged the provision of legal help by not for profit, nonlawyer agencies and enabled a direct comparison between the services provided by nonlawyers and solicitors. This comparison focuses on three main issues: quality, cost and access. The market for publicly funded legal help, historically the preserve of solicitors in private practice, is now a contested market: nonlawyer, not for profit and profit-making solicitors' firms seek contracts from the same, cost-limited funds. The apotheosis of the contested market, price competition, has not been required as yet. The contest itself has been subject to a large-scale pilot, with probably the largest in-depth assessment civil advice ever undertaken. This has provided a welcome opportunity to test assumptions about quality, cost and access and compare the approach of the 'professional' model of solicitors firms with the 'nonlawyer' model in the non-profit context. This paper will articulate the theoretical claims of these models and then evaluate them empirically. To simplify, both models claim to be of higher quality whilst it is traditionally assumed that the nonlawyer, not for profit model is cheaper than provision of services through solicitors. The reality is much more complex and suggests important lessons in developing mixed models for legal aid regimes and in understanding the differences between nonlawyer and professional lawyer models of service. Similarly, the pilot was able to draw out important lessons about the impact of economic forces that a contracted system can exert on quality. As a result, the assumption that value for money will be enhanced by *competition* is questionable; or at least, competition has to be carefully restrained and structured if it is to promote value for money in legal services.

Nonlawyers in the legal aid scheme

Until recently, the provision of legal aid services in England and Wales was almost entirely conducted by solicitors' firms. These firms were funded on a case by case basis, paid for work done under hourly rates. That position has begun to change. Although historically, there has been provision of legal aid services through not for profit agencies (particularly law centres), until comparatively recently legal aid services could not be provided to organisations who did not have a solicitor working within them. That restriction began to be lifted in 1994/1995 when nonlawyer agencies (such as the Citizens Advice Bureau and other specialist advice agencies) were offered the opportunity to fund caseworkers through the legal aid scheme as part of a series of pilots. Since then the rise of the nonlawyer and not for profit sector has been dramatic, as the following table shows.[2]

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[1] This data referred to in this paper is based on Moorhead, Sherr, Webley, Paterson, Sherr and Domberger (2001), *Quality and Cost: The Final Report on the Civil, Non-family Block Contracting Pilot* (forthcoming, London: Stationery Office).

[2] Sourced from R. Smith (1997), *Justice: Redressing the Balance* (London: Legal Action Group) and Legal Aid Board (2000), *Annual Report 1999-00* (London: LAB). These figures only concentrate on 'advice and assistance' (for non-

Table 1: Growth in Not for profit legal advice and assistance funded under the legal aid scheme

	Legal advice and assistance in NFP Organisations
1990-91	£2.1m
1996-97	£5.9m
2000-01	£29.7m

Initially this growth was accounted for by not for profit (NFP) agencies employing solicitors to carry out legal aid work. Law Centres also had solicitors and/or barristers on their staff. But from 1994/95 the Legal Aid Board (now the Legal Services Commission) began to experiment with contracting for non-solicitor agencies (i.e. agencies that had no solicitors on their staff) and they, rather than the Law Centres, have come to dominate the NFP sector's take from the legal aid fund.[3] The group of NFP agencies discussed in this study were entirely non-solicitor agencies almost entirely staffed by nonlawyers.

Even given the large rise in legal aid funding, compared with the solicitors' profession the NFP sector's take from legal aid it is comparatively modest. The legal aid budget is about £1.6 million. Of that, about £780 million is spent on civil representation, i.e. funding of legal services directly related to the conduct of litigation (including family). Just over £800 million is spent on criminal advice and representation. £220 million is for legal help. This latter type of work is the principal area where the contest between lawyers and nonlawyers occurs. Legal help (formerly know as advice and assistance or 'green form'), permits advice on most questions of English law but not court representation. Whilst some funding is available before certain tribunals, the scheme is generally used to provide initial advice on legal issues, the conduct of preliminary negotiations and preparatory work for tribunal cases where representation is not available. It is through this scheme that advice on welfare benefits, debt, employment, immigration and many housing cases is given.

Policy interests behind the promotion of nonlawyer and NFP agencies

Policy interest in nonlawyer agencies was accentuated in 1986, when a LCD report suggested a transfer of legal advice functions from solicitors to lay advisers.[4] These proposals were resisted by the legal profession and the advice sector, partly on the basis that the proposals seemed to be based predominantly on saving costs. By the time a more concerted attempt to introduce nonlawyer agencies into the legal aid scheme was attempted nonlawyer agencies were seen as a supplement to, rather than a replacement for, solicitors operating in private practice. The policy justifications were,

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litigation based services). NFP agencies also gained income from legal aid certificates, in addition to these figures, but it is principally in advice and assistance (or legal help as it is now known), that NFP agencies compete with private practice solicitors.

[3] Smith (1997), *op.cit.*, 25.

[4] LCD (1986), *Legal Aid Efficiency Scrutiny* (London: LCD)

"extending the supplier base providing services in the areas of social welfare law which are underprovided by current suppliers" and providing better value for money by freeing nonlawyer agencies from some of the bureaucratic controls which remained on solicitors. It was also claimed that, "[t]he best practice adopted by agencies takes an holistic approach to clients' problems and explores a range of solutions, many of which are not court-based." [5] As well as offering greater prospects of innovation and improving client choice.[6] For the profession, the proposals raised the suggestion that they would be under cut by the non-profit sector and would effectively be in an unfair competition with them for legal aid contracts. Several practitioners raised quality concerns about the NFP sector. Whilst government policy has flirted with direct price competition in this area, no concrete proposals have yet been advanced. As a result, the situation is one where the market is contested (both NFPs and solicitors seek contracts), but not subject to price competition.[7]

In policy terms, the aims of comparing non lawyers and lawyers can be fairly shortly stated:

- What are the cost implications of funding NFP agencies? In particular, are NFP agencies cheaper than solicitors?

- Which type of contractee produces the highest quality and access?

- How do NFP agencies and solicitors differ in terms of their contribution to a mixed model?

From judgements on cost, quality and access, it may be possible to infer positions about the relative value for money of a particular type of service. If a service is cheaper, provides higher levels of access and better quality then it is obviously better value for money. However, where quality and cost are in contradiction then a more nuanced approach to understanding how quality differs is required. If a service is more expensive but better, how is it better and why? This discussion requires a closer look at the quality paradigms claimed by professional lawyers and their nonlawyer counterparts. In this paper, these have been termed the professional paradigm and the nonlawyer paradigm respectively.

There is a large theoretical and empirical literature that lends support to the criticisms of lawyers implicit in the nonlawyer paradigm.[8] Fewer studies have had as their main focus a comparison of

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[5] LCD (1995), *Legal Aid – Targeting Need: The Future of publicly funded help in solving legal problems and disputes in England and Wales* (London: LCD), para. 4.15

[6] LCD (1998), *Modernising Justice* Cm 4155, (London: LCD).

[7] Domberger, XX

[8] P. Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field,* (1987) 38 Hastings Law Journal 814; M.Cain and C.B.Harrington (eds.), *Lawyers in a Postmodern World - Translation and transgression* (1994, Buckingam: Open University Press); M. McConville, J Hodges, L. Bridges and A. Pavlovic, *Standing Accused, The organisation and practices of criminal defence lawyers in Britain* (1994: Clarendon Press, Oxford); M. Cain, *The General Practice Lawyer and the Client: Towards a Radical Conception* (1979) International Journal of the Sociology of Law 331-354; R.L. Abel, *The Legal Profession in England and Wales* (1988, Oxford: Basil Blackwell); R.L. Abel *American Lawyers*, (1989, OUP, New York); W. Sarat and A. Felstiner, *Law and strategy in the divorce lawyer's office* (1986) 20 Law and Society Review 93-134.

how nonlawyers and lawyers actually perform.[9] Little or no attention has been paid to how the performance of lawyers and nonlawyers compares against the detailed models set out above.

The professional model

The literature suggests a number of key characteristics for the 'professional model' of legal work.[10]

- A 'craft approach' treating every problem as unique and requiring customised service;
- Putting the client's interests above the lawyer's own economic (or other) interests and guaranteeing independence from the state;
- Substantial training in legal thought and the skills of legal practice improving the capacity to perform high quality legal work;
- Breadth of knowledge ensuring "subtle and important issues and linkages" can be recognised aiding appropriate/comprehensive diagnosis of the clients problems;
- The ability to pursue a case all the way through the courts providing critical leverage in advancing the clients interests; and,
- For dissatisfied clients, recourse can be had to disciplinary bodies enforcing ethical codes.

A further aspect of this model is that the considerable protections, and in particular the costs of training, and restraining entry into, the profession, justify increased remuneration for qualified lawyers. ON this basis, the professional model is more expensive, but justifiably so given the importance of the consumer interests at stake.

The nonlawyer paradigm

A review of the literature on nonlawyer provides an interesting set of characteristics which are claimed for nonlawyers.[11] The nonlawyer paradigm claims to be:

- More independent than lawyers (who are part of the establishment);
- More responsive and attentive clients problems;
- Holistic in their approach to problems (dealing with the whole problem rather than just the legally relevant bit of it and dealing with non-presenting problems in addition to the problem that the client comes to the adviser with);

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[9] The main one being Kritzer (1998) *Legal Advocacy*, (XX:), *op.cit.*. Genn and Genn (1989), *The Effectiveness of Representation at Tribunals* (London: LCD), contains a number of interesting findings relevant to the debate.

[10] See, Sommerlad (1995), 164-175 and, for example, Kritzer (1998), *op.cit.*, p.5.

[11] See, Steele and Bull (1996), *Fast, Friendly and Expert? Legal Aid Franchising in Advice Agencies without Solicitors* (London: PSI); Kritzer, *op.cit.*; ABA Commission on Nonlawyer Practice (1995), *Nonlawyer Activity in Law-Related Situations: A Report with Recommendations* (ABA).

- Easier to access (more consumer friendly, having less forbidding office environments and advisers);

- Easier to communicate with (the claim being that clients find communicating with lawyers a problem);

- More willing to innovate with new technologies; and,

- Not so court centric in their approach to problem solving hence being open to greater innovation.

What is noteworthy is how similar many of these characteristics are to those claimed by lawyers. Holism is similar to the 'subtle linkages' claim of lawyers. Both models claim independence. There are also key areas of difference and emphasis. The professional paradigm emphasises the craft or skill itself, the nonlawyer paradigm emphasises the client or problem. Thus the nonlawyers' claims are based partly on *competence* ('we do what you would expect lawyers to do, only better') and partly on *difference* ('our approach is different, and therefore better'). It is through these claims of greater competence and useful difference, that the contest between lawyers and nonlawyers is framed. Some of the claimed virtues of lawyers are problemetised (such as their access to the courts). The civil, non-family block contracting pilot provided an opportunity to compare empirically the theoretical claims of both models.

The Civil Block Contracting Pilot

The civil, non-family advice and assistance block contracting pilot was set up to examine how the different models of contracting worked. This experiment allowed a comparison of NFP (nonlawyer) agencies, with solicitors in the provision of legal help. It also enabled an examination of the application of economic forces to solicitors by allowing three payment regimes to be tested. Solicitor firms participating in the pilot were allocated randomly to one of three groups. This enabled the pilot to proceed as a randomised control.

- **Group 1** solicitors were paid on for work done on an hourly rate (similar to the pre-contract 'Green Form' scheme), subject to bureaucratic controls on how much time they could spend on any individual case. For experimental purposes they were as close as possible to a "control" group.

- **Group 2** solicitors were paid a fixed sum per annum, and asked to provide the level of service that they felt provided the best balance of access and value for money. The number of cases they could do, and the amount of work they could do on any case were not controlled.

- **Group 3** solicitors were paid a fixed sum per annum for a specified minimum number of matters to be opened during that period.

- **NFP agencies** were paid on the basis of contracts for 1,100 hours (or multiples thereof), being the time a caseworker would be expected to spend on casework over one year.

As a result the Block Contracting Pilot provided a unique opportunity to compare the virtues of solicitor and nonlawyer provision. It also provided, through the random allocation of solicitors to the three contractual groups, an opportunity to gauge the impact of different contractual systems on solicitors' work. In particular, through Group 3, as the obvious stepping stone to competitive tendering, the implications of economic forces on quality could be examined.

Methodology

The comparison between nonlawyer and solicitor organisations covered advice and assistance work in all civil areas other than family work. Welfare benefits, debt, housing, and employment advice were considered in detail. The assessment did not cover litigation, but did include cases which were handled within administrative tribunals. A wide ranging methodological approach employing both quantitative and qualitative data was employed.

143 contracted organisations were involved in the research (43 of these were nonlawyer organisations, the others were solicitor contractees[12]). Solicitor participants were selected as willing participants from four LSC regions: Liverpool, Leeds, Nottingham and London. They had to do a minimum amount of advice and assistance prior to the contract (£10,000 in Leeds and Nottingham, £20,000 in Liverpool and London). They thus tended to be the larger and more committed firms involved in legal aid work in those regions. The nonlawyer agencies were selected on the basis of their prior participation in a pilot introducing contracts for non-solicitor agencies to do work. As with the solicitors firms, these participants would be likely to be more committed to legal aid funded work than other agencies.

The research employed a wide-range of quantitative and qualitative data for understanding behaviour and evaluating quality and performance issues. This provides a detailed and triangulated view of many of issues. Data collection occurred between 1997 and 1999.

- A case classification system was designed ('BriefCase') to provide quantitative data on a wide range of issues relevant to categorising cases, understanding how much time was spent on them, the levels of adviser-lawyer working on them and understanding information about how the case ended. Quantitative data was provided on 142,975 cases including 82,705 cases completed under the contract.

- A process of peer review was utilised to assess the quality of the work. Solicitors with experience of both private practice and the not for profit sector were employed to assess contactees' casework files. Peer review was conducted on 718 cases, providing detailed assessments of quality on each file.

- Anonymous model client visits were undertaken. Contractees were advised at the start of the pilot that they might receive such visits but were not made aware when the visit was taking place or the identity of the model client (hence the anonymity of the approach). As a result, model clients were used to carry out a controlled, anonymous observation of how well contracted services were delivered under the Pilot. Model clients provided their own (lay) assessments on service quality which were supplemented by detailed qualitative reports describing the model client encounter. These reports were assessed by peer reviewers to provide a professional assessment of the quality of advice received. As a result, model clients provided crucial, direct observation and insight into the workings of contractees at the first adviser-client meeting. It is believed this research is the first to utilise anonymous model clients in academic socio-legal research.[13] Such visits provided detailed qualitative insights into the quality of service received at initial interviews by simulating an encounter which, from the

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[12] Two of this group were Law Centres funded by the LSC, the rest were private practice firms.

[13] For a model client approach which is not in an anonymous format see, Wasoff, F., Dokash, R., Marcus, D. (1990) *The Impact of the Family Law (Scotland) Act 1985 on Solicitors' Divorce Practice* (Control Research Unit, Scottish Office).

perspective of the suppliers of service, is a real encounter. Model clients were asked to make 45 visits.

- A postal survey of 3,052 clients was also conducted. There were 867 valid responses that could be used by the research, a response rate of 28% overall. The survey focused on providing quantitative data on client satisfaction and views of service which it is reasonable to expect the client to be in a position to assess.

The overlapping of these methods and the depth and size of data sets produced a significant picture of the nature of contract work, its quality and cost and enables some detailed comparisons of nonlawyer and private practice approaches to legal help.

Analysis of the results

The following analysis covers the main contested ground of the theoretical paradigms outlined above. The issue of relative cost is discussed before considering in detail the differences in quality between the two forms of provision. Differences in quality are marked and statistically significant, as are differences in cost. The relative accessibility of services is considered, as is the ability of nonlawyers to handle cases requiring an adversarial approach. Softer client values are also dealt with alongside the debates about a holistic service.

Cost

The presumption that their services are considerably cheaper has played a major part in the debate on the merits of nonlawyer provision. The presumption has traditionally been that lower cost services would, even with a potential diminution in quality, enable greater access to legal services, be they publicly or privately funded.[14] The professional rhetoric has attacked this as unfair competition ('justice on the cheap'). Experience from the block contracting pilot questions all of these presumptions.

NFP contracts were calculated on the basis of multiples of 1,100 hours (the amount of casework expected of one caseworker over one year). The financial basis of this calculation was the salary and overhead costs of funding and managing this caseworker. Solicitor contracts were calculated on the basis of the normal hourly rates for legal help work and the levels of work that firm would be expected to complete in a year (based on their history and negotiations about their future behaviour). It is presumed by government that such rates cover overhead and an element of profit.[15] The hourly rates of the two sectors were higher for solicitors by about £5 an hour.[16] On the face of it, this would suggest that nonlawyer agencies were indeed cheaper. When looked at in terms of cost per case, however, this picture was dramatically reversed. Even when controlling for differences in case type, to take account of the possibility that nonlawyer agencies did more weighty cases than solicitors, nonlawyer agencies took considerably longer (usually upwards of 2.5 hours

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[14] ABA Commission (1995), *op.cit.*

[15] A presumption which have been questioned increasingly by the profession over recent years.

[16] The cost differed somewhat from agency to agency, but averaged out at about £40 per hour. The initial calculation of solicitors' contracts was based on franchised Green Form rates (£45.50 per hour for preparation outside of London). London based firms received slightly higher hourly rates.

per matter) on comparable cases than solicitors. This led to a cost per case in nonlawyer agencies which was, on average, approximately double that of solicitors (or cost about £100 more per case).

There seemed to be three main, related reasons for this extra cost. The first was the way the contracts were structured. Solicitors have the opportunity to do more remunerative work alongside their contract work. This frees them to take on smaller contracts and provides an economic incentive to minimise the work that they do on contracted cases. Nonlawyer agency contracts were explicitly based on the funding of casework equivalent to one caseworker (or multiples thereof). One of the main contractual requirements was that they did 1,100 hours. The incentive was to make sure that they did so, and the easiest way of doing this was to spend more time on cases. The second reason was that nonlawyer agency approaches to problems were often quite different. Thus, for example, in debt cases, nonlawyer agencies were generally more committed to an approach which emphasised extended periods of debt management. An adviser approached by a client with a court summons for a debt might seek to review the entire client's debts, and negotiate on their behalf to manage the problem. Solicitors would be more likely advise the client on the legal aspects of the presenting debt and not intermediate on the client's behalf. A third reason was the potential for nonlawyer agencies to count nonlegal work against their contractual 1,100 hours. There was much tighter control to prevent solicitors doing this.

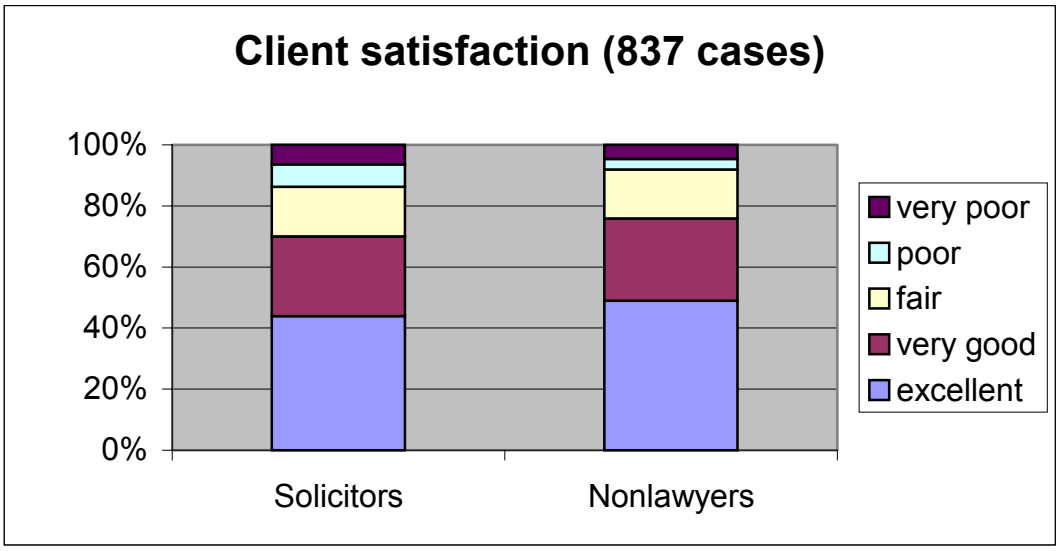
Thus, it is clear that the contractual context and the particular approach of nonlawyer agencies, has in the contractual context led to the position that nonlawyer agencies provide casework under the legal help scheme at a greater cost than solicitor contractees. The first part of the presumption that nonlawyer agencies provide 'justice on the cheap' is not borne out by this experience. How does quality compare?

Overall levels of quality

A related part of the professional rhetoric on nonlawyer services assumes that they are cheaper but inferior to lawyer services. In extremis it is sometimes claimed that nonlawyers pose significant risks to the public. These assumptions are not borne out by this assessment.[17] A statistically rigourous assessment of the relative quality of lawyers and nonlawyers was possible in three ways: an assessment of client satisfaction; the judgements of peer reviewers; and an assessment of outcomes. All of these assessments pointed in the same direction, as the following diagrams show.

The first graph shows that nonlawyer agencies had fewer clients with poor levels of satisfaction and more with high levels of satisfaction than solicitors.

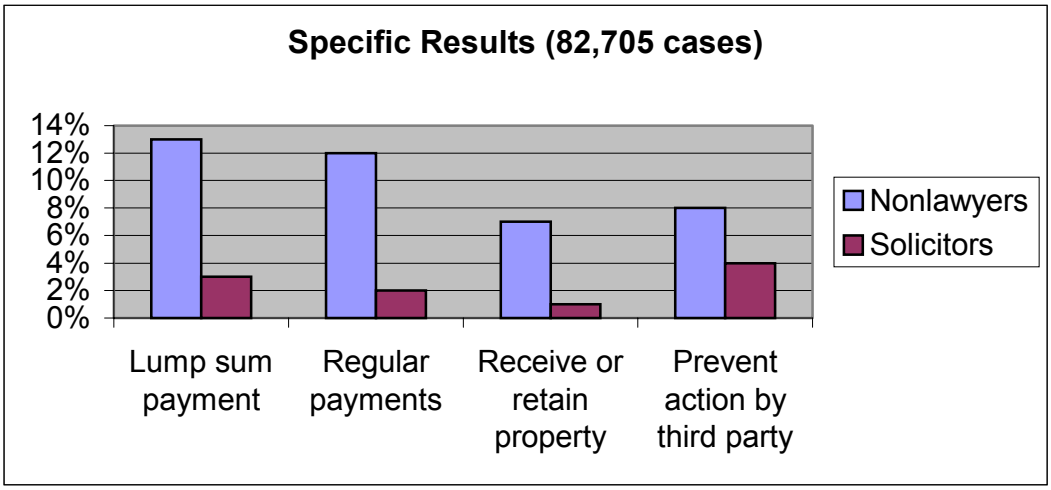
[17] Other empirical evaluations in different contexts tend also to question the supposed supremacy of lawyers. See, Genn and Genn (1989), *op.cit.* and Kritzer (1998) , *op.cit.*. Kritzer found that specialisation was more important than legal qualifications in determining the quality of advocacy, although the best lawyers performed marginally better than the best nonlawyers.



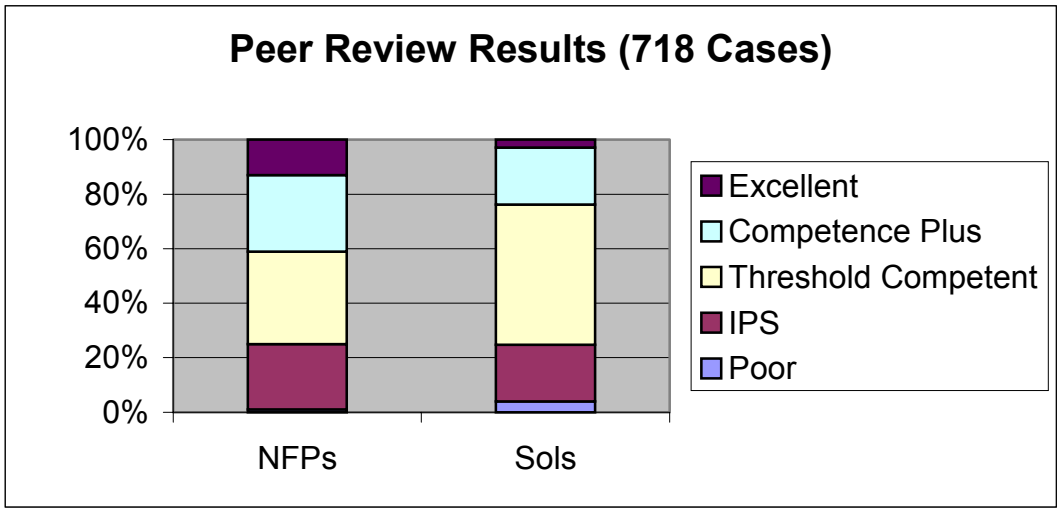
Nonlawyer clients rated their advisers more highly than solicitors' clients, both overall and on specific criteria. Thus nonlawyer clients were more satisfied that their advisers: listened to what the client had to say; told them what was happening; told them what would happen at the end of the case; knew the right people to speak to; really stood up for their rights; did what they wanted; and treated them like they mattered. This evidence supports the view that nonlawyer advisers are more sympathetic, and communicate better with clients. Although the lawyer pathology, that clients regard lawyers as poor communicators, unsympathetic to their problems is not borne out: solicitors were rated positively by clients as well, just not so strongly. Once external factors effecting satisfaction were controlled for, however, the difference between nonlawyers and solicitors in terms of client satisfaction was not quite statistically significant.[18]

Client view points, whilst important, tell us very little about the key issues for quality such as was the advice right and whether the adviser helped the client in appropriate ways. Outcome measures looking at the specific results achieved on cases provided some indication of this. The next graph records the results achieved by the two sectors under the contract by looking at four outcome indicators: the percentage of cases in which the client received a lump sum payment (e.g. compensation for unfair dismissal); the percentage of case in which the client received new or increased regular payments (e.g. welfare benefits payments); the number of occasions on which property was received or retained (e.g. the client's house was not repossessed); and the number of times third party action was prevented (e.g. in relation to enforcing a debt).

[18] Regression techniques were used to control for external factors impacting on satisfaction. See Moorhead *et* al (2001) *op.cit.*, for a full discussion. The probability of the difference between nonlawyer and solicitor contractees occurring by chance was $p = 0.064$, where significance would be accepted if $p <= 0.05$. Other factors which affected satisfaction levels included: having a single adviser handling the case; advisers giving advice on the likely length of case; clients coming to advisers as a result of recommendations; and clients being aged between 18 and 40.



This graph looks at all cases closed under the contract, although similar differences were found when looked at particular work categories. Whilst nonlawyers gain considerably more concrete results than lawyers in relative terms, what is noticeable generally is how few cases yielded concrete results. This is a feature of the emphasis on advice within the legal help scheme, whereby clients can receive help on a wide range of problems not necessarily susceptible to a concrete (and measurable) result. In areas where concrete results were more prevalent, the picture was however similarly strong. In terms of positive financial results, the differences were statistically significant even when other factors effecting outcomes were controlled for. The likelihood of a solicitor getting a positive financial result in a welfare benefit case was about a quarter of the likelihood of a nonlawyer agency. In employment cases, solicitors were about half as likely to get a positive result as nonlawyers were. In housing cases, the picture was more mixed. Although it was possible to control for this to an extent, these differences may reflect other issues about the types of case that come to the different types of organisation. Similarly, there is a need to look beyond 'results' at the fuller range of behaviour that goes to make up 'quality'. Peer review was the main assessment method able to do this.



Peer review found marked differences in the quality of work in the two sectors. Levels of work below threshold competence (the level at which contractees should be performing) were very similar. Solicitors had more cases falling below the level of inadequate professional services as

'poor'[19] This suggests that, if anything, solicitors posed slightly more of a risk to the public than nonlawyers. More marked, however, was the difference in the number of cases handled at the higher levels of quality. Here the nonlawyers performed much more strongly. These were statistically significant differences borne out by nearly all more detailed analysis of peer review. Cases were rated on specific criteria such as the adviser's communication and client handling skills; the adviser's fact and information gathering skills; legal correctness of the advice, etc.. Statistically significant differences consistently indicated that the peer reviewers regarded the nonlawyer agencies as providing a higher level of service on the specific peer review criteria.

There was one area where it was suggested that nonlawyers appeared to be providing poorer quality advice overall than solicitors. Model client visits revealed more quality concerns in nonlawyer agencies than with solicitors' firms although the results were not statistically significant. These visits concentrated on the initial interview between a client and the contractee. This aspect of nonlawyer work was most likely to be provided by volunteers not funded under contracts. The other monitoring mechanisms was more likely to concentrate on work carried out by specialist workers funded under the contract.

Overall, then, these results indicate a statistically significant difference between solicitors and nonlawyer agencies in terms of the quality of their contracted work. Put alongside the findings on quality, the 'justice on the cheap' presumption about nonlawyer services is turned on its head. Nonlawyers provided significantly improved quality (for about 10 to 20% of clients) but at significantly increased cost (about double). The economic context of contracts had a significant impact on this. However, we were able to control for the extra time spent per case on nonlawyer clients in our analysis. Nonlawyers still did better.

As well as the crucial areas of quality and cost, the contest between nonlawyer and professional paradigms presented a subtler analysis of other aspects of the provision of legal services. Evidence relevant to these concerns is now considered.

Access Barriers and nonlawyers

As well as quality, another battleground between lawyers and nonlawyers is the issue of access. Accessibility of service is a key issue for clients. Whilst nonlawyer agencies often claim that they are more user-friendly, less forbidding than lawyers, and therefore more accessible, they are also criticised for long queues and erratic opening hours. The research was able to look at access issues in two ways. One way was a comparison of the socio-economic profiles of the clients in nonlawyer and lawyer caseloads. Differences in these populations may suggest that one type of provision is more accessible, or at least the favoured method of access for particular socio-economic groups. The second was a more direct assessment of how easy it was to get advice from these agencies through using model clients.

The pilot did find differences in the client bases of the nonlawyer and solicitors sector, but generally they did not suggest dramatic socio-economic differences in client-type. For example, both sectors had very similar gender profiles. Similarly, whilst, on the whole, groups which generally suffer from particular access problems (minors, more elderly clients and ethnic minorities) were more strongly represented in the nonlawyer sector, these differences were statistically significant but not particularly marked. One area where the differences were statistically significant and much more

[19] The operational definition of 'poor' for the peer reviewers was 'non-performance'.

marked was disabled clients. Nonlawyer organisations were nearly twice as likely to see clients who had a disability, medical, health or psychological problems: 1 in 5 of nonlawyers clients were disabled, compared with 1 in 9 of the solicitors clients. It suggests that this client group found nonlawyer agencies more accessible.

It is also important to place these findings within a broader context. Some types of work (especially mental health, community care and education work) only tended to be handled by solicitor contractees. In these areas solicitors were the only source of access. Interestingly, some of these areas are relatively new additions to legal services, suggesting that some solicitors' practices are very good at innovating to provide new services. More generally, whilst NFP contracts tend to be quite large compared with solicitor contracts, the number of solicitors providing civil legal advice and assistance across the country is far greater than the number of NFP agency contracts. As a result, solicitors are, numerically at least, the largest providers of civil legal help and the most geographically dispersed. They are also more likely, on the whole, to be operating in smaller towns and rural areas than NFP agencies, which tend (with some noticeable exceptions) to be more urban based. As such, in spite of the small volume and, possibly, lower levels of specialism, solicitor firms provide (and are likely to go on providing), important access points for clients.

Model client visits were also used to conduct a more direct assessment of the actual barriers to access for clients. Model clients had to make contact with contractees in the same way as an ordinary client would. In 10 out of 45 scheduled model client visits, access problems occurred. These problems manifested themselves in different ways in the two sectors. In 5 out of 33 visits planned for solicitor firms, visits did not take place because of access problems. This meant that access problems were less prevalent in the solicitor sector (occurring in 15% of visits). This compares with 5 out of 12 nonlawyer visits (42%). In nonlawyer agencies all the visits took place but only after considerable persistence on the part of the model client. Real clients would have been much more likely to give up and fail to get advice. Solicitors unable, or unwilling to see clients with particular types of problem used receptionists to screen those problems. It is not clear how far receptionists were doing so on the specific instructions of fee earners or on a more ad hoc basis as pressure of work for those fee earners dictated. Nonlawyer agencies tended to deter, rather than decline clients with their problems as a result of closing the agencies, declining to make appointments and requiring clients to queue. Where clients did see someone in a nonlawyer agency, the initial appointment might typically be with a volunteer caseworker who, as the model client exercise showed, would be likely to give poor quality advice rather than research the client or the client's problem or refer them to an appropriate expert adviser. Overall, this data suggests that both models had access problems and that this was a particular problem in the nonlawyer sector.

Service restrictions and innovations

The theoretical framework suggested that nonlawyers might innovate more in service provision, move away from a litigation-centred analysis of legal problems and provide more holistic services. It was also suggested that nonlawyers would fail to utilise adversarial or litigation strategies where appropriate, and fail to address legal problems which strayed beyond their specialisation. They might also be expected to do more of the 'lower' level work. A detailed comparison of the types of case that nonlawyers and solicitors took under contract provides some important insights into these issues.

Welfare benefits work was split into two main problem types: checking benefits (which could include assistance with making claims) and welfare benefit challenges. In this work category, nonlawyer agencies were more likely to take on adversarial cases (56% of their cases were welfare benefit challenges compared with 28% of solicitors welfare benefit cases) and their benefit cases

were more likely to involve the more specialised illness, disability or injury related benefits (57% of nonlawyer challenges involved illness, disability or injury benefits compared with 36% of solicitors' welfare benefit challenges). For solicitors a high proportion of their work involved lower level checking of benefit entitlements (72% of their cases). As a result, in welfare benefits work, nonlawyer agencies did not appear to be inhibited from taking on adversarial cases through the welfare benefits system. Indeed, they were more likely to challenge the client's welfare benefits entitlement than solicitors were. Because nonlawyers are not barred from appearing before welfare benefits tribunals, they are able to pursue cases through the system for their clients. Conversely, solicitors may be inhibited from pursuing such cases as a result of either a) their lack of expertise in the area or b) tighter controls on the legal aid cost they can incur under contracts.

The picture was less clear in housing, where (unlike welfare benefits cases) there is a significant opportunity for lawyers to take cases to the courts rather than administrative tribunals and nonlawyers are effectively barred from conducting litigation. For solicitors, the opportunities to take cases are both structural (they have the right to litigate) and economic (they will be paid more under a separate legal aid scheme to take cases on legal aid which involve representation). In terms of the work under the contract, the main difference between solicitors and nonlawyers was that solicitors dealt with more problems with current occupation (41%), than for nonlawyers (23%), including more disrepair cases. Disrepair cases are likely to involve at least the threat of litigation and give rise to the prospect of greater funding through a legal aid certificate. Nonlawyers were more likely than solicitors to deal with clients wanting to change accommodation (35% vs. 20%). This work might be characterised as more administrative and lower level, particularly as nonlawyers carried out a substantial volume of waiting list issues (26%) whereas solicitors did not (6%). Equally, both sectors dealt with large numbers of cases where possession was threatened; here work has the potential to become highly adversarial, although opportunities for funded representation are more limited. Thus, it seems likely that nonlawyers were inhibited from taking adversarial cases which would require court work, but not other cases. This inhibition may be related to competence, but is equally likely to be structured by their inability to litigate. Rather than criticise their failure, it could equally be argued that they should have the ability to litigate cases to complete their specialism in housing law.

Even more so than welfare benefits work, solicitors and nonlawyers approached debt matters very differently. Interestingly this suggested both that the nonlawyers adopt a more holistic, less court centred approach, and that they may be avoiding litigation-based strategies. Debt was split into three main problems: challenges to debt; rescheduling of debt; and a mixture of challenging and rescheduling. Nonlawyers carried out far more rescheduling matters than solicitors (89% of all debt matters closed by nonlawyers were for the rescheduling of debts, compared with 52% by solicitors). They also dealt with more types of debt per matter, suggesting they took a more rounded view of all the clients' debt problems rather than simply dealing with a limited number of challengeable debts. Solicitors, however, carried out far more challenges to the validity of debts (31%) compared with nonlawyers (4%) and also more challenges coupled with rescheduling of debts (17% vs. 7%). Nonlawyers thus seemed averse to challenging debts (either because they lacked the skills and/or rights to do so through the litigation process or because they took the view that it was not going to benefit the client); whereas solicitors had a range of strategies for dealing with debt. As with housing, there may be a concern that nonlawyers are not challenging debt situations which could, and ought to be challenged. Again this may be due to a lack of competence which in turn could be the result of structural barriers to their conducting litigation.

Holism and Client Centredness

These general approaches to difference areas of casework shed some light on the issue of 'holism'. It is often claimed that nonlawyers are more able to deal holistically with a problem. Holism is meant to mean a number of things. At one level it means, dealing with all aspects of a clients problem be they legal, practical or emotional. This is sometimes criticised on the basis that State services are not funded for 'tea and sympathy'. Equally there is a more substantial element to this: legal advice requires the practical ability to act on that advice. Nonlawyer willingness and ability, given their more flexible contracts, to provide practical intermediation on behalf of clients led to higher outcomes. Another aspect of holism is the ability to look beyond the presenting problem and draw in other aspects of the problem which need resolving. The research sought to measure this by looking for instances of nonlawyer agencies providing advice on subsidiary problems under the contract for each client. No evidence was found supporting the claim to be more holistic in this sense.

A related claim of the nonlawyer paradigm is that nonlawyer methods of provision are more client centred than lawyer provided services. As seen above, higher levels of client satisfaction in the nonlawyer sector support this claim. However, in one important aspect, nonlawyer provision did more poorly than solicitors. This was in complaints handling, an area where the profession has been vigourously criticised over the years.[20] Although complaints were more likely within solicitors firms, where they were raised in nonlawyer agencies, clients were less likely to be satisfied with the way the complaint was handled than solicitor clients. Both sectors did poorly in this indicator: 75% of complainants were dissatisfied with the way solicitors handled their complaints, the figure was 83% for not-for-profit agencies.

Discussion and conclusions

In discussing the performance of the two sectors it is important to acknowledge that the economic, cultural and historical context of the two sectors is different. Indeed one would expect these differences if there was to be a contest between them of any note. Nonetheless, the differences are important. Although the hourly rates were higher for solicitors, nonlawyers were under to increase the amount of time spent on cases. The form of contract allowed (indeed encouraged) the very significant differences in time spent per matter between nonlawyers and solicitors. Nonlawyers also came with specific approaches, in particular, to debt work which meant that advice and assistance for them could be the means for running substantial pieces of work. It would be surprising if these factors did not play a role in the way both sectors worked under contract. They lie at the heart of the differences in cost between the two sectors. The different approach to welfare benefits (probably) and debt work (more definitely) emphasises that the contracting scheme is looking sometimes at quite different ideas about the role of initial advice and assistance. This does not account for all of the differences between both sectors (assessments of quality were able to control for these effects and enables a confident assertion that taken as a group nonlawyers performed to higher standards than the solicitors); however, the differences do underline an important point: contracting is buying a range of different types of service. In welfare benefits and debt, nonlawyers typically involved themselves in the ongoing management of client problems; solicitors (under their contracted work) more often saw their role as providing one-off advice (which clients could then use themselves) in certain areas (welfare benefit in particular) and taking on particular challenging types of problems in other areas (housing disrepair and immigration, for example). Some of the

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[20] See, Moorhead, Rogers and Sherr (1999), *Willing Blindness*, Christenson (1999), Sherry Talk, etc.

work involved giving discrete pieces of advice and limited assistance; other work involved more adversarial legal help for a client, often taking a matter to resolution.

A crucial policy issue will be how to ensure that this diversity within the mixed model is harnessed in a rational, rather than an ad hoc way. At the moment it is likely that whether a client gets the fuller, more expensive nonlawyer approach or the cheaper, more limited approach of solicitors will depend on which locale the client lives in and how they come to choose the service. Community Legal Service Partnerships are developing referral systems which may address this problem, but they will need to overcome significant practical problems if the success of these is to be demonstrated.[21]

A more general issue that is raised is whether the success of the nonlawyer sector in its contest with solicitors, and the difficult cost issues that this raises, should be solved by introducing price competition. The lessons of this research are that it should not. A substantial part of the research focuses not only on the differences between nonlawyers and solicitors, but on the impact of economic forces on the provision of work by solicitors. The random allocation of solicitors firms to the three contractual groups allowed an assessment of how different contractual regimes effected the quality of solicitors' work. The model closest to the necessary basis for competitive tendering on price produced the worst results in terms of quality. Indeed, the overall results of the research suggested that the economic stringency and bureaucratic controls of contracting need relaxing if good quality work by solicitors is to be promoted under contracts. This leaves open the delicate issue of how to encourage solicitors to spend more time on these cases whilst also controlling the overall costs to the budget. It also leaves open the issue of how to reduce the expense of nonlawyer agencies without diminishing the service that they provide. A mixed model needs to work towards the efficiency of the solicitors sector and the quality of the nonlawyers.

An issue where the bifurcation between nonlawyers and lawyers seems to be most problematic for nonlawyers is in their competence, ability and willingness to conduct cases in an adversarial, litigation context. On one level this may not be a problem at all. Avoidance of litigation is one indicator on which the success of the new Community Legal Service will be judged.[22] There will remain a nagging doubt about how nonlawyer agencies deal with cases which are best suited to litigation. This problem appears to be partly constituted by structural factors, it could be met by providing such agencies with rights to conduct litigation, a gift beyond the remit of the Legal Services Commission, and one likely to promote considerable political controversy with the profession. Another approach is to encourage nonlawyer agencies to employ solicitors or barristers to conduct litigation and advocacy. Some not for profit agencies already do this. Referral systems may also have a place in solving this problem. Overall, however, the picture is clear. Nonlawyer agencies are capable of providing legal help in a manner which satisfies clients and meets professional standards of work.

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[21] See, Moorhead (1999), *Pioneers in Practice: The Community Legal Service Pioneer Project Research Report* (London: LCD).

[22] See, Legal Services Commission (2001), *Corporate Plan 2001/2 to 2003/04*.