Legal Aid and Access to Justice: Back to Basics?

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Legal aid and access to justice
• Access to justice
• Context
• First principles
• What do we know about citizens’ needs?
• How to use legal needs data
• Prioritisation
• Delivery

Fundamentals of Access
• Awareness of rights, entitlement, obligations and responsibilities
• Awareness of procedures for resolution
• Ability effectively to access resolution systems/procedures
• Ability effectively to participate in resolution process in order to achieve just outcomes

Access to justice as a social good
• Ability to participate in public redress or resolution systems is a measure of the health of democracies
• Critical question = not ‘what rights do we give or what obligations do we impose’?
• But ‘what opportunities do we provide for the public to make good their entitlements’?

Context
• Continuing commitment to publicly funded legal services
• Continuing or increased pressure on resources
• Increasing pressure on civil area from criminal justice

What is the legal aid problem?
• Supply?
• Demand?
• Delivery?
• Outcomes?
• Remuneration?
• Quality?

First principles
‘Access to justice’ is an expression of process not an outcome
What is access for?

First principles
• What are the purposes of legal aid?
• What is the priority in terms of purposes?
• Within broad categories of purpose, what are the priorities?

What are the purposes of publicly funded legal services?
• Individual
  – Enforcement of rights
  – Dispute resolution
  – Avoidance
• Social
  – Supporting social order
  – Supporting economic activity
  – Supporting social justice agenda
  – Supporting social inclusion agenda
  – Supporting rule of law through control of executive
  – Legal health promotion
What do we know about legal needs?

• A lot – LSRC body of work
• Surveys from around the world indicate common problems, common approaches to problem resolution
• Common need for information, advice and representation

What have we learned?

• Justiciable problems ubiquitous
• Socially excluded experience more problems
• High proportion suffer multiple problems
• Problems often occur in clusters
• Cascade effect – one triggers others
• Can have serious impact on lives
  – Family break-up
  – Unemployment and loss of income
  – Ill-health or disability
• Link between unresolved problems and health, crime

Common findings

• Low income groups suffer more problems and are less likely to do anything about the problem – Sense of powerlessness/helplessness
• Resolution strategy related to problem type
  – Problems for which action most likely to be taken – family, consumer, property
• Advice-seeking related to problem type
  – Problems for which legal advice most likely to be sought – divorce, children, property,
  Advice sought from wide range of more or less appropriate sources – people don’t know where to go
• Significant unmet need for accessible sources of information and advice

What do citizens want?

• Problem-solving
• To be saved
• Dispute resolution processes that are
  – Easy to use
  – Cheap
  – Quick (within reason)
  – Authoritative
  – Transparent
  – Fair
• To get on with their lives!

How can results be used?

• Refocusing justice policy thinking
  – Developing a “customer” orientation
  – Wider than legal aid issues
• Alignment of justice policy with broader government objectives
  – Understanding link between access to justice and social inclusion agenda
• Guiding legal aid policy thinking
  – How to make more effective use of legal aid spend to meet the needs that citizens have
  – Designing services with needs in mind rather than funder convenience or provider assumptions

Need for joined-up thinking and action?

• Dawning recognition that justice system has to clean up the messes that other departments make
  – Poor decision-making on benefits – cost to justice system
  – Social housing policy may lead to cost on justice system
• That unresolved justiciable problems lead to pressure on other services and budgets
  – Does that person need expensive anti-depressants or do they need to sort out the problem with their landlord?

Policy Interest in “Impact”

• Cost of unresolved legal problems appearing in other budgets
• Social and economic costs of unresolved problems
• Estimating cost in public expenditure on physical and mental health, welfare benefits, social housing costs
• The downstream cost of unresolved problems is a powerful argument for protecting civil legal aid
**Smarter approach to advice**
- Emphasis on avoidance and early advice
  - Concept of cascades and trigger events helps to focus thinking around early intervention
- Making advice more accessible
  - When can people go for advice?
  - Where are they likely to go for help?
- Renewed interest in Public Legal Education
  - Recognizing “unnecessary” helplessness
  - Facilitating self-help
  - Knowledge and skills-development

**Legal needs studies and recovery from recession**
- Public interest in access to justice will become greater in tough times
- Civil justice system supports enforcement of rights, access to entitlements and resolution of conflicts that might flow from recession
- Civil legal aid necessary not only to lift up socially excluded BUT equally important in current climate to PREVENT slide into social exclusion

**Barrier at top of the cliff or ambulance at the bottom?**
- Civil legal aid has both protective and restorative potential
- It is both the barrier at the top of the cliff (information, advice, PLE)
- And the ambulance at the bottom of the cliff (advice and representation)

**Focus of prioritisation**
- Type of person?
- Type of problem?
- Civil v criminal?
- Objective of service?
  - Legal health promotion – proactive
  - Dispute resolution – reactive
- Mode of delivery?

**Different ways of meeting needs?**
- Delivery Principles
  - Collaboration between providers and different types of service
  - Triage (through IT?)
  - New methods of delivery
- Service principles
  - Legal awareness raising
  - Empowerment
  - Skills development

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Essential components of effective legal aid system