

Evidence provided to the Bach Commission 22nd June 2017

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1. Questions and context for the evidence - strand three: legal education

Many witnesses said that better legal education should be a key component in ensuring that people can access justice on an equal basis. Islington Law Centre, for example, told the Commission:

“The lack of any proper funding framework for public legal education mean[s] that it is increasingly difficult for people to identify that they have a problem for which there is a legal remedy. Word of mouth is a powerful tool in a lot of communities and the loss of a plurality of agencies promoting justice and dealing with initial enquiries has led to a loss of confidence that anything can be done.”

As Richard Susskind argued in his oral evidence to the Commission: “The ambulance should be at the top of the cliff. The state should play its part in promoting dispute avoidance. We need to reduce the need for dispute resolution by placing a fence at the top of the cliff. Legal education is [an] aspect of this. Most think of law as imposing restrictions, but actually it’s wonderfully empowering if we know what our entitlements are and then what avenues are available to us to pursue claims and enforce things in relation to our employer, landlord, retailer, etc.”

Early intervention and public legal education is also cost-effective in the long run, as Low Commission research has shown, because it prevents disputes ending in costly litigation.¹

Legal education should form part of everybody’s education, both during schooling and through life. To be without knowledge of your legal rights is equivalent to political disenfranchisement, as you are unable to enforce your basic democratic rights. The Commission will explore possibilities for expanding effective public legal education, so that every citizen can identify a legal problem and know the steps they should take to resolve it.

¹ The Low Commission, *Tackling the advice deficit: a strategy for access to advice and legal support on social welfare law in England and Wales*, (London: The Low Commission), Annex 6, 1.

https://www.lowcommission.org.uk/dyn/1401712385510/LCR_Annex06.pdf

Future policy direction

Questions for the Commission to address:

- How can basic knowledge of fundamental legal entitlements become universal?
- How can public legal education reach typically hard to reach groups, such as older and disabled people?

About Law for Life

Law for Life is an independent information and education charity. We serve over a million people in England and Wales via the Advicenow² service, through online provision of multimedia legal information and learning tools. Our curated information service brings together 1600 pieces of public legal information from over 250 UK websites.

We are delighted that we have increased our reach to vulnerable users: 29% identify as low-income workers, 46% identify as disabled, and 48% have a household income of below £1,100 per month after tax. We increased help to litigants in person or potential litigants in person (accounting for 75% of all survey respondents).

The online service is often used by intermediaries and helpers that might be advisers, but also community workers and family members. 10% of our survey respondents say they are using Advicenow to help someone else to deal with a problem but are not an adviser.

Law for Life deliver community-based education and training aimed at building knowledge, skills and confidence in dealing with legal matters. We cover a range of topics with a cross-cutting curriculum aimed at building foundational legal concepts and skills. We often work through trusted helpers in community settings, be they migrant and asylum groups, social workers, teachers or faith leaders. In some cases we also work directly with vulnerable people, for example social housing tenants and, more recently, women in the immigration and asylum system.

² www.advicenow.org.uk

2. Development since the PLEAS Task Force 2008³

The 2007 Task Force recommended the need for a centre for PLE and set out some priorities for the development of the sector, along with much of their fact-finding work. These recommendations are still relevant for us today. The Task Force recommended that we need to:

- Create a coherent focus and identity for PLE
- Create a practitioner network and online knowledge bank
- Develop and spread good practice including evaluation and quality frameworks
- Securing sustainable funding
- Work to establish a statutory remit for the development of PLE

In the last 5 years we were able to achieve the following:

- To set up and grow a dedicated PLE charity in the face of contracting public sector and charitable revenue.
- To merge the Advicenow service with our charity and protect the very substantial information provision to the public.
- To implement and test a PLE evaluation framework⁴ and use the conceptual building blocks of legal capability to design curricula and assess whether we are able to show outcomes from a variety of interventions.
- To share research and tools with PLE sectors both in the UK and overseas.
- To innovate, with the help of Trusts and Foundations. For example, interactive digital tools such as our Personal Independence Payment Tool, which attracted 70,000 visitors this last year to help them to challenge DWP decisions.
- To develop e-learning tools that can be used by vulnerable groups, and to expand and refine a range of community based curricula in the most pressing areas of law affecting poorer communities.
- To contribute to the Litigant in Person Support Strategy, now in its third year of operations, which offers a coordinated response to the needs of people using the courts without the help of a lawyer.⁵

³ Public Legal Education Task Force, *Developing capable citizens: the role of public legal education*, (London, PLEAS Task Force, 2007). <http://lawforlife.org.uk/wp-content/uploads/2013/05/pleas-task-force-report-14.pdf>

⁴ Sharon Collard, Chris Deeming, Lisa Wintersteiger, Martin Jones, John Seargeant, *Public legal education evaluation framework*, (London, Public Legal Education Network, 2010).

<http://lawforlife.org.uk/wp-content/uploads/2011/12/core-framework-final-version-nov-2011-v2-370.pdf>

3. Legal need, legal capability and public legal education⁶

Legal aid cuts in England and Wales since the implementation of the Legal Aid Sentencing and Punishment of Offenders Act 2012 mean that many people who previously could access advice and representation have been left without help in areas of law traditionally associated with poverty and social disadvantage.

The cuts have eviscerated swathes of the advice sector, and have had an enormous impact on the informational ecosystem that is available to the public – for example, the primary source of funding for the Advicenow legal service disappeared with the closure of the Legal Services Commission. Organisations who offered good and up-to-date information on immigration and asylum matters, such as the Immigration Advisory Service, have now closed, leaving a complex and fast-changing area of law with very little in the way of good information for the public.⁷

It should be noted, however, that the scale of unmet need was evidenced long before the reductions in legal aid cuts were given effect by LASPO in 2012.

Lack of knowledge about laws and legal systems is pervasive around the world, and this problem contributes to a wider lack of access to legal advice and representation; evidence of to that effect is mirrored in studies ranging over a period of 30 or more years and across 26 national surveys of 15 jurisdictions. While caution is needed when comparing studies around the world with very different methodologies and designs, certain commonalities can be drawn out.⁸ All surveys in the *Paths to Justice* tradition have pointed to the peripheral role of legal services and legal processes in relation to many types of justiciable problem. Lawyer use and use of the formal legal system is incredibly low compared to the prevalence of legal problems. Use of legal services do, however, vary across

⁵ <http://www.lipsupportstrategy.org.uk/>

⁶ Lisa Wintersteiger, *Legal Need, Legal Capability and the Role of Public Legal Education*, (London, Law for life, 2015).

<http://www.lawforlife.org.uk/wp-content/uploads/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf>

⁷ <https://www.theguardian.com/law/2011/jul/11/immigration-advisory-service-closes-blames-government>.

For an analysis of immigration and nationality information deficits that predate the ultimate closure of the service see: Advicenow, “The poor relation: immigration and nationality information deficit” (Advicenow, 2009). <http://lawforlife.org.uk/wp-content/uploads/immigration-and-nationality-information-deficit.pdf>

⁸ Pascoe Pleasence *et al.*, *Paths to Justice: A past, present and future road map*, (London, Nuffield, 2013) <http://www.nuffieldfoundation.org/sites/default/files/files/PTJ%20Roadmap%20NUFFIELD%20Published.pdf>

problem types - for example, while family matters tend to attract higher levels of lawyer and legal process use, welfare benefits and consumer matters attract far less.⁹

Turning to the UK, repeated population-wide studies in England and Wales show a substantial legal knowledge deficit. Most people lack effective knowledge of legal rights and processes, and many people misinterpret or misunderstand their rights. Individuals often fail to recognise the legal dimensions of problems (the figure suggested by the most recent survey is around 11% of legal issues are accurately characterised),¹⁰ which means that citizens are limited in their actions, in their choices and in their ability to access appropriate help. They are also hindered from using digital help effectively because they struggle to frame their problems in a way that they enables them to search for what they need. If they do find information, they are often unable to properly assess its quality and veracity. They also cannot always correctly identify whether information applies to the relevant jurisdiction.

Alongside major gaps in knowledge, there are broader capabilities or competencies that individuals need when faced with legal issues. These three areas of knowledge, skills and confidence (or attitudinal characteristics) form what has become known as legal capability. Legal capability is a key indicator for the effective use of legal services. People with low levels of legal capability are less likely to act, and less likely to sort things out effectively alone. They are less able to successfully solve legal problems, and are twice as likely to experience stress-related ill-health, to experience damage to family relationships and to lose income. We know that low levels of capability aren't limited to the most vulnerable, although the impact of the absence of knowledge is not evenly distributed.

There are strong correlations between susceptibility to legal problems and the presence of disability, single-parenthood, welfare recipients, unemployment, and minority ethnic grouping. The characteristics of people with low levels of legal capability are the same as those who are at greater risk of experiencing legal problems, a fact that compounds their risk of becoming socially excluded.

⁹ In England and Wales, findings from the 2010 CSJS indicated that only one problem in fifteen saw respondents obtain help from a lawyer and one in twenty court or tribunal involvements. However, figures ranged between 28% (lawyer use) and 15% (court/tribunal involvement) across family problems to 1% (lawyer use and court/tribunal involvement) in the case of consumer problems, and less than 1% (lawyer use) in the case of problems concerning welfare benefits (ibid, 2013).

¹⁰ Pascoe Pleasence, Nigel Balmer and Catrina Denvir, *How people understand and interact with the law*, (Cambridge: PPSR, 2015).

<https://www.thelegaleducationfoundation.org/report/how-people-understand-and-interact-with-the-law>

- Research into legal capability continues a tradition that marks a crucial turn in helping us to understand more about how more people can be helped, and how to craft solutions that are fit for the future. That seam of research entails a shift in attention away from the tip of an iceberg, which is what happens from the perspective of the courts and legal professionals – to look at how social conflicts occur in the shadow of the law, how people can better deal with them and respond to the law in their lives.¹¹
- Although legal capability is attracting more research attention, we would strongly advise the Commission that more investment is needed in those research opportunities, and that they should focus on multi-disciplinary research opportunities including health, education, psychology as well as socio-legal research.
- We need to recognise that the challenges we face in the UK are not unique and that solutions need to be tackled in concert with others. Innovation in delivering justice for the poor in particular has grown since the legal empowerment Commission of 2008.¹² Programmes in middle income and developing contexts (particularly the growth of paralegalism, community based education and so on) mirror our efforts in the UK.¹³ Notwithstanding, much more needs to be done to bring those with limited means under the protection of the rule of law, and more needs to be done at a transnational level to share investment in innovation and in research on how to tackle the needs of increasingly mobile populations.

4. Juridification and public legal education

Alongside a better understanding of the characteristics and competencies that make up legal capability, the links between legal need and juridification need to be better understood. Legislative complexity and accelerated legislative activity impacts disproportionately on vulnerable individuals

¹¹ Hazel Genn, *Paths to Justice: What People Do and Think about Going to Law*, (Oxford: Hart Publishing, 1999)

¹² Commission for the Legal Empowerment of the Poor, *Making the Law work for everyone*, (New York: United Nations Development Programme, 2008).

http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/legal-empowerment/reports-of-the-commission-on-legal-empowerment-of-the-poor/making-the-law-work-for-everyone---vol-ii---english-only/making_the_law_work_II.pdf

¹³ <https://namati.org/resources/developing-a-community-paralegal-program/>. A more recent success is marked by the inclusion of access to justice in the UN Sustainable Development Goals

<http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html>

who are reliant on the welfare state.¹⁴ Those individuals are the least equipped to cope with regulatory demands as they unfold in their lives.

- Given the continuing and increasing demands on the public to understand and make use of new legislation (often without the intervention of lawyers, and often in areas of law which are sensitive to political fluctuations), the need for a better grasp of the interrelationship between law-making and legal need is one of the challenges that we face.
- Law-making carries with it the burden of responsibility for the costs arising from those laws. As a proportion of expenditure, the costs are unevenly distributed at the very top, toward courts and legal institutions, and toward crime. There is a direct correlation between the legislative function and the extent of legal need experienced by any population.
- From a pedagogical point of view, it is also critical that we take seriously the challenges posed by juridification in our teaching, and in the way in which we manage and curate legal information for the public.

5. The Legal Services Act 2007

In our current system, the cost of legal assistance is beyond the means of many, if not most.¹⁵ The Legal Services Act of 2007 recognised the challenge of access to justice more generally and as a problem of the citizen's knowledge and understanding of their rights and duties. Where progress has been made in taking forward the objectives of the Act in the areas of competition and diversity,¹⁶ it remains to be seen how the objective of increasing public understanding of legal rights and duties will be taken forward by the Legal Services Board.

- We would therefore encourage a coordinated and forward-looking response by the Legal Services Board, the regulators and the profession as a whole to fulfil that objective, taking into account the research that exists into vulnerable populations and in a spirit of tackling

¹⁴ Pleasence *et al*, *How people understand and interact with the law*, 25 and 66.

¹⁵ *Delivering Justice in an age of austerity*, (London, Justice, 2015).

<http://2bquk8cdew6192tsu41lay8t.wpengine.netdna-cdn.com/wp-content/uploads/2015/04/JUSTICE-working-party-report-Delivering-Justice-in-an-Age-of-Austerity.pdf>

¹⁶ Although there have been around 700 registrations under the Alternative Business Structure regime, in practice innovation has been limited. Competition and Markets Authority, *Legal Services Market Study*, (London, Competition and Markets Authority, 2006).

<https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

the problem in collaboration with the third sector and with a genuine emphasis on user voice.

- We would also recommend looking at the lessons learned in associated fields, most notably financial capability, that also had to tackle the problem of underlying exclusion by virtue of citizens' lack of knowledge and skills. That field was able to take the lead in designing a national strategy¹⁷ and leveraging funding for financial capability strategies as a partnership between the financial services sector and Government.
- There is also a need for innovation in the manner in which legal services are offered to the public. We know that traditional models of end-to-end legal services are expensive and out of reach for most individuals. Only around 6% of people on average access a lawyer when a legal problem occurs.¹⁸ Public legal education and information is a key component in developing flexible and cost-effective solutions in which expert advice can be secured. There is an increasing need to offer more flexible arrangements for fixed-fee parcels of work which are supported by effective information and learning bridges.
- We would encourage the Commission to look at what needs to be done to improve informational asymmetries to help people understand what services exist, as well as how they can use parts of the system in a cost-effective and empowered way. Technology will be a crucial part of that mix but ultimately, disseminating and targeting high-quality, impartial and independent information and learning to help individuals understand and navigate their problem is a solution in and of itself.

6. HMCTS Reform and Online courts

Many of the following issues have been considered in the context of a move toward the launch of an online court following the broad recommendations of the LJ Briggs review¹⁹ in the areas of family

¹⁷ *Consultation response: Financial capability strategy for the UK*, (Money Advice Service, March 2015), 78.
https://prismic-io.s3.amazonaws.com/fincap-two%2F7ac2f4a9-bf30-4da2-b191-3859eea9396c_uk_financial_capability_strategy_consultation_response_march2015_online.pdf

¹⁸ Pleasence *et al*, *How people understand and interact with the law*, n.11.

¹⁹ <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf>

and civil money claims initially. Law for Life provided input into the consultation process at interim and final stages.²⁰

A broader, 'digital-by-default' intention will see a wider trend in individuals using the internet to solve legal problems. Internet use is on the rise - around 25% of people use the Internet to solve legal problems now. That figure marks a 20% increase from a decade ago, however not everyone is able to use online provision effectively. While we acknowledge that a great deal can be done online by individuals helping themselves, with such a significant shift in the way justice will be delivered, we would emphasise the continuing need for individuals to have access to legal advice on that journey.

We welcome the emphasis on the 'assisted digital' elements of the online court to ensure assistance is available those who are digitally excluded, or who struggle as a consequence of health, poverty or literacy needs. The design of the system needs to be cognisant of patterns of legal capability, and also needs to understand problem characterisations, how they link to effective and early action, the role of confidence, and the patterns of behaviour we see in legal needs studies around problem resolution. These issues should be front and centre in the thinking behind the design of an online court.

7. PLE and the rule of law

The reforms also raise pressing questions about the role of public legal education and the rule of law. Public legal education sits in a somewhat uneasy position with regard to the formal requirement to promulgate the law. The need to promulgate or publish law as part of the law-making function of any state is critical, however PLE increasingly fills the vacuum left in the wake of the loss of advice and legal services. The provision of the information estate to help the public navigate legal issues may well include their ability to challenge the State or individual public bodies.

There must be a thoughtful engagement with the way in which information and education is funded and delivered with an awareness of the motivations of those who are providing legal information and the potential for conflicts of interest. We would ask the Commission to consider the rule of law issues and the need for high-quality, independent legal information that the public can trust, and to ensure that this is done through funding models that work at arms length.

8. Where to next?

²⁰ *Consultation response to the Civil Courts Restructure Review*, (London: Law for Life, 2016).
<http://www.lawforlife.org.uk/wp-content/uploads/Civil-Courts-Structure-Review-interim-report-Law-for-Life-response-February-2016-FINAL.pdf>

Questions for the Commission to address

- a) How can basic knowledge of fundamental legal entitlements become universal?
- b) How can public legal education reach typically hard to reach groups, such as older and disabled people?

Our answers are addressed in combination:

- Community-based work with trusted intermediaries shows every sign of being an effective and scalable mechanism for reaching those groups who are least likely to be able to access justice effectively, and should grow levels of knowledge and skills among individuals in vulnerable groups. Early Law for Life pilots working with advice and community sector groups showed the potential for substantial impacts, for example, data collected over two years through the Early Action Advice project undertaken with Community Links (in which 46 community champions from across the Newham were trained) showed that:
 - a) Confidence in understanding of rights and obligations increased from 44% before the course to 88% after.
 - b) Ability to identify legal problems in everyday issues: the response rate rose from 53 to 91% of participants.
 - c) Champions went on to support others in their community with their legal problems; 90% of the clients evaluated who were subsequently supported by Advice Champions said they feel more confident about dealing with their problems because of the support they received.²¹ In the area of offline teaching, more needs to be done to reach priority groups in regional settings by segmenting and targeting vulnerable groups and focusing on areas of law which have left people struggling to cope.

²¹ Teaching has largely been focused on those groups who both experience multiple legal problems, and often have the lowest levels of legal knowledge and skills to contend with them. They include refugees and migrants, disabled groups, women's groups, young people and low-income workers. Most often, our work has taken place through networks of community organisations, as these organisations tend to have the best knowledge of the issues facing local communities and a relationship of trust and familiarity that makes informal education possible. For evaluations of the work see: Liz Mackie, *Law for Life: Legal Capability for Everyday Life*, (Law for Life, 2013). Available from: <http://lawforlife.org.uk/wp-content/uploads/Law-for-Everyday-Life-Evaluation-report.pdf> [Accessed 5 December 2016]. Liz Mackie, *Evaluation of PLE for Advice Champions in the Community Links Early Action Advice Project: Final Evaluation Report* [online]. (London: Law for Life: the Foundation for Public Legal Education, 2015). Available from: <http://www.lawforlife.org.uk/wp-content/uploads/Law-for-Life-Community-Links-Evaluation-report.pdf> [Accessed 5 December 2016].

- Linking (and embedding) community teaching with updateable online resources that provide more detailed information about rights and duties is a cost effective mechanism for reaching more people. Teaching the granular details of any area of law is largely pointless, since that law will inevitably change. What can be taught to good effect are concepts and skills that can be read across and that are adaptable to different areas of law.²²
- There is a need to build on and maintain a diverse provider base; both for legal information and education. There are too few practitioners able to teach in community settings and too few writers who can translate law in accessible and empowering ways. There should be a focus on growing a body of practitioners and ensuring there are accredited routes to jobs and training. To that end we have begun to embed public legal education in clinical settings which aim to teach undergraduate and postgraduate law students about the theory and practice of PLE.²³ For law schools, this model offers an innovative part of the curriculum, embeds the core legal skills of research, legal processes and legal systems, and provides insight into real life legal problems as well as how to tackle them. For participants, lawyers become less distant. Students of law both in the community and from law schools come together with the recognition that law can be learned and need not be a mystery, and that problems (and clusters of problems) can be unpacked and worked through collectively. A wider training programme for aspiring practitioners also needs to be envisaged as part of an advice model with accredited training routes. Ideally this would be fostered at some remove from casework and one-to-one advice.
- There is a need to think about plurality and independence in the PLE provider base. The PLE sector recognises that some of the best information and education is delivered by those who are close to the communities and users that they serve. It also recognises that users need to be able to trust the quality, impartiality and independence of legal education and information.
- More needs to be done to embed PLEI into wider services and improve coordination of stakeholders. PLEI cannot be the sole responsibility of the legal sector; the inability to access help cuts right across the work of other sectors whether that be in social care, health or housing. If people cannot access services or fail to be able to protect their interests, the impacts fall on other service providers. We receive requests from social workers, youth

²² Examples of teaching resources can be found here: <http://www.lawforlife.org.uk/tools-and-materials/teaching-resources/new-resources-for-ple-trainers/>.

²³ <http://www.lawforlife.org.uk/law-for-life-projects/clinical-module/>

providers, tenancy associations and even letting agents to join our training programmes.

They lack budgets to be able pay for PLE. A subsidy-based model needs to ideally bring together budgets in priority areas.

- We need to build on clever delivery mechanisms. For example, after identifying that private renters were struggling to find accessible information, we designed a combined project with the aim of developing skills-based information on s21 evictions and disrepair. This was published nationally and distributed to target groups, such as London-based food banks. We then designed training sessions around those areas of law and provided them offline in London and Birmingham. An ‘information and education’ model, such as this one, that brings together key stakeholders embedded in both community settings and in the field of wider social and health provision, is urgently needed.
- Building more interconnectivity in services is one of the ways to help users manage complex pathways through services and help. This can be achieved by training staff and volunteers and instilling legal capability skills in key access points. A broad awareness-raising campaign on key topics would also help to drive people to the quality resources that already exist.
- An element of embedding on-and-offline solutions involves targeting non-legal helpers who have an awareness of the boundaries between legal advice and broader information and support. We rely heavily on intermediaries to reach the most vulnerable groups currently left without access to legal advice. Helping people understand how to avoid the risk of straying into legal advice is crucial. We teach those boundaries by considering the difference between information, support and legal advice. We also give examples of how to deal with the sort of questions people would ask that could push them over that boundary. Good practice standards should include an awareness of the difference between information, advice and support, with an agreed framework that provides concrete guidance for community helpers.
- The PLE sector needs investment. All of the recommendations above can be brought under a broad umbrella of innovation funding, which would support new interventions alongside good evaluation to assess what works best. The PLEAS Task Force reported that the cost of what they called “unnecessary helplessness in avoiding or managing legal problems” over a three-and-a-half-year research period came to an estimated £13 billion.²⁴ An innovation fund should therefore be viewed as an investment that would save money in the long-term.

²⁴ Pascoe Pleasence *et al.*, *Causes of Action: Civil Law and Social Justice*, Second Edition, (London: Legal Services Commission, 2006).



Dedicated PLE funding is needed to reduce both the long-term costs on the public purse as well as the devastating impact legal problems have on individuals and their families.

Ends.