Fifth National Forum on Access to Justice for those without means
2 December 2016

Summary

Attendees included **government, the civil service, HMCTS, universities, advice agencies, the legal profession, regulators, charities, business, the judiciary.** Attendees came from England, Wales, Scotland, Northern Ireland and overseas.

Mr Justice Knowles welcomed all those present and thanked them for their time. He reminded attendees that the aims for the day were to provide an update on developments in the last year, to identify what is working and what is not and to start to frame a 10 year strategy.

The Rt. Hon. ***Sir Oliver Heald MP***, Minister of State for Courts and Justice, also welcomed delegates, acknowledging the amount of experience in the room. Everyone had a common goal, which was to improve access to justice, and the programme for the day reflected that. The Government was committed to improving access to justice, and its work on court reform reflected that. He thanked those present for the responses that had been received to the recent consultation on 'assisted digital' (https://consult.justice.gov.uk/digital-communications/transforming-our-justice-system-assisted-digital/).

He touched on the basis of the court reforms, which was to enable those with the right skills to pursue their case online and without legal advice, with the software encouraging litigants to set out the facts in a way that made the dispute easier to resolve, but with support for those unable to do so. It was not a project that was policy-driven, but rather a joint framework for reform that had been created by experts and supported by ministers. He also touched on three elements of the LIP support strategy, namely to provide:

1. online and self-help resources,
2. practical and emotional support,
3. signposts to free or affordable legal advice.

He noted that there were now 20 Personal Support Units (PSUs) in 16 cities. The Exeter PSU has successfully introduced advice on the telephone and was an example of what could be done to help those living in a rural area. He described recent developments in providing advice in family law cases, including the creation of 14 more LawWorks Clinics. The AdviceNow website had 1 million users last year.

The Rt. Hon. ***Sir Terence Etherton***, Master of the Rolls and Chairman of the Civil Justice Council, spoke about some judicial initiatives. The CLIPs initiative had been extended to the Chancery work in Central London County Court. The online solution

court was at the forefront of the vision of the Government and judiciary for court reform, largely informed by the Civil Court Structure Review (CCSR). The LIP Engagement Group (LIPEG) was helping inform the programme on the best way of assisting the vulnerable. He sounded a warning note on the use of professional McKenzie Friends. The inaccessibility of the existing system risked thrusting litigants into the hands of those who were not the best source of advice on how best to pursue a claim. He welcomed the programme for the day as interesting and inspiring.

Mr Justice ***Robin Knowles*** CBE, Chair Civil Justice Council Working Group, gave an overview, noting that this year's Forum was about 'access to justice for those without means'. It was not just about helping those who end up as LIPs but about all our efforts to ensure people do not end up as LIPs where that does not work. There had been many developments in the last 10 years, including the Litigant in Person Support Strategy which had brought pro bono clearing houses together with PSU, RCJ Advice and Law for Life in a working partnership with the Ministry of Justice.

LIPs had also become a shared high priority for Government, courts service, judiciary and profession alike and 'shone through' the CCSR and played a material part in the HMCTS Reform Programme But at the same time public funding had been removed from many areas, and demand for legal advice and representation had risen sharply. He saw opportunities in the next decade to 'take things to the next level'. This required a number of things, not one thing to the exclusion of another, including in the areas of public legal education, early initial legal advice with the involvement of the professions, including an increased use of unbundling, a consideration of where legal aid was best deployed, an across the board reconsideration of court and tribunal fees, bringing scale to secondary specialisation, and a continued dialogue about concise and clear language. The objective should be that those without means across England and Wales identify their needs early, know what support is available to them, can get practical support and information, have a route to some free or affordable legal assistance, and better access to publicly funded legal services, where available. Further work to that end would require mutual trust and respect, including for different views and approaches and teamwork.

The CJC remained ready to continue its contribution, particularly in bringing all the relevant organisations together, and in helping to develop a broader access to justice strategy, and one which included a longer term horizon. The problem in our system was in not providing access to justice where it should and could. But, despite working in a challenging environment, between them, the people in this room could make significant improvements.

Robert Bourns, President of The Law Society reflected briefly on the Society's work in the area, noting that it didn't stand alone, but within a larger strategy for access to justice which was in the public interest and helped a cohesive society. Impediments to access included issue fees, claims thresholds and their impact on the 'just about managing' in recovering modest claims. PLE was important – particularly in relation to the digitisation of the courts – and they had looked at how practitioners might support that. We needed to know more about the extent of the unmet need for legal advice and why it exists.

Work had been done with the Bar Council and CILEX and on a Pro Bono Charter and Manual to help firms develop their pro bono work

(http://www.lawsociety.org.uk/support-services/practice-management/pro-bono/pro-bono-charter/). They included templates, though there was no suggestion there was a 'one size fits all' approach.

We needed to identify more of the people with an understanding of the issues around PLE to help the Law Society produce guidance on organising and funding such work, and to give practitioners a range of models. There was a substantial pro bono community with the enthusiasm to do more and the Society needed to increase the ways in which their expertise could be made available to achieve more.

CJC Task Group Updates. The CJC-sponsored strategy to support the development of a more user-centred civil justice system had included three immediate delivery priorities for 2016 – (1) an organised core web presence, (2) scaling-up early initial advice and (3) furthering public legal education. This session included updates in each of those three areas.

1. ***Matthew Smerdon***, Task Group (1) Chair and CEO Legal Education Foundation gave an update on websites and IT, with examples of work during the past year. The Citizen's Advice website (https://www.citizensadvice.org.uk/) showed the particular topics on which advice was being sought at any given time. The PSU analysed need by looking at the use of its services. Advice UK included a list of organisations and support services. Law for Life and CourtNav provided invaluable advice. Freshfields had created a virtual reception. The LIP Support Strategy was also building an online platform to connect people, build a community and share practice and engage with policy.
2. ***Rebecca Wilkie***, Task Group (2) Chair and Programme Director LIP Support Strategy said there were a number of initiatives on giving early generic and tailored early initial advice to young people using Android phones on topics such as zero hours contracts, and housing. Durham University was one of those now giving legal advice using Skype. Consideration needed to be given to situations where specialist follow up advice wasn't available; possible additional outlets, such as food banks, GP surgeries, schools, job centres, hospitals. All initiatives worked best when they worked closely with the advice sector.
3. ***Ruth Daniel***, Task Group (3) Chair and CEO Access to Justice Foundation talked about public legal education and ways of connecting young people with their rights and responsibilities, including work in schools and the work of the APPG on PLE.

Liz Richmond, Deputy Director, User Experience, HMCTS, and member of the LIP Engagement Group (LIPEG) then spoke about early work on HMCTS Reform and gave an example of user-led design. A group had been set up to look at civil, family and tribunal cases specifically including areas such as divorce, probate, civil money and how best to digitise those claims and provide support. A series of 'discovery' test prototypes had been undertaken looking at customer services, virtual hearings and the use of language and WiFi in courts. Civil money claims was one example, where the aim was to make the system simple, accurate and proportionate for claims up to £25,000, and potentially for more than that. 73 interviews had been held with users to try and understand the 'pain points' and to help build a way of enabling litigants to understand all of their options and the pros and cons of court action. The first (alpha)

version had focussed on the issue and response stages for those claims. The key test would be whether those who entered the system stuck with it.

The Rt. Hon. ***Sir Michael Briggs***, Deputy Head of Civil Justice spoke about developments during the last year on the CCSR. That was about lack of access – though not only to those without means. The judiciary was reviewing the recommendations of the report. A Civil Justice board and executive team had been put together to get a closer oversight of civil justice – part of the system that he had described as the 'Cinderella that laid the golden egg'. The online solutions court (OSC) was backed by Government, and design work had started. It was a new court that would have its own culture, language and rules. It was about understanding the nature of the dispute and early bespoke advice on the merits of a case by lawyers. The three-stage process (advice, ADR and judge-led resolution) would be embedded. He asked for volunteers to help with drafting the new rules. It was a matter of bringing together legal language and that of IT in a way that could be understood by a user.

Some key perspectives:

- **Unbundling**: ***Juliet Oliver***, General Counsel, Solicitors Regulation Authority

Juliet Oliver encouraged the use of unbundling. It meant that, while the solicitor was not on the court record as having conducted the litigation, they were able to help the litigant with defined tasks for a fixed fee or hourly rate. Legal Services Board Consumer Panel research had shown that lawyers were critical to the successful outcome of a case and that in most cases, without unbundling, the litigant would not have had any advice. It tended to save between a third and two thirds of the potential costs of a case. A Law Society Practice Note gave guidance, and had been extended to include all civil law as well as family.

It was important for the client to have the right skills however – both intellectual and emotional – to use unbundling successfully. Lawyers had the benefit of objectivity on a case. They were also often worried that the client didn't understand the limits of their help. Should lawyers be advised on the risks of going further than the agreement with the client? How could a lawyer ensure they were working with sufficient information, and on how to hand the case back to the client. Of course, there was always a risk of the solicitor being blamed later, and it becoming an SRA conduct issue. There should not be any barriers to the use of unbundling, however – simply a clear understanding of who's doing what and what information lawyer is basing her advice on. *Minkin* had given guidance on the use of limited retainers. The SRA would not second-guess the actions of the solicitor with hindsight, and planned to publish guidance on unbundling and case studies to help solicitors assess the risks.

Judicial update: Mrs Justice ***Sarah Asplin DBE***, Judge in Charge – Litigants in Person described the new suite of training modules for judges on managing cases in which there were one or more LIPs. She touched on the opportunity they offered for judges, so often hearing cases alone, to discuss their approach to such cases with their colleagues.

What it is like to be unrepresented: a perspective from the criminal courts: ***Penelope Gibbs***, Director, Transform Justice gave an illustration of the pressures faced by an unrepresented defendant in the Crown Court. 15-20% of defendants in the magistrates' court and 7% in the Crown Court were now appearing without the benefit of legal advice (on e.g. what they were charged with, what mitigation might mean), and the anecdotal evidence was that the numbers were increasing. There were differences between these cases and civil or family cases, with the attendant risks of a fine, imprisonment and criminal record. These people needed to be on the agenda as well.

Plenary discussion: "What is working? What are we learning? What are the strategic essentials on a 10-year horizon?"
Facilitated by Mr Justice ***Robin Knowles*** CBE. There were a number of contributions from the floor, with the following points being made:

- **Direct access to barristers** – almost half of barristers now offered this, though fewer were actively engaged in practice. Research was to be published in Spring 2017. As with unbundling, there needed to be absolute clarity around roles and around how much it would cost. Communication was key, as was simplicity of process and language. It should be consumer and not supply-side led.
- **The design task** was paramount in Stage 1 of the OSC. The system needed to be able to pinpoint the litigant's problem, and the evidence needed to prove it.
- **Inns of Court advocacy training**, teaching newly-qualified barristers how to use ordinary language when encountering LIPs, to help facilitate the process but also to encourage a greater volume of volunteers for pro bono work (including crime).
- The online case management system at the **Traffic Penalty Tribunal**. Those initially pursing a claim offline often ended up coming online. It was important not to forget that many young people can only operate digitally. They had found that people were more accepting of a decision if it was made in a number of weeks; delays only increased frustration and reluctance to accept the determination. The language was key – 'You've won your appeal' (not 'allowed' or 'dismissed'). There was a lot of law and Regulations in the area and the involvement of local government meant that the cases were not straightforward – simplifying language and process was key.
- Importance of **IT experts and lawyers** speaking to each other.
- The gap in the market was being filled by **paid McKenzie Friends**. Some were well qualified and taking on work on that basis for £40-50 an hour, whilst the work failed to meet a £300 minimum spend for a solicitors firm, with insurance, to be engaged. Might **MFs** fill a gap where a fully-qualified lawyer was not needed?
- The importance of the work of tribunals, in particular in **social security**. It wasn't just a matter of numbers but because there were particular issues when the dispute was with the State. Could we talk to local government about how they conduct litigation? 35% of LIPs were pursuing social welfare claims.
- **Unbundling**, where the solicitor had to assess the capability of the client, then their ability to use unbundled services. The client in *Minkin* had been very capable.
- The ability of an online solutions court could deal with **conflicts of fact**.
- The tools on the **AdviceNow website**, including for social security, where it turned the litigant's information into a letter starting an appeal process.
- The experience in **Northern Ireland**, and the number of people who chose not to have a lawyer, suggesting that lawyers needed to consider their customer care.
- The importance of avoiding court by improving the quality of **initial decision-making** by local authorities and other public bodies – social security cases being one

- Might **IT specialists** might also be well-placed to provide support to litigants.
- The statutory regulatory objective of **PLE**.
- Could training in non-profit law be made **mandatory**? New lawyers should be motivated and engaged.
- **Substantive law** also needed to be simplified, not just procedural law; 'legal thickets' were a challenge for Stage 1 of the OSC.
- LIPs are **not a homogenous group**; we needed to prioritise different types of service and support for different kinds of user.
- **Unbundling** had to be made possible for the High Street solicitor. Some litigants were willing and able to pay for unbundled support. There was a lack if understanding of how that worked.
- The ethos and structure of the **PSU** was built around providing support for civil and family claimants. Different skills would be required to help criminal defendants. Volunteers also needed to be trained on the digitalisation of cases. Should funding should be offered to the PSU to provide support for criminal defendants?
- **Wales** was a good example of support working in rural and post-industrial communities, or places less likely to have digital access. There, small firms needed to be encouraged to provide pro bono help.
- It wasn't about providing more and more **pro bono**, but about using it to reduce demand.
- The importance of **evaluating** what was working.
- The need to **cooperate and collaborate** and to put differences aside.
- The support of LAG for the **APPGs**.
- The fact that **family cases** often needed a judge to make a decision in an emotional set of circumstances. Those litigants also often had nothing to lose by going to court.
- The increase in **complex** cases.
- The need for **guidance**, for City law firms among others, on how to use the resources that were available. And a clearer picture of how to apply those that they had.
- The growth in ADR **internationally** and the provision of advice by community groups.
- The willingness of **in-house lawyers** to provide pro bono advice.
- **ADR** should be a strand woven into the 10 year strategy.
- In **Scotland**, a simplified process to lodge and track a case online, along with simplified rules, had been put in place for cases of less than £5,000. It had only been in place for a few days, so it was hard to assess its success.
- People struggled to pursue **Equality Act** cases.

Alex Chalk MP, Chair, All Party Parliamentary Group on Pro Bono then reflected briefly of the importance of work on the APPGs on pro bono, public legal education, legal aid and the rule of law.

Over the lunch break, ***Rebecca Wilkie, Clare Carter and Eleanor Playfair***, Programme Directors and Web Lead, LIP Support Strategy, introduced the proposed On-Line Platform for a continuing exchange of ideas and best practice, and signposting. This would help enable the updating and exchange of ideas achieved at the National Forum to continue year round.

Panel discussion: "How will the vulnerable access the new justice system?"
Chaired by ***Peter Farr***, Secretary, Civil Justice Council

- ***Katherine Barry***, Lead on Specialist Services, Citizens Advice
- HH Judge ***Graham Wood QC***, Designated Civil Judge, Liverpool Civil and Family Court
- ***Eddie Coppinger***, CEO, University House Legal Advice Centre
- ***Richard Leiper***, Chair, Advisory Board, the LIP Support Strategy
- ***Amy Heading***, Pro Bono Director, UK & Nordic, DLA Piper
- ***Clare Galloway***, Service Manager, On-Line Court Project, HMCTS

There were a number of contributions from the floor.

- The system needed to be for everyone, not just the vulnerable. Some people thought they could manage, but couldn't.
- Did the system itself create vulnerability – and how could we reduce that? The online system could increase dependence.
- The importance of drafting the new Rules for the OSC properly, and the role of the new Rule 3.1A of the CPR.
- Litigants should be encouraged not to start litigation.
- It wasn't a binary choice between offline and online – people could move between the two. The key to case management was identifying when to intervene.
- It was about helping the litigant to enunciate his/her claim and get evidence to other side.

Some key perspectives:

- **Introducing technology well**: Professor ***Richard Susskind OBE*** suggested that the OSC should be built around users, using innovation, not automation. How could the technology be exploited to meet needs in new ways? It should be built for the future, not now. It should also be built incrementally – starting modestly and simply, showing restraint and studying results.
- **Tribunals Digitisation**: Judge ***John Aitken***, Chamber President, Social Entitlement Chamber. His Chamber received 500,000 claims involving 400,000 LIPs each year. Their online method was the opposite of triage, and simply put the judge in touch with litigant from the start, to put evidence and let judge make a decision.
- **What is a Court?**: ***Alexandra Marks***, Chair, JUSTICE Working Group outlined the findings in the recent JUSTICE report.

Panel discussion: "Strategy on a 10 year horizon"
Chaired by ***Elisabeth Davies***

- ***Catherine Dixon***, CEO, The Law Society
- ***Christian Fleck***, Managing Director, LexisNexis UK
- ***Sidonie Kingsmill***, Director, Customer Engagement, HMCTS
- ***Kathryn Ludlow***, Global CSR Partner, Linklaters
- ***Amanda Finlay CBE***, Chair, Law for Life
- Rt Hon ***Sir Ernest Ryder***, Senior President of Tribunals
- Professor ***Stephen Mayson***, UCL

The panel referred back to a number of different points that had been made during the day, including those on:

- Plain language.
- The continuing need for lawyers.
- The advice sector was central.
- That pro bono provision needed guidance on where help was most needed.
- That litigants should come away with their confidence in the system reinforced and increased.
- That there was a need for innovation.
- That there was need for leadership.
- There was an important question whether the strategy should move forward incrementally and then join up, or look at the position to be reached in 10 years and decide how to reach it.

Closing Remarks and Next Steps

There were three final comments from the floor.
A plea for the IT systems already in place in courts to work better.
A Scandinavian perspective
A reassurance that the messages from the Forum were and would continue to be taken back to Government.

Mr Justice Knowles thanked everyone for their time and input. The CJC would be back in touch.

AD
8 December 2016