

Law for Life response to Civil Courts Structure Review: Interim report

February 2016

Introduction

Law for Life: the Foundation for Public Legal Education is an independent Charity that works to ensure that everyone has the knowledge, confidence and practical skills they need to secure access to justice.

We do this through community-based education and training, research and policy, and through the Advicenow website which provides easy-to-use information on rights and the law for the public. We also support other organisations around the world to help their users make sense of the law through our research, consultancy, and training.

Between 2014 and 2015 Law for Life served over 1.2 million users via its Advicenow service. Many of our users are litigants in person. We provided education and training for over 80 community groups to support their ability to cope with legal issues for high need service users. We also undertook research into the needs of litigants in person and population-wide analysis of legal capability and the implications for legal education and information services.

Since April 2015 Law for Life's Advicenow service has become the central online gateway for sources of assistance to litigants in person provided via the national Litigant in Person Support Strategy in partnership with the RCJ Advice Bureau, LawWorks, and the Personal Support Unit.

As a result, Law for Life is very interested in the creation of an online court and believes that it has insight and expertise which may be of interest to Lord Justice Briggs and the review process. We have limited our response to the scope of the interim review on areas of Law for Life's particular expertise.

General

- Law for Life believes that a key step is to set out what the purpose of the review process is, so that everyone involved is clear, and to help make sure that it is achieved. For example, is the purpose to achieve savings, increase access to justice, both or something else? The terms of reference do not address this.

Designed primarily for use by litigants in person

- We welcome Lord Justice Briggs's statement that 'the true distinguishing feature of the OC is that it would be the first court ever to be designed in this country, from start to finish, for use by litigants without lawyers'¹ and his recognition that litigants in person and the organisations that work closely with them should be involved in the development. Law for Life believes that they must be at the centre of the design process and should be involved in testing or piloting at an early stage.

¹ Para 6.5

- The on-line court should be designed with a behaviourally realistic view of how litigants complete forms (National Audit Office, 2003), and interact with the court system, rather than being based on an 'ideal litigant'.

Assessing the size of the class of court users, actual and potential, who will be challenged in the use of computers, and therefore need assistance, identifying the types of assistance required, and the ways and means of providing it.

The need for offline assistance and 'assisted digital'

- A number of factors impact on people's ability to use the internet successfully - these include the severity and nature of the legal problem, access to the internet from home, and their personal characteristics (Pleasence et al, 2015).²
- Over the last decade, the number of people turning to the internet for help with legal problems has increased from 4% to 20%. However, not everyone is able to make use of the internet for legal issues effectively.
- The ability to resolve legal problems is increased when there is access to Broadband internet from home. For those who have broadband internet their chances of resolving their problem increased from 24% to 33%. Therefore, the ability of mobile and tablet users to effectively use the online court must be carefully evaluated.
- Older people are substantially less likely to go online, with only 13% of over 75's using the internet. Law for Life piloted its online e-learning course with a local AgeUK IT class and learned many valuable lessons about how many older people use the internet and computers. We would highly recommend similar such consultations and engagement with older people's services during the development of the online court to ensure effective assistance is established at the earliest stage.
- Low levels of legal knowledge and legal capability are significant contributory factors to the effective use of online legal help. Around 60% of the population struggles to identify basic legal rights and institutional frameworks that help them to gain redress (such as a tribunal). Younger and older people are particularly hindered. These knowledge gaps will impact on people's ability to access online legal services. Integrated on and offline public legal education and information campaigns will be an important element of assistance. Well established national public legal education frameworks such as those developed in some Canadian provinces should be considered (Wintersteiger.L, 2015).³
- Additional personal characteristics such as low educational attainment, language barriers, mental and physical impairments will also need to be carefully considered. Stakeholders representing vulnerable court users and the users themselves must be at the centre of the development of assisted forms of help in the development proposals.

² <http://www.thelegaleducationfoundation.org/report/how-people-understand-and-interact-with-the-law>

³ <http://www.lawforlife.org.uk/wp-content/uploads/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf>

Public understanding of the law

A steadily growing number of studies into the public's understanding of the law point to substantial knowledge deficits. Recent research confirms that almost half of individuals that experience a legal problem describe their problem as 'bad luck' and 40% describe their problem as bureaucratic or social. 43% of people attempt to resolve their legal matters alone, and a further 15% turn to family and friends. At present only 6% of survey respondents in the most recent UK large-scale legal needs survey sought the help of a lawyer, a further 4% turned to an advice agency. (Pleasence et al, 2015).

Litigants in person require effective support to:

- identify the legal basis for taking action,
- identify what someone wants to achieve and whether those expectations are realistic in law,
- find out whether their potential opponent is worth suing,
- find and name the right defendant,
- identify and understand the relevant time limits,
- understand how to prove the facts of their case,
- understand the process and costs involved, and
- complete relevant forms

Litigants in person's information needs

Without high quality accessible information and assistance, litigants in person will be severely hindered in using the online court. The 2014 Law for Life report 'Meeting the information needs of litigants in person⁴' asked judges and litigants in person what LIPs need to know and be able to do. We found that:

Litigants in person find many aspects of filling in court forms challenging and need help with:

- Identifying, obtaining and correctly filling in the relevant form
- The language of the forms
- Understanding the purpose of the form and where it fits in the process
- Understanding legal concepts, such as grounds for appeal
- Adopting attitudes, such as emotional detachment or confidence
- The skills needed to fill in certain parts of court forms, such as writing particulars of claim, or a witness statement, as well as skills for dealing with the wider process, such a negotiation.

Litigants in person need effective information to help them:

- Understand the role of the court
- Understand and follow process
- Understand legal language
- Understand the law
- Apply the law to their case and evaluate it
- Identify, obtain and fill in the correct form

⁴ <http://www.lawforlife.org.uk/blog/meeting-the-information-needs-of-litigants-in-person/>

- Develop skills, for example, preparing, filing and serving documents, engaging and negotiating with the other side, and speaking succinctly and confidently in court
- Adopt attitudes, such as objectivity and confidence
- Know where to get more help and support.

The online court may reduce some of these barriers, for example as regards speaking succinctly and confidently in court. However, in order to reduce the numbers of people who need extra assistance to use the online court, it is vital that it is designed to achieve outcomes that meet litigants in person's needs, rather than that the emphasis is on what can be done with new technology. As Bill Gates said 'The first rule of any technology used in a business is that automation applied to an efficient operation will magnify the efficiency. The second is that automation applied to an inefficient operation will magnify the inefficiency.' Indeed much of the very important work of developing the online court will not be digital at all, for example, the new procedure rules, designing the content and layout of online forms, phrasing the triage questions and providing effective legal information.

'Commoditised online advice'

Law for Life welcomes the importance Lord Justice Briggs's report places on online help at every stage of the triage process.⁵ This online help will need to be of a high quality and in order to be effective and address the LiP needs set out earlier will have to go beyond the 'bare essentials of the relevant law' and basic legal principles. In 'Meeting the information needs of litigants in person' we made recommendations for types of information materials to be commissioned, including:

- Standalone 'What is / are...' overview guides which explain what a topic is, why it is important and address barriers and myths.
- Materials on developing and building attitudes to help you with your case (for example, objectivity and confidence, etc)
- 'How to...' guides to help LiPs develop useful skills (for example, find out about the law that applies to your case, etc)
- A glossary which LiPs can use alongside other legal information.

This type of public legal information is not a direct function of the legal profession - it addresses broader legal capability needs than gaps in legal knowledge. Moreover, this type of legal information does not lend itself as a commodity. Whilst upfront investment in good quality legal information can offer immense economies of scale, as Barendrecht points out, it can prove difficult to monetise, "As many webmasters and newspapers have experienced lately, it is difficult to make money from selling information. Markets for information goods are special. Information is a public good, meaning it is difficult to exclude people from using it once it is supplied."⁶ For this reason Law for Life believes that the term 'commoditised' is not ideal in this context.

⁵ Para 6.9

⁶ <http://www.lawforlife.org.uk/wp-content/uploads/2013/05/legal-aid-accessible-courts-or-legal-information-threestrategies-maurits-barendrecht-2010-281.pdf>

The effective provision of good quality legal information for LiPs:

It is important to consider the level of understanding in relation to different areas of law, and to consider the availability of quality controlled legal information. For example, knowledge of housing and employment law is slightly higher (around 70% and 60% of respondents respectively had some basic knowledge), reducing to 34% in the case of consumer law.

- As a corollary, the need to substantially improve the extent and quality of legal information available for those who would potentially have a claim or defence to a legal action is urgently needed. Law for Life makes further recommendations on how to go about this in Meeting the information needs of litigants in person⁷.
- Advicenow's 'top information picks' inclusion criteria set out key indicators of quality in the provision of public legal information⁸.
- Law for Life's Advicenow is a primary source of online help for those seeking information and advice about their legal position. However, at present, the lack of sustained levels of funding for information delivery to ensure resources are created and updated in view of new law or changes in law leaves many areas of law substantially underserved. Moreover the areas of law in which advice provision has reduced dramatically due to legal aid cuts are often those which are least served through online information.
- A carefully constructed analysis of gaps in public legal information would be very valuable in identifying priority help resources to be commissioned for the online court and delivered outside of it through LiP support projects and agencies.

The importance of public legal information being independent

Law for Life would very much welcome a commitment that public legal information provided through or signposted to via the online court should be produced independently and developed or tested with litigants in person. This is because:

- Independent information avoids conflicts of interest between the State and the rights of individuals.
- Individuals tend to have heightened levels of trust in information produced by independent organisations. Independence adds credibility and increases perceptions of fairness.
- Independent organisations tend to have a closer connection with and better understanding of the needs of user groups and their capabilities.

⁷ <http://www.lawforlife.org.uk/blog/meeting-the-information-needs-of-litigants-in-person/>

⁸ <http://www.advicenow.org.uk/articles/about-how-we-choose-top-picks>

Further information

Find out more about Law for Life
www.lawforlife.org.uk
www.advicenow.org.uk

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