



**Innovations in personally-delivered advice:  
surveying the landscape**

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**For further information, please contact:**

**Rachel Jones**

**Lawyer, Civil Justice**

JUSTICE, 59 Carter Lane, London EC4V 5AQ

Tel: 020 7329 5100 Fax: 020 7329 5055

E-mail: [admin@justice.org.uk](mailto:admin@justice.org.uk) Website: [www.justice.org.uk](http://www.justice.org.uk)

# Introduction

Most fundamentally, the question arises whether the sacrifice of ordinary and reasonable expenditure can properly be the price of access to one's rights.<sup>1</sup>

1. More than five years have passed since the Legal Aid, Sentencing and Punishment of Offenders Act ("LASPO") received Royal Assent. Among other changes, the Act imposed substantial cuts on civil legal aid – removing many areas of law from its scope entirely. JUSTICE "voiced significant opposition" to the Bill at the time, expressing concerns about the combined effects of LASPO and local authority cuts on access to legal advice.<sup>2</sup> In 2017, just 16% of recent users of legal services accessed them at no cost. A drop of eight percentage points since 2012, this use of pro bono services represents an "all-time low".<sup>3</sup>
2. This report aims to provide a brief assessment of some developments in the civil legal advice landscape since LASPO. Mindful that the "traditional" model – hiring qualified lawyers – is unavailable and/or unaffordable for huge sections of our society, the report discusses some innovative ways of offering free, or affordable, civil legal advice that is delivered to the client **in person**. The projects and practices discussed may offer scalable models for future development. The ultimate goal is to explore alternatives that are **effective, efficient and ethical**. In other words, personally-delivered services that can address unmet legal needs; that are sustainable and maximise resources; and that do not compromise on quality.
3. Of course the problem of an "advice deficit" predates LASPO. Professional legal advice about everyday civil matters (like debt) has long been prohibitively expensive for the ordinary citizen. In practice, a lack of legal advice creates a bar to accessing the justice system for many who simply do not know where to start.
4. The HMCTS Reform Programme<sup>4</sup> offers an unprecedented opportunity to reshape the justice system – including creating a more inquisitorial, user-friendly "Online Court" for lower-value civil money claims. In its 2015 report, *Delivering Justice in an Age of Austerity*, a JUSTICE Working Party called for such systemic changes.<sup>5</sup> The report also recommended a publicly-funded, integrated online and telephone platform to deliver quality legal advice to millions, run by a consortium of providers:

... [W]e believe that a highly developed and integrated digital and telephone platform should be able to deal with a significant proportion of the current demand for information and advice services. A comprehensive and accessible

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<sup>1</sup> *R (UNISON) v Lord Chancellor* [2017] UKSC 51, para 55.

<sup>2</sup> *Briefings - Legal Aid, Sentencing and Punishment of Offenders Bill* (2011-2012) <https://justice.org.uk/legal-aid-sentencing-and-punishment-of-offenders-bill/> accessed 31 January 2018.

<sup>3</sup> Legal Services Consumer Panel, *Tracker Survey* (July 2017), p.1 [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/How\\_consumers\\_are\\_choosing\\_Final\\_2017.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/How_consumers_are_choosing_Final_2017.pdf) accessed 31 January 2018.

<sup>4</sup> Lord Chancellor, Lord Chief Justice and Senior President of Tribunals, *Transforming our justice system* (September 2016) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553261/joint-vision-statement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf) accessed 31 January 2018.

<sup>5</sup> Available at <https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2015/04/JUSTICE-working-party-report-Delivering-Justice-in-an-Age-of-Austerity.pdf> accessed 31 January 2018.

digital platform is likely to free up the providers of personally delivered services to focus on those who require a greater level of assistance.<sup>6</sup>

5. Technological advancement brings exciting opportunities to radically improve how both justice and advice are delivered. JUSTICE currently has a Working Party looking at preventing digital exclusion, to ensure that *everyone* can benefit from a redesigned justice system.<sup>7</sup> However, as the above quotation recognises, legal advice delivered *in person* remains essential. This is particularly so for marginalised and vulnerable groups, for whom legal problems can escalate quickly.
6. Changes to funding for advice have been widely criticised. According to the Law Society's recent review:

Large numbers of people, including children and those on low incomes, are now excluded from whole areas of free or subsidised legal advice ... for the few who are still eligible, availability of legal aid is drying up, resulting in legal aid deserts where advice is either non-existent or minimal ... A lack of early legal advice can cause relatively minor problems to escalate, creating health, social and financial problems, and put pressure on public services.<sup>8</sup>

7. The current legal aid budget is around £1.6bn per year, or approximately one-quarter of the Ministry of Justice's budget.<sup>9</sup> Evidence from various sources suggests that early legal help may actually create net savings for the public purse.<sup>10</sup> According to the Low Commission in 2015, a review of the available evidence "concluded that social welfare legal aid not only pays for itself, but also makes a significant contribution to families/households, to local area economics, and also contributes to significant public savings".<sup>11</sup> In 2017 the Bach Commission called for a statutory "right to justice", entailing (among other reforms) the restoration of legal aid for early legal help for all of social welfare law.<sup>12</sup> Their proposed new individual right to reasonable (and affordable) legal assistance would be justiciable. In late 2017, then Lord

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<sup>6</sup> Ibid, para 3.6.

<sup>7</sup> <https://justice.org.uk/our-work/areas-of-work/assisted-digital/> accessed 31 January 2018.

<sup>8</sup> The Law Society of England and Wales, *Access Denied? LASPO four years on: A Law Society review* (June 2017), p. 2 <http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/> accessed 31 January 2018.

<sup>9</sup> The Brief, *Lord Chancellor backs 'triage' system for legal aid advice* (26 October 2017) <https://www.thetimesbrief.co.uk/users/39175-the-brief-team/posts/21633-lord-chancellor-backs-triage-system-for-legal-aid-advice> accessed 31 January 2018.

<sup>10</sup> For example, the National Association of CABs has said that "every £1 spent on welfare benefits advice would save £8.80 in the long run": C. Baksi, *Tide is turning on legal aid cuts* (24 October 2017) <https://www.thetimesbrief.co.uk/users/39765-catherine-baksi/posts/21528-tide-is-turning-on-legal-aid-cuts> accessed 31 January 2018. A literature review commissioned by the Low Commission made an economic case for publicly-funded legal advice: G. Cookson and F. Mold, *The business case for social welfare advice services* (Low Commission evidence review, July/August 2014) <https://www.lowcommission.org.uk/dyn/1405934416347/LowCommissionPullout.pdf> accessed 31 January 2018. See also research by the Fraser of Allander Institute indicating that "Citizens Advice Bureaux across Scotland contributed a total benefit to the common good in Scotland of £168.7 million in the financial year 2013/14": The Fraser of Allander Institute, *The continuing financial benefits of advice provision to the common good* (Citizens Advice Scotland, 2014) <https://www.cas.org.uk/publications/continuing-financial-benefits-advice-provision-common-good> accessed 31 January 2018.

<sup>11</sup> *Getting it Right in Social Welfare Law – The Low Commission's follow-up report* (March 2015) [https://www.lowcommission.org.uk/dyn/1435772523695/Getting\\_it\\_Right\\_Report\\_web.pdf](https://www.lowcommission.org.uk/dyn/1435772523695/Getting_it_Right_Report_web.pdf) accessed 31 January 2018.

<sup>12</sup> 'The Right to Justice - The final report of the Bach Commission' (September 2017) [http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission\\_Right-to-Justice-Report-WEB.pdf](http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf) accessed 31 January 2018. See also the Law Society of Scotland, *Social Return on Investment in Legal Aid* (November 2017) <https://www.lawscot.org.uk/research-and-policy/research/published-research/> accessed 31 January 2018.

Chancellor David Liddington indicated that an official governmental review of LASPO was imminent.<sup>13</sup>

8. Of course, free or affordable advice provision is not invariably publicly-funded. Not-for-profit organisations often benefit from private funding as well. In these financially straitened times, it is important that resources are focussed where they do the most good. In the course of researching this report, JUSTICE has spoken to a number of people with expertise around in-person advice – including those working at the coalface, providing legal advice to people who desperately need it. Despite the climate of austerity, a number of innovative and exciting advice projects are taking place across the country. In our view, funding and investment should be directed to forms of in-person advice that most benefit users, particularly vulnerable or disadvantaged users. This report focusses on three particular avenues of interest:
  - a. Client convenience: locating advice services in places that are readily accessible for those seeking legal advice;
  - b. Experiential learning: expanding university law clinics and “for credit” clinical courses for undergraduate and graduate law students;
  - c. Alternative business models: making private legal advice more affordable through methods such as unbundling.
9. Lastly, we are acutely aware of the methodological challenges of defining, much less measuring, whether in-person advice services are successful (or **effective**, **efficient** and **ethical**). Even more difficult is judging whether services help an individual secure a “just” or “fair” outcome (aims that are very difficult to define). In preparing this briefing, it became clear that the sector would greatly benefit from up-to-date and independent research into advice provision – especially measuring its impact. JUSTICE strongly supports investment in long-term, large-scale, robust studies (both qualitative and quantitative). We recognise that those working on the ground often lack the capacity to carry out such evaluations. As such, it is encouraging that the Legal Education Foundation is currently scoping the feasibility of a “What Works” centre.<sup>14</sup> This centre could gather and analyse information, support research, and assess the types of interventions that make legal advice **effective**. This would go some way to remedying the comparative dearth of empirical evidence in the legal advice sector.<sup>15</sup> Though there are a few examples of promising academic research (referred to later in this report), in the absence of much literature to draw from, our aims in surveying the landscape were modest – namely, to provide ideas for further investigation.

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<sup>13</sup> The Brief, *Lord Chancellor backs ‘triage’ system for legal aid advice* (26 October 2017) <https://www.thetimesbrief.co.uk/users/39175-the-brief-team/posts/21633-lord-chancellor-backs-triage-system-for-legal-aid-advice> accessed 31 January 2018.

<sup>14</sup> The LEF also told us that they will shortly be publishing a summary of lessons learned from their Future Advice programme: “Supporting Effective and Sustainable Advice Services – lessons from an evidence-based review of the Future Advice grants programme, 2011 to 2016” (*forthcoming*). This programme provided grants to advice providers between 2011 and 2017, enabling them to engage in restructuring and development to establish a more sustainable footing while at the same time sharing experiences and resources on the sustainability of their advice services within the legal advice sector more widely. Through the programme’s 66 grants (amounting to more than £3 million) legal advice providers were given the opportunity to establish new methods of legal service delivery and be creative with methods of accessing funding. The results of the programme were: increased partnerships formed, more funding accessed, and a greater reach in the legal service provided.

<sup>15</sup> In consultation the LEF pointed us to the Education Endowment Foundation as a good example of a body that generates evidence of what works, and challenges received wisdom. Among other things, the EEF produces a “Teaching and Learning Toolkit” based on the best available evidence. See “Our mission” (The Education Endowment Foundation, November 2016) <https://educationendowmentfoundation.org.uk/about/history/> accessed 31 January 2018. We note that the Citizens Advice website does have a whole section devoted to the impact of their service: <https://www.citizensadvice.org.uk/about-us/difference-we-make/impact-of-citizens-advice-service/> accessed 31 January 2018.

## Section 1: Prioritising user convenience

### The importance of outreach services

10. JUSTICE has consistently argued that the justice system should be designed around the needs of the lay user, not those of legal professionals.<sup>16</sup> The same is true of advice. In our view, the convenience of potential clients should be accorded the highest priority, including when measuring the success of advice projects.
11. A perennial problem for those in the advice sector is reaching the *most vulnerable* clients. By definition, people who successfully seek out face-to-face legal support are less needy than those who cannot. In some cases, bringing legal advice to the user is the only **effective** method; for example, the Prisoners' Advice Service offers one-to-one advice in outreach clinics that they hold in a number of prisons.<sup>17</sup>
12. There are many less extreme reasons why users may be excluded from free legal advice in practice. The compound effect of multiple disadvantages (including poverty, disability and illiteracy) surely plays its part. Those in subsistence-level employment, perhaps juggling several jobs and caring commitments, may simply lack the time to make an appointment at their local law centre or CAB. Others may not even be aware that they have a "legal" problem.

### Finding the right location for outreach services

13. Some free legal services are embedded within the communities they aim to serve – for example the new Greater Manchester Law Centre is based in Moss Side, an area of Manchester with "deep concentrations of family poverty".<sup>18</sup> Another promising way to improve the reach of free legal services is to put them within *existing* services for marginalised groups. It is safe to assume that advice situated in places already frequented by people with multiple and complex needs – such as doctor surgeries or job centres – is better at reaching vulnerable users. This is reinforced by an academic review of high-quality research studies, scrutinising the **effectiveness** of "outreach" legal services:

The review identified that quality outreach legal services can reach clients with complex needs and who had not sought assistance before ... However, to achieve these outcomes, outreach services need to be appropriately located and connected with target groups and their support agencies ... Our review indicates that **a defining feature of effective outreach legal services is that they are located in places that can be easily reached (e.g. by public transport) and are regularly used by target groups**. Outreach legal services included in our review were located in welfare agencies and homelessness services, community centres, doctors' surgeries ...<sup>19</sup>

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<sup>16</sup> See for example *What is a Court?* (2016), p. 9, 14, 52 <https://justice.org.uk/what-is-a-court/> accessed 31 January 2018. At page 9 JUSTICE emphasises that, for example, the "lay participants and members of the public - should be the focus of the HMCTS Reform Programme".

<sup>17</sup> See <http://www.prisonersadvice.org.uk/information/outreach/> accessed 31 January 2018.

<sup>18</sup> George Little, *Manchester City Council Report for Resolution – Manchester Family Poverty Strategy 2012-22* (13 September 2017) p. 22 <http://www.manchester.gov.uk/download/meetings/id/23491/9 - manchester family poverty strategy 2017-22>. At page 22, "Mapping poverty data", the author points to a correlation between these neighbourhoods and "relatively large numbers of residents claiming benefits long-term" as well as "low school attainment, challenges for neighbourhood management, and domestic violence".

<sup>19</sup> **[Emphasis added]**. S. Forell and A. Gray, *Outreach legal services to people with complex needs: what works? Justice Issues*, Law and Justice Foundation of New South Wales (October 2009) pp. 7-9.

14. The Money Advice Trust is alive to these issues. As an independent charity charged with expanding access to high-quality and affordable financial advice, their focus is an extremely common legal problem, debt. Their “Innovation Grants programme” seeks out “new and innovative ways to get debt advice to harder-to-reach groups”.<sup>20</sup> As well as directly helping those experiencing debt (e.g. through a national telephone helpline), the Trust funds creative “grassroots projects across the UK to deliver money and debt advice, often in less conventional ways and serving groups that can sometimes be harder to reach through traditional advice channels alone.”<sup>21</sup> There are two notable features of the Innovation Grants programme: firstly, it specifically seeks “projects displaying a ‘first of their kind’ approach” both in terms of *method* of delivering debt advice and the type of *users* targeted. Secondly, they intend to share findings from the projects – in this way, they will hopefully offer broader lessons to the debt advice sector as a whole.<sup>22</sup>
  
15. Partnerships with the private sector may be another sensible way of spotting those in legal need. An innovative CAB project with the Royal Bank of Scotland illustrates the point. For obvious reasons, RBS’ Debt Management Operations (DMO) Teams were well-positioned to identify clients in financial difficulty. In September 2015, the Team started a pilot project – referring their clients who may need legal advice on debt to the CAB. According to a report on the project:
 

Our pilot with CAB... has been a huge success. We know that over 63% of customers we have referred to CAB have never had prior advice from them. Of that 63%, 61% have either received the advice they needed immediately on the phone or set up a face to face meeting in their local CAB office. The feedback has been extremely positive ... The partnership has also shown us that our customers’ problems are not always financial in origin. A significant number of vulnerable customers are in their financial position due to mental illness.<sup>23</sup>
  
16. As of late 2016, the RBS/CAB partnership had been extended. This sort of project could be a win-win: not only did the collaboration help identify those who may not even be aware of a source of free legal advice, RBS also reported improvement in the processes within the DMO team. In terms of **effectiveness**, the project brought new users to the CAB. It may also be more **efficient** for CAB to partner with the private sector to spot unmet need, rather than (e.g.) publicise its services indiscriminately.
  
17. According to one consultee, some CABs also bring free legal help to the neediest with their own outreach efforts. Citizens Advice Manchester, for instance, have situated “pop-up” CAB services in the following locations (among others):

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[http://www.lawfoundation.net.au/ljf/site/articleIDs/02BEA0CB0CDE5F05CA257672001B3EA2/\\$file/JI12\\_Complex\\_Needs\\_exec\\_summary\\_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/02BEA0CB0CDE5F05CA257672001B3EA2/$file/JI12_Complex_Needs_exec_summary_web.pdf) accessed 31 January 2018. Although this is an Australian publication, of the eleven studies that met the authors’ criteria for inclusion, four were from the UK. The authors defined “outreach legal services as face to face legal assistance and advice services delivered away from the primary service/office, in places accessible to the target group”. See page 4, ‘Outcomes of interest’ for the authors’ definition of ‘effectiveness’.

<sup>20</sup> Jane Tully, Finding new and innovative ways to get debt advice to harder-to-reach groups (24 April 2017) <https://www.moneyadvicetrustblog.org/2017/04/24/finding-new-and-innovative-ways-to-get-debt-advice-to-harder-to-reach-groups/> accessed 31 January 2018.

<sup>21</sup> Ibid.

<sup>22</sup> Money Advice Trust, *Innovation Grants* (2017) <http://www.moneyadvicetrust.org/advice-agencies/grants/Pages/default.aspx> accessed 31 January 2018.

<sup>23</sup> Jasper Davy, *Innovative Citizens Advice Bureau partnership extended* (7 October 2016) <https://www.rbs.com/rbs/news/2016/10/innovative-citizens-advice-bureau-partnership-extended.html> accessed 31 January 2018.

- Sure Start centres
  - Libraries
  - Salford’s “Loaves and Fishes” (a Christian-run drop-in centre providing a range of services to homeless people, including basic necessities like food and shelter)<sup>24</sup>
18. The type of advice provided in these sessions varies – from “generalist”, one-off advice on wide-ranging areas (such as housing, debt and benefits), to “specialist” advice, where casework follows on from an initial appointment. Citizens Advice Manchester has also carried out home visits to clients who cannot use online services or attend venues for appointments.
  19. In a similar vein, the Hackney Community Law Centre has for the last several years provided two “pop-up” clinics to Hackney residents. Our consultee stressed the importance of “trusted places” to the success of their project: appointments with volunteer lawyers are scheduled in the Dalston CLR James Library. The Dalston Pop-up Advice Shop<sup>25</sup> is mutually beneficial – it provides an additional location for the Law Centre that is convenient, familiar and trustworthy for their users, and a flexible and worthwhile use of its space for the library.
  20. Another example highlighted in consultation is the Bromley by Bow Community Centre, “an innovative community organisation in east London...[that] supports families, young people and adults to learn new skills, improve health and wellbeing, find employment and develop the confidence to achieve goals and transform lives. The integrated services they offer include specialist legal advice on debt, employment law and immigration”.<sup>26</sup> Several consultees also highlighted Coventry Law Centre’s partnership with the City Council’s Troubled Families Team. This project seems especially **efficient** in that it aims to spot issues before legal problems even arise.<sup>27</sup>
  21. As was pointed out in consultation, the choice of location for advice depends on whom exactly the project aims to reach. If the service can only help with a particular legal *need*, albeit one that is quite common, then a location frequented by a wide range of users is likely to be more **effective**. An innovative example of this is a pro bono legal surgery in the Watford branch of Tesco Extra, run by a consultancy called “The Women’s Lawyer” (TWL).<sup>28</sup> After an initial one-off event revealed low awareness of legal matters, barrister Camilla Choudhury-Khawaja (director of TWL) runs sessions fortnightly at the supermarket. The service only helps with family law issues, and is advertised by flyers, but presumably has quite a broad reach.<sup>29</sup>

<sup>24</sup> Salford Loaves and Fishes, *Who are we?* (2014) <http://www.salfordloavesandfishes.org.uk/index.asp> accessed 31 January 2018.

<sup>25</sup> Hackney Community Law Centre, *Hackney Community Law Centre* (2017) <http://mailchi.mp/089bd2d935de/debt-consumer-pip-dla-and-esa-form-filling-services-open-again?e=d7a8ac12b7> accessed 31 January 2018.

<sup>26</sup> Amanda Finlay CBE, *Pro bono: in good health?* (November 2017) <https://www.counselmagazine.co.uk/articles/pro-bono-good-health> accessed 31 January 2018.

<sup>27</sup> Catherine Baksi, *Law centres: Picking up the pieces* (1 September 2014) <https://www.lawgazette.co.uk/features/law-centres-picking-up-the-pieces/5042728.article> accessed 31 January 2018.

<sup>28</sup> ‘Milk, Bread & Legal Advice? A fortnightly surgery in Tescos allows visitors to add free legal advice to their shopping list’ <http://www.lipnetwork.org.uk/topics/post/milk-bread-legal-advice-a-fortnightly-surgery-in-tescos> accessed 31 January 2018.

<sup>29</sup> The Women’s Lawyer, *Free Legal Advice Camilla Is Here Today! At Tesco Extra Watford* [https://gallery.mailchimp.com/07c32aad5d6da0dfbc377c88d/files/130c27ef-4bec-440d-a47f-35ce830f2ef9/The\\_Women\\_s\\_Lawyer\\_Tesco\\_Legal\\_Advice.pdf?qa=1.31201277.373741325.1480331415](https://gallery.mailchimp.com/07c32aad5d6da0dfbc377c88d/files/130c27ef-4bec-440d-a47f-35ce830f2ef9/The_Women_s_Lawyer_Tesco_Legal_Advice.pdf?qa=1.31201277.373741325.1480331415) accessed 31 January 2018.

22. Conversely, targeting the legal needs of a particular *group* through co-location might be more **efficient**. JUSTICE has encountered several examples of non-legal charities dedicated to certain specialised issues, supporting their particular clientele with legal problems that are common in that context. For example:

- The organisation “Together for Short Lives” has piloted provision of volunteer advice services within a children’s hospice in East London, the “Short Lives Legal Advice Service”.<sup>30</sup> Families are supported within a familiar setting and do not have to waste precious time travelling. Rather, help comes to them.
- The Trussell Trust, which oversees a network of 400 foodbanks nationwide, has a “More than Food” (MFS) programme – one element of which is referral for debt advice to free legal services.<sup>31</sup> The Trussell Trust’s website notes they “hope that foodbanks will be able to arrange for debt advice providers to be present in their foodbank centres”.<sup>32</sup> Interestingly, the Trussell Trust appears to be taking a commendably robust approach to evaluation – conducting a pilot study on the financial advice aspect of the programme from February to July 2015,<sup>33</sup> and commissioning external expertise to independently assess the outcomes of the MFS for clients.<sup>34</sup> Our consultee said that the pilot study, which placed debt advisors at foodbank centres, was very successful. The Trust is now working to place debt advisors at foodbank centres or at the very least, be contactable through foodbank centres, on a more permanent basis. However, they reported that these advisors do not necessarily have much spare capacity and that they lack the funding to pay these advisors. As a result, the Trust has begun looking at alternative ways of their clients accessing this advice, including digital methods and helplines.

23. Finally, an issue that frequently arose in consultation is the co-location of advice services in health settings. This has become fairly common in recent years. There is a detailed and extensive literature on such projects, though primarily from other jurisdictions.<sup>35</sup> For example, in Australia, a number of health justice partnerships aim to provide “better health and justice outcomes for vulnerable communities”.<sup>36</sup> These “co-location” partnerships include Blacktown Hospital and Legal Aid New South

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<sup>30</sup> LawWorks, *Pro Bono Opportunities with Together for Short Lives* <https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/pro-bono-opportunities/pro-bono-opportunities-together-short> accessed 31 January 2018.

<sup>31</sup> The Trussell Trust, *Money Life – Providing tools and courses to help tackle debt and financial difficulties* <https://www.trusselltrust.org/what-we-do/more-than-food/money-life/> accessed 31 January 2018.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> The Trussell Trust, *This is an exciting opportunity to place a key part in the evaluation of our More Than Food programme* <https://www.trusselltrust.org/evaluation-more-than-food-programme/> accessed 31 January 2018.

<sup>35</sup> See the following examples of literature in Australia regarding these projects: S. Ball, C. Wong and L. Curran, *Health-Justice Partnership Development Report 2016* (2016) <http://www.lsbic.vic.gov.au/documents/Report-Health-Justice-Partnership-Development-2016.PDF> accessed 31 January 2017; H. McDonald, S. Forell, Z. Wei and Sarah Williams, *Reaching in by joining-up* (September 2014) [http://www.lawfoundation.net.au/lif/site/articleIDs/598A65F467E763D0CA257DA8007E2B01/\\$file/SSI%20Report\\_Web.pdf](http://www.lawfoundation.net.au/lif/site/articleIDs/598A65F467E763D0CA257DA8007E2B01/$file/SSI%20Report_Web.pdf) accessed 31 January 2018; *Health Justice Partnerships in New South Wales – Position Paper* (October 2016) <https://nswmentalhealthcommission.com.au/sites/default/files/publication-documents/Position%20Paper%20-%20Health%20Justice%20Partnerships%20-%20Oct%202017%20-%20web.pdf> accessed 31 January 2018; Linda Gyorki, *Breaking down the silos: Overcoming the Practical and Ethical Barriers of Integrating Legal Assistance into a Healthcare Setting* (2013) [https://www.churchilltrust.com.au/media/fellows/Breaking\\_down\\_the\\_silos\\_L\\_Gyorki\\_2013.pdf](https://www.churchilltrust.com.au/media/fellows/Breaking_down_the_silos_L_Gyorki_2013.pdf) accessed 31 January 2018.

<sup>36</sup> Health Justice Australia, *About HJA* <https://www.healthjustice.org.au/> accessed 31 January 2018.

Wales,<sup>37</sup> Redfern Legal Centre and Sydney Local Health District;<sup>38</sup> and Royal Women’s Hospital Melbourne and Inner Melbourne Community Legal.<sup>39</sup>

24. In the UK too, there are many examples of outreach advice services in health settings.<sup>40</sup> Sometimes this occurs in partnership with other trusted organisations, such as the “Camden CAB Macmillan Welfare Benefits Service at the Royal Free Hospital”, which advises cancer patients and their families in the hospital’s Oncology outpatients department.<sup>41</sup> Reportedly, Macmillan also has a partnership with LawWorks offering cancer patients help with employment matters.<sup>42</sup>

### Assessing the impact of outreach services

25. UCL’s Centre for Access to Justice Clinic is of particular interest from the perspective of determining which innovative projects are **efficient, effective** and **ethical**. Their Integrated Legal Advice Clinic (UCL iLAC) not only uses GP referral to spot potential legal clients, it is also integrated into an ongoing research project to assess iLAC’s impact on health outcomes. Our consultee stressed that research is integral to their mission – learning lessons in the hope that the design of *all* such outreach services can be improved. We understand that UCL is also undertaking a “mapping” project of all health/justice partnerships in the UK.
26. Very recent research in the UK has suggested that co-locating advice services in a health care setting *can* lead to notable improvements in the mental health, income, housing circumstances and overall wellbeing of individuals who access the co-located services compared to those who do not.<sup>43</sup> A notable feature of this research is that it used a control group to ascertain impact.<sup>44</sup> The authors found that the local GP is a good venue for advice, for reasons including access, convenience and familiarity.<sup>45</sup> Such services can “reach people who would not otherwise have sought advice”.<sup>46</sup>
27. From the foregoing, it is possible to identify a few features that appear to make advice services **efficient** and **effective** – notably co-location with existing services, in trusted

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<sup>37</sup> NSW Government, *Western Sydney first: free legal service at Blacktown Hospital* (22 June 2016) <https://www.wslhd.health.nsw.gov.au/News/2016/Western-Sydney-first--free-legal-service-at-Blacktown-Hospital> accessed 31 January 2018.

<sup>38</sup> Redfern Legal Centre, *A holistic approach to wellbeing: The Health Justice Partnership* <https://rlc.org.au/holistic-approach-wellbeing-health-justice-partnership> accessed 31 January 2018.

<sup>39</sup> Inner Melbourne Community Legal, *Royal Women’s Hospital* <https://imcl.org.au/our-services/health-justice-partnerships/acting-on-the-warning-signs> accessed 31 January 2018.

<sup>40</sup> See for example, Advice Citizens Camden, *Advice Services in Health Settings* <http://www.camdencabservice.org.uk/get-advice/health-services/> accessed 31 January 2018; Citizens Advice Cornwall, *Getting Advice* <https://www.citizensadvicecornwall.org.uk/getting-advice/> accessed 31 January 2018; Citizens Advice Derbyshire Districts, *Advice in GP Surgeries* <http://www.ddcab.org.uk/gpproject.shtml> accessed 31 January 2018.

<sup>41</sup> Citizens Advice Camden, *Citizens Advice Camden Macmillan Welfare Benefits Service at the Royal Free Hospital* <http://www.camdencabservice.org.uk/get-advice/health-services/royal-free-hospital/> accessed 31 January 2018.

<sup>42</sup> Amanda Finlay CBE, *Pro bono: in good health?*, supra note 26.

<sup>43</sup> C. Woodhead, M. Khondoker, R. Lomas and R. Raine, *Impact of co-located welfare advice in healthcare setting: prospective quasi-experimental controlled study* (2017) 211(6) *The British Journal of Psychiatry* pp. 388, 392, 394.

<sup>44</sup> *Ibid.*, pp. 388, 388-389.

<sup>45</sup> *Ibid.*, pp. 388, 392.

<sup>46</sup> *Ibid.*, pp. 388, 393-394.

places, and in partnership with other organisations. However, as noted in the introduction, there is a lack of recent literature on what works and why. The research described in the preceding paragraph was drawn to our attention by a consultee; it was published in the *British Journal of Psychiatry*, not a legal journal. If such studies become commonplace, outreach services can only improve. In the future, a very useful function of a “What Works Centre” could be to bring together *all* existing research on evidence-based interventions. The Civil Justice Council’s LIP Network website, established last year, already provides a useful online platform for disseminating information about “innovation and progress in access to justice”.<sup>47</sup>

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<sup>47</sup> The Litigant in Person Network, *About Us* (2018) <http://www.lipnetwork.org.uk/about> accessed 31 January 2018.

## Section 2: Experiential learning<sup>48</sup>

### The twin functions of law clinics

28. Law clinics can be broadly defined as “learning environment[s] where students identify, research and apply knowledge in a setting which replicates, at least in part, the world where it is practised”.<sup>49</sup> Law clinics are expanding in numbers and in use throughout the United Kingdom. A 2014 Law Works survey concluded that “at least 70% of all law schools are now involved in pro bono and/or clinical activity.”<sup>50</sup> In addition, 85% of all law clinics between 2012 and 2015, “recorded an increase in demand for their services”<sup>51</sup> and 16 new law clinics were established throughout the UK between 2011 and 2015.<sup>52</sup> Over 50% reported offering general advice-only services, 20% offered general services beyond advice, 40% provided specialist advice-only services and over 30% provided specialist services beyond advice.<sup>53</sup>
29. Though far from a panacea (only 64% of law clinics were actually able to increase their annual caseload between 2012 and 2015),<sup>54</sup> the expanding presence of law clinics in the UK offers great promise from an access to justice perspective. It also offers unique challenges when viewed through the **ethical** lens in particular (i.e. is it desirable for vulnerable clients to be reliant on unqualified student advisers?)
30. While the educational goals of student law clinics merit attention in their own right,<sup>55</sup> JUSTICE is primarily interested in the benefits law clinics offer from an access to justice perspective. There may be tension between different priorities in law school clinics.<sup>56</sup> Where the balance lies is dependent on the law school, who leads the clinic, and the clinic’s aims. However, “while the aims of education or social justice are at different ends of the spectrum, various management techniques can mean that both objectives are met even if one might outweigh the other in terms of priority”.<sup>57</sup> In other

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<sup>48</sup> In our literature review, we found two relatively recent reports detailing the activity of student clinics around the country offering free legal assistance: O. Drummond and G. McKeever, *Access to Justice through University Law Clinics* [hereafter *Ulster University Report*] (2015) and V. Kemp, T. Munk and S. Gower, *Clinical Legal Education and Experiential Learning: Looking to the future* [hereafter *Manchester Report*] (2016). While drawing heavily on both reports, this brief section does not attempt to replicate the level of detail contained in them.

<sup>49</sup> J. Webb and C. Maugham (eds) *Teaching Lawyers’ Skills* (London, Butterworths) p. 138, available at <http://hummedia.manchester.ac.uk/schools/law/lac/Clinical-Legal-Education-Final-Report28.09.2016.pdf> accessed 31 January 2018.

<sup>50</sup> D. Carney, F. Dignan, R. Grimes, G. Kelly and R. Parker, *The LawWorks Law School Pro Bono and Clinical Report 2014*, p. 4 <https://www.lawworks.org.uk/sites/default/files/LawWorks-student-pro-bono-report%202014.pdf> accessed 31 January 2018.

<sup>51</sup> *Manchester Report*, p. 44.

<sup>52</sup> *Ibid*, p. 18.

<sup>53</sup> *Ibid*. An example of an additional service offered by some clinics beyond face-to-face advice is representation at court.

<sup>54</sup> *Ibid*, p. 44.

<sup>55</sup> See further: Cath Sylvester, *Through a glass darkly: Assessment of a real client, compulsory clinic in an undergraduate law programme* (2016) 23(1) *International Journal of Clinical Legal Education* p. 32, <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/489/887> accessed 31 January 2018; Rachel Dunn, *The Taxonomy of Clinics: The Realities and Risks of all Forms of Clinical Legal Education* (2016) 3(2) *The Asian Journal of Legal Education* p. 129 <http://journals.sagepub.com/doi/abs/10.1177/2322005816640339> accessed 31 January 2018.

<sup>56</sup> *Ulster University Report*, p. 13. For an argument that education remains the “prime” rationale of law clinics: Elaine Cambell, *Pro bono is great education for law students, but they shouldn’t fill gap left by legal aid cuts* (19 November 2014) <https://theconversation.com/pro-bono-is-great-education-for-law-students-but-they-shouldnt-fill-gap-left-by-legal-aid-cuts-34323> accessed 31 January 2018.

<sup>57</sup> *Manchester Report*, p. 26.

words, “these tensions are not necessarily irreconcilable”<sup>58</sup> in practice. A number of law clinics continue to expand valued legal services, despite the balancing act required.

31. Northumbria University’s well-established student law clinic is a good example of a primarily “educational” or student-centric approach. Northumbria Law School’s Student Law Office “drew on the teaching hospital model in medical education where no distinction is made between education and training”.<sup>59</sup> Such an approach requires a lower student-to-teacher ratio compared to other advice settings. We suggest that by ensuring that affordable advice is **ethical** as well as **effective** and **efficient**, law clinics can reconcile the best possible clinical education with maximising access to justice. A clinic where a single lawyer/teacher supervises numerous students *may* benefit clients superficially – time otherwise spent supervising students is freed up for clients, and fewer resources are spent on staff. On the other hand, it seems likely that clients are the ultimate beneficiaries of well-supervised students. This should result in higher-quality legal help, and lower incidence of errors.
32. Returning to the “social justice” benefit of law clinics, this can be summarised as follows:

Legal services provided for the public good or on a pro bono basis typically advance citizens’ rights and promote access to justice. Often, those who seek such services have nowhere else to turn for help. Pro bono university law clinics therefore provide invaluable services to their communities.<sup>60</sup>

### **Possibilities for high-quality research and partnerships**

33. As one of our consultees stressed, as well as educating future lawyers and helping those in need, student clinics offer exciting possibilities for high-quality research collaborations. Innovative projects in university settings could be uniquely beneficial at a systemic level – with student clinics serving as laboratories for good practice, and the **effectiveness** and **efficiency** of various advice models tested and measured by impartial researchers. The previous section discussed the example of the UCL Centre for Access to Justice Clinic, where an ongoing research project is built into a health/justice partnership. We believe that such research should be an integral part of *all* student advice offerings – law clinics are a fruitful source of data on matters like clients’ problems, preferences and personal characteristics.
34. An excellent example of research on unrepresented people comes from the United States: Harvard Law School’s Access to Justice Lab.<sup>61</sup> In its own words, it is “dedicated to transforming adjudicatory administration and engagement with the courts into evidence-based fields. The Lab will work to produce rigorous evidence of

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<sup>58</sup> *Ulster University Report*, p. 13.

<sup>59</sup> Cath Sylvester, *Through a glass darkly: Assessment of a real client, compulsory clinic in an undergraduate law programme*, (2016) 23(1) *International Journal of Clinical Legal Education* p. 32 <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/489/887> accessed 31 January 2018.

<sup>60</sup> P. Koroma and N. Antoniou, *Law students’ clinic experience: Is it all hype in relation to performance on black-letter law exams?* (2017) 24(1) *International Journal of Clinical Legal Education* 58, p. 59 <http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/580/1011> accessed 31 January 2018.

<sup>61</sup> Harvard Law School, *Access to Justice Lab* (2018) <https://clp.law.harvard.edu/clp-research/access-to-justice/> accessed 31 January 2018.

what works, by incorporating evidence-based thinking and learning from other fields, and by implementing creative interventions and randomized control field studies.”<sup>62</sup>

35. Among other projects, the Lab’s Debt Collection Default Study trialled sending different versions of self-help materials to defendants and tracked outcomes (and also tracked a control group who received no materials). They wanted to measure which (if any) letter increased defendant participation in their debt collection case, a type of civil case that is often decided “by default” in the defendant’s absence. This study used randomised control trials to measure an intervention’s **effectiveness** – the “gold star” of research.<sup>63</sup> The Lab expanded its operations in 2017. Per their website, as at December, they had more than 75 students helping, various projects “to test for efficacy as we seek to learn the best way to help pro se [self-represented] defendants”, and more than 6360 participants “enrolled in the Lab’s evaluations”.
36. Relevant to both the educative and justice goals, universities and students can also engage in fruitful partnerships with others (such as local law centres or law firms). Collaboration of various kinds (formal and informal) <sup>64</sup> is important to **effectiveness** but also, in our view, the **efficiency** (including sustainability) of clinical programmes. For example, the Greater Manchester Law Centre (referred to in section 1 above) has its own Legal Advocacy Support Project, where they recruit and train law students on a *single*, specialised legal matter. The students, “provide detailed case preparation and representation for appeal hearings for clients with ESA Work Capability Assessment appeals”.<sup>65</sup> Some university law clinics have also secured assistance from law firms – for example, Ulster University Law Clinic has the support of Allen & Overy (which provides three £5,500 scholarships per year).<sup>66</sup> Another example is the commitment of Osborne Clarke to Bristol University Law Clinic in the 2016-17 year, which was described as “invaluable support to our students”.<sup>67</sup>
37. According to the Manchester report, collaboration is valuable for law clinics in “enhancing casework supervision, expertise and capacity, and enabling clinics to extend their services”.<sup>68</sup> A notable example of the aforementioned benefits is the University’s own Dementia Law Clinic - the first of its kind.<sup>69</sup> It was set up to provide free legal advice for those living with dementia and their carers. Working in conjunction with the University of Manchester’s Legal Advice Centre, the Dementia Law Clinic has also collaborated with Dementia UK and the Alzheimer’s Society who refer cases to the holistic Dementia Law Clinic so that legal assistance can be provided as required in combination with “admiral nursing and communication”

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<sup>62</sup> Ibid.

<sup>63</sup> Harvard Law School, *Access to Justice Lab – The Problem of Default* (2018) <http://access2justice.wpengine.com/current-projects/signature-studies/default/> accessed 31 January 2018.

<sup>64</sup> *Manchester Report*, p. 19.

<sup>65</sup> Greater Manchester Law Centre, *Greater Manchester Law Centre Annual Report 2017* (2017) p. 14 [http://www.gmlaw.org.uk/wp-content/uploads/2017/12/GMLC-AGM-2017-Annual-Report\\_spreads.pdf](http://www.gmlaw.org.uk/wp-content/uploads/2017/12/GMLC-AGM-2017-Annual-Report_spreads.pdf) accessed 31 January 2018.

<sup>66</sup> Ulster University, *LLM Clinical Legal Education Annual report 2016-17* (2017) p. 5 [https://www.ulster.ac.uk/data/assets/pdf\\_file/0005/227489/2017-Annual-Report-final.pdf](https://www.ulster.ac.uk/data/assets/pdf_file/0005/227489/2017-Annual-Report-final.pdf) accessed 31 January 2018.

<sup>67</sup> University of Bristol, *Law Clinic Annual Review 2016-2017* (2017) p. 17 <http://www.bristol.ac.uk/media-library/sites/law/Law%20Clinic%20Annual%20Review%202016%202017.pdf> accessed 31 January 2018.

<sup>68</sup> *Manchester Report*, p. 19.

<sup>69</sup> Making Space, *Dementia Law Clinic* <http://www.makingspace.co.uk/our-services/dementia-law-clinic/> accessed 31 January 2018.

support, all of which is easily accessible.<sup>70</sup> The success of the clinic's collaborative efforts is evidenced through winning Best Pro Bono/Community Initiative at the 2017 Manchester Legal Awards<sup>71</sup> and its continued expansion.<sup>72</sup> The Attorney General commended the work of the Legal Advice Centre describing it as "a true commitment to increasing access to justice to those in need".<sup>73</sup>

### Challenges facing clinics

38. Despite some notable successes, student law clinics also suffer from some obvious drawbacks – including, but not limited to regulatory barriers,<sup>74</sup> variable student commitment<sup>75</sup> and resistance by traditional law schools.<sup>76</sup> Moreover, there is a clear trend of increasing demand for pro bono student assistance. For example, the Ulster University Report found that over the past three years:

- 35% of university clinics reported constant caseloads;
- 61% of university clinics reported an increase in their caseloads; and
- 84% of university clinics reported an increase in "the volume of enquiries and referrals to their clinics".<sup>77</sup>

39. Overall though, we perceive three key benefits of student law clinics – improving education, access to justice, and research. Perhaps the most important challenge is funding. While demand seems set only to increase, external financial support for law clinics continues to *decrease*. In 2014, it was found that "80% of clinics receive no external funding".<sup>78</sup> This is compared to 2010 where only 50% of law clinics received no external financial support.<sup>79</sup> For those that did continue to receive external funding in 2014 "the trend continues to be downward and significantly fewer law schools have received external funding year on year".<sup>80</sup>

40. Going forward then, it will be vital for law clinics to be as **efficient** as possible, and perhaps to diversify sources of funding. It appears that the majority of law clinics are

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<sup>70</sup> Ibid.; *Manchester Report*, p. 31.

<sup>71</sup> Manchester Legal Awards, *2017 Winners* (2017) <http://www.manchesterlegalawards.co.uk/winners-gallery/2016-winners.html> accessed 31 January 2018.

<sup>72</sup> The University of Manchester Legal Advice Centre, *Dementia Law Clinic expansion* (19 January 2018) <https://www.law.manchester.ac.uk/legal-advice-centre/news/latest-news/Headline-529139-en.htm> accessed 31 January 2018.

<sup>73</sup> Making Space, *Attorney General Jeremy Wright praises Dementia Law Clinic* (13 October 2016) <http://www.makingspace.co.uk/news-events/news/attorney-general-jeremy-wright-praises-dementia-law-clinic/> accessed 31 January 2018.

<sup>74</sup> *Manchester Report*, pp. 40-41.

<sup>75</sup> Student semesters mean law clinics can not necessarily stay open year-round. However, the University of Strathclyde found an inventive way around this problem – employing part-time students over the summer break to address the drop off in student availability: University of Strathclyde Law Clinic, *University of Strathclyde Law Clinic Annual Report 2016-2017* p. 25 <https://www.lawclinic.org.uk/publications/annual-reports/attachment/uslc1617-annual-report-final-3> accessed 31 January 2018.

<sup>76</sup> *Manchester Report*, p. 35.

<sup>77</sup> *Ulster University Report*, p. 18.

<sup>78</sup> *The LawWorks Law School Pro Bono and Clinical Report 2014*, supra note 50, p. 5.

<sup>79</sup> Ibid.

<sup>80</sup> *Manchester report* p. 18; Ibid, p. 38.

funded through the universities they work from.<sup>81</sup> However, some law clinics struggle to receive financial funding from their university – despite the fact that such programmes are attractive to students.<sup>82</sup> Research and teaching are key means through which universities access public funding. Clinics are not an obvious pathway to receiving funding yet are resource-intensive.<sup>83</sup> On the other hand, if as suggested above, university law clinics can marry high-quality research with social justice, this may increase avenues for funding in the future. Universities could play a vital function in improving the **effectiveness** of advice offerings in this country, by trialling different approaches and disseminating evidence-based suggestions.

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<sup>81</sup> *Ulster University Report*, p. 17.

<sup>82</sup> *Manchester Report*, p. 35.

<sup>83</sup> *Ulster University Report*, p. 18.

## Section 3: Alternative business models

41. In a 2017 report the Solicitors' Regulatory Authority ("SRA") noted:

People want affordable and relevant legal services. But their needs are not being met. Only one in ten people use a solicitor when they have a legal problem, despite the fact that one in two adults had a legal need in the last three years.<sup>84</sup>

42. There are many reforms afoot that, if implemented, could have a bearing on the affordability of private legal services (including, notably, Lord Justice Jackson's proposals on fixed recoverable costs).<sup>85</sup> This section canvasses just a few examples of practices that do not require legal change and, if they become widespread, hold promise in improving access to justice. They are:

- a. Unbundling;
- b. Alternative Business Structures ("ABS"); and
- c. Before-the-event Legal Expenses Insurance ("LEI").

### Unbundling

43. The term unbundling refers to "breaking legal work up into specific tasks and agreeing with the client who will do what".<sup>86</sup> As the SRA explains: "A client might be offered a variety of options, for example:

- a 'pay as you go' model, where they can get advice from a solicitor as and when needed
- 'menu pricing', where a solicitor deals with certain parts of a matter for a fixed fee."<sup>87</sup>

44. Breaking work into chunks has obvious attendant benefits, like making legal services cheaper and more widely available. Qualitative research in 2015<sup>88</sup> showed that some users had found unbundling empowering – "it offered them some control over the pace and direction of dealing with matters".<sup>89</sup> Some of the interviewees would "have been unable to afford the legal support they felt they needed" without unbundling.<sup>90</sup> Judges interviewed for the research thought that unrepresented users might particularly benefit from *early* advice and assistance, especially in civil cases.

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<sup>84</sup> SRA, *Improving access – tackling unmet legal needs* (June 2017) p. 4 <https://www.sra.org.uk/risk/resources/legal-needs.page> accessed 31 January 2018.

<sup>85</sup> Lord Justice Jackson, *Review of Civil Litigation Costs: Supplemental Report Fixed Recoverable Costs* (July 2017) <https://www.judiciary.gov.uk/wp-content/uploads/2017/07/fixed-recoverable-costs-supplemental-report-online-2-1.pdf> accessed 31 January 2018.

<sup>86</sup> *Improving access – tackling unmet legal needs*, supra note 84, p. 11.

<sup>87</sup> *Ibid.*

<sup>88</sup> Ipsos MORI Social Research Institute, *Qualitative research exploring experiences and perceptions of unbundled legal services* (August 2015)

[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/Unbundling\\_2015\\_000.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Unbundling_2015_000.pdf) accessed 31 January 2018.

<sup>89</sup> *Ibid.*, pp. 18-19.

<sup>90</sup> *Ibid.*, p. 20.

However, they questioned the value of unbundled services for *small* claims, for which “it was perhaps only in respect of higher value claims that litigants in person would find it cost-effective to obtain paid for advice and assistance”.<sup>91</sup>

45. There are also clear risks – a client’s vulnerability may not be apparent, and people may misunderstand the extent of the work taken on by their lawyer. The challenge is to promote and expand unbundled legal services, which appear to **effectively** meet *certain* users’ needs, while guarding against **unethical** practices (e.g. unscrupulous or unregulated advisers promising more than they can deliver).
46. Unbundling may be facilitated by fixed fee arrangements. Hourly rates may be less than clear for consumers, and Lord Justice Jackson has criticised the system, saying it “rewards inefficiency”.<sup>92</sup> The Bar Standards Board recently recommended that barristers publish transparent fee structures – although the Bar Council has voiced “significant concerns” over the proposal.<sup>93</sup> It seems likely that even where a piece of legal help *would* be within an individual’s means, they are prevented from accessing such help by lack of transparent, comprehensible information about costs.

### Alternative Business Structures (“ABS”)

47. ABS were brought in by the Legal Services Act 2007 and allow non-lawyers to participate in law practices – enabling “one-stop shops” where a consumer can access various professional services under one roof. A report examining ABS concluded they *could* meet unserved legal needs “more **efficiently** ... by allowing clients to better access existing legal services together with other needed services such as, for example, social work and psychological services.”<sup>94</sup> These mixed practices could offer “innovation, the development of more comprehensive and client-tailored services, and a new means of addressing access to justice”.<sup>95</sup>
48. Importantly for our purposes, ABS have also been used innovatively by not-for-profit organisations. For example:
  - In 2013, the Community Advice and Law Service (CALs), a charity in Leicester, opened a separate entity called Castle Park Solicitors. They were the first non-profit organisation to found an ABS.<sup>96</sup> This “ground breaking enterprise” can

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<sup>91</sup> Ibid., pp. 63-64.

<sup>92</sup> Lord Justice Jackson, *IPA Annual Lecture: Fixed costs – The time has come* (January 2016) p. 2 <https://www.judiciary.gov.uk/wp-content/uploads/2016/01/fixedcostslecture-1.pdf> accessed 31 January 2018.

<sup>93</sup> Bar Council, *Bar Council response to the Bar Standards Board consultation paper on transparency standards* (January 2018) p. 1 [http://www.barcouncil.org.uk/media/627769/bar\\_council\\_response\\_to\\_the\\_bar\\_standards\\_board\\_consultation\\_paper\\_on\\_transparency\\_standards.pdf](http://www.barcouncil.org.uk/media/627769/bar_council_response_to_the_bar_standards_board_consultation_paper_on_transparency_standards.pdf) accessed 31 January 2018.

<sup>94</sup> **[Emphasis added]** Professional Regulation Committee, The Law Society of Upper Canada, *Report to Convocation* (September 2015) p. 118

[http://www.lsuc.on.ca/uploadedFiles/For\\_the\\_Public/About\\_the\\_Law\\_Society/Convocation\\_Decisions/2015/convocation-september-2015-prc.pdf](http://www.lsuc.on.ca/uploadedFiles/For_the_Public/About_the_Law_Society/Convocation_Decisions/2015/convocation-september-2015-prc.pdf) accessed 31 January 2018.

<sup>95</sup> Ibid., p. 116.

<sup>96</sup> Neil Rose, *Exclusive: legal advice charity becomes first not-for-profit to set up an ABS* (26 April 2013) <https://www.legalfutures.co.uk/latest-news/exclusive-legal-advice-charity-becomes-first-not-for-profit-set-abs> accessed 31 January 2018.

charge lower fees and its profits contribute to the running of CALS' free services.<sup>97</sup>

- In 2014, the Communication Workers Union (CWU) set up an ABS, UnionLine. Its co-founder describes it as a “not-for-profit law firm”, and contrasted its aim (access to justice) with traditional law firms' preoccupation with profit.<sup>98</sup>
- 2016 saw the launch of Affordable Justice, “a social enterprise company limited by guarantee, registered with the Solicitor’s Regulation Authority and a registered charity” which is located at the Preston Road Women’s Centre in Hull.<sup>99</sup> Women can access legal advice on a number of issues whilst at the same time access “accredited training courses, a specialist domestic violence and abuse service, sexual health services, outreach support, nursery provision, a housing service, a volunteer programme and a young women’s participation support”.<sup>100</sup> The hourly rate of Affordable Justice is approximately one third of the typical cost of legal proceedings. The enterprise works to support payment options include payment plans, instalments and linking with local credit unions.<sup>101</sup>
- A related development is the use of a “Community Interest Company” structure.<sup>102</sup> Citizens Advice Gateshead, one of the largest community law advice centres in England,<sup>103</sup> established “Gateshead Enterprises” to address the impact of LASPO and ensure the sustainability of its legal advice services. The idea was both “to enable the continuing provision of specialist employment law advice” and to bring in extra income through charging fees.<sup>104</sup> Through Gateshead Enterprises' Job Law, “the first consultation is free and any further advice required is on a ‘pay as you go’ basis”; the chargeable advice is half-price; and any profits are channelled directly back into Citizens Advice Gateshead to ensure it can continue its work.<sup>105</sup>

49. An interesting example of an apparently successful non-profit ABS is Nottingham Trent University (NTU)'s Student Law Clinic, which in 2015 successfully applied for Alternative Business Structure status and since then has been recognised as a “teaching law firm”.<sup>106</sup> ABS status provides the Clinic with the ability to charge fees,

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<sup>97</sup> Castle Park Solicitors, *About us* (2016) <http://www.castleparksolicitors.co.uk/about-us.html> accessed 31 January 2018.

<sup>98</sup> Nick Hilborne, *Lawyers more concerned with access to profit than justice, says union boss* (24 November 2017) <https://www.legalfutures.co.uk/latest-news/lawyers-concerned-access-profit-justice-says-union-boss> accessed 31 January 2018.

<sup>99</sup> Lisa Hilder, *Affordable Justice – an alternative, social enterprise model for legal advice provision* <http://www.lipnetwork.org.uk/topics/post/affordable-justice> accessed 31 January 2018; *Affordable Justice* <http://www.affordablejustice.co.uk/> accessed 31 January 2018.

<sup>100</sup> Lisa Hilder, *Affordable Justice – an alternative, social enterprise model for legal advice provision*, supra note 99.

<sup>101</sup> Ibid.

<sup>102</sup> Introduced by the Companies (Audit, Investigations and Community Enterprise) Act 2004 and subsequent Regulations in 2005, the Community Interest Company (CIC) model reportedly offers several benefits over becoming a charity, notably less stringent regulation: see <https://www.communitycompanies.co.uk/community-interest-companies> accessed 31 January 2018.

<sup>103</sup> Vikkie Wilkinson, *Gateshead Enterprises – the Community Interest Company funding and supporting Citizens Advice Gateshead* <http://www.lipnetwork.org.uk/topics/post-gateshead-enterprises> accessed 31 January 2018.

<sup>104</sup> Ibid.

<sup>105</sup> Gateshead Enterprises, *Job Law* (2014) <http://www.cabenterprises.org.uk/job-law/> accessed 19 February 2018.

<sup>106</sup> Nottingham Trent University, *Nottingham Law School granted ABS licence* (12 October 2015) <https://www.ntu.ac.uk/about-us/news/news-articles/2015/10/nottingham-law-school-granted-abs-licence> accessed 31 January 2018.

though this does not mean that everyone seeking advice will be charged.<sup>107</sup> For example, “they do not intend to charge for legal advice to clients on welfare benefits or on low incomes but for services to middle-income clients and those involved in small and medium-sized enterprises (SMEs) where there is currently unmet needs”.<sup>108</sup> The idea was that fees would be small, so “the majority of funding will continue to come from the University”.<sup>109</sup> In reality then, fees may not make a substantial contribution to the clinic’s sustainability. The clinic was shortlisted for the Law Society’s Excellence in Pro Bono Award in October 2016<sup>110</sup> and won the Law Works Award for Best Contribution by a Law School and the Access to Justice Foundation Award 2016.<sup>111</sup>

## Legal Expenses Insurance

50. In November 2017, the Working Group of the Civil Justice Council produced a comprehensive review of “before the event” (BTE) legal expenses insurance, which it defined as:

Insurance which the insured has already purchased prior to the prospect of any legal claim arising [that] may cover some or all of the insured’s potential costs liabilities in any subsequent proceedings including own-side and adverse costs; and which costs are not insured under any policy of insurance. For cover to be available in most cases, there will be a requirement that sufficient prospects of prosecuting or defending the claim exists.<sup>112</sup>

51. The point of the review was to examine how such insurance may further access to justice. The Working Group (comprising a range of experts, including insurers) made a number of observations. They included:
- BTE insurance can provide legal help to many (e.g. via a helpline) and is often included in other insurance products (e.g. home/contents insurance) – but there are “low levels of awareness of helplines and other services”.<sup>113</sup>
  - “There are common areas of exclusion from scope”, *but* “the scope of a typical BTE insurance policy is broader than many consumers would imagine – for example, family members are typically covered”.<sup>114</sup>
  - Virtually all insurers apply a merits threshold to BTE claims (a balance-of-probabilities test).<sup>115</sup>

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<sup>107</sup> *Manchester Report*, p. 27.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> Nottingham Law School, *Legal Advice Centre Annual Report 2016-2017* (2107) p. 9 [https://www4.ntu.ac.uk/legal\\_advice\\_centre/images/Document%20uploads/195905.pdf](https://www4.ntu.ac.uk/legal_advice_centre/images/Document%20uploads/195905.pdf) accessed 31 January 2018.

<sup>111</sup> Nottingham Trent University Legal Advice Centre, *Double award win for Legal Advice Centre* [https://www4.ntu.ac.uk/legal\\_advice\\_centre/news-and-events/186403.html](https://www4.ntu.ac.uk/legal_advice_centre/news-and-events/186403.html) accessed 31 January 2018.

<sup>112</sup> Civil Justice Council, *The Law and Practicalities of Before-the-Event (BTE) Insurance: An Information Study* (November 2017) <https://www.judiciary.gov.uk/wp-content/uploads/2017/11/cjc-bte-report.pdf> accessed 31 January 2018.

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

52. Of particular interest is the Working Group's conclusion that there are "particular challenges in making BTE insurance available to those who are in the lower socio-economic demographic" (BTE insurance may be a common add-on for certain insurance policies, but those on lower incomes may not purchase insurance at all).<sup>116</sup> On the other hand, "the assistance provided by BTE insurance can ease the workload for those, in the advice sector, who are thus able to concentrate on helping those in need and who may be least able to afford legal advice".<sup>117</sup>
53. The Working Group did not reach a united view on some issues. For example, the prospects of housing associations purchasing "block" insurance to cover their users' common legal issues.<sup>118</sup> They were also divided on whether Lord Justice Jackson's proposed reforms to fixed recoverable costs would have a positive impact on BTE insurance.<sup>119</sup>
54. A simple step recommended by the group is increasing awareness of BTE insurance.<sup>120</sup> If more people avail themselves of their existing coverage, this serves two goals: ensuring a sustainable pro bono advice sector, and furthering access to justice for those of ordinary means. To this end, the University House Advice Centre is helping their users to access legal expenses insurance to fund tribunal appeals.<sup>121</sup>
55. Increasingly, those regulating the legal professions are recognising that access to legal services is hampered by a lack of information and, of course, cost. The Competition and Markets Authority has criticised the competitiveness of the legal services market.<sup>122</sup> There is, of course, a tension between improving access to justice for otherwise-excluded clients (**effectiveness**), maintaining a sustainable practice (**efficiency**), and not compromising on equality (**ethical**). Nonetheless, to expand the market for their services *and* improve access to justice, private sector legal providers should strive to be as transparent and affordable as possible.

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<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid, pp. 146-149.

<sup>120</sup> *The Law and Practicalities of Before-the-Event (BTE) Insurance: An Information Study*, supra note 112, pp. 134-140.

<sup>121</sup> Legal Advice Centre University House, *Legal Expense Insurance* (2015) <http://www.legaladvicecentre.org.uk/legalexpensesinsurance.html> accessed 31 January 2018.

<sup>122</sup> *Improving access – tackling unmet legal needs*, supra note 84.

## Conclusion

56. To conclude, there are two main lessons from this brief review. The first is that despite difficult circumstances, there have been some promising developments for in-person advice. The future sustainability of some of the innovative projects we identified seems uncertain, however. Among numerous indices that the sector is struggling, one consultee told us that 11 Law Centres shut due to financial pressures in the 18 months following LASPO. Further, in 2009 to 2015 almost 100 CABs closed or merged with others.<sup>123</sup> Funding that provided a stopgap for some advice providers may soon dry up. As JUSTICE's Working Party argued in its 2015 report,<sup>124</sup> online and telephone legal advice offerings are increasingly an essential source of legal help for the vast majority of ordinary users. The CAB website, for example, had an astonishing **43 million visits** from 2016 to 2017, compared to under 3 million visiting their local CAB.<sup>125</sup> As our 2015 report also made clear, if digital "self-servers" can get high-quality advice and information online, personally-delivered support can be freed up for the most vulnerable users.
57. Secondly, it is a useful methodological framework, at least as a starting point, to identify projects and practices that *seem effective, efficient and ethical*. In our view, the developments reviewed seem likely to get legal help to more people, maximise resources, and maintain client care. Undoubtedly though, much more in-depth investigation is needed. Coupling this three-pronged framework with comprehensive empirical analysis could yield interesting recommendations for the sector. However, this would require a substantial time investment and much more data. It seems to us that this is a fruitful field for future research.

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<sup>123</sup> Gillian Guy of Citizens Advice on moving with the times (2 March 2015) <https://www.thirdsector.co.uk/gillian-guy-citizens-advice-moving-times/management/article/1334855> accessed 31 January 2018.

<sup>124</sup> *Transforming our justice system*, supra note 4.

<sup>125</sup> Citizens' Advice, *Annual Report 2016/17* <https://www.citizensadvice.org.uk/Global/CitizensAdvice/citizens%20advice%20annual%20report.pdf> accessed 19 February 2018.

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