Introduction

Law for Life welcomes the inquiry into the HMCTS court reform programme at this key juncture. Law for Life has been able to meet regularly with HMCTS teams as a member of the Litigant in Person Engagement Group (LIPEG) and to attend a number of public engagement events. This has led to fruitful dialogue on specific elements of reform, including user accessibility. However we share the concerns raised by the Public Accounts Committee that the pace and scale of change, alongside the pressure to deliver cost savings risk undermining the objective of improving the court system for the benefit of all citizens, and as a corollary, risk undermining access to justice and the rule of law.

Executive Summary:

- In particular, we are concerned that the redesign of the system fails to take adequate account of the very low levels of legal knowledge and skills in the UK population and how this inhibits access to justice.
- The barriers these low levels of knowledge and skills create traverse the continuum of legal actions, from being unaware that a claim in law exists in the first place, to assessing whether a settlement offer is fair.
- Far too little has been done to implement Briggs L.J. recommendation in the Civil Court Restructure Review to assess how actual and potential court users’ varying information and education needs will be met to ensure appropriate and equal access to the online court throughout this broad legal continuum.
- Court users need to understand the law and legal processes in order to ensure adequate participation and equality of arms when making use of the online court.
- While a justice system where cases are resolved online presents challenges and barriers for some, we believe the digital realm also provides many opportunities to present content in helpful, accessible and educative ways. For some, the digital environment may prove less intimidating and offer benefits in organising and administering documentation.
- But this necessitates a substantial overhaul of legal information and education for the general public in addition to targeted support for vulnerable or disadvantaged court
users. This also requires the availability of legal advice for more complex and high risk aspects of the online court.

**About Law for Life**

Law for Life is an award-winning\(^1\) independent information and education charity that works to ensure that everyone has the knowledge, confidence and practical skills they need to secure access to justice. We serve over a million people in England and Wales via our Advicenow\(^2\) service, through online provision of multimedia legal information and learning tools. Our curated information service brings together the best of the web including 2000 pieces of public legal information from over 450 UK websites.

We serve a substantial number of vulnerable users and users with protected characteristics. 46% of our users identify as disabled, 48% have a household income of below £1,100 per month after tax. We help a significant number of LiPs or potential LiPs (accounting for 75% of all of our survey respondents). Our digital tools for overturning welfare benefit decisions have produced 17,000 personalised letters this year. The online service is often used by intermediaries and helpers that might be advisers, but also community workers and family members. 10% of our survey respondents say they are using Advicenow to help someone else to deal with a legal problem but are not an adviser and a further 7% are advisers.

Law for Life deliver community-based education and training aimed at building knowledge, skills and confidence in dealing with legal matters. We often work through trusted helpers in community settings, be they migrant and asylum groups, youth and social workers or faith leaders. This work recognises that some groups will be excluded from accessing legal help due to lack of awareness of rights and remedies.

Since April 2015 Law for Life’s Advicenow service has become the central online portal for sources of assistance to LiPs, provided via the national Litigant in Person Support Strategy in partnership with RCJ Citizens Advice, LawWorks, and the Personal Support Unit. Law for Life also contributes regularly to the HMCTS Litigant in Person Engagement Group.

**General observations and evidence**

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\(^1\) Winner Legal Aid Lawyer of the year award: Access to Justice through IT 2017, Plain English Campaign winner 2009, 2017, British Interactive Media Award 2018: Shortlist Product design and conscience category

\(^2\) [www.advicenow.org.uk](http://www.advicenow.org.uk)
Analysis of the national UK Civil and Social Justice Panel Surveys\(^3\) reveals on-going significant gaps in legal knowledge and capability amongst the UK population, creating substantial barriers to access to justice and undermining the rule of law. The unevenly distributed profiles of legal capability in the population correlate with other aspects of personal capability, and compound underlying disadvantage. The way in which people come to understand the law and legal processes is framed by pre-existing beliefs and attitudes and confidence or lack of it impacts on their ability to act effectively.

Both population wide and targeted legal needs analysis point to the lack of reach of traditional legal services into the lives of people who experience common and sometimes complex legal issues. The difficulties and sometimes reticence to seek legal advice suggests a concomitant need to reshape justice policies to be more responsive and proactive in providing multidimensional forms of assistance in a timely and targeted way.

Most people involved in civil law proceedings in England and Wales are not eligible for legal aid, cannot afford to pay for legal services, and therefore have to represent themselves. Until recently, most information about going to court assumed that litigants had a lawyer.\(^4\) LiPs struggle to participate effectively in proceedings and therefore do not experience equality of arms (Mckeever, 2016).

The raft of cuts implemented since 2013 have eviscerated swathes of the advice sector, and have had an enormous impact on the informational ecosystem that is available to the public – for example, the primary source of funding for the Advicenow legal service disappeared with the closure of the Legal Services Commission. Other organisations that offered good and up-to-date information on immigration and asylum matters, such as the Immigration Advisory

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\(^3\) The Civil and Social Justice Panel Survey (CSJPS) is a nationally representative survey of people’s experience of, and response to, problems with a legal dimension and involved face to-face interviews with 5,113 respondents aged 16 and over in their own homes across two waves, the first in 2010, the second in 2012. As a consequence of closure of the Legal Services Research Centre following LASPO 2012, the independent research centre of the Legal Services Commission was closed. The loss of research capacity represents a significant loss to the evidence based needed to ensure effective use and allocation of justice expenditure and justice reform.

Service, have now closed, leaving complex and fast-changing areas of law with very little in the way of good information for the public.

**Understanding legal rights, entitlements and duties.**

The substantial legal knowledge deficit in the UK means that most people lack effective knowledge of legal rights, and many people misinterpret or misunderstand their rights. Overall, younger\(^5\) and older people, lower skilled workers, and migrants appear to have less knowledge than other groups.

This means that many people will not recognise when their matter entitles them to take legal action, or indeed to understand that they can potentially defend a claim when it is received. Only 11% of people identify legal problems accurately. Characterizing a problem as legal more than doubles the likelihood of an individual seeking legal help, and substantially increases the likelihood of getting some kind of help rather than handling the issue alone (Pleasence, 2016).

Most people handle their legal problems alone or with the help of family or friends. On average, only 6% of people use a lawyer for their legal problems, a further 4% use advice agencies. Awareness of legal services is low. Internet use is on the rise, around 25% of people use the Internet to solve legal problems, however not everyone is able to use online provision well.\(^6\) A concerted strategy is required to embed on and offline assistance as a pre-requisite to meeting the needs of the majority of the population. Similar challenges to meet legal needs arise across jurisdictions and much can be learned from other justice systems. Canadian evidence suggests that LiPs want:

- Simple court forms.
- Access to accurate, trustworthy information resources.
- Hand holding and emotional support.

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• Someone to go over draft documents with them to make sure they’re correct.
• Help strategising – working out what’s the best thing to do next.
• Help to get the other side to engage in settling the dispute.
• An orientation seminar at court to make them feel welcome and to reassure them that the court is expecting them (Macfarlane, 2014).

Research conducted with LiPs in England and Wales showed that they need effective information to help them to:

• 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
• 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.\(^7\)

What will be the likely effects of the reforms, both implemented and proposed, on access to justice?

Law for Life is concerned that the on-line court will exclude those who don’t have access to IT or the capacity to use online resources effectively, particularly those with a complex legal component. 80% of the UK population has access to Broadband internet, and 60% of adults own smart phones (Power, 2014). However, physical access is still low amongst welfare recipients and older people. The type of internet enabled device that users have significantly impacts on their access, for example home users are substantially more likely to use the Internet in relation to legal matters (Pleasence et al, 2016).

It is with the ‘second digital divide’ that many LiPs will face specific barriers including navigating and searching for content relating to their online task (Hargittai, 2002). The ability to effectively use the internet, despite physical access, is not universal. Recent research

indicates that around a quarter of people use the internet to attempt to solve their legal problems in the UK, however a general lack of legal capability hinders the successful use of online resources.

Personal characteristics such as age and education level present particular challenges, with young people, over 75s and those with lower educational attainment much less likely to use resources effectively. For example, all too often, people fail to identify jurisdiction problems in relation to their issues (Denvir et al, 2014). This means they may struggle to identify attendant legal information that is appropriate to their case if suitable signposting to high quality, independent assistance is not embedded in the online Court.

The ability to understand complex legal information, and the confidence needed to take necessary steps are often absent, this is particular pertinent when a power imbalance exists between parties. The online court pays too little attention to the interaction of digital and legal capability. In particular, legal capability must be related to a specific task or process, and this should be considered in a far more granular and rigorous way as an aspect of design and development. We agree with Catrine Denvir’s recent observations in her Civil Justice Council Study:

the level of legal capability required to make use of digital MoJ/HMCTS services is routinely underestimated in digital service assessments. A more realistic appraisal of the level of legal capability required to perform certain civil justice tasks (online or offline) is a critical component in the development of information and guidance that appropriately supports task completion. For this reason [Assisted Digital Services] must be understood within the context of the task that is being completed; failure to do so risks the development of an online system that is accessible in principle but not in practice (2018, ii).

In summary our general concern relates to the extent to which those who exhibit low levels of legal capability are less likely to be able to use the online court effectively, compounding existing disadvantages.

Civil and Family Justice

Knowledge of rights in regard to family problems is also worryingly low, with only 38% of people knowing some of their rights in the case of domestic violence, and 37% in the case of divorce or separation.
LiPs are now able to start divorce proceedings online by completing the application for a divorce. As we understand it, the online facility currently stops there and the next stages of the process will be rolled out to the public in Quarter 2 of 2019. They are also able to submit and defend civil money claims, although not in the case of people who require help with fees.

In a digital environment, users have an even greater propensity to ignore or be less prone to perceive the legal dimensions of the interaction.\(^8\) In the case of civil money claims we are concerned that the adoption of the Standard Financial Statement was not adopted to assist defendants in particular to better understand how to deal with money claims.\(^9\) In the context of divorce, crucially the online divorce application and response (and attendant letters to applicant and respondent) at present do not flag or signpost for victims of domestic abuse. Moreover, there is no signposting to assistance for LiPs dealing with complex child arrangements or financial settlements.

Given that 63% of LiP applications for a divorce are now issued via the online service, and the civil money claim limit may increase, there is a clear information need during these process with tailored signposting required at critical points throughout. This will be even more important within the online process for resolving matrimonial finances where LiPs need to be well informed about their rights in law and potential claims they may have against their spouse. Often for such court users a great deal will be at stake - a roof over their children’s heads, the settling of matrimonial debts, a secure income in later years.

Without access to proper face to face legal advice, alternative sources of legal information will need to be provided and properly signposted. Ideally, online users will be encouraged to pause at key stages of the process, and consider a range of options before proceeding.

Overall, we are concerned that speed and efficiency of the online processes are being conflated with the quality of substantive justice and fair outcomes for users of the civil and family court, particularly where power imbalances may exist.

**Those who are digitally excluded or require support**

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9 https://sfs.moneyadviceservice.org.uk/en/
We are currently unclear how the assisted digital elements will be effectively implemented in order to ensure people are not left behind. In addition to the points made on the interaction of digital and legal capability we are concerned that too little has been done to assess the information and education needs of those who are digitally excluded or facing the ‘second digital divide’, both on and offline.

Court users need to understand the law and processes in order to make use of the online court. The reforms offer real opportunities to improve access to justice in a digital era, but this opportunity is being missed. We would like to see a more ambitious digital content strategy to support the online court which goes beyond flat written text and includes a range of information channels, delivery modes and helpful signposting to high quality independent information and support.

In his final report on the Civil Court restructure review Michael Briggs LJ noted:

> It would in my view be quite wrong to think that the support needed for would-be users of the Online Court are limited to Assisted Digital, with all the rest of the assistance simply being provided online, as part of the three stage process explained above, once the user has received the help needed to get online. On the contrary, I consider that the level of the success of the new court in extending access to justice will depend critically upon parallel progress being made with public legal education generally. The tradition in this country has been to think of Legal Aid as performing that function, by funding private lawyers to provide the necessary education to those unable to afford it for themselves, with voluntary agencies such as the CAB filling particular gaps. It is not therefore surprising that, now that Legal Aid has largely been withdrawn in relation to civil litigation, we are generally less well advanced in the provision of public legal education than some countries where there has never been Legal Aid at a comparable level. I have in mind California and British Columbia in particular.” (2016, 60).

The independence of the justice system is a core principle of the rule of law. The principle of separation of powers, together with low levels of trust in government\(^{10}\) means that it is important that an online justice system, which is presented through gov.uk, should signpost to independent sources of information and support. This is particularly pertinent in public law cases.

\(^{10}\) https://www.edelman.co.uk/magazine/posts/edelman-trust-barometer-2018/
Advicenow research into the effectiveness of information to help people manage their problems\textsuperscript{11} found that organisations that had a distinct audience or a close connection with their users produced more effective information. However public legal information provision across all sectors was patchy, incomplete and inadequate. In particular much information failed to address the skills and support people needed to solve an issue.

In the years since Law for Life’s ‘watching brief’\textsuperscript{12} on the provision of public legal information in England and Wales has revealed a worsening situation. LASPO resulted in many information providers changing and reducing their information provision\textsuperscript{13}, and we notice a general trend away from more specific and detailed information (presumably more difficult to keep up to date) to more general, and therefore for online court users, less helpful information.

We are concerned about a lack of information of any type and quality in some topic areas and in others, a lack of information which aims to enhance legal capability to support LiPs to use the online court by providing not just information but also support around skills and attitudes.

\textsuperscript{11} Research report on the selection and scoring of information materials for inclusion on the CLS Direct operator database, 2007

\textsuperscript{12} Law for Life Advicenow delivers ‘best of the web’ which brings together the best legal information content from over 450 information providers.

\textsuperscript{13} https://www.surveymonkey.com/stories/SM-PQZ6K38/edit/