

**Face to Face Legal Services and Their Alternatives:  
Global Lessons from the Digital Revolution**

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## **Contents**

Foreword	1
Chapter 1 The Shock of the New	5
Chapter 2 The Digital Revolution: Opportunities, Threats, Understanding and Divides	10
Chapter 3 Telephone Hotlines: ‘Front End or Dead End’?	23
Chapter 4 Digital Provision in England and Wales	36
Chapter 5 Innovation in the United States	49
Chapter 6 Rechtwijzer.nl: A Game Changer	59
Chapter 7 Websites	67
Chapter 8 Where Now?	77



## Foreword

In the summer of 2010, the newly elected coalition government in London announced a programme of unprecedented expenditure cuts in response to the financial crisis it was facing. The Ministry of Justice did not escape the axe. It was to lose £350m from the roughly £2bn annual legal aid budget. Initially, the cuts were all from the civil side: those to criminal legal aid remuneration were announced later. Spending on matrimonial disputes and legal advice was targeted. Entitlement to much of the latter was simply removed. Areas remaining in scope were to be transferred, at least initially, from face to face assistance to telephone 'hotlines'. The exclusions were to begin in April 2013; the transfer to the phone was to be phased, beginning with advice concerning debt, special educational need, discrimination and community care.

Predictably, the domestic effect of such proposals was dramatic both on legal aid's clients and its providers. They were particularly disastrous for the not for profit sector which had previously been encouraged to provide advice funded through the legal aid scheme in areas like housing and social security, collectively known in the United Kingdom (UK) as 'social welfare law' and in North America as 'poverty law'. Now entitlement was to be withdrawn across the board except in those areas thought to be protected by the European Convention on Human Rights.

Internationally (and within UK jurisdictions other than England and Wales, to which the above proposals were limited), the financial crisis had a similar impact in those countries hit hard by the recession. Legal aid was vulnerable as part of a crackdown on government expenditure as a whole. International debate about legal aid policy has, in large part, been helped since 1992 by the International Legal Aid Group (ILAG) which has provided a forum for the international discussion. Participants from the UK have played a significant role in ILAG; ideas and practice emanating from the UK have played a leading role in ILAG discussions. Developments such as quality assurance, contracting, research on legal need have inspired action around the world. For example, peer review has been picked up by countries as diverse and widely dispersed as Chile, South Africa and Moldova. Ideas from the UK as to how best to respond to the crisis were therefore likely to be debated internationally, and they have been.

ILAG's fundamental purpose has been to advance evidence-based policy in the field of legal aid. This aim was mirrored, within England and Wales, by the Legal Services Research Centre (LSRC) of the Legal Services Commission. The LSRC was established with effectively the same objective but with the specific capacity actually to conduct empirical research. Alas, the LSRC itself fell victim to the drive for expenditure savings. Indeed, the 2010 proposals were produced at speed by a new administration unable – or possibly unwilling – to look at the international experience and debate to which the UK had so recently been such a major contributor. In a series of its recent biannual conferences, ILAG has considered research, particularly from the United States of America (US), on the use of telephone hotlines and tracked the development, particularly in the US and The Netherlands, of the use of the internet to provide legal assistance. Little of this was reflected in the UK government's proposals.

In response to this mismatch of domestic policy and international experience, we submitted an application to the Nuffield Foundation to fund this report and the two years of work that now lies behind it. The project's title was 'Face to Face Legal Services and their Alternatives: the global lessons'. The intention of the report was expressed in the original grant application as 'to make a significant contribution to both global and domestic UK policymaking and debate on the extent to which telephone "hotlines" and internet-based systems may replace face to face publicly funded legal services in the future'. We express our deep gratitude to the Foundation for its assistance.

Although the initial trigger for the project had been a proposal for a telephone hotline, it soon became apparent that technology was moving at such speed that the internet was coming into its own and its potential merited just as much – if not more – attention. ILAG had been receiving regular reports of developments like the A2J project in the US for computer assisted document assembly for self-represented litigants at its conferences: the Dutch had been logging the progress of its reorientation of legal aid provision around advice counters and an interactive website. Suddenly, however, developments exploded around the world. Additionally, the technology itself took a major step forward and a conflation began of various, previously distinct, channels: telephone communication developed the capacity to morph into video with the use domestically of programmes like Skype or, in the institutional world, those like Cisco Telepresence. As a result, the simple opposition between telephone and 'face to face' became outdated and the distinction much

more complex and multi-layered – as is tracked in the following report. It also became clear that publicly funded legal services would be likely to be just as much transformed as any other area of service delivery and, indeed, the notion that they would – or should – be isolated from technological advances seemed increasingly untenable.

We committed in our grant application at the commencement of the project in 2011 to the following outputs:

- Produce an assessment of the latest general research on the use of telephone and internet access to advice generally;
- Assess the role that technology has played in new business models from retail services and how this could enhance the delivery of high quality legal advice;
- Compile a comprehensive assessment of the current use of hotline and internet legal advice and information projects around the world and how this might evolve in the near future;
- Evaluate the strengths and weaknesses of various forms of delivery in relation to the needs and capacities of those on low incomes and identify the crucial factors which are associated with successful schemes;
- Put forward the criteria by which innovative means of delivery of services should be evaluated;
- Seek to identify the cost differentials of phone advice at different stages of the case;
- Make specific practical recommendations to the Ministry of Justice in the light of how it is developing its proposals throughout the lifetime of the project;
- Make general recommendations for the delivery of services, applicable both here and overseas, aimed at legal aid commissions and policymakers in the field.

We return to these in chapter 8 of the report.

The involvement of ILAG in this project has given it a specific – perhaps unique – identity as a collaborative international project. Almost all of the members of the advisory committee for the project were associated, in one way or another, with ILAG. The committee included: Peter van den Biggelaar, Director of the Dutch Legal Aid Board, Professor Richard Susskind of Strathclyde University, Professor Jeanne Charn of Harvard University, Amanda Findlay CBE, formerly of the Ministry of Justice,

England and Wales, Lindsay Montgomery, CEO of the Scottish Legal Aid Board, Merja Muilu of the Finnish Ministry of Justice, Dr Don Fleming of Canberra University, Dr Moling Ryan, CEO of the Irish Legal Aid Board, Dr Elizabeth Gibby of the English and Welsh Ministry of Justice and Ab Currie, formerly of the Canadian Ministry of Justice.

A number of initial papers were circulated around the ILAG network for comment, including one on hotlines in January 2013 and general developments in April 2013. A draft of the overall paper was discussed at a meeting of ILAG to which we were able to invite, through the grant for the project, additional experts in The Hague in June 2013. Various individuals in a range of countries – among them those above but also many others – gave up their valuable time for interview, discussion and comment. Members of the Dutch Legal Aid Board and the Rechtwijzer team at the University of Tilburg welcomed a visit in March 2013 to discuss their work.

We are extremely grateful for the assistance of everyone. We should stress, however, that only the authors bear responsibility for content, conclusions and recommendations, any or all of which are not to be attributed to – or accepted as endorsed by – anyone else.

Roger Smith  
Alan Paterson

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## Chapter 1

### The Shock of the New

The paradox of the present time is that publicly funded legal services are, in countries like the UK, under unparalleled strain. However, the deployment of new technology in the delivery of legal services is dizzyingly rampant. Despite pressures on government funding, this makes it a very exciting time with wonderful possibilities, not all of which are yet, by any means, fully apparent. It is necessary, however, to begin with a recognition of the tide of innovation and creativity that clearly has the potential to transform the practice of law just as it is in the process of transforming other areas of activity.

Technology has encouraged private actors to develop new markets. As an example, a number of firms in both the US and UK have developed apps for road accident incidents which take advantage of the capabilities of a mobile smartphone:

You are able to take photographs of the accident scene using the iPhone's integrated camera, record your current location using the iPhone's GPS capabilities and store relevant information to your accident. Finally ... you can submit your details to one of [our qualified solicitors].<sup>1</sup>

Other lawyer sites give away considerable information and assistance in order to garner more complicated and lucrative cases. This kind of gleaning technique can be illustrated by a site like [www.roadtrafficropresentation.com](http://www.roadtrafficropresentation.com) or various alternatives on family breakdown. In addition, websites are encouraging a wider transparency over remuneration with a shift to fixed fees low enough to pick up low income clients.

Legal aid authorities in some countries and states – such as The Netherlands, New South Wales or England and Wales – have resourced jurisdiction-wide websites giving basic information and advice on common problems. A number of governments, including that of England and Wales, deploy informational YouTube type videos to assist, for example, those going through divorce. Telephone hotlines have been used in various

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<sup>1</sup> Bott and Co Solicitors, car incident iPhone app.

different forms – particularly in relation to services for older people in the US. The government in England and Wales wishes to make a major shift of civil legal advice to the telephone and away from the office, as we indicated in the foreword. Video connection between adviser and client is expanding, particularly in geographically remote areas like upcountry Australia or Alaska. Even Chinese courts are using Twitter.

Websites themselves are developing fast. The Dutch have an interactive website that seeks to resolve the problems of family breakdown from beginning to end – providing dynamic assistance through the resolution process. The potential of automated document assembly programmes is being explored to provide assistance both with documents and with the processes of which they may be part. To encourage such innovation, jurisdictions like the US and The Netherlands have made deliberate moves to establish NGO or university-based hubs to accelerate development. Some courts in the US have embraced new technology as a way of assisting self-represented defendants to become less of a burden on the judicial system, bringing another public funder into the field.

Not since the late 1960s and early 1970s have countries like the UK, Australia, the US or The Netherlands seen change at such a rate in the delivery of publicly funded legal services. The circumstances are, of course, very different. Forty years ago, the provision of services increased as the result of a major influx of public money. Increasing overall affluence encouraged the rediscovery of pockets of poverty and allowed the opportunity to address them. Now, the relative economic decline of the older established economies of the world pressures their governments to reduce expenditure – in legal services as elsewhere. Cuts are imminent, or have been implemented, in almost all the countries that extended their legal aid and public services in the 1970s.

As a result, two enormously powerful movements coalesce – the constraint of cost and the expansion of new technology. All countries, those opening up new schemes as much as those with well-established provision, want to take advantage of the new digital potential. But, digital delivery has a very immediate attraction for those wishing to reduce the cost of existing provision. For those in such countries – both inside and outside government – who wish to maintain hard-won levels of service, this sets up difficult questions: Can digital capability deliver the political imperative of reduced spending as well the constitutional responsibility of sufficient justice? Can we achieve the great win-win of less spending but more

effectiveness? And all this in a situation where few countries can be complacent about their existing level of scope and eligibility – let alone at any reduction.

Money is at the root of innovative provision in the private sector. In England and Wales, traditional ‘high street’ practice is mutating under the dual onslaughts of public funding cuts and a private funding influx.<sup>2</sup> The incentive grows for brands like Co-operative Legal Services, an ‘alternative business structure’, or Quality Solicitors, a conglomerate of law firms that has received considerable private equity finance, to ‘pile it high and sell it cheap’. Thus, we are seeing a version of the former bogey of ‘Tesco law’<sup>3</sup> coming to pass without the intervention of the supermarket of that name. In addition, mass insurance-based providers are seeking to establish their presence and deploying websites and hotlines to do so. Existing web-based document assembly firms, like LegalZoom and Rocket Lawyer, are also scenting market opportunities. They want to expand their current US operations into other jurisdictions – particularly, perhaps, those less zealous about the ‘unauthorised practice of law’ which may offer more opportunities for their packaged provision.

Meanwhile in the publicly financed sector, it was perhaps predictable that a strategically-minded, multi-jurisdictional public funder like the US Legal Services Corporation would want to fund technological innovation that could spread across its grantees – as, rather effectively, it has. The Dutch Legal Aid Board’s support for a self-help family breakdown web provision in place of more expensive options was similarly motivated. However, the attraction to the English and Welsh government of cheaper advice provision through the use of telephone advice rather than face to face advice is driven much more overtly by a need for savings.

Additionally, in both the private and public sector, there is simply a lot of experiment without direct commercial motivation. Many individuals, agencies and organisations just want, or feel the need, to develop a web presence or some other way of increasing their accessibility through such mechanisms as hotlines, email advice provision or otherwise. It is

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<sup>2</sup> Legislation in England and Wales now allows the external ownership of law firms, thus freeing them up for external financing linked to such ownership. The first applications for ‘alternative business structures’ (ABS) were only accepted in March 2012.

<sup>3</sup> Tesco being a supermarket and ‘Tesco law’ being a derogatory phrase deployed by those delivering legal services in traditional forms.

commonplace that we live in a world which can be characterised, as it is in the title of a book co-authored by two senior Google executives, as *The New Digital Age* and boldly sub-titled *Reshaping the future of people, nation and business*.<sup>4</sup> It would be remarkable if the law and the actors within it were not affected by a revolution sweeping through 'every part of society, including politics, economics, the media, business and social norms'.<sup>5</sup> Those involved in publicly funded legal services want to be part of this global revolution. The result is a profusion of new and experimental provision from those who want to be part of what is going on.

Speed is evident everywhere. We have written three assessments of recent developments over the course of the project over 18 months: and on each occasion provision has changed as we wrote. Rocket Lawyer only announced its tie-up with Quality Solicitors in November 2012 and implemented it in June 2013. The Dutch site, [www.rechtwijzer.nl](http://www.rechtwijzer.nl) in its current form, came online as late as April 2013. In London, the Royal Courts of Justice Citizens Advice Bureau launched its CourtNav online court document assembly only in November 2013. There have also been casualties. When we started, NHS Direct looked like the provision to beat – a world leader that has been stripped of that role by ruthless cuts and political opposition.

There are dangers in all the excitement over the possibilities of new technology. At a global level, even Google's digital enthusiasts can see a downside. They believe that 'the vast majority of the world will be net beneficiaries' but they also accept that 'a digital caste system will endure well into the future'.<sup>6</sup> At a more immediate level, Bonnie Rose Hough, one of the great innovators of self-help assistance in the California courts, warns:

Technology is a great asset and courts and legal services providers need to move forward with technological solutions to address the needs of the public they serve. But not everyone will be able or willing to use the technology when it is first deployed. It

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<sup>4</sup> E Schmidt and J Cohen, *The New Digital Age: reshaping the future of people, nations and business*, Alfred A Knopf, 2013.

<sup>5</sup> *Ibid.*, p10.

<sup>6</sup> *Ibid.*, p256.

is critical that courts never unfairly disadvantage a party because of new technology.<sup>7</sup>

So, even the technological enthusiasts urge a degree of caution, as we shall see in the next chapter.

This is not – and could not be – a considered analysis of a finished process. It is more of a report from the front line where some sense of the shape of the forces engaged can be grasped but the final results are still obscure. We need to begin with an examination of the context both in legal provision and technological access in which new developments are to be set.

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<sup>7</sup> B R Hough, 'Let's not make it worse: issues to consider in adopting new technology', *Harvard Journal on Law and Technology*, Vol 26 No 1, Fall 2012, *Using Technology to increase access to justice*, p266.

## Chapter 2

### **The Digital Revolution: Opportunities, Threats, Understanding and Divides**

Hitherto, when people talked of ‘seeing a lawyer’, they have generally meant it literally in terms of the physical presence of lawyer<sup>8</sup> and client in the same place at the same time. Legal services have traditionally been delivered by lawyers in offices on a face-to-face basis. Technology threatens that paradigm and, in this report, ‘digital delivery’ and similar phrases are used to cover three distinct meanings, all involving the substitution or supplementation of face to face contact by transactions by telephone; over the internet; or integrated in some way that involves both. Developments in technology threaten the paradigm even further as it becomes possible to integrate video into what were purely audio communications or various forms of simultaneous communication with the use of the internet.

By itself, reliance on digital technology is not necessarily a radical step. Substituting a telephone interview for consultation in person, by itself, changes very little. Similarly, getting basic information from a website is not very different from consulting a leaflet. On the other hand, even a simple shift to a telephone service can have a profound effect on how legal services are delivered. There becomes no need for geographically local delivery: centralised provision becomes possible. National legal service providers using telephones, like private firm Epoq in the UK as one example, can have their lawyers in one central location. A new form of delivery can emerge that challenges the traditional local high street office model. Suddenly, there becomes an emphasis on scale and on the availability of capital. All sorts of new variations then become possible of what was once referred to as the ‘hub and spoke’ model of legal practice – outlying generalist provision with supporting specialist services at the centre. The difference becomes even greater if the power of the internet is used to make use of its dynamic potential. Then, processes of information and advice-giving that were once craft operations can be automated.

The implications of digital delivery of legal services have been best examined by Professor Richard Susskind in an impressive trail of

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<sup>8</sup> Though in recent times legal advisers have often been paralegals or advisers working in the voluntary sector.

publications, most notably perhaps *The End of Lawyers?: Rethinking the nature of legal services*.<sup>9</sup> His ideas provide a framework for understanding developments. Professor Susskind is no dry academic observer: he is a tireless advocate for the difference that new technology can – and will – make, an energetic and unashamed proselyter for a new dawn in legal services. He introduces the paperback version by stating that:

the central theme ... is that lawyers should change the way they work. Better and more efficient techniques for delivering legal services are emerging and I urge the legal profession to embrace them.<sup>10</sup>

His main focus has been technology's impact in the commercial field but in *The End of Lawyers?* he tries to draw out the consequences for those concerned with legal services for the poor.

Professor Susskind has four particular observations that are helpful for this project. The first is his understanding of the changes derived from digital developments. He has indefatigably argued that legal services begin by being 'bespoke', ie individually tailored. They 'progress' from there through what is, in total, a five step process - at least in its ideal form. They move from bespoke to 'standardised'. This leads, in turn, to 'systemised' services as lawyers structure their work through such mechanisms as checklists and automatic document assembly. These are still controlled by lawyers but a further step comes when lawyers 'package' their services for direct use by their clients, eg devise a document assembly package for them to use without input from the lawyer. The final stage is 'commoditisation' to which he gives this a specific meaning (though others sometimes apply it to the whole process):

The most subtle and potentially controversial transition on the evolutionary path is from the fourth to the fifth and final step, to that of 'commoditised' legal service. The central idea here is that a legal service or offering is very readily available in the market, often from a variety of sources, and certainly at competitive prices. A legal commodity, as I define it (and I fully accept that others might use this term differently), is a package that is perceived as a commonplace, a raw material that can be sourced from one of

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<sup>9</sup> OUP, paperback version, 2010.

<sup>10</sup> *Ibid.*, pxvii.

various suppliers. Just as barrels of oil or sacks of sugar are regarded as basic and readily available offerings, then so too are legal commodities. As with a package, a commodity is a solution that is made available for direct use by the end-user, often on a DIY basis. Online debt collection services are legal commodities ... Much of the material found on legal websites consists of legal commodities – more or less similar analyses of new regulations for example.<sup>11</sup>

He demonstrates the progression with the following block diagram:



Professor Susskind has seen off (with no little glee) a number of those who disputed his thesis of the potential impact of new technology on their particular area of work with variants of the argument that ‘it might work elsewhere but not here’. His differentiation is interesting to bear in mind as we proceed to look at current developments. There are plenty of examples of packaged services. This would be where one would file the free information available on something like [www.roadtrafficropresentation.com](http://www.roadtrafficropresentation.com), a website which assists a person with a straightforward case to find the likely outcome to a query (for example, the likely result of a speeding conviction) through a structured question and answer process and to then take the appropriate action as prompted on the website.

Examples of commoditisation are rarer. Examples are, however, provided by document assembly programmes like Rapidocs or Hotdocs. These are sold as packages to third party users with royalties paid to their suppliers. They allow the construction of an individualised document through the answers to a programmed set of relevant questions – most easily illustrated by how they can construct a will. However, there remain good commercial reasons why a provider might want to retain possession of the software and sell it together with supplementary services. Thus, firms may sell bulk suppliers, like insurers, a package that includes a document assembly packaged linked to centralised lawyers who can provide advice and check the final document. Epoch, for example, does this. LegalZoom

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<sup>11</sup> *Ibid.*, pp31-32.



in the US provides document assembly for such as a will with a 'peace of mind check' for a \$69 fee. This will partly be because this is how providers increase the value of their product but it may also be testimony to the fact that, actually, lawyers or experts have a role in checking documents which is recognised by clients (and insurers).

Commoditisation may have an appeal to public providers whose prime aim is not private profit but public information. The widely used A2J software developed to underlie different US court self-help packages provides an example. This was developed with public funds and then licensed to a range of users. Another is the Dutch Rechtwijzer site. This was funded and packaged by the Dutch Legal Aid Board. The board then presents it as commoditised by licensing legal providers to integrate it into their own websites. Practitioners can take elements of its website and use them in their own. However, Professor Susskind's description of the evolutionary progression in legal services from left to right as a result of the market and client demand has to be balanced against his own recognition that the decomposition or unbundling of a client's legal work does not mean that bespoke legal work will die out. He accepts that in some cases and in some situations – advocacy being a clear one – bespoke work for the client may still be needed, just less than the profession publicly acknowledges. In this study part of our objective is to identify situations and individuals who may require the bespoke services of a 'warm body' lawyer or legal adviser, rather than a hot-line or the internet.

A further interesting insight from Professor Susskind<sup>12</sup> comes in the notion of 'disruptive legal technologies': 'technologies (or systems, techniques or applications) that do not simply support or sustain the way a business or sector operates; but instead fundamentally challenge or overhaul such a business or sector':<sup>13</sup>

The systems that are increasingly causing a stir and attracting greatest attention among clients are not conventional sustaining uses of IT that bolster the business of law firms; instead they are applications of new technology that challenge old ways and, in doing so bring great cost savings and new imaginative ways of managing risk'.<sup>14</sup>

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<sup>12</sup> Via, as he acknowledges, Professor Clayton Christensen of Harvard. *Ibid.*, p93.

<sup>13</sup> *Ibid.*, p99.

<sup>14</sup> *Ibid.*, p98.

Little of the provision discussed above has perhaps got to this point. But, we may, after all, be wrong in saying that clients want legal advice: they may actually want the resolution of the underlying source of unhappiness or dispute. An automated online dispute resolution service, like that of the eBay Resolution Centre, eradicates the advice step and steers the parties directly into a settlement process. Thus, one could conceive of a situation in which a person may log on to a service for advice but be taken through an automated resolution procedure – transforming the paradigm of the interaction through assumptions built into the programme itself. The Dutch site hints at this, as is discussed later: it is a development fraught with practical and ethical difficulties but pregnant with possibilities.

Professor Susskind's third useful observation is his well established notion of a 'latent legal market':

the notion that many people in their social and working lives need legal help and would benefit from legal guidance but lack the resources or perhaps simply the courage to secure legal counsel from lawyers.<sup>15</sup>

The extension of low cost services possible through telephone and internet provides potential access to this latent market. Certainly, at least for some cases and some clients, digital technology could reduce the cost to something like the level of contributions once payable for means-tested legal aid or to such a low level that even those once eligible for free legal aid would pay for them. High volume, low cost, fixed fee providers like Cooperative Legal Services are clearly exploring this market.

The final insight to take from Professor Susskind is prompted by the application of his ideas to access to justice. He argues that there are six 'building blocks' which can be used to construct an access to justice policy in the current technological age:

- citizens must be empowered to deal with more of their legal affairs;
- a streamlined legal profession must embrace the possibilities of technology;
- there should be a healthy third sector for those whom Professor Susskind says 'are in need of legal assistance [and who] want a kind, empathetic ear with only a light sprinkling of legal expertise' (likely to be a somewhat

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<sup>15</sup> *Ibid.*, p18.

contentious proposition as put among the NGO advice sector, especially since research has shown that non-lawyer specialists perform better than generalist lawyers);

- a new wave of imaginative, entrepreneurial providers;
- easily accessible primary sources; and
- an enlightened set of government policies on public sector information.

Professor Susskind's proposals may understate or, at least, under-imply the degree of public funding which would still be required even in the most benign of technological futures. How else is there to be a 'healthy third sector'? However, his list is valuable for its plurality; its inclusion of the private sector; its stress on the need for imagination and entrepreneurialism (in private, public or third sector provision); the empowering of citizens to handle their own cases; and the need for a suite of government policies to assist such empowerment, not just funding. In some ways what he is suggesting is another variant on the complex planned mixed model which many developed legal aid jurisdictions have been following in the last decade.

### ***The issue of digital divides***

Any consideration of the potential of the internet has to deal with the issue of digital exclusion and three 'digital divides' – physical access to the relevant technology; the technical ability to use it; the cultural inclination to do so. These are inconvenient for policymakers intent on saving money from switching to digital services but there must be doubt as to the proportion of the population, even of technologically advanced countries, able to access digital sources of assistance. Professor Susskind takes a pretty robust view:

I think the impact of the digital divide on access to justice can be overstated and sometimes disingenuously so ... [However,] it is unquestionably the case that some Internet-deprived citizens can be described as secondary or proxy users ... Another class of indirect beneficiaries are citizens who are guided by advisers (not least in the third sector) ... All of which is to say that the number of people who are actually disadvantaged by being non-users is appreciably less than at first blush.<sup>16</sup>

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<sup>16</sup> *Ibid.*, p245.

Arguments about digital exclusion may, indeed, sometimes be used prematurely to end a debate about the role of new technology in revolutionising delivery. There is a comforting – and surely misplaced – complacency in arguing that the rest of the legal world may change but the need of poor people for law centres, salaried lawyers or legal aid practitioners remains a constant. Nevertheless, the issue of society's current digital divides need to be confronted. Respectable estimates in the UK and US relevant to the 'first' divide put access to internet transactions at something like 80 per cent of the population. Professor Susskind himself has predicted that direct access to the internet might plateau slightly lower.<sup>17</sup>

Access to the internet or to a telephone hotline is not, of course, coterminous with its use. On the one hand, as Professor Susskind confidently asserts there will be those who do not have home access but can use some form of intermediary. On the other, evidence from a detailed study of young people suggests a perhaps surprising lack of digital literacy and capacity to identify the best forms of assistance.<sup>18</sup> This has given rise to a concern that 'internet services may not be most appropriate or effective for young people not in education, employment or training'<sup>19</sup> because of low effective use by this generally low skilled group. It also casts further doubt on Professor Susskind's belief that the next generation, familiar with social media will rely on it to tackle legal problems. As his own experience has taught him,<sup>20</sup> young professionals have been slow to use Facebook for business purposes and may choose to keep their private and business lives separate.

Access certainly correlates with class, education and age. A recent study by the UK National Audit Office (NAO) provides the latest information on the extent of online use in the UK.<sup>21</sup> This found that, as would be expected, access is skewed. On the one hand, 91 per cent of 15-64 year olds were

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<sup>17</sup> *Ibid.*, p244.

<sup>18</sup> Eg C Denvir, N Balmer, P Pleasance, 'Surfing the web – Recreation or resource? Exploring how young people in the UK use the Internet as an advice portal for problems with a legal dimension', in *Interacting with Computers*, 2011 23, pp96-104.

<sup>19</sup> N Balmer, P Pleasance, *The Legal Problems and Mental Health Needs of Youth Advice Service Users: The Case for Advice*, Youth Access, 2012.

<sup>20</sup> Susskind, note 9 *supra*, p78.

<sup>21</sup> National Audit Office, *Putting users at the heart of government's digital services*, 2013.

online but only 51 per cent of those who were older. A similar percentage of those categorised as socially ABC1 were online compared with only 74 per cent of categories C2DE. And 85 per cent of those without a disability were online as compared with 63 per cent who declared a disability. Once online, the majority seemed digitally literate: 84 per cent had shopped and 72 per cent paid a bill. The NAO concluded: 'our findings suggest a high degree of capability among the majority of people online' rather making light of the notion of a 'second digital divide'.<sup>22</sup> The UK government's assumption, overall, is that 82 per cent of transactions over government services can go online. Its hope is that, by so doing, it can save around £1.8bn a year.<sup>23</sup>

The picture is not, of course, static. The latest data from the Office for National Statistics indicates that, in 2013, 36 million adults (73 per cent of the population) in Great Britain accessed the internet every day (20 million more than in 2006, when comparable records began); access to the internet using a mobile phone more than doubled between 2010 and 2013, from 24 per cent to 53 per cent; 72 per cent of all adults bought goods or services online (up from 53 per cent in 2008); and 21 million households (83 per cent) had internet access with 42 per cent having broadband using fibre optic or cable (up from 30 per cent in the previous year).<sup>24</sup>

An Oxford Internet Survey puts a further gloss on the figures.<sup>25</sup> A class of 'next generation users' is emerging. They are defined by their use of mobile devices and multiple access to the internet through a range of devices. This is a widely observed phenomenon – shared, as we will see, with the US. Around 67 per cent of internet users as a whole are such new generation users – a proportion that is sharply rising. The major impact of this for legal sites is the increasingly prevalence of the iPhone and its equivalents, requiring a new approach to internet-based information that allows much less explanation on each page. The survey also underlined the fact that 'disability, such as health-related problems, remains a key source of digital exclusion'. On its figures, only 51 per cent of people with a disability used the internet as opposed to 84 per cent for the able-bodied.

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<sup>22</sup> Para 3.9.

<sup>23</sup> The Cabinet Office, *Government Digital Strategy*, November 2012.

<sup>24</sup> <http://www.ons.gov.uk/ons/rel/rdit2/internet-access---households-and-individuals/2013/stb-ia-2013.html>.

<sup>25</sup> W H Dutton and G Blank, *Next Generation Users: the internet in Britain*, 2013.

This is an improvement on its 2012 survey but still leaves 'a major digital divide for the disabled'.<sup>26</sup>

One element in the changing picture is the determination of government to move transactions online. This will create a 'sink or swim' situation for universal credit which will eventually unify a number of existing benefits and for which application can be made in person. Online application only is being trialled for this benefit. The BBC commented:

This online system is one of the big question marks over the shift to universal credit.<sup>27</sup>

Moves like this will undoubtedly encourage digital uptake but may also lead to major disappointment and backlash. As the Chartered Institute of Personnel and Development has stated:

The move to online applications and management for benefit claimants could lead to the exclusion of vulnerable people from receiving essential benefits that would otherwise prevent destitution. The majority of benefit recipients feel they need help or support to use online benefits. [Homeless services centre] St Mungo's recently found that many of their clients have issues around literacy, with 35 per cent requiring support to complete a form. Those who are sleeping rough or cannot access this support will be even further excluded.<sup>28</sup>

The NAO report concluded that there was the danger of creating a 'them and us' culture and that the government needed to continue to provide assistance to those using government services who lacked the access or confidence to use digital provision. The same lesson would seem to be likely to apply to systems to provide advice.

The position in the UK is not that dissimilar from the US, suggesting a common pattern over various developed countries. A seemingly reliable study has been tracking the use of technology in the US since 2000 and

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<sup>26</sup> *Ibid.*, p22.

<sup>27</sup> 'Q and A on Universal Credit and the Benefits Overhaul', [www.bbc.co.uk](http://www.bbc.co.uk), 5 September 2013.

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<http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2013/01/29/move-to-online-claims-for-jobseekers-allowance-causes-concern-2012-09.aspx>.

has published data from its most recent survey in 2011.<sup>29</sup> The headline results repeat those from the UK. Use of the internet has roughly stabilised at around three quarters of the population since 2006 though it is now creeping up to four-fifths:

There has been significant growth in the activities internet users engage in once they are online. As a result, the gap in technical experience—and general understanding of the internet—between online adults and offline adults is increasing.<sup>30</sup>

More than three-fifths of all those who use the internet do so for banking and social networking:

The rise of mobile is changing the story. Groups that have traditionally been on the other side of the digital divide in basic internet access are using wireless connections to go online. Among smartphone owners, young adults, minorities, those with no college experience, and those with lower household income levels are more likely than other groups to say that their phone is their main source of internet access.<sup>31</sup>

Access to the technology is pretty widespread.

Currently, 88% of American adults have a cell phone, 57% have a laptop, 19% own an e-book reader, and 19% have a tablet computer; about six in ten adults (63%) go online wirelessly with one of those devices. Gadget ownership is generally correlated with age, education, and household income, although some devices—notably e-book readers and tablets—are as popular or even more popular with adults in their thirties and forties than young adults ages 18-29.<sup>32</sup>

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<sup>29</sup> Pew Research Centre, whose latest report (K Zickuhr and A Smith, *Digital Differences*, April 2013) is available at <http://pewinternet.org/Reports/2012/Digital-differences.aspx>.

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[http://www.pewinternet.org/~media/Files/Reports/2012/PIP\\_Digital\\_differences\\_041312.pdf](http://www.pewinternet.org/~media/Files/Reports/2012/PIP_Digital_differences_041312.pdf).

<sup>31</sup> <http://www.pewinternet.org/Reports/2012/Digital-differences/Overview.aspx>.

<sup>32</sup> *Ibid.*

46 per cent of Americans own a smartphone – a statistic which holds good for all racial groups.

The one-fifth of the US population which does not use the internet has the characteristics that one might anticipate: they are disproportionately pensioners, poorly educated, Spanish-speakers, poor and disabled. For the providers of legal services to this group, their disproportionate digital exclusion provides a fundamental constraint to be balanced against enthusiasm for the potential of new technology, at least at the present time. This involves wider issues than just legal services and is relevant to the obvious attractions of digital delivery for government as a whole. One US manager reported:

I am just beginning to investigate a case where our clients are being left out because of e-government. Our unemployment benefits agency is moving to a system of online applications and reporting which is creating huge problems for applicants and recipients who do not have access to computers and/or the skills to navigate the system. I am exploring the possibility of a legal challenge to this scheme.<sup>33</sup>

Enthusiasts for digital delivery have to take an explicit position on the issue of digital exclusion. To what extent do they accept that it represents a barrier to use of digital technology? Could all services safely responsibly be switched at the present time from personal interaction to the telephone, video or internet? The best answers would seem, from the available evidence, to be highly conditional. They depend on a number of variables. Different media raise different questions. Most people will have home access to a telephone, either their own or that of a family member. Fewer will have home access to video communication though again almost all could probably get access via a library or other public facility. More people will have home internet access and probably almost all could get public access through a facility such as a library, at least in the UK. In any event, the technology is changing. Increasingly, access to the internet is by mobile phone which, for legal advice, provides both opportunities in increased accessibility and challenges in terms of an increased need to compress information. It may be that, very soon, the telephone, video, TV and the internet will collapse into one facility so that large numbers of people become adept at moving easily between the different media,

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<sup>33</sup> Private email, 10 August 2013.



something that might massively increase accessibility via, for example, a Skype link embedded in an internet site that was easily accessible via the television.

For a variety of reasons, people may continue to be reluctant – or unable – to use technology to which they technically have access. Just as one example, an Australian study of a rural advice project using video suites found people reluctant to consult public provision where they were unsure of the privacy.<sup>34</sup> Some of the reported categories of disproportionate exclusion seem counter-intuitive. For example, one might have thought, on basic principle, that those with motor disabilities might be disproportionately inclined to use the internet rather than the reverse. However, it cannot be a surprise that those with low language or cognitive skills prefer face to face communication. And, indeed, it should be remembered that most clients willing to pay for their own services still prefer to see their lawyer face to face, at least for cases of any complexity.

The success of digital delivery may vary not only in relation to people but in relation to type of case. This was one of the conclusions of the US hotline survey considered in the next chapter. In this context, the focus of the Dutch Rechtwijzer site on family problems is interesting because this tests one of the areas of advice and assistance which may be among the most difficult to deliver remotely. Similarly, digital delivery may be difficult or impossible in areas where the best solution is some form of collective action – such as where tenants might get the best result by forming a tenants' association. Finally, as we will see, there are ways in which successful use of digital means of communication may require supplementation by individualised assistance – a conclusion of an early study of telephone hotlines in the US.<sup>35</sup> Without the necessary support, hotlines or internet sites can fall into the trap, as reported in an Australian study of:

a focus on the mechanical dissemination of information, regardless of how useful or otherwise it might have been to the caller.<sup>36</sup>

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<sup>34</sup> R Hunter, C Banks, J Giddings, 'Technology is the answer ... what was the question: Services to Regional, Rural and Remote Clients', p146, in P Pleasence, A Buck, N Balmer, *Transforming Lives: law and social process*, Legal Services Commission, 2007.

<sup>35</sup> And also a conclusion of the study above.

<sup>36</sup> *Ibid.*, p155.

The conclusion to be drawn from the combination of the insights of theorists such as Professor Susskind and empirical analysis is perhaps unsurprising. The internet, telephone hotlines and other forms of digital based delivery have tremendous potential which we should explore in the field of access to justice. The promise is the nirvana of increased access at reduced price. However, delivery cannot, at least at the present time, be wholly digital because too many would be excluded – at least, it would seem, 20 per cent of the target population and perhaps double that if allowance is made for its particular social composition. And, furthermore, all is not equal in the digital world. There are ways in which websites or telephones can be well or badly used. Almost invariably, the research would seem to suggest that internet or telephone provision, to be truly effective, needs supplementing with assistance from individual advisers. This is what we will explore in the chapters to come.

## Chapter 3

### Telephone Hotlines: 'Front End or Dead End'?

At the start of the twentieth century the arrival of the telephone began to transform ways of doing business for lawyers as for other professionals, as the telegram had done in a slightly earlier era and the photocopier and email has done for last decade and more. However, it was not until late in the twentieth century that telephone hotlines became prevalent in the provision of legal services to those of low and moderate incomes. Today telephone hotlines have become widespread in developed societies. They are widely used in commerce and by banks. As consumers, we have a wide experience of how they work. Hotlines have also spread into the world of advice – in fields like health, as we have seen, and law. In the latter, the US probably has the longest and broadest experience of their use.

The issues relating to telephone hotlines are particularly well known in England and Wales because of the debate that has followed government proposals to switch large areas of advice on civil matters from face to face practitioners to a telephone 'gateway'. The already established Community Legal Advice Helpline, a legal aid funded telephone advice line, would act as the exclusive gateway. The helpline has been assessing legal aid eligibility and offering legal advice in some areas of law for some time through a low cost telephone number (0845) combined with a free callback service. The helpline, however, had not been the exclusive means of access: a person could choose to contact the helpline or go direct to other face to face providers.

The arguments for and against the change were widely made during a government consultation. They were summarised in its response to the consultation.

The government reported the:

widely held view was that a mandatory single telephone gateway would restrict access to justice for those clients who would have difficulty using a telephone based service.

This could lead to some clients failing to take action to resolve their problems [including] people who did not have easy access to

a telephone (particularly a landline); people who did not have the necessary privacy to make the call including situations where the client was detained or lived in residential care; people with communication difficulties, including callers who did not speak English, had low levels of literacy, or people who lacked the ability to express themselves or understand information given by telephone; people who could not afford the cost of the call or would have problems accessing call back services ... ; people with multiple or particularly complex problems which could be more difficult for advisors to handle over the telephone; people with problems where the subject matter is particularly sensitive or where they need additional emotional support; problems where the advisor would need to see documentation in order to give effective advice.<sup>37</sup>

Respondents argued that certain groups were likely to be disproportionately affected including: younger people, including children; older people; homeless people; people in residential care; victims of abuse; refugees and asylum seekers; deaf and deafened people; people with learning difficulties; people with mental health problems, including substance abuse; people in detention, including prisoners and detained patients; black and minority ethnic groups, including immigrants; people for whom English is not their first language.<sup>38</sup>

In response, the government accepted retaining face to face funded advice to a limited range of clients: those previously assessed as requiring face to face services (in certain circumstances), those in detention and children. It also limited the initial implementation to four areas of law: debt (to the limited extent it is still to be in scope), Special Educational Needs cases, discrimination cases, and community care (subsequently reduced to three when community care was exempted). To the extent that funding was retained in housing and family matters, advice could be obtained either from the helpline or face to face.

The effect of the proposals on the number of providers, even in the first phase of implementation, is dramatic. In 2011-12, there were 509 contracted housing and 127 community care practitioners, all with open

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<sup>37</sup> Ministry of Justice, *Reform of Legal Aid in England and Wales: the Government Response*, June 2011, Annex D, p163.

<sup>38</sup> *Ibid.*

access to clients who could walk through their door. These were reduced to thirteen, a mixture of private and NGO providers:<sup>39</sup>

Family: Duncan Lewis, Cooperative Legal Services, FLG Limited  
Housing & debt: Duncan Lewis, Derbyshire Housing Aid, Access Legal Training Limited, Shelter, Carillion Energy Services, Ty Arian Ltd  
Special Education Needs: MG Law limited, the Children's Legal Centre, Tower Hamlets Law Centre  
Discrimination: Stephenson's, Howells, Merseyside Employment Law

The consequence is that England and Wales presents itself on the global stage as an empirical testing ground for the switch to telephone advice. If it is properly researched, we will find out if clients will respond as the government predicts by happily using the phone service in the areas where it is being piloted and with the limited exceptions that have been allowed. Two issues may obscure the comparison. Demand might be affected by failure to publicise the new telephone services – the importance of which was noted in Australia. However, the government has developed an online calculation tool for eligibility and worked closely with partner organisations to raise awareness of the service. Additionally, the shift of 'channel' is also being accompanied by straightforward cuts in scope which, by itself, will dramatically cut claims.

Notwithstanding its insistence on the use of the telephone gateway for most clients within the designated areas of law to be covered by it, even the Ministry of Justice concedes the principle behind a plurality of channels:

The Government agrees that there is benefit in providing access to services through a variety of channels (for example, telephone, on-line, email) and we continue to examine the way in which this can best be achieved.<sup>40</sup>

What might we expect to be the result from experience and research elsewhere? There is, on the positive side, plenty of evidence that NGOs and businesses believe that a telephone hotline is desirable as part of service provision. In England and Wales alone, around 150 legal firms advertise themselves as giving free legal advice by phone or email as a

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<sup>39</sup> *Legal Voice*, 29 November 2012.

<sup>40</sup> Note 37 *supra*, p172.

loss leader.<sup>41</sup> The Co-operative Legal Services site offers free phone advice on six areas of law on this basis.<sup>42</sup> A number of businesses base themselves on a model solely on advice by phone, for example [www.1stadvice.co.uk](http://www.1stadvice.co.uk) which offers 20 minutes for £30. NGOs like Shelter and Child Poverty Action Group have run longstanding phone advice lines, publicly available though often used by other advisers.

Hotlines are, of course, of very different types. This affects how they can be measured against each other. In particular, they vary on whether they are what a customer gets or whether they perform some 'triage' function and take a person with a difficult problem through to another level of service - by phone or face to face. We could characterise the two extremes, with just a whiff of prejudice towards a full service, as providing a 'front end' or 'dead end'. A key finding from research is pretty consistently that telephone hotlines are the more effective, the more they can do.

Telephone hotlines have been particularly important in delivery in the US:

Hotlines now operate in over 92 programs in forty-five states, Puerto Rico and the District of Columbia.<sup>43</sup>

Systems have sought different ways of providing support.

Approximately 20 states are now operating online chat support for their access services. These permit programs, without establishing an attorney-client relationship, to make sure that users are getting accurate information. In addition, some state courts, specifically Alaska and Minnesota, operate statewide hotlines that provide informational assistance to litigants, using both websites and document assembly as well as phones support. In the case of Minnesota, this service includes 'co-browsing', the ability for the person providing assistance to view the same screen as the viewer.<sup>44</sup>

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<sup>41</sup> <http://www.venables.co.uk/individx.htm>.

<sup>42</sup> <http://www.co-operative.coop/legalservices/free-initial-legal-advice/>.

<sup>43</sup> A Houseman, 'National Report USA' in International Legal Aid Group, *Legal Aid in Difficult Times: Conference Booklet 2013*, p4.

<sup>44</sup> R Zorza, *Review of the Status and Potential of Access to Justice Technology in the United States of America*, ILAG, 2013.

In the US, there has been a particular concern that, if hotlines provide advice, then it should be to a professional standard. The American Bar Association drew up a code for them in 2001.<sup>45</sup> Its concern was that 'fact-specific' information and advice should be given to professional standards:

the scope of legal service provided by hotline staff is typically more limited than that provided by lawyers through full representation. In some circumstances, the hotline service is simply an inadequate vehicle to meet the needs of clients with complex matters. In these respects, lawyers participating in telephone hotline services providing legal advice and information have responsibilities that differ from those of lawyers who provide case-by-case, in-person representation in the traditional model of full representation.<sup>46</sup>

Hotlines have been particularly attractive to those delivering legal services to older people. Indeed, Michigan's Center for Elder Rights leads a project through a specific website which implies ownership of the whole concept: [www.legalhotlines.org](http://www.legalhotlines.org). One of its concerns has been to indicate that telephone hotlines go beyond the 'dead end' of doing no more than replying to the call:

A legal hotline is a service designed to provide legal advice and information by telephone at the time the client contacts the program or soon thereafter. This definition includes programs that provide answers to clients' legal questions, analysis of their legal problems, and advice on solving those problems. Hotlines may perform brief services such as making phone calls, writing letters or preparing documents on behalf of clients. Hotlines may also provide referrals to other programs or serve as the intake mechanism for a full service program. Programs that provide only information and referrals, or which are limited to intake screening, are not considered to be legal hotlines. Hotlines frequently call themselves help lines, advice lines, or intake units. It is the service, not the name, which defines a legal hotline. Hotline call handlers may be attorneys, paralegals or law students, working under an attorney's direct supervision.<sup>47</sup>

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<sup>45</sup> *Standards for the operation of telephone hotlines providing legal advice and information*, adopted by the American Bar Association, August 2001.

<sup>46</sup> *Ibid.*

<sup>47</sup> <http://www.legalhotlines.org>.

The hotline website contains material on the running and evaluation of hotlines. This contains assistance on 'measuring outcomes' but this is largely through self or attorney assessment. A national hotline assessment study published in 2002 came up with results which have stood the test of time.<sup>48</sup> Its methodology included telephone interviews with a sample of hotline users on what strove to be a representative basis and sought to use statistical analysis to identify variables. Crucially, it also got experienced lawyers to evaluate outcomes – something missing from most other assessments and which, therefore, does not permit any objective evaluation of the level of assistance given.

People liked hotlines (41 per cent found the Hotline 'very helpful' and 28 per cent as 'somewhat helpful') but there was a high fall out of those who did not follow advice. Objective success in terms of dealing with the problem was only rated as occurring in about half of all cases.<sup>49</sup> Crucially, success tended to increase with the degree of service given. Brief [full representation] services yielded the highest favourable outcome ratings, followed in order by coaching clients on how to deal with a private party; providing written legal information, and coaching clients on how to proceed *pro se* in court. Follow-up actions by the Hotline – such as a letter, other written material, a follow-up phone call from the Hotline, or help from someone other than the Hotline worker also boosted the chances of callers experiencing favourable results. Hotline advice seemed least effective in helping someone deal with a government agency or not very good at making effective referrals: 'Of clients who were advised by Hotline workers to hire a private attorney, only 18 percent did so'.<sup>50</sup>

Hotlines worked best for those who were white; relatively better educated; and not separated from a spouse. They worked worst for those who were Spanish-speaking, Hispanic, had the lowest education and income levels, and those who were separated and lived apart from their spouse. Effectiveness was diminished by a series of actors:

a family disability or a serious health problem; serious transportation problems; depression or fear of an ex-partner or

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<sup>48</sup> The Hotline Outcomes Assessment Study was funded through the Project for the Future of Equal Justice with grants from the Open Society Institute. The Project was a joint initiative of the National Legal Aid and Defender Association and the Center for Law and Social Policy.

<sup>49</sup> Executive summary, <http://www.nlada.org/DMS/Documents/1037903536.22>.

<sup>50</sup> *Ibid.*



current household member; inflexible work, school, or daycare schedules; or problems reading or speaking English well enough to complete forms and other legal paperwork. While clients with disabilities fared no worse than the average, the other barriers listed above were associated with outcomes that were significantly less favorable.<sup>51</sup>

The researchers made a number of detailed practical recommendations into how a telephone system could best be organised, such as ‘tickler’ systems that flag cases for a callback to check on the client’s progress. They also recommended that hotlines should develop – or increase – their capacity to provide full representation. Hotlines got better results if they wrote a letter, made a call, or take some action than if they simply advised a caller to take that action. Confirmation in writing of oral advice increased the likelihood of a successful outcome. The researchers warned of overuse of client satisfaction statistics: clients were frequently more generous in their assessment of hotline services than external evaluators.

One of the temptations behind telephone advice services has always been that, particularly if aimed at low level services, they can appear cheap. They are, thus, proving attractive to legal aid administrations strapped for cash. Hence, their appeal to the government in England and Wales. Ontario, for example, has introduced a service providing 20 minutes free family or criminal advice over the phone for those who meet financial tests. Legal Aid Ontario’s 2011/12 annual report puts this move in context:

to support the strategy LAO has ... expanded the use of its Summary legal advice (SLA) through the Client Service Centre (CSC), provided family law information through the Family law information Program (FliP) and made more criminal law information available through its new lawFacts.ca website.<sup>52</sup>

The SLA service was clearly good for statistics but its value is not that apparent from the report:

over 23,000 Summary legal advice [SLa] assists in family law were delivered in 2011/12, including: formulating an opinion and coaching the client to help themselves; assisting with forms (brief

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<sup>51</sup> *Ibid.*

<sup>52</sup> Legal Aid Ontario Annual Report 2011/12.

service); duty counsel; providing summary advice; referring clients to web services and public legal information; prescribing resolution strategies for issues; and dealing with certificates. a sample of 9,709 matters (all types of law) referred to the Sla revealed that only 13% resulted in the issuance of a legal aid certificate. 87% were resolved through substantive services provided by the Sla including referral to the local duty counsel or other service providers.

Without further research, it is not clear whether the figure of 'only' 13 per cent referral to certificates was a good result or a bad one. That would depend on the extent to which the service is meeting need. The overall strategy of concentrating resources to less complicated cases seems somewhat self-defeating: it would appear to be more logical to deploy them at the most difficult ones, which has traditionally been the intention of legal aid provision. More research, deploying qualitative assessment, is desperately needed on the quality and nature of the work undertaken through telephone hotlines.

The much-respected and now defunct Legal Services Research Centre in England and Wales undertook research on housing advice provided by telephone in 2012. It used Legal Services Commission data on telephone advice on housing in about 140,000 matters. Three-quarters of the advice had been given face-to-face and about a quarter by telephone. It revealed that advice given by telephone was likely to take 14 minutes longer than the equivalent given face to face – if variables were controlled so that similar cases were compared against each other. Thus, the researchers surmise that savings may be illusory if it was hoped that money could be saved by using the telephone if like was compared with like – despite the indisputable fact that telephone contracts were let at prices below what was spent on face to face advice. The researchers underlined just how little we know about the comparison between the use of telephone and face to face advice:

Overall, little reliable evidence appears to exist to support claims that telephone advice better caters to the needs of clients, enhances ease of access and/or delivers value for money.<sup>53</sup>

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<sup>53</sup> Balmer et al, *Just a Phone Call Away: is telephone advice enough?* p5.

The difficulty is that: 'much of our knowledge regarding how willing clients are to obtain advice via the telephone, the barriers that they may face in doing so, and their success in understanding and implementing the advice that they obtain, is informed only by a limited number of policy orientated service evaluations'.<sup>54</sup> The researchers were looking at cases in two categories – on the phone and face to face – but a major problem was that they had insufficient data to fully compare them. Outcomes were assessed by reference to whether callers had received a 'substantial benefit'. This unavoidably involved a degree of subjective assessment. The researchers were dissatisfied with the consequences: high overall self-reported satisfaction rates did not give 'a complete picture'<sup>55</sup> regarding outcome and mode of advice. Face to face advice tended to be used for more serious problems: 'clients with problems that required urgent advice or which had reached a point of crisis or involved an immediate threat to the client gravitated to face-to-face advice'<sup>56</sup> and seemed to be more effective for such cases.<sup>57</sup>

An interesting finding was that face to face services were used (and apparently preferred) not only by those with an illness or a disability, which might have been predicted, but also by those under 18, which might not. The researchers found no evidence that those with mobility problems preferred telephone advice. They did find, as might be expected, that those with mental health problems preferred face to face advice. They surmised that: 'More generally, for vulnerable clients where the development of a personal relationship between the advisor and client may be crucial to the successful progress of a case, the telephone may be an inadequate substitute for face-to-face services.'<sup>58</sup>

Nonetheless it is apparent from studies in other jurisdictions that there are reservations as to how well hotlines can deal with serious problems. An Australian study<sup>59</sup> looked at two related hotlines – one for family law advice and the other for regional, rural and remote areas. The research included dummy calls to check quality and interviews which allowed some objective measure of level and quality. The raw statistics on caller satisfaction were

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<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*, p17.

<sup>56</sup> *Ibid.*, p23.

<sup>57</sup> *Ibid.*, p24.

<sup>58</sup> *Ibid.*, p23.

<sup>59</sup> Banks, Hunter and Griffith, *Australian Innovation in Legal Services: balancing cost and client need*, Griffith University, 2006.

high but the researchers had severe criticisms of how their dummy calls had been dealt with and this was shared by others:

Several respondent agencies said they received negative feedback about the service. One said: "Yeah, the feedback on the hotline is that they get very limited information, and they don't get much time with the person who answered the call on the hotline".<sup>60</sup>

Moreover, the uptake of the hotline services had been very low. Initial expectations were for around 350,000 calls a year: the actual total seemed even after five years to be around 40,000. Respondents pointed to the need for good promotion of the service. The research called for better information to be available to the call centre staff and for better training. As one person reported:

The main point [would be] about training the customer service operators to handle the calls a bit better...I get the impression that they're often a bit lost about where to actually find the information from their screens... I think that people answering the hotline also need to become a lot more familiar with the other services that are there...providing similar types of services, and they need a lot more work around specific types of groups or specific types of clients that they are dealing with, say for example, people from culturally and linguistically diverse backgrounds, victims of domestic violence, people with mental health issues, drug and alcohol issues. I think that the way it's set up at the moment it tends to assume, you know, a certain background of a caller. ...they really need to try and hone the service a little bit better to accommodate particular types of callers.<sup>61</sup>

These sorts of results are confirmed elsewhere, for example in an evaluation of family law services in British Columbia.<sup>62</sup> This included a province wide hotline, Family LawLINE, within a range of other family law provision. Family LawLINE is a telephone advice service by lawyers for individuals around the province who do not qualify for and/or cannot access other services. Individuals access the service by calling the provincial call centre of the Legal Services Society of BC (LSS). Family

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<sup>60</sup> *Ibid*, p225.

<sup>61</sup> *Ibid*, p226.

<sup>62</sup> Legal Services Society, *Evaluation of the Family Law Services of the Legal Services Society: final report*, Legal Services Society, 2012.

LawLINE started in November 2010, following the closure of a more general LSS LawLINE service in April 2010.

The evaluation found that clients tended to use telephone advice early in their case and then move onto other provision:

Analysis of the order of use of services helped clarify that services such as LawLINE, Legal Aid Intake, community advocacy services, and Family Justice Counsellors tend to be used by clients as front-end services (i.e. used earlier by clients). The Internet may be used at any point in the client's quest for resolution to his/her issue(s).<sup>63</sup>

The research charted the high degree to which issues re-emerge in family cases eg over child support. 16 per cent of Family LawLINE cases appeared to be completely settled at one point but with an issue later, such as maintenance, to re-emerge. It seemed, overall, that clients felt that they got better at using advice provision but not the legal system itself.

When asked to respond to four statements pertaining to their knowledge and confidence about dealing with legal problems in the future, respondents were most positive about knowing where to go to get legal assistance in the future. They were slightly less positive about their confidence in recognizing the legal component of a family matter or of knowing their rights. They were the least positive about being sure their rights would be adequately addressed in a similar case in the future.<sup>64</sup>

In common with most other surveys, there was a high satisfaction rate among users (with 84 per cent reporting themselves as partly or completely satisfied with the service received). However, there was no way of factoring in their level of expectation or the quality of the outcome. In addition, the average client used more than one service so that the hotline advice was not exclusive. In satisfaction terms, use of hotline was rated better than the internet but worse than referral to a private lawyer or duty family counsel.

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<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

It matters how a telephone hotline is run. There may be particular value in hearing the conclusions of an experienced manager of hotlines, Wayne Moore from the USA. His assessment of telephone hotlines<sup>65</sup> derives from his role as a practitioner. He has actually run them and has done so in a particular context which was not mainline publicly funded services but as a member service for the American Association of Retired Persons (AARP). This gives him a distinct perspective. He is a believer in telephone hotlines and considers them as good as face to face provision except in certain circumstances. On the issue of where they are unsuitable, he follows the research undertaken in the public sector and agrees that there is a correlation between those who take no action on problems after phone advice with characteristics that follow experience elsewhere: low educational levels, failure to take action on prior legal problems, being a tenant, mental health problems, male, being younger, Asian or black, illness or disability or being a carer. He believes that 'client intake and screening' is the most important element of a delivery system.<sup>66</sup>

Wayne Moore's expectation is that clients are answered by an advocate who will take notes and 'often draft a letter' confirming advice. His model is, therefore, very different from that of a call centre with non-lawyers keeping to a script. He has some very practical recommendations: 'my experience has been that a part-time staff is more productive' but require 'more active management and may affect quality'. He is clear on the attributes of a good system: supervision with the supervisor reviewing notes; availability of legal resource materials; matching calls with areas of expertise; listening in by supervisor; asking client to repeat advice; letter to clients repeating advice. He does not believe in using the service on a model of 'fire and forget': 'The best quality control method but one that significantly increases costs is to place a follow up call to those advised to take some action'. He is clear on the requirements of best practice: same day call back system, not a call holding system; limited automation eg a live person and not a tape to tell people to expect call back; 'my personal opinion is that the use of experienced attorneys is the best practice' though experienced paralegals may be acceptable in limited areas; intake workers should be able to give limited initial advice on first call; there should be follow up letters; follow up calls, 'almost essential for good quality control'; effective case notes; adequate training; availability of video conferencing facilities; an effective procedure to deal with conflict cases and third party

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<sup>65</sup> W. Moore, *Delivering Legal Services to Low-Income people*, Moore & Associates, USA, 2011.

<sup>66</sup> *Ibid.*, p34.

case; adequate procedures for document review where essential eg fax; performance data on individual attorneys; methods of managing bottlenecks among screeners; the avoidance of poor practices – eg separating fact-gathering from advice-giving.

## Chapter 4

### Digital Provision in England and Wales

Turning from the technology of the last century – telephone hotlines – to the new age of digital provision, in the next four chapters we will examine the impact of digital delivery in a range of jurisdictions. England and Wales provides a good example of how the pattern of legal services is being revolutionised by digital delivery, particularly the internet and electronic communication. This chapter identifies eight different ways in which this is happening – there may well be others. The effect of the technology has been magnified by the creation of an over-arching super-regulator for providers of legal services, the government-appointed Legal Services Board, with a set of regulatory objectives that includes the promotion of competition.<sup>67</sup> This move was accompanied by legislative changes which permitted the establishment of alternative business structures (law firms owned by third parties), thereby facilitating external capital investment.

Amongst the early movers was The Co-operative, a mutually owned business with seven million members. In 2011, Co-operative Legal Services (CLS) became the latest adjunct to a £13bn business that includes a strong high street presence with businesses in food retailing, funeral services, finances (including the now somewhat troubled and partly owned Co-operative Bank) and other businesses. Still in start-up mode, the Co-operative is already impinging on the legal market. Legal Futures announced early in 2013:<sup>68</sup>

The biggest brand name to enter legal services and one of the country's first alternative business structures, Co-operative Legal Services (CLS), has announced strong revenue growth for 2012. The Co-operative Group's preliminary results for last year, released this morning, showed that CLS's revenue was up 12.8% to £33m, delivering a profit of £26,000 "in this start-up phase, after absorbing significant investment for growth costs". This would place CLS at 76<sup>th</sup> in *The Lawyer* magazine's table of the top 100 law firms by turnover. The Co-op said its intention is to create "compelling co-operative alternatives for customers needing professional services in each of the areas in which we operate,

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<sup>67</sup> Section 1, Legal Services Act 2007.

<sup>68</sup> 21 March 2013.



while retaining relentless focus on great customer service, value for money and innovation to ensure we deliver our services as efficiently as possible”.

A later shadow passed across CLS’s performance with bad figures for the first half of 2013 though these were explained as due to start-up costs.<sup>69</sup> Whatever the precise fate of CLS, it has probably changed the face of private practice for ever, introducing new standards of transparency in pricing and professionalism in presentation. In particular, its website, as described below, gives a range of fixed fee prices for a range of work.

CLS is just one manifestation of a wave of innovation in legal services. Quality Solicitors is another. This is a consortium of now over 200 solicitors’ firms with a consolidated brand, funded by private equity firm Palaman Capital Partners. As presently constituted, it represents an attempted defence of the existing high street model of provision with the addition of collective branding and shared marketing. Its members retain separate legal forms. It has used an alleged £15m advertising budget in part for ‘attack’ ads on ‘faceless’ legal advisers (presumably like CLS). Its website offers ‘a same day response’ to an email from the site and ‘free over-the-phone advice’. Quality Solicitors’ members also promise such improvements to standard service delivery as routine Saturday opening. A further variant among new entrants is provided by firms like Epoch and US imports, LegalZoom (which now has a link with Quality Solicitors) and Rocket Lawyer. These are, at least in their current format, very much based around document assembly software. Epoch pitches itself to other businesses (such as legal expenses insurers). It offers a document assembly service (using Rapidocs, a package developed by Epoch itself) for their customers assisted, if required, by an in-house telephone service. So, for example, it contracts to provide a will drafting service to legal insurance providers, allowing them to subsume its services within their brand. Rocket Lawyer offers as a taster a free will-drafting service for simple matters to those consulting its website.

Meanwhile in the publicly funded sector, legal aid is being rapidly transformed from a system delivered by large numbers of ‘high street’ providers to a much more concentrated number of specialist firms. The government plans cuts of around a quarter of what was formerly a £2bn

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<sup>69</sup> ‘Co-operative pushes ahead with ABS despite losses’, *The Lawyer*, 29 August 2013.

budget. There is, thus, major change afoot among legal aid providers. As late as the 1980s, legal aid was so well distributed throughout solicitors' offices that about two-thirds received a payment of some kind in the year.<sup>70</sup> At the same time, legal aid made up around a quarter of the income of the Bar.<sup>71</sup> Legal aid has provided, at least until recently, about a tenth of the income of solicitors (the largest group of lawyers). The cuts affect both remuneration and (in civil matters particularly) scope. They will eat deep into the finances of thousands of firms undertaking legally aided work: many will merge, go under or seek new markets.

A cut of this planned magnitude drives the final nail in the coffin of the identity of interest between the government and the legal profession that has, despite professional protest and occasional spats, largely existed since the establishment of legal aid in the 1950s. Although lawyers have long complained of low remuneration rates, in fact, legal aid has provided a steady and not inconsiderable portion of the income of both branches of the legal profession. It has encouraged a publicly funded sector among solicitors and at the Bar to deliver services in ways which reflected historic practices and a 'cottage style' delivery through small firms and a separate advocacy profession. Government's desire to hammer hard on costs means that a cosy relationship between government and the legal profession is no longer possible. The government priority is to cut costs: the profession (and, indeed, their clients) must look after themselves.

In this context, it is no surprise that, as we saw in chapter 1, the Ministry of Justice is exploring the use of a telephone advice service and supporting electronic provision as an alternative to face to face services for reasons of cost. Over the last decade, when funding was more freely available, the Legal Services Commission (now absorbed within the Ministry of Justice and known as the Legal Aid Agency) encouraged the development of not for profit providers particularly to meet needs in 'social welfare' or 'poverty law' areas and, indeed, assisted in the funding of the two national legal advice websites. The good times of such funding are now well and truly over, though, for the time being at least, the legacy of two national legal information websites remains.

The scope of publicly funded legal advice in civil matters has been dramatically reduced. Where it remains, the government has limited

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<sup>70</sup> Law Society, *Annual Statistical Report 1991*.

<sup>71</sup> Bar Council Strategy Group, *Strategies for the Future*, 1990.

access to a central telephone advice line in some areas of law, although there are a few exceptions.<sup>72</sup> The intention is that face to face services will rarely be provided after an assessment of suitability for telephone advice:

In most cases it is anticipated that the [telephone] Gateway will be able to provide the client with legal help over the telephone/email/post. However, in certain cases the Gateway may determine that the case is such that it is not suitable for advice by telephone/email/post and that face to face advice may be required. In these circumstances the Gateway will inform the client that they may seek advice from a face to face provider ...<sup>73</sup>

Winners of the initial gateway contracts in pilot areas of law as we saw in the last chapter were an eclectic mix of private law firms, not for profit organisations and commercial firms, including Carillion Energy Services (which, though essentially an energy company, styles itself 'a recognised leader in transformational outsourcing').<sup>74</sup> No assessment has yet been possible on how these gateway providers have performed. In particular, it is not clear how volumes of calls have compared with previous face to face figures. However, the government committed itself to publication of a review of the implementation and operation of the gateway by March 2015.

It is against this backdrop that we can identify at least eight different forms of service delivery to those on low incomes.

### **1. Provision whose main function is to signpost low price, fixed cost services**

There is nothing particularly new in the idea that poor people can be attracted to products that are cheap and transparently priced, certainly in fields other than law. And, we have already seen the effect of legal deregulation in the field of house conveyancing: the result has been greater transparency and lower prices.

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<sup>72</sup> The exceptions include when the client is in detention (including prison, a detention centre or secure hospital), under 18, or has been previously assessed by the gateway as needing face-to-face advice, has received this advice within the last 12 months, and is seeking further help to solve a linked problem from the same provider.

<sup>73</sup> *Lord Chancellor's Guidance under Section 4 of Legal Aid, Sentencing and Punishment of Offenders Act 2012*, undated, para 8.10.

<sup>74</sup> <http://www.carillionenergy.com>.

The impact of national brands and websites threatens to give a new edge to big 'discount' players with the capacity to transform the existing legal services market. We are just at the beginning of this process. CLS, for example, offers a number of packages for divorce. You can opt for a managed or a DIY package. The latter is offered in three separate forms:<sup>75</sup> basic (£118); basic with a check (£178); and basic with check and help (£298). The site gives a degree of general information for free. There are lots of exhortations to ring up a hotline number for advice. At a time when legal aid is being withdrawn from a range of matrimonial problems, this is strategic bid for high volume, low price work which will, for some clients, address what would otherwise be the resulting gap in legal provision.

CLS is an example of the use of a website and central telephone services to provide a general range of information about process aimed at attracting high volume, low cost cases. It is, under Professor Susskind's paradigm, a provider of packaged legal services. The end result is standardised, systemised though not commoditised. The ultimate relationship almost universally remains one of lawyer and client for anyone who hires CLS. The site gives a certain amount of information away for free – for example, there is a 'breaking up checklist' but is basically designed to lead you to a series of fixed fee packages – of which, in total in autumn 2013 there appeared to be close to 100.

The CLS site is unique only in its association with a national non-legal brand, the clarity of its website and the transparency of much of its pricing. Many other lawyers or legal organisations offer telephone hotlines or websites to offer packages of services. For example, Saga is a company concerned to provide services to the elderly whose site is, in some ways, similar to the CLS: it incorporates a legal section among holidays, insurance and other topics. This takes you to Saga Legal Solutions which promotes a legal insurance plan that can, for example, be added to home insurance and various other specific packages for such matters as probate, wills and conveyancing. Quality Solicitors are less transparent about their fixed fees – which may well vary among their members but its website offers a prominently displayed national hotline number. Its approach to DIY litigants is a little more sceptical. Divorce question and answers on the site, for example, begin:

Do I even need a divorce lawyer? We've agreed everything...

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<sup>75</sup> For petitioners.

We suggest you do. We make certain that you do not agree something now only to find out it is not legally valid years later.

***2. 'Winnowing' or 'gleaning' provision that offers legal advice and information to meet the needs of a wide range of people in order to attract clients for paying services***

There are two types of site which go beyond what is available from the CLS and offer substantially more legal advice. The first category contains the commercial websites that follow a 'gleaning' or 'winnowing' strategy. They offer free assistance designed to satisfy a range of people with relatively simple problems in order to attract, among them, those for whom they can act and from whom they can make money. The second category are not for profit providers, which are discussed later.

A successful winnowing commercial service therefore – whether based on a website, a hotline or even a physical consultation – depends on a cheaply provided 'loss leader' mass service which throws up a smaller number of profitable cases which have thereby been attracted. Litigation resulting from road traffic accidents is a good field to study this. For poorer clients, road traffic personal injury cases were once funded by legal aid but this was withdrawn in favour of 'no win, no fee' arrangements that significantly raised their overall cost and, incidentally, profitability. The LSA Legal Partnership runs the well thought out website, [www.roadtrafficropresentation.com](http://www.roadtrafficropresentation.com), referred to earlier. This gives considerable free assistance for routine cases and signposts people with more complicated ones to the firm. It specifically proclaims that it is a 'new way' of providing services:

this ... process ... can be streamlined and automated, which is what we offer. You are asked a series of questions and your answers produce an automated free diagnostic advice on possible outcomes and penalties if convicted. It replicates the process that a solicitor would ordinarily go through with you, but in much less time and without cost to you, all at a time of day or night that suits you. Our 'virtual office' never closes!

A test of this site with a relatively mundane speeding problem suggested a likely result of three penalty points and a fine of around £1000 for the income disclosed: steep but probably correct. The site works automatically and easily.

Saga Legal Solutions takes a similar approach within a wider range of law. It gives a lot of information about different legal problems in the hope that someone will commit either to a specific package or to take out an annual insurance package.<sup>76</sup>

### **3. Sites selling email advice**

There are a number of sites that simply sell legal advice by email such as [www.justanswer.co.uk](http://www.justanswer.co.uk). This invites you to email a question to an expert; offer a price as a 'refundable good faith deposit' (which becomes the price that you agree to pay if satisfied); get an answer; rate it; authorise payment; and join a subscription plan. The site claims to run 'secret shoppers' to test its experts and to use a 'third party service' to check at least one of the claimed credentials of each expert using the site. Experts get between 25 and 50 per cent of the sum paid by customers. The legal site is part of a wider programme in more than 100 categories and including doctors, lawyers, mechanics and vets: [www.brain-picker.com](http://www.brain-picker.com) is very similar.

[www.rightsolicitor.co.uk](http://www.rightsolicitor.co.uk) is a solicitor-based version of the same idea. This is a subscription site with a free 14 day introductory offer. Solicitors pay a monthly subscription fee for referrals. The online advice provision is run by LegalCare, a subscription legal advice service. This organises a network of LegalCare 'associates' who sell subscriptions and are wooed by a YouTube video clip based around a plausible young man somewhat inexplicably drinking a pot of tea in an upmarket cafe. Law on the Web is a similar sort of site, the content of which got panned by a commentator in an article in the *Guardian*.<sup>77</sup> It is now owned by DAS UK, the legal expenses insurer, whose insurance packages it promotes. It also offers a wide range of free documents, such as 'living wills' which you can download for free. This raises the issue of quality assurance of websites, an issue addressed later.

### **4. Document assembly packages**

Document assembly is an obvious use of online potential – it is discussed further below in relation to the US. Rocket Lawyer uses document assembly to give you a taster on a small range of documents such as wills

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<sup>76</sup> <http://www.saga.co.uk/legal.aspx>.

<sup>77</sup> G Peaker, 'The pitfalls of free online legal advice' *Guardian Law*, 12 June 2012.

and powers of attorney. The technology underlies other bulk providers - both direct to customers and provided for other businesses. AA Legal Services offers a range of documents which can be completed online for fixed prices using Rapidocs. These are, in fact, produced by Epoq but branded as those of the AA. Epoch has its own lawyers in the Midlands who can remotely deal with clients and help them through the process of document assembly. One of its founders specifically uses Professor Susskind's phrase in describing what is now possible:

It is now possible to unbundle and commoditise a variety of legal services and to reach out to a mass market audience.<sup>78</sup>

## **5. Virtual law firms**

Digital technology provides the opportunity for law firms drastically to cut their overheads. In particular, they no longer need to fund a central physical office. In both the UK and the US, the virtual law firm or practice has evolved. These can obtain most of their clients through a website; communicate electronically; allow lawyers to work from home; use cloud computing to share files and programmes; eliminate secretarial assistance. This is how Excello Law, a commercial firm, describes itself:

A virtual law firm

Our structure is the key to the delivery of our service. We have dispensed with the expensive overheads that our clients tell us they do not need. This means that we do not operate out of a central office or engage teams of support staff to deliver the mail or handle our calls. Excello Law comprises of a team of experienced lawyers who work from their home offices, clients' offices or make use of satellite office facilities across the country. When you instruct a lawyer at Excello Law you will only deal with a lawyer. We are supported by the latest technology to ensure our services are efficient and prompt. By working in this way, we are able to provide our clients actual value for their money with an exceptional and truly responsive legal service.<sup>79</sup>

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<sup>78</sup> R Cohen, 'Unbundling by Law Firms through Cloud Computing: responding to changes in legal aid', in International Legal Aid Group, *Legal Aid in Difficult Times: conference booklet 2013*, p7.

<sup>79</sup> [www.excellolaw.co.uk](http://www.excellolaw.co.uk).

One of the longest established virtual law firms in the legal aid field is Scott-Moncrieff and Co, run by Lucy Scott Moncrieff, recently Law Society President. This has around 50 consultants: it advertises its wares to future hires as well as clients on its website:

#### Working for Scomo

As you will see from the rest of the website, Scomo is a firm of excellent people with a positive attitude and a strong commitment to its clients - does this sound like you and the type of firm you would like to work for?

#### What we offer

To enable our consultants to thrive and enjoy their work, we offer:

A case management and accounts system.

A fair fee-sharing arrangement.

Supervision and support.

Marketing assistance.

Administrative support.

#### How do we work?

The majority of people that work for Scomo are self-employed consultant solicitors, but all work that they do for Scomo is under the name of the firm itself and the contract is between the client and Scomo and subject to Scomo's policies and procedures. The work is protected by Scomo's professional indemnity insurance. Scomo consultants usually work from home or have their own offices, are free to take on as much or as little work with us as they wish, and can combine work for Scomo with any other work.

#### Our Technology

Technology makes our structure possible. We have a computerised case management system, a secure intranet, and an on-line forum to ensure that distance does not impede communication or effectiveness, and to allow people to practice from anywhere in the country without difficulty.

However we do not rely on technology alone to make the firm work; our consultants meet professionally through regular unit meetings and socially. We think that all this makes Scomo a happy place to work.<sup>80</sup>

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<sup>80</sup> [www.scomo.com](http://www.scomo.com).



The technology makes possible a very different form of practice from the point of view of the lawyer. However, for the client, much of this will be unseen. Services can be provided by telephone, email or through face to face contact. The firm is known for its advocacy in mental health cases tribunals.

Virtual practice of this kind has proved popular in the US. 'E-lawyering' has become a recognised concept and the American Bar Association has had since 2000 a thriving e-lawyering task force within its law practice management section. Protected by stronger provisions than in the UK preventing the 'unauthorised practice of law', the ABA has developed guidelines that will require a certain structure for 'virtual law offices'. These require a secure 'client portal' through which clients communicate with the firm.<sup>81</sup> The use of this distinguishes lawyers from the competition:

A virtual law practice is not a law firm website that sells legal documents without legal review. A virtual law practice provides direct and personal communication between a lawyer and a client rather than strictly form-generated, unbundled legal documents for sale to the public or single online task management.<sup>82</sup>

Nor is a virtual law office to be defined loosely as a law firm that encourages email communication for quotes or responses: the ABA wants to define the means of communication of a virtual law firm as encrypted, secure, passworded and, thereby, capable of attracting lawyer's privilege and requiring compliance with legal ethics: it is 'a professional legal practice that exists online through a secure portal and is accessible to both the client and the lawyer anywhere the parties may access the internet'.<sup>83</sup>

## **6. Not for profit advice**

England and Wales has had for many years a distinctive lay advice sector with an increasing role in giving legal advice. The origin of the national citizens advice movement lies in lay advice on wartime regulations during the Second World War but since the 1970s it has employed an increasing number of lawyers in the spine of full-time staff that support large numbers

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<sup>81</sup> See *Suggested Minimum Requirements for Law Firms delivering Services Online*, available in August 2013 on the ABA website.

<sup>82</sup> S Kimbro, *Virtual Law Practice: how to deliver legal services online*, ABA Law Management Section, 2010, p6.

<sup>83</sup> *Ibid.*, p4.

of volunteers. In addition to face-to-face provision, the CAB service runs a national website, [www.adviceguide.org.uk](http://www.adviceguide.org.uk), and is building up a national helpline service. An alternative national advice website is provided by Law For Life, an NGO that took it over from the Advice Services Alliance, at [www.advicenow.org.uk](http://www.advicenow.org.uk).

In addition, there are a number of other national advice websites on specific topics, notably the housing charity Shelter ([www.shelter.org.uk](http://www.shelter.org.uk)) and the national debt helpline (<http://www.nationaldebtline.co.uk>). A number of local providers also have websites that have a national utility.

## **7. Online dispute resolution (ODR)**

Online dispute resolution is simply dispute resolution that happens over the web. There is little ODR focused on poor clients though there are a number of sites offering ODR over a wide field (and with varying definitions of ODR) for relatively small commercial disputes with a value of less than £15,000. For example, [www.e-mediator.co.uk](http://www.e-mediator.co.uk), offers 'consensus, commercial mediation' with named negotiators, many of whom are practising lawyers. It operates on the basis of a variable fixed fee for a package that includes preparation, one day of the mediator's time and travel costs. This appears to be a fairly traditional mediation service with an online front end during which the parties communicate by email prior to the mediation.

A second set of online providers specifically advertise their ability to use teleconferencing. Helplink is an Ireland-based service which provides a variety of services online including counselling and mediation. This has fixed fee rates, quoted on its website, for personal and online sessions. The Mediation Room is a UK alternative (tagline – 'we'll see you out of court'). Its accessible website explains how it can provide an online mediation which makes use of the possibilities of private communication with the parties and then anonymous suggestions of solutions to encourage the parties to resolution. The Mediation Room is run by Graham Ross, a retired solicitor and trained mediator, who was once a founder of the online legal information service, Lawtel. The big daddy of the online resolution market, however, is Modria, a spin off from the online resolution procedures set up by eBay and PayPal and whose European Advisory Board is headed by Graham Ross. This is US based and clearly operated as the model for The Mediation Room (its own equivalent is the Resolution Center). European developments in this area are being

encouraged by an EU directive on online dispute resolution intended to come into force in 2015.

## **8. Government advice sites**

The UK government recognises a duty to provide information to assist citizens and, on that basis, a number of departments have set up sites to do so. The Department of Work and Pensions has, for example, established [www.cmoptions.org](http://www.cmoptions.org), to assist on relationship breakdown where its interest is to minimise the level of state payments. The site contains a range of information and is referred to as an 'app' that can be downloaded. It advises on how to make a parenting plan. It contains a set of videos designed to help people separating, the same sorts of issues as are covered by the Dutch Legal Aid Board's *Rechtwijzer* site. The videos are professionally made and informative. They can also, like elements of the Dutch site, be embedded in other websites at no cost.

The site's approach, like *Rechtwijzer*, is to steer parties to settlement – though there are warnings about taking a different route in cases of domestic violence. This is perfectly legitimate as a general government aim. But, it might be argued that the videos minimise the problems that occur when one party to the breakup is deliberately evading their responsibilities. This type of case may just not be suitable for anything other than traditional legal action – whatever the means of communication with the lawyer. There is a further potential problem, exacerbated by the lack of any individualised support. A video can give limited emotional support to someone in considerable distress, as illustrated by the following blog from a single parent:

Looking at a promo video for the app, I felt my hackles rising. It opened with footage of warring parents, all emotive stuff: dads sleeping on sofa or relegated to granny's house, mums looking angry and waving their arms about during highly-charged mediation meetings. Then, presumably after a session pressing some buttons on their electronic device, order is restored: dad returns home (to a 'I know it's not forever' voiceover from a little girl), a mum opens the door smiling as she hands her child over for a trip out with her ex, and an estranged couple smile fondly at each other as they discuss stuff round a kitchen table ...

Honestly, will this REALLY be of any use to anyone? At the risk of sounding like a belligerent teenager, I already 'know my rights'. The day I decided I wanted to leave my child's father I Googled them, cross referenced them, looked up family law stuff and went and had an hour's consultation with a family law expert (a free initial consultation as offered by many practitioners).

I don't think 'not knowing where to turn' is the real issue at all during separation – sure it might be for some people, but, as the excruciating film for the app shows, it is all about breakdown in communication.

THOSE are the realities, and frankly, an app pointing us in the right direction to resolution (our 'rights', access to mediation...) is not going to take any of that away.

And trying to reassure us in the manner of a kindly aunt with phrases like 'it's normal during a break-up to feel angry, frustrated or sad when you think of your ex-partner. Learning to deal with your ex without conflict means you can build a better future for yourself, and your children' is more likely to make us want to kill whoever wrote the script than treat our ex with a modicum of respect.

So sorry, DWP. You rightly acknowledge that 300,000 families undergo separation every year in Britain. But I very much doubt any of them will want to be patronised by a computer programme offering them advice.<sup>84</sup>

All this profusion of evolving provision is replicated in other countries with equivalently developed technological infrastructure including, of course, the US. However, the historically lower levels of spending on publicly funded legal services has, as we will see in the next chapter, taken developments in a particular way. One major problem of government websites is their inevitable vulnerability to changes of policy, government and funding cuts. They provide tempting targets for expenditure cuts and in this connection we discuss later the fate of NHS Direct.

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<sup>84</sup> <http://www.parentdish.co.uk/2012/12/07/government-launches-app-sorting-out-separation/>.

## Chapter 5

### Innovation in the United States

As the cradle of the current technological revolution, it would be surprising if the US does not have lessons in how emerging technologies can be used in the delivery of legal services, both generally and in relation to the poor. And, indeed, it does – though its experience of the use of technology is unavoidably mediated by the nature of the US context.<sup>85</sup> Much of its emergent pattern of delivery parallels that of England and Wales but lower levels of funding have forced an earlier reliance on technology. One informed commentator estimated that in relation to publicly funded legal services:

Perhaps ten times as many people access legal aid generated technology tools each year than have direct human contact with providers.<sup>86</sup>

Space does not permit a detailed account of the many technological initiatives in the US in the legal services sphere in the last decade and more. However, four developments in the US are particularly important. Three are dealt with below: unbundling, the strategic use of innovation funds and court self-help initiatives. The fourth – research on telephone hotline provision – was considered in chapter 3 above.

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<sup>85</sup> This chapter is heavily dependent on the assistance of three people who have written widely about, and directly participated in, recent developments in the US: Alan Houseman, Bonnie Rose Hough and Richard Zorza. They all attended the discussions at, and presented excellent papers to, the 2013 ILAG conference in The Netherlands: they gave other help as well. Their papers are available on the ILAG website ([www.ilag-net.org](http://www.ilag-net.org)) and, together, present a wider overview of the US than this focused analysis on the use of new technology. Thanks are also due to Stephanie L Kimbro who, hearing of this project, was good enough to send us a copy of her book, published by the ABA Law Practice Management Section, *Virtual Law Practice: how to deliver legal services online*. The inspiration was theirs: any misunderstandings and all the judgements are ours.

<sup>86</sup> R Zorza, 'Review of the Status and Potential of Access to Justice Technology in the United States of America', in International Legal Aid Group, *Legal Aid in Difficult Times: conference papers 2013*, p1.

## ***'Unbundling' or limited service representation***

The concept of 'unbundling' (termed 'decomposition' by Professor Susskind) was developed before the digital revolution. It can be defined, as it is by Stephanie Kimbro, a member of the American Bar Association's e-lawyering task force and proselytiser of virtual legal practice, as:

occurring when a lawyer breaks out the different tasks associated with a legal matter and provides the client with only specific portions of the legal work.<sup>87</sup>

An early exponent was an English solicitor, Peter Browne, who deployed the concept but not the term when he set up a 'Law Shop' in Bristol in 1991. This offered an open access office with available information together with the capacity to buy 'bites' of legal advice on discrete parts of a legal issue. The shop still exists although recently taken into new ownership: legal advice can be purchased at £10 for 5 minutes.<sup>88</sup> However, the lawyer most associated with the idea of 'unbundling' is the Los Angeles lawyer, Forrest (often familiarised to Woody) S Mosten. He used the technique in a ground-breaking divorce practice, based in Beverly Hills, where clients were offered a room full of resources relating to family breakdown issues and discrete packages of advice that they could purchase. Woody Mosten was identified in an earlier project funded by the Nuffield Foundation in 1995 as someone leading innovation in the delivery of legal services around the world. His ideas have been influential in both the US and the UK.<sup>89</sup>

Unbundling has, thus, become a crucial step in the reduction of cost possible through remote assistance. Insurers, and, indeed, the ethical guardians of the legal profession took a little time to accept this idea but such practice is now accepted – on both sides of the Atlantic<sup>90</sup> – and widespread. Several US firms specifically refer to unbundling in their advertising. For example, [www.MDFamilyLawyer.com](http://www.MDFamilyLawyer.com) proclaims:

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<sup>87</sup> Note 85 *supra*, p21.

<sup>88</sup> <http://www.legalfutures.co.uk/latest-news/bristol-law-shop-given-new-lease-life-local-solicitors>.

<sup>89</sup> See F S Mosten, 'The Unbundling of Legal Services: increasing legal access' in *Shaping the Future: new directions in legal services*, Legal Action Group, 1995.

<sup>90</sup> See 'Unbundling Family Legal Services' 1 May 2013 Practice Direction by the Law Society of England and Wales.

We offer an "unbundled legal service" for self-represented parties in Maryland uncontested divorce matters. This means that we offer legal forms bundled with legal advice for an affordable, fixed fee (Read more...). This is an innovative approach to getting a Maryland divorce at the lowest possible cost.

Moreover a Google search of the term throws up several examples of English and Welsh law firms offering unbundled legal services, particularly in the family law area, now that legal aid provision in that sphere has been severely curtailed. The ability to specify precisely what legal service is being offered facilitates fixed advance pricing and lies behind, for example, the different service packages offered on the Co-operative Legal Services website.

In a recent article, Stephanie Kimbro considers the use of technology to assist in unbundling in nine specific ways: document assembly and automatic, decision-making tools and artificial intelligence, online case and client management, online branded networks, web calculators and web advisers, guided walkthroughs, video conferencing and real time live help chat, video tutorials and legal guidance, and 'game theoretic bargaining systems'. She is concerned to tread a line between the demands of ethics and lawyers' responsibilities with the opportunities of the potent combination of unbundling and technology.<sup>91</sup> Her conclusion is that:

Changes in technology and consumer behavior have irrevocably changed the method of legal services production and delivery. Unbundling permits lawyers to adapt to changes by slowly making their processes more cost-effective and efficient through the use of technology. Responsible adoption of unbundling across the legal profession will help push the profession into the next generation of legal services delivery – increasing access to justice for the public we serve. To get there will require greater collaboration and cooperation among private practitioners, legal services organizations, technology providers and law schools and legal clinics.<sup>92</sup>

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<sup>91</sup> S Kimbro, 'Using Technology to Unbundle in the Legal Services Community', *Harvard Journal of Law and Technology*, February 2013, pp18-24.

<sup>92</sup> *Ibid.*, p26.

## ***Strategic use of funds for innovation funds***

Low cost-high volume services have had a particular attraction in the US where funding for public legal services has been severely limited. The best estimate of total funding for 2013 appears to be around \$1.4bn.<sup>93</sup> For a US population of around 313m, spending would be the equivalent of around \$4.4, £2.91 or €3.37 per head of population. By comparison, England and Wales spent an estimated £925m on civil legal aid in 2012/13.<sup>94</sup> Its population is around 56m. Thus, the cost per head is the equivalent of \$25.32, £16.51 or €19.1. This massive difference greatly affects the levels of scope, eligibility and remuneration. Public funding in the US is just nowhere near as important to the provision of legal services as in the UK – where, even now, probably around 10 per cent of all solicitors' income comes from legal aid and a rather higher proportion for the Bar.

One positive effect, however, arises from this parsimony. Like the prospect of hanging in the morning, it has concentrated minds. The largest single funder in the US is the federally funded Legal Services Corporation (LSC). It has tended to take a much more strategic approach to funding than in the UK where development was very much driven by the legal profession. The LSC has managed to withstand almost continuous political attack in Congress since the Reagan presidency, albeit (literally) at a price. Spending has only risen between 1980 and 2013 by €40,000 in absolute terms (from \$300,000 to \$340,000 – a cut in real terms of 59 per cent).<sup>95</sup> Decades of financial stringency have required the LSC to make the most of its money.

A good example of the LSC's strategic approach has been its Technology Initiative Grants (TIG) programme. It arose out of an LSC summit on the potential use of technology in 1998.<sup>96</sup> The LSC explains the programme as follows:

The LSC Technology Initiative Grants (TIG) program emerged from the combination of longstanding need to provide some

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<sup>93</sup> A Houseman, *National Report USA*, ILAG conference 2013, p10.

<sup>94</sup> Ministry of Justice *Legal Aid Statistics 2012-13* June 2012. This figure is, of course, to be cut significantly - to a planned £887 in 2013-14 (Legal Aid Agency *Business Plan 2013-14*)

<sup>95</sup> Note 93 *supra*.

<sup>96</sup> J Graecen, 'Introduction' *Harvard Journal of Law & Technology*, Volume 26, Number 1 Fall 2012, p244.



assistance to the large percentage of persons whom LSC grantees cannot fully represent, and a new resource -- the communication and information capacities brought about by the technological revolution.

Most legal needs surveys in the United States indicate that no more than 20 percent of low-income people with civil legal problems are able to get help. The unprecedented powers of the Internet, personal computers and mobile devices -- combined with the development of high-quality legal information and tools -- can broaden the reach of the valuable work conducted by legal services practitioners. Seeing this potential, Congress authorized funding for the TIG program beginning in 2000.

TIG funding has provided LSC with a remarkable opportunity to explore new ways to serve eligible persons, to help build legal aid programs' capacities, and to support the efforts of pro bono attorneys. TIG has supported projects to develop, test and replicate technologies that improve client access to high quality legal information and pro se assistance. It has also helped programs enhance their overall information technology infrastructure. These projects use a broad range of technologies -- including mobile, cloud computing, big data, and automated document assembly -- to make the delivery of legal services in the United States more efficient and effective.

Through 2012, LSC has funded over 525 projects totaling more than \$40 million. There have been over 800 applications to the TIG program.

These grants have had an influence disproportionate to their amounts. One consequence has been that some LSC grantees have become leaders in the use of new technology. At an LSC-White House Access to Justice Forum, LSC President Jim Sandman revealed that Pine Tree Legal Assistance in Maine had a website before his own commercial firm, Arnold and Porter.<sup>97</sup> They have funded the development of the A2J software discussed below.

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<sup>97</sup> <http://www.lsc.gov/media/in-the-spotlight/lsc-white-house-host-forum-increasing-access-justice>.

The TIG programme has a number of themes. In the category of 'innovations and improvements' its current priorities include: document assembly, expert systems; and 'triaging' programmes. In addition, the LSC is looking for 'remote service delivery' initiatives:

LSC seeks proposals to develop new and creative systems that would promote the delivery of remote legal services efficiently and effectively. It encourages organizations to explore private bar innovations -- such as virtual law office (VLO) platforms -- and advances seen in the medical field, where providers increasingly utilize patient portals and telemedicine in their practices.<sup>98</sup>

It is also interested in the shift to mobile telephones:

For many clients, a cellphone may be their only dedicated Internet access point and is likely the technology with which they are most familiar. According to a 2012 Pew survey, this is particularly true for people "under the age of 30, Black and Latino users, and people with lower income and education levels." Proposals could address the use of text messaging, responsive web designs to deliver content to mobile devices, specialized apps or tools for use on smartphones or ways to better integrate the use of mobile technologies in the delivery of legal services by advocates.<sup>99</sup>

As a Congress-approved scheme, the TIG has legislature endorsement. The application process is professionalised with a specified marking requirements. For 2013-14, just under \$4m is available (£2.6m or €3m). Applicants have to be LSC grantees but partnerships are actively encouraged with other organisations. The programme is impressive and provides a model of seed-corn funding.

### ***Court self-help initiatives***

Another consequence of funding constraints has been the development within some court structures of provision to assist the vastly greater number of self-represented litigants than in the UK. These have been the subject of a number of evaluations and considerable research, particularly

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<sup>98</sup> <http://tig.lsc.gov/grants/application-process/2013-tig-categories-and-areas-interest>.

<sup>99</sup> *Ibid.*

in California which is the most active state in this field.<sup>100</sup> The scale of the problem is enormous. For example, 90 per cent or more of housing litigants are unrepresented in New York or Massachusetts in housing matters: in Maryland, 70 per cent of all civil litigants are unrepresented.<sup>101</sup> A recent survey of assistance with civil cases published by the American Bar Association reported:

Some access services available to the general public are widely present. In nearly every state, at least some lower courts have moved to put selected court forms or some basic information about court operations on the internet (98% and 100% of states, respectively). Over 70% of states have at least one staffed self-help center located in a courthouse. In these centers, members of the public receive information and sometimes advice about how to pursue civil legal claims on their own using formal court processes, including – sometimes -- how to represent themselves in trials and hearings. Over half of states (59%) have at least one program that places computer kiosks in court-houses to assist unrepresented civil litigants in pursuing their claims. These kiosks contain computer programs that assist people in providing the information required by specific court forms or describe the process that people will go through as they pursue or respond to a claim.<sup>102</sup>

Many states use document assembly programmes to help self represented litigants to fill in forms.<sup>103</sup> As legal aid in the UK is cut back, US experience will become even more relevant. US courts are clogged with those forced to represent themselves, giving the judiciary an incentive to seek ways of addressing the consequent blockages, even at a cost to their own budget.

Again, the Nuffield Foundation can note with satisfaction its funding of a 1996 study that looked at the use of interactive kiosks placed within courts, particularly in Arizona.<sup>104</sup> The conclusions, for humans, were rather

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<sup>100</sup> See eg *Model Self-Help Pilot Programs - Report to the Legislature* March 2005, [www.courts.ca.gov/partners/211.htm](http://www.courts.ca.gov/partners/211.htm).

<sup>101</sup> Note 93 *supra*, at p28.

<sup>102</sup> R Sandefur and A Smyth, *Access Across America; first report of the civil justice infrastructure mapping project*, American Bar Foundation, 2011, p12.

<sup>103</sup> Note 93 *supra*, p4.

<sup>104</sup> See Chapter 4, 'Access to Justice Innovation in North America' in R Smith, *Achieving Civil Justice: appropriate dispute resolution for the 1990s*, Legal Action Group, 1996.

heartening: the kiosks worked best when fed, watered and tendered by living people rather than just dumped and left in dark courthouse corners. As Arizona's manager of the project said:

The kiosk that works best is in Mesa, where it is set up in a law library and supervised by staff.<sup>105</sup>

California has played a leading role in the development of assistance for unrepresented litigants. It has a self-help section (including videos and information on workshops) within the courts overall website.<sup>106</sup> This contains information on various subjects of litigation; links to a separate website (partly funded by the LSC) which provides details of sources of legal assistance; and lists self-help centres and facilitators funded by the court service. There is a considerable commitment to this service within the courts. This is indicated in the rather sad circumstances of judicial negotiation on proposed budget cuts. The Californian judiciary placed restoring and expanding self-help services as the first-mentioned of five priorities (above reducing delays).<sup>107</sup>

California and other states that have similarly invested in self-help internet provision (such as Minnesota),<sup>108</sup> continue to think that it gives value for money. There is also a recognition that the lessons from the early use of court-based kiosks remain. There is a continuing commitment to supplementing 'cold' sources of information such as the internet or other forms of remote provision with 'warm bodies' available to DIY litigants to meet in person (at self-help centres) or with whom they can 'chat' online or otherwise interact.

Much court procedure involves the submission of documents. It is not surprising, accordingly, that this is an area where automated document assembly has been useful. Dominating the field in this area has been a combination of software packages – the commercial product, Hotdocs, donated free; a national system for creating legal documents, Law Help Interactive (which has been responsible for 145,000 online documents)<sup>109</sup>; and a user-friendly 'front end', originally developed with the assistance of

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<sup>105</sup> *Ibid.*, p41.

<sup>106</sup> [www.courts.ca.gov](http://www.courts.ca.gov).

<sup>107</sup> Judicial Council of California, *Reinvesting in our Justice System: Judicial Accountability and Outcomes Fiscal Year 2013-14*, May 2013.

<sup>108</sup> See [www.mncourts.gov/selfhelp](http://www.mncourts.gov/selfhelp).

<sup>109</sup> [www.lawhelpinteractive.org](http://www.lawhelpinteractive.org).

the LSC's TIG programme at Chicago-Kent University's Center for Access to Justice and Technology, A2J. A2J arose out of a major research project which found that:

Civil justice reform in the United States has failed to address the problems faced by self-represented litigants in their efforts to obtain access to the justice system. Although the great majority of cases filed by self-represented litigants are factually and legally uncomplicated, many litigants in these simple cases struggle to navigate through an unfamiliar and procedurally complex court system. Court systems employ difficult, even arcane terminology, and impose highly technical requirements to prosecute or defend cases. To date, most approaches to this problem have failed to address this inherent complexity from the "customer's" perspective.<sup>110</sup>

The answer was a set of branded variations of the A2J concept: A2J guided interviews based on a tool, A2J author, displayed through A2J player. In essence, the idea is simple. You are guided up a cartoon road to a cartoon courthouse. You progress as you answer questions put to you by a cartoon guide. This allows the operation of an underlying document assembly programme. A further project, Self Help Support, again part of Pro Bono Net, exists as a clearing house for information about online assistance for DIY litigants.<sup>111</sup>

A2J makes an interesting comparison, as we will see, with the Dutch Rechtwijzer site. They are, of course, differently focused and funded. A2J takes the user through the completion of crucial court documents. Rechtwijzer contains elements of doing the same thing but, in fact, one of its main aims is to deflect users away from the courts and to take an overview of the best way of solving their case. Rechtwijzer also contains a dynamic element which gives assistance and steering to users as they proceed through a case. Most excitingly, it has the capacity to function on outcome rather than process. A2J shares the notion of a journey – the user progresses down a path to a courthouse but is necessarily limited to the court context from which it emanates.

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<sup>110</sup> C Owen, R Staudt and E Pedwell, *Access to Justice: meeting the needs of unrepresented defendants*, Institute of Design, Chicago-Kent University, Illinois Institute of Technology, undated, p3.

<sup>111</sup> [www.SelfHelpSupport.org](http://www.SelfHelpSupport.org).

There are lessons from US experience of assisting litigants in this kind of way. First, it can be very effective. It is something that the UK courts may need to consider as legal aid is withdrawn. Second, the pace of change is fast and, compared with more modern websites, A2J is perhaps somewhat showing its age in terms of its rather simple visualisations when compared with more recent sites. Third, self-help assistance needs to be integrated with provision for those that do not need it:

Developers must recognize that the same features that make an application friendly for unsophisticated users may make it unfriendly for those who use the application more frequently.<sup>112</sup>

Finally, the message comes through again and again that internet-based self-help will not work for all litigants. It is worth repeating the following quote from California's Bonnie Rose Hough as an echoing refrain:

Technology is a great asset and courts and legal services providers need to move forward with technological solutions to address the needs of the public they serve. But, not everyone will be able or willing to use the technology when it is first deployed. It is critical that courts never unfairly disadvantage a party because of new technology.<sup>113</sup>

Meanwhile, we should move on the Dutch Rechtwijzer website, a development that amounts to a game changer in the quality of digital provision and which does incorporate human assistance with its website.

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<sup>112</sup> B R Hough, 'Let's not make it worse: issues to consider in adopting new technology', *Harvard Journal of Law & Technology*, Volume 26, Number 1 Fall 2012, p260.

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

## Chapter 6

### Rechtwijzer.nl: A Game Changer

The Dutch Legal Aid Board has developed a legal advice site known as Rechtwijzer,<sup>114</sup> variously translated as ‘conflict resolution guide’<sup>115</sup> or ‘interactive platform to justice’.<sup>116</sup> The project, which initially cost €2.3m, is run by a joint committee with the support of a number of stakeholders, including the Bar. It sets a new standard for what can be delivered. Readers are encouraged to get online; switch on Google translator; work their way through at least a bit of it; and make their own judgement.

Rechtwijzer1.0 was launched in 2007 and comprehensively reworked in 2012. Research on the current version, Rechtwijzer2.0, is being undertaken by the University of Twente. Results will be available in 2014. This will be an important study because it will indicate whether the provision is, in fact, as good as it looks. Thus, a note of caution should be sounded. We do not yet know how the current site will be rated by those using it in practice.

The Rechtwijzer has to be seen in its context. The Dutch have a relatively well funded legal aid scheme. Expenditure was €440m (£367m or \$596m) in 2008.<sup>117</sup> Services are delivered through private practitioners on a certificated basis and a national network of legal advice ‘counters’ staffed by paralegals. This is the Board’s own description of the Rechtwijzer:

In addition to the Counters, there is also an interactive online application called Rechtwijzer (‘Roadmap to Justice’; see [www.rechtwijzer.nl](http://www.rechtwijzer.nl)). This, too, is an easy way to obtain legal information. It helps users to find their way towards solving a conflict. The application, developed by the Legal Aid Board in close cooperation with the University of Tilburg, consists of a ‘dispute roadmap’ that, on the basis of a number of choices, guides users step by step along all the legal aspects of the conflict at hand. The software covers the fields of housing, labour, family, consumer and administrative law.

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<sup>114</sup> [www.Rechtwijzer.nl](http://www.Rechtwijzer.nl).

<sup>115</sup> Eg J v Veenen, *Online integrative negotiation tools for the Dutch Council for Legal Aid* source.

<sup>116</sup> <http://www.hiil.org/project/rechtwijzer>.

<sup>117</sup> Legal Aid Board *Legal Aid in the Netherlands: a broad outline*, undated.

Apart from further development of this Dispute Roadmap, new applications will be added to the website too: the Divorce and Parenthood Plan and Mediation Online. These applications will soon be ready for use and are also meant to encourage users to solve legal conflicts themselves.

The Dispute Roadmap can be seen as a first help towards settling actual conflicts. The website of the Legal Services Counters, on the other hand, contains lots of documentation and is meant first and foremost to inform visitors on all sorts of legal matters. It is of a much more comprehensive nature than the Dispute Roadmap, which focuses on well-defined conflicts. That is why the Dispute Roadmap software sometimes refers visitors to one of the Counters.<sup>118</sup>

The current version (April 2013) of the Rechtwijzer covers consumer and relationship breakup in depth with 'lite' versions on employment, tenancy and administrative law issues. The clunkiness of Google translator makes it hard for a non-Dutch speaker fully to appreciate the site. However, it is designed to take someone on a 'journey', a dynamic and iterative process in which a small number of questions refining the parameters of the problem must be answered on each page before moving on to the next.

To test the site, let us take the example of a 40 year old male in employment with two children in their early teens who wants to separate from, or divorce, his wife. He would be led through the system as follows:

- the opening screen offers a choice between saying that things are not going well; or my partner and I have decided to split; or we have already split but a new problem has occurred. Assume the answer that you have decided to split up and register accordingly. The option on screen is carefully phrased. You certify that you have decided to split up **and** need to arrange your affairs - signalling the process to come.
- You are now prompted to give details on marital status; children; marriage contracts; ownership of any company.
- The following screen begins to get interesting. You have to rate your level of educational attainment and that of your partner (we are assuming both graduates, both with paid jobs for this example); then you are then asked two questions 'If you compare yourself with your partner do I have

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<sup>118</sup> *Ibid.*, p11.



more or less skills to find a good solution?’ You answer ‘more’ – obviously. And ‘if you compare yourself with your partner do you have more or less people in the area on whom you can rely?’ Less – predictably.

- The next screen leads you to think about the options. For the first time, we encounter a block of text rather than short questions to elicit answers. The text explains that you have choices. In the English Google translation, these are not entirely balanced – the choice is phrased between mediation and ‘messy divorce’. You then have to rate on a sliding scale how much you want a messy divorce or a ‘consultation separation’. You, of course, want the latter: you enter your assessment of your unreasonable partner who is all for the messiest divorce possible.

- You are now asked if you have a good understanding of the implications of the divorce for your children, your partner, yourself and in relation to finance. You say yes to all but the last. You are led on again.

- You are given the option to indicate if you have other worries. If you indicate that there is ‘talk’ of violence just to check what is offered, the system leads you out of the mediation stream: You get to a page which leads you to victim support and lawyer referral.

- And so it goes on. Somewhere around this point, your patience with Google Translate will break but if you stay with it – which will involve a lot of fiddling around returning to the site – you will be encouraged to mediate; to draw up an agreed parenting plan; and given access to a financial calculator.

Rechtwijzer was developed by a multi-disciplinary team at Tilburg University. There is an advisory group composed of interested stakeholders such as judges, mediators and lawyers. The key guidelines formulated for its establishment were that:

- the site should identify and signpost the best dispute resolution assistance, given both the dispute itself and the parties to it;
- the approach is based upon the principles of ‘integrative negotiation’ ie draws users to getting to ‘yes’ and building up common ground rather than identifying difference;
- time and opportunity is deliberately given to encourage users to reflect upon their conflict;
- no legal advice is offered as such though information is given at strategic times both as to process and likely result.<sup>119</sup>

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<sup>119</sup> Note 115 *supra*.

The site has been established within the context of overall Dutch policy on the resolution of disputes. This is to encourage self-help, early intervention<sup>120</sup> and mediated settlement in preference to recourse to lawyers and the courts. This had previously been reflected in the fact that, between 2003 and 2006, the Dutch Ministry of Justice wound up its Buros voor Rechtshulp, effectively law centres, and replaced them with its nationwide network of juridische loketten or ‘law counters’ that offer information and self-help assistance rather than representation.<sup>121</sup> In 2009, the Ministry, in pursuance of the same aim, required parents who were splitting up to produce a divorce and parenting plan. In its turn, this approach exerts pressure on policy. Self-help and the operation of digital forms of resolution work better when judicial decisions are predictable; there are clear rules on such matters as maintenance; and minimal discretion. This can instantly raise the hackles of lawyers and judges with very clear ideas of the different interests of each party. However, the site works to clearly stated principles: to improve communication; to encourage parties to explore and identify their interests if they are not clear about them; to identify creative options; to identify, in the jargon of this area of conflict resolution, the best alternative to a negotiated agreement, commonly referred to as BATNA, with the aim of aligning the BATNA as closely as possible to a settlement; and to find objective criteria to assist the parties to make a decision on the way forward.<sup>122</sup>

The Tilburg team behind the Rechtwijzer project have also worked on personal injuries. Their description of the ‘personal injuries claims express’ (PICE, pronounced in Dutch as Pike) provides another demonstration of the collaborative approach incorporated within the structure of a website:

The first innovation is to enhance collaboration between parties through a communication structure that stimulates dialogue rather than argument. Directing parties’ consultation towards a constructive dialogue probably adds to a problem-solving attitude, and leads to a positive negotiation atmosphere overall. The communication structure encourages parties to share interests while explaining their position to each other. For instance, in case of opposing interests, they are advised to make up a list of

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<sup>120</sup> The Dutch were even quicker to see the policy implications of H Genn’s seminal study on *Paths to Justice*, Hart Publishing, 1999.

<sup>121</sup> Although professional tensions between the Dutch Bar and the law centres may also have played a role in the closure of the latter.

<sup>122</sup> Note 115 *supra*.

possible objective criteria that may help to reach an agreement in line with the a problem-solving or integrative approach to negotiation and conflict resolution ... Concretely, PICE enables parties to start a dialogue about an issue in various sections by means of the “Dialogue Button”, which allows them to enter their view and invite the other party to respond ... When parties consult on the amount of the damages, PICE provides arithmetic support and overview by means of a “Damages Summary section”. Parties can mark agreement and work arrangements, using the “Arrangement Button”. Differences of opinion are also noted, as well as clear agreements on how to resolve these issues. This helps to focus on possible solutions instead of points of contention. All communication regarding a particular case is mediated by the PICE system, which in its capacity of electronic file of the process retains all data entered. The parties, including the victim, can use it to monitor progress of the claim handling procedure. A neutral party who may be called upon in case of a dispute can also use it to review the case.’<sup>123</sup>

A graphic illustration of how this works is that both parties to, for example, a car accident can work together to provide a composite statement of facts.

They set out their approach as follows:

Taking a bottom-up approach, TISCO members develop, integrate, and apply insights from negotiation theory, conflict research, dispute system design, (comparative) legal research, network theory, behavioural law, and law and economics in their research in order to connect and extend the body of knowledge on building, maintaining and (constructively) ending horizontal relationships in which people and businesses are involved.<sup>124</sup>

Rechtwijzer’s designers are clear that the site does not offer advice on what professional to contact: it offers an overview of the things that need to be done; who may do this; and at what cost. With this information, users can choose which of the professionals is best suited for their own (personal, financial) situation. This is sophisticated. It facilitates the

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<sup>123</sup> C van Zeeland, R Leenes, J van Veenen. *Handling Personal Injury Claims PICE*.

<sup>124</sup> University of Tilburg website.

'unbundling' of legal services in which a user may seek legal assistance with parts of a problem but retain ownership of its entirety. In some matters, such as some consumer disputes, the information elicited by proceeding through the site ends with the suggestion of a letter to the other side setting out the dispute in a structured way and seeking its solution:

The application uses a series of questions to analyze the conflict situation, and then offers advice. The advice consists of a number of interventions that are needed to resolve the situation, linked to the people or organizations that are can provide this service. The advice is organized in such a way that the most simple solutions are most prominent, and also focuses on the things that the user can do by him- or herself to solve the conflict. One specific tool is provided to support people who are dealing with consumer issues. Signpost to Justice helps users to write a letter to the opponent in which they explain their situation. This letter performs several tasks; it notifies the opponent of the issue, it communicates the user's interests, and it lets the user voice a number of creative solutions.<sup>125</sup>

Any conclusions on the effectiveness of the site have to be tentative until the research is in but the following emerged from discussion with those concerned with it at the Legal Aid Board and Tilburg University.<sup>126</sup> The initial reaction of lawyers showed some hostility but, as time goes on, they are adapting. Some now direct their clients to the site in preparation for – or part of – taking instructions. Research on the first version identified that people liked to use it to organise themselves but tended not to rely on it exclusively. In particular, at that time, the financial coverage was too difficult for many users. The team put some thought into elements such as reading age (now school-leaver level) and to cutting back the text. As a consequence, the content per page has been really pared back.

A small-scale survey of law students at the University of Amsterdam in 2013 produced mixed results. A majority liked the consumer friendliness

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<sup>125</sup> <https://www.tilburguniversity.edu/research/institutes-and-research-groups/tisco/research/completedprojects/rechtwijzer/projectinformation/>.

<sup>126</sup> C van Zeeland, J van Veenen, I von Burg, and L Combrink-Kuiters on 8 March 2013.

and relevance of the package but a significant minority felt that the package's answers were too general or oriented in a particular direction.<sup>127</sup>

Client surveys on the other hand report high satisfaction ratings but, again, the full meaning of that awaits further research. It was hard to determine objectively how much usage was being made of the site but between the beginning of November 2012 and the beginning of March 2013, 200 couples and 500 single people had begun the 'journey' through the package relating to the divorce and parenting plan (which can be accessed through the Rechtwijzer site or directly). Overall usage on the old site, prior to the 2012 revamp, was around 145,000 in 2011. Plans have been drawn up to develop a 'digital assistant' whereby a user can effectively proceed to a 'side Bar' for an email exchange with an adviser – the identity of which is to be decided but might include or be the Juridisch loketten (the counters).

The commitment of the site to integrative negotiation (biasing towards settlement) would seem acceptable (and, indeed, desirable) provided that sufficient exit routes are signposted, eg where, in a matrimonial case, there is a threat of violence. There has, of course, to be great care in how this is done. The research should tell us whether the redirection of those suffering from domestic violence works as well as it appears it should. There is an issue to be logged about the potential effect – both good and bad – of a site which restructures a query and leads the questioner off in a direction, the consequences of which may not be transparent. This is a discussion to be had as the site develops. It will parallel similar debates that particularly occur in relation to the handling of matrimonial cases by such techniques as collaborative lawyering. The question is the balance achieved between a drive for settlement and the recognition of legal entitlement.

The site has been connected with the Board's legal service counters so that the website can be supported by face to face services which exist throughout The Netherlands. This, to some extent, will assist in addressing the digital divide. To see how effectively, again we will need the University of Twente research. There remain enormous questions. Will the Dutch public accept their policymakers' drive to make them more self-reliant and self-helping? Traditionally, those going through relationship breakdown, particularly women who tend to be the weaker party, have wanted the

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<sup>127</sup> M Westerveld, 'The Dutch Conflict resolution guide: a mini survey by legal aid students' Presentation given to the ILAG conference at The Hague, June 2013.

support of face to face assistance. It may be that they find as little solace in the website as did the single parent blogger in the DWP site quoted in the last chapter. At the moment, the safeguard exists of mandatory review by a lawyer of agreements relating to children and maintenance. However, the Board would like this removed. In those circumstances, will the site adequately protect the weaker side in relationship breakdown? Is there any danger that potential clients overall will split on income grounds - the poor getting second rate mediation and the rich first class lawyers? Will the government and the judiciary play their part in simplifying the law to assist online dispute resolution and avoiding complexity?

Whatever the answers to these questions, however, this site shows clear signs of being a game changer and far in advance of anything else in the world in terms of its dynamic and client-centred approach. How far in advance of others can be seen in comparison with the best of the rest in the next chapter.

## Chapter 7

### Websites

The trans-national nature of the internet facilitates international comparison of national websites. In order to draw out lessons from the experience of different countries, the following were taken as a selection of the best advice sites that could be found:

- LawAccess NSW ([www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au));
- LawAccess New Zealand ([www.lawaccess.govt.nz](http://www.lawaccess.govt.nz));
- Clicklaw, a British Columbian advice site ([www.clicklaw.bc.ca](http://www.clicklaw.bc.ca));
- the Dutch Legal Aid site ([www.rechtwijzer.nl](http://www.rechtwijzer.nl)); and
- three UK sites: Shelter ([http://england.shelter.org.uk/get\\_advice](http://england.shelter.org.uk/get_advice)), Citizens Advice ([www.adviceguide.org.uk](http://www.adviceguide.org.uk)) and AdviceNow ([www.advicenow.org.uk](http://www.advicenow.org.uk)).

These sites differ not only in their nationality. The two LawAccess and the Dutch sites are run by their respective government or a governmental agency. The British Columbia site is operated by BC's Courthouse Libraries and overseen by a mixed government and NGO team. The three UK sites are run by NGOs. Some of the sites – like Clicklaw, the two LawAccess sites and AdviceNow – are 'aggregator' sites and lead on to provision on other specialist websites rather than reprocessing it themselves. This group of sites are, overall, good and the result of thoughtful development. Where judgements between them are made below that is because they can stand the comparison: the temptation to choose really bad sites has been resisted. It should also be noted that the nature of websites is changing fast in at least two relevant ways. First, they are rapidly becoming more interactive. Second, they are similarly seeking to adapt to the mobile phone revolution. Thus, the particular date of a site makes a difference as their providers catch up or fall behind the standards prevailing elsewhere. Another point is emphasised below. One important factor in the best website provision is that it is not expected to stand alone - the best sites are integrated into interactive advice provision capable of responding to individual cases.

There is, of course, much interest in what generally makes a good website and any number of lists of essential qualities. The following seem as helpful as any: appearance; content; functionality; usability and search

engine optimisation.<sup>128</sup> This would seem entirely consistent with the qualities that emerged from examination of the sites under consideration.

### ***Qualities of a great legal advice website***

*Design* is critical. Too many websites are little more than digital leaflets: many legal advice websites are exactly that. Someone has put an existing leaflet on the web. They do not use the web's interactive power: they just have pages of information. The best sites use the fewest words to the best effect – particularly important if you are using a mobile phone to access them.

The importance of design is an obvious point hammered home in advice for the commercial sector: particularly important is good use of colour; text that is easily read; meaningful graphics, quality photography, simplicity.<sup>129</sup> 'Remember', counsels the UK Design Council, reporting on their role in commerce generally:

Websites are often the first point of contact between a company, organisation, product or service and its users or customers, so the user experience is vitally important ...<sup>130</sup>

Bearing in mind that these sites are all good ones, it is interesting to compare the opening pages of the two LawAccess sites. New Zealand's is much more visual; uses buttons to press for relevant topics; has more colour. Clicklaw has good use of white space and its opening page where you have to choose your type of problem does not feel crowded. Design is as important in the public as the private sector.

*User Perspective.* An advice website needs to work from the perspective of the person consulting it. Too many advice websites work from the point of view of the adviser because it is easier in relation to the assumptions of literacy and knowledge that can be made.

A good example is provided by testing the two general UK advice sites with a question about a road traffic accident. The first things that any experienced adviser would tell an accident victim is to write down the details; draw a map; note the names of witnesses and get them to do the

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<sup>128</sup> <http://www.spritzweb.com/resources/good-website-characteristics.html>.

<sup>129</sup> *Ibid.*

<sup>130</sup> <http://www.designcouncil.org.uk/about-design/types-of-design/web-design/>.



same. This information is contained on the advice guide site but in the ninth paragraph well after the definition of a traffic accident and legal obligations of reporting. This contains absolutely correct advice in an entirely logical position for an adviser:

Witnesses should write down their evidence and keep their original notes, as it may be some time before any claims are settled or court proceedings are heard. Whatever witnesses may say, the people involved in the accident should make their own written accounts of what happened, including making sketches and taking photographs as soon as possible and keeping their original notes.<sup>131</sup>

But, someone in an accident and using a site to know what to do immediately afterwards needs to have this information better signposted - as it is in some of the road traffic apps produced by lawyers and referred to in chapter 4.

*Specific, relevant and practical.* To get near to replacing a need for face to face interaction, the information on the website needs to be specific, relevant and practical. This is very hard to judge and really needs an expert from inside the jurisdiction to make a qualitative assessment. At the end of the day, content remains king. Aggregator sites have to be particularly discriminating about what information they select. The LawAccess NSW site provides an example. If you consult it in the persona of a tenant with a disrepair problem it takes you to a list of leaflets. The first, indicated as 'best buy', is actually a short summary of recent legislation (the Residential Tenancies Act 2010), produced by the NSW Tenants Union. As such, it is fine but it is more a list of the Act's provisions than any explanation. The second is a link to a *Tenants Manual*, also published by the Union, which is more helpful and gives detail on various disrepair problems. A very similar manual is reached through Clicklaw which takes you through to a *Tenants Survival Guide* produced by the Tenant Resource and Advisory Centre. Though both are well produced, they are electronic versions of physically published material and are not interactive. All these sites will have been constrained by cost but one can see, in using them, the value that there would be of making the whole

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[http://www.adviceguide.org.uk/england/consumer\\_e/consumer\\_cars\\_and\\_other\\_vehicles\\_e/consumer\\_driving\\_and\\_parking\\_e/consumer\\_driving\\_e/traffic\\_accidents.htm](http://www.adviceguide.org.uk/england/consumer_e/consumer_cars_and_other_vehicles_e/consumer_driving_and_parking_e/consumer_driving_e/traffic_accidents.htm).

process interactive and incorporating the previously written material into the digital site. A site that was really to be used as a primary source of information for tenants would benefit immeasurably from the interactive approach of Rechtwijzer in which the information is processed from the perspective of the person consulting the site.

*Journey.* The best sites replicates what happens when you book an airline ticket – as you list places, dates, and times options are refined out and you are given only the core information relevant to you. Too few websites use interactivity, decision trees and what might be called an ‘app approach’. This is best illustrated by Rechtwijzer which is vastly more orientated towards refining a request and then taking a dynamic approach to resolution than any other site. However, there are other possible refinements. A further leaflet from the Tenants Union on the LawAccess NSW site incorporates a click through to the relevant tribunal from which proceedings can be issued by a tenant. In this way, the person consulting the site is led on to the next stage.

*Assistance.* Both LawAccess and Rechtwijzer incorporate a human element. A person who needs personal assistance can get it. This is really important. It provides a way of minimising digital exclusion. However good a website can be, even the Dutch acknowledge that some people with some problems will need personal help. This issue, flagged in previous chapters, is not only the conclusion of Bonnie Rose Hough quoted previously but repeated by one of the leading gurus of US technological developments in access to justice, Richard Zorza:

It has also become clear that tech systems must be deployed with human support options and human interface alternatives. While many analogize the tech innovations above to bank ATMs, the fact is that those with bank accounts use the ATMs frequently, but few court system users have that many divorces. Thus the systems, including support subsystems, have to be built on the assumption that people will not have lots of experience using those particular systems.<sup>132</sup>

*Role of government.* There are two issues that arise from the role of government in the provision of advice. First, the source of information and

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<sup>132</sup> R Zorza. ‘Review of the Status and Potential of Access to Justice Technology in the United States of America’ in International Legal Aid Group Conference Papers, The Hague, 2013.

advice must be transparent. For example, both UK general advice sites refer someone asking about child maintenance to [www.cmoptions.org](http://www.cmoptions.org), referred to in the last chapter. This is a helpful government site that provides a child maintenance calculator. However, neither site discloses that [www.cmoptions.org](http://www.cmoptions.org) is actually run by a government department. Nor is [www.cmoptions.org](http://www.cmoptions.org) itself particularly forthcoming about this: the information is given six paragraphs down the page on 'about us' and the site is not located with the bulk of government sites which have been grouped together. Yet, this is surely material information that someone consulting the site should have. Secondly, there is the issue raised by the *Rechtwijzer* – the redefinition of function from advice to resolution. This is where the Dutch site shows such promise. The same could perhaps be said of online dispute resolution sites. This is an issue which will grow in importance as websites develop because potentially it involves the ethics and competence of government to engineer how disputes are resolved. For the moment, it needs to be logged until the technology catches up with the idea. Behind this new idea lies, however, a much older one. Advice and information needs to be seen as independent and reliable. To what extent will that happen if it is given by a government institution? Are advice websites best delivered by organisations at a distance from government?

### ***LawAccess New South Wales: towards a new delivery model?***

LawAccess New South Wales hints at an evolving model for the overall delivery of legal services. It is a package of services designed with a core website providing a 'one stop shop' providing referral, legal information and self-help assistance in New South Wales. Like *Rechtwijzer*, it is a joint project with representatives of the NSW Ministry of Justice, the NSW Legal Aid Commission and legal profession among its board. LawAccess was formally launched in 2002 and has been developed so that it now has three components:

- a state-wide telephone call centre (with 28 full-time equivalent customer service staff and 12 legal officers, additional team leaders and administrative support: it operates five days a week from 9am to 5pm except for public holidays. In 2011/12, it assisted 195,165 and gave free legal advice to 19,542 customers);
- an information website (LawAccess Online); and
- a website designed to help people to represent themselves, performing the same function as the court-based self-help assistance in the US (LawAssist).

Law Access NSW is available to all NSW residents but is particularly aimed at people who have difficulty accessing traditional community and government legal services such as those living in regional and isolated areas or suffering from disabilities. The service 'is particularly focused on helping people who live in regional, rural and remote areas; Aboriginal or Torres Strait Islanders; people who have a disability; people from culturally and linguistically diverse backgrounds; or those who are at risk of harm and have an urgent legal problem'.<sup>133</sup> Anyone can get initial information and referral. Customers are directed to relevant leaflets and booklets on their problem. Some callers can receive an initial session of telephone legal advice. Eligibility - at least in theory - is set out in a detailed Policy Standards Manual. In practice, advice may be more freely available but, according to the manual, you should be a 'priority customer' (defined by reference to your characteristics, eg disability, or problem (eg, and intriguingly, anyone who 'intend[s] to commit an offence'). There are various exclusions including complexity of case; availability of alternative assistance and degree of available resources.

LawAssist contains information designed to help self-representation which is less dependent on third party sources than LawAccess Online. It covers six subjects in particular - debt, car accidents, apprehended violence orders, employment, fences and fines. Tested with a road traffic accident, the opening page had 'car accident' clearly signposted on its opening page. This clicked through to an overview of topics such as 'what to do after an accident'. Click on this and up comes a well laid-out page of information under various headings. This contains some coverage of next steps, including the all-important:

At the scene of an accident it is important to write down the names and contact details of any witnesses. It is also important to take photos of the place where the accident happened and any damage to your car or the other driver's car. This may help you if you need to claim the cost of repairs from the other driver or if the other driver makes a claim against you.<sup>134</sup>

The service is appreciated by its users. In 2011/12, it assisted 195,165 customers; provided 19,542 free legal advice sessions with 1,760

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<sup>133</sup> Department of Attorney General and Justice, *Annual Report 2011-2*.  
<sup>134</sup>

[http://www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist\\_car\\_accident/lawassist\\_after\\_an\\_accident.html](http://www.lawassist.lawaccess.nsw.gov.au/lawassist/lawassist_car_accident/lawassist_after_an_accident.html).

customers from culturally and linguistically diverse communities who were assisted by translation.<sup>135</sup> Customer satisfaction ratings are high – generally well over 90 per cent (and 97 per cent would recommend it to someone else). Over 70 per cent reported that it increased their confidence in dealing with the problem. An independent study of legal aid in Australia found, however, that as a source of assistance it was beginning from a low base: 'Legal Aid was used in 4.9 per cent of cases, court services were used in 3.5 per cent of cases, and CLCs were used in 1.8 per cent of cases. LawAccess NSW was used in under one per cent of legal problems where advice was sought.'<sup>136</sup> This research suggested that LawAccess needed greater promotion: public recognition of its existence was 'very low'<sup>137</sup> despite a creditably large range of promotional postcards, posters, fridge magnets and brochures.

Intuitively, the LawAccess model, with its integration of a call centre, a general advice website and a specific self-help site, (supplemented by face to face services provided by private lawyers and law centres) seems well designed to meet its aim of being a first point of call, information and referral. In its integrated approach, it is perhaps potentially a world leader. The LawAccess and LawAssist websites are clear and uncluttered. The next step would be to obtain the level of investment that would allow re-design based on less information per page and more progress through decision trees on the Dutch model. The LawAccess system was not designed to – and, accordingly, does not – threaten face to face legal provision: it was designed to make the best use of it and to generate appropriate referrals.

### ***NHS Direct: an inspiration and a warning***

By contrast to these two overseas provisions, let us look at a site within the UK but with a medical rather than legal focus. NHS Direct was a web and phone based medical information resource which covered England and Wales.<sup>138</sup> It was established to 'provide easier and faster information for people about health, illness and the NHS so that they are better able to care for themselves and their families'.<sup>139</sup> NHS Direct has been

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<sup>135</sup> *Ibid.*

<sup>136</sup> C Coumarelos et al, *Legal Australia-wide Survey Legal Need in New South Wales*, p110.

<sup>137</sup> *Ibid.*, p132, 'uncued' recognition of LawAccess was a 'very low 14.2 per cent'.

<sup>138</sup> See [www.nhsdirect.nhs.uk](http://www.nhsdirect.nhs.uk).

<sup>139</sup> DHSS, 1997.

controversial. It was seen as a pet project of the Labour government: it has been radically cut back by the current coalition government so that, as from April 2013, its telephone service is no longer national (though it retains some regional contracts). It has had a difficult, and particular, history: it faces an uncertain future and reduced funding. However, medicine is an obvious comparator for the law and, while avoiding too much detail, it may be worth looking at NHS Direct to see whether there are any lessons to be learnt. It would be surprising, frankly, if there were not.

NHS Direct went nationwide as a telephone service in 2000 after successful piloting. In December 1999, it had launched its initial website, which was subsequently been upgraded. As a national service and before the impact of cuts in 2013, NHS Direct was getting significant use – about 1m hits a year on the website (and 11m users of its symptom checkers in 2011/12) and 400,000 telephone calls a month. The website now includes a number of features and sources of information including a series of self-help guides that are, perhaps, the most interesting feature for comparison.

The service has been bedeviled since its beginning by the politics of where it fits into the range of NHS services. It encountered rivalry from alternative sources of assistance – the ambulance service (which responds to emergency 999 calls) and general practitioner out of hours services. In addition, hospitals were not always keen to see reductions in the numbers coming through their accident and emergency provision because of the potential impact of reduced ‘footfall’ on funding. Its chief executive in early 2013, Nick Chapman, said:

There are four barriers to developments like NHS Direct – professional conservatism, the incentives of paying other agencies by footfall, re-engineering information for a different medium [than print], and the patients who really want the service not having a voice which counts politically. A mother with a sick child really does not want to go to Accident and Emergency in the middle of the night’.<sup>140</sup>

Recent funding cuts make the service less useful than it was. A dummy enquiry on mild arthritis in the knee led to being told to consult a GP within 36 hours whereas an earlier dummy run had taken me through a full

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<sup>140</sup> Personal interview.

assessment (which failed to qualify for surgery). It seems no longer available. So, the value of the site is more in its process than its content. The site has developed over time. Nick Chapman, who became chief executive four years ago in 2009, said: 'I inherited an "encyclopaedia in the sky". We set about to capture very simply the response to our telephone calls. We integrated the site with [the telephone service]. We had to learn different skills. It was a paradigm shift.' His team went on to develop a mobile app: 'That was different from a computer screen. It needs to be much faster.'<sup>141</sup>

The use of NHS Direct was researched quite thoroughly – at least in the early days. The former website reported on contradictory research evidence in relation to those using the site:

In 2002, a population survey of over 15,000 people was conducted in the areas of Preston, Chorley, Newcastle, North Tyneside and Sheffield. The study showed that those from poorer socio-economic groups or with communication difficulties were less likely to have used NHS Direct than others ... These findings differed from those of an earlier study in South East London. It showed that calls to NHS Direct rise in areas of increasing deprivation, until at extreme levels of deprivation, they then decline ...

There seems little or no research of the use of the website though research of the phone service suggests that people overwhelmingly followed advice and that referrals were correctly made.<sup>142</sup>

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<sup>141</sup> Personal interview.

<sup>142</sup> A postal survey of callers who had contacted NHS Direct between June 2004 and January 2005 with symptoms of either abdominal pain or a cough and sore throat was conducted. Of the 268 callers who responded:

- Over 90% reported they had followed the advice given by NHS Direct to self-care or to contact another health service.
- 51 callers were referred to an Accident and Emergency department and, of these, 39 (76%) received a prescription and 20 (39%) were admitted to hospital.
- 144 callers were referred to a General Practitioner (GP) and, of these, 88 (61%) received a prescription and 21 (15%) were admitted to hospital.
- Of the 69 callers advised to self-care, 47 (68%) reported that they did not receive any further intervention, while 18 (26%) reported they had subsequently contacted a GP and been given a prescription for medication.

NHS Direct may well not survive in anything like its initial ambitious form. It faces significant enemies and it is inherently illogical to have so much out of hours rival provision, all now fighting for funding. In this battle, it was perhaps predictable that NHS Direct would become a casualty. To an outsider, the case for pulling together one provider under one roof looks overwhelming. There could have been a seamless service from consultation on the web to the arrival of the flashing blue light of an ambulance when required. But it was not to be. The service was regionalised; put out to contract; and is now underperforming to the extent that it has become a subject of national news coverage, with concerns that it will be avoided by potential users who will flood to the accident and emergency departments of hospitals instead.

The sabotaging of the service is both wasteful and disappointing because it had a number of really important characteristics. The transformation of knowledge through a series of decision trees that lead a layperson towards a diagnosis is a common element to medicine and law. It parallels the work done on the Dutch Rechtwijzer site. The integration of a website with a phone service was a common element with the NSW LawAccess programme. But, it does show that central websites are perhaps more vulnerable to cuts than physical provision. NHS Direct's funds were reduced with considerable less public fuss than proposals to cut various hospital departments - some of which attracted considerable public opposition and political prominence.

There has been remarkably little research into the use of websites to give legal advice. The forthcoming report from the University of Twente on the Rechtwijzer site will be particularly welcome and useful. It points to a major recommendation in the following chapter: the need for more research.

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The authors concluded that most referrals made by NHS Direct to another health service appropriate. However, a significant minority (26%) of callers referred to GPs did not receive any further intervention and there was some duplication of service use [G Byrne, J Morgan, S Kendall, D Saberi, 2007]. Source: website, now removed.



## Chapter 8

### Where Now?

Our list of twelve initial research questions is contained in the foreword. Most of them have been touched on earlier in this report but now is the time to draw some conclusions. Despite the rapidity of change since the goals were formulated, our research suggests that they remain pertinent. There have been major technological advances – or, more accurately, greater deployment of existing advances. Some development would be expected. The goals were formulated some three years ago. That allows for two cycles of Moore’s ‘law’ that computers double their speed every 18 months.<sup>143</sup> It is clearer now that the major driver of change is the internet rather than the telephone, although the two are increasingly merging. Telephone hotlines are still the Ministry of Justice’s choice for triage and initial assessment but mobile phones are already providing the link with the internet and e-advice. Time has also facilitated a conflation of two other previously separate technologies, namely automated document assembly and video communication. Best practice, such as the *Rechtwijzer* and LawAccess Online, is already showing us the advantages to be derived from linking the internet with telephone advice.

Commercial players have had time to adapt and to link use of digital technology to the emergence of new forms of practice. This has been particularly so in England and Wales where there has been a major relaxation of rules about third party ownership of law firms. We appear likely to be in the middle of a major reshaping of that part of the commercial marketplace formerly dominated by ‘high street’ practice. And, public funding in countries like the US, The Netherlands and Australia has also been specifically directed to use of the possibilities of new technology.

### *Limitations of the study*

There are three major and unavoidable limitations on this project in addition to the obvious restriction of finite resources. First, it was not possible for us to undertake primary research on the efficacy of different forms of provision: we were dependent on others. And there is a real need

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<sup>143</sup> The ‘law’ began with a specification of a two year cycle which was then accelerated to 18 months by Intel executive David House. It began technically as a reference to the number of transistors that can be placed on an integrated circuit. Its expression in the text seems an acceptable simplification.

for studies that compare like with like and which really test effectiveness with dummy questions and expert assessors. This is very evident in relation to reports on telephone hotlines. These consistently get high ratings from customers but there is remarkably little assessment of their substantive value. Studies, like that in Australia or in England and Wales by the Legal Services Research Centre, which do evaluate the level of service are greatly to be prized. Second, Google Translator is a wonderful thing but still pretty rudimentary: it makes assessment of written provision in other languages than English very difficult. Language remains a barrier in learning of developments in non-English speaking countries. Thirdly, it is almost impossible to make any sensible observation about cost. There are just too many variables. Too much domestic reporting does not compare like with like. Of course, a limited hours hotline staffed by unqualified call centre personnel will be cheaper than face to face assistance by trained legal aid practitioners. But that tells you nothing of value about the relative benefits. There are interesting hints that the rigorous comparison of cost can give rise to surprising and counter-intuitive results. This certainly comes out of the LSRC's research published shortly before it was closed down: it suggested that phone advice might take longer than that given face to face and, therefore, if the costs of the adviser were the same, be more expensive. Furthermore, much technology requires high investment up front with a reducing cost per transaction according to the numbers serviced. Hopefully, the research on the Dutch Legal Aid Board's *Rechtwijzer* due next year should have the capacity to raise discussion of cost of internet provision to another level.

### ***Technology and new business models***

Technology is changing the commercial legal market just as surely as it is changing retail grocery. At least within the UK, local corner grocery stores are being supplanted by outlets of the big retailers. Developments are likely to be similar – if not identical – in the law. As it is with Starbucks in coffee, as it is with Tesco's in retail, so it will be with Quality Solicitors and Co-operative Legal Services. Serious outside capital is betting that major change is coming.

This raises the issue of how much there is in Professor Susskind's idea of a 'latent legal market'. Can a combination of new technology and new business structures reduce prices – at least for some types of case – to a level which meets a need for legal services that will otherwise be unmet? This is likely to happen – though unevenly. Three particular groups are

likely to benefit: those with enough literacy and education to be able to handle the share of the work that comes with ‘unbundling’; those with problems in areas shared by wealthier clients – particularly perhaps cases relating to relationship breakdown, road traffic accidents, some employment and immigration cases – where private providers may be willing to provide free assistance as a loss leader; and finally those with enough disposable resources to make them of commercial interest, the true representatives of the latent market.

Even for those within the categories which might benefit from the enterprise of the private market, the state – as Professor Susskind impliedly indicated – retains a role in ensuring that people are assisted to handle their own affairs. For example, law needs to be accessible both in the sense of, for example, readable statutes but also clear substantive provisions and (something he perhaps did not cover) effective enforcement. Among Professor Susskind’s ‘building blocks’ for access to justice are a duty on states to provide easily accessible primary sources and an enlightened policy on public sector information. These need to be stressed rather than just taken as desirable in the way of motherhood and apple pie. Professor Susskind points to the value of the BAILII free database of cases and statutory material which has had limited government support. Lord Neuberger also recently drew attention to the importance of accessible legislation at a time when more and more citizens will need to consult it without intermediaries:

The Government’s freely accessible [www.legislation.gov.uk/ukpga](http://www.legislation.gov.uk/ukpga) website has all statutes and [statutory instruments]. But the incorporation of insertions, amendments, repeals is often very slow, which is unacceptable because there are many such changes, and a significant proportion of them are quite radical in their effect. It seems to me self-evident that any changes to legislation must be easily and promptly available to everyone. Despite the welter of legislation ... it would not cost very much money to keep the statutes and SIs promptly updated: even in an age of austerity, I believe that serious consideration should be given to making this improvement.<sup>144</sup>

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<sup>144</sup> Lord Neuberger, *Tom Sargeant Memorial Lecture*, October 2013, [www.justice.org.uk](http://www.justice.org.uk).

There is a general point here. Governments understand that austerity means the cutting of expenditure. They are perhaps less willing to accept that, beyond a point, austerity demands greater clarity about the essential role of the state. And savings in one place may need, as Lord Neuberger suggests, to be balanced by expenditure (even if less than the savings made) to deal with their consequences.

There is an even more difficult challenge to be addressed if citizens are really to be left much more to their own devices. The law must be predictable. Take away the opportunity for poor citizens to go to court or have lawyers and one consequence is that the law must be more predictable for all citizens, rich and poor. Governments have to grasp this nettle, as that of The Netherlands is trying to do. But, it means, at the extreme, that cuts to legal aid may require changes to substantive law. For example, the distribution of assets on a divorce – for all – may need to be sufficiently predictable to reduce to a workable algorithm in a computer programme for those struggling to understand the system without specialist advice. Importantly, legislative assumptions may have to change. So, for example, it may be necessary to limit judicial discretion in favour of statutory certainty. It will also be necessary to retain the appropriate degree of judicial steel in the pursuit of the unwilling or the unlawful. And, since the law is universal, these developments will have to affect the rich as well as the poor. It cannot be satisfactory, for example and at an extreme, that the English and Welsh legal system delivers exquisitely bespoke adjudications for divorcing Russian oligarchs – such as Mr and Mrs Slutsker – but something entirely different for its own citizens of lesser means.<sup>145</sup> Rough justice for some cannot be our aspiration. It is either justice for all or rough justice for all.

As legal businesses are driven more and more to low cost, high volume legal services at the less affluent element of the market, issues of quality will arise. Fees are being driven down to meet what quite poor people can afford. In the US, legislation against the unauthorised practice of law retains professional control over ‘legal advice’ – for all that a generous definition of ‘information’ seems to have emerged. In England and Wales, no such restriction applies. The majority of current providers will be regulated by the Legal Services Board but there will be increasing numbers of others who are not. What happens if advice on a website or

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<sup>145</sup> See, as to the pursuit of Russian oligarchs, *Slutsker v Haron Investments Ltd & Anor* [2013] EWCA Civ 430.

from a hotline is wrong or misleading? The framework of negligence may not prove enough. We need to ramp up the debate about regulation in this area or look for some less intrusive approach, such as the voluntarily kite-marking of sites that reach specific standards of accessibility and accuracy.

There are a variety of organisations that might be appropriate to run such a kitemarking scheme from the Legal Services Board to various NGOs: it might be logical to begin with a voluntary kite-marking carrot before reverting to a regulatory, compulsory stick. Quality assurance provides a very good reason for the engagement of the voluntary sector as a major provider of information which is not related to a drive for funding and which is backed by the reputation of major voluntary organisations such as, in the UK, the Citizens Advice Bureaux (CAB) service.

For countries like The Netherlands and the jurisdictions of the UK, the area of matrimonial disputes and relationship breakdown provides one of the major areas of tension over legal aid policy making. Traditional assistance by lawyers for those unable to afford them has been funded by legal aid, albeit on an increasingly more restricted basis. This explains the interest of the Dutch and English and Welsh governments in this area. Indeed, some part of a lawyer's traditional work in this area has been problem-solving rather than 'legal' at a high level. Both governments have high hopes of mediation and of encouraging parties away from courts and disputes, although initial findings suggest that referrals to mediation have declined rather than increased since the start of April 2013 and the legal aid cutbacks. Reduction of unit case costs may allow some parties to hire a lawyer for parts of the case that require it or to give them an overall understanding. However, considerable numbers will be on minimum benefit levels and unable to afford such assistance. Still others will face parties who are as uncooperative as was allegedly Mr Slutsker in sharing their assets.<sup>146</sup> It is by no means only billionaires who seek to evade their family responsibilities. For women (as it generally is) in such circumstances, DIY provides little assistance. There may well be a need to resume traditional assistance in cases of stubborn resistance to accede to a court order.

There is a theoretical point here as well as a practical one. As we have seen, much of the theory behind reduction of unit price has been that

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<sup>146</sup> *Ibid.*

'unbundling' will provide cheaper services. However, it is important to recognise that 'unbundling' was never presented as simply DIY. Its essence is better described as 'limited service' or 'discrete task representation'. As Woody Mosten commented in an early English description (in a project creditably also funded by the Nuffield Foundation) of his approach:

The lawyer's hourly rate may not differ in discrete task representation but the cost to the client will be more controlled and generally far less.<sup>147</sup>

Thus, 'unbundling' is not, on its own, likely to be answer for a clientele that has no money just as much as it will not help those who have not got the skills to do their share of the work. The combination means that, though the private sector can play a major role in delivering legal services to those of low income, the state cannot avoid its responsibility for funding appropriate resources.

### ***The strengths and weakness of delivery***

The unavoidable paradox of digitally based delivery of legal services is a combination of universal accessibility (as with the internet) with implicit selectivity. The internet, exactly like the Ritz, is open to all. And the potential barriers to access are three: physical access to such things as operational terminals (probably low - particularly in the age of the smartphone);<sup>148</sup> access to the appropriate skills and experience (research around the world suggests less access for exactly those groups that should be prioritised – lower social groups, older age, less skills, immigrant background); and cultural (as in the reluctance identified in some remote rural communities for people to use very visible means of video communication or in the apparent reluctance of young people actually to use the internet most effectively). This last barrier is counter-intuitive – at least in the case of young persons – and indicates that there are indeed substantial numbers of individuals who will need substantial support to reveal their problems and ask for assistance.<sup>149</sup>

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<sup>147</sup> W Mosten, 'The Unbundling of Legal Services', in, R Smith (ed), *The Shape of the Future: new directions in legal services*, LAG, 1995 at p49.

<sup>148</sup> See eg Survey: *New US Smartphone Growth by Age and Income*, Nielsen Wire, February 2012.

<sup>149</sup> See J Kenrick, 'Online advice services and the myth of the tech-savvy generation', Legal Voice blog, 11 October 2013.

As a result, research suggests that we cannot yet expect digital delivery to be a complete or even nearly complete substitute for face to face services. We are just not at that point. Put starkly, clients will be lost if consulting rooms are closed and people are expected to use the phone or the internet. It is difficult, if not impossible, to quantify the size of the problem. Government experiments (such as in the UK) with the attempted transfer of benefits to the internet may give us more insight into what we might term 'channel swap fallout'. The drop-out rate may vary over time. Intuitively, if people get used to it through benefit claims, then that may operate to shift culture. However, if we took official government figures it would seem that we can quantify the drop out at around 20 per cent of the overall population in relation to the internet: that might amount to, say, 40 per cent of the targeted population. We need more research to know better and we need that research to be repeated over time.

Research – and practice – around the world consistently indicates that the effectiveness of digital delivery can be enormously enhanced by supplementary provision of individual assistance – not necessarily face to face but personal. That is the lesson of telephone hotlines as researched and practiced in the US; the practice of commercial providers who are offering personal checks on document self-assembly; and implicit in the mixed delivery models implicit in the New South Wales model or incorporated within the Dutch Legal Aid Board's provision.

The need for 'warm bodies' to supplement cold technology is comforting to us as human beings. The lesson is not, however, 'business as usual'. All is changed, changed utterly by new technology. In particular, the fact that some clients will need traditional face to face lawyers and bespoke legal services does not equate with the argument that this form of delivery should continue to be the unique, or even main, form of delivery. Indeed if interactive video systems continue to improve at the current rate it may soon be possible to provide such a lifelike image of a warm body to one who is seeking advice as to be indistinguishable from the real thing.<sup>150</sup>

We can see emerging a new balance within what in the legal services world might be dubbed as a new version of the 'complex, planned, mixed model of delivery'. The logical pattern of provision may well become

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<sup>150</sup> This is an area for future research. We cannot assume without testing that empathy can jump the ether divide through interactive video, although the success of confidential telephone support services such as the Samaritans strongly indicates that it can – though possibly not in every case.

internet led with freely available advice on the internet; linked to telephone / interactive video assistance for those that need it; and individualised services for those clients or those cases which require it. The internet should be developed, as it is in commercial provision like Co-operative Legal Services or Quality Solicitors, as a first tier of provision, albeit on a non-exclusive basis: there need to be other channels as well. This is the new pattern which can be observed evolving in The Netherlands, New South Wales and elsewhere. Traditional practitioners are maintained in the delivery mix but they do not need to be the first port of call, unless those needing assistance fall within the groups significantly affected by the access barriers identified above.

The universality of the internet has an interesting consequence: it is more difficult to limit web-based advice to any specific group in the same way as face to face advice can be restricted. The medium is inherently universal. Governments would be well advised to make the most of this and to proclaim a commitment to greater transparency and assistance for all.

### ***Telephone hotlines***

The following ten conclusions about hotline provision emerge out of the research and experience considered in chapter 3. The most important lesson is that hotlines need to be linked to individual assistance at a personal level by experts capable of resolving the problem in its entirety. It might be argued that a hotline giving first-tier general advice is 'better than nothing'. But, if telephones are to be used in the serious resolution of people's problems, then they need to filter people through to individual assistance aimed at that resolution.

- Most clients, but not all, rate hotlines as helpful. This does not, however, necessarily correlate with usefulness.
- The benefit of the hotline expands with the depth of services offered. The best results are obtained when the hotline is the 'front end' of a system that can extend through assistance to full representation.
- Follow up letters confirming advice and later contact to check on action increase effectiveness. In particular, the clients with the following characteristics should be called back: (a) the recommended action is one where clients are less likely to obtain a favourable outcome: they are representing themselves in court; dealing with a government agency; or obtaining legal assistance from another provider; (b) the client is less likely



to obtain a favourable outcome because of their characteristics or the nature of the problem.

- Hotlines work best for better educated, more settled clients and worst for those who have complex problems, communication difficulties, mental problems or are otherwise vulnerable or lead unsettled lives.
- Telephone advice will not necessarily be shorter than face to face advice and may, when compared in similar circumstances, even take longer.
- Clients tend to prefer face to face services. Some may not follow telephone advice that is given to them.
- A good hotline is likely to have certain characteristics eg good supervision and management, good technique (eg asking client to repeat advice), follow up written information, follow up calls, effective call back system and technology, ability to review documentation, 'warm body' advisers capable of advising on the resolution of smaller problems, adequate training of advisers and effective ways of dealing with conflicts between clients.
- To obtain good coverage a hotline must be well promoted.
- Take up may be unpredictable – either lower than expected due to barriers or overwhelming as new demand is identified or users become repeat callers.
- We need more research that uses objective assessment of quality and level.

## **Websites**

The effectiveness of websites is discussed in chapter 7 and the following emerge as the major issues:

### *(1) Design*

The standard for websites is set by commercial provision. This becomes what users expect and provision at a lesser standard can be difficult to accept, particularly by those whom are not a captive audience but whose attention it is required to attract. In the UK, Co-operative Legal Services' website has raised the bar in terms of its presentation, use of colour and graphics, and transparency over costs. A site of this kind requires initial investment in design but also continuing upgrades to hit standards of ever higher quality. Much public provision can very easily become 'worthy but dull' and the continuing investment can be hard to fund.

(2) *A user perspective*

Website content has to be reconceptualised from the perspective of a user. For example, guidance on anything to do with an accident must begin with encouragement to make a statement and identify witnesses rather than relegating that to later. The site needs to follow the path that a user would actually take.

(3) *Content which is specific, relevant and detailed*

A site which is actually maximising the potential of the internet has to begin with the general and move to the specific with as much particularity as is possible if it is to be of much use as basic assistance.

(4) *Based dynamically on the 'journey' of a client seeking to solve a problem*

Websites have tended to be seen as 'static' as providing information in response to a query but provision which is assisting someone with a problem has to be able to follow their progress through to its resolution. That is what is so exciting about the potential of the Rechtwijzer site.

(5) *Integration with individualised assistance*

The lesson from experience so far is the same as from telephones. You get maximum effectiveness from a website where you can link it through a 'chat', or email or telephone facility with personal assistance.

(6) *Some form of validation of independence and authority.*

The inherently anarchic nature of the internet requires that users need to be able to trust a website. This come most easily from the reputation of the body whose website it is. Thus, information from solicitors or other regulated legal entity is likely to be trusted. So too is information from well-established and respected NGOs, like the Citizens Advice Bureaux in the UK. Government websites have the authority of government but are likely to encounter a degree of reservation (rightly or wrongly) as lacking independence from government policy. So, for example, they may not entirely be trusted as giving the whole story on matters that involve engagement with government such as benefit claims or immigration matters. The authority of websites from quasi government bodies such as legal aid authorities of varying degrees of independence probably varies according to different cultures and jurisdictions.

These six attributes are so universal that ILAG or some other internationally oriented institutions might beneficially seek to stimulate further innovation by marking sites against these, or other pre-agreed, criteria in order to promote examples of best practice around the world.

## ***Effectiveness***

The effectiveness of different channels of delivery must be assessed against explicit criteria of the policy objective of an access to justice policy. Governments are remarkably shy of doing this but it becomes increasingly critical as lower spending forces prioritisation of resources. The purpose of access to justice policy amounts to a minefield of different political and constitutional understandings through which many have trodden with varying degrees of persuasion, particularly in the 1970s when the issue was raised by the escalating political interest in legal aid and its alternatives.<sup>151</sup>

For the operational purposes of this research, let us dodge some semantic and political issues by adopting the assertion of the Lord Chancellor of England and Wales in announcing his cuts package that 'access to justice is the hallmark of a civilised society'<sup>152</sup> and distil from that a basic constitutional concern to uphold the notion of 'equal justice under law' (the words engraved on the outside of the US Supreme Court). Governments need to do what they can to ensure their citizens are – and feel – included within the framework of the law and the rule of law.

If governments accept a constitutional duty to provide access to justice for their citizens, they need to know how well they are doing. As the use of technology expands, they urgently need confirmation of what works. Accordingly, there is a real importance to the kind of independent studies produced by the Legal Services Research Centre or those from the researchers in Australia, the US and elsewhere quoted in this report. We need the rigorous testing of the quality of the provision. This means mystery shopping or dummy clients; external evaluation and other techniques to supplement self-certification by those using or providing these services. The findings of research from the University of Twente on the Rechtwijzer project will be crucial to decisions on how it may be developed.

The issue of research becomes very clear if we try to formulate the kind of questions to ascertain how well a government is doing in its access to justice policy. They would follow the pattern of 'paths to justice' research

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<sup>151</sup> See, for a discussion, chapter 1 of A Paterson and T Goriely, *Resourcing Civil Justice*, OUP, 1996.

<sup>152</sup> *Proposals for the Reform of Legal Aid in England and Wales* CP 12/10, November 2010, para 1.2 and widely repeated by Ken Clarke.

around the world and compare the number and resolution of 'justiciable problems' that people resolved.<sup>153</sup> How able did citizens feel to resolve their own problems with the resources available to them? Which worked best? We need to maintain the kind of linear studies that the LSRC has conducted in England and Wales to show progress over time. Above all, we need to disentangle the suppression of demand from its satisfaction. Experience around the world indicates, for example, that you can reduce pressure on a telephone hotline simply by not publicising its number: that does not mean that the demand which its previous use indicated has been met. Government, in this area as well as elsewhere, need to know what works for the public.

### ***Governments in an age of austerity***

Governments certainly need to ensure that they meet their constitutional obligations – including those imposed by binding international treaties such as the European Convention on Human Rights – something which has clearly been a constraint in England and Wales.

Governments must, in addition, retain a general responsibility to ensure that their citizens have access to law and dispute resolution. This, as the 'access to justice' evangelists of the 1970s pointed out, does not immediately equate to funding lawyers and legal aid.<sup>154</sup> Governments should acknowledge at least seven approaches to meeting their goals. First, they should ensure that information and assistance of self-help through the kind of measures suggested above. Second, they should encourage the private sector to meet what need it can and assisting in that through such measures as accessible court and tribunal access procedures. Third, they should also encourage a third sector, as recognised by Professor Susskind, which has a valuable and broad value of support. Fourth, they can maximise their 'soft power' at no or minimal expense. President Obama and Vice President Biden have shown a willingness to associated themselves with discussions on the future of technology in the delivery of legal services in the US.<sup>155</sup> Fifth, public

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<sup>153</sup> H Genn and S Beinart, *Paths to Justice: what people do and think about going to law*, Hart, 1999 which spawned a series of further research in various countries, including Scotland, and served as a model for ground breaking longitudinal studies by the Legal Service Research Centre

<sup>154</sup> See eg M Cappelletti and B Garth, *Access to Justice: volume 1*, Sitjthoff and Noordhof, 1978.

<sup>155</sup> Both have attended recent seminars on this topic in the White House.

fundere can seek ways of leverage their spend. The Legal Services Corporation has made a little go a long way with its Technology Initiative Grants. Many organisations use awards and recognitions of excellence as a way of fostering initiative. Governments need to make the best of this kind of opportunity. Ministers, for example, can associate themselves with leading developments without having to fund them directly as would happen, for example, if a Minister of Justice awarded a range of annual awards for innovation in delivery. Sixth, there is a real benefit to funding 'hubs' within the NGO sector and academia to encourage new developments as, for example, at the University of Tilburg or Chicago-Kent University in the US. The UK has no equivalent and this would be a very useful development, whether funded publicly or privately. Seventh, there needs to be the kind of integrated multi-channel model of provision discussed above.

## ***Research***

A constant refrain of this report has been the need for more research of the thorough kind that the Legal Services Corporation commissioned on hotlines that was published just over a decade ago. To the extent that the current frontier is the internet, it makes a lot of sense for this research to be international in scope. A lot rides on the research commissioned by the Dutch Legal Aid Board from the University of Twente on the *Rechtwijzer*. This should raise problems relevant to almost every jurisdiction and it is to be hoped that the traditional internationalism of the Dutch temperament will encourage it to build international discussion of its findings. First, in terms of its general application, we have identified the barriers to use of the internet as three: access to the technology; the skills to use it; the culture to accept its use. These barriers are likely to be malleable and to change over time: we need to be able to plot that. A working hypothesis would be that some of legal aid's hardest to serve clients will be disproportionately represented in the excluded groups: the non-English speaking; illiterate; old; young; those, in general, with more marginalised lifestyles. Technology may bring access to a wider group in society overall but may simply underline the exclusion of those already the most marginal. In that case, technology needs supplementation with specialist 'outreach' provision of one kind or another. Second, some cases for all clients will need individual assistance. We need research into the irreducible minimum of face to face provision and its obverse: just how far technology can go in delivering mass services of the kind traditionally delivered face to face by lawyers in traditional ways. And, the measure of this research has

to be based on solid legal outcomes which will require qualitative assessment of the different results attained by different dispute resolution strategies. Only with the benefit of such work can serious work be done on the issue of cost effectiveness.

Separate from the need for research is the need for reportage. In a fast moving world, we need to know what is happening. In particular, we need to follow developments in the commercial world. It is there that, for example, the boundaries of what might be possible in the development of automatic document assembly programmes will be explored. In each jurisdiction, there will be groups exploring this very issue. In England and Wales, for example, it would be *Legal Futures*.<sup>156</sup> We need groups like ILAG to be a conduit for international dissemination. Within jurisdictions, legal aid administrations need to keep an eye on the private market for innovation which they might follow or which might allow the private market to meet some of their responsibilities.

### ***Recommendations for one country***

We committed ourselves in our original project proposal to making recommendations for the Ministry of Justice in England and Wales. We should acknowledge the difficulty of limiting ourselves to issues about the delivery of legal services in the context of a major retrenchment of scope and eligibility beyond what either author would regard as acceptable in meeting the needs of the most marginalised in society. We cannot forbear to note that policy for England and Wales has diverged dramatically from that in Scotland where, although enduring financial cutbacks, the legal aid programme – including scope and eligibility has remained more or less intact.. However, we set out below a set of recommendations which concern themselves with delivery and which we regard as compatible with existing policy.

- The Ministry of Justice must continue to support free access to internet versions of statutes and cases. Indeed, it should ensure that free versions of statutes as amended should be easily available to all.
- Like the Dutch, the Ministry of Justice should explicitly commit to policy to encouraging citizens to deal with their own problems through self-help, simplified legislation, ‘unbundling’ where possible and other mechanisms.

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<sup>156</sup> [www.legalfutures.co.uk](http://www.legalfutures.co.uk).

- The Ministry should foster innovation in the delivery of legal services through a range of low or no-cost measures such as annual awards and the engagement of its ministers in recognition of achievement.
- The Ministry should consult on the methodology for the research promised on the use of the telephone gateways to advice in 2015 and should certainly include techniques such as 'dummy shoppers' and qualitative evaluation of advice given.<sup>157</sup>
- The Ministry should continue to assist financially the use of the internet to provide legal advice and information in various different ways and foster developments by way of awards or kite-marking.
- The Ministry should ensure that it follows developments in other jurisdictions, particularly (but not only) Australia, New Zealand, The Netherlands, Scotland, the US and Canada to keep abreast of best practice. We would very much encourage continuing contact with the Dutch Legal Aid Board to follow the progress of its work.
- The Ministry must review the position of self-help litigants, drawing on the experience of existing court-based advice in the UK and elsewhere. Consideration should be given to increased funding for the equivalent to the self-help centres in US courts such as in California. The domestic equivalent would presumably be an extension of initiatives like the Royal Courts of Justice CAB.
- The Ministry should monitor the effectiveness of self-help and unbundling in the private sector. It might consider supporting awards in this field or, for example, in collaboration with the Law Society annual excellence awards.
- The Ministry must test the effectiveness of its hotline provision through independent research using dummy clients and qualitative assessment of advice given. It must ensure that the hotline is given adequate publicity to meet its goals and the temptation to ration delivery through lack of publicity

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<sup>157</sup> Here reference should be made to the work of Avrom Sherr, Alan Paterson and Richard Moorhead in developing the technique for peer review of legal aid lawyers in England and Wales and in Scotland. See A Sherr and A Paterson, 'Professional competence, peer review and quality assurance in England and Wales and in Scotland' 45 (2008) *Alberta Law Review* 151.

should be resisted. The essential issue will be to identify who falls through the safety net of the telephone gateway: the particular issue is the fate of those groups noted above for whom telephone advice has proved unsuitable. More testing will be required of the follow up measures which US experience suggests are essential to make full use of provision

- The Ministry should consider how the LawAccess model in New South Wales of integrated internet and telephone advice might be adapted to England and Wales.

### ***And a final warning***

Judgement of current developments unavoidably becomes a delicate balancing act. On the one hand, there is the genuine excitement to be taken from innovation as can be seen from the private sector in England and Wales and publicly funded developments in the US, Australia and, above all, The Netherlands. On the other hand, there is the depressing nature of cuts to scope and entitlement (let alone remuneration) currently dominating the English and Welsh domestic debate. It is fitting that we balance the positiveness of our opening with a final warning. The fate of NHS Direct (now to be wound up in April 2014) stands as a silent ghost spoiling the banquet of anyone celebrating the wonderful future predicted by new technology. A world leader in medical assistance was signed away by a government driven by a change of political priorities. The result is likely to be part of a major crisis in emergency medical care. It happened in medicine: it could happen in law. It is the job of evidence-based research to ensure that it measures a continued striving to meet the overall (if unobtainable) goal of equal justice for all.