



# Public Law and Clinical Legal Environments

A report on the role of university law clinics in increasing access to justice in public law, and the role of non-governmental organisations



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## EXECUTIVE SUMMARY

University law clinics are a developing tool for both legal skills-based education and academic education. As well as providing students with experience of law in action and a practical base for academic enquiry, law clinics are, and should be supported as, an important means of providing practical legal work experience; especially where they can provide experience of working with clients who face social problems that many students may never face themselves.

The research summarised in this report was conducted between December 2015 and September 2016 with funding from the Legal Education Foundation, which was provided to enable PLP to look at ways in which it might support the work of university law clinics. The research was initially written up as an internal report, for use by PLP and the participating law clinics. At the end of 2017 and start of 2018, PLP went through a process of developing the report to make it more widely available, particularly for anyone with an interest in the work of law clinics or law clinic collaboration with the not-for-profit sector and Non-Governmental Organisations (NGOs). This report is the result of that process.

### Methodology

For this study, PLP looked at the operation of seven university law clinic models, as well as meeting with lawyers and staff involved in crossover activity at clinics, at NGOs working with clinics and, to a limited extent, university research centres. PLP undertook desk-based research to map the provision of public law services in social welfare law, and met with various interested stakeholders.

### Findings

The research established that, in the field of public law, law clinics face various challenges and limitations in improving access to justice. These include:

- Uncertainty in the university sector;
- Issues around their capacity to conduct casework;
- The reach of their services;
- The difficulty in classifying what public law cases are;
- The availability of particular expertise; and
- Regulatory issues.

The report identifies various ways in which law clinics have sought to mitigate these problems:

- Transferring the burden of training and supervising clinic students to other organisations;
- Limiting, or eliminating altogether, the individual casework expected of clinic students;
- Focusing clinic students on high volume relatively unskilled tasks;
- Only accepting case referrals from limited and trusted sources; and

- Securing sufficient funding.

In contrast with the problems of casework and general capacity with law clinics, many of the successful forays into public law by law clinics involved public law cases where it was clear from the outset that judicial review was not an option for the client. This was because either there was a statutory right of appeal which would (in most cases) provide an adequate remedy (e.g. work on applications and appeals in benefits and immigration cases), or because the work involved a complaint or public inquiry (e.g. the Hillsborough Inquest).

The advantages for law clinics of forming partnerships with NGOs and other external organisations were also clear. Not only could external organisations add capacity by taking over supervision and training costs (where they have an interest in so doing), but they also, potentially, open up clinical projects to additional funding streams. This is particularly so in relation to NGOs, who will come to the table with their own funders. The report identifies a variety of ways that NGOs may assist in building capacity in the law clinic sector.

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The PLP team working on this report has included Ravi Low-Beer, Jo Hickman, Ade Lukes, Alison Pickup, Emma Marshall, and Dr Joe Tomlinson.

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## INTRODUCTION

*University law clinics form part of an intricate ecosystem of legal advice in the UK... The network of university law clinics in the UK has continued to grow since the 1990s, creating a greater geographical spread across the UK.*

Drummond and McKeever (2015), p.33.

### University law clinics and the provision of public law legal advice

In recent years, cuts to legal aid and austerity measures more generally have combined to have a dramatic impact on the landscape of advice provision, often affecting the most marginalised or disadvantaged groups in society.<sup>1</sup> Legal aid is no longer available in many areas of social welfare law, family law, and immigration.<sup>2</sup> Those voluntary sector advice agencies still open cannot meet demand. In that context, the pro bono sector has become the fastest growing area of independent advice provision in the UK.

Law students are doing more pro bono work than ever before, in more clinics, and covering a wider variety of legal areas. As of 2014, 70% of all UK law schools provided free legal services to individuals, groups, and organisations. According to the Law Works *Law School Pro Bono and Clinic Report* (2014), this was up from 46% of law schools in 2006 and 61% in 2010. There are now over 10,000 students involved in clinical work, with law school clinics receiving 11,100 enquiries in 2014/15.<sup>3</sup>

In their report *Access to Justice through University Law Clinics*, Drummond and McKeever demonstrate the ways that law clinics can deliver access to justice, as well as the limitations on the work that they do.<sup>4</sup> Drummond and McKeever's findings show how "the range of areas of law covered by clinics is diverse and not necessarily predictable since the clinic focus is more likely to be aligned to Law School expertise than demonstrable legal need," which means that the work done by university law clinics may have to balance the needs of local communities against the need to provide students with valuable learning opportunities.<sup>5</sup>

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<sup>1</sup> Amnesty International, *Cuts That Hurt: The impact of legal aid cuts in England on access to justice* (Amnesty, London 2016); Ministry of Justice, *Legal Aid Statistics in England and Wales* (2014), p.22.

<sup>2</sup> In this report, the term 'social welfare law' describes those areas of civil law particularly relevant to those on low incomes, who are typically disadvantaged and marginalised. It includes the law relating to debt, discrimination, mental health, family, welfare benefits, employment, education, community care, immigration and housing. This report is concerned with the public law aspects of social welfare law.

<sup>3</sup> LawWorks, *LawWorks Clinics Network Report April* (2015).

<sup>4</sup> O Drummond and G McKeever, *Access to Justice through University Law Clinics* (Ulster University Law School Report, 2015), p.33.

<sup>5</sup> Ibid.



In terms of the challenges that university law clinics face in assisting with access to justice, the lack of capacity to conduct clinic casework can be one of the most significant issues. Drummond and McKeever discuss how capacity limitations arise due to “constraints on staff numbers and expertise, physical and financial resources to support or develop casework; student availability, knowledge, ability and commitment; and the need to manage clinic caseloads to match student-focused objectives within these parameters.”<sup>6</sup> They conclude that their research evidences “misperceptions by clinic clients about the nature of the service being provided, with clients not fully aware of the clinic’s limitations in progressing their legal problems.” In addition, they find that clinics are not always visible on the legal landscape:

*The consequence is that clinics may not be able to help the clients who find them, either because of a lack of capacity, or fit, and without any guarantee of connecting the client to a more suitable provider, with the risk therefore of exacerbating referral fatigue and the individual’s sense of frustrated resignation: clinics themselves could become a further barrier on the path to justice unless clients are properly directed and adequately assisted [ . . . ] There are also strategic issues that operate to limit clinics. The development of university law clinics in the UK has been ad hoc, tied to individual and institutional academic objectives rather than access to justice agendas, with the overriding need to serve core university functions, and associated academic demands”.*<sup>7</sup>

The research conducted by PLP sought to investigate some of the challenges that university law clinics encounter when engaging in public law work, by identifying the ways in which the limitations of clinical legal education models can be addressed. This report recognises that whilst there are complex factors that influence the potential for university law clinics to engage with public law work and access to justice issues, there is also much value in the work done by university law clinics. The report sets out the challenges and opportunities for pro bono projects as part of clinical legal education programmes, including potential ways that NGOs, such as PLP, can help to increase the capacity of university law projects by developing collaborative projects. The remainder of this introductory section provides further context about public law work in the UK and the current landscape of justice in which university law clinics are situated.

## Public law and access to justice

Public law can be thought of as the framework of legal principles governing the decisions, actions, and failures to act of public authorities when they are exercising public functions. Public law cuts across many recognised areas of law. It includes aspects of the law relating to housing, welfare benefits, immigration, crime, policing, access to health and social care, education, the conduct of tribunals, access to legal aid, prison law, planning, regulation, and aspects of constitutional law, such as use of prerogative powers, and powers to make delegated legislation.

Public law cases can be described in a number of different ways:

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

- Simply as ‘public law cases,’ to distinguish them from ‘private law cases’ which do not involve challenges to the exercise of public authorities’ powers;
- By reference to the substantive area of law concerned (e.g. immigration, or welfare benefits); or
- By reference to the type of court proceedings (e.g. judicial review).

There are several remedies available to individuals when public authorities act in breach of public law. These remedies include complaints procedures and ombudsmen schemes, appeal and review processes, public inquiries, and judicial review.

## Judicial review and public law cases

Judicial review is a process whereby claimants can bring a claim before the court that a public authority has breached public law. The complex rules around judicial review mean that it can be difficult for university law clinics to take on public law cases. There are a range of reasons why this is the case.

First, judicial review has an unusually short limitation period (i.e. the period within which a claim for judicial review must be commenced following the unlawful conduct complained of) compared to other types of civil litigation. The limitation period in most public law cases is ‘promptly and in any event within three months’ of the conduct complained of.<sup>8</sup> The meaning of ‘promptly’ in any particular case depends on the facts, is a matter for the court (whatever the parties may agree), and in many cases is considerably less than three months. This means that determining with any certainty how long a claimant has to issue a claim can be a difficult question, even for expert public law practitioners. Second, as with most other types of civil litigation, the general rule in judicial review is that the loser is liable to pay the winning party’s costs. Finally, it should also be observed that judicial review is a front-loaded procedure, i.e. an unusually large amount of preparatory work including legal research needs to be done by the claimant before the merits of a case can be established, and a claim issued. Judicial review cases therefore frequently require substantial urgent investment in the case by expert lawyers at the outset, when—because of the short limitation period—the time available for the necessary expert scrutiny is invariably very limited.

These aspects of judicial review (the short limitation period, the general rule that an unsuccessful claimant is liable to pay the successful public authority’s costs of the case, and the front-loaded nature of the procedure) are just three of a number of reasons why claimants for judicial review will invariably benefit from quick expert legal advice before issuing proceedings.

As stated above, public law cases are not restricted to those involving judicial review – other types of public law remedy, such as complaints against public authorities, may have more relaxed deadlines, better suited to the pressures on law clinics’ supervisory staff and the limits on law clinics’ capacity. However, whilst the vast majority of public law cases will not involve judicial review, many complaints about the conduct of public authorities could require

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<sup>8</sup> There are different limitation periods in planning and procurement cases.

the client to be advised that judicial review proceedings could or should be brought with the consequent need for urgent expert legal advice.

Similar considerations in relation to the need for time-pressured legal analysis arise where an individual affected by an administrative decision (such as a benefits claimant) has a right of appeal to a tribunal which must be exercised within specified time limits (which vary depending on the particular type of appeal). While lodging an appeal to an administrative tribunal does not carry with it the same costs risk as issuing judicial review proceedings, it may nevertheless require urgent consideration to meet the appeal deadline, and detailed legal analysis to determine if, and on what basis, the underlying decision might be challenged on appeal. This imposes a heavy supervisory burden where law students are involved in working on appeals to tribunals, and tends to mean that either the supervision is provided by an external body such as a partner NGO (e.g. Citizens Advice Bureau), or that the number of appeals in respect of which work could be done by the law clinic is very limited.

Public law cases are therefore particularly difficult for law clinics to take on because of: the need for expert scrutiny of the case before judicial review can be excluded, or the grounds of any appeal formulated; and the urgency with which such scrutiny has to be applied to the case in order to potentially meet the judicial review deadline, or the time limit for bringing an appeal to the relevant tribunal.

# METHODOLOGY

## Background and aims

To conduct this research, PLP identified university clinics offering varying degrees of public law experience to students and assistance to clients. The function of the law clinics varied, but their client services included: providing general legal advice in mostly non-public law cases; offering advice and representation across a wide range of areas including public law; and creating public law toolkits for the general public without giving advice on individual cases. The research also sought to consider examples of NGOs and law firms working with law clinics in a public law context. The aim of the research was to assess work already underway or in development to examine how to extend the work of law clinics and overcome or mitigate any limitations, where possible identifying the positive resolution of public law problems by law clinics.

## Methods

PLP conducted desk-based research to gather contextual information on the operation of the clinics, including any research or project work, any partnerships or collaborative working, and any conference and training events held near the clinics. Qualitative data was collected during face-to-face visits to law clinics, through interviews with staff and students, and via field notes made by the researchers during their visits. A follow-up questionnaire was then set to the clinics after the initial visit.

The law clinics that participated were:

- University of Huddersfield
- Cardiff University
- University of Kent
- University of Liverpool
- University College London
- City University
- The Centre for Criminal Appeals (which is a not-for-profit organisation that works in collaboration with eight law clinics)

The first four of these law clinics—Cardiff University, the University of Huddersfield, the University of Kent and the University of Liverpool—came to PLP’s attention through its training outreach: individual delegates from each of these clinics had attended PLP conferences, which were mainly held outside of London. Information was gleaned from each of them by face to face and telephone interviews, email correspondence, and the completion, by each law school, of a questionnaire (see Appendix 1).

The initial engagement with the first four participating law clinics led to additional lines of inquiry, as the research progressed. These were explored through engagement with two other law clinics at University College London (UCL) and City University, as well as the Centre for Criminal Appeals, which is a project that works with eight university law clinics. PLP’s

interest in meeting colleagues at UCL and City University was generously accommodated by those colleagues, but the level of engagement that was possible in the available time was less than for the four main partners to this report. Nonetheless, aspects of work undertaken by these clinics merits inclusion in this report albeit in summary form, with less systematic analysis. This work was undertaken between December 2015 and September 2016.

The selection of a limited number of participating law schools for the study was necessary to ensure that the report retained focus and cost-effectiveness. It has, however, meant that highly regarded projects—such as the Student Law Office at Northumbria University and the Legal Advice Centre at Nottingham Trent University School are not included in the detailed case studies. That said, it is considered that the range of clinical models considered is sufficient to enable PLP to make observations and draw conclusions that are of general significance.

## KEY FINDINGS

This section outlines the key findings established by the research. It sets out both the key central observations from the research and some proposals for how some of the limitations identified may be responded to.

### University law clinics and access to justice

From PLP's perspective, one interesting theme to emerge from this work was to scrutinise the extent to which university clinics are 'pro bono,' in a traditional or literal sense. University law clinics have an increasingly high profile in the access to justice community, but providing legal services to the socially disadvantaged is not a primary reason for the existence of clinics; the primary reason for their existence is educational. This creates the potential for tension that must be managed.

A further theme to emerge was the true cost of running a university law clinic. The services provided by clinics may be free for the (necessarily limited) number of clients that receive help from units directly or indirectly, but they are not cheap. Law clinics require high staff resources, and students require intense supervision. Clinics themselves are at great pains to emphasise that their capacities are very limited, and that such limitations make it inconceivable that law clinics will ever be able to plug current gaps in service provision caused by recent legal aid cuts amongst other things.

The research demonstrated the reason why public law casework is particularly challenging for law clinics. The need to identify issues of law before commencing a case, tight deadlines for bringing claims and lodging tribunal appeals, the potential consequences for clients of the normal litigation costs rules and the complex and often protracted nature of public law cases generally, all militate against the work being taken up. Another issue worth noting is that the regulatory framework applicable to law clinics' legal work is not straightforward (PLP provides an analysis of the relevant legislation in Appendix 2 of this report).

Of the law clinics considered in the study, only Kent Law Clinic has consistently brought judicial review cases for clients on a pro bono basis. It should be noted that these cases were brought for clients for whom it made sense to bear the costs risk, for example because they were destitute and had nothing to lose by litigating and losing. In the vast majority of public law cases, litigation without costs protection (generally the costs protection afforded by legal aid), will not be a realistic option. Pro bono representation in litigation (especially litigation against public bodies) is unlikely to be possible except in a very small number of cases.

There are a number of ways in which clinics seek to engage with areas of public law that go beyond, or sidestep, individual casework. This includes work on public inquiries and inquests, such as matters relating to Hillsborough, to which two of the clinics provided student capacity to assist with document sifting and logging (Liverpool and Huddersfield). Also, the preparation of legal guides for the public (e.g. Cardiff Law School Pro Bono Scheme's work with Cerebra and Mencap Cymru) which does not require students to engage directly with casework, and the provision of basic advice and assistance with benefit claims and appeals,

under the supervision of NGOs such as the Citizens Advice Bureau (e.g. Huddersfield Legal Advice Clinic's work with Kirklees Citizens Advice and Law Centre).

One area that seems surprisingly underdeveloped is the overlap of academic research with clinical practice, where both helping individual clients and gathering an evidence base would help create impact through policy initiatives or strategic legal work. There are several clinics starting to take this model forward, though most are at incipient stages.

## Funding university law clinics

The desire to meet pressing social need for legal services was evident as a motivational factor on the part of each of the clinic directors, and most of the supervisory staff we met, albeit within a viable academic and business model. That motivation has found expression in a number of different initiatives, for example:

- Partnership working by Liverpool and Huddersfield law clinics with, respectively, Liverpool Citizens Advice and Kirklees Citizens Advice and Law Centre;
- The immigration test cases run by Kent Law Centre, and the possibility raised by practitioners there, that where a judicial review claim was considered viable but a legal aid practitioner could not be found because of the lack of guaranteed payment of legal aid where permission is not granted, the claim could be brought pro bono by the law clinic, and transferred to a reputable legal aid practitioner (for whom any grant of legal aid would then mean guaranteed payment of their fees) following the grant of permission; and
- The collaboration between Cardiff Law School Pro Bono Scheme and Cerebra and Mencap Cymru, which is intended to meet pressing social welfare advice needs (albeit on a national rather than local basis).

However, it is clear that a commitment to facilitating access to justice cannot be a law clinic's primary motivation, given its other overriding responsibilities to students and the institutional aims of law schools more generally. Whatever a law clinic's motivation, meeting any external demand is impossible without building sufficient capacity.

In order to explore funding options, PLP has spoken with a range of colleagues working in law clinics, both in the participating law clinics and beyond. The following points can be gleaned from those conversations. Most law schools, which fund law clinics' core costs like staff and premises, are presently being forced to reconfigure the services that they offer in order to meet future challenges. These challenges include:

- Changes to the qualification route for solicitors, which will place a greater emphasis on skills-based learning, and qualifying legal work experience;
- Changes in recent years to the traditional career path for solicitors: graduates increasingly face a period of employment as an unpaid intern or a paralegal doing poorly paid and relatively unsatisfying work before they will be considered for a training contract. The importance of internships to prospective legal employers (particularly blue chip employers) and for barrister's chambers puts a premium on the acquisition by students of practical legal skills that will prepare them for employment. In this regard, law

schools may (to varying extents) view law clinics as an important means to implement the Widening Participation agenda, since they offer work experience that may not in practice be available to those students from more deprived socio-economic backgrounds; and

- A realisation on the part of law schools that it is increasingly important to offer a student experience that responds to students' wishes. As tuition fees have risen, students and their families are treated more like consumers of services than was previously the case. This is evidenced by the increasing weight given by universities to the National Student Satisfaction Survey, and other measures of what students want.

It might be anticipated that the present period of profound uncertainty regarding law schools' future development will result in law schools taking a more risk averse approach to investment in relatively expensive (in staffing terms) law clinics.

Law clinics are popular with students (all the clinical placements considered as part of this study were over-subscribed), and are perceived by law schools to be a major selling point, both in terms of recruitment, as law schools compete for students, and in terms of the student experience, an increasingly significant consideration, as surveys such as the National Student Survey grow in importance.

Law clinics are, however, a greater drain on law schools' resources than other more traditional types of legal educational activity, because of the higher staff to student ratio that is required to ensure students' clinical work is adequately supervised. The costs to law schools of supporting law clinics are correspondingly high. High staff student ratios are considered normal in vocational undergraduate courses like medicine where clinical work is a better established part of the curriculum. But while law schools have good reasons to support law clinics (in terms of recruitment, reputation, community engagement and research impact), some may be deterred at their relatively high staffing costs. Law schools always have to decide which areas of teaching and research to focus upon, and staff costs may weigh against clinical work. On the other hand universities may decide to invest further in law clinics because they attract students (and thus income for all purposes) and also as being appropriate for their students in the context of the new Solicitors Qualifying Examination route. It should also be noted that some law clinic respondents perceived themselves to be operating in a funding environment where they are expected by law schools to take on an increasing number of students, without corresponding increases to staff costs.

None of the law clinic respondents to this study considered that the law school imposed strategic objectives or other Key Performance Indicators on the clinic's activities (save, in some cases, in terms of administration). Law clinics' strategic objectives appeared to vary. In particular, the degree to which each law clinic pursued objectives such as facilitating access to justice, serving the local community, legal skills training, and providing legal work experience to students (alongside in every case providing students with a legal education) appeared to vary from clinic to clinic depending on factors such as the law school's ethos,<sup>9</sup> the drive, interests and expertise of the clinical supervisors, and the support given to the clinic by the school. Having a supportive senior voice in the faculty hierarchy was widely

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<sup>9</sup> Including the extent to which its activities are research or education focused.



considered to be an important factor in the degree to which a clinic might be supported by a school.

Paying for external supervision of specific projects (e.g. the Centre for Criminal Appeals model) may become increasingly difficult for law clinics to justify in light of the challenges highlighted above, particularly where subsidies initially provided by charitable funders are withdrawn over time. Since supervision of work by students of any legal complexity (whether provided by the law clinic or by external lawyers directly funded by the law clinic) is necessarily time-consuming and expensive, the number of students who will benefit from project work of this sort is likely to be limited. As law schools seek to offer clinical experience to more students, there is likely to be pressure on law clinics to allocate their resources to benefit a wider number of students (rather than a chosen few selected to work on select flagship projects). While an increase in supervision capacity through the use of external lawyers (such as those in NGOs) might relieve some of the pressure on law clinics' in-house supervisors, such an increase, in itself, appears unlikely to benefit significant numbers of students unless additional funding is secured.

## Main challenges and limitations for law clinics

Each of the law clinics considered in the course of this study faced the capacity limitations identified by Drummond and McKeever in *Access to Justice through University Law Clinics*, which are set out in the introduction to this report. This section summarises the main challenges faced by the university law clinics that participated in PLP's study.

**Uncertainty in the relevant sectors:** The research presented in this report was conducted during a time of uncertainty for law schools and law clinics.

**Issues around the capacity to conduct casework:** Capacity was clearly limited by:

- High supervision costs – students are in general unqualified to give legal advice, and typically have limited life and professional experience, and therefore generally need intensive training and supervision;
- The number of available student hours – students' educational commitments, including examinations and ongoing course work, and lengthy vacation periods when many students lose their university accommodation and need to do paid work, mean that the window within which students are available for work at the law clinic is in practice a small one; and
- The number of available supervisor hours – this is a particularly limiting factor where there are no dedicated supervisor resources (e.g. where supervisors have to combine law clinic work with other teaching and research functions), and where the supervisors' practical legal expertise is narrow or non-specialist.

These limitations throw up particular challenges in certain types of clinical work, for example: work requiring a detailed grasp of the law; work requiring the application of the law to an initially incomplete set of facts; and work on cases with fixed and early deadlines (all features of much public law casework). Where cases (with potentially urgent deadlines for action) are

received from the general public unfiltered, the challenges are aggravated by the need for early case analysis and appropriate signposting.

**Reach of services:** The lack of capacity within law clinics was often a highly significant barrier to law clinics' ability to facilitate access to justice for members of the local community.

**The classification of public law cases:** The definition of 'public law' in itself can make it challenging to measure a law clinic's public law caseload. Professor John Fitzpatrick of Kent Law Clinic observed:

Professor Fitzpatrick's observation demonstrates some of the difficulties for law clinics to

*Our classification of legal casework is primarily by the subject matter or area of concern as it appears to our clients: 'employment', 'family', 'housing', 'welfare benefits', 'immigration' etc. We do bundle some matters under the category of 'cause of action', e.g. 'contract', 'tort'; or sometimes by 'proceedings' or 'forum', e.g. 'county court', 'JR', 'ET', 'ombudsman etc.; or by 'purpose of the proceedings', e.g. 'criminal', 'civil'. We don't use 'public law' as a distinct category of casework. In general terms, although it's a fuzzy category, we consider 'public law' as any law which concerns matters where the interests of society are directly engaged, for example dealings between the individual and the state and its emanations. From our work this would include: public sector housing, welfare benefits, immigration, asylum, nationality, crime, policing, prison law, public access to land, and access to legal aid generally. We also undertake casework in employment, family, private housing, contract, tort, equality law and miscellaneous areas.*

engage in public law work, particularly when the term public law requires a clear definition as well as a working understanding of what it means in practice. Professor Fitzpatrick's comments indicate how, from an NGO perspective, encouraging law clinics to engage in public law or social welfare law may first require a negotiation of the various meanings that are assigned to these categories.

**The availability of particular expertise:** During the research, PLP found that the participating law clinics were particularly mindful of the areas of law where they had the necessary supervisory expertise (e.g. immigration or social security law), as well as the types of remedy that could be offered to clients in that area of law (e.g. often advice was possible, but not necessarily representation on appeal to tribunals or judicial review), which often shaped the limitations on the work that each clinic could develop.

**Regulatory issues:** All of the law clinics visited had to deal with regulatory issues. An overview of regulatory issues that might affect law clinics is set out at Appendix 2 of this report.

## Responding to challenges

Each of the law clinics that participated in the study responded to the challenges they faced in different ways. Examples taken from the case studies included:

- **Transferring the burden of training and supervising clinic students to other organisations** whose interest in working with the clinic students outweighs the training and supervision costs. Examples were Huddersfield Legal Advice Clinic and Liverpool Law Clinic's relationships with, respectively, Kirklees Citizens Advice and Law Centre and Liverpool Citizens Advice, where the advice agencies could use clinic students to perform a limited range of relatively simple legal tasks, which made commercial sense to the advice agencies given the parlous state of their resources. Another example of this working model is the NHS Continuing Healthcare scheme operated by Cardiff Law School Pro Bono Scheme with Hugh James Solicitors. There were mutual benefits for this arrangement (for the clinic students, for Hugh James Solicitors, and for the law clinic);
- **Limiting, or eliminating altogether, the individual casework expected of clinic students**, as it is predominantly the needs of individual clients that generate tight casework deadlines which law clinics are poorly equipped to meet (e.g. in the Cerebra and Mencap scheme operated by Cardiff Law School Pro Bono Scheme);
- **Focusing clinic students on high volume, relatively unskilled tasks** on the basis that the training and supervision required is not onerous, so the clinic, or partner agency, might see a return on their training and supervision investment relatively quickly (necessary, given clinic students' limited availability). Again, the Huddersfield and Liverpool law clinics' work with advice sector partners fits this pattern, as does the document management work undertaken by clinics in support of the Hillsborough Inquiry (Liverpool) and the Orgreave Truth and Justice Campaign (Liverpool and Huddersfield);
- **Only accepting case referrals from limited and trusted sources** (e.g. Cardiff Law School Pro Bono Clinic, Immigration Human Rights Project at City University); and
- **Securing sufficient funding** from the university or law school to be able to provide a quality service as part of what is intended to be primarily an educational experience (e.g. Kent).

In contrast with the problems of casework and general capacity with law clinics, many of the successful forays into public law by law clinics involved public law cases where it was clear from the outset that judicial review was not an option for the client. This was because either there was a statutory right of appeal which would (in most cases) provide an adequate remedy (e.g. work on applications and appeals in benefits and immigration cases), or because the work involved a complaint or public inquiry (e.g. the Hillsborough Inquest).

The advantages for law clinics of forming partnerships with NGOs and other external organisations were also clear. Not only could external organisations add capacity by taking over supervision and training costs (where they have an interest in so doing), but they also, potentially, open up clinical projects to additional funding streams. This is particularly so in relation to NGOs, who will come to the table with their own funders.

# CASE STUDY ONE: CARDIFF UNIVERSITY

## Regional context

There are four public law contract holders in the Cardiff area, although this does not include Hugh James Solicitors, a major provider of niche services in continuing healthcare, which could be described as a public law area, dealing as it does with local authority and NHS decision making. Watkins and Gunn are a law firm offering clients access to judicial review in education and local authority service provision cases (including challenges to library and school closures). There are also a number of community care, mental health and SEN (Special Educational Needs) providers in the area, all of whom could bring public law proceedings (though as explained below very few of these are progressed to judicial review in Wales, to PLP's knowledge). As far as immigration and asylum services are concerned, Duncan Lewis have an office in Cardiff, but seem to have relatively low activity in public law there (though they do have a contract for this with LAA) and we are aware of one small immigration and asylum advice service (Trinity Centre) that has used public law to assist its clients, as well as the Migrant Legal Project which has a limited advice service in the area. As explained below, there is a national helpline for families requiring advice provided by Mencap Cymru.

Cardiff Law Centre closed in October 2014. The Employment Law Clinic, a service run by Cardiff Law Centre for many years, continued to run with the assistance of LawWorks, which arranges alternative premises at the Speakeasy Advice Centre in Cardiff. The Employment Law Centre has no public law caseload. PLP is aware from contact with advice services in Wales, that those seeking to use public law to challenge the decisions of public authorities in Wales also look to England to get legal support, for instance from Deighton Pierce Glynn, who have an office in Bristol, and Irwin Mitchell who have offices in Bristol and several other cities in England and who (very occasionally) handle judicial review claims in Wales.

PLP has run a public law conference annually in Wales since 2009 and thus has a reasonably developed knowledge of the public law landscape in Cardiff and in Wales more generally. Subsequent to questions raised at that conference, in 2013 PLP conducted an analysis of the number and type of cases then being heard at the Administrative Court in Cardiff, an exercise that provides some local intelligence.<sup>10</sup> The data set of cases over 26 months (to February 2013) suggested a (relatively) very low instance of judicial review per capita of population in Wales and a very low number of cases being brought by individual claimants (as opposed to cases brought by commercial entities challenging public bodies). Although further work would need to be done to interpret and analyse more recent data, this may suggest the existence of some issues in public law supply/demand that are specific to Wales.

## Overview of the clinic and the services offered

Unlike the clinical models adopted in Huddersfield and Liverpool, Cardiff does not offer a general advice service, but has specialised areas of expertise, with different external partners. Clinical projects include:

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<sup>10</sup> Practice Direction 54d provides that public law cases should in general be administered and determined in the area in which the claimant has the closest connection.

- The Cardiff Innocence Project – students work under the supervision of academic staff, and sometimes practising solicitors and barristers, on cases where long-term prisoners maintain their innocence of serious crimes for which they have been convicted. The clinic has had some success in having cases accepted for full review by the Criminal Cases Review Commission, and (in a project spanning 14 years and 30 law schools) has been the only law school to have succeeded in having a conviction overturned.
- The Mencap Cymru Project – students work in teams under supervision to research and develop toolkits to assist people with learning disabilities and their families. This project is considered further below.
- The NHS Continuing Healthcare Scheme – students work under the supervision of a firm of solicitors on continuing healthcare cases, where the client has to show that he or she meets eligibility criteria for NHS continuing healthcare. This project is considered further below.
- The Welsh Rugby Union Project – students work in partnership with the Welsh Rugby Union, to provide a free legal advice service to Welsh amateur rugby clubs. The Scheme is supported by the law firm Hugh James, and by a barrister at Civitas barristers' chambers.
- The Cerebra Learning Entitlements Research Project, although that has now moved with the member of staff who developed it, Professor Luke Clements, to the University of Leeds. There is a possibility that, subject to future funding, the scheme may re-start in a different format involving a partnership between Professor Clements and Cardiff, which will consider the differences between relevant English and Welsh law.

Referrals are in general received from Age Concern Cymru, Mencap Cymru and Hugh James Solicitors, and sometimes directly from clients. The Cardiff Law School Innocence Project cases are chosen from the dozens of letters received each year from prisoners maintaining their innocence, who have no central point of contact if they are trying to find help, now that the Innocence Network UK no longer operates. Cases are also referred by solicitors, and by other organisations such as Inside Justice, which is part of the national prisoner newspaper Inside Time.

Cardiff School of Law and Politics has approximately 1300 “law” students. All “law” students can apply to work in the clinic. Their clinical work is currently extra-curricular, and so not assessed as part of their degree. Students are expected on average to commit 4 hours per week to clinic work. The law school is focused on equipping students with the practical skills to get employment. Clinic students are generally trained in October and work during the academic year until June, by which time their exams are over, so for the majority of students, the clinic only offers a short window. The reality often is that undergraduate students are not available to work on cases after April, because the exam period starts in mid-May. The clinic tries to address this by bringing on board its Legal Practice Course and Bar Professional Training Course students to take up the reins after Easter. There are currently (although numbers vary) about 50 students working on the Cardiff Law School Innocence Project, about 36 on the NHS Continuing Healthcare Scheme and about 24 on the Welsh Rugby Union Project. Other in-house schemes, Global Justice, Mencap and the Environmental Law Foundation Clinic, occupy about 46 students between them. If the external partnership and volunteering schemes are included e.g. the Bail Observation Project, Asylum Justice, Cardiff

Asylum Support Advocacy, Hafal (Appropriate Adult training), and the Duncan Lewis advice clinic, typically up to about 200 students are involved in the various Cardiff schemes.

Professor Julie Price has overall responsibility for the clinics, and is the only full-time employee, with a remit that also includes Employability, Engagement and other student skills activities such as Client Interviewing and Negotiation. The law clinic also employs (on a 40% contract) a qualified (but not practising) barrister/BPTC tutor to coordinate work on the NHS Continuing Healthcare Scheme, but otherwise has to provide supervision with a small number (usually between one and three others) of highly skilled but non-dedicated (in the sense that they have other responsibilities) academic staff, who can in reality only spend a small amount of their time on clinical work. Overall, the clinic activity at Cardiff is heavily dependent on the goodwill of a small number of local and national practitioners who each provide a small amount of time largely on a pro bono basis.

Some of these projects involve significant investment by external agencies. These are considered in more detail below.

## Supervision and relationships with external organisations

### The Mencap Cymru Project

In 2014, as a member of the Cerebra/Law School steering group, and having identified its own needs inspired by that research project, Mencap Cymru decided to approach Cardiff Law School, with a view to setting up a pilot advice project. Mencap Cymru would look for live cases from families that contacted its telephone advisers, and would refer some of those cases to the law clinic for students to prepare a written advice. However, that model was not perceived by Mencap Cymru to meet families' needs, as the law students would need up to 6-8 weeks to research the law, apply it to the facts, and have their work properly checked by the supervising staff, and this was too long to wait for many of the families concerned. Further, Mencap Cymru's telephone advisers could deal with many of the cases themselves, so the number of cases referred to the clinic was lower than expected.

The solution was to carry out an analysis of the queries its telephone advisers were receiving, and to refer those issues to the law school for generic, rather than individual, advice on problem areas. That generic advice would then be passed back as a resource to the telephone advisers. The 16 students were divided into groups, and under the supervision of Professor Jason Tucker (a qualified solicitor and part-time tribunal judge, with a background in Legal Practice Course/Bar Professional Training Course teaching), produced four online toolkits, funded by Mencap Cymru, which were launched at the Welsh Assembly in September 2015, in four specific areas of law, namely:

- Accessing health and social care services: the rights of adults with a learning disability;
- Housing Law: the rights of tenants with a learning disability;
- Applying for a place at a specialist further education college: a guide for young people aged 19-25;
- Supporting parents with a learning disability through the child protection system.



Mencap Cymru then applied for more funding from the Welsh Government, and received three years funding from April 2016. With that funding, Mencap Cymru and the law clinic have committed to producing five new toolkits, and updating those already produced.

Mencap Cymru were asked, in the preparation of this report, why they chose to work with the law clinic rather than with established lawyers. In response, they indicated that, in addition to providing dedicated, accurate information that supports people to help themselves, one of the aims of Mencap Cymru is to raise awareness of the issues affecting its client base. It is therefore an advantage for Mencap Cymru to work with younger students at a formative stage of their development, and to be able to expose them to learning disability issues, and to feel able to use their skills to assist the client base. Paying established lawyers to produce and update the toolkits would not, in Mencap Cymru's view, stimulate a wider attitudinal change, and would also very likely be unaffordable. A sign of the success of the project was that students who participated in the scheme proceeded to involve themselves in other ways with Mencap Cymru, for example by fundraising and by jointly presenting alongside Mencap Cymru Regional Officers at a conference hosted by Learning Disability Wales.

### **The NHS Continuing Healthcare Scheme**

The scheme is a partnership between the law clinic and the nursing care department of Hugh James Solicitors, a large commercial firm with offices in London and Cardiff. In past years, up to about 60 clinic students have participated in the scheme each year, but numbers have been reduced so that they are now more manageable. Each case concerns entitlement to NHS continuing healthcare. In order to demonstrate entitlement, applicants have to show that they meet the relevant criteria. If entitlement is refused, applicants can appeal to an NHS Continuing Care Independent Review Panel. The scheme has secured more than £150,000 in wrongly-paid nursing home fees for clients, since its inception.

Under the scheme, law clinic students are tasked with collating clients' medical and nursing records, reviewing records, and preparing advices on entitlement to continuing healthcare. If the matter proceeds to an Independent Review Panel, students may attend the panel hearing with the applicant family, and sometimes make submissions. If the Panel's decision is negative, an Ombudsman complaint can be made, which students may draft. Very rarely, cases will proceed by way of judicial review; these are carried out in-house by Hugh James.

Cases are typically referred to the scheme by Age Concern and other local charities. Occasionally Hugh James will refer a case to the scheme where the value of the claim is too low for the case to be viable for Hugh James to act either on a privately paying or no win no fee basis.

The law clinic employs one of the law school's Bar Professional Training Course tutors to coordinate students' work on the cases, and to provide initial supervision. A team of six Hugh James junior fee earners (3 working one evening each week) and the partner in charge of the department oversee all correspondence sent and received by the pro bono clinic, advise on file progression and give feedback to students. Work has to continue on some of the cases

outside of the academic year. At these times, the clinic coordinator has to have more input, and Hugh James has to invest more resources in the project.

### **Cerebra Learning Entitlements Research Project**

Although the Cerebra Project no longer operates at Cardiff Law School, it was developed there. In this course of preparing this report, the author has spoken with Professor Luke Clements, and with Tracy Elliott of Cerebra. Professor Clements moved to Leeds University in 2016, and the scheme has relocated with him. But as the scheme was developed at Cardiff, it is considered in more detail in this section of this report.

Cerebra is a national charity set up to improve the lives of children with neurological conditions, through research, information and direct, on-going support. It offers a telephone advice service for families of children with such conditions. Its relationship with Professor Clements and Cardiff Law School started when Cerebra noticed that the same queries were being received again and again in seminars it ran for parents with Professor Clements. This prompted Cerebra to develop a series of Parents' Guides, written in question and answer form, which Professor Clements reviewed, and thereafter, in 2013, to pilot the pro bono scheme at the law school. From 2014 until his departure in December 2015, Cerebra have funded a proportion of Professor Clements' professorship.

The scheme operated as follows at Cardiff: Cerebra employed an adviser (a qualified solicitor) to receive calls from Cerebra's members with queries about the law. Of the questions not referred elsewhere, the adviser took some on herself, researched the law, and drafted a letter of advice. The other cases were referred to Cardiff Law School Pro Bono Scheme, who prepared a legal advice, under supervision of the clinic supervision staff and ultimately of Professor Clements.

A digest of seven advices (on issues including direct payments, carer's assessment and delay, school transport, continence supplies and Child and Adolescent Mental Health Services) was published by Cerebra in 2013, followed by a second Digest in 2014 with 13 pieces of advice. Impressive though those publications were, the arrangements were problematic, because they imposed a heavy supervision burden on the clinic staff, and in reality the students' work needed significant re-writing, given their relative inexperience at legal drafting. As with the Mencap Cymru Project, capacity problems on the part of students and their supervisors resulted in delays before advice could be given to parents. Cerebra and the law clinic sought to address this problem by asking clinic students to work on generic advices (where time would not be of the essence) rather than on individual cases. The new approach led to the publication in 2016 of the Cerebra Problem Solving Toolkit. The toolkit is packed with legal and practical content, in accessible language, and comprises a powerful resource.

Professor Clements gave an update on the progress of the scheme following his move to Leeds University. About 15 students are involved in preparing reports under the Scheme. The purpose of the reports is to influence local authorities, ombudsmen, and central government, to review and change practices which the reports contend are unlawful. This work is part of Cerebra and Professor Clements' research programme. Its strategic aims (changes in policy and practice leading to better outcomes for disabled children and their



families) give the research impact. Impact is an increasingly important factor in the funding of research. One novel feature of the Cerebra Project has been to link students' clinical work on the project to the impact of departmental research.

## Sustainability of the clinic's external relationships

This illustrates one aspect of the clinic's relationships with external organisations that appears to be particularly well thought through: the relationships are mutually beneficial to all parties in a way that enhances the motivation of all parties to sustain them. At the same time as the law clinic students gain experience of legal work, the department obtains research which has impact, and Cerebra obtains useful resources for its members.

Similarly, for the NHS Continuing Healthcare Scheme, we understand that a relatively large number of Cardiff Law School Pro Bono Scheme alumni are taken on by Hugh James as paralegals and sometimes as trainee solicitors. So while clinic students get experience in such cases, they also get a chance to shine at a firm which may in the future offer them employment. And at the same time as providing community-based pro bono work, and assisting with clinic students' education and training, Hugh James are able to recruit the best of those students as paralegals and trainees. And, as indicated above, Mencap Cymru's work with the law school brings with it the benefit from Mencap Cymru's perspective of fostering attitudinal change on the part of students (many of whom are exposed to learning disability issues for the first time through working on the project), and the possibility of different types of support in the future from the clinic students participating in the scheme.

## Developing public law work

While the Innocence and NHS Continuing Healthcare Projects touch on public law, only the Mencap Cymru scheme completely fits that description. The clinic's work on the Mencap Cymru project is limited to producing generic advice. The head of the clinic, Professor Julie Price, expressed some interest in the possibility of PLP supporting the clinic's work with Mencap, which is still at an early stage of development, and she plans to discuss future needs with that clinic's lead, Professor Jason Tucker.

There was also some interest in the possibility of clinic students providing representation before the First-Tier Tribunal in some welfare benefits cases, possibly in conjunction with Riverside Advice, a not for profit organisation in Cardiff. Cardiff has for some time been considering how it may be viable to introduce some sort of representation work for students. Since Cardiff runs both the Legal Practice Course and Bar Professional Training Course, it is well-placed to use the expertise of its vocational staff in creating and delivering professional legal skills training materials. Cardiff is interested in exploring with PLP the sourcing of substantive selective welfare benefits training (without duplicating training resources offered by other bodies such as LawWorks).

Additional challenges for clients and lawyers in Cardiff are raised by the manner in which law is being devolved from Westminster to the Welsh Assembly. The law clinic's experience of the Cerebra and Mencap Cymru schemes, had been that there was no clear and reliable

source for finding exactly what the law is in Wales where it is different to that in England.<sup>11</sup> Lack of certainty about what the law is and where to find it raises obvious access to justice concerns, some of which are being addressed by the law clinic in its work on the Mencap Cymru project. There would appear to be scope for further work on this issue in future projects.

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<sup>11</sup> The Law Wales website was first introduced in July 2015. See The Welsh Government, *New website shows how Welsh law differ from rest of UK* (2015) at <http://gov.wales/newsroom/firstminister/2015/150715-law-website/?lang=en>.

# CASE STUDY TWO: UNIVERSITY OF HUDDERSFIELD

## Regional context

Huddersfield Legal Advice Clinic has a comprehensive advice service covering public law on its doorstep in the form of Kirklees Citizens Advice and Law Centre, with which it has a developed relationship. There are a number of other services nearby (such as Switalski's solicitors) who, though they do not hold a public law contract, do bring judicial review cases in their areas of practice (including Immigration and Asylum cases). Huddersfield's proximity to Manchester and Leeds puts some (but not all) potential clients within reach of accessible public law services in that city.

## Overview of the clinic and the services offered

The Legal Advice Clinic's offices are situated in Pack Horse Shopping Centre in the centre of Huddersfield. The advice clinic currently operates with an average of 28 students per year, four staff supervisors, and an office coordinator. Three out of four of the staff supervisors are qualified lawyers who all have academic responsibilities in addition to their work at the clinic. A maximum of four clients are seen by the clinic, with each supervisor being responsible for one client each week. On average each case takes approximately 14.68 student hours over a three week period, with between two and four supervisor hours per week.

Students usually undertake work at the clinic on an extra-curricular basis and this is subject to application, being shortlisted and successfully passing a competency assessment test. Students who are in year 2 have the option of working in the clinic as part of a module.

The advice clinic is not SRA regulated, but is able to provide general advice and assistance, typically in areas of law which are outside the scope of legal aid. Most of the advice clinic's work is in the areas of Family, Employment, Wills and Probate, Landlord and Tenant, Property and Contract law. Referrals are received from local solicitors, the local county court, Kirklees Law Centre, and in the past, from the Northern Refugee Centre (although this service has subsequently ceased operation).

Up to one client each day is seen by students under supervision by appointment, at which information is taken but no advice given. A needs and risk analysis is conducted by a selection panel chaired by supervisory staff and including two other students. Shortly after the appointment and on the basis of that analysis, cases are selected to be taken forward to a letter of advice. Those cases that are not selected are signposted, if possible, to other organisations that may assist. Once the client has been advised, limited resources do not generally permit the advice clinic to offer further follow up.

## Supervision and relationships with external organisations

The advice clinic is able to involve itself in a number of community based initiatives, in addition to providing clients with general legal advice.

Services provided by the advice clinic include:

- **Weekly drop-in sessions at the clinic's offices**, where local solicitors see clients in their area of expertise (for example, immigration or family law) with clinic students assisting.
- **Offering clinic students the opportunity to volunteer at Kirklees Citizens Advice and Law Centre.** Throughout the academic year 2015/16, 4-6 clinic students were allocated to the law centre for up to a day per week for one month. That imposed a heavy supervision burden on the law centre, so from September 2016, law students and law clinic students will have an opportunity to attend the law centre for one day per week during the academic year, save for at exam times. Students typically assist with welfare and benefits advice and tribunal representation under the law centre's supervision. Both the clinic and the law centre would be interested in working in conjunction with PLP, both in relation to training and specialist support, and on issues of local (and national) importance, for example related to benefits sanctioning and Universal Credit.

Unlike the other law clinics visited, the advice clinic at Huddersfield was physically and culturally accessible as it was based in a shopping centre rather than on campus. That accessibility came however at a price, since the advice clinic's willingness to receive direct referrals from members of the public (rather than referrals filtered by a third party) creates a need to analyse and respond appropriately to a wide range of cases, which is itself a drain on resources.

The absence of dedicated supervision staff impacts on the amount of supervision that advice clinic students can be offered, and therefore also impacts on the type of clinical work offered to clients. The advice clinic has however been able to forge valuable community links with Kirklees Citizens Advice and Law Centre, as well as local lawyers offering their time pro bono.

## Developing public law work

The advice clinic has provided advice in only a very limited number of public law cases to date (the clinic director estimated that the clinic has dealt with two such cases, both involving prisoners' rights in the last academic year), and has referred out the public law cases it has had to date. In addition, the clinic is also currently working on the Orgreave Truth and Justice Campaign, in support of which law students prepare chronologies and summaries of witness statement evidence, and compile documentation for use by a legal team tasked with seeking a public enquiry into police conduct during the Battle of Orgreave in 1985. The legal team includes Gareth Peirce of Birnberg Peirce solicitors and Henrietta Hill QC of Doughty Street Chambers.

The potential for expanding the advice clinic's public law work appears to be limited – although the supervisors are qualified lawyers, they do not hold current practising certificates so are not able to conduct litigation under the auspices of the advice clinic. In any event, its capacity is limited by the number of available supervisors, the other demands on supervisors' time (e.g. teaching and research responsibilities), and the limits on the supervisors' areas of expertise (none of the supervisors had recent practical public law experience). However, this does not – in principle – prevent the advice clinic from using legal friends (local practising lawyers giving their time pro bono) to assist the clinic with cases

outside supervisors' areas of expertise. Further, the clinic has a mutually beneficial working relationship with Kirklees Citizens Advice and Law Centre, which has a contract with the Legal Aid Agency to conduct Public Law work.

As indicated above, the advice clinic's accessibility to members of the public, and its willingness to accept cases direct from the public without being filtered for appropriateness, means that advice clinic staff have to signpost cases that the advice clinic cannot deal with itself. These cases will inevitably include a number of public law cases requiring urgent referral so that appeal or judicial review deadlines might be met. Some training in public law and judicial review may assist with accurate and timely referrals. An example of a public law referral occurred during the preparation of this report.

## CASE STUDY THREE: UNIVERSITY OF KENT

### Regional context (Canterbury, Dover, Maidstone, Folkestone)

At the time of the research, PLP were only aware of one public law contract holder in the Kent area, Kesar & Co Solicitors. This is a practice largely specialising in immigration and asylum that has set up a charity, Intervene, to help deliver aspects of their work which are not publicly funded. Elder Rahimi have offices in Folkestone (as well as London) and are noted specialist immigration and asylum legal practice, who undertake strategic legal work (for instance receiving funding from the Strategic Legal Fund to undertake research into the treatment of young asylum seekers and refugees in the criminal justice system). Hodge Jones and Allen have a branch in Maidstone (which has a contract to conduct actions against the police). Clarke Kiernan LLP, based in Tonbridge, does not have a public law contract (they do have a housing and debt contract) but state on their website that they specialise in undertaking 'actions against public bodies', including 'actions against the Prison Service, Social Services and various actions against Local Authorities'. Kent is served by Medway Citizens Advice, and Shepway Citizens Advice situated in Folkestone (though with very limited opening times). There is also Canterbury Housing Advice Centre (CHAC), which has a relationship with Kent Law Clinic.

### Overview of the clinic and the services offered

Kent Law Clinic provides three types of legal service: a referral service, an advice service and a representation service. These services are supported by the full time equivalent of just over six solicitors on the academic staff of the School (of a total of more than 65 not including associate lecturers/hourly paid/sessional academics) in the following areas of law: social security, welfare benefits, family, housing and civil litigation, immigration, employment, criminal law and public access to land (broadly representing the solicitors' core areas of expertise). There are four professional services staff (2.5 Full Time Equivalent). A bespoke building for the clinic is in the process of being constructed at the time of writing.

The clinic's classification of legal casework is primarily by the subject matter or area of concern as it appears to its clients: 'employment', 'family', 'housing', 'welfare benefits', 'immigration' etc. The clinic does not use 'public law' as a distinct category of casework, but it could include: public sector housing, welfare benefits, immigration, asylum, nationality, crime, policing, prison law, public access to land, and access to legal aid generally.

It is generally only in immigration and asylum that judicial review proceedings are considered possible, where clients are sufficiently impecunious not to be deterred from proceeding by the risk of paying the defendant's costs if the litigation is unsuccessful. In the academic year 2015/16, for example, letters before action were sent in four immigration or asylum cases (three of them with success) and in two further cases proceedings were issued (both successfully settled, one before and one after permission was granted). However, in many different sorts of case judicial review will often be in prospect, for example in town and village greens cases (e.g. a public right of access to Whitstable beach application), or in community care cases (e.g. a refusal to provide seven day accommodation for an autistic adult).

The clinic has two aims: to provide legal assistance where it is needed but cannot be paid for; and to enhance the education of students in the Law School. The clinic has about 50 students working on cases with the supervising solicitors, mostly on a one-to-one basis. The students usually work on about two cases at any time over two terms, sometimes overlapping. They play as full a role as possible under supervision, including in certain cases: interviewing clients, conducting legal research, drafting correspondence and pleadings, negotiating with the other side, and in some cases advocacy in tribunals and small claims. They receive some significant pro bono support from law firms, solicitors and barristers' chambers, especially in immigration and access to land cases.

In the process of providing the service to clients, the solicitors (members of the academic staff of the Law School) supervise, train and teach the students who work in the Clinic. About 50 students are assessed for academic credit on their LLB degrees (one eighth of final mark) and about 200 students participate on an extra-curricular basis.

As a separate service, the clinic works with about 33 local solicitors and barristers who volunteer their time for two hours on Monday evenings on a rota basis. Clients are matched in advance with the relevant pro bono lawyers and are seen by them by appointment, for 30 minutes each. These appointments are in various locations in the local community. The students administer and observe the advice sessions. These sessions offer only one-off advice given by the volunteer lawyer, but the advice given is reviewed by a supervising clinic solicitor who assesses whether any further assistance can be offered to the client, and may decide to take the case on in the clinic.

On Tuesday lunchtimes, back at the University, some cases where advice has been given at one of the outreach sessions are selected by the supervising solicitors, and discussed by the students at a meeting co-chaired by one of the supervising staff and an elected student Chair of the Clinic. Students and staff discuss the facts of the case, and discuss the application of the law (considering further facts and law to be obtained) to be able properly to advise the client if further advice or referral is necessary. The meeting also considers as a separate matter any broader issues arising, for educational purposes and general interest only. The advice given by the volunteer lawyer is relayed to the meeting by the students who were present at the advice session.

In addition, the students staff a telephone line for 40 hours per week, and, having gathered and recorded information, consult with one of the solicitors who advise with regard to referral, advice, or appointment with a clinic solicitor or at an advice session.

Some prison law and criminal matters (where legal aid is not available) are dealt with where the case is considered to have wider public interest. The team includes a part-time (0.6 Full Time Equivalent) criminal solicitor. The clinic is already working with the Prisoners Advice Service and hopes to work more with them, and to expand its service to prisoners.

There are also ad hoc projects run by the clinic, and liaison with other law clinics abroad (e.g. in Cameroon, Sierra Leone, and Gaza). Around 50% of the undergraduates are from overseas, around 10% from other EU countries and around 40% from non-EU countries.

The clinic also organises ad hoc seminars, social events, dinners, fund-raisers, quizzes, parties for students, staff, volunteer lawyers and former clients reflecting the shared interest, commitment and collegiality of joint endeavour.

As at May 2016, the clinic head, Professor John Fitzpatrick estimated that the clinic was dealing with nearly 1,500 telephone queries a year; giving legal advice to about 350 clients; taking on and acting in about 135 new cases a year (although the yearly figure fluctuates depending on the highly variable size of cases and the number of cases that remain open). The clinic was assessing over 50 students a year for academic credit (anticipating an increase to 60–65 students), and supervising around 200 students on an extra-curricular basis in a wide range of legal activities.

## Supervision and relationships with external organisations

The clinic works in partnership with local advice and information agencies e.g. with several offices, Canterbury Housing Advice Centre, and Advice Provision in East Kent, liaising about referrals, and identifying further needs. The clinic's housing solicitor is on the management committee of the Canterbury Housing Advice Centre, and on the steering committee of the Access to Justice 'CLOCK in Kent' scheme at the Canterbury Combined Court Centre starting on 16 May 2016.

The clinic has a group of about 35 local solicitor and barrister volunteers who sustain, on a rota basis, the evening advice sessions that the clinic holds weekly in term time at outreach locations in the community – working with the St Stephens Community Centre, the Thanington Neighbourhood Resource Centre, and the Whitstable Umbrella Centre. Immigration and asylum are not dealt with at those advice sessions, but extensive immigration and asylum work is carried out with local groups on a partnership basis. Much of it has an educative, advisory, 'second tier' advice and assistance character.

The clinic also works closely with national NGOs. For example, the clinic works with the Prisoners Advice Service, in meeting the legal needs of prisoners – at present on a small scale (but the clinic is working with PAS at present to establish law clinic advice sessions inside prisons during the academic year 2016/17), and are seeking external funding to support this. If resources allow, the clinic hopes to start next year in prisons in the Sheppey cluster, starting at HMP Stanford Hill, and then moving on to HMP Elmley. The clinic's immigration and asylum team works extensively with a number of national organisations. Clinic solicitors are members of the Housing Law Practitioners' Association and the Immigration Law Practitioners' Association.

## Developing public law work

The clinic already has a judicial review caseload, through its specialist immigration team. Sheona York, a highly regarded immigration solicitor now practising at the law clinic, indicated that she was *"eager and willing to issue judicial reviews on behalf of clients, certainly where the legal argument is clear and so there will be little or no danger of a costs award against our client. (Where the client is a destitute failed asylum-seeker or over stayer facing removal that is not really a relevant consideration in any event)"*.



Judicial review claims have been issued by the law clinic concerning issues such as: failure to issue EU residence permits within 6 months, issuing a refusal before the deadline for the claimant to produce further information; refusal to accept that a claimant was destitute and so should not have to pay an immigration application fee; injunction against removal directions; failure to deal with an application under the Immigration Rules (and instead rejecting it as not amounting to a fresh claim); and, a judicial review of a refusal of permission to appeal to the Upper Tribunal (sometimes known as a 'Cart' judicial review) concerning the application of Article 8 ECHR in entry clearance cases.

The clinic has not sought a legal aid contract – which gives it freedom from the onerous contractual duties imposed on practitioners by the Legal Aid Agency. A legal aid contract would make it far easier for the clinic to obtain legal aid for its clients. If a case is brought with legal aid, it means that:

- The legally aided person has de facto protection from a costs order (which is generally ordered if a case is lost in court) being enforced against them;
- The clinic is guaranteed to be able to recover costs at (discounted) legal aid rates even in cases which lose (although if permission to apply for judicial review is not granted, the recovery of costs is not guaranteed);
- The clinic can recover its costs at (higher than legal aid) commercial rates, if the case is successful, and a costs order is made against the losing party (in a judicial review case, typically the defendant public body).

However, all cases are brought pro bono. The consequences of this are that: the solicitors must carefully consider the likelihood of losing, and advise clients fully on the potential risk in costs (since there is no legal aid costs protection for the client); and inter partes costs cannot be claimed directly by the clinic, where the clinic's client is successful in the litigation (as standard awards of inter partes costs can only be claimed from an opponent if the client is liable in principle for costs themselves, the so called 'indemnity principle'). However, in this scenario, a pro bono costs award can be made under s194 Legal Services Act 2007. This provides for the payment of costs where a party was represented 'in whole or in part' free of charge. Costs must be paid to the 'prescribed charity', which is the Access to Justice Foundation. That charity repays disbursements to the pro bono organisation, and has the power to make 'small grants' to that organisation of up to 50% of the profit costs so earned. That provision has enabled the clinic to build up a fund from which to pay disbursements and court fees in other cases.

The clinic has an impressive record of test case litigation, all brought on a pro bono basis. The clinic's supervisory staff suggested that the clinic will aim to assist judicial review claimants in other cases who are struggling to find legally aided representation.

The requirement that permission to apply for judicial review must be granted before legal aid payment is guaranteed was intended by government to have a 'chilling effect' on lawyers contemplating bringing cases that might not succeed in getting past the permission stage. The law clinic, acting pro bono, is not susceptible to such a chilling effect. Clinic solicitors, mindful that some legal aid lawyers are not bringing judicial review claims because of the risk

that they would not be paid if permission is refused (even if legal aid is granted) suggested that the clinic might issue a claim and obtain permission acting pro bono, and then pass the case to local solicitors in the knowledge that legal aid, if granted, would certainly be paid. This appears to be a novel way of addressing the access to justice concerns arising from the new regulations making payment of a legally aided judicial review claimant's costs conditional on getting permission to apply for judicial review.

Some interest was expressed in PLP's involvement in the clinic's activities, in the following capacities in particular:

- Supporting the clinic to make applications for exceptional funding;
- The provision of training in public law, to include training in how to spot and refer judicial review cases, and also on the use of ombudsmen;
- The provision of specialist telephone or other remote support at the time that enquiries are first received or at the time they are being analysed; and
- Joint working with the clinic on specific issues of local concern, for example on asylum support, or sanctioning of benefits claimants by the Department for Work and Pensions.

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REPRESENTATION FOR PUBLIC LAW CASES PROVIDED BY KENT LAW CLINIC IN 2015

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In the calendar year 2015, the clinic advised and provided representation for the following number of public law cases:

Welfare benefits	10
Immigration and asylum	33
Crime	8
Policing	5
Prison	5
Public sector housing	3
Public access to land	1
<b>TOTAL</b>	<b>65</b>

## CASE STUDY FOUR: UNIVERSITY OF LIVERPOOL

### Regional context

Although public law provision in the immediate vicinity of the law clinic is limited, there is a relatively high concentration of public law contract holders in Manchester, which is approximately one hour's journey from Liverpool centre. There are only two legal aid providers with public law contracts in the Liverpool area; Swain and Co, and Broudie Jackson Canter. Liverpool Law Clinic has developed a relationship with the latter. RMNJ solicitors, with offices just over the Mersey in Birkenhead, also offer judicial review services through their mental health contract. There are a number of services focussed on debt, welfare benefits and housing in the area. Merseyside Law Centre (listed on the legal aid agency spreadsheet as Merseyside Welfare Rights, as it has only just changed its name and status) indicated on inquiry that, were it to encounter a public law issue in the course of its contracted work in the Upper Tribunal (welfare benefits) or in housing, it would be able to action the issue by way of judicial review as a public law case. Merseyside Law Centre is one of two Law Centres Federation affiliates in the area, the other being Vauxhall Community Law and Information Centre, which also deals with debt, welfare benefits and housing. Other potential sources of public law support include Mental Health contract holders Peter Edwards Law who have an office in Birkenhead.

### Overview of the clinic and the services offered

There are two academic modules offered by Liverpool University's Law Department that involve the law clinic: Clinical Legal Skills; and Human Rights and International Law Practice Module. In the academic year 2015/6 there were about 140 students on the Clinical Legal Skills module, available in Year 3. Students study professional conduct and ethics, interviewing skills, legal drafting, file management, reflective learning, and practical next steps (including study of case funding, tribunals, and ombudsmen). They work in pairs and each pair has one case per year in which they see a client, research the law and then write a detailed letter of advice. Their work is externally supervised by volunteer solicitors from local commercial and legal aid firms. The cases are drawn from a wide range of areas of law including housing, employment, family, civil litigation (typically small claims track), probate, neighbour disputes, advice to small businesses and advice to small charities. Cases are selected by the law clinic course supervisors. No urgent cases are accepted and none of the client's cases are clearly within the scope of legal aid (sometimes the case is not quite as it first seemed, and the clinic end up referring or signposting to a legal aid firm).

In addition to this general advice service, the law clinic offers a specialist immigration service predominantly in statelessness and fresh asylum claims cases run by the four course supervisors (two solicitors who are part time and a barrister), all of whom are experienced immigration lawyers. About 64 students a year undertake the Human Rights and International Law Practice Module, where they contribute to the work on a statelessness or fresh claim case. For regulatory reasons they support the work of the Clinic's lawyers, but are involved in research and legal drafting. Their formal teaching is similar to the other Clinic

module, but with the addition of some lectures giving a basic introduction to immigration law. All the supervision on this module is handled by Clinic staff, with no external involvement.

Law clinic students have also worked on the following ad hoc legal projects:

- Benefits cases on secondment to, and under the supervision of, Liverpool Citizens Advice;
- The Orgreave Project, preparing chronologies and summaries of witness statement evidence, and compiling documentation for use by a legal team tasked with seeking a public enquiry into police conduct during the Battle of Orgreave in 1985. The legal team includes Gareth Peirce of Birnberg Peirce solicitors and Henrietta Hill QC of Doughty Street;
- The Hillsborough Inquest, where students took on a similar role working with Broudie Jackson Canter, a local Liverpool firm;
- Statelessness and other immigration work, where students have worked on a voluntary basis assisting with litigation and other casework both during term time and during the summer break.

In relation to the project with Liverpool Citizens Advice – at the time of writing this project had moved outside the law clinic remit, with a member of staff from the department with strong Citizens Advice links taking it over from clinic staff. Despite the removal of the partnership from the remit of the law clinic, the ongoing partnership remains, in the view of both PLP and the Clinic Director, a good example of the benefits of partnership working between a law clinic and an NGO. Both parties are keen to develop further projects.

At the time of the research, a project involving work for children in Calais with family in the North West was also under consideration.

## Supervision and relationships with external organisations

The law clinic is professionally run by expert public law practitioners, and is committed to serving the needs of the local community as far as possible, and at the same time enabling its students to be on a more level playing field when competing for legal and other professional employment. It aims to develop appropriate legal skills ('clinical legal education') and to encourage a commitment to social justice and pro bono legal work. This is in contrast to some other law schools such as Kent, which are primarily concerned with using the law clinic as a vehicle for the educational development of the participating students. However, since the clinic is located on the university campus, it may not be easily accessible to the marginalised communities it seeks to serve. The clinic therefore relies on referrals, all of which are vetted by the supervisory staff who have a strong knowledge of public law and judicial review from their time in practice. The need for vetting referrals and supervising students limits the clinic's capacity to expand its public law work.

Given its practical focus, the clinic was open to work which would facilitate students' acquisition of legal skills, involving students carrying out practical tasks commensurate with their still developing legal skills, even though such tasks may be of limited academic interest. Examples of such work are document-management in the Orgreave Truth and Justice

Campaign, and work on welfare benefits cases, including form filling at Liverpool Citizens Advice.

It is lack of supervisor capacity, exacerbated by judicial review and administrative appeal time limits that appears to be the major barrier to the clinic taking on more public law cases. Where supervision could be carried out by an external body such as Liverpool Citizens Advice, the law clinic would be keen to expand its public law work.

The clinic has what appears to be a mutually beneficial relationship with Liverpool Citizens Advice, which trains and supervises the work of around 30 student volunteers per year. Students receive training from the Citizens Advice in June and commit what time they can to voluntary work under the supervision of Citizens Advice. The Citizens Advice manager was keen to encourage first year degree students to volunteer, as in her experience many return to volunteer in their second year.

### Developing public law work

It was clear that—as with Kirklees Law Centre and Huddersfield Legal Advice Clinic—there was clear interest on all sides for closer working relationship between Liverpool Citizens Advice and Liverpool law clinic.

# CASE STUDY FIVE: UNIVERSITY COLLEGE LONDON

## Centre for Access to Justice

In March 2013, University College London opened its Centre for Access to Justice (The Centre). The Centre offers innovative clinical work to undergraduate students taking the Access to Justice and Community Engagement (AJCE) course as part of a law degree, and to postgraduate students taking an Access to Justice Course on the LLM degree. As part of the AJCE course, or in an extra-curricular capacity, students have an opportunity to carry out pro bono advice in the UCL Integrated Legal Advice Clinic (iLAC), in East London. The clinic also forms part of a UCL health research project led by Professor Dame Hazel Genn QC. Between them, these projects illustrate some of the themes of this study. They are summarised below.

The Head of Teaching and Learning at the Centre, Jacqueline Kinghan, explained to PLP that the Centre recognised the benefits of partnership working with NGOs to expand the law clinic's capacity. Specialist links have been forged with two NGOs in particular, the Free Representation Unit (FRU),<sup>12</sup> and Just for Kids Law (JFKL).<sup>13</sup>

UCL pays the FRU to supervise its students on FRU social security tribunal cases. This helps subsidise FRU's running costs, at the same time as providing FRU with a regular supply of high quality volunteers (the Centre for Access to Justice is over-subscribed so that students must apply for a placement there). In return, the FRU provide training, real life legal education, and legal work experience to students.

In the past, UCL had a different arrangement with JFKL. It partly funded the post of a senior solicitor in JFKL. In addition to teaching at the law school, the post holder carried out her JFKL casework (largely in community care law) using law students as unpaid paralegals. This arrangement benefits JFKL, as it provides JFKL with a partly funded solicitor's post, and a supply of high quality unpaid paralegals, and benefits the law school, which is able to offer some of its students a placement conducting interesting high level community care casework under the guidance and supervision of a top legal professional.

Students are trained to do clinical work at the start of the academic year, and start to undertake the work in October. Students on the course who are accepted for a clinical placement are required to do 60 hours of clinical work between November and March the following year. There are between 25-30 students on the Access to Justice and Community Engagement course. Historically, the students accepted for clinical work (typically approximately half of those doing the course) are split equally between FRU and JFKL. The FRU placements typically involve the students in conducting 2-3 tribunal cases each.

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<sup>12</sup> The Free Representation Unit (FRU) provides representation in social security and employment tribunals for people who are not eligible for legal aid and cannot afford lawyers. The work is done by volunteers, mostly law students and legal professionals in the early stages of their career.

<sup>13</sup> Just For Kids Law (JFKL) is a charity that provides advocacy, support and assistance to young people in difficulty; particularly those in trouble with the law, looked after children and those at risk of exclusion from school.

As well as giving advice, and providing advocacy to the clients, students from the Centre for Access to Justice and Community Engagement provide outreach services to pupils in local schools, and to community groups. Some consultation responses of interest to clinic supervisors are drafted by students.

## UCL iLAC

The UCL iLAC clinic presently advises patients of the Guttman Centre, a GP facility built for Olympic athletes at the 2012 London Olympics in Stratford. The facility comprises a legal advice centre staffed by an adviser, a consultant solicitor and two 'Centre for Access to Justice fellows', in the same building as a participating GP's surgery. All staff members are overseen by the Centre's Head of Legal Practice, Rachel Knowles. There are 30 students working at the clinic this year and they each do half a day per week for a full term (this includes some students from Hong Kong University, who are required to do at least 25 hours of clinical work as part of their Access to Justice Placement Programme).

The model is one of traditional advice-giving in areas such as employment, housing and social security law, with the qualified lawyer and advisers supervising the students' work. Students sometimes draft representations to the First-tier Tribunal, and provide representation. No work that could be done under legal aid is undertaken - clients in that situation are signposted or referred to legal aid practitioners.

One innovative feature of this clinical work is that it is being undertaken as part of a UCL research project overseen by Professor Hazel Genn. The research project aims to measure the social and health effects of unresolved legal problems. GPs are often the first port of call - where GPs consider that a patient's health problem is a social or legal problem, they may refer patients to the legal advice centre. Clients who receive advice through such referrals are followed up after one month, and data is collected about the effect on the client's health where the legal advice the client received solved the problem. There are three main strands of the project:

- Providing a service to the community (both to GPs and patients);
- Educating students, medical practitioners, and patients;
- Compiling data to use as evidence in policy work.

Funding for the iLAC clinic was obtained from the LEF (which funds a health researcher for this, the first year of the project), the faculty and alumni.

The work of UCL's Centre for Access to Justice and the Guttman Centre highlights the benefits of partnership working between, respectively, law clinics and NGOs, and law clinics and academic researchers. Both partnerships open up the law clinic to diverse funding streams that may be tapped to meet supervision costs and so to expand the amount of clinical work the law clinic can offer students, and clients. Whether either project could present an opportunity for PLP would depend whether PLP's expertise is required. UCL has access to expert public lawyers in both its clinical and academic teams, and therefore opportunities for PLP to support these initiatives may be limited. But the model that has been



outlined above has a number of features that appear to work, and so is highlighted in this report.

## CASE STUDY SIX: CITY UNIVERSITY

### City University 'Immigration Human Rights Project'

In March 2016, City University and No 5 Chambers established a pilot 'Immigration Human Rights Project' (IHRP) to provide pro bono assistance to migrants. Following a successful, limited pilot involving 12 students, the project has now expanded its services and 32 students have recently been trained to volunteer at the project.

The assistance provided by the IHRP is limited to five specific areas, each of which is targeted at a discrete area, where practical assistance can be offered by students without the need to be regulated by the Office of the Immigration Services Commissioner, or for urgent casework. The areas where the project provides assistance are:

- Applications to the Home Office for a fee waiver (which includes an exemption from the Immigration Health Surcharge) to accompany applications for leave to remain on Article 8 grounds;
- Financial assessments to assist clients in proving their financial circumstances for the purpose of applying to the Home Office to remove a 'no recourse to public funds' (NRPF) condition on their leave to remain, or to support an application to the First-tier Tribunal (Immigration and Asylum Chamber) to remit the fee for appealing against an immigration decision;
- Legal aid ECF applications and reviews;
- Pre-referral advice and preparation of referrals into the NRM for victims of trafficking; and
- Acting as McKenzie friends for family, housing or immigration court proceedings.

The IHRP is an innovative collaboration between a University law clinic and a local barristers' Chambers, which has found creative ways to avoid some of the obstacles to involving law students in public law work identified by PLP's research. The project only accepts referrals from established partners, not directly from members of the public. Each of these referral organisations runs pro bono drop-in or outreach advice services in the community with very limited capacity to do follow-up casework, so IHRP is meeting a need for more time-consuming assistance for which no legal aid is generally available.

Each person referred to the IHRP will have received some legal advice about their position from a lawyer at the referring organisation, which ensures that the assistance provided by the project is appropriate and targeted to the individual's needs without the need for students to acquire detailed legal knowledge. Referrals are also screened by a specialist barrister from No 5 Chambers to check the appropriateness of the referral and to identify any particular vulnerabilities.

Students meet clients on the premises of the referring organisation, which also makes arrangements for interpreters if required and meets student travel expenses and any postage costs. Typically, students meet clients up to three times to complete the work. Clients are provided with a client care note confirming the scope of the work that the project

will do for the client, and explaining its limitations. Where issues arise on which further legal advice is required, the client is either referred back to the referring agency, or IHRP and the referrer make a joint referral to a solicitor's firm.

However, IHRP currently has no funding and is dependent on the commitment, enthusiasm – and availability – of two barristers at No 5 Chambers in London who are the main contacts for the project, alongside Dan Wilsher, a Professor of Law at City Law School. The barristers train the students, screen all referrals, and provide ongoing supervision. In cases involving pre-referral work in trafficking cases the supervision is intensive, with barristers often sitting in on appointments and reviewing all work before it is sent out. This degree of supervision is seen as necessary because of the potential significance of information provided to the Home Office with an NRM referral. The barristers do not have capacity to provide the same degree of supervision in relation to the other types of case: after a total of five hours training, students are able to take on cases and their work is not automatically reviewed before being sent out. They are provided with access to 'how to' guides for each kind of case, sample completed pieces of work, and have access to all the previous work done by the project. The barristers are available to the students to answer queries as they arise by email or telephone.

The responsibility for the day-to-day running of the project rests with three Student Directors, who place cases, supervise volunteers and respond to enquiries. They also help to deliver the training, and they are in regular contact with the two barristers involved with the project. They are postgraduate law students, and where possible have practical expertise of casework. For example, one of the current Student Directors, at the time of writing, also works for a legal aid immigration firm. The involvement of the Student Directors to some extent mitigates the limited capacity of two barristers (acting on a pro bono basis) to adequately supervise the increased number of students now involved in the project (approximately 32) across a diverse range of work. Student volunteers manage their own cases, but the two barristers provide support in screening cases initially, and communicating directions via the Student Directors to provide guidance on how the cases should be approached. The only time that the barristers otherwise directly supervise volunteers is on trafficking cases. Whilst it is recognised here that the use of student volunteers allows a wholly unfunded project to provide an important service to clients, it also highlights the careful thought that needs to be given to how supervision arrangements operate for student-led projects, particularly where the limited and 'ad hoc' pro bono support of busy practitioners is being relied upon.

The ongoing need for supervision and limited capacity to provide it, as well as the lack of any funding for the project, raise concerns about its sustainability, as well as its scalability. It has reportedly worked well at the pilot stage where there were only 12 students involved, but with now nearly three times the number of students there is an obvious risk that the barristers will not have the capacity to provide adequate supervision, or to continue doing so over the medium to long term.

## CASE STUDY SEVEN: THE CENTRE FOR CRIMINAL APPEALS

The Centre for Criminal Appeals (CCA) operates a different model to the other case studies presented in this report. The CCA currently works with 8 law schools, referring cases to them for organisation of the documents and research into the merits of potential applications to the Criminal Cases Review Commission.

In the course of preparing this report, PLP met with Sophie Walker, then Director of the Centre for Criminal Appeals (CCA). The purpose of the meeting was for PLP to gain insight into the manner in which the CCA, a legal NGO with some similarities to PLP, engages with the law schools that it partners.

The CCA's work with law schools can be broken down as follows:

- Cases are selected for appropriateness and one each year is referred to each participating law school. All the cases considered involve serious offences, some of which may be difficult for some students to deal with – CCA does not refer the most emotive and distressing of the cases. Cases are also matched with law schools by geographical area, depending on the location of the client;
- The students sign a confidentiality agreement with CCA, and agree to commit at least five months to each case;
- Training is given by CCA in person (although CCA are considering providing training by video/webinar in future years to save costs);
- Document transfers are made using a secure software package, for which each of the participating law schools needs to buy a licence. This ensures that the research that comes back from the law schools is in usable form, but it has the disadvantage that it limits the amount of work that can be done, as the system does not permit students to work remotely;
- CCA require the law schools to complete work on the case in one academic year. If the work has not been completed by then, CCA staff complete it themselves. No work is carried out by students in the vacation periods;
- Supervision is offered to students by CCA by Skype to deal with any issues that the students may have one day each week between 2 and 5pm;
- At the end of their work on the case, students refer back to CCA a research note and advocacy document, which if appropriate the CCA lawyers work up into an application to the Criminal Cases Review Commission (for which a limited amount of legal aid is available, which CCA claim). As at July 2016, CCA has had 3 cases accepted for review by the CCRC in the two years it has been running (approximately).

The law schools pay a modest amount for each year of work with CCA, rising as current grant funding diminishes, to a maximum of £3000 per annum. In return, the law schools get a training programme, access to CCA's case papers, supervision by Skype, and two visits per year by CCA lawyers.

There is much that can be learnt from the successes of the CCA's business model. Key features of the scheme are:

- The lack of fixed deadlines. There is no deadline for applications to the CCRC. Cases can be referred by CCA to the law schools at the beginning of each academic year on the basis that work should be completed within a year (with CCA lawyers completing work on the case if it is not completed at the end of the academic year). These timescales place the law schools and CCA under less time pressure than the more reactive and restrictive public law deadlines described above;
- The nature of the legal work. Cases typically involve the students in document management of the sort that they may be well suited to undertaking. They do not typically involve the complex issues of law that must be grappled with under time pressure in many public law cases (e.g. judicial reviews, or appeals against administrative decisions);
- The number of cases. Only one case is referred to each law school per year. Working on a limited number of cases that the CCA will progress itself after the law school's involvement makes supervision by the CCA more manageable, than if there were a larger number of cases in which the CCA did not have an ongoing interest.

These features do not typically arise in the public law cases, which are generally reactive (both to administrative decisions and tribunal or court deadlines), involve complex issues of law that require analysis at the outset of the case, and need to be conducted under conditions of urgency. Nevertheless, the potential roles for PLP to support law clinics' public law work have been developed with CCA's working model in mind.

## CONCLUSION AND RECOMMENDATIONS: BUILDING CAPACITY IN THE ADVICE SECTOR WITH NON-GOVERNMENTAL ORGANISATIONS

This section identifies opportunities for law clinics and NGOs to work together in order to build capacity in the advice sector, and the potential ways in which public law work could be developed by university law clinics. Whilst the research findings reflect PLP's own engagement with public law work and areas of expertise, the ideas are shared here with the hope that they can more broadly contribute to knowledge of how to improve capacity in the advice sector, by examining the ways in which NGOs and university law clinics can work together.

### Roles for NGOs in support of law clinics' public law work

In the course of meeting staff and students at the participating law clinics, the research identified potential ways in which NGOs might support the public law work carried out in law clinics. The following non-exhaustive proposals reflect those discussions.

#### General and bespoke training

NGOs have extensive experience of providing specialist training. For example, PLP offers introductory courses for legal practitioners and members of the voluntary sector on public law and judicial review. While these courses have in the past had a practical rather than academic slant, they can readily be adapted to cater for law clinics' particular needs. During the research, participating law clinics (students, supervision and support staff) were given free access to PLP's *"How to do judicial review"* course; a course that is deliberately intensive in order to fit it into one day, for practitioners' convenience.

Many law clinics offer specialist rather than merely general legal advice (for example, Liverpool's work on statelessness, Cardiff's work on the issues affecting people with learning disabilities, and Kent's work on a variety of areas of law including immigration, public access to land, welfare benefits, housing, employment and family law). Even where expertise exists in house, developing bespoke training could add capacity to clinical supervision staff.

#### Specialist support with public law referrals

Clinic staff often felt that there was a need to have assistance with public law referrals, where clinic supervision staff did not have public law expertise, or where supervision staff have public law expertise, but had to assess each referral. Access to specialist support services, for example existing services available via telephone or email, could build the capacity of law clinics by tapping into the resources available from NGOs. However, such a recommendation would also have to consider the capacity limitations of NGOs. The most effective way of putting any collaboration into practice would be to put agreements for referrals in place, to allow urgent requests for specialist support to be made, whilst also recognising the need for NGOs to manage their workload.

## Continuing specialist support during the lifetime of a case or project

The research indicated how specialist support (as opposed to training) could assist law clinics during the course of a case or project. The precise form of the support would be project specific, but could include:

- The provision of public law advice for participating law clinics on individual cases or generic public law issues;
- Supervision of students' written advice or legal analyses; and
- Real-time supervision of students' work, either face to face, or remotely by Skype or telephone.

Any specialist support would need to be planned and agreed so as not to cause capacity problems for NGOs, but, for example, supervision provided on a dedicated rather than responsive basis may be preferable (e.g. as shown in the Centre for Criminal Appeals case study). Law clinics could consider outsourcing the provision of advice and supervision services, where appropriate.

## Input in undergraduate academic courses

Taught public law courses at universities can be enhanced with the input of NGO expertise. This was not the main focus of enquiry during our visits to the law schools, however, the case studies demonstrate how combining practical elements of work with public law courses has real benefits. Combining lectures with input from NGOs on issues such as public interest litigation and human rights could offer significant opportunities for students. It is recognised that there may be some limitations for this, for example, since PLP's expertise is practical rather than academic, PLP input into a public law module may be of limited appeal, particularly to more academically-focused law schools.

## Expanding the work of law clinics

During the research, PLP observed a number of ways in which the work of university law clinics could feasibly be developed, taking into account the limitations on resources and practical issues such as regulatory frameworks. The opportunities recorded reflect PLP's own strategic priorities as a charity, but are presented here with the intention of developing further discussions with any interested parties.

## Exceptional Case Funding

The availability of legal aid and 'Exceptional Case Funding' (ECF) as an area where university law clinics are able to offer support and expertise. Legal aid is made available to individuals in accordance with the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Schedule 1 to that Act contains a list of types of legal case for which legal aid is in principle available (subject to the individual being able to demonstrate to the Legal Aid Agency that criteria relating to his or her means, and the merits of the case are met). If a type of legal case is not

listed in Schedule 1 to the Act, it means that legal aid will not be available for that type of case unless the individual is eligible for exceptional funding.

Exceptional funding is available to people whose human rights or European Union law rights would be breached if they did not have legal aid (section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012). This was intended by the Government of the time to be a high threshold, with only a small number of cases receiving exceptional funding.

The most relevant human right in this context is Article 6 of the European Convention on Human Rights, which guarantees the right to a fair hearing when someone's rights and obligations are being determined. In practice, where the refusal of legal aid would make it practically impossible for someone to bring their case or would result in obvious unfairness in the proceedings, legal aid may have to be provided under Article 6. Other human rights may also require the provision of legal aid, including the right to a private and family life under Article 8 of the European Convention and the right to life (and associated right to an enquiry into the circumstances of death) under Article 2, pursuant to which legal aid may be available to fund representation at inquests. Legal aid may also have to be provided under European Union law, as a result of Article 47 of the Charter of Fundamental Rights of the European Union: the criteria for this are similar to the criteria under Article 6 of the European Court of Human Rights. Guidance on exceptional funding has been published by the Lord Chancellor.

All applications for exceptional funding must be sent to the Exceptional Cases Team at the Legal Aid Agency, and should be determined by the Legal Aid Agency within 20 working days. If an application for exceptional funding is unsuccessful the applicant can apply for an internal review of the refusal by submitting grounds of review and supporting documentation to the Legal Aid Agency. If the refusal of funding is upheld on the internal review, the only way of bringing a further challenge is by judicial review.

PLP's exceptional funding project, which has run since April 2013, was designed to assist people in need of legal advice, assistance or representation with making exceptional funding applications and challenging refusals of funding where appropriate. Solicitors can in principle assist individuals with making an application for exceptional funding. However, legal aid for making the application will only be available retrospectively if the application is subsequently granted. PLP's concern when the scheme came into force in April 2013 (subsequently borne out by PLP's experience) was that many solicitors would refuse to make them. For this reason, PLP developed a project to assist those that could not get help from another source to make an application for exceptional funding. Typically, referrals to PLP were received from solicitors and voluntary sector organisations. PLP then worked with the individual to make the exceptional funding application, and in some instances challenged a refusal of exceptional funding through the review process or by way of judicial review. If and when exceptional funding was granted, PLP returned the case to the organisation that referred it, or sought a solicitor to take the case forward (which is less difficult if legal aid for the case is guaranteed).

As a consequence of this work, PLP has been at the forefront of the exceptional funding scheme and has brought challenges both to decisions on individual cases to refuse exceptional funding, and into the procedures and guidance by reference to which all cases are considered. PLP did not have the resources to continue to make exceptional funding



applications indefinitely; nor was it considered desirable or appropriate for it to do so. PLP continues to explore how it can work to increase the capacity and willingness of lawyers, front line advice agencies and other voluntary sector organisations to make exceptional funding applications by providing training and support to share its learning and experience, and to facilitate the making of exceptional funding applications in areas of need.

Establishing ECF clinics would be compatible with law clinics' existing referral networks, as the cases would be outside the scope of general legal aid. It would have the benefit of helping to foster good professional links between clinics and local practitioners.

For ECF applications, law clinics can control referrals by accepting them only from a trusted pool of local solicitors and voluntary sector organisations. Although PLP's success rate in making exceptional funding applications had increased dramatically in the three years since the scheme has been in operation, it remains the case that exceptional funding is only granted in a minority of cases, and overall application numbers remain much lower than originally anticipated. It is therefore not the case that clinics would necessarily be overwhelmed with cases, and the number of referrals can be easily managed in line with clinics' day-to-day capacity. ECF clinic students can compile case papers, obtain evidence in support of exceptional funding application, and make applications on behalf of the client under supervision.

Participation in the exceptional funding project appeared to be of some interest to all the participating law clinics. Huddersfield, which is not SRA regulated (the clinical staff do not have current practicing certificates) expressed some concern about whether work on the preparation of exceptional funding applications would be reserved activity that would necessitate SRA regulation and the changes to its practice arrangements that SRA regulation would entail. An analysis of the relevant regulatory issues is contained in Appendix 2. Work on a project of this sort would be unreserved legal activity for the purposes of section 12 of the Legal Services Act 2007.

PLP already offers a half day course on exceptional funding for practitioners, and it would be possible to provide specific training to law clinic students and supervisors to enable them to make applications in certain cases referred by local solicitors, law centres, and civil society groups. There is potential to spread the training over two days to go at a slower pace to reflect clinic students' early stage of professional development.

## Complaints, in particular relation to failures by public bodies and others exercising public functions to discharge their public law duties

Current legal aid public law contracts (unlike public law contracts pre-2013) do not permit solicitors to provide publicly funded advice and assistance to clients in connection with complaints against public bodies (including complaints to ombudsmen). Complaints to the ombudsman can promote societal change (for example the LGO's findings of maladministration in a number of cases in which local authorities had used bankruptcy to collect arrears of council tax, before trying other, less Draconian remedies. The law in relation to many public authority and ombudsmen complaints procedures tends to be

straightforward (otherwise ombudsmen tend to refuse to investigate), but preparing complaints can sometimes be time-consuming and factually complex.

PLP's experience has been that work preparing complaints to the ombudsman can increase the chances that those complaints will be investigated and therefore increase the chances of a positive outcome, possibly because ombudsman investigators seem not to be resourced to do justice in cases that require a large amount of unpacking; and thus, work preparing complaints could significantly add value. Clinics may be able to receive selected complaints from existing referral networks, who would not be funded to carry out the necessary work, despite the public benefit of such complaints being advanced in a well-focused manner. A project of this sort would also help clinics to foster good professional links with local law firms and voluntary sector organisations by providing a service to their clients for which there is otherwise no funding available.

PLP could offer training on making complaints as part of the general introduction to public law and judicial review referred to above. PLP could also offer some specialist support to supervise clinic students' work on the complaints and to challenge decisions by ombudsmen not to investigate or to reject a complaint.

### Strategic support for local projects in conjunction with local advice agencies

The research demonstrated how general capacity problems for university law clinics could to some extent be resolved or mitigated by working with local advice agencies. For example: Cardiff's working relationship with Hugh James Solicitors; Liverpool's working relationship with Liverpool Citizens Advice; and Huddersfield's working relationship with Kirklees Citizens Advice and Law Centre. All showed the value that these arrangements could have for the local community.

Collaborative working arrangements allow law clinics to increase front line capacity by shifting supervision costs to an external body. In Cardiff, Hugh James Solicitors benefited from being able to offer high profile community-based pro bono work, and assisting with clinic students' education and training, whilst also being able to recruit the best of those students as paralegals and trainees. In Liverpool and Huddersfield, the advice agencies' scarce resources, and their culture of working with volunteers, meant that a supply of (relatively) untrained, unskilled students with limited availability is nevertheless worth the necessary investment in training and supervision.

PLP could build on such arrangements with the advice sector on select projects on particular areas of local concern and of interest to the advice agency, the clinic and PLP. PLP could offer bespoke training, and work with the law clinics and the local advice agencies on a legal strategy to address particular local or national issues.

An example of such an issue is benefits sanctioning. PLP has received funding to explore legal solutions to the unlawful use of sanctioning, and so has an interest and some legal expertise in the topic. Similarly, the consequences of sanctioning decisions occupied a significant part of the casework of both Kirklees Citizens Advice and Law Centre and Liverpool Citizens

Advice. Both agencies were interested in any training PLP could offer in relation to sanctioning. Both understood the potential for test case litigation: in Kirklees, there is a direct interest in bringing test cases, as the law centre part of the organisation has recently established a public law team and has a public law contract; in North Liverpool, the Citizens Advice gave the impression that they would be open to being involved in the formulation of a legal strategy, and – if it makes sense to them – supporting a litigation strategy. The focus of both agencies is in meeting their clients’ advice needs.

Kirklees Citizens Advice and Law Centre has its own public law team, and is keen to increase links with Huddersfield Legal Advice Clinic. Liverpool Law Clinic is managed by experienced judicial review practitioners, who understand how test case litigation works. Both sets of relationships (PLP/Liverpool law clinic/Liverpool Citizens Advice, and PLP/Kirklees Citizens Advice and Law Centre/Huddersfield Legal Advice Clinic) could be mutually beneficial and effective: the law clinics could offer such a project the time and energy of their students, who in return would receive experience of an innovative community law project; the advice agencies could offer front line experience, and – where appropriate – clients for litigating issues of concern, and would gain bespoke training on the law relating to benefits sanctioning, and input into the formulation of a legal strategy to obtain better outcomes for their clients; PLP could offer bespoke training, specialist support on individual cases as they arose, and expertise in strategic litigation, and would in return be able to formulate and implement – with potential access to litigation clients – a legal strategy in one of its key areas of interest.

By way of example, a legal strategy could involve making arrangements to work with community and local advocacy groups (a) to advise those clients for whom there is a legal remedy (e.g. an appeal right), (b) to make some provision, if possible, for those without a legal remedy (e.g. a referral to another agency where one exists, such as a food bank), and (c) to identify potential clients who may wish to bring strategic litigation in accordance with a legal strategy developed and overseen by PLP. Law clinic students could be involved in researching the law, making Freedom of Information Act requests, drafting advice notes, and working with community groups to organise meetings and ad hoc drop-in sessions. The law clinics could provide meeting room premises and a supply of volunteer students.

In addition to benefits sanctioning (which was also of interest to Kent Law Clinic), other areas of mutual interest that were discussed with participating law clinics, including issues relating to Universal Credit (Liverpool and Huddersfield), the use of bailiffs to collect magistrates court fines (Liverpool), the support needs of migrants and failed asylum seekers (Kent), and s.21 of the Immigration Act 2014, which allows for permission to be given for a migrant to rent, but provides no proper procedure by which a migrant might access that ‘right’ (Kent).

There was also discussion of a potential project between Cardiff Law School Pro Bono Scheme and Riverside Advice in Cardiff by which clinic students could be trained to provide representation before the First-tier Tribunal in selected benefits cases. Participating students could be drawn from final year law students, and Bar Professional Training Course and Legal Practice Course students, as part of an assessed module. PLP’s input could be to provide training for participating students at the beginning of the academic year. Day to day supervision would be offered by Riverside Advice and the law school.

## Specialist support for local or national projects in conjunction with NGOs and university research teams

Case study 1 describes the partnership work between Cardiff Law School Pro Bono Scheme and the NGOs Cerebra and Mencap Cymru, which represents a different form of community engagement from the traditional model of support for local social welfare advice services. The strengths of the Cerebra/Mencap Cymru model are that:

- It seeks to provide generalised rather than client-specific advice. This minimises the capacity issues that arise when advice is given on an individual basis because (a) advice needs to be given at a time and in a manner consistent with the individual clients' circumstances; and (b) there is a consequent need for ad hoc, and hard-to-plan-for supervision of students' work.
- It lends itself to strategic litigation with NGO partner organisations, because: the involvement of a partner NGO, such as PLP, with a policy agenda and a university research department means that the potential for strategic thinking is present in the project from the outset; and the NGO's client group provides a potentially rich evidence base, and source of test case litigants.
- The clinical work supports the department's research. If PLP's participation in clinic could add real world impact to academic research efforts, it may be perceived to add value to the academic institutions in a way that social projects divorced from a research programme would not (however worthy they are, and however much PLP might want to support them). A similar point is made in *Access to Justice through University Law Clinics*, in reference to the Research Excellence Framework and the institutional priorities that frame the work of university law clinics.<sup>14</sup>

Without impact in the research sense, there is a risk that universities will gain neither funding nor prestige from the law clinics' work. Therefore, funding additional clinical work (and PLP's work in support of law clinics) could directly benefit the universities where it would allow specialist support projects to be developed to add research impact in support of social welfare research initiatives.

The participating law schools at Cardiff and Kent were particularly interested in this possibility. In recent years, Kent Law Clinic has produced a significant body of research work on asylum and immigration. The head of Kent Law Clinic, Professor John Fitzpatrick, commented that:

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<sup>14</sup> Drummond and McKeever (above n 4, p.33) find that "while clinics can lay claim to enhancing pedagogic developments and employability agendas, as yet there is insufficient evidence of REF [Research Excellence Framework – the system for assessing the quality of research in UK higher education institutions] standard research being developed, despite the potential for empirical work and associated policy impact. A missing research focus may create institutional vulnerabilities for clinics, where the pedagogically focused access to justice benefits are not seen as an adequate trade-off. Universities are publicly funded institutions, but their funding is connected to education – in all its manifestations – and the proposal that universities should also deliver access to justice services, or should use their educational mission as the means to deliver access to justice, may have only limited purchase in the face of more pressing institutional demands".

*In the Law School and the School of Social Policy, Sociology and Social Research alone (both top REF ranking UK departments) there is clearly much research activity relevant to our joint concerns.*

*Our difficulty is one of resources. KLC has only been able to develop our research activity by specifically allocating time from the outset for this purpose in these newly created posts (immigration and asylum solicitor and research assistant). This was a new development for KLC, given our longstanding emphasis on providing a real and serious high quality and effective service to clients and students. Clearly further resources will be needed to develop this more fully, but we intend to press ahead as best we can in developing this dimension of work. This is why we are very interested in the possibility of developing research projects in conjunction with PLP – in relation to public services, legal services or on other public law issues.*

## Assisting clients to apply for fee remissions for appeals to the First-tier Tribunal (Immigration and Asylum Chamber)

The IHRP's work highlights an area for potential future collaboration between PLP and law clinics. Helping individuals to obtain fee remissions for appeals falls squarely within PLP's access to justice agenda and does not require highly developed legal skills.<sup>15</sup> Students could be trained to identify individuals who are exempt, and to assist those who are not exempt but who cannot realistically afford high fees for appealing, to apply for fee remissions. PLP could provide training and supervision, as well as working with law clinics to monitor the outcomes. Such collaboration would provide a useful evidence base for research into the impact of increased court and tribunal fees, which could inform PLP's policy and strategic litigation work in this area. Funding would be needed for PLP's time delivering training, supervision and co-ordinating monitoring of outcomes.

## The use of technology by law clinics in their existing service delivery

In his December 2014 paper *Digital delivery of legal services to people on low incomes, summary and recommendations*, Roger Smith categorised the current pattern of digital provision as follows:

- For-profit legal providers using the Internet to provide high-volume, low-cost services;
- Online communities free to users;
- Government free information websites;

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<sup>15</sup> PLP has asked the OISC to confirm its position as to whether this work constitutes immigration advice and services which can only be carried out by authorised providers. The OISC's position is that assisting with evidencing an individual's finances for the purpose of an application to the Home Office for a fee waiver is not the provision of "immigration advice and services". This proposal could only be taken forward if it takes the same position with respect to appeal fee remission applications.

- Not-for-profit legal portals and ‘triaging’ websites (i.e. directing individuals towards particular services such as legal aid or alternative dispute resolution);
- Stand-alone specialist not-for-profit information websites;
- Assisting self-represented litigants;
- Online Dispute Resolution and Online Dispute Determination;
- Websites that link legal assistance to the development of skills, including emotional support; and
- Websites that provide textbook-level information on a shareable basis.

All of these are models that could in principle—given the appropriate allocation of resources – be adopted by law clinics in the development of their public law work. However, in practice, with some notable exceptions referred to below, law clinics appear not to have been at the forefront of such methods of service delivery. This should not come as a surprise, because:

- Experience of traditional (rather than novel) forms of legal service delivery will likely be attractive to many students looking for work experience that will confer an advantage in the (traditional) legal job market; and
- The skills of law clinic supervisory staff are more likely to lie in traditional rather than novel forms of legal service delivery. Clinical work appears to be viewed by some law schools (for example, Liverpool) as part of a rounded practical legal education, with supervisory staff teaching crucial practical legal skills such as interviewing techniques.

The following observations might also be drawn from the research:

- Any digital service that offers high-volume casework would risk serious capacity problems given students’ limited availability, and the limited capacity of supervision staff. These pressures were apparent even where third party organisations found it viable to supervise students acting as unskilled paralegals in the delivery of high-volume casework (e.g. Hugh James Solicitors in Cardiff, and Liverpool Citizens Advice); and
- The law is constantly evolving—digital delivery of information on the state of the law therefore requires sufficient resources to ensure that the information is up to date. But the resources needed for maintenance depend on the speed with which the area of law (and consequential policy) in question develops, which may be hard to predict, and therefore difficult to budget for.

That said, we have seen that where the development of specialist online information services is adequately funded, supported by specialist NGOs (e.g. Cerebra and Mencap Cymru), and linked to academic research (offering the potential for research impact), the results can be impressive. The toolkits produced by Cerebra and Mencap Cymru are examples of innovative Public Law clinical work, tailored to offer access to justice to members of the public in general, in light of the capacity and supervision pressures that arise where law clinics offer individualised advice to clients.

It may be that the link between this type of clinical work and departmental research is more likely to lead to innovative forms of service delivery, because the focus of the participating students is less on the acquisition of traditional legal skills through work experience, and more on departmental research, to which the service being delivered is closely connected; i.e. the

profile and motivation of the participating students and supervisory staff may tend to make projects where service delivery is linked to departmental research more open to the development of innovative services. And more generally, the effective use of new technology is one area in which students' skills may be more advanced than those of their supervisors, and might in certain circumstances be effectively harnessed in developing innovative forms of service delivery.

# APPENDIX ONE

## PLP questionnaire for participating law clinics

Please answer the following questions as best you are able to. Please do not feel constrained by the format. Whilst we want to elicit useful information from you, we do not want to make this questionnaire unduly onerous. So please feel free to supply as much or as little information as you see fit, including any extra information or comments you feel may be relevant.

1. What is the clinic's current capacity in terms of devoted student hours per week, and supervisor hours per week? You can estimate and comment on your estimation, It may be useful for us to understand typical equations (for instance 5 hrs student time equates to 1 hr supervision, etc.)
2. What areas of law does the clinic undertake, and which of these would you classify as "public law"?
3. If the clinic undertakes public law work of any description, please go to Q 4 below. If not, then:
  - (1) Please explain:
    - (a) whether the clinic would like to do some public law work
    - (b) what sort of public law work the clinic would like to do
    - (c) what prevents, or may prevent, it from doing this work
  - (2) Please indicate how PLP could help develop the clinic's public law work:
    - (a) in terms of training
    - (b) otherwise (for instance with a specific project focus)
4. If the clinic does undertake some public law work
  - (1) Please estimate:
    - (a) how many public law cases the clinic undertakes each year
    - (b) in what categories of substantive law
    - (c) involving how many student hours per week
    - (d) how many supervisor hours per week
  - (2) Would the clinic ideally undertake more public law work, and if so, what prevents this?
  - (3) please indicate how PLP could support the clinic's public law work:



- (a) in terms of training
- (b) otherwise

5. Does the clinic currently work with other advice services or groups in the community?
  - (1) If so, how would you describe the clinics role in that partnership?
  - (2) If so, do you feel that PLP could enhance that relationship in any way, and if so, how?
6. Does the clinic currently work in partnership or on projects with national organisations, such as the Centre for Criminal Appeals?
7. Is public law taught as a distinct module, or as part of another course (for instance a constitutional law module)?
8. Do students need to elect to do a clinical module in order to be part of the clinic, and if so is this mandatory?
9. Would you see a useful academic role for PLP associated with the clinic, for instance, teaching an introduction to judicial review, or to strategic litigation?
10. PLP's aim is to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. Does the university undertake any research which might be relevant to PLP's aims (for instance on delivery of public services, or indeed legal services) which might be developed in conjunction with the law clinic and PLP, if so, please give details.

## APPENDIX TWO

### An overview of the regulation of legal services in England and Wales

1. Regulation of legal activity arises in three distinct ways:
  - (1) The Legal Services Act 2007 defines “legal activity” and “reserved legal activity”, and provides that the latter can – as a general rule - only be carried out under regulatory frameworks set by bodies such as the Solicitors Regulation Authority or the Bar Standards Board. Such frameworks provide that only authorised persons (e.g. solicitors) may carry out certain types of work, impose burdens on lawyers in terms of client care, and confer rights on clients, e.g. to particular complaints procedures.
  - (2) Some legal activities that are unreserved are nevertheless regulated because they are the subject of legislation that imposes a regulatory structure on the conduct of the specific unreserved legal activities. Examples are immigration, insolvency, and claims management.
  - (3) Further some regulation of legal activities arises because of regulation of the individual practitioners or entities that carry them out (e.g. solicitors and legal executives). The individual authorised person might not be authorised in respect of all legal activities, but only those that their regulator has been approved to authorise.
2. Unreserved legal activities not subject to regulation by statute, and not carried out by persons or entities whose conduct is regulated as a matter of course, are not regulated.

#### Reserved legal activity

3. As a starting point, it is important for law schools to determine whether the clinical services they offer comprise reserved or unreserved legal activity, so as to be able to determine which individuals are able to carry out the work and under what conditions.
4. Reserved legal activity is defined in section 12(1) of the Act, as any one of the following activities:
  - The conduct of litigation
  - The exercise of a right of audience in the courts
  - Reserved instrument activities
  - Probate activities
  - Notarial services
  - Administration of oaths

5. These terms are explained in Schedule 2 to the Act. Of all the types of reserved legal activity, it is the conduct of litigation that will be relevant to most law clinics, as other types of reserved legal activity are unlikely to be provided in a clinical context. It is important therefore for law clinics to determine whether the services they offer fall within the meaning of “the conduct of litigation” for the purposes of section 12(1) of the Act, so that they can determine whether appropriate regulation is required, (typically in relation to the conduct of litigation, from the Solicitors Regulation Authority).
6. Paragraph 4 of Schedule 2 to the 2007 Act, states:
  - “(1) The “conduct of litigation” means—
    - (a) the issuing of proceedings before any court in England and Wales,
    - (b) the commencement, prosecution and defence of such proceedings, and
    - (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).
  - (2) But the “conduct of litigation” does not include any activity within paragraphs (a) to (c) of sub-paragraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity.”
7. Law schools therefore must be aware of what is meant by the “performance of any ancillary functions” in relation to proceedings before any court<sup>16</sup> in England and Wales. Unless they are SRA regulated or otherwise appropriately regulated, such ancillary functions cannot be conducted.
8. The meaning of this term was considered by the Court of Appeal in Agassi v Robinson (HMIT) [2005] EWCA Civ 1507, a case decided in the context of the Courts and Legal Services Act 1990, the forerunner to the Legal Services Act 2007. Section 70 of the 1990 Act made it an offence to do any act in the conduct of litigation when not so entitled. Section 119 of the 1990 Act defined the right to conduct litigation as:
  - “the right—
    - (a) to exercise all or any of the functions of issuing a writ or otherwise commencing proceedings before any court; and
    - (b) to perform any ancillary functions in relation to proceedings (such as entering appearances to actions)”.

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<sup>16</sup> “Court” is defined in s.207 LSA 2007 and includes many tribunals.

9. At paragraphs 53 -56 of its judgment, the Court of Appeal stated:

*The right to conduct litigation: the 1990 Act*

53. Depending on the context, the word 'proceedings' may have a very wide ambit (see *Callery v Gray* (No1) [2001] EWCA Civ 1117 at [54]; [2001] 1 WLR 2112; and, for an extreme example, see *Crosbie v Munroe* [2003] EWCA Civ 350 at [34]). In the present context the word undoubtedly includes ancillary applications and appeals in the course of litigation. Only a litigant in person or an authorised litigator may issue proceedings. But what is the scope of the right "to perform any ancillary functions in relation to proceedings (such as entering appearances to actions)"? The background material to the 1990 Act that we have been shown sheds no light on the meaning of these words. Mr Drabble and Mr Carr rely on the statutory objective and the general principle stated in section 17 in support of the submission that the words should not be given a narrow meaning. They submit that there are powerful policy reasons why litigation which is not being conducted by litigants in person should be conducted by authorised litigators. The scheme introduced by the 1990 Act was intended to make provision for new and better ways of conducting litigation and a wider choice of persons providing them "while maintaining the proper and efficient administration of justice". It is an essential part of the scheme that the enlargement of the class of persons available to conduct litigation is properly regulated.

54. We recognise the importance of these considerations. But the language of section 119 must be interpreted in accordance with the usual rules for statutory interpretation. These include that the starting point is that words should be given their plain and natural meaning. It is also important to bear in mind the penal nature of section 70. If a person purports to exercise the right to conduct litigation when he is not entitled to do so, he commits an offence. This is not directed at the person who pretends that he is entitled to exercise the right to conduct litigation: that is the subject of the separate offence created by section 70(3). Section 70(1) is directed at the person who, whatever his state of mind, actually issues proceedings or performs any ancillary functions in relation to proceedings when he is not in fact entitled to do so.

55. If Parliament had intended to introduce a broad definition of the right to conduct litigation, it could have defined it as the right "to issue *and conduct* proceedings before the court". That would have been all-embracing and the second limb of the definition that was adopted would have been unnecessary. Instead, Parliament decided to limit the first limb of the definition to the initial formal step in proceedings, namely their issue. It then added a second limb, which, if its meaning is ambiguous or otherwise unclear, should be construed narrowly.

*56. The word "ancillary" indicates that it is not all functions in relation to proceedings that are comprised in the "right to conduct litigation". The usual meaning of "ancillary" is "subordinate". A clue to what was intended lies in the words in brackets "(such as entering appearances to actions)". These words show*

*that it must have been intended that the ancillary functions would be formal steps required in the conduct of litigation. These would include drawing or preparing instruments within the meaning of section 22 of the 1974 Act and other formal steps. It is not necessary for the purposes of this case to decide the precise parameters of the definition of "the right to conduct litigation". It is unfortunate that this important definition is so unclear. But because there are potential penal implications, its very obscurity means that the words should be construed narrowly. Suffice it to say that we do not see how the giving of legal advice in connection with court proceedings can come within the definition. In our view, even if, as the Law Society submits, correspondence with the opposing party is in a general sense "an integral part of the conduct of litigation", that does not make it an "ancillary function" for the purposes of section 28" (emphasis added).*

10. In summary, therefore, the Court concluded that the giving of legal advice in connection with court proceedings and correspondence with the opposing party were not ancillary functions in relation to proceedings for the purposes of s 28 of the 1990 Act. In *Heron Bros Ltd v Central Bedfordshire Council* [2015] EWHC 1009 (TCC), Edwards-Stuart J concluded that "In the light of these observations [in *Agassi*] I see no reason to construe the definition of the conduct of litigation as extending to any activities that take place prior to the issue of proceedings and which do not involve any contact with the court. For example, advising on the merits of starting proceedings or drafting Particulars of Claim". Pre-action work would also include the sending of a pre-action protocol letter.
11. The Bar Standards Board has issued guidance as to what amounts to the conduct of litigation as part of its *The Public Access Scheme Guidance for Barristers*. Barristers are not normally entitled to conduct litigation, although they can be specifically authorised to do so. The Bar Standards Board states that the following ancillary activities amount to the conduct of litigation:
  - issuing proceedings or applications;
  - acknowledging service of proceedings;
  - giving your address as the address for service;
  - filing documents at court or serving documents on another party; and
  - issuing notices of appeal.
11. "Legal activity" is defined for the purposes of the Act, in section 12(2) as:
  - (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and
  - (b) any other activity which consists of one or both of the following—
    - (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;

- (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.
12. It follows that the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes, that does not fall within the definition of “the conduct of litigation” in paragraph 4 of Schedule 2 to the 2007 Act is unreserved legal activity. This is referred to below as “general legal advice”, and is at the heart of what most law clinics are able to do (although three of the four law clinics considered in this study undertake reserved legal activity in addition).
  13. At present (although consideration has been given by the Legal Services Board to making general legal advice into reserved legal activity), general legal advice is unreserved, and is only subject to regulation if (a) statute imposes a distinct regulatory regime; and/or (b) those providing the advice are subject to regulation because of regulation that attaches to their professional status or the status of the entity they work for.
  14. The Solicitors Regulation Authority has indicated (consultation response – July 2012<sup>17</sup>) that its position is that where a body is authorised to provide reserved legal activities, all of its mainstream legal activities (reserved and unreserved) should be provided through that regulated entity, rather than through a separate business.

#### Regulation imposed by statute in respect of unreserved legal activity

15. As a result of Parliamentary intervention, some services that would fall within the definition of ‘legal activity’ in section 12(3)(b) of the Legal Services Act 2007 are regulated by statute, even though they are not listed as reserved legal activities in the Act. For law clinics, the most important type of legal activity regulated in this way is immigration.
16. Section 84 of the Immigration and Asylum Act 1999 provides that immigration advice and services may only be provided by qualified persons. It states:
  - (2) A person is a qualified person if he is–
    - (a) a registered person [by section 85, registration is by the Immigration Services Commissioner],
    - (b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,
    - (ba) a person authorised to provide immigration advice or immigration services by a designated qualifying regulator,

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<sup>17</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/special\\_bodies\\_non\\_commercial\\_bodies/sra.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/special_bodies_non_commercial_bodies/sra.pdf) at para 38

- (c) the equivalent in an EEA State of–
    - (i) a registered person, or
    - (ii) a person within paragraph (b) or (ba)
  - (d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or
  - (e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).
17. Schedule 18 to the Legal Services Act 2007 establishes the Law Society, the General Council of the Bar, and the Institute of Legal Executives as qualifying regulators for the purposes of authorising solicitors, barristers and legal executives to provide immigration advice and services under the Immigration and Asylum Act 1999.
  18. In practice, this means that law clinics must ensure that immigration advice is either given by persons registered with the Office of the Immigration Services Commissioner (OISC), by solicitors or barristers, or persons working on behalf of and under the supervision of a person so registered or authorised.
  19. In August 2016, the OISC issued guidance setting out its position that where immigration advice or services are provided on behalf of an entity, which is not itself regulated by one of the qualifying regulators, that entity must be registered with the OISC in order to comply with section 84. This means for example that where immigration advice is provided by a solicitor or barrister employed by a law centre (which, unlike a solicitors' firm, will not normally be regulated as an organisation by the SRA), the law centre needs itself to be registered with the OISC. The OISC's position also appears to be that other advisers in the law centre, who are not solicitors or barristers, need to be individually registered with the OISC, even if they are working under the supervision of a solicitor or barrister. That is because, in order to be authorised to provide immigration advice under s.84(1)(e), a person must be working **both** under the supervision of **and** on behalf of a qualified person. It is currently unclear, however, whether it is sufficient for the organisation to be registered with the OISC, and for supervision to be provided by qualified persons, such as solicitors or barristers. PLP has sought clarification from the OISC on this question.
  20. This guidance raises a number of issues for law clinics who wish to provide *pro bono* immigration advice and services. It may be necessary for clinics to become registered with the OISC and, pending clarification of the position relating to supervision, to ensure that only qualified or OISC registered individuals provide immigration advice and services.

21. In addition to the above, the Bar Standards Board has issued guidance for barristers, which states that self-employed barristers may only act as supervisors for the purposes of s.84 IAA 1999 if they are public access qualified.





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