

LSB Consultation on future strategy and business plan 2021-2022

Response from Amanda Finlay CBE

I am responding to this consultation as an individual. I am drawing on my experience as Chair of Law for Life, the foundation for public legal education, as a Council Member of Justice and Chair of their Working Group on Preventing Digital Exclusion from Online Justice, as a former Trustee of LawWorks, a former member of the Civil Justice Council and member of the CJC Working Group on Self Represented Litigants, and as a current member of the Ministry of Justice Litigants in Person Engagement Group. I was for many years a senior civil servant in the Ministry of Justice, latterly with responsibility for Legal Aid and Legal Services Strategy.

Summary

The chief points I make in my response are these:

- The LSB and the regulators should explore and encourage public legal education in the community through trusted intermediaries. They should actively audit what the legal profession are doing to expand public legal education out from the traditional territory of schools into the wider territory of the community where people are actually experiencing problems.
- The LSB and the regulators should be more active in supporting responsible use of technology that commands public trust by commissioning online resources and tools from those organisations that already work in social welfare law, an area not well covered by Legal Choices and a market failure space.
- Attention and encouragement from the LSB and the regulators would be helpful in encouraging the development of unbundled services. The professional representative bodies still do not grasp how important this is going to be for the future provision of affordable, accessible legal services.

- Encouragement is needed from the regulators to foster accessible, game changing IT resources for self-help and to expand the capability of trusted intermediaries. Part of the new Technology Fund should be ringfenced for solutions that meet the needs of the most vulnerable or those who support them, and/or are developed in conjunction with the third sector that already work in this field.
- In providing online resources to help the public, the LSB should press the front-line regulators and professional bodies to do more to support and work in partnership with those organisations that are trusted and used by the most vulnerable consumers, including those consumers who are unlikely to access Legal Choices.

My overall ask of the Legal Services Board is not just to funnel all the effort and money into Legal Choices and routes to lawyers. Recognise that there are other providers in this space who could do a lot more with the significant resources that are being devoted to improving that site. Help those other providers to demonstrate what they could do with just a portion of that funding.

Q1—Do you have any comments on the three strategic themes that we have identified?

I welcome the LSB's three strategic themes: Fairer outcomes, Stronger Confidence, Better Services. Achieving these for the most disadvantaged requires a significant change in focus and new partnership working.

Recent Legal Services Board /Law Society joint research on people's experience of legal problems has drawn attention to the importance of confidence in helping people to approach a lawyer to resolve their legal issues. Much of the discussion on this topic and much of the focus of professional bodies and legal services regulators has been on helping people to access lawyers.

It is even more important to consider the situation of people who do not have the financial resources to instruct a lawyer and who are unable to access legal aid because their problem is out of scope or they do not pass the means test. Even when legal aid was available, many people fell into this category.

It is important to have an additional focus and strategy for low- and modest-income people who have legal problems. The first problem to tackle is not their access to lawyers but the fact that they often do not realise that their problems might have a legal solution, as the research recognises. The problems they experience are predominantly in social welfare law and may well occur in clusters. They are the problems of the “have-nots” and interestingly do not feature significantly in the LSB 2019 survey which seemed to cover mainly the experience and problems of the “haves”: problems such as conveyancing, will writing, powers of attorney, probate and family.

The main issue for the “have not” segment of the population is their lack of awareness that their problem has a legal solution: an issue which lies squarely within the statutory objective of the Legal Services Act 2007 and which so far has not been fully addressed by the regulators, except perhaps through the establishment of Legal Choices. Though if you don’t know you have a **legal** problem you might not choose a website with “Legal” as part of its moniker.

Their next problem is finding access to free legal advice. The LSB Consumer Panel survey released in July 2019 found a decline in availability of free services from 24% in 2012 to 11% in 2019, and a reduction in funding from legal aid, trade unions and employers from 14% down to 5%. These difficulties will have been further exacerbated by the pandemic which has slashed local authority funding and drastically reduced access to walk in sources of advice. Remote access favours the digitally capable.

And even if people find free legal advice or muster the resources to pay for some help, they may not now be able to find a specialist lawyer in housing or welfare benefits work as even advice agencies are finding it difficult to access these specialist services. Cathy Gallagher’s October 2018 blog on the LSB Consumer Panel website recognised this problem, and the resulting advice deserts in many parts of the country. These deserts have got more arid in the years since then and various reports over the last twelve months have highlighted this problem.

I am concerned that the regulators do not seem to be very interested in this group. This group is notoriously hard to reach. It always has been, even when legal aid was available. And the current focus of the regulators on price and

quality information and comparison and transparency about cost are **fourth level issues for this group, well after awareness, funding and provision.**

Q2–Do you have any comments on the nine challenges that we have identified for the sector? Are there any important sector challenges that we have not addressed?

Q3–How can you/ your organisation contribute to overcoming the sector-wide challenges we have identified?

The emphasis in the LSB Strategic Plan and Business Plan **on Lowering Unmet Legal Need, on Achieving fairer outcomes for people experiencing greater disadvantage, on Fostering innovation that designs services around consumer need and on Supporting responsible use of technology that commands public trust** are all welcome. Law for Life is already doing many things to meet these challenges and would welcome the chance to contribute more strategically.

For some time, I have been arguing strongly for a twin pronged approach to addressing these challenges through public legal education. The first is awareness raising in the places (both real and virtual)- and through the people with whom the most needy already interact: the trusted intermediaries who understand their circumstances and will spot their legal issues once they, the trusted intermediaries, have had **their** awareness raised.

It is inefficient to try to reach directly all the low-income folk whom we know will experience legal issues on a *just in case* basis as some have suggested. It will not be relevant to them unless they have that particular problem at that particular time; it won't be memorable; and it risks being a vast and nugatory effort at a time when resources are scarce.

In contrast we know that if we raise the awareness of trusted intermediaries, as Law for Life has been doing through a wide range of training courses in the community, these community workers, volunteers and health workers “get it”. They recognise the problems that they see every day and they learn how to deal with them more effectively. For them it is *just in case* AND *just in time* PLE because they have seen these problems yesterday and the day before, and last week, and they will be seeing these problems again in the next day or so. They have the context that makes sense of what they are learning and they don't

have time to forget. And the multiplier effect is fantastic- among their clients and their friends and family too –because trusted intermediaries and their social contacts will have problems too.

This should be an important element of the work aimed at meeting the challenges of **Lowering Unmet Legal Need, Achieving Fairer Outcomes for People Experiencing Greater Disadvantage and Fostering innovation that designs services around consumer need**. Indeed, I suggest that without an emphasis on this proactive approach it will be difficult to achieve any better, fairer outcomes for this group.

Law for Life has demonstrated that it is possible to reach the most vulnerable through trusted intermediaries and to do this even in the lockdown conditions of a pandemic through its on-line courses for grass roots community workers supporting vulnerable communities: disadvantaged women, refugees and migrant workers.

We have run several courses on Housing Rights with sessions spread over 6 weeks. These have been very well attended and massively oversubscribed. At the request of the Ministry of Justice we are now planning two series of shorter courses to reach isolated communities in the South West and North West.

<https://www.advicenow.org.uk/know-hows/your-housing-rights-during-covid-19>

<https://lawforlife.org.uk/blog/strategic-forums-on-housing/>

<https://lawforlife.org.uk/blog/call-for-participants-housing-rights-for-women-courses-in-south-west-and-north-west-england/>

This remote delivery model has proved extremely popular and effective with appreciative feedback from participants who feel empowered to recognise and tackle their clients' problems in the future.

The professional representative bodies are shy about doing this because their members think that it will divert paying customers into self-help. Many of the subject areas where awareness needs to be raised are not fee-paying areas for the legal profession. In the case of those that are, they might even drum up

some business if their product offering and price were attractive. PLE work in schools does not have this built-in dilemma but it does not really reach the people who need it most and need it now.

Indeed, there are some segments of the “haves” that have lower awareness than others, for example awareness of the importance of will writing among BAME groups who do have resources to pass on. So, some targeted work with particular underserved sections of the “haves” groups might be a way of encouraging the legal profession to get into PLE in the community and reaping some reward.

The LSB and the regulators should explore and encourage this approach and actively audit what the legal profession are doing to expand public legal education out from the safe territory of schools into the wider territory of the community where people are actually experiencing problems.

The second prong is online resources which have a fantastic one to many multiplier effect. I was encouraged to see that the LSB Consumer Panel summer 2019 survey found an uptake in online services from 21% in 2012 to 33% in 2019. These online resources are the weapons in the armoury of the trusted intermediaries. They can use them in the same way as GPs, nurses and consultants use all the myriad online resources about health conditions to give their patients something to help them understand and remember. The NHS increasingly uses online resources to inform, educate and help people manage their health conditions. And importantly, they can use them to expand their own understanding and agency in areas where their digitally excluded clients are having problems.

It would be great if there were competition to provide online resources in social welfare law but the problem here is one of market failure. There is little or no return on investment in developing online resources for the problems of the have-nots. So, the market has not stepped in and developed high tech online tools to help with social welfare law issues. The resources that exist have been developed by the third sector: Citizens’ Advice, Shelter, Age UK, specialist asylum and immigration charities and a whole host of others. And by the Charity I chair, Law for Life, through its award-winning Advicenow website which provides easy-to-use information on rights and the law for the public,

including document assembly tools for people challenging complex welfare benefits decisions.

<https://www.advicenow.org.uk/pip-tool>

We provide legal information for nearly 1 million people each year in England and Wales. And we reach have nots as well as haves. Of those responding to our annual survey, around half of our service users are disabled and the same proportion have a household income of below £1,100 per month. Around a fifth of our users are helping other – either friends and family or clients. Importantly we recognise that many of our users will be forced to resolve their problem without help from a lawyer and we give them all the information, skills and confidence to do so. In addition, we have a Help Directory so that they can also find advice resources nationally or near them.

<https://www.advicenow.org.uk/guides/help-directory>

The feedback from users is positive and also reveals how much difference clear, well-constructed information and guidance can make in giving people the knowledge, skills and confidence to address their problems. Many say they had almost given up before discovering Advicenow but then felt supported, understood and helped every step of the way through processes that can be long and complex. So, we know that it can be done. And it can be done without a lawyer.

The regulators should be more active in supporting responsible use of technology that commands public trust by commissioning online resources and tools from those organisations that already work in this market failure space.

If we develop resources for the least confident and capable, we will also help those who have more confidence and capability – the “haves” of this world. I would argue that this group (the haves) needs to understand the context, potential solutions and detailed steps for resolving their problems **before** they start thinking about price and quality comparison. Apart from anything else, once they grasp the complexity, they will appreciate the importance of choosing quality and perhaps of avoiding bargain basement providers. But they will still have concerns about cost, predictability and affordability.

Another way in which we can meet the challenges of **Fostering innovation that designs services around consumer needs** is by the development of unbundled services that meet consumers' needs for affordable service through a guided pathway that builds their knowledge, skills and confidence and gives them access to affordable legal services.

That is the reason why Law for Life is working with Resolution, the family lawyers association, to develop guided pathways in family law issues which will allow our users to access a Resolution member who can offer fixed price services for discrete pieces of advice, confident that the client has had access to detailed advice before and after reaching this point in their pathway. This "unbundled" advice approach has to be part of the **future provision of legal services**.

<https://www.advicenow.org.uk/know-hows/getting-affordable-advice-family-solicitor-advicenow>

Attention and encouragement from the LSB and the regulators would be helpful in encouraging the development of unbundled services. The professional representative bodies still do not grasp how important this is going to be for the future provision of affordable, accessible legal services.

There is a lot of focus on Tech solutions in the legal services space and MOJ gave £2m to TechNation to "help support the digital transformation of the UK's legal sector." There are also whizzy tech labs which offer to develop solutions through intensive time limited development. Some of these would like to work with the third sector but their conditions of engagement take no account of the reality of life in the third sector, the tight funding and shortage of people with real expertise. Often money and resources are thrown at a problem without enough thought about the non-IT expertise that will be required. Yet legal resources tech is ALL about content. In the last couple of years LawforLife helped MENCAP with their chatbot initiative. MENCAP got massive funding from IBM and NESTA. But no allowance for understanding the questions of users or the correct answers – the PLE bit. Tech alone is not enough. Content is essential

The regulators could help here if they realised that LawTech is not just about making big law firms and high street firms more efficient but it is also a way of

helping individuals whose only hope of accessing legal help is through a free or low-cost online interaction. All the emphasis at the moment seems to be on the top end of the market, and there is no financial incentive to invest in the problems of the “have nots”. Freshfields Pro Bono, led by Paul Yates, stands out as a supporter of low tech but transformative developments working with the RCJ CAB. Roger Smith thought that the answer was a Technology Fund but I’m not sure (and nor is he) that TechNation is what he meant.

Encouragement is needed from the regulators to foster accessible, game changing IT resources for self-help and to expand the capability of trusted intermediaries. Part of the new Technology Fund should be ringfenced for solutions that meet the needs of the most vulnerable or those who support them, and/or are developed in conjunction with the third sector that already work in this field.

There is a salutary lesson from the development of the Online Court in which I have a keen interest. Two years ago, HMCTS contracted with the Good Things Foundation to provide Digital Assistance for Online Court users. After six months the number of people they had helped was in single figures. By November 2019, after two years 279 people had been helped at 25 locations. At this point HMCTS finally listened to all their LIPEG (Litigants in Person Engagement Group) members who had been telling them that people needed help with the Court as well as the Online elements, and the final year’s contracts went to ten advice agencies/law centres that can provide digital assistance embedded in their other assistance. Even in the challenging circumstances of the pandemic this has seen an improvement in uptake.

I therefore welcome the fact that the LSB have provided the possibility for a similarly sensible approach to Online provision in their response to the CMA. The proposed fourth outcome measure is

- Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them.

While the LSB supports activity by the frontline regulators to enhance the existing Legal Choices website, the revised wording gives the frontline regulators flexibility to pursue alternative mechanisms towards helping

consumers to identify their legal needs and understand the full range of providers who can help them.

Law for Life has been encouraged by the outward looking approach taken by the Bar Standards Board which commissioned us to ensure that their public facing pages were comprehensible by ordinary citizens and covered the issues that they were most concerned about. They also funded a guide on Advicenow to help people understand the issues- and many misunderstandings- that may arise when the other side has a lawyer.

<https://www.advicenow.org.uk/guides/when-other-side-has-lawyer-guide-litigants-person-0>

This commissioning approach supports an independent organisation trusted by many vulnerable members of the public. It demonstrates the profession's commitment to the wider needs of the public rather than just encouraging them to use a lawyer. It provides a potential model for other regulators and professional bodies. The costs of this commitment and support are considerably less than the substantial amounts currently devoted to Legal Choices.

The LSB should press the front-line regulators and professional bodies to do more to support and work in partnership with those organisations that are trusted and used by the most vulnerable consumers, including those consumers who are unlikely to access Legal Choices

Finally, the biggest area of market failure is the lack of funding and lack of provision for face to face (or remotely provided) social welfare law advice following the LASPO cuts. This has knock on effects as it hollows out the provision of specialist expertise which can back up the efforts of community advisors, volunteers and pro bono lawyers. There is little sign that the regulators are looking at this. And yet there is a massive swathe of the population that is not getting the help that they need.

It cannot be right that most of the resources that the regulators are putting into information on legal services look as though they are going to drumming up business for lawyers. The statutory objective to inform consumers of their rights and responsibilities applies to everybody, regardless of whether they can

afford a lawyer. The regulators should be spearheading initiatives with particular groups of disadvantaged people in community settings, working to find out what their issues are and how best they can be supported to identify them, know where to turn for help and self-help as far as possible. They should be identifying how new affordable and accessible services might be developed or where there is complete market failure and a need for legal aid. I recognise the challenge in the LSB new Business plan to develop a suite of simple legal solutions for common problems but on the basis of past experience this may not be aimed at the section of the population that I am most concerned about.

I recognise that tackling the whole problem may be just too daunting and difficult, but testing an intervention designed for a specific vulnerable cohort in one area of law, and working with the third sector would help to identify what works. Law for Life did this with mental health outpatients in Woolwich. Their number one ask was a guide to avoiding welfare benefits sanctions. That is now a resource for all on Advicenow.

<https://www.advicenow.org.uk/guides/survival-guide-benefit-sanctions>

My ask of the Legal Services Board is not just to funnel all the effort and money into Legal Choices and routes to lawyers. Recognise that there are other providers in this space who could do a lot more with the significant resources that are being devoted to improving that site. Help those other providers to demonstrate what they could do with just a portion of that funding.

Amanda Finlay CBE

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