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The Role of University Law Clinics in delivering access to justice

Dr Gráinne McKeever, Reader in Law, Ulster University Law School

Introduction

The problems of access to justice are well documented, not least through the two Access to Justice Reviews commissioned by the Justice Minister, which focus on a range of problems and potential solutions to help balance the supply and demand of legal support and to open up new pathways to justice that do not rely exclusively on traditional legal services. The agenda for the second Review identifies the potential for university law clinics to provide support to citizens to enhance their legal capability, noting in particular the development of the Ulster University Law Clinic through which graduate law students provide members of the public with free legal advice and representation on social security and employment law problems.¹ Given that citizens often lack awareness of traditional advice sources, it is unclear what awareness citizens have of university law clinics, or of the value that clinics might offer in enhancing legal capability. The research on which this policy briefing is based sought to assess the nature of clinic services that were being provided and the extent to which Law School clinics focus on delivering access to justice through a survey of the 64 Law Schools in the UK which offered clinical legal education based services in order to.² Completed responses were received from 32 Law Schools and this policy briefing presents the findings from the survey, in the context of the research evidence on access to justice in the UK. The research identifies some critical differences between the advice landscape in Northern Ireland and Britain and makes a number of recommendations to support and develop the potential for clinics to deliver access to justice. In doing so it raises fundamental questions concerning the state's role in providing access to justice for its

¹ The Ulster University Law Clinic is run as part of the LLM Clinical Legal Education and is located on the Belfast campus of Ulster University. The Department of Justice has provided a full-fee Access to Justice Scholarship for the LLM Clinical Legal Education since 2013.

² O. Drummond and G. McKeever, *Access to Justice through University Law Clinics* (2015: Ulster University Law School), available on the Ulster University Law Clinic website at <http://www.ulster.ac.uk/lawclinic/files/2014/06/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf>. The research was funded by The Legal Education Foundation.

citizens and the subsequent tensions inherent in the delivery of access to justice through university law clinics.

Access to justice

The ability to access justice depends, in part, on an individual's level of legal capability and on their vulnerability to legal problems. Multiple sources of disadvantage interact to increase vulnerability to justiciable problems, creating a cluster of inter-related, reinforcing and complex issues. The intractability of these issues is compounded by the reality that many individuals will not have the legal capability to recognise that there are legal solutions available, or to know how to access those legal solutions. We know that good quality support can be critical in developing legal capacity but we also know that support is often sought at crisis point, rather than at an early stage in the life of a legal dispute, making it difficult to develop preventative measures to avoid the escalation and accumulation of problems.

Individuals take different paths to justice and access different types of advice provision, each of which can service different justice needs. This creates an interconnecting ecosystem of advice provision in which different elements are balanced. The changes to the advice ecosystem in Britain and Northern Ireland have not followed the same pattern. In relation to publicly funded legal advice and representation, the Department of Justice has so far eschewed the approach taken in England and Wales under the Legal Aid, Sentencing and Punishment Act 2012 (and previous changes to legal aid funding in Britain) and instead have recommended a series of reforms which have stopped short of radically cutting back on the scope of what can be covered by legal aid. Where there are similarities between Britain and Northern Ireland, however, is in the model of competitive, contractually based funding for legal services. The impact of this model of funding has been evaluated by Sommerlad and Sanderson in relation to the work of the voluntary sector in England and Wales.³ Their research documented that the voluntary sector response to this funding model was to reduce services (by doing less complex work, less specialist work, more high output work, and withdrawing from areas of law) and/or 'activating' clients (developing self-help tools, information services and sign-posting). Sommerlad and Sanderson's analysis reveals that the overall impact has been a loss of capacity in the sector and an increasing mission drift as organisations chased the funding rather than matched their services to local needs. There has been no equivalent research on the impact of changes in Northern Ireland, making it more difficult to assess how future funding decisions should be made in order to ensure a healthy advice ecosystem. The survey by Ulster University seeks to understand how clinics have interacted with the evolving advice ecosystems in Britain and Northern Ireland and their role within it.

Development of UK university law clinics

Clinical legal education is the defining term for a form of legal education which exposes students to the practical application of law and puts them in the position of using their legal knowledge to respond to real life issues. The nature of clinical legal education which this research focuses on are those public-facing initiatives through which students provide legal advice to members of the public on their legal problems, under the supervision of academics and/or legal practitioners. The

³ H Sommerlad and P Sanderson, "Social Justice on the Margins: the Future of the Not for Profit Sector as Providers of Legal Advice in England and Wales" (2013) *Journal of Social Welfare and Family Law* 305-327

development of this type of legal education is designed to meet multiple ambitions. First, to provide education, through high quality teaching and research; second, to deliver social justice by being responsive to justice problems; third, to add value to the student experience by developing professionally relevant skills in students and enhancing their employability. There are, however, tensions between the core university objectives of teaching, research and the student experience and the ambition to promote or develop social justice.

The survey identified 64 Law Schools in the UK that offer public-facing clinics, of whom 32 provided completed survey responses.⁴ The survey evidences clearly that university law clinics are bespoke creations, designed to meet the needs of their Law School. There is no typical model of clinic, with considerable variations in the numbers of academic staff, administrators, external supervisors, students and caseloads. This bespoke nature is beneficial from a university perspective but perhaps problematic from a wider access to justice perspective in that it reduces the chance of providing an 'off the shelf' replacement or supplement for existing advice services.

Clinic services

University law clinics in the UK cover a diverse range of legal areas, with housing law the most popular, covered by 27 out of 32 of the respondent clinics. Commercial law, (including company law, contract and intellectual property) follows this, with 24 clinics offering support in this area; and 24 covering consumer law. Family law is covered by 21 clinics; employment law by 16 clinics; health and social care covered by 12; and immigration (including statelessness), criminal law and education are each covered by nine clinics. Social security law is covered by seven clinics; five cover asylum; three cover human trafficking; property; probate and wills. There are a range of 'other' areas of law covered by clinics, including: criminal injuries compensation, property law, neighbour disputes, inquests, environmental law, debt, planning, human rights and data protection. The findings indicate that the theoretical possibility of all clinics being able to cover any area should be tempered by the practical reality that Law School clinics, in the main, are not extensively resourced and will face limitations as a result, specifically in relation to the capacity and expertise of academic staff in being able to supervise casework in particular areas.

In addition to variations in areas of law, there are variations in the type of service offered by UK university law clinics ranging from advice that provides a general outline of legal options, to specific written advice on individual client problems, to full advice and representation. Perhaps understandably, therefore, there are misperceptions by clients as to the nature of service a clinic can provide that are not compatible with clinic operations. The most common misperceptions related to clients expecting to receive immediate advice, that extends through to the completion of their dispute, regardless of timeline and complexity. The question this raises is whether such service limitations and misperceptions create an incomplete or and fragmented client journey.

25 per cent of the clinics surveyed reported limiting their services based on financial need, justifying this limitation as a way of addressing their own objective of meeting unmet legal need and avoiding competition with private law firms. 25 per cent of respondents, however, said that the financial means of their clients was not a relevant case selection criterion. Generally, clinics looked at complexity, expertise, capacity, educational value and alternative support in deciding whether or not to accept cases. Predominantly, therefore, the focus was not on finance but on the educational value of the

⁴ There are currently no public-facing law clinics in the Republic of Ireland and Ulster University provides the only law clinic in Northern Ireland.

case and even among those clinics which selected based on financial need, the educational objectives could override this criterion.

Connections to other service providers

The survey provides strong evidence that university law clinics are connected to a range of other service providers, through collaboration on casework, referring cases out to, or taking referrals from, external partners, and signposting clients to relevant service providers. The survey did not provide the data to allow us to conclude that these collaborations advanced the clients' legal journeys, but there was a clear collaborative value to clinics, namely the ability of students to access to external supervision, expertise and the additional capacity and support that this provided for clinics. Clinics also identified the value to external providers: for private firms this was seen to be a contribution to Corporate Social Responsibility objectives and associated pro bono activities, and for voluntary sector bodies the value added was seen to be increasing service provision and alleviating the impact of funding pressures. The question raised about whether clinics provide a fragmented or incomplete path to justice might therefore be addressed by evidence that clinics can provide another step on the path to justice. To continue the analogy, the road may still run out but it may have run out sooner if the clinic was not there.

Intervention points

External connections to service providers resulted in 84 per cent of clinics taking case referrals from other organisations. In addition, there appeared to be good public visibility of clinics, with 96 per cent taking clients who self-referred. The survey provided strong evidence that clinic clients looked in the same places for advice as other advice seekers, and that their ability to connect with relevant support organisations was often dependent on luck and chance. This indicates that clinics are part of the access to justice ecosystem but are not the main focus for advice seekers, and that external connections are a necessary part of clinic networks and of the continued need to match the client to the right solution.

The evidence is that clinic clients are no different from the general population in their advice seeking behaviour: they do not adopt a consistent approach to dealing with legal problems but rather seek help at a variety of stages and from a variety of sources. While it is beneficial for law students to understand that paths to justice are not exclusive or linear, it means that there is no singular point at which individuals might routinely be referred to clinics for legal assistance in a way that clinics can accommodate in line with their service limitations. Arguably, however, this represents a very narrow view of the problem, since access to justice is not the same as access to a legal solution, particularly where those legal solutions themselves create difficulties for individuals – intellectual, practical and emotional difficulties that are connected to the legal process itself. In this analysis, justice is not just measured by the same set of metrics or values that attach to traditional access to justice solutions but on how to make the pathway to redress less emotionally, financially and temporally taxing. The role of clinic legal education here is to train law students to identify the best solution rather than to prioritise the legal solution, and innovative research generated by this focus on the interdisciplinary nature of solutions to socio-legal problems can feed this educational focus. This approach offers a potential route for clinic development that may be more easily aligned with core university objectives.

Legal education *versus* access to justice?

The clinics respondents were clear that their clinics had a range of objectives, including assisting local communities, meeting unmet legal need and delivering access to justice. When asked to prioritise their objectives, however, clinics identified improving student employability and developing the professional capacity of law students as more important than access to justice focused objectives. The fundamental question for most clinics was whether they should be access to justice providers. 22 out of 32 respondents stated that clinics should be access to justice providers: that it was an important part of the Law School (and university) ethos, an important part of legal learning and a good pedagogic initiative, and that there was a moral obligation on Law Schools to contribute to access to justice. Significantly, however, there were concerns expressed by respondents that this access to justice function should not be compulsory because access to justice provision remained a state function. Following this line of argument, 10 out of 32 respondents stated that clinics should not be access to justice providers: that education should be prioritized, that clinics were not equipped to cope with the demands that casework created, and – again – that it was the state's responsibility to provide access to justice. Nonetheless, 90 per cent of clinics identified themselves as access to justice providers, on the basis that they provided advice and, therefore, access to justice to those who were unable to access advice elsewhere.

The research evidences a continued tension between the civic mission of universities and their teaching and research objectives. In part this conflict stems from the increased marketisation and documented rise in the consumerised demand of fee-paying students. The dilution of the concept of (higher) education as a social right and the developed perspective of its function as a vocational route has inevitably altered the ability of universities to react to external demands. While the two core university functions of research and teaching are often complementary, their different profiles have resulted in academics and institutions having to serve different masters, each with specific resource demands: research as ranked (and directly financially rewarded) through the national Research Excellence Framework while teaching quality is subject to a different set of benchmark exercises, with different, often more indirect financial consequences. Numerous other academic demands also compete but the research-teaching nexus is one of the most critical for institutions and their staff. Consequently, anything that adds value to these elements may be more likely to attract institutional support, but where one core activity is prioritized over the other then these elements can be competing rather than complementary.

There is a critical question that the research highlights, which is concerned with the role that universities do, or should, play in society. Their function of delivering education through teaching and research is broadly understood, but what is not clear is the extent to which universities should serve wider social justice objectives, how they could meet such objectives and how they might be supported in this function. While this research evidences contradictory responses about the role of universities in providing access to justice services, there is consistency among respondents that the state has ultimate responsibility for enabling individuals to access justice, and consistency too that university law clinics are not adequate substitutes for a state supported advice structure. The bigger questions on the role of the state, and the role of universities in meeting societal needs, are cultural, philosophical, economic, social and political questions that go beyond the remit of this clinic-focused research, but which need to be considered as part of the context of these research findings and the potential for the development of access to justice provision. The findings are timely, therefore, as the Department of Justice considers the responses to its consultation on the *Access to Justice Review 2* to inform its thinking on how access to justice should be provided.

Development potential for clinics

It is clear from the research that there are a number of limitations faced by clinics in to developing their access to justice provision: their capacity, the service model that they operate, their orientation as student-centred and staff driven, the increased risk to clients of referral fatigue if clinics cannot meet client needs, the absence of consistency in client paths to clinics, the vulnerability to changes in external partnerships, and the vulnerability to changes in university strategic objectives. Despite this, however, there is development potential that can be realised, which hinges on three main areas.

First, the relationship between clinics and external providers is one of the most critical findings of this research, and indicates that the development potential for clinics is intimately connected to the need to protect their external partners. Clinic work will be more likely to meet the needs of clients where the external advice environment is healthy – both in terms of clinics working through external providers for appropriate case referrals, supervision and other resources, and in terms of clinics being able to assist clients beyond the service capacity of the clinic, so that clinics form part of the client's path to justice which can then be extended through external partners. Developing the potential for law clinics must also take account of the service model offered by clinics, which tends towards the more basic, general advice model, with relatively few clinics able to provide specialist legal assistance. Developing clinic capacity therefore, will also involve enhancing third and private sector capacity for complex, specialist cases. The role of specialist, expert advice is to unlock the complexities of individual, strategic or test cases. Some clinics may be able to take on the complex, borderline cases that general advisers are unable to take, where such cases offer educational value, but there is no evidence of clinics taking a strategic approach to such cases, or of case selection policies identifying or prioritising test cases. Sommerlad and Sanderson's research evidences the critical role of expert advice in supporting general advice services, and clinics can be seen to be equally dependent on expert and specialist advice in advancing client cases.

Enhancing and supporting clinic relationships with other access to justice providers therefore seems a critical aspect of developing the access to justice function of clinics, which necessarily indicates a need to enhance the capacity of external partners to collaborate with clinics. The research evidences the value to law clinics of these partnerships, and the consequential value to clients, but further research is needed to substantiate the value of clinic partnerships to external providers.

Secondly, the development of law clinics can include harnessing their potential to draw lessons from frontline casework (of clinics and external partners) to feed into research and policy agendas. This requires advancing the relationships with potential policy partners, as well as enhancing university support to develop clinic casework towards research and policy outcomes. Clinics have made valuable and productive connections with a range of legal service providers, and these relationships could be built on to understand systematic and operational barriers to justice and to pilot and develop innovative solutions, but this may place additional demands on external organisations to feed through frontline learning. The research and policy potential for clinics, therefore, includes the need to enhance the capacity of external partners to feed into policy-focused consultations and research. Such capacity cannot be assumed, as Sommerlad and Sanderson's research indicates, but has the potential to enhance not just academic research on access to justice, but also the evidence base for policy makers in identifying best practice and possible solutions to access to justice problems.

Thirdly, the support *from* universities will play a critical role in supporting or restricting the development potential of law clinics, which in turn may require support *for* universities to align their core objectives to access to justice. The support for universities to expand their core focus may be something that can be generated externally – through government departments with responsibility for justice, higher education or employment, for example – or through greater integration of CLE within

public funding allocations for higher education institutions, or through a philanthropic focus connecting innovations in access to justice with university research. Ultimately, this goes to a bigger question about the function of universities – many of whom already adopt an inclusive, outward facing approach – and the ways in which the state can support broader societal objectives through universities, but without this debate being taken forward it may be naïve to assume that universities will, or can, readily incorporate the delivery of access to justice as part of their institutional mission.

Recommendations and conclusion

The research makes ten key recommendations that focus on identifying further research that is needed; building and protecting relationships with external partners; realising clinic potential to research and develop innovative solutions to legal problems; and supporting universities to deliver access to justice through clinics. There is now clear evidence that clinics are part of the advice ecosystem that delivers access to justice and that their potential has not yet been reached. The Department of Justice is at a critical point in developing its strategic priorities for access to justice, and this research provides an insight into how university law clinics can be utilised in that process, both to support collaborations in service delivery and to contribute to a more informed understanding of the impact of the state's role in ensuring access to justice. The responsibility, however, is not solely that of the Department of Justice. Those Departments that provide funding to advice sector organisations contribute to the advice ecosystem, and changes in funding provision from these sources will inevitably upset the balance. More fundamentally, those Departments which have responsibility for preventing justiciable problems contribute to access to justice vulnerabilities. The focus must therefore shift from individual Departments to collective responsibility that focuses not merely on the delivery of legal advice but on the prevention of legal problems and the expansion of legal capability. The opportunity to take this challenge forward offers the potential to develop exciting and innovative methods of delivering access to justice, in which university law clinics can play a part.

