

Can digital replace personal in the delivery of legal aid?

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Summary

1. This paper addresses the key question of the extent to which the traditional model of 'face to face' legal services can be replaced by greater use of technology through the internet and sophisticated telephone systems for the poor and disadvantaged. On this major issue, it concludes that it is too early to tell. Technology is still advancing; resistance by potential users still uncertain and in the course of change; new provision still too raw; exemplar services and reliable research too few and too little. During the course of preparing this paper, Co-op Legal Services produced a website which might prove a game-changer in England and Wales. On the other, NHS Direct, which looked to have marvelous potential a year ago in the medical field with lessons for the law, has been gutted by ill-advised price competition and fragmentation: the failures of its successors are currently national news.
2. Some lessons can, however, be drawn. In articulating these, it is important to remember the question in the above paragraph. The issue is not whether a website or a phone line is better than no provision at all or the 'most that can be afforded'. The issue is whether, to what extent, for what kind of problems, which kinds of people can be helped by forms of digitally assisted delivery to the same extent as they could by conventional provision. Practitioners, in all jurisdictions, tend to argue that the digital possibilities are severely limited: clients, above all perhaps those who traditionally use legal aid services need lawyers that they can see, hear and touch. Futurists, like Richard Susskind, argue that such negativity is unjustified, given the extent of transformation of the rest of our lives and economy by new technology. Ministers and managers responsible for legal aid programmes lick their lips at the potential savings. What can we tell from the provision which has been developed so far?

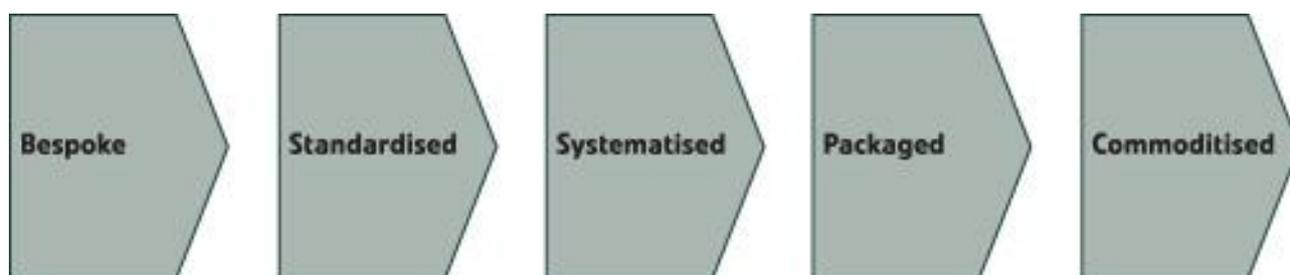
3. The paper approaches its subject circuitously through study of three inspiring examples of provision; a national study of the use of websites in England and Wales; a global comparison of six legal information websites; an analysis of experience around the world with hotlines. This reflects the jumble of developments at the current time.
4. For those with limited time, and to put the following descriptions into context, these are my ten top conclusions:
 - 4.1. Susskind's predictions of the transformative impact of new technology could be borne out by imaginative use of the internet in law for the poor. The capacity exists for legal services to morph directly into dispute resolution. If they did, that would provide a very good example of the impact of 'disruptive technology' that transforms services of one kind into another. The Dutch Rechtwijzer site shows the potential. It also raises enormous issues about the detail of the process.
 - 4.2. The potential exists also to transform the package of services delivered so that they are led by net-based advice and information supplemented by telephone services and, where appropriate, face to face services. Intuitively, this looks the most sensible model and the LawAssist and LawAccess packages in New South Wales provide a good example of how this might be done.
 - 4.3. Internet information needs to progress beyond the digital publication of leaflets in traditional form. To meet its full potential, it needs an 'app' based approach which transforms the way the information is delivered so that the user is taken through a logical 'decision tree' and the amount of information on the screen at any one time is limited. Much existing internet provision is likely to look very amateur in the near future.
 - 4.4. Delivery systems are only a means to an end. There is no escaping the fact that the best websites and hotlines have the best advice both in terms of its substantive content and practicality. This is absolutely crucial and is an expression of the 'gold in; gold out: rubbish in; rubbish out' principle.
 - 4.5. The development of systems of delivery which are expensive to set up even if relatively cheaper than face to face services to run poses problems for the state. At a constitutional level, it must decide if it accepts a duty to see that access to justice is provided to all in society, often with the family problems for women separating from their partners as one of the pressure points. If it does, are the ways in which services may be delivered through private providers? What is its role if there are public providers? How can there be stable funding?
 - 4.6. Private providers need to be encouraged to adopt a 'winnowing strategy in which they provide a large amount of assistance for free in return for picking up a relatively small number of paying customers.
 - 4.7. The potential greater engagement of the state directly into the delivery of services raises potential conflicts of interest to be acknowledged and explored further.
 - 4.8. A range of mechanisms can increase the effectiveness of telephone hotlines. These include ensuring, at a service level, that they can give full representation rather than just information and referral (that they are 'front end' not 'dead end'); at an organisational level, it involves ensuring that there are adequate call-back and follow up procedures including mechanisms such as written confirmation of advice and checks that advised action has been taken. In summary, the best hotlines replicated the best features of face to face services.
 - 4.9. There will be an irreducible group of clients and cases for which face to face provision remains the only effective form of delivery but the scope of this group is still to be explored. For example, the Ministry of Justice for England and Wales accepts that 'Delivering a greater proportion of advice by telephone may cause

access problems for some clients, for example due to literacy issues, language barriers, problems acting on advice given, or an inability to pick up on non-verbal cues’.

- 4.10. We need more independent research. This would be far too early a moment for legal aid administrations to make irrevocable decisions on future delivery but it is the moment to explore what can be done.

The future: a theory

5. A starting point for the theoretical element of this research is provided by the work of Richard Susskind. He has indefatigably argued that legal services are progressing through a five stage process which begins with ‘bespoke’, ie individually tailored, and ends with ‘commoditised’. He poses a five step ideal process: services begin as provided individually; the approach is then standardised; the next stage is that they are systemised through the mechanisms such as checklists and automatic document assembly controlled by lawyers; a further step comes when lawyers package their services for direct use by their clients eg devise a document assembly package for them to use without input from the lawyer.



6. The final stage in this evolution of services is commoditisation. Of this, Susskind says:
The most subtle and potentially controversial transition on the evolutionary path is from the fourth to the fifth and final step, to that of ‘commoditised’ legal service. The central idea here is that a legal service or offering is very readily available in the market, often from a variety of sources, and certainly at competitive prices. A legal commodity, as I define it (and I fully accept that others might use this term differently), is a package that is perceived as a commonplace, a raw material that can be sourced from one of various suppliers. Just as barrels of oil or sacks of sugar are regarded as basic and readily available offerings, then so too are legal commodities. As with a package, a commodity is a solution that is made available for direct use by the end-user, often on a DIY basis.¹
7. Susskind has seen off (with no little glee) a number of those who disputed that his thesis of the impact of new technology on their particular area of work with variants of the argument that ‘it might work elsewhere but not here’. In a way, however, one of the most interesting things about current developments is that there is much evidence of having reached packaged legal services in a systematised and standardised form but less, though perhaps some, of the emergence of commoditisation. This might just be that the market has only reached a particular level of development. However, it might also be that there are market advantages to clients and providers of packaged services

¹ R Susskind *From Bespoke to Commodity Legal* <http://www.legaltechnologyjournal.co.uk/content/view/21/>

that do not exist in commoditised ones. In such a case, the paradigm of the lawyer-client relationship would remain and Susskind's prediction of its transformation into that of, effectively, reader-publisher, would be forestalled. Certainly, this might be suggested by the current trajectory of bulk legal services in England and Wales

8. Susskind's major concern is with commercial developments in the private market. But, it would be odd if his insights were applicable only for commercial firms acting for private clients. If the legal market is in the process of transformation, it is only logical that all providers - publicly or privately funded - are susceptible to the same drive to respond to technological innovation. Rather unusually perhaps for a guru of the private market, Susskind has observations on the impact of new technology on access to justice. He proposes six 'building blocks' towards better access to justice and it may be worth listing them here: citizens must be empowered to deal with their legal affairs; a streamlined legal profession must embrace the possibilities of technology; there should be a healthy third sector for those whom Susskind says 'are in need of legal assistance [and who] want a kind, empathetic ear with only a light sprinkling of legal expertise' (likely to be a somewhat contentious proposition among the NGO advice sector); a new wave of imaginative, entrepreneurial providers; easily accessible primary sources; an enlightened set of government policies on public sector information. It would seem unlikely that adequate access to justice could be provided without state funding of some kind.

And the winners are ...

9. Five sites stood out in a trawl around the world. Three are discussed separately below: the Dutch Rechtwijzer.nl; New South Wales' LawAssist; NHS Direct and two as part of an analysis of UK sites those of Co-operative Legal Services and www.roadtrafficrepresentation.com. There may be other sites that should also be considered and suggestions would be welcome but these are chosen to illustrate the best of the new possibilities.
10. Looking at these sites, the following criteria stand out as important:
 - (1) **Design** is important. Too many websites are little more than digital leaflets: many legal advice websites are exactly that. Someone has put an existing leaflet on the web. They do not use the web's interactive power: they just have pages of information. The best sites use the fewest words to the best effect - particularly important if you are using a phone to access them;
 - (2) The best sites take you on a **journey**, replicating what happens when you book an airline ticket - as you list places, dates, and times options are refined out and you are given only the core information relevant to you. Too few websites use interactivity, decision trees and what might be called an 'app approach'.
 - (3) The best websites **link** to opportunities for assistance by other means. Websites are not a 'fire and forget' form of provision. The best websites are not 'stand alone' virtual resources.
 - (4) An advice website needs to work from the **perspective** of the person consulting it. Too many websites work from the advisers' perspective;
 - (5) To get near to replacing a need for face to face interaction, the information on the website needs to be **specific, relevant and useful**. This is very hard to judge and really needs an expert from inside the jurisdiction to make a qualitative assessment.

- (6) The very best websites raise the possibility of eliminating the advice from the dispute resolution process. They begin to **redefine the task** from giving advice to resolving the problem. This is where the Dutch site shows such promise.

Rechtwijzer.nl: first in class



11. The Dutch Legal Aid Board's legal advice site is known as Rechtwijzer², variously translated as 'conflict resolution guide'³ or 'signpost to justice'⁴. The best thing to do at this point is to get online; switch on google translator and work your way through it. It was first launched in 2007; has had added functionality since; and was comprehensively reworked in 2012. The original site has been the subject of some academic research⁵ and the current version is being researched by the University of Twente but the results will not be available until 2014. Thus, a note of caution should be added at the beginning of any assessment. We do not yet know how the current site will be rated by those using it in practice. To an outside observer, and disregarding the clunkiness of the Google translation required to translate its content into English, frankly, it appears just stunning. The Rechtwijzer has to be seen in its context where the Dutch Legal Board funds legal aid and mediation in individual cases, a national network of legal advice 'counters' (see below) as well as the Rechtwijzer site. In comparative terms, it is a well funded scheme costing just over 440m Euros in 2008. This is the Board's own description of the Rechtwijzer.

Raad voor Rechtsbijstand

Legal Aid

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

Apart from further development of this Dispute Roadmap, new

² www.Rechtwijzer.nl

³ eg J v Veenen *Online integrative negotiation tools for the Dutch Council for Legal Aid* source

⁴ <http://www.hiil.org/project/signpost-to-justice-guidance-for-citizens-facing-justiciable-problems>

⁵ eg Gramatikov, Utrecht?

applications will be added to the website too: the Divorce and Parenthood Plan and Mediation Online. These applications will soon be ready for use and are also meant to encourage users to solve legal conflicts themselves.

The Dispute Roadmap can be seen as a first help towards settling actual conflicts. The website of the Legal Services Counters, on the other hand, contains lots of documentation and is meant first and foremost to inform visitors on all sorts of legal matters. It is of a much more comprehensive nature than the Dispute Roadmap, which focuses on well-defined conflicts. That is why the Dispute Roadmap software sometimes refers visitors to one of the Counters.⁶

12. The current version (April 2013) of the Rechwijzer covers consumer and relationship breakup in depth with 'lite' versions on employment, tenancy and administrative law issues. If you are inspired to check out the site with the Google translation, the relationship breakdown section is translated somewhat brusquely as 'apart'. It is probably more idiomatic in the original Dutch. The way the site works is best shown by starting out on a 'journey', very consciously the way that the makers of the site saw its operation - as a dynamic process. Each page provides a small number of questions which must be answered before moving on to the next.
13. We can test how the site works with a mythical case. Assume that you are a 40 year old male in employment. You want to separate or divorce from my wife. You have two children in the early teens. You are led through the system as follows:
 - (1) the opening screen offers you a choice between saying that things are not going well; or my partner and I have decided to split; or we have already split but a new problem has occurred. Suppose you answer that you have decided to split up and register accordingly. The option on screen is actually phrased that you have decided to split up and need to arrange our affairs - signaling the process to come.
 - (2) You are now prompted to give details on marital status; children; marriage contracts; ownership of any company.
 - (3) The following screen begins to get interesting. You have to rate your level of educational attainment and that of your partner (we are assuming both graduates, both with paid jobs for this example); then you are then asked two questions 'If you compare yourself with your partner do I have more or less skills to find a good solution?' You answer 'more' - obviously . And 'If you compare yourself with your partner do you have more or less people in the area on whom you can rely?' Less - predictably.
 - (4) The next screen leads you to think about the options. For the first time, we encounter a block of text rather than short questions to elicit answers. The text explains that you have choices. In the English google translation, these are not entirely put with balance - the choice is phrased between mediation and 'messy divorce'. No doubt, the Dutch is slightly more nuanced. You then have to rate on a sliding scale how much you want a messy divorce or a 'consultation separation'. You, of course, want

⁶ p11, Legal Aid Board *Legal Aid in the Netherlands: a broad outline* Undated

the latter: you enter your assessment of your unreasonable partner who is all for the messiest divorce possible.

- (5) You are now asked if you have a good understanding of the implications of the divorce for your children, your partner, yourself and in relation to finance. You say yes to all but the last. You are led on again.
- (6) You are given the option to indicate if you have other worries. If you indicate that there is 'talk' of violence just to check what is offered, the system leads you out of the mediation stream: You get to a page which leads you to victim support and lawyer referral.
- (7) And so it goes on. Somewhere around this point, your patience with Google Translate will break but if you stay with it - which will involve a lot of fiddling around returning to the site - you will get encouraged to mediate; to draw up an agreed parenting plan; and given access to a financial calculator.

14. Having given a flavour of the site, it is worth some reflection because it is different from any other legal site that I have found. The only thing that comes close would be the English and Welsh NHS Direct site in relation to medicine but that is integrally linked to a central telephone advice service absent in the Dutch project (see later). Rechtwijzer was developed for the Dutch Legal Aid Board (and associated stakeholders such as the Bar) by a multi-disciplinary team in various institutes at Tilburg University. There is also an advisory group composed of interested stakeholders such as judges, mediators and lawyers. Key guidelines for its development were:

- (a) the site should identify and signpost the best dispute resolution assistance, given both the dispute itself and the parties to it;
- (b) the approach is based upon the principles of 'integrative negotiation' ie draws users to getting to 'yes' and building up common ground rather than identifying difference;
- (c) time and opportunity is deliberately given to encourage users to reflect upon their conflict;
- (d) no legal advice is offered as such though information is given at strategic times both as to process and likely result.⁷

15. The site has been established within the context of overall Dutch policy on the resolution of disputes. This is to encourage self-help and mediated settlement in preference to recourse to lawyers and the courts. As a result, some years ago, the Dutch Ministry of Justice wound up its Bureau voor Rechtshulp, effectively law centres, and replaced them with its nationwide network of juridische loketten or 'law counters' that offer information and self-help assistance rather than representation. In 2009, it also, in pursuance of the same aim, required parents who were splitting up to produce a divorce and parenting plan. In its turn, this approach exerts pressure on policy. Self-help and the operation of digital forms of resolution work better when judicial decisions are predictable; there are clear rules on such matters as maintenance; and minimal discretion. This can instantly raise the hackles of lawyers and judges with very clear ideas of the different interests of each party. However, the site works on clear principles behind its approach: it seeks:

- (a) to improve communication;
- (b) to encourage parties to explore and identify their interests if they are not clear about them;
- (c) to identify creative options;

⁷ van Veenen, see above

- (d) to identify, in the jargon of this area of conflict resolution, the best alternative to a negotiated agreement, commonly referred to as BATNA, with the aim of aligning the BATNA as closely as possible to a settlement;
- (e) to find objective criteria to assist the parties to make a decision on the way forward.⁸

TISCO [Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution]

TISCO's focus is on justice needs in civil law. Key to our research are the individuals and corporations who use, are involved with, or are influenced by the law and the civil justice system. Taking a bottom-up approach, TISCO members develop, integrate, and apply insights from negotiation theory, conflict research, dispute system design, (comparative) legal research, network theory, behavioural law, and law and economics in their research in order to connect and extend the body of knowledge on building, maintaining and (constructively) ending horizontal relationships in which people and businesses are involved.⁹

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

The first innovation is to enhance collaboration between parties through a communication structure that stimulates dialogue rather than argument. Directing parties' consultation towards a constructive dialogue probably adds to a problem-solving attitude, and leads to a positive negotiation atmosphere overall. The communication structure encourages parties to share interests while explaining their position to each other. For instance, in case of opposing interests, they are advised to make up a list of possible objective criteria that may help to reach an agreement in line with the a problem-solving or integrative approach to negotiation and conflict resolution ... Concretely, PICE enables parties to start a dialogue about an issue in various sections by means of the "Dialogue Button", which allows them to enter their view and invite the other party to respond ... When parties consult on the amount of the damages, PICE provides arithmetic support and overview by means of a "Damages Summary section". Parties can mark agreement and work arrangements, using the "Arrangement Button". Differences of opinion are also noted, as well as clear agreements on how to resolve these issues. This helps to focus on possible solutions instead of points of contention. All communication regarding a particular case is mediated by the PICE system, which in its capacity of electronic file of the process retains all data entered. The parties, including the victim, can use it to monitor progress of the claim handling procedure. A neutral party who may be called upon in case of a dispute can also use it to review the case.¹⁰ A graphic illustration of how this works is that both parties to, for example, a car accident can work together to provide a composite statement of facts.

17. Returning to the Rechtwijzer, the designers of the site are clear that it does not offer the user advice on what single professional to contact: it offers an overview of the

⁸ Van Veenen as above

⁹ University of Tilburg website

¹⁰ C van Zeeland, R Leenes, J van Veenen *Handling Personal Injury Claims PICE*

things that need to be done, who may do this, and at what cost. With this information the user herself can choose which of the professionals is best suited for her own (personal, financial) situation. This is sophisticated stuff. It facilitates the 'unbundling' of legal services in which a user may seek legal assistance with parts of a problem but retain ownership of its entirety rather than the usual model of passing it all over to a lawyer. In some matters, such as some consumer disputes, the information and goals elicited by proceeding through the site ends up with a letter to the other side setting out the dispute in a structured way and integrating an orientation to its solution:

The user sets a date by which she will contact the other or when she expects the other to contact her. She also makes clear what actions she will take if the dispute is not solved in this way. With this information (from the advice module) she affects the opponents [best alternative to a negotiated agreement], making it clear that serious alternatives are available.

18. Any conclusions on the effectiveness of the site have to be tentative until the research is in but the following emerged from discussion with those concerned with it at the Legal Aid Board and Tilburg University.¹¹ The initial reaction of lawyers is reported as hostility but, as time goes on, they are adapting and some direct their clients to the site in preparation for - or part of - taking instructions. Research on the first version identified that people liked to use it to organise themselves but they tended to use parts of it. In particular, at that time, the financial coverage was too difficult for many users. The team put some thought into elements such as reading age (decided to be school-leaver level) and to cutting back the text to the minimum (This is really noticeable). The content per page has been really pared back. Client surveys report high satisfaction ratings but, again, the full meaning of that awaits further research. It was hard to determine objectively how much usage was being made of the site but between the beginning of November and the beginning of March, 200 couples and 500 single people had begun the 'journey' through the package relating to the divorce and parenting plan (which can be accessed through the Rechtwijzer site or directly). Overall usage on the old site, prior to a 2012 revamp, was around 145,000 people in 2011. Plans have been drawn up to develop a 'digital assistant' whereby a user can effectively proceed to a 'side Bar' for an email exchange with an adviser - the identity of which is to be decided but might include or be the Juridisch loketten.
19. This is a highly sophisticated site that, intuitively, you would think would be effective. It does seem the most impressive that I have seen. Like NHS Direct in England and Wales, the construction of the site has benefited from the input of communication professionals and reader feedback as well as legal experts. Indeed, the combination is probably essential and shows up the weakness of many other sites. This is, of course, dependent on funding that allows such inputs.
20. The integral commitment of the site to integrative negotiation (ie biasing towards settlement) is philosophically acceptable (and, indeed, desirable) provided that sufficient exit routes are signposted eg where, in a matrimonial case, there is a threat of violence. There has, of course, to be great care in how this is done. We await the research to see whether the redirection of those suffering from domestic violence works as well as it appears it should. There is an issue to be logged about the potential effect - both good and bad - of a site which restructures a query and leads the questioner off in a direction which may not be transparent (see discussion below on the English Department of Work and Pensions site).

¹¹ C van Zeeland, J van Veenen, I von Burg, L Combrink-Kuiters (check) 8 March 2013

21. The establishment of the site maintains the government's acceptance of its constitutional role in providing justice to all its citizens - something that is not apparent in the cuts being made to English and Welsh legal aid where those with disputes eg about matrimonial matters are being largely abandoned to their own devices. There is the basis of a model here which could surely be developed in other jurisdictions, using the Dutch work as a template. The idea and the practice look exciting. We should probably await the research expected to be published in 2014 to be sure of how it works in practice. The development of the site probably opens possibilities of savings on Dutch legal aid if its success can be established.
22. There remain enormous questions. Will the Dutch buy their government's drive to make them more self-reliant and self-helping? Traditionally, those going through relationship breakdown, particularly the weaker party which tends to be the wives and women partners, have wanted face to face assistance. It may be that they find little solace in the website. At the moment, a lawyer has to review agreements relating to children and maintenance but, if this is removed as the Legal Aid Board wants, and in any event, will the site adequately protect the weaker side in relationship breakdown? Is there any danger that potential clients overall will split on income grounds? The poor get second rate mediation and the rich first class lawyers? Will the government and the judiciary play their part in simplifying the law to assist on-line dispute resolution and avoiding complexity?

LawAccess New South Wales: best system?



23. By contrast with the Rechtwijzer site, LawAccess New South Wales is a package of services designed with a core website providing a 'one stop shop' providing referral, legal information and self help assistance in New South Wales. It is a joint project of the NSW Ministry of Justice, the NSW Legal Aid Commission and legal profession with not for profit representation on its board. LawAccess was formally launched in 2002 and has been developed so that it now has three components:
- (a) a state-wide telephone call centre (with 28 full-time equivalent customer service staff and 12 legal officers with additional team leaders and administrative support: it operates five days a week from 9am to 5pm except for public holidays. In 2011/12, it assisted 195,165 and gave free legal advice to 19,542 customers);
 - (b) an information website (LawAccess online); and
 - (c) a website designed to help people to represent themselves (LawAssist).
24. Law Access NSW is available to all NSW residents but is particularly aimed at people who have difficulty accessing traditional community and government legal services such as people in regional and isolated areas and people with disabilities. Anyone can get initial information and referral. Customers are directed to relevant leaflets and booklets on their problem. Some callers can receive an initial session of telephone legal advice. Eligibility - at least in theory - is set out in a detailed Policy Standards

Manual. In practice, advice may be more freely available but, according to the manual, you should be a 'priority customer' (defined by reference to your characteristics, eg disability, or problem (eg, and intriguingly, anyone who 'intend[s] to commit an offence'). There are various exclusions including complexity of case; availability of alternative assistance and degree of available resources. The service is 'is particularly focused on helping people who live in regional, rural and remote areas; Aboriginal or Torres Strait Islanders; people who have a disability; people from culturally and linguistically diverse backgrounds; or those who are at risk of harm and have an urgent legal problem'.¹²

25. LawAccess Online offers 'plain language legal information including factsheets and guides to help you with your legal issues'. It groups these on its home page in two groups of categories (eg 'my job' or 'employment'). Click on one of these; identify your area of problem a bit more closely; and a further page will present a choice of leaflets produced by third parties, one or more of which may be identified as a 'best buy' most likely to meet your need. Thus, LawAccess Online is set up as an 'aggregator site' with its content as good as the leaflets and booklets of other organisations chosen by those responsible for it. A test of the housing disrepair advice of six sites around the world follows below. LawAccess certainly pointed to helpful advice material.

LawAssist

26. LawAssist contains information designed to help self-representation which is less dependent on third party sources. It covers six subjects in particular - debt, car accidents, apprehended violence orders, employment, fences and fines. Personally, I am an urban cyclist and, two years ago, was knocked off my bike by a white van making an illegal right turn. This happened in King's Cross, London but it could easily have been King's Cross, Sydney: white van owners are probably a global phenomenon. Anyway, this gives a personal edge to examining how LawAccess Online would counsel a NSW cyclist seeking some recompense. The opening page has rather a lot of writing on it but 'car accident' is very clearly one of the eight further boxes leading on to further information. The next page gives an overview of topics such as 'what to do after an accident' and links to the websites of other organisations. Click on 'what to do', There is a well laid-out page of information under various headings. This contains some coverage of next steps eg 'At the scene of an accident it is important to write down the names and contact details of any witnesses. It is also important to take photos of the place where the accident happened and any damage to your car or the other driver's car. This may help you if you need to claim the cost of repairs from the other driver or if the other driver makes a claim against you.'
27. At this point, I have a personal quibble because it seems to me that anyone in an accident should write down a full statement as soon as possible, preferably at the scene or as soon as they get somewhere with the opportunity. The site does advise on making a statement and it has a pretty comprehensive list of things to put in it but it does not draw attention to this as something to be done immediately. The site takes you from a page on 'What to do after an accident' to one entitled 'getting evidence' which refers to 'your notes' under 'evidence about fault' but you need to click again under the heading of 'evidence about fault' (not 'notes') to get details. The content is absolutely impeccable but its organisation may reflect more the logical process of a lawyer dealing with a claim than the order which occur to a layperson involved in an

¹² Department of Attorney General and Justice *Annual Report 2011-2*

accident. The point of such detail is not to carp but to draw out the nature of the site. It sets out to provide - and does - a clear statement of law and relevant practice. It does not aspire to the immediacy and interaction of a decision tree in the way that some of the road traffic 'apps' do or the question-focused and process-orientated approach of the Dutch Rechtwijzer site.

28. The combined approach of the call centre and two websites makes it a very good with solid information and comprehensive cover - probably the best in the world after the Dutch - at what it sets out to do. The service is certainly appreciated by its users. In 2011/12, it assisted 195,165 customers; provided 19,542 free legal advice sessions with 1,760 customers from culturally and linguistically diverse communities who were assisted by translation.¹³ Customer satisfaction ratings are high - generally well over 90 per cent (and 97 per cent would recommend it to someone else). Over 70 per cent reported that it increased their confidence in dealing with the problem. An independent study of legal aid in Australia found, however, that as a source of assistance it was beginning from a low base: 'Legal Aid was used in 4.9 per cent of cases, court services were used in 3.5 per cent of cases, and CLCs were used in 1.8 per cent of cases. LawAccess NSW was used in under one per cent of legal problems where advice was sought.'¹⁴ This research suggested that LawAccess needed greater promotion: public recognition of its existence was 'very low'.¹⁵
29. Intuitively, the LawAccess model, with its integration of a call centre, a general advice website and a specific self help site, seems well designed to meet its aim of being a first point of call, information and referral. In its integrated approach, it is a world leader. As yet, not even the Dutch have such good integration of different channels. Certainly, England and Wales looks fragmented in comparison. The LawAccess and LawAssist websites are clear and uncluttered. The next step would be to obtain the level of investment that would allow re-design based on less information per page and more progress through decision trees on the Dutch model. The LawAccess system was not designed to - and, accordingly, does not - threaten face to face legal provision: it was designed to make the best use of it and to generate appropriate referrals. Research within NSW identifies that LawAccess needs more publicity and 'brand recognition' even though it produces a creditably large range of promotional postcards, posters, fridge magnets and brochures. That is, in part, presumably a question of time.

NHS Direct: an inspiration and a warning?

30. By contrast to these two overseas provisions, let us look at a site within the UK but with a medical rather than legal focus. NHS Direct is a web and phone based medical information resource which covers England and Wales.¹⁶ It was established to 'provide easier and faster information for people about health, illness and the NHS so that they are better able to care for themselves and their families'.¹⁷ NHS Direct has been controversial. It was seen as a pet project of the Blair government: its extent has been radically cut back by the Coalition government so that, as from April 2013, its telephone service will no longer be national (though it retains some regional contracts). It has had a difficult, and particular, history: it faces an uncertain future and reduced funding. However, medicine is as obvious comparator for the law and, while avoiding too much

¹³ as above

¹⁴ Table 6.2, C.Coumarelos et al *Legal Australia-wide Survey Legal Need in New South Wales* p110

¹⁵ p132 as above, 'uncued' recognition of LawAccess was a 'very low 14.2 per cent'

¹⁶ see www.nhsdirect.nhs.uk

¹⁷ DHSS, 1997

detail, it may be worth looking at NHS Direct to see whether there are any lessons to be learnt. It would be surprising, frankly, if there were not.



31. NHS Direct went nationwide as a telephone service in 2000 after successful piloting. In December 1999, it launched its initial website, which has subsequently been upgraded. As a national service and before the impact of cuts in 2013, NHS Direct was getting significant use - about 1m hits a year on the website (and 11m users of its symptom checkers in 2011/12) and 400,000 telephone calls a month. The website now includes a number of features and sources of information including a series of self-help guides that are, perhaps, the most interesting feature for comparison.
32. The service has been bedeviled since its beginning by the politics of where it fits into the range of NHS services. It encountered rivalry from alternative sources of assistance - the ambulance service (which responds to 999 calls) and general practitioner out of hours services. In addition, hospitals were not always keen to see reductions in the numbers coming through their accident and emergency provision because of the potential impact of reduced 'footfall' on funding. Its director in early 2013, Nick Chapman, said: 'There are four barriers to developments like NHS Direct - professional conservatism, the incentives of paying other agencies by footfall, re-engineering information for a different medium [than print], and the patients who really want the service not having a voice which counts politically. A mother with a sick child really does not want to go to Accident and Emergency in the middle of the night'.
33. Recent funding cuts make the service less useful than it was. My dummy enquiry on mild arthritis in the knee led me twice to be told to consult a GP within 36 hours whereas an earlier dummy run had taken me through a full assessment (in which I failed by a couple of points out of 40 odd to qualify for NHS assistance and was effectively told to grin and bear it). If that scale is still available, I could not easily find it. So, the value of the site is more in its process than its content. The site has developed over time. Nick Chapman, who became chief executive four years ago in 2009, said: 'I inherited an "encyclopedia in the sky. We set about to capture very simply the response to our telephone calls. We integrated the site with [the telephone service]. We had to learn different skills. It was a paradigm shift.' His team went on to develop a mobile app: 'That was different from a computer screen. It needs to be much faster.'
34. The use of NHS Direct was researched quite thoroughly - at least in the early days. The former website reported on contradictory research evidence in relation to those using the site: 'In 2002, a population survey of over 15,000 people was conducted in the areas of Preston, Chorley, Newcastle, North Tyneside and Sheffield. The study showed that those from poorer socio-economic groups or with communication difficulties were less likely to have used NHS Direct than others ... These findings differed from those of an earlier study in South East London. It showed that calls to NHS Direct rise in areas of increasing deprivation, until at extreme levels of deprivation, they then decline ...' There seems little or no research of the use of the website though

research of the phone service suggests that people overwhelmingly followed advice and that referrals were correctly made.¹⁸

35. NHS Direct may well not survive in anything like its initial ambitious form. It faces significant enemies and it is inherently illogical to have so much out of hours (all hours) rival provision, all now fighting for funding. In this battle, was perhaps predictable that NHS Direct would become a casualty. To an outsider, the case for pulling together one provider under one roof looks overwhelming. There could have been a seamless service from consultation on the web to the arrival of the flashing blue light of an ambulance when required. But it was not to be. The service was regionalised; put out to contract; and is now underperforming to the extent that it has become a subject of national news coverage, with concerns that it will be avoided by potential users who will flood to the accident and emergency departments of hospitals instead.
36. The sabotaging of the service is a scandal because it had a number of really important characteristics. The transformation of knowledge through a series of decision trees that lead a layperson towards a diagnosis is a common element to medicine and law. It parallels the work done on the Dutch Rechtwijzer site. The integration of a website with a phone service was a common element with the NSW LawAccess programme and effective. But, it does show that central websites are perhaps more vulnerable to cuts than physical provision. NHS Direct's funds were reduced with considerable less public fuss than proposals to cut various hospital departments - some of which attracted considerable public opposition and political prominence.

The United Kingdom: a case study

37. As a contrast to the three studies above of specific projects within three jurisdictions, this section attempts to give a comprehensive analysis of the use of the internet in the provision of legal advice and information in one jurisdiction: England and Wales. This involves looking at websites produced by commercial organisations, the not for profit sector and government. Initially, however, there is the need for some degree of context.

¹⁸ A postal survey of callers who had contacted NHS Direct between June 2004 and January 2005 with symptoms of either abdominal pain or a cough and sore throat was conducted. Of the 268 callers who responded:

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

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

The changing face of legal aid

38. English legal aid is being rapidly transformed from a system that was basically a 'judicare' or a widespread private practitioner model to, effectively, a contracted public defender one where a limited number of providers, selected at least in criminal matters by price competition, deliver residual services. This is designed to deliver major cuts to cost of some £500m in an overall budget that has been around £2bn for the last decade or so. There is, thus, major change afoot among legal aid providers. As late as the 1980s, legal aid was so well distributed throughout solicitors' offices that about two-thirds received a payment of some kind in the year.¹⁹ At the same time, legal aid made up around a quarter of the income of the Bar.²⁰ Legal aid has provided, at least until recently, about a tenth of the income of solicitors (the other major group of lawyers). The cuts affect both remuneration and (in civil matters particularly) scope.
39. The effect of cuts of this magnitude is to drive the final nail in the coffin of the identity of interest between the government and the legal profession that has, despite professional protest, existed since the establishment of legal aid in the 1950s. The scheme was originally administered by the legal profession itself through the Law Society. Although lawyers have long complained of low remuneration rates, in fact, legal aid has provided a steady and not inconsiderable portion of the income of both branches of the legal profession and has encouraged a relatively broad specialist sector of both to grow up to deliver services in ways which reflect historic practices, such as the divided profession and the 'cottage style' delivery of services through small firms. The desire - and the perceived need - to hammer hard on costs means that a happy relationship between government and the legal profession is no longer possible. The government priority is to cut costs: the profession (and, indeed, their clients) must look after themselves. In this context, it is no surprise that the Ministry of Justice is exploring the use of telephone hotlines as an alternative to face to face services for reasons of cost. Over the last decade, when funding was more freely available, the Legal Services Commission encouraged the development of not for profit providers particularly to meet needs in 'social welfare' or 'poverty law' areas and, indeed, assisted in the funding of two legal advice websites discussed below.
40. The morale of legal aid's practitioners and supporters is, in these circumstances, unsurprisingly low. However, the times may be particularly propitious for experiment with new forms of delivery. First, there is the financial attractiveness of digital delivery over face to face services. Second, there is the cultural and political expectation of a comprehensive legal advice service that has received public funding for thirty years and only recently been dismantled (the major cuts to scope came into effect only in April 2013). Third, some of the cuts may not prove as 'clean' as hoped. In particular, an attempt has been made to retain services in some matrimonial cases (largely those where domestic violence is feared) and not others but this may, in practice, leave large

¹⁹ Law Society *Annual Statistical Report 1991*

²⁰ Bar Council Strategy Group *Strategies for the Future 1990*

numbers of potential litigants in desperate situations but unable to receive assistance. In other words, demand for legal advice may become all too apparent. Finally, the reduction of legal aid funding for conventional service may trigger a commercial response from providers towards new forms of provision for those able to afford a low level of cost.

The changing face of the legal profession

41. The English legal profession is in the course of radical transformation through the introduction of external regulation (through a Legal Services Board formally independent of the legal professions) and the approval of 'alternative business structures' to be licensed by the board. These will facilitate third party investment in, and ownership of, firms providing legal services. For low income practice, this has been demonised for some year by the use of the description of 'Tesco law' in homage to the UK's most successful supermarket. It was feared that Tesco's would provide outlets for legal services in its shops and, thus, wipe out local solicitors in the way that it has tended to wipe out other rival retail facilities. In the event, a rather more intriguing event took place. The Co-operative, a mutually owned business with 7 million members, was the first major commercial entrant into the legal services field. In 2011, Co-operative Legal Services (CLS) became the latest adjunct to a £13bn business that includes a strong High Street presence with businesses in food retailing, funeral services, finances (including the Co-op Bank) and other businesses. Still in start up mode, the Co-op is already impinging on the legal market. *Legal Futures* announced earlier in 2013²¹:

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

The **co-operative** legal services

42. CLS is just one manifestation of an innovative approach to legal services, the impact of which is discussed below. Another example is the creation of Quality Solicitors. This is a consortium of solicitors' firms with a consolidated marketing brand, funded by private equity. It represents, in a way, a last ditch defence of private practice in the face of new corporate entrants like Co-operative Legal Services. It has used its alleged £15m advertising budget in part for 'attack' ads on 'faceless' legal advisers (presumably like the Co-op) but it is yet to show much interest in giving free information and advice through its website though it does offer 'a same day response' to an email from the site and 'free over-the-phone advice'.

²¹ 21 March 2013

“QualitySolicitors gives us total peace of mind.”

Our promise is simple

With branches across the UK, all of our solicitors are local, approachable and professional. We offer a same-day response and free initial over-the-phone advice. We're also open six days a week, including Saturdays.²²

43. A further variant among new entrants is provided by firms like Epoch and US imports, LegalZoom (which has a link with Quality Solicitors but has yet apparently to start work) and RocketLawyer. These are, at least in their current format, very much based around document assembly software. Epoch pitches itself to other businesses (such as legal expenses insurers) to which it offers a document assembly service for their customers assisted by an in-house telephone service. So, for example, it would contract to provide a will drafting service to a legal insurance provider. RocketLawyer offers a free will-drafting service for simple matters to those consulting its website. This worked satisfactorily when I tried it: you were required to register to obtain a copy of the will.

Why Rocket Lawyer?

We can help you through the legal process, whether you just want to share legal documents with your family or form your own business. We can also put you in touch with lawyers for those more complicated matters.²³



44. It is important to note the speed of current developments. Co-op Legal Services only launched its website last autumn. RocketLawyer and LegalZoom have only just set up. There are likely to be further rapid developments. As it stands at the moment, there would seem to be seven identifiably different ways in which different organisations use the internet.

Internet based services type 1: Provision whose main function is to signpost low price, fixed cost services

45. There is nothing particularly new in the idea that poor people can be attracted to services that are cheap and transparently priced, certainly in fields other than law. This is the basis of a whole sector of the retail food trade. Deregulation of prices formerly fixed by the legal profession began the opening up of the legal services market. In

²² www.qualitysolicitors.com

²³ www.rocketlawyer.co.uk

England and Wales, as a consequence, there is a well-established and lively market in conveyancing which is boosted by competition from non-lawyers.

46. The impact of national brands and national (indeed, international) websites threatens to give a new edge to big 'discount' players with the capacity to transform the existing legal services market. We are just at the beginning of this process. The CLS website, for example, offers a number of packages for divorce. You are offered a managed or a DIY package and, in relation to the latter, three different prices and sets of service (as a petitioner) for a basic divorce (£118), with a check (£128) and with check and help (£298). The site gives a degree of general information as well. There are lots of exhortations to ring up a hotline number for advice. At a time when legal aid is being withdrawn from a range of matrimonial problems, this is strategic bid for high volume, low price work which will for some clients address the gap in legal aid provision.
47. The Co-op site is unique only in its association with a national non-legal brand, the clarity of its website and the transparency of its pricing (at least for certain services). Many other lawyers or legal organisations offer telephone hotlines or websites to offer packages of services. Quality Solicitors have, for example, a prominently displayed national hotline number though their approach is appears rather less flexible than the Co-op and with more of a bias to using solicitors in a conventional way. Divorce Q and As on the site, for example, begin with:

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

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

48. The Co-op stands, however, as an example of the use of a website and central telephone services to provide a general range of information about process aimed at attracting high volume, low cost cases. It is a good example, under Richard Susskind's paradigm, of the provider of packaged legal services. The end result is standardised, systemised but distinctly not commoditised. The ultimate relationship remains one of lawyer and client for anyone who hires Co-op Legal Services. It gives a certain amount of information away for free - for example, there is a 'breaking up checklist' but is basically designed to lead you to a series of fixed fee packages - of which there appear to be around 90.
49. Saga is a company concerned to provide services to the elderly. Its site is, in some ways, similar to the Co-op: it incorporates a legal section among holidays, insurance and other topics. This takes you to Saga Legal Solutions which promotes a legal insurance plan and various other packages for such matters as probate, wills and conveyancing.

Internet based services type 2: 'Winnowing' provision that offers legal advice and information to meet the needs of a wide range of people in order to attract clients for paying services

50. There are two types of site which go beyond what is available from the Co-op or Quality Solicitors and offer free legal advice through websites or hotlines. The first category can be illustrated by commercial websites that follow a 'winnowing' strategy. They offer free assistance designed to satisfy a range of people with relatively simple problems in order to attract those for whom they can act and from whom they can make money. This would represent the commoditised legal service heralded by Susskind. The second category are not for profit providers. They raise rather different issues.
51. A successful winnowing commercial service - whether based on a website, a hotline or even a physical consultation - depends on a cheaply provided 'loss leader' mass service with the pretty certain attraction of a smaller number of profitable cases as a result. A good place to look for such a combination is road traffic accidents. For poorer clients, these were once funded by legal aid but this was withdrawn in favour of 'no win, no fee' arrangements that significantly raised their profitability and cost. In any event, www.roadtrafficrepresentation.com provides a good example of a winnowing site. It specifically offers 'a new way' to get legal services.

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

52. I went through the automated process with a relatively mundane speeding problem and got the unwelcome news that I would be likely to get three penalty points and a rather horrifically high fine of around £1000. It worked automatically and easily. It is an example of a Susskind's commoditised service in an area of law which is susceptible to a fairly mechanistic approach. It does raise the issue of whether, if the individual service traditionally provided by legal aid is to be substantially withdrawn, more could be done to simplify the substantive applicable law. It also raises the question of whether a provider like the Co-op or Quality Solicitors might be interested in using a similar 'winnowing' methodology or whether their business model is fundamentally different.

Internet based service provision types 3: sites selling email advice

53. There are a number of straightforward sites that sell legal advice by email such as Justanswer.uk. This invites you to email a question; offer a price as a 'refundable good faith deposit' (this actually the price that you agree to pay if satisfied); get an answer; rate it; authorise payment for the advice and, hopefully, join a subscription plan. The site claims to run 'secret shoppers' to test its experts and to use a 'third party service' to check at least one of the claimed credentials of each expert using the site. Experts get between 25 and 50 per cent of the sum paid by customers. The legal site is part of a wider programme in more than 100 categories and including doctors, lawyers, mechanics and vets. Brain-picker.com is a very similar site. Indeed, this reports that it is run by a Duncan Lanser but if you click on his name for more details you actually get

the biography of Andy Kurzig, 'JustAnswer Founder and CEO' which suggests a link (and a mistake).

54. Rightsolicitor.co.uk is a solicitor-based version of the same idea . This is a subscription site with a free 14 day introductory offer. Solicitors pay a monthly subscription fee for referrals. The online advice provision is run by LegalCare, which is a subscription legal advice service. It has a whole programme of LegalCare 'associates' who make money from selling subscriptions and are wooed by a youtube video clip based around a plausible young man somewhat inexplicably drinking a pot of tea in Patisserie Valerie, an upmarket tea and coffee house.
55. Law on the Web is a similar sort of site, the content of which got panned by Giles Parker in an article in the *Guardian*.²⁴ This site is now owned by DAS UK, the legal expenses insurer, whose insurance packages it promotes. It also offers a wide range of free documents, such as 'living wills' which you can download for free.

Internet services type 4: Document assembly packages

56. Document assembly is a sensible use of online potential - it is discussed further below in relation to the US in particular. Rocketlawyer uses document assembly to give you a taster on a small range of documents such as wills and powers of attorney. The technology underlies other bulk providers - both direct to customers and provided for other businesses. For example, Epoq offers document assembly packages to be integrated within clients' existing websites. This allows, for example, wills to be produced through Epoq processes but branded as those of the client. Epoch has its own lawyers in the Midlands who can remotely deal with clients and help them through the process of document assembly.

Internet services type 5: Not for profit advice

57. England and Wales has had for many years a distinctive lay advice sector which has increasingly identified itself as containing a legal orientation. The origin of the national citizens advice movement lies in lay advice on wartime regulations during the Second World War but since the 1970s CAB have employed an increasing number of lawyers among the spine of full-time staff that support large numbers of volunteers. In addition to much face-to-face provision the CAB service runs a national website www.adviceguide.org.uk and is building up a national helpline service.

²⁴ 12 June 2012



58. An alternative national advice website is provided by the Advice Services Alliance, a grouping of non-CAB advice agencies, at www.advicenow.org.uk.
59. In addition, there are a number of other national advice websites, notably the housing charity Shelter (www.shelter.org.uk) and the national debt helpline (<http://www.nationaldebtline.co.uk>). A number of local providers also have websites that have a national usefulness. One of the effect of the cuts to scope introduced in April 2013 will be to reduce legal aid funding for the not for profit sector since many of its areas of specialisation have been removed.
60. These sites work slightly differently - though each site may have elements of each approach. The Advice Now site is essentially an 'aggregator' site, largely pointing the user to third party materials. The Advice Guide site is more centrally written. I assumed two particular cases to test the sites for the purpose of this description (a comparison of the performance of these sites and some overseas comparable sites is elsewhere). These were:
- (i) a father who wanted to know how much maintenance payments would be after a divorce for two children;
 - (ii) what to do after an road accident (I was particularly looking for practical advice about making a statement and getting witnesses).
61. In relation to the maintenance problem, the two major sites gave descriptive material (all accurate, well presented and, I thought, too long) and then took me to cmoptions.org. This provided what I was particularly looking for: a child maintenance calculator. Advicenow did not disclose that cmoptions.org (see below) is actually a site run by a government department. Nor is [cmoptions](http://cmoptions.org) itself particularly forthcoming about this: the information is given six paragraphs down the page on 'about us'. There is nothing wrong with the site: but, in principle, disclosure of its authorship would seem desirable. To be fair, Advicenow referred the reader to a range of other sources, including independent agencies like Resolution. Adviceguide gave a full explanation of how child maintenance is calculated (I have to say I was lost after two paragraphs) and again a reference to child maintenance options (cmoptions.org) without indicating that it was a government site.
62. In relation to the traffic accident, Adviceguide says: 'Witnesses should write down their evidence and keep their original notes, as it may be some time before any claims are settled or court proceedings are heard. Whatever witnesses may say, the people involved in the accident should make their own written accounts of what happened,

including making sketches and taking photographs as soon as possible and keeping their original notes.’ This is the correct advice but it comes at the bottom of the ninth headed paragraph. My criticism of this is that the information is provided too much from the adviser’s perspective and not the client’s. For example, up at the top of the item is a section entitled ‘What must a driver involved in a traffic accident do’. This is limited to the legal obligations in such a situation: not the practical ones. Advicenow simply takes the enquirer back to the Adviceguide website.

Internet provision type 6: On-line dispute resolution (ODR)

63. On-line dispute resolution is simply dispute resolution that happens over the web. There is little ODR focused on poor clients though there are a number of sites offering ODR over a wide field (and with varying definitions of what ODR is) for relatively small, commercial disputes with a value of less than £15,000. E-mediator.co.uk, offers ‘consensus, commercial mediation’ with named negotiators, many of whom are practising lawyers. It operates on the basis of a variable fixed fee for a package that includes preparation, one day of the mediator’s time, travel costs. This appears to be a fairly traditional mediation service with an on-line front end during which the parties communicate by email prior to the mediation.
64. A second set of online providers specifically advertise their ability to use teleconferencing. Helplink is an Ireland-based service which provides a variety of services online including counselling and mediation. This has fixed fee rates, quoted on its website, for personal and on-line sessions. The Mediation Room is a UK alternative (tagline - ‘we’ll see you out of court’). It has an accessible website that explains how it can provide an online mediation which makes use of the possibilities of private communication with the parties and then anonymous suggestions of solutions to encourage the parties to resolution. The Mediation Room is run by Graham Ross, a retired solicitor and trained mediator, who was once a founder of the online legal information service, Lawtel. The big daddy of the online resolution market is Modria, a spin off from the online resolution procedures set up by e-bay and Paypal and of which Graham Ross is the Vice President Europe. This is US based and clearly operated as the model for The Mediation Room (its equivalent is the Resolution Center).

Internet provision type 7: Government Advice Sites

65. The Department of Work and Pensions has set up the website referred to above at cmoptions.org. This contains a range of information referred to as an ‘app’ that includes ways of addressing making parenting plans and a set of videos designed to help people separating, the same sorts of issues as are covered by the Dutch Legal Aid Board’s *Rechtwijzer* site. The videos are professionally made and informative. They encourage - perfectly legitimately - parents to come to arrangements without the expense of using solicitors or the Child Maintenance Agency, a state agency that has just introduced charges for the pursuit of maintenance. Among the available resources is a maintenance calculator. In the light of cuts to legal aid in family cases, the DWP site will become even more of an important source of information.
66. The site has, however, given rise to criticism from single parents and some of their representative organisations. A blogging single parent reported:

Looking at a promo video for the app, I felt my hackles rising. It opened with footage of warring parents, all emotive stuff: dads sleeping on sofa or relegated

to granny's house, mums looking angry and waving their arms about during highly-charged mediation meetings. Then, presumably after a session pressing some buttons on their electronic device, order is restored: dad returns home (to a 'I know it's not forever' voiceover from a little girl), a mum opens the door smiling as she hands her child over for a trip out with her ex, and an estranged couple smile fondly at each other as they discuss stuff round a kitchen table ...

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

I don't think 'not knowing where to turn' is the real issue at all during separation – sure it might be for some people, but, as the excruciating film for the app shows, it is all about breakdown in communication. It is *entirely* about dad sleeping on the sofa (although in my case it was me who spent a year and a half without a bed) and it *is* about mum angrily waving her arms about. Because THAT is what a relationship break up brings with it, a breakdown in communication. Anger. Resentment. And, quite likely a heartbroken partner who does not want to leave the family home or accept what is happening to their family. And, conversely, a furious partner who can see no way out of the situation they are in. And from that heady mix comes conflict and rows.

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

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

So sorry, DWP. You rightly acknowledge that 300,000 families undergo separation every year in Britain. But I very much doubt any of them will want to be patronised by a computer programme offering them advice.²⁵

67. So, there is a point to bear in mind here, particularly in a jurisdiction where the largest cut in scope has been in relation to the removal of legal aid for family problems where there is no domestic violence. The internet is a cold friend and can be little substitute for a warm body. It is entirely legitimate for a government department to promote mediation as a way of dealing with difficulties but some people do not want to participate. It is a stereotype of this type of work that the better off former partner (usually the man) does not want to share (or even declare) their assets and actively resists being forced to do so. The emphasis on a non-conflictual approach can, in some circumstances, assist one ex-partner to evade their responsibilities and the other to miss out on their rights. This would get even more important if the current generation of apps mutate into dispute resolution mechanisms. Conflict, deviousness and

²⁵ <http://www.parentdish.co.uk/2012/12/07/government-launches-app-sorting-out-separation/>

obfuscation are inconvenient for administrative forms of resolution: they are also unavoidable.

Advice site comparison

68. The value of an internet site depends, of course, both on its technical competence and, supremely, on its content. To put it bluntly, a site is no good if it looks wonderful but has pretty useless information on it. This is a harder challenge than might be thought. To get a handle on the issue of content, it is worth briefly comparing a group of websites seeking to do the same thing in different countries. For this purpose, I have chosen six - three in the UK and the others in different countries - New Zealand, Australia and British Columbia in Canada. The starting premise is that all six will deliver competent information. But, the interesting question is how well they do it. In particular, how good are they at seeing a problem from the point of view of someone who has one - rather than someone who might advise upon it? And how much assistance will they give beyond giving the information? Will they give practical help in solving the problem with draft letters, emails or even links to on-line resolution of one kind or another? Finally and overall, are there any overall lessons that we can take?
69. We need to test the sites with a problem that has a roughly similar, and certainly comparable, shape in each jurisdiction. So, let us take housing disrepair. We are tenants suffering under a leaky roof. The landlord does not really want to know. What can we do? The answer is likely to be broadly similar in all four of the jurisdictions: the landlords are liable; you need to document your approach to them and may want precedents; you may want to consider specific forms of resolution for this type of problem; you are certainly going to ask if you can withhold the rent. The marking scheme is out of ten with points deducted as explained in the text.
70. The sites to be compared are New South Wales' LawAccess (www.lawaccess.nsw.gov.au); LawAccess New Zealand (www.lawaccess.govt.nz); the Legal Services Society of British Columbia (www.lss.bc.ca) and, from the UK, Shelter (www.england.shelter.org.uk/get_advice), Citizens Advice (www.adviceguide.org.uk) and AdviceNow (www.advicenow.org.uk).
71. LawAccess NSW is an aggregator site: it leads you on to material provided by others. The opening site is bright and approachable. In three clicks, you go through options listed as 'home', then 'tenancy' to a choice of two leaflets. The first is a factsheet from TenantsNSW. Here a problem seems to arise because the factsheet is headed the 'Residential Tenancies Act 2010'. It tells the reader that a tenant will have rights in relation to repair but lists them among a whole number of others. All the information is within the context of the Act, reasonable enough for an adviser but surely the wrong way round for a user. A tenant begins with their problem not the Act. When I consulted it, the site provided a better alternative in the leaflet listed second. This comes from the Fair Trading. It gives details of what you can do in urgent (which is specifically covered by legislation) and non-urgent cases. It also makes reference to the Consumer, Trading and Tenancy Tribunal to which you may apply for a disrepair order. A further click takes you through to the website of the tribunal. This, in turn, allows you to lodge an application on line.
72. I would subjective assess this as a 7.5/10 site. It loses two points from the maximum for not taking you through a decision tree ie a series of interactive options that lead you through to a result. It loses another for no precedents but it gets a maximum score

once you dodge the first factsheet offered and get moving with Fair Trading. It also gets a bonus of 0.5 for providing you a direct link to the relevant tribunal through which you can seek resolution of your problem.

73. LawAccess New Zealand is pretty similar to its New South Wales counterpart. Three clicks and you have passed through the opening portal of 'housing, homes and animals' through to information about repair. You take a bit of a circuitous route but, as in New South Wales, you can end up directly applying for mediation or to the relevant tribunal. I'd give this another 7.5/10 on the same reasoning as above.
74. Legal Services Society, British Columbia raises scoring issues because the actual advice and assistance given, reachable through the usual clicks, provides better information than the two Antipodean sites. However, this arises from the straightforward pasting onto the net of a digital copy of a booklet from the Tenant Resource and Advisory Centre. TRAC clearly know what they are doing and even give a specimen letter to the landlord. So, this gets 7/10. This represents the (not unworthy) triumph of content over form. There is not much use of digital potential here.
75. Of the UK sites, Advice Guide (UK) takes an acceptable number of clicks get you through to a straightforward script on the law. But the site makes no real use of digital possibilities. I would give it 7/10. Advice Now (UK) gets 6.5/10 with half a mark deducted for no original content. It gives nine references to the Shelter and one to the Advice Guide site. Nothing else: it is difficult to see what value is added on this topic. It could be argued that the Legal Services Society does just the same but the Canadians slide ahead because of the quality of the TRAC booklet. Shelter (UK) has the best site in terms of content - as you might expect from a national, specialist housing agency. For example, it covers disrepair in a number of situations. Where appropriate (for social housing), it links to relevant ombudsman sites. The pages give a clear link to a free phone service. There are downloadable precedents. So, I would give it a top mark of 8/10 with just the two marks lost for failing to use a decision tree approach which would show the user only the information and choices immediately available to them.
76. A comforting conclusion for advisers is that class will out. Shelter and BC's Tenant Resource and Advisory Centre have the most experience and it shows. On the other hand, no site used the sort of interactive approach which can be found in NHS Direct's 'Symptom Checker' where you progress up a decision tree with only one question before you at any time. A separate question, to be followed up, is the extent to which the value of a website can be leveraged by linked telephone services. So, some achievement, room for improvement. Anybody want to suggest any other contenders?

Access to the internet

77. An obvious barrier to the provision of on-line legal advice is digital access and the extent of the 'digital divide' excluding those from lower classes and of older age from the internet. The extent of digital acceptability will vary from country to country. However, the UK provides a good example to choose to examine this problem because considerable attention has been focused on this issue in the context of government plans to go 'digital by default'.
78. The UK government's assumption is that 82 per cent of transactions over government services can go on line, reflecting the percentage of the population which is online. Its

hope is that, by so doing, it can save around £1.8bn a year.²⁶ A recent study by the UK National Audit Office (NAO) provides the latest information on the extent of on-line coverage and on-line acceptance.²⁷ This found that, as would be expected, on-line access is skewed: 91 per cent of 15-64 year olds were online but only 51 per cent of those who were older; 91 per cent of socio-economic groups ABC1 were on line compared with only 74 per cent of categories C2DE; 85 per cent of those without a disability and 63 per cent who declared a disability. Those online seemed to be pretty ITC literate: 84 per cent had shopped and 72 per cent paid a bill. The NAO concluded: 'our findings suggest a high degree of capability among the majority of people online'.²⁸

79. An Oxford Internet Survey puts a further gloss on the figures.²⁹ There are, perhaps, three key additions to make. First, a class of 'next generation users' are emerging. They are defined by their use of mobile devices and multiple access to the internet through a range of devices. Around 44 per cent of internet users as a whole are such new generation users, around a third of the total population - a proportion that is sharply rising. The major impact of this for legal sites is the increasingly prevalence of the iphone and its equivalents, requiring - as NHS Direct has discovered, for example - a new approach to internet-based information that requires much less explanation on each page. Second, the survey underlined the fact that 'disability, such as health-related problems, remains a key source of digital exclusion'. On its figures, only 41 per cent of people with a disability used the internet as opposed to 78 per cent for the able-bodied (lower figures than the government found a year later). Third, the survey picked up the growing importance of social networks, probably not so relevant to legal advice as the first two findings.
80. Considerable controversy attends the decision of the UK government to move claims for universal credit online from April 2013 with a typical comment from a concerned nont for profit being put by Jacqui McCluskey, director of policy and communications at Homeless Link:
- The move to online applications and management for benefit claimants could lead to the exclusion of vulnerable people from receiving essential benefits that would otherwise prevent destitution. The majority of benefit recipients feel they need help or support to use online benefits. [Homeless services centre] St Mungo's recently found that many of their clients have issues around literacy, with 35 per cent requiring support to complete a form. Those who are sleeping rough or cannot access this support will be even further excluded.³⁰
81. The NAO report concluded that there was the danger of creating a 'them and us' culture and that the government needed to continue to provide assistance to those using government services who lacked the access or confidence to use digital provision.
82. In the context of digital delivery of legal advice, the research on the Dutch Rechwijzer site becomes of considerable interest. It will help us to determine the extent to which people are willing to use the internet as a prime source of legal advice at the present time. There will be a number of 'push' and 'pull' factors. As benefit applications and

²⁶ The Cabinet Office *Government Digital Strategy* November 2012

²⁷ National Audit Office *Putting users at the heart of government's digital services* 2013)

²⁸ para 3.9

²⁹ W H Dutton and G Blank *Next Generation Users: the internet in Britain* 2012

³⁰ <http://www.cipd.co.uk/pm/peoplemanagement/b/weblog/archive/2013/01/29/move-to-online-claims-for-jobseekers-allowance-causes-concern-2012-09.aspx>

other government transactions are transferred to the net, so there will be a build up of experience in using digital communication. Agencies, such as libraries and NGOs, are likely to respond to the need by providing greater acceptance for those unable to use the net themselves. In the context of law, there is the possibility of providing interlocking face to face services (such as the Dutch counters) or telephone advice lines (as in New South Wales' LawAccess programme). There will, however, always be an irreducible minimum (though currently unquantifiable) of potential users, which will no doubt vary over time and place, for whom a digital only channel of legal assistance will not be satisfactory.

Telephone Hotlines

83. Unlike the internet, telephone hotlines, certainly by themselves, do not really have any capacity to transform the delivery of legal services. The issue is empirical: to what extent will people prove able to communicate as easily over the phone as in person? Phone services can be, in Susskind's taxonomy, standardised and systemised. Epoch's operation would indicate that they can be packaged and sold as such. It is harder to see that they have the same potential as the internet to be commoditised or, at the extreme of development, to be transformative of the process - though you could imagine a telephone advice service that led you on to determination by an adjudicator or judge.
84. Telephone hotlines have become popular with legal aid providers as an apparently cheaper form of provision (though see the Legal Services Research Centre findings below). Assessing their value is made very difficult by the varying levels at which a telephone service can work - from 'full service representation' to referral only. Some of the major research from around the world studies are summarised below. The focus of this project is to look at the extent to which face to face consultation with lawyers can be replaced by contract through the phone only. It is notable that commercial services such as those provided by Epoch (quoted above) take the view that some transactions with some clients can be safely undertaken with phone contact only. It would be surprising if the same were not true for some clients seeking 'legal aid' type services.
85. When phones are supplemented by a capacity to fax or scan documents to the adviser, it may well be that there are few problems which cannot be resolved through contact via the telephone for clients able to handle this form of communication well. That seems to be the experience both of commercial and not for profit providers. The more difficult question is to identify which clients with what problems are not going to be able to take advantage of the phone. On this, we need research and some of it summarised below. We also need information on the best way to run a telephone service. We have some information on that as well.
86. An issue should be made about the available research. Much of it is descriptive rather than analytical. It also tends to rely on subjective judgements made by advisers or clients about whether the phone contact made 'a substantial difference' to solving the problem. A reply to such a question may depend too much on the expectation of the respondent and you could imagine responses that indicate a high rating on substantial difference assessed subjectively while objectively little difference was measurable. Some of the clearest findings come from the oldest research - the US hotlines study published in 2002.

US hotline survey

87. The US hotline study 2002 was one of the first in the field but has withstood the test of time in terms of its identification of some of the key issues. It conducted telephone interviews with a sample of hotline users on what strove to be a representative basis; got experienced lawyers to evaluate outcomes; and sought to use statistical analysis to identify variables. It found that:

- i. Recipients of hotline services were 'successful' in outcome terms in about half of all cases: the majority found hotlines helpful in any event. 'Nearly half (41 per cent) characterized the Hotline as "very helpful" and 28 percent as "somewhat helpful."' Two-thirds of clients credited the Hotline with helping them make better decisions, feel more confident about their abilities, and keep the problem from escalating.' User satisfaction ratings tended to be associated with outcomes, but not entirely. 'While 63 percent of clients with favorable outcomes gave the Hotline a "very favorable" rating versus only 19 percent of clients with unfavorable outcomes, a third (3 per cent) with unfavorable outcomes rated the Hotline as "somewhat helpful." A quarter of the clients who did not follow the Hotline's advice or did not prevail rated the Hotline as "very helpful." '
- ii. About a fifth of those recipients of advice who understood, but failed to act on, it were too intimidated or overwhelmed to attempt to act.
- iii. Success tends to increase with the degree of service given. Brief [full representation] services yielded the highest favorable outcome ratings, followed in order by coaching clients on how to deal with a private party; providing written legal information, and coaching clients on how to proceed pro se in court. Favorable assessments were still lower when clients were instructed on dealing with a government agency or were referred to another agency.
- vi. Clients who were referred to a private attorney had the worst outcomes and were the most dissatisfied. 'Of clients who were advised by Hotline workers to hire a private attorney, only 18 percent did so.'
- vii. Outcomes for housing and consumer cases were most likely to be rated favourably. Unfortunately, conclusions in family cases were hindered because most cases were left unresolved within the research period.
- viii. Hotlines worked best for those who were white; relatively better educated; and not separated from a spouse. They worked worst for those who were Spanish-speaking, Hispanic, had the lowest education and income levels, and those who were separated and lived apart from their spouse.
- ix. Issues that affected ability to make maximum use of hotlines included: 'a family disability or a serious health problem; serious transportation problems; depression or fear of an ex-partner or current household member; inflexible work, school, or daycare schedules; or problems reading or speaking English well enough to complete forms and other legal paperwork. While clients with disabilities fared no worse than the average, the other barriers listed above were associated with outcomes that were significantly less favorable.'
- x. Follow-up actions by the Hotline - such as a letter, other written material, a follow-up phone call from the Hotline, or help from someone other than the Hotline worker boosted the chances of callers experiencing favorable results.

88. The study made recommendations that have stood the test of time rather well. On the basis of these findings, the researchers recommended that hotlines should institute or improve follow-up procedures such as 'tickler' systems that flag cases for a callback to check on the client's progress. These are likely to have some of the following characteristics: the recommended action is one where clients are less likely to obtain a

favorable outcome: representing self in court; dealing with a government agency; obtaining legal assistance from another provider; the client falls into one of the demographic categories identified above that are less likely to obtain a favorable outcome; the client reports one of the barriers described above as associated with a reduced likelihood of obtaining a favorable outcome.

89. The research recommended that hotlines should develop - or increase - their capacity to provide brief services or institute a brief services unit. Brief services are more likely to result in successful outcomes than advice or referral services. In cases where it may be possible to resolve the client's problem with a letter, telephone call, or completion of a form or referral, it is likely to be a more effective use of resources for the Hotline or a related unit to perform the action than for the Hotline to advise the client how to do so. They should routinely provide written information to clients. The provision of written information, whether a generic pamphlet on an issue or a letter detailing the advice provided, increases the likelihood of a successful outcome. They should recognize that just telling a caller to obtain a private attorney is unlikely to result in a successful outcome. Most clients who are advised by the Hotline to retain a private attorney, particularly in divorce cases, will not be able to afford one willing to take their case. Hotlines should explore alternative services that are more likely to result in successful outcomes. They should be aware of the limitations of client satisfaction data and analyze the data they get in ways that maximize their utility. While user satisfaction is a legitimate and important indicator, it is not a perfect measure of Hotline effectiveness. Clients are frequently more generous in their evaluations of Hotlines than their personal situations would suggest, which may reflect the fact that some clients who do not get what they want feel empowered by the information they receive. Finally, hotlines should conduct random follow-up telephone interviews with clients. In order to more accurately assess performance, Hotlines would do well to institute random follow-up interviews to gauge the effectiveness of their services and to identify ways to improve them.

The UK LSRC 2012 study

90. The Legal Services Research Centre used Legal Services Commission data on telephone advice on housing. It took information on about 140,000 matters where about three quarters of the advice had been given face-to-face and about a quarter by telephone. Its headline result was the revelation that advice given by telephone was likely to take 14 minutes longer than if given face to face if you controlled for variables - contrary to the suggestion in some earlier studies. Thus, the researchers surmise that savings may be illusory if it was hoped that money could be saved by using the telephone. This bombshell for policy makers was the most significant finding of the research. The researchers underlined just how little we know about the comparison between the use of telephone and face to face advice: 'Overall, little reliable evidence appears to exist to support claims that telephone advice better caters to the needs of clients, enhances ease of access and/or delivers value for money.' The difficulty is that: 'much of our knowledge regarding how willing clients are to obtain advice via the telephone, the barriers that they may face in doing so, and their success in understanding and implementing the advice that they obtain, is informed only by a limited number of policy orientated service evaluations.'

91. The researchers were looking at cases in two categories - on the phone and face to face - but a major problem was that they had insufficient data fully to compare them. Outcomes were assessed by reference to whether there had been a 'substantial benefit' from the interaction by reference to various elements. This involved a

necessarily subjective assessment and the benefit varied according to case: 'telephone advice had far higher percentages enabling clients to plan or manage affairs, while face-to-face advice had a far greater percentage in the housed/re-housed or home retained category for cases involving homelessness or the threat of homelessness and the repairs category in particular for disrepair cases'.

92. A reasonable inference from this would seem to be that face to face advice tended to deliver more substantial results in more serious cases. And the researchers could trace this effect. They found that: 'The analysis ... does not tell a complete picture regarding outcome and mode of advice. The broad definition of outcome as substantive benefit or non- substantive benefit masks considerable differences by mode'. The answer appeared to be in the different way in which clients appreciated 'substantial benefit'. In other words, face to face advice did, indeed, seem better suited to more serious cases although telephone advice did help clients better to manage: 'clients with problems that required urgent advice or which had reached a point of crisis or involved an immediate threat to the client gravitated to face-to-face advice'.
93. An interesting finding was that face to face services were used (and apparently preferred) not only by those with an illness or a disability, which might have been predicted, but also by those under 18, which might not. The researchers found no evidence that those with mobility problems preferred telephone advice. They did find, as might be expected, that those with mental health problems appeared to prefer face to face advice. They surmised that: 'More generally, for vulnerable clients where the development of a personal relationship between the advisor and client may be crucial to the successful progress of a case, the telephone may be an inadequate substitute for face-to-face services.'

Wayne Moore

94. Wayne Moore's assessment of telephone hotlines derives from his role as a practitioner. He has actually run them and has done so in a particular context which was not mainline publicly funded services but as a member service for the American Association of Retired Persons (AARP). This gives him a distinct perspective - further particularised by the fact that he has worked in the US and, thus, uses the US as the paradigm for the delivery of publicly funded services. He is a believer in telephone hotlines and considers them as good as face to face provision except in certain circumstances. On the issue of where they are unsuitable, he follows the research undertaken in the public sector and agrees that there is a correlation between those who take no action on problems after phone advice with certain characteristics: low educational levels, failure to take action on prior legal problems, being a tenant, mental health problems, male, being younger, Asian or black, illness or disability or a carer. He believes that 'client intake and screening' is the most important element of delivery system.³¹
95. Moore clearly envisages a hotline service as involving contact between client and lawyer after the call ie not a 'dead end' service. His expectation is that clients are answered by an advocate who will take notes and 'often drafts a letter' confirming advice. He has some very practical recommendations: 'my experience has been that part-time staff is more productive' but require 'more active management and may affect

³¹ p34

quality'.³² He identifies the following as the quality measures required by a good system.

1. supervision with the supervisor reviewing notes;
2. availability of legal resource materials;
3. matching calls with areas of expertise;
4. listening in by supervisor;
5. asking client to repeat advice;
6. letter to client repeating advice;
7. 'The best quality control method but one that significantly increases costs is to place a follow up call to those advised to take some action';
8. Others include ongoing training, periodic meetings, access to experts, thorough initial training, creation of culture of support.

9. He suggests the following as very practical methods of delivering the highest quality services:

1. same day call back system not a call holding system;
2. limited automation eg a live person and not a tape to tell people to expect call back;
3. 'my personal opinion is that the use of experienced attorneys is the best practice' though experienced paralegals may be acceptable in limited areas;
4. intake workers should be able to give limited initial advice on first call;
5. there should be follow up letters;
6. follow up calls, 'almost essential for good quality control';
7. effective case notes;
8. adequate training;
9. availability of video conferencing facilities;
10. an effective procedure to deal with conflict cases and third party cases;
11. adequate procedures for document review where essential eg fax;
12. performance data on individual attorneys;
13. methods of managing bottlenecks among screeners;
14. the avoidance of poor practices - eg separating fact-gathering from advice-giving.

The Australian Innovation Study

96. The Australian Innovations study³³ has a section looking at two related hotlines - one for family law advice and the other for regional, rural and remote areas. The research included dummy calls to check quality and interviews. It is difficult to separate out the criticisms which are particular to these particular hotlines (eg which compared them with other legal aid telephone advice provision) and those which raised more general issues. One point may be general: the repeated use of hotlines by people searching for a different answer than the one they had before:

A couple of respondent providers ... said that the hotline was often used repeatedly by people who had "done the rounds of the legal services and just wanted confirmation about the path they had chosen", or who "continue to call in the hope that they will finally get the answer they've been unable to get anywhere else". One respondent provider said some people ring the hotline so many times that call centre operators begin to recognise their voices

³² p119

³³ Banks, Hunter and Griffith *Australian Innovation in Legal Services: balancing cost and client need* Griffith University, 2006

97. Uptake of the hotline services had been very low. Initial expectations were for around 350,000 calls a year: the actual total seemed even after five years to be around 40,000. Respondents pointed to the need for good promotion of the service. The raw statistics on caller satisfaction were high but the researchers had severe criticisms of how their dummy calls had been dealt with and this was shared by others:

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

98. These criticisms could be particular to these hotlines but they may also identify the frustration of clients where a hotline only gives limited information and not any attempt at a full service. The research called for better information to be available to the call centre staff and for better training. As one person reported:

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

Evaluation of family law services in British Columbia³⁴

99. This included an evaluation of a province wide hotline, Family LawLINE, within a range of other family law provision. Family LawLINE is a telephone advice service by lawyers for individuals around the province who do not qualify for and/or cannot access other services. Individuals access the service by calling the provincial call centre of the Legal Services Society of BC (LSS). Family LawLINE started in November 2010, following the closure of a more general LSS LawLINE service in April 2010.

100. The evaluation found that, as one might expect, clients tended to use telephone advice early in their case and then move onto other provision:

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

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

³⁴ Legal Services Society *Evaluation of the Family Law Services of the Legal Services Society: final report* Legal Services Society, 2012

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

102. In common with most other surveys, there was a high satisfaction rate among users (with 84 per cent of the sample reporting themselves as partly or completely satisfied with the service received). However, there was no way of factoring in their level of expectation or the quality of the outcome. In addition, the average client used more than one service so that the hotline advice was generally part of the service received. In satisfaction terms, use of hotline was rated better than the internet but worse than referral to a private lawyer or duty family counsel.

103. The principle findings were that:

- a. Clients rate services quite differently in terms of their helpfulness in getting them close to a resolution. The most valued services are ones that advocate for, or represent them.
- b. They use more than one service to resolve an issue; knowing where they have been can therefore be helpful.
- c. They frequently use a service more than once for the same issue and may have used Legal Aid services previously over a long period of time.
- d. They tend to re-use a higher level service if an issue opens up again, rather than a lower level one.
- e. A significant percentage of clients have major social, health, economic and other issues that can directly impact their family legal issue. Understanding these pressures and how they affect the legal problem may help service providers give advice that can and will be followed, and/or help them to make appropriate referrals to resources in or outside the legal system to resolve these other issues.

The US Senior Legal Hotlines 2011 Annual Report

104. This report is compiled by Elder Law of Michigan's Center for Elder Rights. It is annual summary of the work of a number of telephone hotlines aimed at the elderly (defined as a legal advice service by telephone to which professional rules apply). It reported on the work of 22 legal hotlines which helped 44,272 clients with 52,877 distinct cases on which it provides statistics. As in the BC and Australian reports, it is difficult to identify read-across lessons. The hotlines certainly appear effective in meeting the needs of low income elderly people (59 per cent of clients were under 150 per cent of the Federal Poverty Level); Seniors age 70 and older (50 per cent of clients); Women (68 per cent of clients), and Black/African-American seniors (24 per cent of clients). The group that were underserved were those who were Hispanic or Asian (3.6 per cent) where the report itself suggested 'that additional outreach efforts are still needed to increase helpline usage'. This may be an indicator of difficulties over language.

105. The report is available on the website of legalhotlines.org run by the Center for Elder Rights Advocacy. Also available on the site is a presentation by authors from legal service centres in Texas, Michigan and Carolina which includes a useful statement of the advantages and disadvantages of hotlines as a delivery model.³⁵ Advantages are: flexibility; potentially large volume; capable of assisting the homebound and disabled; potential coverage of large areas and help those without transport; linked to DIY approaches that people can find empowering; provide a good framework for pro bono or DIY assistance; flexible on location; well positioned to take advantage of technological advances; can accommodate volunteers and part-timers; and cost-effective. Among the disadvantages were the need for secure funding; may not be linked to full services which people need; some clients are unable to follow advice that they are given; limitations in not meeting the client; and (interestingly) may not be so attractive to lawyers so that there is difficulty in attracting candidates for posts; and the difficulty of follow up.

The England and Wales impact assessment (2012)³⁶

106. The government of England and Wales proposes to move from a largely face to face publicly funded legal advice scheme (although some telephone advice has hitherto been available through a community legal advice (CLA) telephone hotline) to a system of reduced availability for advice with much more provided by way of telephone hotlines. In the course of developing its policy, it has published various 'impact assessments' which make reference to research findings and relevant considerations. These are helpful in drawing out some of the issues raised by others and give an indication of how one Ministry of Justice looks at the relevant factors. The CLA helpline provided, for the last year available (2009/10), approximately 417,000 acts of assistance of which 127,000 related to the provision of specialist advice. This is within a context where, overall, 85 per cent of legal advice at the specialist level are provided face-to-face and only 15 per cent by phone. On average, cases dealt with through the helpline cost an estimated 50 per cent less than the equivalent face-to-face service. However, the difference in terms of client case requirements between the clients choosing to access Legal Help through the CLA helpline and face-to-face advisors is, as the Ministry accepts, 'currently unknown'.

107. The government proposal is that future clients with certain types of issues would initially be required to access civil legal advice services through the CLA helpline alone. This was intended to apply initially to community care, debt, Special Educational Needs and discrimination cases. For all other types of issues within the scope of legal aid the client will, at least initially, retain a choice. They could access civil legal advice through either the CLA helpline or through a face to face advisor. It is expected that the majority of eligible clients with cases that are required to access civil Legal Help through the CLA helpline would be required to make prior contact with, and be referred by, the CLA telephone operator service with some exceptions including: where the client needs emergency advice; where the client is a child; where the client is in detention; or where they have been assessed by the CLA helpline as requiring face- to-face advice in the previous 12 months and is seeking to resolve a linked problem from the same provider.

108. Face-to-face advice provision will be scaled back but will still be available where telephone advice would not be appropriate, for example where it is clear that the caller would not be able to give or understand instructions given through a telephone-based

³⁵ Pierce, Morris, Mandel *Legal Hotline Service Delivery Model to Meet Community Needs*, Undated

³⁶ annex D

service. As a result, the Impact Assessment accepts that ‘some clients may feel worse off in terms of perceived service quality if they prefer face-to-face contact to phone. Evidence on the drivers and barriers of channels shift, indicated that face to face channels may be preferred for the delivery of complex advice and sensitive information³⁷ Other groups may feel the same and these are likely to include ‘those with complex problems³⁸ as well as vulnerable people³⁹, older people⁴⁰ and those facing communications problems (such as English being a second language) may find it particularly difficult to switch away from face to face channels’. The assessment notes that awareness.⁴¹ There will be advantages, for example in greater flexibility and accessibility. However, the cost to customers of accessing the relevant information or advice may rise as they have to be phone charges though these might be mitigated by offering various call back services, or a ‘call-me-back’. The Impact Assessment accepts that ‘evidence on the drivers and barriers to “channel shift” suggests lack of access to a landline telephone can be a barrier to using helpline services.⁴² Access to a mobile phone did not appear to offset this barrier, particularly when services use non-geographic telephone numbers (e.g. numbers beginning 0800, 0845 and 0870), which are expensive to call from a mobile.⁴³

109. Research is supposedly ongoing on case outcomes to identify whether they are dependent on the channel used - though this is likely to be dependent on the potentially subjective assessments of ‘substantial benefit’ as discussed above. Initial findings ‘indicate that there are some differences across the current categories of law. In Housing law the proportion of clients reporting themselves as deriving ‘substantive benefit’ is similar for both face to face and telephone services. Clients are more likely to gain ‘substantive benefit’ from a face to face service in Debt, Welfare Benefits and to a lesser degree Employment law. However, clients that access the CLA telephone service for advice in Family and Education law are more likely to derive a substantive benefit from the outcome of their case.’ The Impact Assessment raises a number of possible explanations including: a different breakdown of matter type, higher proportion of clients referred on to a face-to-face provider e.g. where representation is required or the client requests is not counted as a substantive benefit and the current operator service does not conduct a merits test so a higher proportion of cases will be stopped on the advisor’s recommendation.

110. Finally, the Impact Assessment accepts that ‘Delivering a greater proportion of advice by telephone may cause access problems for some clients, for example due to

³⁷ IDEA (2008) *Information needs when making complex decisions*, London: IDEA

³⁸ 3 Hall, S., Pettigrew, N., Robins, A. and Sweetman, R. (2007) *The relationship between HM Revenue & Customs, its customers and the voluntary and community sector*, London: HMRC

³⁹ 4 Hasluck, C., Mhonda, J., Winter, E., Durrant, C., Thompson, M., Dobbs, L., and Christou, G. (2005) *The use and development of alternative service delivery channels in Jobcentre Plus: a review of recent evidence*, London: DWP

⁴⁰ 5 Barnard, H. and Pettigrew, N. (2003) *Delivering benefits and services for black and minority ethnic older people*, London: DWP; Coleman, N., Jeeawody, F. and Wapshott, J. (2002) *Electronic government at the Department for Work and Pensions - Attitudes to electronic methods of conducting benefit business*, London: DWP; Collinge, A., Gray, S. and Hall, N. (2003) *The Pensions Service's Interactive Digital Television Pilot: A Qualitative Evaluation*, London: DWP; Howat, N., Norden, O and Garnett, E. (2008) *The Pension Service Customer Survey 2007*, London: DWP and Kelly, G., Williams, B., Howat, N., Kay, S. and Scheer, R. (2004) *The Pension Service Customer Survey 2003*, London: DWP

⁴¹ Hasluck, et al. (2005). (cited above)

⁴² Hasluck et. al. (2005), cited above

⁴³ Duffy, D., Roberts, S. and Stafford, B. (2010) *Accessing Jobcentre Plus Customer Services: a qualitative study*, London: DWP; Coulter, A., Sinclair, P., Muscat, R. Joyce, L. (2009) *Research to explore tax credits claimants' experiences of the Assisted Claims pilots: Levels 2 and 3 summary report*, London: HMRC; Ipsos MORI (2008) *Tax Credits and Household Break-ups*, London: HMRC; Ipsos MORI (2009) *HMRC Reporting Births Project*, London: HMRC; Nunn, A., Falton, F. and Jassi, S. (2009) *A qualitative study of satisfaction and dissatisfaction with Jobcentre Plus; an exploration of issues identified in the 2007 Customer Satisfaction Survey with a particular focus on those most likely to be dissatisfied*, London: DWP

literacy issues, language barriers, problems acting on advice given, or an inability to pick up on non-verbal cues’.

Telephone hotlines: conclusions

111. The Impact Assessment statement above provides a pretty good summary of the drawbacks of phone delivery and is close to the findings a decade again of the US study. Wayne Moore’s recommendations on how to maximise the effectiveness of phone provision seem likely to be correct. Such things as written confirmation of advice add, however, to cost and, if regarded as critical to effective delivery, are likely to prove hard to obtain where the prime concern is cost rather than effectiveness.

Next steps

112. This paper has been produced to precipitate debate at the ILAG conference in June 2013. It will be rewritten in the autumn. There are three questions for readers to bear in mind to which answers would be really helpful:

- i. Is the paper technically accurate in its descriptions of schemes and research?**
- ii. Is there other experience that should be considered?**
- iii. Are the arguments right?**

f.

Conclusions

This is where debate is very much welcomed.

In looking at the future, Susskind makes repeated use of a saying, allegedly coming from an ice hockey legend, to the effect that you have to look where the puck is going not where it is. This is likely to be particularly true at a time of rapid change. My conclusions from the provision analysed above are:

1. We are the beginning of active use of the web and the Rechwijzer site gives an indication of where we are going - away from digital leaflets and towards an 'app' type approach which is focused on the viewpoint of the person consulting the website and not the expert, technical or substantive.
2. Form remains form and substance remains substance. The best websites have the best information written by the best practitioners. This is the gold in-gold out, rubbish in - rubbish out principle.
3. Advice provision on the web could morph into dispute resolution, thereby demonstrating the capacity of the web to be a 'disruptive technology' that threatens existing categories of thought and provision.
4. For some people with some problems, the net is not an adequate resource - though we should perhaps be reluctant to make this any starting position. Providers should certainly be encouraged to try to prove it false.
5. Already, we can see an alternative structuring of an ideal legal aid scheme in which the web plays a leading part, supplemented first by telephone and then by face to face provision - the model followed in New South Wales.
6. The transparency and the universality of the web offers the prospective of the transformation of private legal practice at the hands of large, well-backed providers.
7. Private practitioners should be encouraged to use a 'winnowing' strategy in which they give a lot of assistance for free on the net in return for a greater chance of picking up profitable clients.
8. New forms of delivery provide a challenge for the not for profit sector because of the high initial investment. However, its great advantage is that it has the knowledge, independence and commitment to provide exemplary content.
9. The role of state agencies in the provision of advice can be problematic where rights and policies are in conflict.
10. And for telephone hotlines, the following points just for them:
 - a. Hotlines vary and are of very different types which cannot really be measured against each other. Material differences include: function (Hotlines are organised on a spectrum from 'front end' to 'dead end' ie whether they are seen as a gateway to other services or whether they are the service itself); integration (Some telephone only services are, nevertheless, integrated with full or partial further representation or advice even if the client maintains contact through the telephone gateway. Others give only a 'one shot' answer on the telephone); level. (Some services offer only referral: others hold themselves out as dispute solvers.); follow up. (Some services follow up callers to increase the likelihood that advice is taken and, thereby, place emphasis on whether the client's problem has been solved. Others see their role as giving advice and do not

check to see if it is followed.); researched information and monitoring. (Some services strive to measure outcomes; some few seek to measure hotline effectiveness against other methods of delivery; most measure just outputs. In any event, it is genuinely difficult to measure the relative effectiveness of different types of assistance because of identifying similar types of problem against which comparison can be made.); and norganisation. (There are various ways in which a hotline may be organised - varying, at one extreme, to a (literally) disembodied machine to various kinds of 'warm bodies'. This is discussed below. Particular attention should be paid to the lessons of hotlines set up as a service for members of an organisation who might see themselves as paying for and therefore have greater ownership and expectation (such as the members of the American Association of Retired Persons).)

- b. Most clients, but not all, rate hotlines as helpful. This does not, however, necessarily correlate with usefulness.
- c. The benefit of the hotline expands with the depth of services offered. The best results are obtained when the hotline is the 'front end' of a system that can extend through assistance to full representation.
- d. Follow up letters confirming advice and later contact to check on action increase effectiveness.
- e. Hotlines work best for better educated, more settled clients and worst for those who have complex problems, communication difficulties, mental problems or are otherwise vulnerable or lead unsettled lives.
- f. Telephone advice may take longer than oral advice for the same result.
- g. Clients tend to prefer face to face services. Some may not follow telephone advice that is given to them.
- h. A good hotline is likely to have certain characteristics eg good supervision and management, good technique (eg asking client to repeat advice), follow up written information, follow up calls, effective call back system and technology, ability to review documentation, 'warm body' advisers capable of advising on the resolution of smaller problems, adequate training of advisers and effective ways of dealing with conflicts between clients.
- i. To obtain good coverage a hotline must be promoted.
- j. Take up may be unpredictable - either lower than expected due to barriers or overwhelming as new demand is identified or users become repeat callers.

The test

- 1.
- 113.
- 114.
- 115.