



# Impacting Justice: The contribution of clinical legal education and law school clinics to pro bono and access to justice in England and Wales

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## 1. Introduction

The access to justice landscape in England and Wales has seen a significant shift in recent years, as state retrenchment from the comprehensive *judicare* approach to legal aid, associated policy reforms, technology and other developments in the justice sector have displaced traditional models. The growth and development of law school based pro bono legal advice clinics, driven by a proactive clinical legal education agenda, has become a notable feature of the modern law school in England and Wales. However there is a need to assess the scale and value of this important contribution to access to justice, and to research this in a wider policy and practice context for legal support needs.

This paper reviews the evidence and data around the scale and impact of this pro bono contribution and asks critical questions about the relationship between clinical legal education and access to justice within this jurisdiction. We argue that law schools are making an important and valuable contribution – clinics are more than a student learning experience, they can be the gateway to and vanguards of what Corey Stoughton has called “social justice movement lawyering.”<sup>1</sup> Nevertheless, expectations need to be managed, and clarity asserted that pro bono clinics cannot, and should not, replicate or replace a system of publicly funded legal support provision. Their contribution should instead be seen on a “spectrum” of available legal support.<sup>2</sup>

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<sup>1</sup> Speech to LawWorks Clinics Conference 2019

<sup>2</sup> Low Commission 2015 *Tackling the Advice Deficit: A strategy for access to advice and legal support on social welfare law in England and Wales*

In writing this paper, we draw heavily on LawWorks' own data. LawWorks supports a network of 261 pro bono legal advice clinics across England and Wales, 40% of which are based at, or organised by, law schools (the remainder are run by advice charities/non-profit NGOs like Citizens Advice and some are run by commercial law firms). Every year LawWorks collects data from those clinics, and is able to report in some detail on clinic activity across all sectors<sup>3</sup>. As well as publishing annual clinics reports, LawWorks have also undertaken occasional surveys of law schools' pro bono activity. LawWorks has a long history of working with law schools to help develop and support clinics, a particular emphasis of our work is linking law school clinics with the wider advice sector and charity partners, and solicitors in private practice and in house environments doing pro work.

## 2. Context

Every jurisdiction has its own unique context, legal education framework and distinct public policy approaches towards access to justice. In England and Wales developments in regulatory and legal education reform, combined with significant retrenchment of state funded legal aid and support, have shaped the context in which law school clinics operate. Since 2013 when the Legal Aid, Sentencing and Punishment of Offenders Act took effect, legal aid has no longer been available for a significant range of civil, family and social welfare law matters, and there has been a reduction of legal aid casework volumes for non-criminal matters of around 75%.<sup>4</sup> Whilst there is no single authoritative study of unmet demand for legal advice, multiple legal needs studies over the past decade suggest that unmet demand remains stubbornly high. The last England and Wales *Civil and Social Justice Panel Survey* showed that around a third of the population experience legal problems, but only 10 percent access legal advice or support.<sup>5</sup> We explore more recent data on unmet demand in section 7 of this paper below.

However, unmet demand and the decimation of legal aid services should not be regarded as primary factors driving clinic development in law schools, but rather as part of the context in which they now operate. Graduate employability, market expectations, education outcomes and the practical skills focus of clinical legal education, as well as Universities' wider CSR and

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<sup>3</sup> <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/clinic-resources/monitoring-and-impact>

<sup>4</sup> Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777038/post-implementation-review-of-part-1-of-laspo.pdf) Ministry of Justice, 2019

<sup>5</sup> *The Civil and Social Justice Panel Survey* (CSJPS) is a nationally representative survey of people's experience of, and response to, problems with a legal dimension and involved face to-face interviews with 5,113 respondents aged 16 and over in their own homes across two waves, the first in 2010, the second in 2012.

community engagement agendas, may be more significant factors in driving clinic development. The increasing role that technology is playing in the justice system, from online courts to LegalTech, is also impacting the debate about the future of clinical legal education, and the clinics environment.

Much of the research and practice literature though about law schools clinics, since the early days, locates their activity within a social justice paradigm, rather than a purely educational paradigm.<sup>6</sup> The social justice impetus for clinics was powerfully re-stated by Liberty's Advocacy Director Corey Stoughton in her keynote speech to LawWorks 2019 Clinics Conference, referring to "movement lawyering" and that whilst "law is not inherently a tool for social justice" clinics can help wield it as an instrument of change.<sup>7</sup> But equally much of the academic literature about the English Law School from Twining<sup>8</sup> to Birks<sup>9</sup>, has discussed clinical legal education by analogy with medical schools and patient-centred learning.

However the context is changing in ways that bridge the 'clinical' and 'social' contexts – for example there is real interest both amongst policymakers, service designers and practitioners to focus pro bono activity within healthcare settings, and also to use tech tools to reach those who don't traditionally access legal services. Citing University College London's (UCL) integrated Legal Advice Clinic (iLAC) at the Guttman Health and Wellbeing Centre in Newham, the Government's "Legal Support Action Plan" is supportive of the "various initiatives underway across the country to creatively deliver legal support alongside other services to help people with legal problems. Co-located legal support services may help people with multiple, linked, or difficult to diagnose legal problems."<sup>10</sup> Examples of other law school clinics operating in healthcare settings include Swansea University Law Clinic which runs an outreach at Maggie's Cancer Centre, Swansea, Singleton Hospital, Staffordshire University Legal Advice Clinic drop-in at Shrewsbury Hospital, and the University of Liverpool Law Clinic at Alder Hey Hospital. Examples of tech projects in law school clinics are too numerous to include in this paper and were the subject of a conference earlier this year,<sup>11</sup> but would be useful separate study.

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<sup>6</sup> G Grossman, 'Clinical Legal Education: History and Diagnosis' (1974) 26 *J Leg Ed* 162 at 174. J Giddings, 'Contemplating the Future of Clinical Legal Education' (2008) 17 *Griffith L Rev* 1 at 2. R Wilson, 'Training for Justice: the Global Reach of Clinical Legal Education' (2004) 22 *Penn St Int'l L Rev* 421 at 421-422; J Giddings, R Burridge, S Gavigan, C Klein, 'The First Wave of Modern Clinical Legal Education: The United States, Britain, Canada and Australia' in *The Global Clinical Movement: Educating Lawyers for Social Justice* (F Bloch ed, OUP, 2011) Ch 1.

<sup>7</sup> Speech to LawWorks Clinics Conference 2019

<sup>8</sup> William Twining *Blackstone's Tower: The English Law School: Discipline of Law* (1994) Blackwells

<sup>9</sup> Peter Birks (ed), *Pressing Problems in the Law, Volume 2: What are Law Schools For?*, (OUP, 1996: 2003 reprint).

<sup>10</sup> <https://www.gov.uk/government/publications/legal-support-action-plan>

<sup>11</sup> <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/cleo-legaltech-workshop>

### 3. Growth and profile of clinics

Innovation is the hallmarks of the clinics movement. Clinics themselves are not new, they have been championed across generations by ‘realist’ educators and jurists in law schools from Jerome Frank to Edgar Cahn in the US,<sup>12</sup> to Russell, Sackville and Hanks in Australia,<sup>13</sup> to Brayne and Grimes in the UK.<sup>14</sup> In the UK the first Law Clinic was launched in 1970, and it is now twenty years since the College of Law announced that it planned to establish a nationwide network of free legal advice clinics. The growth in clinic activity has been steady and incremental as LawWorks’ periodic surveys of Law Schools in England and Wales demonstrate.

- In 2000 and 2003, 41 per cent of responding Law Schools surveyed reported pro bono activity, with a further 20 per cent indicating interest in or plans to develop pro bono.
- In 2005, 53 per cent of responding law schools are involved in pro bono activity, with a further 12 per cent expressing interest<sup>15</sup>
- In 2010 75 per cent of responding law schools were carrying out pro bono work in some capacity.
- In 2014, 96 per cent of responding law indicated that they were carried out pro bono work<sup>16</sup>

These surveys have also demonstrated that increasingly clinic work is assessed as part of law schools’ curricula. Whilst only 10 percent of law schools in 2010 assessed student performance in clinics, by 2015 this total had increased to 25 per cent.<sup>17</sup> Currently there are 118 law school clinics registered with the LawWorks network. LawWorks’ data over March 2017 – April 2018 reporting periods showed that there were 4,632 students volunteering over the year, delivering over 200,000 volunteering hours.<sup>18</sup> Students participate in clinics in many ways beyond the direct provision of advice, for example: acting as a scribe, undertaking initial triage or intake, involvement in casework support and research, and assisting with co-ordination, reception and administrative

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<sup>12</sup> J Frank, ‘Why Not a Clinical Law School?’ (1933) 81 *U Pa L Rev* 907 at 908 Edgar Cahn and Christine Gray ‘Clinical legal education: where next? clients as co-producers of system change’ *NYU Clinical Law Review* Vol.24/No.2 Spring 2018

<sup>13</sup> “Teaching Social Justice in Clinics.” *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School*, by Adrian Evans et al., ANU Press, Acton ACT, Australia, 2017, pp. 97–122. *JSTOR*, [www.jstor.org/stable/j.ctt1q1crv4.10](http://www.jstor.org/stable/j.ctt1q1crv4.10)

<sup>14</sup> Duncan and Grimes, *Clinical Legal Education: Active Learning in Your Law School* Blackstone Press 1998 Grimes and Hamilton: Clinical approach in Pro Bono : good enough? *Solicitors Journal Justice gap series*, Vol. 55, 11.2010. Brayne, H (2000) “A Case for Getting Law School Students Engaged in the Real Thing – The Challenge to the Saber Tooth Curriculum” *34 International Journal of Legal Education* 17.

In: *Solicitors Journal Justice gap series*, Vol. 55, 11.2010.

<sup>15</sup> [www.probonogroup.org.uk/lawworks/docs/Student%20report%20Final.pdf](http://www.probonogroup.org.uk/lawworks/docs/Student%20report%20Final.pdf)

<sup>16</sup> <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-law-school-pro-bono-and-clinics-report-2014>

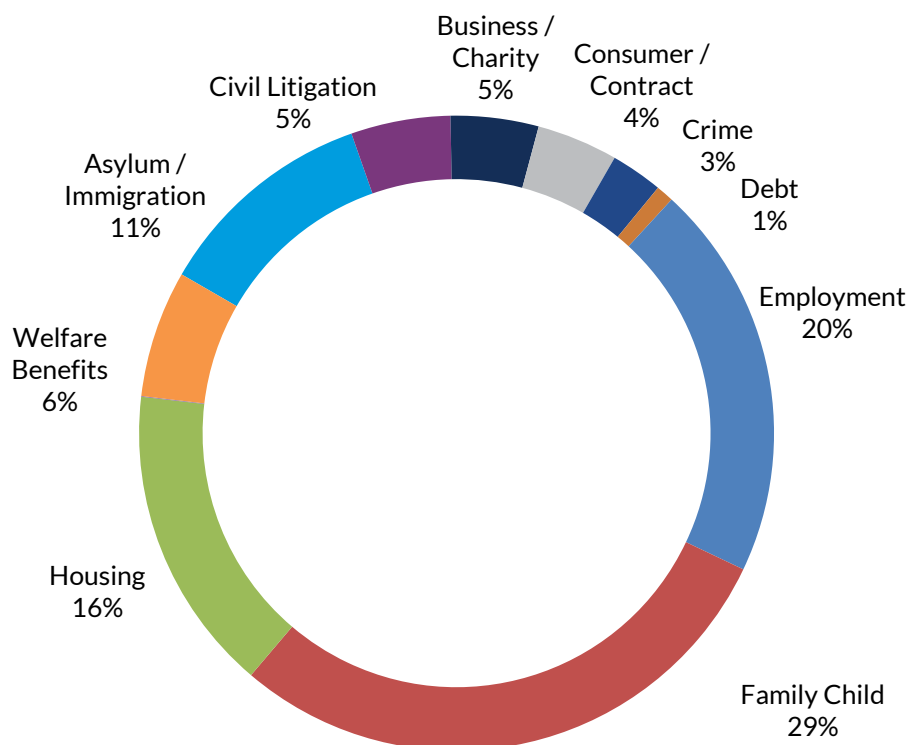
<sup>17</sup> *Ibid*

<sup>18</sup> <https://www.lawworks.org.uk/about-us/news/lawworks-clinics-network-report-year-march-2018>

duties/tasks, or working on projects with a wider public legal education (PLE), policy or law reform focus. Law school clinic services tend to focus on information and initial advice including form-filling and preparing written advice letters. 75 percent of law school clinics offer this level of service, whilst another 25 per cent also provide more end to end casework and/or representation services.

## 4. What clinics deliver

Across the 12 months period (March 2017 – April 2018) law school clinics received 19,776 enquiries, representing a third of all clinic enquiries across the LawWorks Clinics network. A common feature of law school clinics is that in many cases the services will either be closed, or operating on a reduced basis, over the summer period. Therefore nearly two-thirds of the advice given by law school clinics was given during the autumn/winter period compared with spring/summer. 46 per cent of clients were provided with advice, whilst 37 per cent of clients were provided with assisted information or signposted elsewhere, whilst another 17 percent were not able to access support at the clinics. These figures differ from the national trends for all clinics, but may in part reflect seasonal opening hours and that law school clinics may be less able to deal with complex and specialist enquiries or follow through with end to end services; therefore a high proportion have to be signposted elsewhere. Family law issues made up the highest proportion of enquiries, followed by employment law.



## 5. Measuring the justice impact of clinics

Most studies and reports on the work of clinics have tended to focus on inputs and outputs, rather than the outcomes for clients. LawWorks have been running an outcomes monitoring project over the last two years which has given us a representative sample of client outcomes through telephone feedback.<sup>19</sup> The project covered a range of different clinic types resulting in 209 completed client interviews, 41 of whom were clients of law school clinics. The interviews took place six to twelve weeks from visiting the clinic, and explored client experiences in terms of legal outcomes, capability outcomes, and health and wellbeing outcomes. A full summary of the outcome data can be found in LawWorks Clinics report.<sup>20</sup> Some interesting highlights though from the law school clinic clients were-

- *Legal outcomes:* For 29 per cent of clients their issue was either fully or partially resolved following advice, or it was possible to take further action, although for 42 per cent it was too early to tell. 56 per cent were considering pursuing their issue to court or tribunal, but following advice 27 per cent changed their mind.
- *Capability outcomes:* 78 per cent of clients have better understanding of what their next steps are following advice and 68% said their problem was more manageable
- *Wellbeing outcomes:* 63 per cent of clients felt less stressed after visiting the clinic and 49 per cent felt physically better

These are hugely valuable findings, but are only the beginning of analysing the wider justice impact of law school clinics. There are wider impacts to consider also, including the impact of public legal education (PLE) programmes like Streetlaw and other community engagement work, to involvement in law reform projects.

## 6. The reform of legal education and overcoming regulatory uncertainty

The development of the student and or trainee/apprentice contribution to clinics will depend on the emerging educational and regulatory context. As part of its drive to open up access to the legal profession, the Solicitors Regulatory

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<sup>19</sup> Based on a total number of 35,008 clinic clients who received advice during the previous year's reporting period (2017 Clinics Report), the feedback from our group of 209 respondents gives us a robust and statistically significant national sample, with an assumed 6.8% margin of error. Assuming a random sample was selected, we can report with a 95% confidence level, and a confidence interval of  $\pm 6.8$ , i.e. we can be 95% confident that an observed statistic (e.g. 50%) would lie between 43.2% and 56.8% <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/clinic-resources/measuring-our-impact/better-information-project>

<sup>20</sup> <https://www.lawworks.org.uk/about-us/news/lawworks-clinics-network-report-year-march-2018>

Authority (SRA) may potentially facilitate an interesting opportunity for clinics through the introduction of the new Solicitor’s Qualifying Exam.<sup>21</sup> Due to replace the current Legal Practice Course over the next few years, the new qualifying structure envisages that “qualifying work experience” (QWE) which had previously been wrapped up in practitioner training contracts, could be undertaken in clinics. The QWE component is intended to be undertaken between the two stages of the SQE (stage 1 being the knowledge strand and stage 2 being the skills strand), although the SRA’s requirements will be flexible on this and further guidance is expected.<sup>22</sup> However, the SQE itself has come under fire for providing an insufficient knowledge framework in family and social welfare law.<sup>23</sup>

Allied to the SQE reform, the SRA is also loosening the practice framework rules in its new regulatory handbook due to take effect this Autumn.<sup>24</sup> Whilst continuing to follow the statutory essentials of the Legal Services Act 2007 (LSA), the new handbook adopts a permissive approach enabling newly qualified entrants to the profession to work from day one in different employment patterns or as freelancers, and freeing-up practitioners to carry out unreserved legal work from unregulated entities. There will also be new guidance for non-profit legal services providers, and the volunteers and employees that support them. In this looser framework though, it is possible to see that CLE based pro bono could provide pathways into new models of legal practice. Already we are seeing law schools experiment with student law firms, and a few law schools actively embracing an ABS model.

The broader relevance for law schools is that ever since passage of the LSA, the operating framework for clinics as far as regulation is concerned has been described as a “black hole.”<sup>25</sup> Most law school clinics benefit, and will continue to benefit, from the charitable status of Universities enabling them to be considered “special bodies” for the purposes of the Legal Services Act (LSA); however private Universities are treated as commercial bodies. By definition though, University lecturers and employees with legal practice certificates supervising the work of students in clinics, or undertaking clinic casework themselves, are in-house lawyers as far as the regulations are concerned and the hybrid ‘entity’ and ‘title’ based regulation structure of the LSA can be

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<sup>21</sup> <https://sra.org.uk/home/hot-topics/Solicitors-Qualifying-Examination.page>

<sup>22</sup> <https://sra.org.uk/sra/consultations/solicitors-qualifying-examination.page#download>

<sup>23</sup> <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/briefing-new-route-qualification-solicitors>

<sup>24</sup> <https://www.sra.org.uk/sra/news/comp-news-27-handbook.page>

<https://www.sra.org.uk/sra/policy/future/looking-future.page>

<sup>25</sup> Linden Thomas. *Law clinics in England and Wales: a regulatory black hole*, *The Law Teacher*, Volume 51, 2017 - Issue 4

especially complex for the pro bono work of in-house practitioners.<sup>26</sup> The SRA have signalled a supportive and permissive approach in a recent statement to “give comfort” for employed solicitors conducting voluntary pro bono work for a non-profit body outside their normal practice.<sup>27</sup> Over time we hope that the SRA will facilitate a clearer and easier regulatory environment to law school clinics.

## 7. Unmet needs and the limits of pro bono and the law school contribution

As suggested above we believe that it is important that the law schools' contribution to pro bono is viewed within a wider context of unmet needs, barriers to justice, and the challenges of accessing available sources of legal help to achieve fair and just outcomes for vulnerable groups and individuals. The research literature on legal needs indicates just how challenging that context is for clinics. The Ministry of Justice's own research report published in 2017, reviewed both past and present legal needs research, finding that "around a third of the population experienced legal problems, with certain groups more likely to experience problems than others, particularly those vulnerable to social exclusion (such as individuals on benefits, lone parents, those with a disability, those with low incomes). Around half of problems led to adverse consequences such as stress-related illnesses, physical ill-health, or loss of confidence. Some individuals reported experiencing multiple problems, with certain problem types clustering together, such as those relating to a relationship breakdown, or economic problems."<sup>28</sup>

The reduction in the scope of legal aid has contributed to an increase in the number of people going to court or tribunal without a lawyer; for example in private family law proceedings 64% of parties were unrepresented in 2016-17 compared to 42% five years ago.<sup>29</sup> The scale of the change to the availability of legal aid needs to be emphasized in both this and other areas of law. In November 2017 the Government published a 'post-legislative memoranda' as the prelude to undertaking a review of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO). The memoranda records that “In 2012–13, prior to LASPO's implementation, the Government provided funding for

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<sup>26</sup> This hybrid structure is currently under review by Professor Mayson <https://www.ucl.ac.uk/ethics-law/publications/2018/sep/independent-review-legal-services-regulation>

<sup>27</sup> <https://sra.org.uk/solicitors/guidance/waivers/waiver-employment-status-pro-bono-work.page>

<sup>28</sup> 'Findings from the Legal Problem and Resolution Survey' <https://www.gov.uk/government/publications/legal-problem-and-resolution-survey-2014-to-2015>

<sup>29</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604030/family-court-statistics-quarterly-q4-2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604030/family-court-statistics-quarterly-q4-2016.pdf)



575,000 new legal help matter starts (i.e. providing advice and assistance) and 150,000 new certificates for civil representation (i.e. representing someone at court). By 2016–17 the legal help figures had fallen by 74% to 145,000 and the civil representation figures by 29% to 105,000.”<sup>30</sup>

Timely access to legal information and advice can identify options and remedies (including alternatives to going to court), and help prevent problems escalating. A 2015 study ‘*Varying Paths to Justice*’ - commissioned by the Ministry of Justice to improve understanding of how people seek to resolve their problems - found that those “who were not aware of available advice and support services or those who were unable to access relevant information to understand their options struggled to find a resolution to their civil justice problem”. In 2015/16, Ipsos MORI conducted an online survey of legal needs on behalf of the Law Society and the Legal Services Board (LSB). Their report *Analysis of the potential effects of early legal advice/intervention* showed that early advice has a statistically significant effect on the timing of the resolution of peoples’ legal issues.<sup>31</sup>

Legal support needs are diverse, and so a range of services and strategies are needed, depending on individual circumstances. Law school pro bono clinics cannot and should not do it all, and need to work in partnership to ensure that the contribution of pro bono is appropriately targeted. So whilst clinics can make an important contribution, as we have seen from the data in this report, the scale and range of advice and casework activity does not address the underlying unmet needs. Nor should they be expected to, and there is an important debate to be had about how clinics might impact justice in other ways such as participating in advocacy, policy, law reform programmes and public legal education to improve access to rights and remedies.

## 8. Concluding thoughts

Further research needs to be undertaken on the full extent of the contribution of clinical legal education and law school clinics to pro bono and access to justice in England and Wales, both in terms of client services and outcomes, students educational experiences, and wider justice impacts. Next year, LawWorks plan to undertake a further detailed survey of law schools to better understand how law schools are operating in a challenging social justice and technological disruption context. We will be inviting all law schools in England and Wales to participate and will share the findings.

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<sup>30</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf)

<sup>31</sup> <https://www.lawsociety.org.uk/policy-campaigns/campaigns/early-advice/>