

## The changing face of legal exclusion

**The principle that law should be public knowledge is by no means a new idea. We expect rules to be made known so that people can organise their lives in accordance with those rules. Yet new research suggests that in 21st century Britain, up to two thirds of the population are unaware of the system of legal rights and processes to which they should be able to turn**

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**T**he research undertaken by the Legal Services Research Centre<sup>1</sup> and published by the Public Legal Education Network, looks at the knowledge and capability of the population of England and Wales in the context of social and civil legal issues.

70% of respondents didn't know of any processes (such as courts and tribunals) that could be used to sort out their problem when it arose. And 65% of people reported that they did not know their rights at the time of their legal issue. This widespread ignorance of the law has been described as legal exclusion on a massive scale<sup>2</sup>.

The findings make an important and timely contribution to the debate about the future of the civil and family justice system. In effect, the report suggests there has been a fundamental failure to ensure a sufficient level of knowledge and confidence to provide adequate legal protection for the bulk of the population, with all the resulting costs to both individuals and the public purse.

Based on a nationally representative survey of the adult population of England and Wales the research reflects the results of interviews with over 10,000 adults in their homes. The findings offer an insight into how people experience and act upon (or indeed fail to act upon) a raft of civil legal issues - from

discrimination to clinical negligence and more.

Knowledge, capability and the experience of rights problems

A closer look at the problem solving strategies that people adopt shows that less than half seek advice for the civil justice problem they encounter. Just over a third of people handled their problems alone and one in ten tried and failed to obtain advice, or did nothing at all. Some problem categories, including discrimination, police treatment and clinical negligence featured particularly high levels of inaction at around 30%.

An important distinction needs to be made between those who do nothing and don't feel that they need to, and those who want to do something but feel unable to. Reasons for inaction in the latter group are commonly feeling 'it wouldn't make a difference' or feeling 'too scared to act'. Many others simply said it was because they didn't know where to go or who to go to. Almost half of these people also reported experiencing an adverse outcome such as ill health, loss of income or suffering violence aimed at them.

Of those handled their problems alone, (in some legal areas many as 60% of people), those with knowledge achieved significantly better results; over 65% reported that they met all their objectives. Conversely 60% of those acting alone without knowledge failed

to meet any of their objectives.

Low levels of legal capability predominate for some groups, most notably women who were prone to feeling they were unable to do anything in the context of a legal issue, despite their wish to act. Lack of knowledge of rights and processes was also more likely to be reported by low income groups and those with health problems. Younger and older people were also more likely not to act or to try and fail to obtain advice.

In some cases the differences in the choice to take a particular course of action point to situations in which an imbalance of power or ongoing relationships play a role, for example, in cases of police treatment, employment and discrimination problems.

The report offers some possibilities for effective intervention in what appears to be a gloomy picture of widespread ignorance. The need to tailor education initiatives to the needs of particular groups with a focus on key legal issues is a first step. For some - particularly more affluent and educated groups - information resources and potentially improved self-help options could offer benefits. For others, often the most vulnerable, better awareness of sources of help is indicated. Those who lack confidence and skills, practical planning and communication skills, as well as attention to emotional factors will be important in order for those groups to effectively gain redress for their issues.

## Public legal education

The 2007 Public Legal Education Task Force chaired by Dame Professor Hazel Genn OBE defined PLE as a set of activities that:

*Provides people with the awareness, knowledge and understanding of rights and legal issues, together with the confidence and skills needed to deal with disputes and gain access to justice. Equally important, it helps people to recognise when they may need support, what sort of advice is available, and how to go about getting it.*

*PLE has a further role to play in helping citizens to better understand everyday life issues, making better decisions and anticipating and avoiding problems*

The report emphasised the increased complexities and pace of modern living, and the consequent challenges of managing daily life. The result is a need for an effective legal system coupled with a population capable of making use of that system in a wise and efficient way. However the overall cost of unnecessary helplessness in avoiding and managing legal problems is reported by the task Force as 'staggering'. According to Ministry of Justice economists over a three-and-a-half-year research period the costs to individuals and the public purse were estimated at £13 billion.

Members of the profession have, in some very practical ways, become involved in the work of helping the public make sense of the law, both at home and elsewhere. Innovative examples include twinning lawyers with schools<sup>3</sup>, the Legal Speakers Bureaux<sup>4</sup> that give talks in libraries and community centres on common legal issues. Ontario Justice Education Network<sup>5</sup> boasts a high number of volunteer lawyers and judges supporting youth justice education work. Through

the passionate commitment of judges and lawyers, Ontario court rooms witness daily throngs of young people visiting in order to learn more about their system of justice and how things work in practice.

The American Bar Association (ABA)<sup>6</sup> Division for Public Education offers a range of services and activities. Its mission statement declares that 'Lawyers and judges have a special responsibility to foster public understanding of and confidence in the law and legal institutions. Law provides an essential context for understanding society, institutions, norms, and values.'

Crucially the ABA points to the fact that 'In order to maintain legitimate authority, law and legal institutions depend on popular participation and support. Public understanding of the law promotes access to the legal system for all people to pursue justice through the legal process.' This recognition underlines the need to actively engage the public, help dispel myths about legal matters, and build confidence in a system of justice.

Other factors bring the problem into sharp focus. Direct access to barristers and the squeeze on public finances are likely to increase competition in the legal market place. How the profession communicates with the public could become an issue of economic survival. Moreover, changes in social media and networking technologies offer a challenge to the way in which services are traditionally delivered. From YouTube to blogs and citizen journalism, technology is enabling the production and distribution of amateur content that people want to watch, read, consume, re-use, and buy. Products include free and paid for self-help resources, DIY legal kits or simply signposting to sources of advice and representation. The demand for knowledge and skills in dealing with

legal matters, by individuals and businesses, alongside a proliferation of new technologies and greater consumer choice all present unique challenges for the quality, range and accessibility of the legal services of the future.

Uncertainty is never comfortable, with politics as with law. The premise that the consequences of our actions should be reasonably calculable offers to some extent the ability to be the master of ones own destiny. Presently, the majority of the population are unable, in a legal context, to make informed choices; dire consequences arise from a failure to plan ahead and poor problem solving strategies when things go wrong. Much of this is preventable.

In the field of health care, when patients are systematically provided with information and skills to reduce health risks, the burden of health conditions can be dramatically reduced. These advances have been brought about by a collaborative approach; health practitioners working with families, communities and policy-makers. In the legal context we have yet to coin a phrase that captures this notion of prevention. But what is doubtlessly needed is the energy and commitment of the legal profession, along with others, to effect a real change in how people are helped to manage both routine legal issues and vital life events.

<sup>1</sup> Knowledge, capability and the experience of rights problems (2010).

<sup>2</sup> Developing capable citizens: the role of public legal education (2007) Public Legal Education Task Force

<sup>3</sup> <http://www.lawyersinschools.org.uk/>

<sup>4</sup> <http://www.publiclegaled.bc.ca/>

<sup>5</sup> <http://www.ojen.ca/>

<sup>6</sup> <http://www.abanet.org/publiced/>