

DIGITAL DELIVERY OF LEGAL SERVICES TO PEOPLE ON LOW INCOMES

SUMMARY AND RECOMMENDATIONS

December 2014



Roger Smith

The Legal Education Foundation

This Report was commissioned by The Legal Education Foundation and we are very pleased to publish it as a contribution to identifying the advances being made in the use of information technology to aid the provision of legal services for people on low incomes.

The Author

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All the information in this Report is verified to the best of the author's and publisher's ability, but they do not accept responsibility for loss arising from decisions based upon them and whilst Internet addresses were believed to be accurate at the time of publication they may have changed since then. Where opinion is expressed it is that of the author, which does not necessary coincide with the editorial views of The Legal Education Foundation.

Acknowledgments

This Report is a summary of seven individual papers written by me and published by The Legal Education Foundation on its website. It attempts to provide a global overview of digital delivery of legal services to people who are on low incomes as at December 2014.

So much is going on that the task would have been completely impossible without extensive assistance and collaboration from a range of people around the world. Help has come both formally through an international Advisory Committee and many individuals who helped by reading drafts, making suggestions and pointing out projects that should be covered. In addition, virtually the whole community in British Columbia engaged in the field - ranging through the Ministry of Justice, the Legal Services Society, the Justice Education Society and the Courthouse Libraries and many involved in public legal education and information - turned out to assist during a week-long visit and a similar level of help was given in the Netherlands for a visit to The Hague Institute for the Internationalisation of Law. Inevitably, with such a broad field to cover, there will be omissions (I have been particularly worried about omitting developments in Australasia and in countries with developing legal aid systems which there has been insufficient time to consider properly), contestable opinions and, indeed, errors due to processing the vast material collected in such a short time. These are, alas, no one's responsibility but my own.

The Report is built upon an earlier study published in January 2014. It is a measure of how fast developments are moving that there is so much more to cover even in the course of less than a year. This original work was written jointly with Professor Alan Paterson of Strathclyde University. It was published as *Face to Face Legal Services and their Alternatives: global lessons from the digital revolution (Face to Face)* by the Centre for Professional Legal Studies at Strathclyde and is available at http://www.strath.ac.uk/media/faculties/hass/law/cpls/Face_to_Face.pdf. From time to time in this Report, the reader is referred to *Face to Face* for further detail. Although this Report is effectively a second edition of the earlier one, repetition has been avoided as much as possible and readers may occasionally find it helpful to refer to the original study.

The earlier project was funded by the Nuffield Foundation for which thanks should be acknowledged for beginning a process which hopefully will prove useful around the world. That Report, like this, was heavily dependent on contacts made through the International Legal Aid Group (ILAG) which is chaired by Professor Paterson and for which I edit a bimonthly newsletter.

Further updating of developments will be available on a quarterly basis on The Legal Education Foundation website at <http://www.thelegaleducationfoundation.org> and circulated in the regular ILAG quarterly newsletters - subscription to which is available through the ILAG website (<http://www.internationallegalaid.org>). In some ways, the Dutch *rechtwijzer.nl* in its first version emerged as the hero of Face to Face: it took the use of the Internet to a new level of presentation, interactivity and user focus. A chance to consider Version 2.0 will provide one of the highlights of the year to come. Also coming on line should be the Civil Resolution Tribunal in British Columbia. Both are planned to offer an end-to-end service taking a user from diagnosis to online resolution. Amongst new websites offering assistance with much improved interactivity will be the British Columbia Legal Services Society website, on which updates can be obtained at *MyLawBC.com*, and a reworking of the Citizens Advice Bureaux website in England and Wales, *AdviceGuide.org.uk* on which updates can be obtained at *alphablog.citizensadvice.org.uk*. Coverage of these, plus the opportunity to keep up to date with other developments, should encourage readers with an interest to keep up with the Foundation's website and ILAG's newsletter. Anyone who would like to notify me of new developments or write an article themselves for website or newsletter should contact me at *rsmith@rogersmith.info*.

In a project so dependent on the assistance of others, the naming of any particular people is invidious. However, the following should be thanked in particular:

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Corporation; Jin Ho Verdonschot, Peter van den Biggelaar and others in the Netherlands; Ab Currie in Canada; enormous numbers of people in British Columbia including Darin Thompson, Mac Campbell and Jay Chalke QC of the Ministry of Justice, Rick Craig and Dave Nolette of the Justice Education Society; Mark Benton, John Simpson and Candice Lee from the Legal Services Society; Johanne Blenkin, Nate Russell and Brenda Rose of the Courthouse Libraries; many in the public legal education and information community in both British Columbia and Canada; and, of course, innumerable people in the United Kingdom including Martin Jones, Terry Stokes and Alison Lamb.

Roger Smith OBE

December 2014

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1. Introduction

Scan the world for innovation in the use of the Internet to deliver legal services to people on low incomes and you find a profusion of creativity. Private providers, not-for-profits, statutory bodies, and governments are all engaged in major projects which, if successful, will change how people resolve their legal disputes. This Report follows earlier research, the findings of which were published only in January 2014¹, but from which significant developments are already clear. Providers are becoming more professional; video is being better integrated into websites; the presentation of information is being transformed by the introduction of guided pathways that lead the user interactively through difficult issues; the provision of information and advice is being transmuted into processes of Online Dispute Resolution; the potential of integrated document assembly programmes in advice provision is pushing courts and tribunals to update their online capabilities; websites are seeking to adapt to the rampant growth of mobile phones as primary means of access to the Internet, particularly amongst young people.

Driving this innovation is money allied to imagination and technological opportunity: a powerful brew. Private providers are seeking to open up low cost, high volume 'latent legal markets'. Governments are seeking to stabilise or reduce the costs of publicly-funded legal services.

Not-for-profit organisations are seeking to extend the value of services that they can provide. Funders are interested in exploring the possibilities of the new frontiers being opened up by digital delivery systems that promise to revolutionise legal services just as they radically changed shopping patterns more generally. The most creative staff in each sector want to explore the possibilities of a new medium that they feel must, surely, have much to offer. Albeit, it must be admitted, this is being done in a terrible post-crash financial climate in which much needed conventional services are being cut.

This Report provides a snapshot of global developments and the issues for governments, funders, providers and users which are raised. Geographical coverage is inevitably biased by limitations of resources in favour of England and Wales, the jurisdiction of its origin, and also to the United States, the

¹ R Smith and A Paterson *Face to Face Legal Services and their Alternatives: global lessons from the digital revolution*, Centre for Professional Legal Studies, Strathclyde University, available at http://www.strath.ac.uk/media/faculties/hass/law/cpls/Face_to_Face.pdf (*Face to Face*)

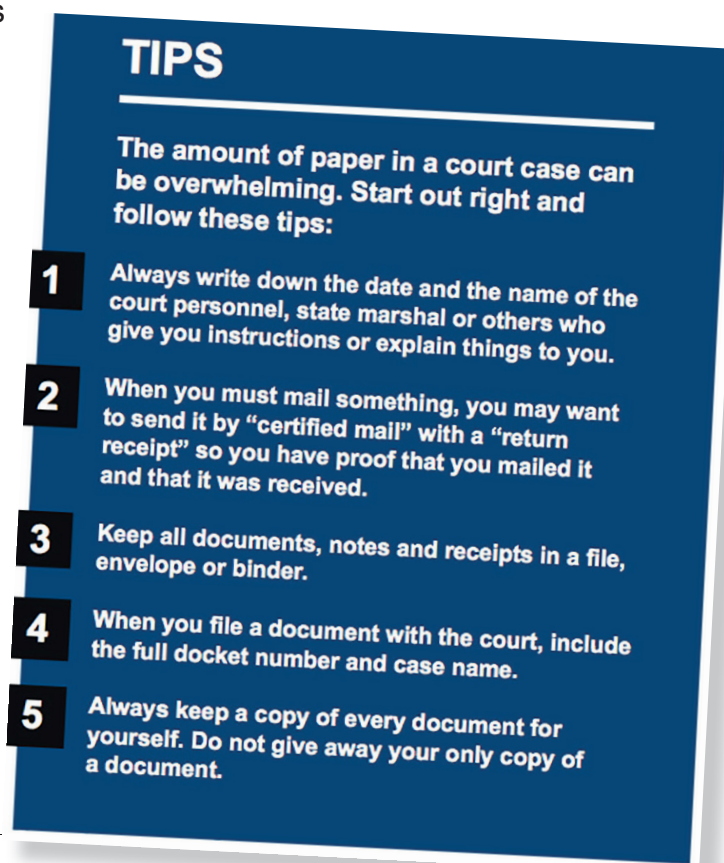
Canadian province of British Columbia and the Netherlands. The pioneering work of the Australian Ministry of Justice of New South Wales in its LawAssist and LawAccess provision was detailed in *Face to Face*.

Failure to cover any development that is worthy of inclusion but has been inexplicably omitted can easily be remedied. This Report is necessarily provisional. The Legal Education Foundation (TLEF) intends to follow it with quarterly newsletters through 2015, culminating in a full review of developments at the end of the year. Let us know of omissions both of description and argument and we can correct these as the year goes by.² TLEF wants to provide a resource that will be useful both globally and nationally, and which will help to guide its own funding decisions.³

In all the excitement of the 'shock of the new', two restraining elements have to be recognised. Firstly, we cannot assume that digital delivery will be universally accessible.

Excluded populations will be disproportionately found amongst those on low incomes - planning must allow for that. Secondly, underlying all the froth about delivery is the unavoidable fact that content will remain king. Here is an example of really good, practical advice from a court website (*Connecticut in the USA*) about how to handle low technology dealings with court officials. It is not interactive; it does not use video; it is a simple, old-fashioned list of really good tips on how to keep track of vital interactions.

This Report is based upon a series of Working Papers which are separately published on the website. Here, it is framed as a series of questions and answers.



TIPS

The amount of paper in a court case can be overwhelming. Start out right and follow these tips:

- 1** Always write down the date and the name of the court personnel, state marshal or others who give you instructions or explain things to you.
- 2** When you must mail something, you may want to send it by "certified mail" with a "return receipt" so you have proof that you mailed it and that it was received.
- 3** Keep all documents, notes and receipts in a file, envelope or binder.
- 4** When you file a document with the court, include the full docket number and case name.
- 5** Always keep a copy of every document for yourself. Do not give away your only copy of a document.

² Write to Roger Smith at rsmith@rogersmith.info

³ This can be found on The Legal Education Foundation website: <http://www.thelegaleducationfoundation.org>

2. What is the current state of relevant digital development and access?

As a general observation, few would dispute the emergence of what has been called a ‘second machine age’ that will transform society through ‘real, useful artificial intelligence’ and ‘the connection of most of the people on the planet via a common digital network’, all made possible by ever-increasing processing capacity.⁴ An iPad 2 tablet in 2011 had more processing capacity than a 1985 Cray supercomputer and with that came a dramatic shift in cost (downward) and performance (upward and outward as previously separate technologies like mobile phones and televisions converge). The pace of change continues.

Implications of this ongoing digital revolution include:

- (a) the Internet is becoming ‘so effortlessly interwoven into daily life that it will become invisible, like electricity’;
- (b) mobile connectivity through mobile phones (or cell phones) is changing how people perceive communication: it has also ‘affected the way people allocate their time and attention’;
- (c) users increasingly obtain information from video sources such as YouTube and Vimeo;
- (d) use of social media has expanded, with wider social networks on which people rely with the result that, as the influential USA Pew Center put it, ‘traditional boundaries between private and public, between home and work, between being a consumer of information and producer [are] blurred’⁵;
- (e) the field of health is providing examples of how provision in law might develop with specialist patient fora; online communities; online clinics and, in consequence, the development in the United Kingdom of NHS information standards to protect the quality of information.⁶;
- (f) the general growth of what in the legal field is called ‘unbundling’ and ‘self-

⁴ See further E Brynjolfsson and A McAfee *The Second Machine Age* Norton, 2014 from which the quotes below are taken unless otherwise indicated. Detailed references are given in the working paper.

⁵ See www.pewinternet.org/three-technology-revolutions/

⁶ See paper on context REF.

representation' e.g. in self-management digital communities for those sharing conditions such as diabetes;

- (g) a growing concern about whether the high access amongst young people to the Internet (pretty well 100% in the United Kingdom and USA) is coupled with 'a perhaps surprising lack of digital literacy and capacity to identify the best forms of assistance'.⁷

Consideration has to be given to the question of 'digital divides' and the exclusion from the Internet of some groups in the population. For the United Kingdom, The Oxford Internet Survey research suggests that 'divides are narrowing, but digital inequality persists by age, education, income'. The issue is not physical access: almost everyone can get access via a library or a 'proxy'. Barriers relate more to cognitive abilities, skills and culture. Furthermore, the OIS has discovered that 14% of those with online access are not fans.

They do

"not feel that the Internet makes them more efficient, nor do they enjoy being online to pass the time... they feel frustrated that the Internet is difficult to use and harbours too much 'immoral material... they feel excluded from a technological context which is "not made for them"."⁸

We have worrying suggestions from research that, though young people have high levels of access to the Internet through near ubiquitous mobiles and smartphones, it cannot be assumed that they are willing or able to use it as a definitive source of advice.⁹

Once this 14% of discontented users is added to the reported 20% of non-users, we have around a third of the population either not using the Internet or not happy with doing so. This figure for exclusion is likely to reduce over time if only as those now young and familiar with smartphones inevitably age - but people

⁷ C Denvir, N Balmer, P Pleasance, 'Surfing the web - recreation or resource? Exploring how young people in the United Kingdom use the Internet as an advice portal for problems with a legal dimension' in *Interacting with Computers* 2011, 23, pp96-104.

⁸ p12, William H. Dutton and Grant Blank with assistance from Darja Groselj *Cultures of the Internet in Britain Oxford Internet Survey Report 2013*, University of Oxford, 2013, from which quotes relating to the United Kingdom are taken.

⁹ See http://www.youthaccess.org.uk/uploads/documents/Advice%20Publications/YPs_Access_to_Advice_briefing.pdf and C Denvir, N Balmer, P Pleasance, 'Surfing the web - recreation or resource? Exploring how young people in the United Kingdom use the Internet as an advice portal for problems with a legal dimension' in *Interacting with Computers* 2011, 23, pp96-104.

who are poor, old, less well educated and (at least at present) with a disability, are likely to continue to be disproportionately excluded. Currently excluded populations will, to some degree, adapt to the surrounding culture and be forced to do so by governments keen to drive digital services in order to save costs of administration. However, we are left with a sizeable group of the excluded - likely to be high amongst those on low incomes. A reasonable working assumption would seem to be that the overall excluded population rises from about a third to around a half of those on low incomes because, amongst them, will be more of the specifically excluded populations.

The policy consequence is clear. Digital delivery can and should play an important role in delivering legal services to the population as a whole but, for the foreseeable future, it will need to be supplemented by traditional, face-to-face mechanisms for something like half of those on low incomes. Thus, a degree of realism is required over what is possible in terms of digital delivery.

In addition, it is likely that digital provision which can incorporate individualised or face-to-face options will be more successful than that which does not.

3. What is the current pattern of digital provision?

In the field of digital delivery, it remains - as reported in *Face to Face*. There is widespread innovation and experimentation. Developments might be categorised as follows:

(a) For-profit legal providers are seeking to access the 'latent legal market', i.e. using the Internet to provide high-volume, low-cost services. Innovative, web-based initiatives include:

(i) 'Winnowing' or 'gleaning' websites that provide free information as a way of attracting more valuable cases.

An example is provided by *Roadtrafficrepresentation.com*, which offers automated decision trees or guided pathways that deliver advice on sentence to users who input data on themselves and the offence with which they have been charged. It then proceeds to arrange representation for those who might require it, at a fee.



(ii) Providers offering low-cost, deconstructed, 'unbundled' services for fixed fees many of whom are seeking high volumes through the establishment of national brands.

The establishment of these websites is assisted in England and Wales by the influx of external investment into legal provision consequent to the deregulation introduced by the Legal Services Act 2007, which facilitates external ownership of law firms. A pioneer in this field was Co-operative Legal Services though this might have financially overreached itself, at least temporarily.

Illustrations of three brands hoping to develop the 'latent legal market' with a combination of national promotion, 'unbundling' and fixed fees.



QualitySolicitors

The **co-operative** legal services

Professional Legal Advice Online.

Slater & Gordon Lawyers offers expert legal advice for all your legal matters – on- and off-line.

Various overseas law firms have dipped their toes into the English market - some to quite a considerable extent. These include Australia's Slater & Gordon and the USA firm Jacoby & Myers. A home grown response is emerging with Quality Solicitors - a federation of individual firms with common branding, a shared advertising 'front end', and an increasingly uniform offer to clients in terms of fixed fees.

- (iii) Various forms of 'virtual legal practice' that may incorporate unbundling and other means of delivery. Commercial providers are deploying a variety of means by which they manage legal cases through virtual portals, by email or otherwise:

divorceonline.co.uk is but one example.

Divorce-Online - The Fast, Affordable and Easy way.

 **DivorceOnline**.co.uk

We can complete all required divorce forms and send them to you within 24 hours for just £69. Or we can manage your whole divorce process including dealing with the court and judge on your behalf for just £189.

In the USA, *legalgenie.com* was created by the Legal Aid Society of Orange County, California. It combines referral from a website or telephone hotline to a lawyer with some provision of automatic document assembly and telephone legal advice. It is aimed specifically at those above legal aid eligibility levels but on low incomes.

A leader in the field of virtual legal practice is Stephanie Kimbro. She is experimenting with 'gamification', using the techniques developed in games to provide legal information in relation to estate planning.¹⁰

(iv) Various forms of managed online communities.

These are websites which provide facilities for online communities (see below) but with some form of profit-generating mechanism behind them.

For example, *wikivorce.com* has a link to a solicitors firm to which a user of the not-for-profit website can be referred. Another example would be *legalbeagles.info*, which provides free discussion fora on a whole range of consumer law topic and is run by a paralegal in a firm of solicitors to which referrals are made.



Wikivorce is a well respected, award winning social enterprise Volunteer run - Government sponsored - Charity funded

Our organisation helps 50,000 people a year through divorce

Who are we?



Founded in May 2007 LegalBEAGLES® is a FREE forum offering support, discussion & advice in many areas of your life. Made up of dedicated & enthusiastic individuals who are experienced in consumer issues. Most of us are fighting, or have successfully fought, our own battles against the major financial institutions. We are committed to remaining free to access to all our users.

(b) Online communities free to users

These have been very successful in the health field: *mumsnet.com* is an example of a high- profile United Kingdom website which deals with a range of topics of concern to mothers, including aspects of the law. It is a

¹⁰ <http://www.openlawlab.com/2014/02/04/estate-quest-video-game-estate-planning/>

commercially-oriented website but it seeks to fund itself from advertising rather than from fees. It also includes guides to the law from aspiring national solicitor brand, Slater & Gordon.

(c) Government free information websites

All governments make available large amounts of information - and increasingly do so on the Internet. In the United Kingdom, there has been a move to place all of this within one overall source - *gov.uk*.

The inherent authority of this information is invaluable and clearly governments have a responsibility to inform citizens. However, there are difficulties. Some are illustrated by the United Kingdom “Sorting out Separation” website. It is so influenced by the desire to encourage mediation amongst splitting couples that it hopelessly simplifies the kind of problems that people face in practice - with consequent dents to its credibility (as detailed in *Face to Face*¹¹). A more openly acknowledged failure was the United Kingdom *moneyadvice.service.org.uk* website, which stood accused of ‘reinventing the wheel and spending millions of pounds in brand building... Unnecessarily’, both by outsiders and the specialist Parliamentary Committee to which its sponsoring department was accountable.¹²



¹¹ p47-8

¹² See Working Paper 4 on Portals

website that pulls together material produced both by government departments and others.

(d) Not-for-profit legal portals and 'triaging' websites

The advantage of one or more general portal websites per jurisdiction is clear. Their creation in each state of the USA was the first recommendation of the Legal Services Corporation's 2013 technology summit. They can be divided into different types on various bases including:

(i) Aggregator or Comprehensive

This is not necessarily a material distinction, in principle. To the user, there may be little difference in whether the website provider is the source of the information or whether referral



is being made to

another organisation. Examples of comprehensive provision from the USA by the providers of the website itself would be *illinoisonline.org* or two well produced Canadian websites, *educaloi.qc.ca* in Quebec and *yourlegalrights.on.ca* in Ontario. Both are linked to wider public legal education programmes: the presentation of the content of the Quebec website is particularly excellent.

About Éducaloi

Éducaloi is a non-profit organization founded in 2000. It is a leader in the movement to improve access to justice in Quebec. Our mission is to inform Quebecers about their legal rights and responsibilities in language that makes the law easy to understand. In everything it does, Éducaloi draws on established techniques from the fields of legal education and plain language. High standards of legal accuracy are at the core of our work.

By contrast, a range of other websites marshal information provided by others, with varying degrees of comment, rating or linking. Examples are the law access website in *lawaccess.nsw.gov.au* New South Wales; Clicklaw in British Columbia *clicklaw.bc.ca*; *advicenow.org.uk* in England and Wales.

*Welcome
to Clicklaw*



*This site
provides legal information, education and help for British Columbians.
What is here for you?*

About the Advicenow search

*Handpicked pieces of quality information, sourced from the best providers,
tailored for your needs. We do the searching for you*

*In the Advicenow handpicked search you can find the web's best information
on the law and rights. We've gathered together information from over 250
United Kingdom websites, checked that it's up-to-date, and covers the issues
that are important to you.*

*If you have a law-related problem or want to know more about the law and
your rights, don't wade through endless Internet pages. Just type a word or
phrase into the Advicenow search box. We'll present you with a choice of
hand-selected, quality-checked results.*

All shapes and sizes

*From fast facts and top tips to detailed leaflets and step-by-step guides
there's something to suit everyone.*

*The information covers England and Wales. The law for Scotland and
Northern Ireland can be significantly different.*

How to use our Internet search

Either select a topic from Browse all topics, or type a few descriptive key words into the search box and press Enter or click 'Search'. The search is not case sensitive.

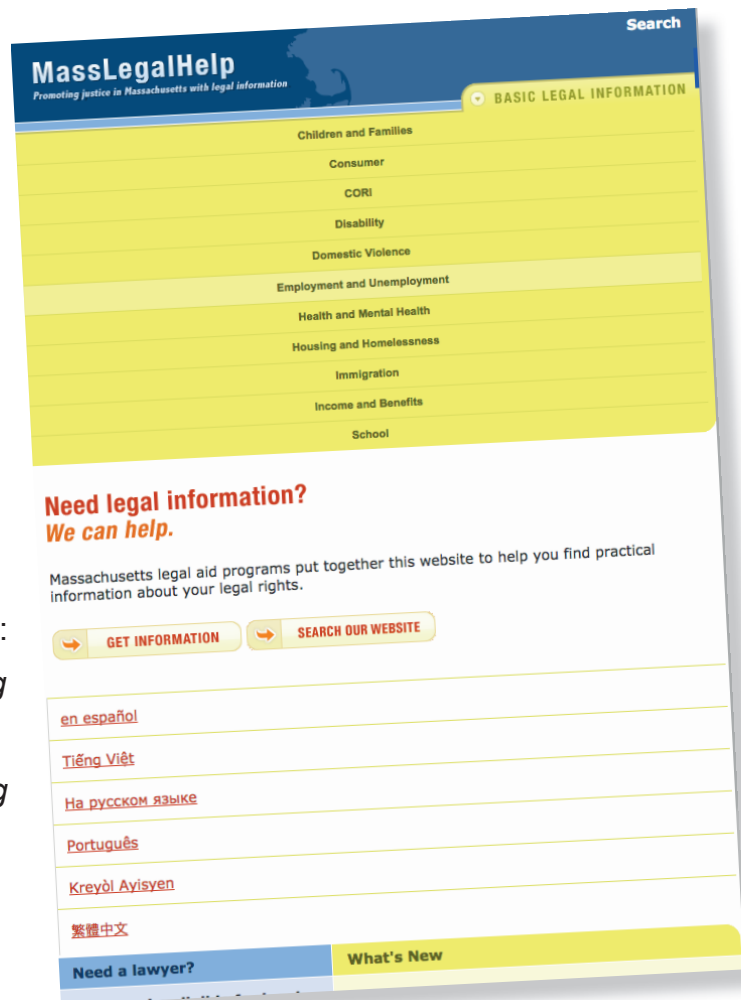
For example, type "tax credits" into the search box and click on 'Search'. The results in the left-hand column will provide a list of web pages dealing with this issue. Each entry will contain the title of the page; its web address (URL), a description of the page written by Advicenow, and the name of organisation producing the information together with their web address. If you click on one of these links, it will open in a new window. Each of these links is checked for accuracy and helpfulness every 6 months.

The right hand column of the search results will contain information on these topics from Advicenow.

If the word you used in the search falls within more than one topic area you will be given a summary of each of the relevant areas. Click on the most relevant topic to see the list of links on that issue.

- (ii) orientation as a gateway to legal aid, or to other advice provision, or as standalone

Some portal websites, particularly in the USA, have been expressly established as a way of filtering people into (or away from) legal aid: *illinoislegalaonline.org* would be one example, and *MassLegalHelp.org* another.



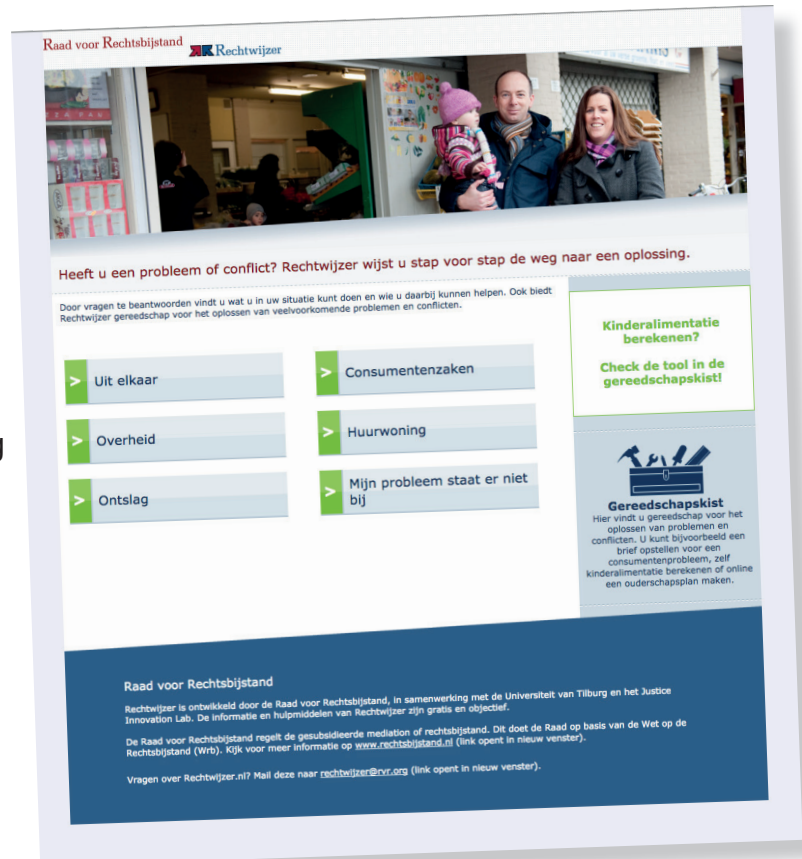
Others, like the two English websites - *adviceguide.org.uk* and *advicenow.org* - are emanations of not-for-profit advice organisations and represent those organisations plying their trade on the Internet rather than having a primary filtering function for legal aid. However, this difference may be explained by history more than current function.

These kind of websites are all designed to give initial information and assist in referral where necessary.

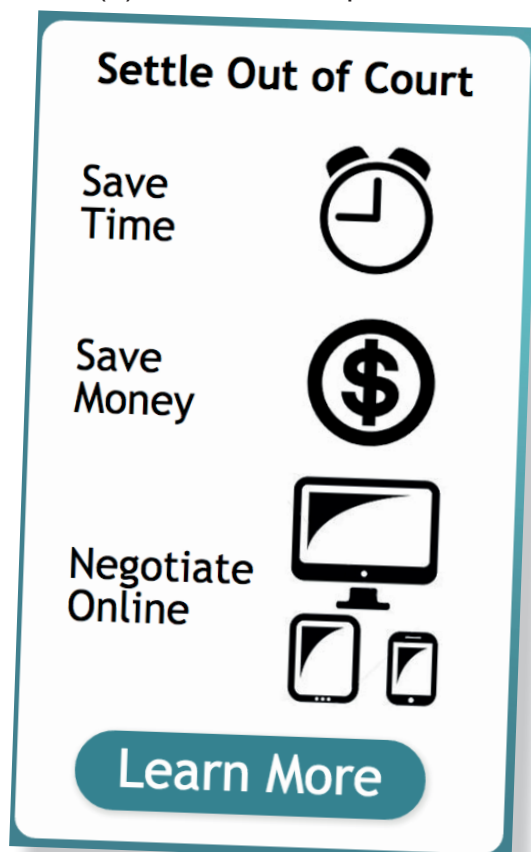
- (iii) orientation towards dispute resolution

This is one of the distinctive features of the Netherlands *rechtwijzer.nl* website. Even in its current 1.0 version, it is seeking to identify and narrow the issues in dispute, and the ways of resolving them beyond the simple giving of information.

Version 2.0, discussed below, goes much further and will offer, as will British Columbia's Civil Resolution Tribunal, a full service from information to resolution. The dynamic momentum of this approach represents a 'game changer'.



- (e) Stand-alone specialist not-for-profit information websites



Almost every specialist not-for-profit legal advice provider has a website. For this project, we are concerned only with those aimed at non-professional users. In England and Wales the best website on housing is run by the specialist housing organisation, Shelter, *shelter.org.uk*. In other jurisdictions, such as British Columbia and New South Wales, the aggregator websites direct users to specialist materials provided by their equivalents. This provides a reminder that, despite all the technology, content continues to be king. Specialist organisations have specialist information - about their subject area and sometimes too about a particular constituency of users. A good example of this is provided by the consideration of the problems of

single parents given by their advocacy group, Gingerbread, on its website: gingerbread.org.uk. This, as you would expect, has the freedom to indicate, for example, that you might want to challenge a decision of the Child Support Agency - something difficult for a government website to acknowledge.

(f) Assisting self-represented litigants

There are evident reasons why websites have been developed in various jurisdictions to assist DIY litigants in court. Individuals taking court action are unavoidably brought directly into contact with complex legal procedures designed for, and by, lawyers. Judges generally find litigants in person a distraction from what they see as their 'proper' work, particularly in common law jurisdictions where the model of litigation is adversarial. Cuts to, or the non-provision of, legal aid, particularly in family cases which generally require court decision-making, expose litigants in person to an often alien world - emotionally as well as legally. As common responses, New South Wales has developed its CourtAssist provision; in England & Wales the Royal Courts of Justice CAB is developing its CourtNav programme, British Columbia has a variety of provision to assist litigants in person - including SupremeCourtBC.ca and smallclaimsBC.ca, and California - the long time leader in the field - has a wide provision of assistance for DIY litigants including its online self-help centre - courts.ca.gov/selfhelp.htm?genpubtab.

(g) Online Dispute Resolution (ODR) and Online Dispute Determination (ODD)

An obvious development from face-to-face mediation is to take the process online. In England and Wales, provision like divorcejigsaw.co.uk and divorceonline.co.uk are beginning to do this.

Welcome to Divorce Jigsaw

Divorce Jigsaw is a specialist mediation and collaborative law practice. Why? Because, divorce and separation can be a traumatic and difficult time for couples and their children. Things can sometimes feel out of control and conflicts can quickly intensify and turn toxic, damaging parents and children alike. I believe that there is another way to divorce, one that avoids the toll of court proceedings, both in terms of costs and emotional upheaval, and yet acknowledges the significance of this major life change with all that it entails.

One step beyond such ODR processes - which are generally voluntary and, ultimately, not binding in court - is what might be termed 'Online Dispute Determination' i.e. the final and online determination of cases within a court structure that delivers judgements as enforceable as those traditionally obtained in person from a judge. The Netherlands has deployed an online element to the solution of some neighbour disputes. Australia is moving that way with partially online services from Consumer Affairs Victoria and the Dispute Settlement Centre of Victoria but the world leaders in exploring this field are British Columbia's proposed Civil Resolution Tribunal and the Netherlands' planned version 2.0 of its *rechtwijzer.nl* programme. Both of these are close to fruition. British Columbia passed legislation to establish the Tribunal in 2012. This will allow the Tribunal to deal with small claims and 'strata disputes' relating to liability for the common costs of a shared building. It is planned to implement the Tribunal in 2015, soon after the Netherlands will enact its *Rechtwijzer 2.0* proposals. Both are based on modules which take a person from intake through negotiation and facilitated settlement to adjudication: some of the models will be free and others paid for. By the end of next year, it should be possible to see how these are actually working and the final details of their implementation - still, in both cases, being worked out.

Civil Resolution Tribunal Act

British Columbia's new Civil Resolution Tribunal Act received Royal Assent May 31, 2012. The act establishes a new dispute resolution and adjudicative body, the Civil Resolution Tribunal, which has authority to hear some strata property disputes and, where the parties agree, small claims matters.

It is anticipated the Civil Resolution Tribunal Act will come fully into force and the Tribunal will begin operations in 2015.

The new Civil Resolution Tribunal will provide an alternative to the traditional dispute resolution services of the B.C. Provincial Court's small claims division. The Tribunal will be structured to encourage people to use a broad range of non-litigation based dispute resolution tools to resolve their disputes as early as possible, while still preserving adjudication as a valued last resort. It is intended, as with the recently enacted Family Law

Act, to encourage a collaborative, problem-solving approach to dispute resolution, rather than the traditional adversarial litigation model.

The Civil Resolution Tribunal will draw on proven technology and combine it with the flexibility, case management and dispute resolution strengths demonstrated by British Columbia's administrative justice system.

- (h) Websites that link legal assistance to the development of skills, including emotional support

Some of the USA court websites give practical assistance with skills necessary to help someone navigate their way throughout the courts, including with advocacy. At its very basic, *Connecticut* gives very simple tips on communicating with courts and their staff. A number of websites seek to help someone with the question of whether they should represent themselves and how: Maryland delivers this as a Q and A quiz - steering potential litigants away from such goals as 'wanting to get even'. A number of jurisdictions have online training for those going through the breakup of a family, most interestingly British Columbia, where the Justice Education Society's FamiliesChange website <http://www.justiceeducation.ca/>, (which incorporates the interactive educational presentation of *Changeville* for children to explore as a virtual representation of issues that they may face), is a world leader. *Changeville*, which is described in more detail in *Face to Face*, raises a general issue about delivery on the Internet. In what circumstances should you use the techniques of 'gamification', of making the quest for legal advice and information into a game? *Changeville* appears to do that very successfully for its audience of children. More questions arise on the appropriateness of this technique for people seeking advice on a legal issue, for which the notion of gaming may be seen as trivialisation.

- (i) Websites that provide textbook-level information on a shareable basis

Clicklaw Wikibooks is an example of a project using a wiki structure to place detailed book - or pamphlet-sized descriptions of the law - current in 15 areas - in a form which allows users to print, copy and re-use, provided that they do so for non-commercial reasons. The format also allows quick and easy updating by authors. This is of obvious use to the informed or skilled user, not least because the content can form a bridge to the primary sources.

The resultant script on the screen, however, could be off-putting for someone not used to dealing with print at a high level.

A number of jurisdictions have websites which are designed primarily for advisers rather than the general public. An example from England and Wales is *rightsnet.org.uk* and from Canada *povnet.org*. These have not been considered in this Report: they have a different function from websites which are directed at the public.



4. What is the context of the best digital services?

- (a) Users must have a relatively high digital literacy. Providers, therefore, must recognise the consequence of digital exclusion. So, the best services are functionally integrated into face-to-face provision, which can support those unable to use the web, or which is available for assistance - such as the network of law counters where paid staff in the Netherlands support the *Rechtwijzer*. It also helps to have opportunities for chat, email or phone conversations with an adviser within the programme.
- (b) A feature of the jurisdictions with the best provision is leadership, creativity (perhaps also competition) and some degree of resources. Thus, the Legal Services Corporation (LSC) has played a lead role in the USA with its competitive Technology Initiative Grants Programme; the Netherlands Legal Aid Board has teamed up with the innovative Hague Institute for the Internationalisation of Law; in British Columbia, a more widespread leadership has been devolved amongst a crucial range of providers including Government, Legal Services Society, the Justice Education Society, the Courthouse Libraries, and a strong public legal education culture, to drive forward a digital agenda.
- (c) An entrepreneurial culture and the convergence of once separate activity, e.g. to the courts, legal aid, mediation, advice. This is reducing the silos in which previously separate communities have developed material. In the United Kingdom for example, it would prompt a coming together of lawyers, legal aid funding, the advice sector and the courts.
- (d) A favourable constitutional context where government remains committed to access to justice (in some cases, despite major cuts to funding on legal aid or the courts) and, as in the Netherlands, there is an explicit government endorsement of the value to citizens of self-representation and self-generated solutions to legal issues. This, at best and as in the Netherlands, extends to a commitment to simplifying legislation to allow citizens to help themselves as well as facilitating digital development;
- (e) a desire to make use of the interactive possibilities of the Internet. Websites like the *Rechtwijzer* stand out because of their use of decision trees, guided pathways or series of limited options. These begin to challenge the static

provision of much information and should begin to establish themselves as the new normal. They represent a quantum leap in the processing of information on the web and provides a challenge to providers in re-engineering their knowledge.

- (f) A commitment to research and feedback. The USA LSC requires an evaluation of the effectiveness of its Technical Initiative Grants Programme. Some provision has been the subject of analysis - for example, British Columbia's Justice Education Society's court-oriented assistance. It is perhaps understandable that, in the opening waves of development, people should experiment but, as we progress, we need to know more about how people actually use provision, and a willingness to learn from experience will be an indicator of the best provision. In this context, it would be helpful to develop criteria for assessment which could be as widely agreed as is possible (see below).

5. What are the characteristics of the best Internet provision?

The best websites:

- (a) Meet basic standards. No website should be misleading; have major technical failings; be offensive or discriminatory; inadequately protect data; be out of date (preferably indicating when last checked) or inaccessible below the best current standards, and all must be transparent about ownership.
- (b) Are user oriented. The content must be aimed squarely to the target constituency - not advisers or lawyers. Content must be specific, relevant, practical, balanced, in plain language, structured around key points and route maps of the way forward; translated into major languages of likely users; evaluated and continually adapted to user outcomes, and provide a way in which a user may give feedback on, or complain about, their experience.
- (c) Are functionally integrated with individualised assistance - both within and outside the website.
- (d) Meet current commercial standards of design - including responsiveness to different formats, particularly smartphones; use graphics, audio and video: effectively, and have attractive presentation.
- (e) Are interactive and resolution-oriented. They should offer a process that is interactive and dynamic, using such techniques as guided pathways, and be oriented to the resolution of any dispute or query, providing sample letters and forms, automatic document assembly, practical tips on proceeding, assistance with necessary skills, and be emotionally supportive.
- (f) Justify the expenditure on them either by proving that they are more cost efficient or effective than alternative forms of provision, or because they can generate self-sustaining income. A starting list for relevant criteria might include the extent that provision can be proved:
 - (i) to increase the identification and resolution of disputes;
 - (ii) to increase access;

- (iii) to increase the affordability of assistance;
- (iv) to increase the quality of services;
- (v) to comply with appropriate ethical standards;
- (vi) to operate at a cost acceptable to its funder and likely to remain stable;
- (vii) to increase the skills and capability of users;
- (viii) to respond to the needs of users;

(ix) to generate feedback for policy-makers.



These are all indicators of a fundamental approach to develop provision which begins with the needs of users and re-engineers knowledge and information in consequence.

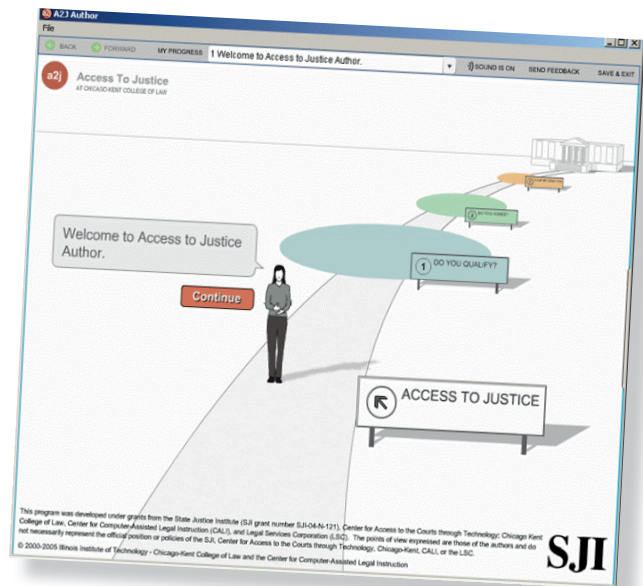
Jes, the avatar of the Justice Education

Society who talks users through court procedures

6. What are the 'new frontiers' which are emerging?

These are the developments in which progress is being made and which merit monitoring to assist in developing best practice:

- (a) the integration of automated document assembly programmes. This is old hat in relation, say, to the USA Access to Justice (A2J) programmes. They allow the building up of court forms with a visual interface that fronts an automated document assembly programme. They have yet to spread very far in England and Wales where courts are not yet equipped, in the main, to accept electronic filing;
- (b) the integration of interactivity - through such mechanisms as guided pathways, and the use of such mechanisms as video avatars to conduct interaction with the user;
- (c) the integration of effective video;
- (d) the incorporation of individualised assistance within standard packages;
- (e) ensuring or introducing a degree of creative competition to encourage developments;
- (f) holistic approaches that incorporate skills training and emotional support;
- (g) holistic approaches that take a user through from initial contact to resolution of a problem, either within one website or a linked series;
- (h) online dispute resolution and, particularly, online dispute determination that involves courts, tribunals and judges being online;
- (i) methods seeking to address digital exclusion;
- (j) the incorporation of user-generated comment;



- (k) appropriate inter-relationship between profit and not-for-profit assistance (as, for example, in linked websites);
- (l) the modification for, and potential relationship with, more detailed provision - websites designed primarily for mobile phones;
- (m) the development of transparent and widely agreed criteria for the assessment and comparison of websites across jurisdictions;
- (n) an agreed research methodology on effectiveness;
- (o) sustainable funding.

Digital delivery of legal services takes place, of course, within a context. At the moment, users of the Royal Courts of Justice CAB's CourtNav software have to print off their forms at the end of a digitally assisted process and physically lodge them with the court because there is no electronic filing. A digital intake and processing system has limited use if it ends with a whimper and not a bang as the user shifts to unreconstructed mainline services of a non-digital kind.

7. What are the international priorities at the current time?

- (a) maximum recognition that law might be national but technology and skills are global. In consequence, much can be transferable (as is happening with collaboration such as that between the Netherlands and other jurisdictions, and between British Columbia's Justice Education Society and the California courts);
- (b) recording and disseminating latest developments;
- (c) developing and encouraging international pathways for communication and learning;
- (d) encouraging evaluations; sharing the lessons, and developing a shared methodology which would allow comparison of effectiveness and cost efficiency;
- (e) sharing lessons on which technology proves the best for which purpose.

8. What should be the priorities for England and Wales?

- (a) 1% of the annual legal aid budget should be allocated to a competitive innovation fund along the lines of the Technology Initiative Grants programme of the USA Legal Services Corporation;
- (b) the Lord Chancellor and the Ministry of Justice should take a lead in the delivery of digital legal services by fostering and celebrating provision, for example through national annual awards;
- (c) the Lord Chancellor and the Ministry of Justice should examine the provision of services in British Columbia which seek to address the problems that arise from the withdrawal of legal aid in family cases;
- (d) the Lord Chancellor should expressly endorse the commitment of the government to encourage citizens to deal with their own problems and, for example, safeguard free access to statutes through The British and Irish Legal Information Institute (BAILII) and press plain language review of all statutes before receipt of third reading approval;
- (e) the Lord Chancellor should re-evaluate legal aid priorities so that funding is aimed at the resolution of disputes as early as possible, and deploy Internet-assisted provision to meet the need for initial advice and information;
- (f) the Ministry of Justice or the Legal Aid Agency should find the funds - perhaps from the current underspend on legal aid - to support both of the national advice websites, *adviceguide.org.uk* and *advicenow.org.uk* - one as representing the national CAB service and the other as an aggregating site of specialist providers;
- (g) the Legal Aid Agency should have more operational independence from the Ministry of Justice with more freedom to manage delivery and drive innovation on its own initiative while keeping within budget.
- (h) the Courts Service should acknowledge the need to assist litigants in person; develop self-help provision; make access to it available on the Ministry of Justice website; and develop the RCJ CAB's CourtNav programme as a national prototype to assist litigants in all courts;

- (i) the Ministry of Justice and the Courts Service should commit to a pilot small claims online dispute resolution programme to be developed from 2016 onwards when the lessons from the programmes in the Netherlands and British Columbia can be established;
- (j) the Department of Work and Pensions should respond to research on its Sorting out Separation website and better recognise on the website the practical difficulties faced by separating couples;
- (k) the Department of Work and Pensions should add a further element to its accreditation scheme for those assisting separating families that requires those meeting the standards to provide accurate information that respects, and reflects, the legal rights of users;
- (l) the Department of Work and Pensions and the Ministry of Justice should consider whether a mandatory programme, which might be digitally provided, should be introduced for separating couples with children, along the lines of British Columbia's Parenting After Separation model;
- (m) providers of digital legal information should debate whether some form of voluntary quality assurance mark for websites giving legal information might be desirable along the lines of the NHS Information Standard;
- (n) The Law Society and Legal Services Board should encourage private providers to develop services for those on low incomes; monitor developments, and seek maximum publicity for them amongst legal providers and the public;
- (o) The Solicitors Regulation Authority and Legal Services Board should consider the ethical issues relating to online provision, including links between for-profit and not-for-profit websites.

The fieldwork for this report was conducted between March and October 2014.

Its findings are supported by the following papers:

Paper 2: THE CONTEXT

Paper 3: EVOLVING DELIVERY MODELS - THE EXAMPLE OF FAMILY LAW

Paper 4: PORTALS

Paper 5: LITIGANTS IN PERSON, PUBLIC LEGAL EDUCATION & SKILLS

Paper 6: COMPARING WEBSITES: MATERIAL CRITERIA

Paper 7: FROM ONLINE INFORMATION TO RESOLUTION

Paper 8: LEADERSHIP, CULTURE & CREATIVITY.



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