

Relieving some of the legal burdens on clients: Legal aid services working alongside psychologists and other health and social service professionals

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In this paper, I discuss key research from the United Kingdom and some of the more limited research undertaken in Australia. English research and some national research has recently revealed that people are often unaware that their problem is legal in nature and that often the health and social services that may be the client/patient's first 'port of call' are not identifying problems as legal. This means that particularly disadvantaged community members are not finding appropriate assistance. A significant impediment for vulnerable and disadvantaged people accessing the legal system is the cumulative nature of problems and often their lack of knowledge and confidence in seeking assistance from lawyers. The recent research in the United Kingdom also suggests that vulnerable and marginalised people have so many problems to deal with that they are overwhelmed. Unresolved legal problems are also linked to poor health in this research. Pressing health or social welfare problems gain a response but legal needs may never get examined or will only be revealed when they have escalated. In addition to highlighting key aspects of this research this article will also discuss a holistic model of health and legal services working collaboratively with tertiary education in West Heidelberg, Victoria Australia. This model serves to demonstrate how through co-location and multi-disciplinary approaches, legal social and health professionals can work together to ensure that clients/patients are more likely to have their legal problems addressed. Communication and networking between legal aid services and other health and social service providers can overcome the difficulties indicated in the research in terms of people's access to justice and legal services.

Relieving Legal Burdens Through Integrated Service Delivery

Introduction

Research emerging from the United Kingdom demonstrates that a significant impediment to vulnerable and disadvantaged people in accessing the legal system is that their problems are often cumulative and compounding, that their sources for seeking advice are often non-legal and that both clients and non-legal service providers often lack of knowledge, confidence and capacity in seeking assistance from lawyers or identifying cases that are of a legal nature and making appropriate referrals. The United Kingdom has for some time been at the forefront of world research on people's advice seeking behaviour in seeking help for their legal problems. Only recently has Australia commissioned such research specifically in New South Wales. Some research has been undertaken in Canada (Currie, 2007) and in New Zealand (Legal

Services Agency, 2006) but the key focus of this article is the significant body of research emerging from the United Kingdom on which the New South Wales research is based. Building on the research findings this article argues for greater collaboration, partnerships and communication between legal aid services and health and allied health services including psychologists in order to assist people with their legal problems and highlights research connecting unresolved legal problems with poor health outcomes caused or made worse by stress and anxiety.

Definitions

It is useful to define some of the terms which are used in this article because commonly understood meanings may not be the same as legal understandings and because the law, like other professions has its own language. The term *legal aid services* includes services provided by the private legal profession for legal aid, salaried legal aid

lawyers within legal aid commissions, community legal centres and other services which provide legal information, advice and representation to people on a low income or who are disadvantaged. Where legal aid commissions are concerned unless a matter fits within a tight means test and legal merits requirements then options other than litigation will need to be explored for the client to resolve the matter.

References to *vulnerable and disadvantaged groups* include people who have limited income, limited employment opportunities, have minimal power, live in poverty, have limited education and who often live in communities that are deprived, under-resourced and lack sufficient infrastructure. It may also include people who suffer from some form of disadvantage in terms of mental illness, intellectual disability, racial or cultural background, their age, or a combination of all these things. A *justiciable problem* is a problem which is capable of having a legal solution. (Genn, 1999)

The role of lawyers

Lawyers work in a wide range of areas including consumer issues, debt, Centrelink entitlements, domestic violence and discrimination as well as in matters relating to the criminal law and family law. The stereotype of a lawyer is that they litigate or encourage litigation. However, most of the time their role is to examine the client's legal position, explore a range of solutions or strategies with a client and then problem solve. This may involve mediation between parties, letters outlining and advocating a client's position, protection of clients from hostile opponents, out of court advocacy with social service agencies and negotiation with the decision-makers who can influence the lives of clients/patients.

Social exclusion and the law

It is well-understood that poverty and deprivation lead to poor education, poor health outcomes, alienation and disempowerment (Smith, Dorling & Shaw, 2001) this subsequently limits people's capability and capacity to achieve well-being and participation in civic life (Sen, 1999). In a recent report entitled *Australia Fair* by the

Australian Council of Social Services (ACOSS 2007) the number of Australians living below the poverty line was estimated to be 2.2 million. Attempts to improve legal services to the vulnerable and disadvantaged ought to take into account the implications of poverty and inequitable income distribution, and the systemic inequities that occur in a justice system that has been historically modelled on the protection of property interests, highly complex and technical legal language and expensive charges for legal services (Duncanson, 1994).

The United Kingdom's research

Building on earlier research by Genn in 1999, the Legal Services Research Centre (LSRC) in the United Kingdom has conducted the Civil and Social Justice Survey of 5015 adults from 338 households randomly selected from over 73 postcode sectors, to produce a sample representative of the population of England and Wales. A parallel temporary accommodation survey was also conducted with 197 adults in 170 households. The questionnaire was in two parts: The screening component which involved all respondents, and the main component where those respondents reporting problems were individually interviewed for an average of 30 minutes. Eighteen categories were used in the survey to describe justiciable problems. These included clinical negligence, children, consumer problems, mental health problems, discrimination, divorce, domestic violence, money or debt problems, rented housing, relationship background, owned housing, neighbours, unfair police treatment and welfare benefits.

The screening component reported the incidence of problems and the basic advice strategies adopted together with detailed socio-demographic information from each respondent. The main component focused on one problem and recorded in-depth data relating to advice-seeking behaviour. This included what the respondents did or did not do, where they went for help and their level of awareness of the availability and location of advice services. The main component also covered the type of funding the respondents obtained, the costs incurred, objectives in trying to resolve the problem and the perceived impact on their lives of dealing with the problem.

In the most recent survey in 2004, the LSRC conducted a more detailed analysis of the experiences of vulnerable groups including children and young people, the homeless and lone-parents. By conducting ongoing periodic surveys, the researchers have been able to refine and target their questions to gain a deeper understanding of the knowledge and advice-seeking behaviour of vulnerable people (Pleasence, Buck, Balmer, O'Grady, Genn, & Smith, 2004). Much of the research discussed in this article emerges from these ongoing periodic surveys. In the absence of such research across Australia findings of the New South Wales Law and Justice Foundation research in New South Wales which used similar survey material has revealed similar trends (Cournarelous, Wei and Zhou, 2006). National Legal Aid in Australia has recently commissioned similar Australian research but this is still underway. In the interim much useful information can be learned from the United Kingdom's research.

The LSRC's research (Pleasence, et al, 2004) suggests that vulnerable and marginalised people may have so many problems to deal with that they are overwhelmed or prioritise what they can deal with. They may have pressing health or social welfare problems to address, so, their legal needs may never get examined or will only be revealed when they have escalated because they have been neglected. This examination of their legal issues may only be forced through a criminal or civil court case, a loss of benefits or a loss of home or livelihood through debt. The provision of legal services is more likely to reach groups of people if services are multi-disciplinary and located where people are likely to turn for help. These multi-disciplinary services where legal services could be delivered include health services, allied health and social services.

Traditional legal aid services continue to operate on an appointment basis and with the expectation that the clients have sufficient wherewithal to be able to identify that they have a legal problem and will turn up at the solicitor's office or at legal aid services. Traditional legal services often presume that people can overcome their fears of the legal

system and the fear of the implications of taking action, and that even if people have no money or power, that they will still seek legal advice. The reality is that many people particularly those from vulnerable groups continue to have their legal needs unmet. The research discussed in this article reveals that the traditional model of legal services where the lawyer expects the client to identify and present with a legal problem continues to miss a section of the community who may be in desperate need of legal assistance. In this author's view better communication, respect, understanding and improved networking between legal aid services and other service providers who assist people with an array of problems which can have a legal context will improve client's access to justice. Recent research in the United Kingdom found that people experiencing social or economic disadvantage were most likely to experience problems (Pleasence, et al. 2004). The authors concluded that "...people who are vulnerable to 'social exclusion' are also particularly vulnerable to justiciable problems (p105).

Further research into the nature of problems by the LSRC revealed that justiciable problems do not occur in isolation but often come in clusters and that there are distinct areas when this can occur (Pleasence, Balmer, O'Grady, and Genn, 2004). One such cluster was family problems such as domestic violence, divorce and relationship breakdown which also led to problems for children in those environments. Another cluster involved homelessness, unfair police treatment and action being taken against the respondent. Further clusters emerged regarding medical negligence and mental health problems, and those involving consumer transactions and or connected with money, debt, employment, neighbours, rented housing and social housing or public housing and welfare benefits (Pleasence, Balmer et al, 2004).

Buck, Balmer and Pleasance (2005) conclude that there is a clear overlap between those demographic characteristics associated with social exclusion and vulnerability, such as living in temporary accommodation or being on a low income and the experience of justiciable problems. Some justiciable problems may be a

consequence, others a precursor to social exclusion. Increased awareness of this relationship by service providers outside the legal aid field could better inform the delivery of health services and legal services. The researchers also note that these figures revealed patterns of advice-seeking behaviour amongst low-income people which demonstrate the important role legal and other advice services, including financial counselling, can play in tackling social exclusion and helping vulnerable groups with their problems. The greater integration of legal and other advice services in providing suitable legal advice and assistance might play a crucial role in helping people move out of some of the worst experiences of social exclusion by, for example, preventing the clustering of civil problems and life crises such as debt or homelessness (Buck et al. 2005)

Moorhead and others conducted research in 2004 into the advice needs of lone parents (Moorhead, Sefton, & Douglas, 2004). Their research was based on a survey of 200 callers to a 'One Parent Families / Lone-Parent Helpline'. They also conducted five focus groups with lone-parents and advisers. The research found that lone-parent families were a vulnerable and marginalised group in that they had high needs, often have longstanding problems which are, both legal and non-legal. Lone-parents were twice as likely to have justiciable problems related to benefits and debt compared to the general population. They use a high number and diverse range of advice sources for help, the quality of service that they receive is variable.

Many lone-parents in the Moorhead research did not approach solicitors and obtained advice elsewhere. Thirty per cent contacted lawyers but did not perceive them as providing substantial help with their problem. In 20% – 50% of cases they were unable to secure assistance; 41% wanted face-to-face advice but were unable to find it; 32% wanted to find advice on an issue but could not get it; and 12% were unable to find anyone to provide legal aid for their problem/s with benefits, contact and child support (Moorhead et al. 2004).

This research with lone-parents

highlights that a significant group of people who are in need of and want help, are not able to find it. It also highlights the presumption that people, with a legal problem, will present to a lawyer is a fallacy in relation to this group and that lawyers also need to be more helpful and proactive. These are people likely to be seen by psychologists in matters pertaining to their relationship and property or joint debt. There is clearly a need for different approaches to providing legal services, acknowledging that people with legal problems may not seek out lawyers but seek their advice elsewhere.

In further research by the LSRC in 2007 examining the effectiveness of outreach services to people with debt problems, people interviewed felt that it was a good idea to deliver services in a place where people trusted what happened and where they felt comfortable and welcome. The LSRC report noted the people that were interviewed were clearly in need but that they displayed a low level of awareness of services that were on offer (Buck, Tam, & Fisher, 2007). In terms of levels of anxiety caused due to money issues, a significant 67% of interviewees reported spending most or all of their time worrying about their money problems (Buck et al. 2007).

As psychologists, it may be of interest to note that the research in the United Kingdom has also concluded that a failure to address a person's justiciable or legal problems can lead to ill health prompted by the distress and anxiety from people having too many problems or not being able to access help. The LSRC, on further analysing its survey data from the 2004 CSJS, concluded that there was a clear link between justiciable problems and health (Plesence, Balmer et al, 2004). Accordingly, the LSRC argues for the promotion of public awareness of a broad range of legal rights and obligations which should be incorporated into both the justice and public health agendas. There is the ability for legal services to mitigate the stresses of clients by resolving the justiciable problems and that this should be recognised as one way of improving public health outcomes. The LSRC suggested the forging and development of partnerships between legal centres, general advice-agencies and health centres. The LSRC suggests training of health professionals in

problem identification and appropriate referral and linkages upon the problem being identified, so as to provide a means of getting earlier advice to clients and patients to prevent ill-health. They also note that this could have the potential to address health inequalities and that such further integration of services could lead to a reduction in social exclusion (Pleasence, Balmer et al. 2004).

Australian research

In Australia, as stated, research into legal aid services has been more limited than that in the United Kingdom but this is about to change with National Legal Aid (a lobbying body representing the legal aid commissions around Australia) currently rolling out research across the country. Key research has already been conducted in New South Wales (Counareous, et al. 2006) and more recently and modestly in Victoria (Noone, & Curran, 2007). The New South Wales Law and Justice Foundation has conducted a series of surveys in New South Wales, most notably the 'Justice Made to Measure: New South Wales (NSW) Legal Needs Survey in Disadvantaged Areas' (JMTM) which will be the focus of the following discussion.

Residents in six disadvantaged areas were surveyed by telephone. These included three suburban areas (Campbelltown, Fairfield and South Sydney), one provincial area (Newcastle) and two rural areas (Nambucca and Walgett). The survey was conducted on 2,431 residents over 15 years of age with a response rate of between 24-34% and was a random sample. The findings were that in the disadvantaged areas surveyed, people had a high incidence of legal events over a one year period. There were substantial rates of inaction amongst those surveyed. It was also found consistent with research on lone-parents in the United Kingdom (Moorhead et al. 2004) that traditional legal advisers such as private lawyers, legal aid services and courts were rarely used and that the substantial proportion of people experienced barriers in seeking help. When they did seek help two-thirds found it from non-legal advisers sources of this advice included family and friends, local councils, trade unions, government, insurance companies, accountants, health and social

services and schools. The report authors conclude that more client-focused responses and multi-dimensional responses are needed, with greater co-ordination and co-operation between services (Counareous, et al. 2006).

In a small research project conducted in West Heidelberg Victoria, the aim was to trial a new methodology for measuring people's access to justice and human rights adherence. The outcomes of the research suggested that clients and their health and social advisers were often unaware of people's legal options and rights and that they lacked confidence in using them where they had knowledge of legal rights. Although the research was modest it is relevant to this discussion. The research consisted of two focus groups and a survey. The first focus group of seven people was with service providers including social workers, housing workers, ethnic workers and health professionals). The second focus group of ten people were clients of Centrelink and the survey was of local people in the mall but only people who identified as having involvement with Centrelink were surveyed. Fifty people were approached but only five were surveyed as many people expressed fear of reprisal (despite the confidentiality of the process being explained) or were not comfortable with having their comments written down. The survey was never intended to be representative or random due to funding constraints. In the author's view, the survey approach was probably not the most appropriate tool for this type of research in view of the many problems that the survey approach presented for people experiencing disadvantage.

The findings, (modest as the research was) revealed that few people were aware of their rights or their remedies when their right to social security was infringed or when they were treated inappropriately by *Centrelink* officers. Participants expressed a high level of fear about reprisals for complaining about their treatment as many service users believed that if they challenged a decision or their treatment they might jeopardise their remaining payments. The overwhelming majority of participants, in the trial, had little information or understanding of the methods by which unfair treatment could be addressed. They did not know there were legal aspects to problems and that legal advice could

be sought

The trial concluded that "the right of everyone to social security" was inappropriately curtailed. If the right to social security was a human right and enshrined in domestic legislation, then for those people surveyed and those people in both of the focus groups, it was not capable of being realised in practice as people, including service providers in the West Heidelberg area, had little knowledge, capacity or confidence and were unable to exercise the right. With new human rights legislation in the Australian Capital Territory, Victoria and legislation likely to follow in Western Australia and Tasmania, human rights will have little meaning for the most marginalised people in our community until these gaps in knowledge, confidence and capacity are addressed.

As with the United Kingdom's research (Pleasence et al. 2007), the Curran and Noone study found participants often thought the advice would make little difference, they were uncertain about what to do and where to get help or often felt that nothing could be done. It appeared in the Victorian research that psychological factors such as anxiety and shame impacted on participant's ability to access their right to social security payments. These observations are also consistent with recent research findings in the United States (Sandefur, 2007). Sandefur ran focus groups with low and moderate-income residents in a mid-western American city exploring problems involving money and housing and found five rationales for inaction amongst the respondents. These included shame, a sense of insufficient power, fear, gratitude due to previous experiences and frustrated resignation.

All of the research discussed in this article points to the fact that legal aid services and health services need to work more closely together to equip clients in navigating the complex array of advice that they may need to resolve their problems. Lawyers certainly need to have a better understanding of why it is in their clients' best interests for them to be involved in training and connecting with non-legal service providers. As many elements of the research point to psychological barriers

playing a critical role in preventing access to legal services greater communication between the two disciplines can only reduce the legal burdens on clients. This article will now discuss an example of a co-located service in West Heidelberg which has facilitated greater cross referrals for clients across the two disciplines and in the author's submission successfully reduced the legal burdens and health burdens on clients.

Case Study

The West Heidelberg Community Legal Service, Banyule Community Health Service and La Trobe University partnership Victoria

West Heidelberg remains one of the most disadvantaged communities in Victoria. West Heidelberg was ranked twentieth in the out of a total of 726 postcodes for general disadvantage. This level of disadvantage was similar in 1999 and 2004 (Vinson, 2007). This service provides an illustration of how, if agencies can work side by side in a 'one stop shop' or co-located service, some of the impediments to clients resolving their legal problems can be overcome. Although West Heidelberg Community legal Service is not perfect, this example illustrates that workers can cross-refer clients on site in such a way as to ensure client confidentiality and can reduce the barriers to seeking advice outlined in the research which has been discussed. Critical in this is the training of staff in awareness of legal issues. This is an area which is in need of constant updating as new staff come and go.

The legal service operates on a holistic model of problem-solving, appropriate referral, representation and advice, and active involvement in law reform and community education. This capacity is enhanced by La Trobe Law students on clinical placement who under supervision work on client cases and law reform at the legal service. Where resources permit, the legal service may take on test cases. The main areas of assistance provided by the legal service relate to criminal law, debt, fines, social security law and domestic violence. Integral to the legal services approach is its ongoing relationship and co-location with the *Banyule Community Health Service*. The fact that health, allied health and social service disciplines work in one location, have lunch

together and regularly stop and chat helps build relationships of trust between the different service providers and bridges the gaps in information about the various disciplines. This relationship has demonstrably improved client/patient outcomes. (Curran, 2005; Noone 2007).

The legal service and the health centre have endeavoured to implement an 'integrated care approach' whilst adhering to privacy laws and lawyer client privilege through a separate filing system and strict client consent regime within the legal service. The health service provides allied health and social welfare services. It employs doctors, nurses, nutritionists, dentists, psychiatrists, psychologists, drug and alcohol counsellors, problem gambling support services, financial counsellors and neighbourhood renewal personnel. The health service works on a case management basis and hence does not focus on problems in isolation but works on the array of issues that the client brings. The client feels they are not alone and can take action with support. An example highlighting the potential benefits for psychologists and their clients is illustrated by the way that the psychologists at the health service deal with their clients from the Magistrates Court's Court Referral and Evaluation for Drug Interventions and Treatment (CREDIT) Program. This program assists people on bail who are seen by a psychologist/clinician and treatment is arranged and attendance is a condition of bail. Clients have a drug problem who can be young people and adults. Psychologists working with CREDIT clients have referred young people to the legal service for assistance with social security entitlements, client fines and in relation to mistreatment by police on a regular basis. It is unlikely that these young people would receive legal help were it not for the team of psychologists who due to their relationship with the legal service are in a position to identify the problems as legal in nature and utilise their trusted relationship with their client/patients to encourage them to seek further help from the legal service.

This example illustrates the key point of this article, namely, that non legal services have access people to people (who for the

variety of reasons outlined earlier in this article) would otherwise would not seek help. Enhanced opportunities can exist to help people through relationships built on trust and contact between the onsite workers of health, allied health, legal and welfare services. Legal issues are often seen as part of a complicated web of other associated problems that might include mental health, health generally, financial issues and so on (Noone, 2007; Curran, 2005).

Conclusion

People's lack of knowledge about their legal options and where they can find appropriate services – if these services exist – suggests that more must be done to educate both service providers and members of the public. The United Kingdom research discussed in this article reveals that those most likely to experience justiciable problems are the vulnerable and disadvantaged and that for various complex reasons there are many impediments to them being able to find help or to seek resolutions for their problems. The United Kingdom, NSW and Victorian research discussed in the article reveals that many, who are involved in advising people, are themselves not always aware of issues which are legal. Non-lawyers should be trained and confident in identifying what might be legal issues so that they can appropriately refer and support clients who come to them with additional problems.

More sustained effort is needed to reach marginalised and vulnerable groups which move beyond the traditional models of advice service delivery. Legal aid services need to be better at connecting with and engaging services from other disciplines and taking a more holistic approach to solving client/patient's problems. Legal aid services need to realise that the traditional approaches to service delivery they use which often rely on clients identifying that they have a legal problem and seeking out a lawyer are flawed in terms of what the research reveals about the advice seeking behaviour of vulnerable groups. A coordinated and holistic approach to problem-solving which recognises that the health care, legal services and welfare professionals together have a role to play in identifying those who are vulnerable to justiciable problems is a key way to attaining more access to justice for all.

Many vulnerable and marginalised people will either not seek advice at all or will seek advice from non-legal sources if they feel confident, familiar and have trust in that service (Buck et al. 2007; Curran, 2005; Noone, 2007). One key suggestion is that the services should be delivered in locations where the clients/patients are likely to be. The legal profession needs to make a greater effort to think laterally about how they can link a client up with other services or supports and how they can get the clients to other allied services. It does not involve much extra effort for lawyers to become conversant in the range of other services that exist in their local area. Similarly non-legal service such as psychologists may find help for their clients through the development of a closer relationship with the legal profession.

Often issues around legal aid services are consigned to the fringe. Issues of health and education are often at the forefront of politicians' and the public's mind at election time and little priority is given to legal aid as an issue. This article highlights that there are connections between legal/justiciable problems and health and well-being. It suggests greater acknowledgement and development of these linkages and opportunities for partnerships to alleviate client/patient burdens in a holistic way.

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