

Norwich City Council
SCRUTINY COMMITTEE

Item No 7

REPORT for meeting to be held on 23 November 2017

Access to justice

Summary:

The purpose of this item is to review the impact of legal aid cuts, changes to tribunal fees, debt, and impact of cuts to probation, prisons, and courts. The city council commission's advice services which provide elements of legal advice and how these work in Norwich. The following report provides background on the Norfolk Community Law Service (NCLS), Family Court Support Service and Norfolk Community Advice Network (NCAN), and how these organisations assist people in court.

There is also further evidence on how benefit sanctions and debt affect access to justice, as well as case studies of people in family courts.

Conclusions:

The report should enable the scrutiny committee to determine any recommendations they would wish to make on the council's or other organisations approaches to access to justice issues in Norwich.

Recommendation:

To make recommendations on how the city council can enhance its role in collaboration with partners to address issues around access to justice.

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Background

The scrutiny committee opted to dedicate two meetings to the topic of access to justice. The meeting on 23 November will provide evidence and background on the topic, and the meeting on 14 December will be the opportunity to identify any recommendations.

Members will hear from four speakers who will provide evidence on access to justice and answer questions to help inform any recommendations the committee may make. The speakers:

Janka Rodziewicz – Norfolk Community Advice Network (NCAN)
Gareth Thomas - Director of the UEA Law Clinic, and as a trustee of the Eastern Legal Support Trust
Judi Lincoln – Norfolk Community Law Service (NCLS)
Sue Bailey – President of the Law Society

1. What is access to justice?

1.1 According to the United Nations website 'Access to justice is a basic principle of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.'

1.2 The Law Society explains the difficulties people experience around access to justice as 'ordinary people are finding it more difficult to access justice because of issues including legal aid cuts, court closures and increased court fees, as well as changes to the rules regarding the legal costs a client can recover.'

2. Civil cases vs criminal cases

2.1 Civil law – is a system which tries to set out rules to cover all the sorts of situation that may arise in life, and provides for disputes to be decided by a Judge if the parties are unable to sort it out themselves. Examples of cases in civil court include: breach of contract claims, equitable claims, and landlord tenant issues.

2.2 Criminal law – is a system for punishing wrong doing. The criminal law sets out all the things which are considered unacceptable, and which will render someone liable for prosecution.

This report considers civil law, particularly those areas known collectively as 'social welfare law'.

3. Social welfare law

3.1 Social Welfare Law (SWL) is the term used in the UK to describe those areas of civil law with which people on low incomes, who are typically disadvantaged, are prone to experience difficulties. Internationally, the term Poverty Law is used. SWL is a very large and diverse area of law that draws on, and overlaps with many other.

3.2 The majority of definitions class SWL as encompassing debt, discrimination, mental health, welfare benefits, employment, education, community care, immigration and housing. Of these, debt, welfare benefits, employment and housing are the areas which have in the past, in respective order, receive the greatest number of public enquiries at advice centres.

<http://www.law.ac.uk/futurelawyers/practice-areas/social-welfare/>

4. Factors which affect access to justice

4.1 According to the annual report of Norfolk Community Law Service (NCLS), the main factors contributing to the increase in demand on their service are the impact of legal aid cuts, changes in welfare benefits, and reductions in public expenditure which are both impacting on clients' income levels but also reducing the funding for advice provision across the sector. The NCLS say they are also seeing clients experiencing debt and rent arrears resulting from the impact of the benefit cap, sanctioning and the 'bedroom tax', and, more recently, the impact of the roll out of universal credit.

5. Legal aid reform

5.1 Four years ago, the then government implemented the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Hundreds of thousands of people who were eligible for legal aid on 31 March 2013 became ineligible the very next day. Four years on, the Law Society has conducted a review of the legal aid changes introduced under the act. This review concludes that:

- Legal aid is no longer available for many of those who need it
- Those eligible for legal aid find it hard to access it
- Wide gaps in provision are not being addressed
- LASPO has had a wider and detrimental impact on the state and society

5.2 Since the introduction of major reforms to legal aid it is harder than ever to get free access to a lawyer for those who cannot afford one. The result is that in courts around the country, growing numbers of people with no legal experience are representing themselves in court to maintain their homes and possessions, exercise their right to stay in the UK or even keep custody of their children. These people are known as 'litigants in person'.

5.3 One online news source gathered the following data about litigants in person:

- The Personal Support Unit (PSU), which works in 20 courts to provide emotional support and advice for people without lawyer, has seen a 520% increase in people going to it for help since 2011.
- Six years ago the PSU had 200 volunteers helping people on just over 9000 occasions. In the financial year to 2017 more

than 700 volunteers helped people on more than 56,000 occasions. This represents a quarter of all those who have received help from PSU since the charity's foundation 16 years ago.

- A previously unreported study into litigants in person published earlier this year by the University of Birmingham reveals the vast educational gulf between postgraduate qualified lawyers and those representing themselves in court.
- Almost two-thirds of the almost 200 litigants in person they surveyed in Birmingham did not have A-levels. A quarter had no formal qualifications at all.
- Only 45% of people said they had understood what was said in court and 22% did not have English as a first language.

The full article is available here:

https://www.buzzfeed.com/emilydugan/a-record-number-of-people-are-representing-themselves-in?utm_term=.je1dPOvMO#.sogazJD5J

6. The impact locally

The below table shows the number of civil law cases funded through legal aid in Norfolk vs. nationally from 2011 – 2017. There has been a 65% decrease in Norfolk, and a 46% decrease nationally.

6.1

	Norfolk	National
2011-2012	807	59530
2012-2013	750	55358
2013-2014	585	51961
2014-2015	477	43537
2015-2016	376	35936
2016-2017	282	32079

6.2 This breaks down for different areas of social welfare law over the same timescale as follows:

- 100% decrease in debt cases in Norfolk (96% decrease nationally)
- 65% decrease in domestic violence cases in Norfolk (47% decrease nationally)
- 100% decrease in employment cases in Norfolk (99% decrease nationally)
- 67% decrease in family cases in Norfolk (50% decrease nationally)
- 69% decrease in housing cases in Norfolk (31% decrease nationally)
- 100% decrease in welfare benefit cases in Norfolk (96% decrease national)

6.3 This has resulted in an increased demand for free social welfare legal advice as provided by advice providers in the VCSE sector. For example, the Norfolk Community Law Service (NCLS) reported that in 2016/2017 they saw an increase in the number of clients seeking advice combined with an increase in the complexity of the issues involved. They saw a total of 2493 new clients, a 6.7% increase on the previous year.

6.4 National research has shown that access to social welfare legal advice has a positive impact on health and wellbeing outcomes. This has been supported by local data gathered by Norfolk Community Advice Network, showing that individuals receiving help from NCAN providers have seen increased wellbeing scores and increased income.

Source: <http://www.norfolkcan.org.uk>

7. Family law

7.1 The highest reduction in social welfare legal aid cases locally has been in private family law – mostly in connection with divorce or parents' separation, including parental disputes over access to and upbringing of children. This is one of the areas in which litigants in person are highly prevalent, with estimates that a third of all private family law cases now have no solicitor representing either side.

7.2 One of the responses to this has been the development of so-called 'McKenzie Friends' schemes. These schemes vary but essentially provide individuals with basic support from non-legal-professionals who may help them with understanding and navigating the courts, completing paperwork or understanding the judge's direction. In some schemes these are paid-for services and in others these are free. NCLS have developed one such free scheme known as the Family Court Support Service. The Family Court Support Service is in its fourth year of assisting clients seeking help when they have a dispute over contact with their children. During 2016/17 it assisted 125 clients, compared to 21 in 2015/2016.

7.3 Case study from the scheme:

Carl and Nicola were at Court over a dispute about how much time their children should spend with each parent. The family court supporter was able to act as messenger for Carol in dealing with Nicola who had a solicitor. She was also able to emphasise that the hearing was not about past enmities but about the child's well-being.

By liaising with Nicola and her solicitor before the hearing, it became clear that the solicitor was going to raise concerns about Carl's mental health which gave Carl an opportunity to prepare a response to the court. During the hearing, we

supported Carl by calming him when comments were made about him and to prompt him to make the points he felt important. Carl is diagnosed with depression, anxiety and ADHD and he found the support really useful.

Nicola's solicitor drafted the Order for the Court and the Court Supporter asked the solicitor to go through it with Carl so that he was clear about the meaning. Following the hearing, the Court Supporter helped Carl who has dyslexia, to draft his statement for the next hearing and we had the statement for the next hearing and we had the statement checked by one of our FLA solicitors.

7.4 Court staff in Norwich have reported that 'the Family Panel welcomes the initiative of the Family Court Support Service which provides assistance to those who are unsure how to prepare and fully participate in the Court hearing. Many of those who find themselves in this position have been the subject of domestic violence; therefore, to have the assistance of someone who can help identify the paramount issues for their child, assist in the preparation of the paperwork, provide guidance to focus on the relevant issues for the court and then quietly support them through the hearing is invaluable and can make a real difference both to the individuals and the court process.'

8. Other issues

8.1 There has also been a significant reduction in benefits, debt and housing cases supported through legal aid, driving demand to other sources and limiting access to justice. These exacerbate changes to the wider benefits system that leave people in difficult situations.

8.2 Welfare benefit decisions (including sanctions) continue to create issues. Most benefit decisions, including sanctions, can be appealed but there are a relatively low number of appeals being lodged, as individuals may not know whether or not they know have a valid appeal and may not know how to appeal. However the high rate of success with the cases that are pursued indicates a worryingly high number of 'bad' decisions are being made by authorities, which suggests that more people may be losing their entitlements as a result of not pursuing appeals.

8.3 Evidence from Leeway domestic violence and abuse service shows that restrictions in legal aid leave individuals in difficult and dangerous situations: "Ladies working part-time and accessing tax credits can often be above the financial limit for legal aid. Ladies that are working are unable to access any legal aid which leaves them stuck in very difficult situations. With their only options being DIY, non-molestation order etc. Not all solicitors now offer the first ½ hour free so can be difficult to get basic legal advice"

8.4 Particular client groups who face specific issues around access to justice include members of BAME communities. Beatrice Humarau from Bridge Plus submitted the following statement to the committee:

“We at The Bridge Plus+ believe that there is a strong link between diversity, social inclusion and access to justice for BAME communities. We have identified the following key issues regarding access to justice:

- Race equality/race hate crime and incidents: anecdotal evidence we have gathered and findings from our community surveys indicate that most incidents remain unreported. Community members do not believe that something can be done about such incidents and are concerned that reporting them could affect their immigration status. Without proper resourcing for a race equality project, The Bridge Plus+ does not have the capacity to influence change – e.g. to provide communities with skills and/or mechanisms that would encourage reporting. Unfortunately, we do not anticipate the newly launched “Stop Hate in Norfolk” website to address the issue of under reporting, especially given that the role of Police diversity liaison officer may no longer exist in a near future.
- Access to social welfare benefits: although our advice work does not cover welfare benefits appeals (we support individuals up to the mandatory reconsideration/review stage then refer them onto other specialist agencies), ‘lower level’ benefits advice work provided on a one to one, face to face basis is essential to ensure that BAME individuals can exercise their right to apply and/or retain welfare benefits. We are concerned that some of the letters received by benefits claimants lack clarity and transparency and make it harder for individuals to understand their rights and entitlements and to dispute decisions. This is especially the case with housing benefits (e.g. letters detailing calculations and informing claimants of an overpayment issue) and with tax credits overpayment issues.
- Digital by default agenda: The majority of our services users have limited English language skills and IT skills. We are already working with the Digital Champions project to encourage people to go online however we believe maintaining one to one, face to face support for those service users who face additional barriers and/or are particularly vulnerable, should be prioritised.
- Universal Credit full service from June 2018. Because most of our advice service users are foreign nationals and/or have families, they have not yet been affected by Universal Credit. We are engaging with Norwich City Council’s UC lead and with DWP staff to try and prepare our service users for June 2018 Full service implementation. Our key concerns in relation to Universal Credit are similar to those expressed by other support agencies i.e. money management issues, the minimum 6-week

wait and the expectation that claimants will do everything online. We are also concerned that unlike Norwich City Council, JobcentrePlus Norwich does not always provide interpretation support for claimants who have limited English language skills. We have direct evidence of this unfortunately. We are concerned that access to justice for BAME claimants may be affected if such support cannot be accessed and BAME claimants find themselves in situations where they feel they have to sign documents (e.g. "Claimant Commitments") without fully understanding them."

9. Employment Tribunals

9.1 One area of social welfare law that has changed recently is employment tribunals, arguably with a positive impact on access to justice, as laid out in this case study:

Case study – UNISON:

On Wednesday 26 July, UNISON members and staff gathered outside the Supreme Court in London, awaiting the outcome of a four-year legal battle.

In 2013, this access to justice was restricted when the government decided to charge fees to everyone who wanted to go to an employment tribunal.

The fees were brought in at a time when the Ministry of Justice was facing huge budget cuts and the government said the aim of them was to transfer part of the cost of the tribunals to users of the service, to "deter unmeritorious claims", and to encourage disputes to be settled earlier.

Anyone who felt they had been illegally treated by their employer suddenly had to include a cheque when they sent off their claim form, or pay with a card online, or the form wouldn't even be looked at.

The Supreme Court decided that employment tribunal fees conflicted with the right to access to justice, and therefore undermined the rule of law.

It said the rule of law was undermined because, if people couldn't reasonably afford to bring employment tribunal claims, this damaged the ability of the courts to enforce the law, and if the laws Parliament makes can't be enforced then the electoral process could become "a meaningless charade".

Not only does the result mean that anyone who needs to take their employer to court can do so for free from now on, it also means that anyone who has had to pay for that access to justice over the last four years will be reimbursed.

Source: <https://www.unison.org.uk/news/article/2017/08/employment-tribunal-fees-story-behind-success/>

This shows that the issue of access to justice continues to develop as new case law is developed.

10. The role of the city council

The city council has provided significant funding to a range of VCSE sector agencies in the city over recent years to delivery social welfare advice and advocacy. This is currently being reappraised with a few to an open tender process to deliver this support to Norwich residents over coming years as part of the annual grants process. This is in addition to the provision of money and budgeting advice to council tenants provided by the housing income team .

10.1 The council is an active part of the NCAN referral system which allows for individuals who are identified by council officers as being in need of social welfare advice and advocacy to be quickly and securely referred to an appropriate source of that advice.

10.2 This complements other initiatives that seek to identify people who may have presented in other public sector settings with social welfare issues that are unresolved, and thence to triage and support them to resolve those issues. Notably, there is increasing amount of interest and activity in the field of 'social prescribing' which embeds non-medical advice (including social welfare advice) in GPs' surgeries. The city council are actively working with health and VCSE sector partners to pilot and expand this in Norwich.

10.3 The city council also has a role as a provider of services such as housing and benefits which may drive demand for social welfare advice. Alongside funding for the VCSE sector, the council maintains ongoing dialogue with the providers of these services to understand where council policy and practice is driving system demand, with a view to reducing this where possible and compliant with statutory duties.

11. Access to justice is a broad topic with a range of factors that limit how easily or otherwise individuals can exercise their rights. The evidence here suggests that there has been a reduction in the availability of support and advice resulting in significant issues for residents. The committee is invited to consider how the city council can enhance its role in collaboration with partners to improve access to justice and address some of the issues raised in this briefing.