

Public law in clinical legal environments

The
Legal
Education
Foundation



Public
Law
Project

Contents

Acknowledgements.....	4
Executive summary.....	5
Introduction.....	7
The Public Law Project.....	7
University law clinics.....	7
Purpose of the report.....	9
An overview of our approach.....	9
Guiding principles.....	9
Methodology.....	10
Context.....	10
Some terms explained.....	13
Social welfare law.....	13
Public law.....	13
Classification of public law cases.....	15
Regulatory matters.....	16
Existing public law provision in the vicinity of the clinics covered.....	16
General distribution of public law and related advice services in England and wales.....	16
Cardiff – public law legal aid contract holders.....	18
Huddersfield – public law legal aid contract holders.....	19
Kent (Canterbury, Dover, Maidstone, Folkestone) – public law legal aid contract holders.....	19
Liverpool – public law legal aid contract holders.....	20
The work of the participating law clinics.....	20
Cardiff Law Clinic.....	21
An overview of the clinic and the services offered.....	21
Supervision and relationships with external organisations.....	22
The Mencap Cymru Project.....	22
The NHS Continuing Healthcare Scheme.....	24
Cerebra Learning Entitlements Research Project.....	24
Sustainability of the clinic’s external relationships.....	26
Developing public law work.....	26
Huddersfield Legal Advice Clinic.....	27
An overview of the clinic and the services offered.....	27

Supervision and relationships with external organisations	28
Developing public law work	29
Kent Law Clinic	29
An overview of the clinic and the services offered	29
Supervision and relationships with external organisations	32
Developing public law work	33
Liverpool Law Clinic	35
An overview of the clinic and the services offered	35
Supervision and relationships with external organisations	36
Developing public law work	37
University College London and City University Law Clinics	37
University College London - the Centre for Access to Justice and the Guttman Centre	37
City University 'Immigration Human Rights Project'	40
Some general observations about law clinics' casework	42
The Centre for Criminal Appeals Model	43
Potential roles for PLP in support of law clinics' public law work	45
General training in public law and judicial review	46
Bespoke training on public law issues of particular relevance to law clinics	46
Specialist support to assist clinics with public law referrals	47
Continuing specialist support during the lifetime of a case or project	47
Diverse initiatives which could be supported by PLP through training and specialist support	48
Detailed below is a non-exhaustive list of the types of initiatives by which PLP might assist a university law clinic to have a greater impact on social justice	48
PLP's Exceptional Funding Project	48
Complaints, in particular in relation to (a) failures by public bodies and others exercising public functions to discharge their public law duties	50
Strategic support for local projects in conjunction with local advice agencies	51
Specialist support for local or national projects in conjunction with NGOs and university research teams	53
Assisting clients to apply for fee remissions for appeals to the First-tier Tribunal (Immigration and Asylum Chamber)	55
Crossover with PLP research	55
The potential for PLP to have input into undergraduate academic courses	56
The use of technology by law clinics in their existing service delivery	56
The potential use of technology by PLP to support law clinics	59

Funding PLP’s work	61
<i>PLP bears cost</i>	65
<i>University bears cost</i>	65
<i>Third Party bears cost</i>	65
Conclusions and recommendations	66
Appendix 1 - PLP questionnaire for participating law clinics	70
Appendix 2 - An overview of the regulation of legal services in England and Wales ..	72
Reserved legal activity.....	72
Regulation imposed by statute in respect of unreserved legal activity	76
Appendix 3 – public law provision in England and Wales - specifically in proximity to participating law clinics	78
General distribution of public law and related advice services in England and wales	78
Appendix 3 (ii) Tabled data for the distribution of public law and related services in areas of clinics	79
Appendix 3 (iii) – discussion paper on access to justice and public law in Wales 13_2_13	82
Appendix 4 – an exchange of emails between Ravi Low-Beer of PLP and a student at Huddersfield Legal Advice Clinic	85

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Executive summary

The work summarised in this report was undertaken with funding from the Legal Education Foundation, provided to enable PLP to look at ways in which it might support the work of university law clinics.

PLP looked in detail at the operation of four law clinics as well as meeting with lawyers and staff involved in crossover activity, at clinics, at NGOs working with clinics and, to a limited extent, university research centres. PLP undertook desk research to map the provision of public law services in social welfare law, and met with various interested stakeholders.

Law clinics are a developing tool for both legal skills-based and academic education. As well as providing students with experience of law in action and a practical base for academic enquiry, law clinics are seen, and should be supported, as an important means of implementing universities' 'Widening Participation' agenda. They provide practical legal work experience, and experience of clients facing social problems that many students will never face themselves.

From PLP's perspective an interesting theme to emerge from this work was to scrutinise the extent to which university clinics are 'pro bono', in a traditional or literal sense. University law clinics have an increasingly high profile in the 'access to justice' community, but providing legal services to the socially disadvantaged is not a primary reason for clinics' existence. The primary reason for their existence is educational. This creates the potential for tension that must be managed.

A further theme to emerge was true cost. The services provided by clinics may be free for the (necessarily limited) number of clients that receive help from units directly or indirectly, but they are not cheap. Law clinics require high staff resources, and students require intense supervision. Clinics themselves are at great pains to emphasise that their capacities are very limited, and that such limitations make it inconceivable that law clinics will ever be able to plug current gaps in service provision caused by recent legal aid cuts amongst other things.

This research establishes that public law casework is particularly challenging for law clinics. The need to identify issues of law before commencing a case, tight deadlines for bringing claims and lodging tribunal appeals, the potential consequences for clients of the normal litigation costs rules (explained below) and the complex and often protracted nature of public law cases generally, all militate against their being taken up. One other issue worth noting is that the regulatory framework applicable to law clinics' legal work is not straightforward (PLP provides a provisional analysis of the relevant legislation in *appendix 2* of this report).

Of the four law clinics considered in this study, only Kent Law Clinic has consistently brought judicial review cases¹ for clients on a pro bono basis. It should be noted that these cases

¹ See para 83

were brought for clients for whom it made sense to bear the costs risk, for example because they were destitute and had nothing to lose by litigating and losing. In the vast majority of public law cases, litigation without costs protection (generally the costs protection afforded by legal aid), will not be a realistic option. Pro bono representation in litigation (especially litigation against public bodies) is unlikely to be possible except in a very small number of cases.

That said, there are a number of ways which clinics seek to engage with areas of public law which go beyond, or sidestep, individual casework. This includes work on public inquiries and inquests, such as Hillsborough, to which two of the clinics provided student capacity to assist document sifting and logging (Liverpool and Huddersfield). Also, the preparation of legal guides for the public (e.g. Cardiff Law Clinic's work with Cerebra and Mencap Cymru) which does not require students to engage directly with casework, and the provision of basic advice and assistance with benefit claims and appeals, under the supervision of NGOs such as the Citizens Advice Bureau (e.g. Huddersfield Legal Advice Clinic's work with Kirklees Law Centre and Citizens Advice Bureau).

Law clinics are often able to maximise service provision to the community, and provide useful student experience, when local NGOs and solicitors meet training and supervision costs. This can lead to effective partnerships where organisations use students as supervised paralegals, and students increase the capacity of local services. Partnership work with NGOs also has the potential to diversify funding streams potentially for both partners.

One area that seems surprisingly underdeveloped is the overlap of academic research with clinical practice, where both helping individual clients and gathering an evidence base would help create impact through policy initiatives or strategic legal work. There are several clinics starting to take this model forward, though most are at very incipient stages.

The observations and conclusion of this report will be of interest both to clinics and their potential or actual partners. For PLP's part, we conclude with various options identified to pursue with the consequence of improving access to justice.

Public Law Project
31 October 2016

Introduction

The Public Law Project

1. The Public Law Project (PLP) is a national legal charity (founded in 1990) which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage. Within this broad remit PLP has adopted three main objectives:
 - Increasing the accountability of public decision-makers;
 - Enhancing the quality of public decision-making;
 - Improving access to justice.
2. Uniquely for an organisation of its kind, PLP undertakes research, policy initiatives, casework and training across the range of public law remedies. Nominally, this report has been prepared by PLP in its research and training capacities, though there is no absolute delineation in PLP's activities.

University law clinics

3. In recent years, cuts to legal aid (both funding and scope changes) and austerity measures more generally have combined to have a dramatic impact on the landscape of advice provision for the very poorest in society². Legal aid is no longer available in many areas of social welfare law, family law and immigration and those voluntary sector advice agencies still open cannot meet demand.
4. As funding for general advice about social welfare law has been dramatically reduced, the pro bono sector in general (law clinics in particular) has become the fastest growing area of independent advice provision in the UK. Law students are doing more pro bono work than ever before, in more clinics, with a wider variety of legal areas covered. As of 2014, 70% of all UK law schools now provide free legal services to individuals, groups and organisations. According to the latest (2014) Law Works Law School Pro Bono and Clinic report, this was up from 46% of law

² See, for instance, MOJ Legal Aid Statistics in England and Wales 2013/14, specifically page 22 of below https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/366575/legal-aid-statistics-2013-14.pdf

schools in 2006 and 61% in 2010. There are now over 10,000 students involved in clinical work, with law school clinics receiving 11,100 enquiries in 14/15³.

5. Advice experience is undoubtedly of benefit to law students, and the provision of legal advice by students may go some way to meeting demand that would otherwise go entirely unmet, but the risks of such a model are self-evident. Advice providers are unqualified and inexperienced, resources are stretched and generally reactive, and (where one-off advice fails to solve the problem) few if any clinics have the potential or capacity to provide their service users with ongoing casework or active representation in either complaints procedures or litigation. This is a real and serious issue. Ultimately, if any advice service cannot provide a reliable route to meaningful redress mechanisms for its clients then, whatever else it is doing, it is not truly facilitating access to justice, at least not directly.
6. PLP has prepared this report in conjunction with four representative universities. Each institution is interested in developing the capacity and ability of their particular advice clinics (and/or of the pro bono sector more generally) to identify and progress public law issues, whether internally or by informed referral.
7. PLP deliberately identified university clinics offering varying degrees of public law experience to students and capacity to clients. The projects offered by participating law clinics (explained further below) varied from providing general legal advice only in mostly non-public law cases, to offering advice and representation across a wide range of areas including public law, to creating public law toolkits for the general public without giving advice on individual cases.
8. The participating law clinics were at the Universities of:
 - Cardiff
 - Huddersfield
 - Kent
 - Liverpool
9. These law clinics came to PLP's attention through its training outreach: individual delegates from each of these clinics had attended PLP's conferences (mainly) outside of London. Information was gleaned from each of them by face to face and telephone interviews, email correspondence, and by the completion, by each law school, of a questionnaire designed by PLP. A copy of the questionnaire template is contained in *Appendix 1*.

³ LawWorks Clinics Network Report April 2014- March 2015

<https://www.lawworks.org.uk/sites/default/files/LawWorks%20Clinic%20Network%20Report%202014-15.pdf>

10. The selection of a limited number of participating law schools to study was necessary to ensure that the report retained focus and cost-effectiveness. It has however meant that highly regarded projects – such as the Student Law Office at Northumbria University and the Legal Advice Centre at Nottingham Trent University School - have not been studied in detail. That said, it is considered that the range of clinical models considered is sufficient to enable PLP to make observations and draw some conclusions that are of general application. Also, during the research period projects relevant to the research findings came to PLP's attention, and have been included, though with less rigorous analysis.

Purpose of the report

11. The purpose of the report is both (1) to assess demand for, and provision of public law services in the clinical environments chosen study, and potentially (2) to develop model options for PLP's involvement in law clinic service delivery (for example, as a specialist support service). Of course, this means it may also be of interest to other clinics, universities, law firms and NGO's looking at developing pro bono models and/or establishing partnerships between institutions.

An overview of our approach

Guiding principles

12. This report is written from PLP's perspective as an access to justice organisation. This means that our assessment of current and potential clinical work is focused primarily on good/improved client outcomes (as opposed to student educational outcomes, for example). In anticipation of potential PLP involvement with law clinics, good client outcomes will tend to attract more support from wider stakeholder groups and would be in line with PLP's charitable remit. That said, nothing in this report is intended to downplay the importance – as an end in itself – of providing students with a practical legal education, particularly in areas of social welfare law.
13. PLP is mindful of the benefits of community outreach and partnership working with community-based organisations to facilitate contact with client groups. Working in this way will provide law students and their supervisors with:
 - 1) A point of engagement with social welfare client groups, enabling them to properly understand their clients' issues, whether in a general or in a topic-specific sense,

- 2) Access to groups that may assist with administrative burdens such as communicating with clients, and obtaining papers.
 - 3) Assistance in focusing on their clients' needs;
 - 4) A better understanding of social welfare clients' needs, and knowledge of the sector (where some students will eventually be employed).
14. Any prospective law clinic model, and in particular PLP's involvement with it, must be financially sustainable, notwithstanding PLP's capacity limitations. PLP has also considered the extent to which new technologies might assist.

Methodology

15. The work that has culminated in this report has been to:
- Develop relationships with law clinics to assess how to work together to provide a forum for meaningful public law development within the university pro bono sector.
 - Assess work that is already underway or in development to see how PLP can help either overcome or mitigate the current limitations to the identification and (where possible) positive resolution of public law problems by law clinics.
 - Consider examples of NGOs and commercial law firms working with law clinics in a public law context.
 - Undertake initial work to gauge whether and if so how PLP might be able to work with university law departments and students to develop reactive research/casework projects.

Context

16. This study was undertaken during a time of uncertainty for law schools and law clinics. A law clinic director observed that:

“The increasing “Employability” agenda of all universities, the importance to universities of National Student Survey scores, taken together with £9000 annual tuition fees, has led a noticeable change in the attitude of students who now see themselves as consumers with high expectations. Universities, even the Russell Group, are increasingly aware of this and in theory this should help increase the profile and value of clinic. But it is still Research (and increasingly impact) that is the

driver.

In addition, the Solicitors Regulation Authority is currently reviewing legal education and training, including the place of the Qualifying Law Degree. If that is dispensed with, it will have a huge impact on all law schools, not just those that offer the Legal Practice Course (LPC). This is happening at the moment, and will affect law schools from 2020 – whether public law will still then exist as a separate subject is also open to debate. Who knows, also, what the effect of Brexit will be on recruitment and student/staff mobility, so law schools are at a very uncertain period of their existence at the moment and clinical activity is something that may well have a different level of importance in coming years because of the increasingly uncertain market / future.”

17. In their report *Access to Justice through University Law Clinics* (2015), Orla Drummond and Gráinne McKeever considered the potential for law clinics to deliver access to justice, and concluded⁴:

“The research findings demonstrate that university law clinics form part of an intricate ecosystem of legal advice in the UK. The range of areas of law covered by clinics is diverse and not necessarily predictable since the clinic focus is more likely to be aligned to Law School expertise than demonstrable legal need. The services provided are often basic but range from establishing the legal issue, to offering written legal advice, to providing specialist legal representation. The number of cases varies widely between clinics but the overall number of clients helped on an annual basis is substantial. The network of university law clinics in the UK has continued to grow since the 1990s, creating a greater geographical spread across the UK. While most clinics are based in or around predominantly urban university campuses which may be unfamiliar to the general public, some clinics do situate themselves in more client-friendly environments, including shopping centres and court buildings, and most clinics attempt to engage with the public to raise awareness of the services they provide and the assistance they can offer”.

18. However the research identified important limitations in providing access to justice, as follows⁵:

“Clinic casework is limited by a lack of capacity – in terms of staff numbers and expertise; physical and financial resources to support or develop casework; student availability, knowledge, ability and commitment; and the need to manage clinic caseloads to match student-focused objectives within these parameters. The service

⁴ *Access to Justice through University Law Clinics* (2015), Drummond and McKeever, p32

⁵ *Ibid*, p33

models offered by clinics vary considerably, with the model of support matched to Law School requirements rather than to legal need. The research evidences the misperceptions by clinic clients about the nature of the service being provided, with clients not fully aware of the clinic's limitations in progressing their legal problems. In addition, clinics are not always obvious or visible on the legal landscape and are predominantly student-centred and staff driven. The consequence is that clinics may not be able to help the clients who find them, either because of a lack of capacity, or fit, and without any guarantee of connecting the client to a more suitable provider, with the risk therefore of exacerbating referral fatigue and the individual's sense of frustrated resignation: clinics themselves could become a further barrier on the path to justice unless clients are properly directed and adequately assisted.

These limitations mean there is no singular point at which individuals might routinely be referred to clinics for legal assistance. Instead, the entry point will vary according to the individual clinic's service model, which may not have been developed in line with other local service provision, and which will itself be subject to variation depending on internal university demands. This may be no different from the service limitations of existing legal advice providers but it does raise questions about how clinics might be inserted systematically into a client's path to justice. It also highlights the importance of external partnerships for clinics – where partners are aware of what the clinic can provide and how to make, or receive, appropriate referrals – but here too the dependence on external partners creates vulnerabilities for clinics, particularly where those external partners are themselves vulnerable. The impact on the legal ecosystem of removing what might seem to be minor or remote support mechanisms may cause considerable detriment if the consequence is to reduce the layers of expertise that make the ecosystem effective and on which other parts of the ecosystem depend.

There are also strategic issues that operate to limit clinics. The development of university law clinics in the UK has been ad hoc, tied to individual and institutional academic objectives rather than access to justice agendas, with the overriding need to serve core university functions, and associated academic demands”.

19. This research also observed lack of capacity to be a highly significant barrier to law clinics' ability to facilitate access to justice for members of the local community.

Capacity was clearly limited by:

- 1) High supervision costs - students are in general unqualified to give legal advice, and typically have limited life and professional experience, and therefore generally need intensive training and supervision,
- 2) The number of available student hours - students' educational commitments, including examinations and ongoing course work, and lengthy vacation periods when many students lose their university accommodation and need to do paid work, mean that the window within which students are available for work at the law clinic is in practice a small one, and

- 3) The number of available supervisor hours – this is a particularly limiting factor where there are no dedicated supervisor resources (ie where supervisors have to combine law clinic work with other teaching and research functions), and where the supervisors’ practical legal expertise is narrow or nonexistent.

These limitations are particularly relevant - and particularly limiting - in public law cases, for reasons considered below.

Some terms explained

Social welfare law

20. In this report, the term “social welfare law” is used to describe those areas of civil law particularly relevant to those on low incomes, who are typically disadvantaged and marginalised. It includes the law relating to debt, discrimination, mental health, family, welfare benefits, employment, education, community care, immigration and housing. In accordance with PLP’s aims and objectives, this report is concerned with the public law aspects of social welfare law.

Public law

21. Public law can be thought of as the framework of legal principles governing the decisions, actions, and failures to act of public authorities when they are exercising public functions. Public law cuts across many recognised areas of law. It includes aspects of the law relating to housing, welfare benefits, immigration, crime, policing, access to health and social care, education, the conduct of tribunals, access to legal aid, prison law, planning, regulation, and aspects of constitutional law such as use of prerogative powers, and the ministers’ powers to make delegated legislation.
22. There are several remedies available to individuals when public authorities act in breach of public law. These remedies include complaints procedures and ombudsmen schemes, appeal and review processes, public inquiries and judicial review.
23. Judicial review is a process whereby an individual can bring a claim that a public authority has breached public law before the court. It has an unusually short

limitation period (i.e. the period within which a claim for judicial review must be commenced following the unlawful conduct complained of) compared to other types of civil litigation. The limitation period in most⁶ public law cases is “promptly and in any event within three months” of the conduct complained of. What “promptly” means in any particular case depends on the facts, is a matter for the court (whatever the parties may agree), and in many cases is considerably less than three months. This means that determining with any certainty how long a claimant has to issue a claim can be a difficult question even for expert public law practitioners.

24. As with most other types of civil litigation, the general rule in judicial review is that the loser is liable to pay the winning party’s costs. It should also be observed that judicial review is a front-loaded procedure (ie an unusually large amount of preparatory work including legal research needs to be done by the claimant before the merits of a case can be established, and a claim issued). Judicial review cases therefore frequently require substantial urgent investment in the case by expert lawyers at the outset, when - because of the short limitation period - the time available for the necessary expert scrutiny is invariably very limited.
25. These aspects of judicial review (the short limitation period, the general rule that an unsuccessful claimant is liable to pay the successful public authority’s costs of the case, and the front-loaded nature of the procedure) are just three of a number of reasons why claimants for judicial review will invariably benefit from urgent expert legal advice before issuing proceedings.
26. As stated above, public law cases are not restricted to those involving judicial review – other types of public law remedy, such as non-litigious complaints against public authorities, may have more relaxed deadlines, better suited to the pressures on law clinics’ supervisory staff and the limits on law clinics’ capacity. But while the vast majority of public law cases will not involve judicial review, many complaints about the conduct of public authorities could require the client to be advised that judicial review proceedings could or should be brought with the consequent need for urgent expert legal advice.
27. Similar considerations in relation to the need for time-pressured legal analysis arise where an individual affected by an administrative decision (such as immigration or benefits claimants) have a right of appeal to a tribunal, which must be exercised within specified time limits which vary depending on the particular type of appeal. While lodging an appeal to an administrative tribunal does not carry with it the same costs risk as issuing judicial review proceedings, it may nevertheless require urgent consideration to meet the appeal deadline, and detailed legal analysis to determine if, and on what basis, the underlying public law decision might be challenged on

⁶ There are different limitation periods in planning and procurement cases

appeal. This imposes a heavy supervisory burden where law students are involved in working on appeals to tribunals, and tends to mean that either the supervision is provided by an external body such as a partner NGO (e.g. a CAB) or that the number of appeals in respect of which work could be done by the law clinic is very limited.

28. Public law cases are therefore particularly difficult for law clinics to take on because of (a) the need for expert scrutiny of the case before judicial review can be excluded, or the grounds of any appeal formulated, and (b) the urgency with which such scrutiny has to be applied to the case in order to potentially meet the judicial review deadline, or the time limit for bringing an appeal to the relevant tribunal.
29. For these reasons, it came as no surprise to observe that many of the successful forays into public law by law clinics involved public law cases where it was known from the outset that judicial review was not an option for the client, either because there is a statutory right of appeal which will (in most case) provide an adequate remedy (e.g. work on applications and appeals in benefits and immigration cases), or because the work involves a complaint or public enquiry (e.g. the Hillsborough Inquest, see para 107.3)).

Classification of public law cases

30. As indicated above, public law cases can be described in a number of different ways:
 - 1) Simply as “public law cases” to distinguish them from “private law cases” which do not involve challenges to the exercise of public authorities’ powers;
 - 2) By reference to the substantive area of law concerned (e.g. immigration, or welfare benefits);
 - 3) By reference to the type of court proceedings (e.g. judicial review).
31. This can make it challenging to measure a law clinic’s public law caseload. As Professor Fitzpatrick of Kent Law Clinic observed:

“Our classification of legal casework is primarily by the subject matter or area of concern as it appears to our clients: ‘employment’, ‘family’, ‘housing’, ‘welfare benefits’, ‘immigration’ etc. We do bundle some matters under the category of ‘cause of action’, e.g. ‘contract’, ‘tort’; or sometimes by ‘proceedings’ or ‘forum’, e.g. ‘county court’, ‘JR’, ‘ET’, ‘ombudsman’ etc.; or by ‘purpose of the proceedings’, e.g. ‘criminal’, ‘civil’. We don’t use ‘public law’ as a distinct category of casework. In general terms, although it’s a fuzzy category, we consider ‘public law’ as any law which concerns matters where the interests of society are directly engaged, for example dealings between the individual and

the state and its emanations. From our work this would include: public sector housing, welfare benefits, immigration, asylum, nationality, crime, policing, prison law, public access to land, and access to legal aid generally. We also undertake casework in employment, family, private housing, contract, tort, equality law and miscellaneous areas.”

32. Professor Fitzpatrick’s observation is reproduced here because it demonstrates how PLP’s broad interest in supporting law clinics’ public law casework in areas of social welfare law is unlikely to be thought of in the same terms by the law clinics themselves. Instead, PLP have found that the law clinics tend to be mindful of the areas of law in which the clinic has the necessary supervisory expertise (e.g. immigration or social security law) and the type of remedy offered to clients in that area of law (e.g. advice, but not representation on appeal to tribunals or judicial review).

Regulatory matters

33. All the law clinics visited had to deal with regulatory issues. An overview of regulatory issues that might affect law clinics is set out at [Appendix 2 - An overview of the regulation of legal services in England and Wales.](#)

Existing public law provision in the vicinity of the clinics covered

General distribution of public law and related advice services in England and Wales

34. Set out below is a summary, to the best of PLP’s current knowledge, of the social welfare public law services available in the vicinity of the clinics covered. The purpose of including this information in this report is to help place in context any observations regarding clinics’ contribution to public law provision locally, and also nationally. The data, tabled at clinics includes:
 - 1) Extracted sections from the Legal Aid Agency’s ‘find an adviser’ spreadsheet which is stated to be updated regularly (the version used was updated July 2016 according to LAA’s website)
 - 2) Mapping using publicly available web based software, showing the distribution of LAA contract holders for advice and assistance in public law and in category areas likely to overlap with public law, i.e. welfare benefits, debt, housing and immigration and asylum, mental health and prison law. PLP are also providing web references for these maps, which are publicly accessible, in appendix 3.

- 3) Information taken from the Law Centres Network national map and CAB website(s).
 - 4) Evidence from PLP's own knowledge of public law provision, for instance from recent conference attendance or other outreach work, and the direct research for this project.
35. The data relating to the number of firms with public law contracts should be treated with caution. As stated above, public law comprises a number of different aspects of the individual's relationships with the state, including much of the law relating, for example, to immigration, housing, community care and welfare benefits. The legal aid system recognises these areas of law in their own right, and the Legal Aid Agency awards contracts to law firms and other organisations permitting them to give publicly funded advice in certain cases within the specialism in question for the lifetime of the contract (at least insofar as issues within that specialism remain within the scope of the legal aid scheme). "Public law" is treated by the Legal Aid Agency as another specialist area of law for which contracts are granted. For the purposes of these contracts, "public law" cases are defined as cases where the underlying issues are determined according to judicial review principles. But many judicial review cases in, say, an immigration or community care context are brought by firms acting under an immigration and asylum, or a community care (rather than a public law) contract.
36. Accordingly the number of organisations holding a public law contract with the Legal Aid Agency does not give a full picture of the availability of public law services in that area. Equally, information from the Legal Aid Practitioners Group suggests that many contracts that are publicly stated to exist, are in fact no longer functional (the firms in question having ceased to provide publicly funded services).
37. In addition, the correlation between the existing availability of public law services that are free or affordable to the consumer and the demand for public law services that law clinics might meet is not straightforward. That is because:
- 1) It is clear that law clinics, as providers of pro bono legal services, are most often sought out to assist in areas of law that are outside the scope of legal aid - if publicly funded lawyers are available, PLP consider it would be reasonable for most clients to prefer them, and likely clinics would refer them.
 - 2) As indicated above, law clinics can increase their capacity by shifting supervision costs onto partner organisations, such as firms of solicitors or NGOs, at the same time increasing the capacity of the partner organisations by

providing law clinic students working as pro bono (albeit unskilled) paralegals (the model adopted by Hugh James⁷, Liverpool CAB⁸ and Kirklees Citizens Advice and Law Centre⁹). So it is not necessarily a disadvantage for law clinics wishing to increase their capacity to be in an area where there is adequate existing free-to-the-client provision.

38. It is nevertheless considered that data that is indicative of gaps in the local legal services market, and information as to the location and identity of potential or existing partners, may be relevant and useful in the consideration of initiatives to improve or develop law clinics' public law capacity. The data presented in this section and Appendix 3 should be considered in that light.
39. Below PLP provides more detail on the provision of public law services in the area of the four main participating law clinics.

Cardiff – public law legal aid contract holders

40. There are four public law contract holders in the Cardiff area, though this does not include Hugh James Solicitors, a major provider of niche services in continuing healthcare, which could be described as a public law area, dealing as it does with local authority and NHS decision making¹⁰. Watkins and Gunn are a public law firm offering clients access to judicial review in education and local authority service provision cases (including challenges to library and school closures). There are also a number of community care and mental health providers in the area, all of whom could bring public law proceedings (though as explained below very few of these are progressed to judicial review in Wales, to PLP's knowledge). As far as immigration and asylum services are concerned, Duncan Lewis have an office in Cardiff, but seem to have relatively low activity in public law there (though they do have a contract for this with LAA) and we are aware of one small immigration and asylum advice service (Trinity Centre) that has used public law to assist its clients, as well as the Migrant Legal Project which has a limited advice service in the area. As explained below (at paragraph 52), there is a national helpline for families requiring advice provided by Mencap Cymru.
41. Cardiff Law Centre closed in October 2014. A service with the same name, established by Law Works, staffed by volunteers and dealing solely with employment law, was recently established but has no public law caseload. PLP is aware from contact with advice services in Wales, that those seeking to use public

⁷ See para to 56 to 59 and 66

⁸ See paragraphs 111 to 114

⁹ See paragraphs 76 to 79

¹⁰ See paragraphs 56 to 59

law to challenge the decisions of public authorities in Wales also look over the Severn to England to get legal support, for instance from Deighton Pierce Glynn, who have an office in Bristol, and Irwin Mitchell who have offices in Bristol and several other cities in England and who (very occasionally) handle judicial review claims in Wales.

42. PLP has run a public law conference annually in Wales since 2009 and thus has a reasonably developed knowledge of the public law landscape in Cardiff and in Wales more generally.
43. Subsequent to questions raised at that conference, in 2013 PLP conducted an analysis of the number and type of cases then being heard at the Administrative Court in Cardiff, an exercise which provides some local intelligence.¹¹ The data set of cases over 26 months (to February 2013) suggested a (relatively) very low instance of judicial review per capita of population in Wales and a very low number of cases being brought by individual claimants (as opposed to cases brought by commercial entities challenging public bodies). We provide some of the analysis in *appendix 3 (ii)*. Although further work would need to be done to interpret and analyse more recent data, this may suggest the existence of some issues in public law supply/demand that are specific to Wales.

Huddersfield – public law legal aid contract holders

44. Huddersfield Legal Advice Clinic has a comprehensive advice service covering public law on its doorstep in the form of Kirklees Citizens Advice and Law Centre, with which it has a developed relationship. There are a number of other services nearby (such as Switalski’s solicitors) who, though they do not hold a public law contract, do bring judicial review cases in their areas of practice (including Immigration and Asylum cases). Huddersfield’s proximity to Manchester and Leeds puts some (but not all) potential clients within reach of accessible public law services in that city (see also paragraph 46 below).

Kent (Canterbury, Dover, Maidstone, Folkestone) – public law legal aid contract holders

45. As far as PLP is aware there is one public law contract holder in the Kent area, Kesar & Co Solicitors. This is a practice largely specialising in immigration and asylum that has set up a charity, Intervene, to help deliver aspects of their work

¹¹ Practice Direction 54d provides that public law cases should in general be administered and determined in the area in which the claimant has the closest connection.

which are not publicly funded. Elder Rahimi have offices in Folkestone (as well as London) and are noted specialist immigration and asylum legal practice, who undertake strategic legal work (for instance receiving funding from the Strategic Legal Fund to undertake research into the treatment of young asylum seekers and refugees in the criminal justice system). Hodge Jones and Allen have a branch in Maidstone (which has a contract to conduct actions against the police). Clarke Kiernan LLP, based in Tonbridge, does not have a public law contract (they do have a housing and debt contract) but state (ON THEIR WEBSITE?) that they specialise in undertaking 'actions against public bodies', including 'actions against the Prison Service, Social Services and various actions against Local Authorities'. Kent is served by Medway Citizens Advice, and Shepway CAB situated in Folkestone (though with very limited opening times). There is also Canterbury Housing Advice Centre (CHAC), which has a relationship with Kent Law Clinic. It is worth noting that PLP's LAA contract holder mapping shows no community care contract holders in the area.

Liverpool – public law legal aid contract holders

46. Although public law provision in the immediate vicinity of the law clinic is limited, there is a relatively high concentration of public law contract holders in Manchester, which is approximately one hour's journey from Liverpool centre. There are only two legal aid providers with public law contracts in the Liverpool area; Swain and Co and Broudie Jackson Canter. Liverpool Law Clinic has developed a relationship with the latter¹². RMNJ solicitors, with offices just over the Mersey in Birkenhead, also offer judicial review services through their mental health contract. There are a number of services focussed on debt, welfare benefits and housing in the area. Merseyside Law Centre (listed on the legal aid agency spreadsheet as Merseyside Welfare Rights, as it has only just changed its name and status) indicated on inquiry that, were it to encounter a public law issue in the course of its contracted work in the Upper Tribunal (welfare benefits) or in housing, it would be able to action the issue by way of judicial review as a public law case. Merseyside Law Centre is one of two Law Centres Federation affiliates in the area, the other being Vauxhall Community Law and Information Centre, which also deals with debt, welfare benefits and housing. Other potential sources of public law support include Mental Health contract holders Peter Edwards Law who have an office in Birkenhead.

The work of the participating law clinics

¹² See paragraph 107.3) below regarding *Hillsborough*

47. Set out below is a summary analysis of the work carried out by each of the four law clinics participating in this study.

Cardiff Law Clinic

An overview of the clinic and the services offered

48. Unlike the clinical models adopted in Huddersfield and Liverpool, Cardiff do not offer a general advice service, but have specialised areas of expertise, with different external partners. Clinical projects include:
- 1) The Cardiff Innocence Project - students work under the supervision of academic staff and sometimes practising solicitors and barristers on cases where long-term prisoners maintain their innocence of serious crimes for which they have been convicted. The clinic has had some success in having cases accepted for full review by the Criminal Cases Review Commission, and (in a project spanning 14 years and 30 law schools) has been the only law school to have succeeded in having a conviction overturned.
 - 2) The Mencap Cymru Project – students working in teams under supervision research and develop toolkits to assist people with learning disabilities and their families. This project is considered further below.
 - 3) The NHS Continuing Healthcare Scheme – students work under the supervision of a firm of solicitors on continuing healthcare cases, where the client has to show that he or she meets eligibility criteria for NHS continuing healthcare. This project is considered further below.
 - 4) The Welsh Rugby Union Project – students work in partnership with the Welsh Rugby Union, to provide a free legal advice service to Welsh amateur rugby clubs. The Scheme is supported by the law firm Hugh James, and by Civitas barristers' chambers.
 - 5) (Until recently) the Cerebra Learning Entitlements Research Project, although that has now moved with the member of staff who developed it, Professor Luke Clements, to Leeds University. There is a possibility that, subject to future funding, the scheme may re-start in a different format involving a partnership between Professor Clements and Cardiff, which will consider the differences between relevant English and Welsh law.
49. Referrals are in general received from Age Concern Cymru, Mencap Cymru and Hugh James Solicitors, and not directly from clients. Innocence Project cases are chosen from the dozens of letters received each year from prisoners maintaining

innocence, who have no central point of contact if they are trying to find help, now that the Innocence Network UK no longer operates. Cases are also referred by solicitors, and by other organisations such as Inside Justice, which is part of the national prisoner newspaper Inside Time.

50. Cardiff Law School has approximately 1300 students. All, apart from first year undergraduates, are eligible to apply to work in the clinic. Their clinical work is extra-curricular, and so not assessed as part of their degree. Students are expected on average to commit 4 hours per week to clinic work. The law school is focused on equipping students with the practical skills to get employment. Clinic students are trained in October and work during the academic year till June, by which time their exams are over. So for the majority of students, the clinic only offers a short window. The reality often is that undergraduate students are not available to work on cases after April, because the exam period starts in mid-May. The clinic tries to address this by bringing on board its Legal Practice Course and Bar Professional Training Course students to take up the reins after Easter. There are currently (although numbers vary) about 50 students working on the innocence project, about 36 on the NHSCHC scheme and about 24 on the WRU scheme. If the external partnership and volunteering schemes are included (eg. the Bail Observation Project, Asylum Justice, Cardiff Asylum Support Advocacy, Hafal (Appropriate Adult training), Global Justice, and the Duncan Lewis advice clinic, about 160 students are involved in the various Cardiff schemes. Professor Julie Price has overall responsibility for the clinics, and is the only full-time employee, with a remit that also includes Employability, Engagement and other student skills activities such as Client Interviewing and Negotiation. The law clinic also employs (on a 40% contract) a qualified (but not practising) barrister/BPTC tutor to coordinate work on the NHS Continuing Healthcare Scheme, but otherwise has to provide supervision with a small number (usually between one and three others) of highly skilled but non-dedicated (in the sense that they have other responsibilities) academic staff, who can in reality only spend a small amount of their time on clinical work. Overall, the clinic activity at Cardiff is heavily dependent on the goodwill of a small number of local practitioners who each provide a small amount of time largely on a pro bono basis.
51. Some of these projects involve significant investment by external agencies. These are considered in more detail below.

Supervision and relationships with external organisations

The Mencap Cymru Project

52. In 2014, as a member of the Cerebra/Law School steering group (see paragraphs 60-64 below), and having identified its own needs inspired by that research project, Mencap Cymru decided to approach Cardiff Law School, with a view to setting up a pilot advice project. Mencap Cymru would look for live cases from families that contacted its telephone advisers, and would refer some of those cases to the law

clinic for students to prepare a written advice. However that model was not perceived by Mencap Cymru to meet families' needs, as the law students would need up to 6-8 weeks to research the law, apply it to the facts, and have their work properly checked by the supervising staff, and this was too long to wait for many of the families concerned. Further, Mencap Cymru's telephone advisers could deal with many of the cases themselves, so the number of cases referred to the clinic was less than expected.

53. The solution was to carry out an analysis of the queries its telephone advisers were receiving, and to refer those issues to the law school for generic, rather than individual, advice on problem areas. That generic advice would then be passed back as a resource to the telephone advisers. The 16 students were divided into groups, and under the supervision of Jason Tucker (a qualified solicitor and part-time tribunal judge, with a background in Legal Practice Course/ Bar Professional Training Course teaching), produced four online toolkits, funded by Mencap Cymru, which were launched at the Welsh Assembly in September 2015, in four specific areas of law, namely:

- 1) Accessing health and social care services: the rights of adults with a learning disability
- 2) Housing Law: the rights of tenants with a learning disability
- 3) Applying for a place at a specialist further education college: a guide for young people aged 19-25
- 4) Supporting parents with a learning disability through the child protection system.

54. Mencap Cymru then applied for more funding from the Welsh Government, and received three years funding from April 2016. With that funding, Mencap Cymru and the law clinic have committed to producing five new toolkits, and updating those already produced.

55. Mencap Cymru were asked, in the preparation of this report, why they chose to work with the law clinic rather than with established lawyers. In response, they indicated that in addition to providing dedicated, accurate information that supports people to help themselves one of the aims of Mencap Cymru is to raise awareness of the issues affecting its client base. It is therefore an advantage for Mencap Cymru to work with younger students at a formative stage of their development, and to be able to expose them to learning disability issues, and to feel able to use their skills to assist the client base. Paying established lawyers to produce and update the toolkits would not, in Mencap Cymru's view, stimulate a wider attitudinal change, and would also very likely be unaffordable. A sign of the success of the project was that students who participated in the scheme proceeded to involve themselves in other ways with Mencap Cymru, for example by fundraising and by jointly presenting

alongside Mencap Cymru Regional Officers at a conference hosted by Learning Disability Wales.

The NHS Continuing Healthcare Scheme

56. The scheme is a partnership between the law clinic and the nursing care department of Hugh James Solicitors, a large commercial firm with offices in London and Cardiff. In past years, up to about 60 clinic students have participated in the scheme each year, but numbers have been reduced so that they are now more manageable. Each case concerns entitlement to NHS continuing healthcare. In order to demonstrate entitlement, applicants have to show that they meet the relevant criteria. If entitlement is refused, applicants can appeal to an NHS Continuing Care Independent Review Panel.
57. Under the scheme, law clinic students are tasked with collating clients' medical and nursing records, reviewing records, and preparing advices on entitlement to continuing healthcare. If the matter proceeds to an Independent Review Panel, students may attend the panel hearing with the applicant family, and sometimes make submissions. If the Panel's decision is negative, an Ombudsman complaint can be made, which students may draft. Very rarely, cases will proceed by way of judicial review; these are carried out in-house by Hugh James.
58. Cases are typically referred to the scheme by Age Concern and other local charities. Occasionally Hugh James will refer a case to the scheme where the value of the claim is too low for the case to be viable for Hugh James to act either on a privately paying or no win no fee basis.
59. The law clinic employs one of the law school's BPTC tutors to coordinate students' work on the cases, and to provide initial supervision. A team of six Hugh James junior fee earners (3 working one evening each week) and the partner in charge of the department oversee all correspondence sent and received by the pro bono clinic, advise on file progression and give feedback to students. Work has to continue on some of the cases outside of the academic year. At these times, the clinic coordinator has to have more input, and Hugh James has to invest more resources in the project.

Cerebra Learning Entitlements Research Project

60. Although the Cerebra Project no longer operates at Cardiff Law School, it was developed there. In this course of preparing this report, the author has spoken with Professor Luke Clements, and with Tracy Elliott of Cerebra. Professor Clements moved to Leeds University in 2016, and the scheme has relocated with him. But as

the scheme was developed at Cardiff, it is considered in more detail in this section of this report.

61. Cerebra is a national charity set up to improve the lives of children with neurological conditions, through research, information and direct, on-going support. It offers a telephone advice service for families of children with such conditions. Its relationship with Professor Clements and Cardiff Law School started when Cerebra noticed that the same queries were being received again and again in seminars it ran for parents with Professor Clements. This prompted Cerebra to develop a series of Parents' Guides, written in question and answer form, which Professor Clements reviewed, and thereafter, in 2013, to pilot the pro bono scheme at the law school. From 2014 until his departure in December 2015, Cerebra have funded a proportion of Professor Clements' professorship.
62. The scheme operated as follows at Cardiff: Cerebra employ an adviser (a qualified solicitor) who receives calls from Cerebra's members with queries about the law. Of the questions which she does not refer elsewhere, the adviser takes some on herself, researches the law, and drafts a letter of advice herself. Others however she referred to Cardiff law clinic, who prepared a legal advice, under supervision of the clinic supervision staff and ultimately of Professor Clements.
63. A digest of seven advices (on issues ranging from direct payments, carer's assessment and delay, school transport, continence supplies and CAMHS) was published by Cerebra in 2013, followed by a second Digest in 2014 with 13 pieces of advice. Impressive though those publications were, the arrangements were problematic, because they imposed a heavy supervision burden on the clinic staff, and in reality the students' work needed significant re-writing, given their relative inexperience at legal drafting. As with the Mencap Cymru Project, capacity problems on the part of students and their supervisors resulted in delays before advice could be given to parents. Cerebra and the law clinic sought to address this problem by asking clinic students to work on generic advices (where time would not be of the essence) rather than on individual cases. The new approach led to the publication in 2016 of the Cerebra Problem Solving Toolkit. The toolkit states its aim to be:

“to support disabled people and carers, as well as their families and advisers, who are encountering difficulties with the statutory agencies in relation to the provision of health, social care and education support services.”

The toolkit is packed with legal and practical content, in accessible language, and comprises a powerful resource.

64. Professor Clements gave an update on the progress of the scheme following his move to Leeds University. About 15 students are involved in preparing reports under the Scheme. The purpose of the reports is to influence local authorities, ombudsmen, and central government, to review and change practices which the

reports contend are unlawful. This work is part of Cerebra and Professor Clements' research programme. Its strategic aims (changes in policy and practice leading to better outcomes for disabled children and their families) give the research impact. Impact is an increasingly important factor in the funding of research. One novel feature of the Cerebra Project has been to link students' clinical work on the project to the impact of departmental research.

Sustainability of the clinic's external relationships

65. This illustrates one aspect of the clinic's relationships with external organisations that appears to be particularly well thought through: the relationships are mutually beneficial to all parties in a way that enhances the motivation of all parties to sustain them. At the same time as the law clinic students gain experience of legal work, the department obtains research which has impact, and Cerebra obtains useful resources for its members.
66. Similarly, for the NHS Continuing Healthcare Scheme, we understand that a relatively large number of Cardiff law clinic alumni are taken on by Hugh James as paralegals and sometimes as trainee solicitors. So while clinic students get experience in such cases, they also get a chance to shine at a firm which may in the future offer them employment. And at the same time as providing community-based pro bono work, and assisting with clinic students' education and training, Hugh James are able to recruit the best of those students as paralegals and trainees.
67. And, as indicated above, Mencap Cymru's work with the law school brings with it the benefit from Mencap Cymru's perspective of fostering attitudinal change on the part of students (many of whom are exposed to learning disability issues for the first time through working on the project), and the possibility of different types of support in the future from the clinic students participating in the scheme.

Developing public law work

68. While the Innocence and NHS Continuing Healthcare Projects touch on public law, only the Mencap Cymru scheme completely fits that description. The clinic's work on the Mencap Cymru project is limited to producing generic advice. The head of the clinic, Professor Julie Price, expressed some interest in the possibility of PLP supporting the clinic's work with Mencap, which is still at an early stage of development, and she plans to discuss future needs with that clinic's lead, Jason Tucker.
69. There was also some interest in the possibility of clinic students providing representation before the First-Tier Tribunal in some welfare benefits cases,

possibly in conjunction with Riverside Advice, a not for profit organisation in Cardiff. Cardiff has for some time been considering how it may be viable to introduce some sort of representation work for students. Since Cardiff runs both the LPC and BPTC, it is well-placed to use the expertise of its vocational staff in creating and delivering professional legal skills training materials. Cardiff is interested in exploring with PLP the sourcing of substantive selective welfare benefits training (without duplicating training resources offered by other bodies such as LawWorks).

70. Additional challenges for clients and lawyers in Cardiff are raised by the manner in which law is being devolved from Westminster to the Welsh Assembly. The law clinic's experience of the Cerebra and Mencap Cymru schemes has been that there is no clear and reliable source for finding exactly what the law is in Wales where it is different to that in England. Lack of certainty about what the law is and where to find it raises obvious access to justice concerns, some of which are being addressed by the law clinic in its work on the Mencap Cymru project. There would appear to be scope for further work on this issue in future projects.

Huddersfield Legal Advice Clinic

An overview of the clinic and the services offered

71. The Legal Advice Clinic's offices are situated in Pack Horse Shopping Centre in the centre of Huddersfield. The advice clinic currently operates with an average of 28 students per year, four staff supervisors, and an office coordinator. Three out of four of the staff supervisors are qualified lawyers who all have academic responsibilities in addition to their work at the clinic. A maximum of four clients are seen by the clinic, with each supervisor being responsible for one client each week. On average each case takes approximately 14.68 student hours over a three week period, with between two and four supervisor hours per week.
72. Students usually undertake work at the clinic on an extra-curricular basis and this is subject to application, being shortlisted and successfully passing a competency assessment test. Students who are in year 2 have the option of working in the clinic as part of a module.
73. The advice clinic is not SRA regulated, but is able to provide general advice and assistance, typically in areas of law which are outside the scope of legal aid. Most of the advice clinic's work is in the areas of Family, Employment, Wills and Probate, Landlord and Tenant, Property and Contract law. Referrals are received from local solicitors, the local county court, Kirklees Law Centre, and in the past, from the Northern Refugee Centre (although this service has subsequently ceased operation).

74. Up to one client each day is seen by students under supervision by appointment, at which information is taken but no advice given. A needs and risk analysis is conducted by a selection panel chaired by supervisory staff and including two other students, shortly after the appointment and on the basis of that analysis, cases are selected to be taken forward to a further appointment and then a letter of advice. Those cases that are not selected are signposted, if possible, to other organisations that may assist. Once the client has been advised, limited resources do not generally permit the advice clinic to offer further follow up.

Supervision and relationships with external organisations

75. Unlike the other law clinics visited, the advice clinic at Huddersfield was physically and culturally accessible as it was based in a shopping centre rather than on campus. That accessibility came however at a price, since the advice clinic's willingness to receive direct referrals from members of the public (rather than referrals filtered by a third party) creates a need to analyse and respond appropriately to a wide range of cases, which is itself a drain on resources.
76. The absence of dedicated supervision staff impacts on the amount of supervision that advice clinic students can be offered, and therefore also impacts on the type of clinical work offered to clients. The advice clinic has however been able to forge valuable community links with Kirklees Citizens Advice and Law Centre, as well as local lawyers offering their time pro bono.
77. The advice clinic is able to involve itself in a number of community based initiatives, in addition to providing clients with general legal advice. These include:
- 1) Weekly drop-in sessions at the clinic's offices, where local solicitors see clients in their area of expertise (for example, immigration or family law) with clinic students assisting.
 - 2) Offering clinic students the opportunity to volunteer at Kirklees Citizens Advice and Law Centre. Throughout the academic year 2015-16, 4-6 clinic students were allocated to the law centre for up to a day per week for one month. That imposed a heavy supervision burden on the law centre, so from September 2016, law students and law clinic students will have an opportunity to attend the law centre for one day per week during the academic year, save for at exam times. Students typically assist with welfare and benefits advice and tribunal representation under the law centre's supervision. Both the clinic and the law centre would be interested in working in conjunction with PLP, both in relation to training and specialist support, and on issues of local (and national) importance, for example related to benefits sanctioning and Universal Credit.

Developing public law work

78. The advice clinic has provided advice in only a very limited number of public law cases to date (the clinic director estimated that the clinic has dealt with two such cases, both involving prisoners' rights in the last academic year), and has referred out the public law cases it has had to date. In addition, the clinic is also currently working on the Orgreave Truth and Justice Campaign, in support of which law students prepare chronologies and summaries of witness statement evidence, and compile documentation for use by a legal team tasked with seeking a public enquiry into police conduct during the Battle of Orgreave in 1985. The legal team includes Gareth Peirce of Birnberg Peirce solicitors and Henrietta Hill QC of Doughty Street Chambers.
79. The potential for expanding the advice clinic's public law work appears to be limited – although the supervisors are qualified lawyers, they do not hold current practicing certificates so are not able to conduct litigation under the auspices of the advice clinic. In any event its capacity is limited by the number of available supervisors, the other demands on supervisors' time (eg teaching and research responsibilities), and the limits on the supervisors' areas of expertise (none of the supervisors had recent practical public law experience). However this does not – in principle - prevent the advice clinic from using legal friends (local practising lawyers giving their time pro bono) to assist the clinic with cases outside supervisors' areas of expertise. Further, the clinic has a mutually beneficial working relationship with Kirklees Citizens Advice and Law Centre which has a contract with the Legal Aid Agency to conduct Public Law work.
80. As indicated above, the advice clinic's accessibility to members of the public, and its willingness to accept cases direct from the public without being filtered for appropriateness, means that advice clinic staff have to signpost cases that the advice clinic cannot deal with itself. These cases will inevitably include a number of public law cases requiring urgent referral so that appeal or judicial review deadlines might be met. Some training in public law and judicial review may assist with accurate and timely referrals. An example of a public law referral occurred during the preparation of this report. The exchange of emails between the student adviser seeking to make an appropriate referral and the primary author of this report is appended to illustrate the benefits of training in public law and judicial review in relation to the referral process.

Kent Law Clinic

An overview of the clinic and the services offered

81. Kent Law Clinic provides three types of legal service: a referral service, an advice service and a representation service. These services are supported by the full time

equivalent of just over six solicitors on the academic staff of the School (of a total of more than 65 not including associate lecturers/hourly paid/sessional academics) in the following areas of law: social security, welfare benefits, family, housing and civil litigation, immigration, employment, criminal law and public access to land (broadly representing the solicitors' core areas of expertise). There are four professional services staff (2.5 fte). A bespoke building for the clinic is in the process of being constructed at the time of writing.

82. The clinic's classification of legal casework is primarily by the subject matter or area of concern as it appears to its clients: 'employment', 'family', 'housing', 'welfare benefits', 'immigration' etc. The clinic does not use 'public law' as a distinct category of casework, but it could include: public sector housing, welfare benefits, immigration, asylum, nationality, crime, policing, prison law, public access to land, and access to legal aid generally. In the calendar year 2015 the clinic advised and provided representation in the following 'public law' cases:

- Welfare benefits 10
- Immigration and asylum 33
- Crime 8
- Policing 5
- Prison 5
- Public sector housing 3
- Public access to land 1

83. It is generally only in immigration and asylum that judicial review proceedings are considered, where clients are sufficiently impecunious not to be deterred from proceeding by the risk of paying the defendant's costs if the litigation is unsuccessful. In academic year 2015-16, for example, in immigration or asylum cases letters before action were sent in four cases (three of them with success) and in two further cases proceedings were issued (both successfully settled, one before and one after permission was granted). However, in many different sorts of case judicial review will often be in prospect, for example in town and village greens cases (e.g. a public right of access to Whitstable beach application), or in community care cases (e.g. a refusal to provide seven day accommodation for an autistic adult).

84. The clinic has two aims: to provide legal assistance where it is needed but cannot be paid for, and to enhance the education of students in the Law School. This contrasts with the other law clinics considered as part of this study, whose focus tended towards developing skills that would facilitate clinic students' prospects of future employment.

85. The clinic has about 50 students working on cases with the supervising solicitors, mostly on a one-to-one basis. The students usually work on about two cases at any time over two terms, sometimes overlapping. They play as full a role as possible under supervision, including in certain cases: interviewing clients, conducting legal

research, drafting correspondence and pleadings, negotiating with the other side, and in some cases advocacy in tribunals and small claims. They receive some significant pro bono support from law firms, solicitors and barristers' chambers, especially in immigration and access to land cases.

86. In the process of providing the service to clients, the solicitors (members of the academic staff of the Law School) supervise, train and teach the students who work in the Clinic, about 50 students are assessed for academic credit on their LLB degrees (one eighth of final mark) and about 200 students participate on an extra-curricular basis.
87. As a separate service, the clinic works with about 33 local solicitors and barristers who volunteer their time for two hours on Monday evenings on a rota basis. Clients are matched in advance with the relevant pro bono lawyers and are seen by them by appointment, for 30 minutes each. These appointments are in various locations in the local community. The students administer and observe the advice sessions. These sessions offer only one-off advice given by the volunteer lawyer, but the advice given is reviewed by a supervising clinic solicitor who assesses whether any further assistance can be offered to the client, and may decide to take the case on in the clinic.
88. On Tuesday lunchtimes, back at the University, certain of the cases where advice has been given at one of the outreach sessions are selected by the supervising solicitors, and discussed by the students at a meeting co-chaired by one of the supervising staff and an elected student Chair of the Clinic. Students and staff discuss the facts of the case, and discuss the application of the law (considering further facts and law to be obtained) so as to be able properly to advise the client if further advice or referral is necessary. The meeting also considers as a separate matter, any broader issues arising, for educational and broader interest only. At some point, the advice given by the volunteer lawyer is relayed to the meeting by the students who were present at the advice session.
89. In addition, the students staff a telephone line for 40 hours per week, and, having gathered and recorded information, consult with one of the solicitors who advise with regard to referral, advice, or appointment with clinic solicitor or at an advice session.
90. Some prison law and criminal matters (where legal aid is not available) are dealt with where the case is considered to have wider public interest. The team includes a 0.6 fte criminal solicitor. The clinic is already working with the Prisoners Advice Service and hopes to work more with them, and to expand its service to prisoners.
91. There are also ad hoc projects run by the clinic, and liaison with other law clinics abroad (eg in Cameroon, Sierra Leone, and Gaza). Around 50% of the undergraduates are from overseas, around 10% from other EU countries and

around 40% from non-EU countries.

92. The clinic also organises ad hoc seminars, social events, dinners, fund-raisers, quizzes, parties for students, staff, volunteer lawyers and former clients reflecting the shared interest, commitment and collegiality of joint endeavour.
93. As at May 2016, the clinic head, Professor John Fitzpatrick estimated that the clinic was dealing with nearly 1,500 telephone queries a year; giving legal advice to about 350 clients; taking on and acting in about 135 new cases a year (although the yearly figure fluctuates depending on the highly variable size of cases and the number of cases that remain open). The clinic is assessing for academic credit over 50 students a year, to increase to 60-65 in 2016, and supervising around 200 students on an extra-curricular basis in a wide range of legal activities.

Supervision and relationships with external organisations

94. The clinic works in partnership with local advice and information agencies eg with several Citizens Advice offices, Canterbury Housing Advice Centre, and Advice Provision in East Kent, liaising about referrals, and identifying further needs. The clinic's housing solicitor is on the management committee of the Canterbury Housing Advice Centre, and on the steering committee of the Access to Justice CLOCK in Kent scheme at the Canterbury Combined Court Centre starting on 16 May 2016.
95. At present the clinic has a group of about 35 local solicitor and barrister volunteers who sustain on a rota basis the evening advice sessions that the clinic holds weekly in term time at outreach locations in the community – working with the St Stephens Community Centre, the Thanington Neighbourhood Resource Centre, and the Whitstable Umbrella Centre. Immigration and asylum are not dealt with at those advice sessions, but extensive immigration and asylum work is carried out with local groups on a partnership basis. Much of it has an educative, advisory, 'second tier' advice and assistance character.
96. The clinic also works closely with national NGOs. For example, the clinic works with the Prisoners Advice Service, in meeting the legal needs of prisoners – at present on a small scale (but the clinic is working with PAS at present to establish law clinic advice sessions inside prisons during the academic year 2016-17), and are seeking external funding to support this. If resources allow, the clinic hopes to start next year in prisons in the Sheppey cluster, starting at HMP Standford Hill, and then moving on to HMP Elmley. The clinic's immigration and asylum team works extensively with a number of national organisations. Clinic solicitors are members of the Housing Law Practitioners' Association and the Immigration Law Practitioners' Association.

Developing public law work

97. Of all the law clinics considered, Kent appeared to be the best established, the best resourced by the university, and the best supported by local agencies. The clinic already has a judicial review caseload, through its specialist immigration team. Sheona York, a highly regarded immigration solicitor now practising at the law clinic, indicated that she was “eager and willing to issue judicial reviews on behalf of clients, certainly where the legal argument is clear and so there will be little or no danger of a costs award against our client. (Where the client is a destitute failed asylum-seeker or over stayer facing removal that is not really a relevant consideration in any event)”.
98. Judicial review claims have been issued by the law clinic concerning issues such as failure to issue EU residence permits within 6 months, issuing a refusal before the deadline for the claimant to produce further information; refusal to accept that a claimant was destitute and so should not have to pay an immigration application fee; injunction against removal directions; failure to deal with an application under the Immigration Rules (and instead rejecting it as not amounting to a fresh claim), and a judicial review of a refusal of permission to appeal to the Upper Tribunal (sometimes known as a “Cart” judicial review) concerning the application of Article 8 ECHR in entry clearance cases.
99. The clinic has not sought a legal aid contract – which gives it freedom from the onerous contractual duties imposed on practitioners by the Legal Aid Agency. A legal aid contract would make it far easier for the clinic to obtain legal aid for its clients. If a case is brought with legal aid, it means that:
- 1) The legally aided person has de facto protection from a costs order (which is generally ordered if a case is lost in court) being enforced against them;
 - 2) the clinic is guaranteed to be able to recover costs at (discounted) legal aid rates even in cases which lose (although if permission to apply for judicial review is not granted, the recovery of costs is not guaranteed)
 - 3) the clinic can recover its costs at (higher than legal aid) commercial rates, if the case is successful, and a costs order is made against the losing party (in a judicial review case, typically the defendant public body)
100. However, all cases are brought pro bono. This has a number of consequences:

- 1) The solicitors must carefully consider the likelihood of losing, and advise clients fully on the potential risk in costs (since there is no legal aid costs protection for the client).
 - 2) Inter partes costs cannot be claimed directly by the clinic, where the clinic's client is successful in the litigation (as standard awards of inter partes costs can only be claimed from an opponent if the client is liable in principle for costs him- or herself - the so called "indemnity principle"). However, in this scenario, a pro bono costs award can be made under s194 Legal Services Act 2007. This provides for the payment of costs where a party was represented 'in whole or in part' free of charge. Costs must be paid to the 'prescribed charity', which is the Access to Justice Foundation. That charity repays disbursements to the pro bono organisation, and has the power to make 'small grants' to that organisation of up to 50% of the profit costs so earned. That provision has enabled the clinic to build up a fund from which to pay disbursements and court fees in other cases.
101. The clinic has an impressive record of test case litigation, all brought on a pro bono basis. The clinic's supervisory staff suggested that the clinic will aim to assist judicial review claimants in other cases who are struggling to find legally aided representation.
102. The requirement that permission to apply for judicial review must be granted before legal aid payment is guaranteed was intended by government to have a chilling effect on lawyers contemplating bringing cases that might not succeed in getting past the permission stage. The law clinic, acting pro bono, is not susceptible to such a chilling effect. Clinic solicitors, mindful that some legal aid lawyers are not bringing judicial review claims because of the risk that they would not be paid if permission is refused (even if legal aid is granted) suggested that the clinic might issue a claim and obtain permission acting pro bono, and then pass the case to local solicitors in the knowledge that legal aid, if granted, would certainly be paid. This appears to be a novel way of addressing the access to justice concerns arising from the new regulations making payment of a legally aided judicial review claimant's costs conditional on getting permission to apply for judicial review.
103. Some interest was expressed in PLP's involvement in the clinic's activities, in the following capacities in particular:
- (1) Supporting the clinic to make applications for exceptional funding
 - (2) The provision of training in public law, to include training in how to spot and refer judicial review cases, and also on the use of ombudsmen

(3) The provision of specialist telephone or other remote support at the time that enquiries are first received or at the time they are being analysed;

(4) Joint working with the clinic on specific issues of local concern, for example on asylum support, or sanctioning of benefits claimants by the DWP.

Liverpool Law Clinic

An overview of the clinic and the services offered

104. There are two academic modules offered by Liverpool University's Law Department that involve the law clinic:

(1) Clinical Legal Skills; and

(2) Human Rights and International Law Practice Module.

105. In the academic year 2015-6 there were about 140 students on the Clinical Legal Skills module, available in Year 3. Students study professional conduct and ethics, interviewing skills, legal drafting, file management, reflective learning, and practical next steps (including study of case funding, tribunals, and ombudsmen). They work in pairs and each pair has one case per year in which they see a client, research the law and then write a very detailed letter of advice. Their work is externally supervised by volunteer solicitors from local commercial and legal aid firms. The cases are drawn from a wide range of areas of law including housing, employment, family, civil litigation (typically small claims track), probate, neighbour disputes, advice to small businesses and advice to small charities. Cases are selected by the law clinic course supervisors. No urgent cases are accepted and none of the client's cases are clearly within the scope of legal aid (sometimes the case is not quite as it first seemed, and the clinic end up referring or signposting to a legal aid firm).

106. In addition to this general advice service, the law clinic offers a specialist immigration service predominantly in statelessness and fresh asylum claims cases run by the four course supervisors (two solicitors who are part time and a barrister), all of whom are experienced immigration lawyers. About 64 students a year undertake the Human Rights and International Law Practice Module, where they contribute to the work on a statelessness or fresh claim case. For regulatory reasons they support the work of the Clinic's lawyers, but are involved in research and legal drafting. Their formal teaching is similar to the other Clinic module, but with the addition of some lectures giving a basic introduction to immigration law. All the supervision on this module is handled by Clinic staff, with no external

involvement.

107. In addition, law clinic students have worked on the following ad hoc legal projects:

- 1) Benefits cases on secondment to, and under the supervision of, Liverpool CAB
- 2) The Orgreave Project, preparing chronologies and summaries of witness statement evidence, and compiling documentation for use by a legal team tasked with seeking a public enquiry into police conduct during the Battle of Orgreave in 1985. The legal team includes Gareth Peirce of Birnberg Peirce solicitors and Henrietta Hill QC of Doughty Street;
- 3) The Hillsborough Inquest, where students took on a similar role working with Broudie Jackson Canter, a local Liverpool firm.
- 4) Statelessness and other immigration work, where students have worked on a voluntary basis assisting with litigation and other casework both during term time and during the summer break

108. In relation to the project with Liverpool CAB – at the time of writing this project had moved outside the law clinic remit, with a member of staff from the department with strong CAB links taking it over from clinic staff. Despite the removal of the partnership from the remit of the law clinic, the ongoing partnership remains, in the view of both PLP and the Clinic Director, a good example of the benefits of partnership working between a law clinic and an NGO. Both parties are keen to develop further projects.

109. At the time of writing, project involving work for children in Calais with family in the North West is under consideration.

Supervision and relationships with external organisations

110. The law clinic is professionally run by expert public law practitioners, and is committed to serving the needs of the local community as far as possible, and at the same time enabling its students to be on a more level playing field when competing for legal and other professional employment. It aims to develop appropriate legal skills (“clinical legal education”) and to encourage a commitment to social justice and pro bono legal work. This is in contrast to some other law schools such as Kent, which are primarily concerned with using the law clinic as a vehicle for the educational development of the participating students. However since the clinic is located on the university campus, it may not be easily accessible to the marginalised communities it seeks to serve. The clinic therefore relies on referrals, all of which are vetted by the supervisory staff who have a strong

knowledge of public law and judicial review from their time in practice. However the need for vetting referrals and supervising students limits the clinic's capacity to expand its public law work.

111. Given its practical focus, the clinic was open to work which would facilitate students' acquisition of legal skills, involving students carrying out practical tasks commensurate with their still developing legal skills, even though such tasks may be of limited academic interest. Examples of such work are document-management in the Orgreave Truth and Justice Campaign, and work on welfare benefits cases, including form filling at Liverpool CAB.
112. It is lack of supervisor capacity, exacerbated by judicial review and administrative appeal time limits that appears to be the major barrier to the clinic taking on more public law cases. Where supervision could be carried out by an external body such as Liverpool CAB, the law clinic would be keen to expand its public law work.
113. The clinic has what appears to be a mutually beneficial relationship with Liverpool CAB, which trains and supervises the work of around 30 student volunteers per year. Students receive training from the CAB in June and commit what time they can to voluntary work under the CAB's supervision. The CAB's manager was keen to encourage first year degree students to volunteer, as in her experience many return to volunteer in their second year.

Developing public law work

114. It was clear that – as with Kirklees Law Centre and Huddersfield Legal Advice Clinic - there was clear interest on all sides for closer working relationship between Liverpool CAB and Liverpool law clinic, and what PLP might be able to offer to support

University College London and City University Law Clinics

115. Engagement with the four participating law clinics led to lines of enquiry which were explored through engagement with two other law clinics at University College London and City University. PLP's interest in meeting colleagues at UCL and City University was generously accommodated by those colleagues, but the level of engagement that was possible in the available time was less than for the four main partners to this report. Nonetheless, aspects of work undertaken by these clinics merits inclusion in this report albeit in summary form, with less systematic analysis.

University College London - the Centre for Access to Justice and the Guttmann Centre

116. In March 2013, University College London opened its Centre for Access to Justice (The Centre). The Centre offers innovative clinical work to undergraduate students taking the Access to Justice and Community Engagement course as part of a law degree, and to postgraduate students taking an Access to Justice Masters degree. In a separate initiative, students and fellows of the university have an opportunity to carry out pro bono advice in the Guttmann Centre, in East London, as part of a UCL led research project. Between them, these projects illustrate some of the themes of this study. They are summarised below.
117. The Centre Director, Jacqueline Kinghan, explained to PLP that the Centre recognised the benefits of partnership working with NGOs to expand the law clinic's capacity. Specialist links have been forged with two NGOs in particular, the Free Representation Unit (FRU), and Just for Kids Law (JFKL).
- 1) FRU provides representation in social security and employment tribunals for people who are not eligible for legal aid and cannot afford lawyers. The work is done by volunteers, mostly law students and legal professionals in the early stages of their career.
 - 2) JFKL is a charity that provides advocacy, support and assistance to young people in difficulty; particularly those in trouble with the law, looked after children and those at risk of exclusion from school.
118. UCL pays FRU to supervise its students on FRU employment and social security tribunal cases. This helps subsidise FRU's running costs, at the same time as providing FRU with a regular supply of high quality volunteers (the Centre for Access to Justice is over-subscribed so that students must apply for a placement there). In return FRU provide training, real life legal education, and legal work experience to students.
119. UCL has a different arrangement with JFKL. It partly funds the post of Rachel Knowles, a senior solicitor in JFKL. In addition to teaching at the law school, Ms Knowles carries out her JFKL casework (largely in community care law) using law students as unpaid paralegals. This arrangement benefits JFKL, as it provides JFKL with a partly funded solicitor's post, and a supply of high quality unpaid paralegals, and benefits the law school, which is able to offer some of its students a placement conducting interesting high level community care casework under the guidance and supervision of a top legal professional.
120. Students are trained to do clinical work at the start of the academic year, and start to undertake the work in October. Students on the course who are accepted for a clinical placement are required to do 60 hours of clinical work between November and March the following year. There are currently 25-30 students on the Access to Justice and Community Engagement course. Most years, the students accepted for clinical work (typically approximately half of those doing the course) are split equally between FRU and JFKL. This year, however, Rachel Knowles, the JFKL solicitor whose post is partly funded by UCL, is on maternity leave. So exceptionally, this

year, all 15 UCL placements are with FRU. The FRU placements typically involve the students in conducting 2-3 tribunal cases each.

121. As well as giving advice, and providing advocacy to the clients, students from the Centre for Access to Justice and Community Engagement provide outreach services to pupils in local schools, and to community groups. Some consultation responses of interest to clinic supervisors are drafted by students.
122. The Guttman Centre is located in a facility built for Olympic athletes at the 2012 London Olympics in Stratford. The facility comprises a legal advice centre staffed by two advisers, a consultant solicitor and three 'Centre for Access to Justice fellows', in the same building as a participating GP's surgery. Students work for approximately eight hours per week for five week blocks. Two advice sessions are offered per week. Approximately 35 students work on the project each year, on an extracurricular basis (except for some students from Hong Kong University, who are required to do at least 80 hours of clinical work).
123. The model is one of traditional advice-giving in areas such as employment, housing and social security law, with the qualified lawyer and advisers supervising the students' work. Students sometimes draft representations to the First-tier Tribunal, and provide representation. No work that could be done under legal aid is undertaken - clients in that situation are signposted or referred to legal aid practitioners.
124. One innovative feature of this clinical work is that it is being undertaken as part of a UCL research project overseen by Professor Hazel Genn. The research project aims to measure the social and health effects of unresolved legal problems. GPs are often the first port of call - where GPs consider that a patient's health problem is a social or legal problem, they may refer patients to the legal advice centre. Clients who receive advice through such referrals are followed up after one month, and data is collected about the effect on the client's health where the legal advice the client received solved the problem. There are three main strands of the project:
 - 1) Providing a service to the community (both to GPs and patients);
 - 2) Educating students, medical practitioners, and patients;
 - 3) Compiling data to use as evidence in policy work.
125. Funding for the Guttman Centre was obtained from the LEF (which funds a health researcher for this, the first year of the project), the faculty and alumni.
126. The work of UCL's Centre for Access to Justice and the Guttman Centre highlights the benefits of partnership working between, respectively, law clinics and NGOs, and law clinics and academic researchers. Both partnerships open up the law clinic to diverse funding streams that may be tapped to meet supervision costs and so to expand the amount of clinical work the law clinic can offer students, and clients.

Whether either project could present an opportunity for PLP would depend whether PLP's expertise is required. UCL has access to expert public lawyers in both its clinical and academic teams, and therefore opportunities for PLP to support these initiatives may be limited. But the model that has been outlined above has a number of features that appear to work, and so is highlighted in this report.

City University 'Immigration Human Rights Project'

127. In March 2016, City University and No 5 Chambers established a pilot 'Immigration Human Rights Project' ('IHRP') to provide pro bono assistance to migrants. Following a successful, limited pilot involving 12 students, the project has now expanded its services and 32 students have recently been trained to volunteer at the project.

128. The assistance provided by the IHRP is limited to five specific areas, each of which is targeted at a discrete area where practical assistance can be offered by students without the need for OISC regulation or for urgent casework. The areas where the project will provide assistance are:

- A) Applications to the Home Office for a fee waiver (which includes an exemption from the Immigration Health Surcharge) to accompany applications for leave to remain on Article 8 grounds.
- B) Financial assessments to assist clients in proving their financial circumstances for the purpose of applying to the Home Office to remove a 'no recourse to public funds' ('NRPF') condition on their leave to remain, or to support an application to the First-tier Tribunal (Immigration and Asylum Chamber) to remit the fee for appealing against an immigration decision.
- C) Legal aid ECF applications and reviews.
- D) Pre-referral advice and preparation of referrals into the NRM for victims of trafficking.
- E) Acting as McKenzie friends for family, housing or immigration court proceedings.

129. The IHRP is an innovative collaboration between a University law clinic and a local barristers' Chambers, which has found creative ways to avoid some of the obstacles to involving law students in public law work identified in PLP's research. The project only accepts referrals from established partners, not directly from members of the public. Each of these referral organisations runs pro bono drop-in or outreach advice services in the community with very limited capacity to do follow-

up casework, so IHRP is meeting a need for more time-consuming assistance for which no legal aid is generally available.

130. Each person referred to the IHRP will have received some legal advice about their position from a lawyer at the referring organisation, which ensures that the assistance provided by the project is appropriate and targeted to the individual's needs without the need for students to acquire detailed legal knowledge. Referrals are also screened by a specialist barrister from No 5 Chambers to check the appropriateness of the referral and to identify any particular vulnerabilities.
131. Students meet clients on the premises of the referring organisation, which also makes arrangements for interpreters if required and meets student travel expenses and any postage costs. Typically, students meet clients up to three times to complete the work. Clients are provided with a client care note confirming the scope of the work that the project will do for the client, and explaining its limitations. Where issues arise on which further legal advice is required, the client is either referred back to the referring agency, or IHRP and the referrer make a joint referral to a solicitor's firm.
132. However, IHRP currently has no funding and is dependent on the commitment, enthusiasm – and availability – of two barristers at No 5 Chambers in London who are the main contacts for the project, alongside Dan Wilsher, a Professor of Law at City Law School. The barristers train the students, screen all referrals, and provide ongoing supervision. In cases involving pre-referral work in trafficking cases the supervision is intensive, with barristers often sitting in on appointments and reviewing all work before it is sent out. This degree of supervision is seen as necessary because of the potential significance of information provided to the Home Office with an NRM referral. The barristers do not have capacity to provide the same degree of supervision in relation to the other types of case: after a total of five hours training, students are able to take on cases and their work is not automatically reviewed before being sent out. They are provided with access to "how to" guides for each kind of case, sample completed pieces of work, and have access to all the previous work done by the project. The barristers are available to the students to answer queries as they arise by email or telephone.
133. The limited capacity of two barristers acting on a pro bono basis to adequately supervise the increased number of students now involved in the project (approximately 32) across a limited but diverse range of work raises questions about the ability of a wholly unfunded project to provide a quality service to the clients. Careful thought needs to be given to how supervision arrangements involving the provision of ad hoc pro bono support by busy practitioners can ensure adequate supervision of student volunteers.
134. The ongoing need for supervision and limited capacity to provide it, as well as the lack of any funding for the project, raise concerns about its sustainability, as well as its scalability. It has reportedly worked well at the pilot stage where there were only 12 students involved but with now nearly three times the number of students there

is an obvious risk that the barristers will not have the capacity to provide adequate supervision, or to continue doing so over the medium to long term.

Some general observations about law clinics' casework

135. Each of the law clinics considered in the course of this study faced the capacity limitations identified by Drummond and McKeever in *Access to Justice through University Law Clinics*, and referred to above. These limitations throw up particular challenges in certain types of clinical work, for example, work requiring a detailed grasp of the law, work requiring the application of the law to an initially incomplete set of facts, and work on cases with fixed and early deadlines, all features of much public law casework. Where cases (with potentially urgent deadlines for action) are received unfiltered from the general public, the challenges are aggravated by the need for early case analysis and appropriate signposting.

136. Each of the law clinics considered in this study has responded to these challenges in different ways, for example, by:

(1) Transferring the burden of training and supervising clinic students to other organisations whose interest in working with the clinic students outweighs the training and supervision costs. Examples were Huddersfield Legal Advice Clinic and Liverpool Law Clinic's relationships with, respectively, Kirklees Citizens Advice and Law Centre and Liverpool CAB, where the advice agencies could use clinic students to perform a limited range of relatively simple legal tasks, which made commercial sense to the advice agencies given the parlous state of their resources. Another example of this working model is the NHS Continuing Healthcare scheme operated by Cardiff law clinic with Hugh James Solicitors. The mutuality of the benefit of this arrangement (for the clinic students, for Hugh James, and for the law clinic) has already been noted¹³.

(2) Limiting or eliminating altogether the individual casework expected of clinic students - as it is predominantly the needs of individual clients that generate tight casework deadlines which law clinics are poorly equipped to meet (e.g. in the Cerebra and Mencap scheme operated by Cardiff Law Clinic);

(3) Focusing clinic students on high volume relatively unskilled tasks on the basis that the training and supervision required is not onerous, so the clinic, or partner agency, might see a return on their training and supervision investment relatively quickly (necessary, given clinic students' limited availability). Again,

¹³ At paragraph 66

the Huddersfield and Liverpool law clinics' work with advice sector partners fits this pattern, as does the document management work undertaken by clinics in support of the Hillsborough Inquiry (Liverpool) and the Orgreave Truth and Justice Campaign (Liverpool and Huddersfield).

- (4) Only accepting case referrals from limited and trusted sources (e.g. Cardiff, IHRP at City University);
- (5) Securing sufficient funding from the university or law school to be able to provide a quality service as part of what is intended to be primarily an educational experience (Kent).

136. The advantages for law clinics of forming partnerships with NGOs and other external organisations are clear. Not only can external organisations add capacity by taking over supervision and training costs (where they have an interest in so doing), but they also, potentially, open up clinical projects to additional funding streams. This is particularly so in relation to NGOs, who will come to the table with their own funders.

137. The benefits of such partnerships were emphasised at a seminar organised by LEF on 5 October 2016 for an invited group comprising (i) lawyers with responsibility for law clinics, (ii) representatives from NGOs, and (iii) funders. The seminar was addressed by three distinguished members of the first group, including Professor Peter Markowitz from Cardozo School of Law in New York. There did not appear to be any departure from the view that partnership working is likely to play an important part in increasing law clinics' capacity and effectiveness.

The Centre for Criminal Appeals Model

138. In the course of preparing this report, PLP met with Sophie Walker, then Director of the Centre for Criminal Appeals (CCA). CCA currently works with 8 law schools, referring cases to them for organisation of the documents and research into the merits of potential applications to the Criminal Cases Review Commission. The purpose of the meeting was for PLP to gain insight into the manner in which CCA, a legal NGO with some similarities to PLP, engages with the law schools it partners.

139. CCA's website describes its work on miscarriages of justice as follows:

“A person who has been subjected to an unsafe conviction needs the help of a lawyer to investigate the case and present fresh evidence to the Court of Appeal. Only very rarely can a prisoner afford to pay for such legal representation themselves. Public funding for such work is extremely limited, so the Centre

must raise funds from private donors and grantmakers to make up for the shortfall.

The lawyers at the Centre focus solely on appeal cases, conducting street level investigation, overseeing expert examination of technical evidence, and a review of the existing case documentation assisted by cutting edge file analysis software. We then work with counsel to ensure a comprehensive presentation to the Court of Appeal”.

140. CCA’s work with law schools can be broken down as follows:

- 1) Cases are selected for appropriateness and one each year is referred to each participating law school. All the cases considered involve serious offences, some of which may be difficult for some students to deal with - CCA does not refer the most emotive and distressing of the cases. Cases are also matched with law schools by geographical area, depending on the location of the client.
- 2) The students sign a confidentiality agreement with CCA, and agree to commit at least five months to each case.
- 3) Training is given by CCA in person (although CCA are considering providing training by video/webinar in future years to save costs).
- 4) Document transfer is by a secure software package, for which each of the participating law schools needs to buy a licence. This ensures that the research that comes back from the law schools is in usable form, but it has the disadvantage that it limits the amount of work that can be done, as the system does not permit students to work remotely.
- 5) CCA require the law schools to complete work on the case in one academic year. If the work has not been completed by then, CCA staff complete it themselves. No work is carried out by students in the vacation periods.
- 6) Supervision is offered to students by CCA by Skype to deal with any issues that the students may have one day each week between 2 and 5pm.
- 7) At the end of their work on the case, students refer back to CCA a research note and advocacy document, which if appropriate the CCA lawyers work up into an application to the Criminal Cases Review Commission (for which a limited amount of legal aid is available, which CCA claim). As at July 2016, CCA has had 3 cases accepted for review by the CCRC in the two years it has been running (approx.).

141. The law schools pay a modest amount for each year of work with CCA, rising as current grant funding diminishes, to a maximum of £3000 per annum. In return, the law schools get a training programme, access to CCA's case papers, supervision by Skype, and two visits per year by CCA lawyers.
142. There is much that can be learnt from CCA's apparently successful business model. Key features of the scheme are:
- 1) The lack of fixed deadlines. There is no deadline for applications to the CCRC. Cases can be referred by CCA to the law schools at the beginning of each academic year on the basis that work should be completed within a year (with CCA lawyers completing work on the case if it is not completed at the end of the academic year). These timescales place the law schools and CCA under less time pressure than the more reactive and restrictive public law deadlines described above.
 - 2) The nature of the legal work. Cases typically involve the students in document management of the sort that they may be well suited to undertaking. They do not typically involve the complex issues of law that must be grappled with under time pressure in many public law cases (eg judicial reviews, or appeals against administrative decisions).
 - 3) The number of cases. Only one case is referred to each law school per year. Working on a limited number of cases that the CCA will progress itself after the law school's involvement makes supervision by the CCA more manageable, than if there were a larger number of cases in which the CCA did not have an ongoing interest.
143. These features do not typically arise in the public law cases which are generally reactive (both to administrative decisions and tribunal or court deadlines), involve complex issues of law that require analysis at the outset of the case, and need to be conducted under conditions of urgency.
144. Nevertheless, the potential roles for PLP to support law clinics' public law work have been developed with CCA's working model in mind.

Potential roles for PLP in support of law clinics' public law work

145. In the course of meeting staff and students at the participating law clinics, consideration was given to potential ways in which PLP might support the clinics' public law work. The following non-exhaustive proposals reflect those discussions.

General training in public law and judicial review

146. PLP has an extensive and developed training department, and already offers introductory courses for legal practitioners and members of the voluntary sector on public law and judicial review. While these courses have in the past had a practical rather than academic slant, they can readily be adapted to cater for law clinics' particular needs. Participating law clinics (students, supervision and support staff) were given free access to PLP's "How to do judicial review" course, and received it positively. That course is deliberately intensive in order to fit it into one day, for practitioners' convenience.
147. For law clinics, a two day course could give clinic students, supervision and support staff a basic grounding in public law and judicial review. Such a course would need to be adapted for each clinic to fit each clinic's needs, taking into account the clinics' caseload, and clinic students' exposure to public law in their academic study. It would cover the use of ombudsmen, since work on complaints is no longer within the scope of contracted Legal Help work and therefore is work that is liable to be referred to law clinics (prior to 2013, complaints could be done under a Legal Help form by firms with a public law contract, but since then, the meaning of "public law" for contract purposes has been re-defined to exclude work that is not judicial review or judicial review-related, and therefore no longer includes work on complaints to ombudsmen). It could also cover in appropriate cases, the law and practice relating to public enquiries, where law clinics undertake work in that context (eg Liverpool's work on the Hillsborough Inquest).
148. A practical public law and judicial review course would assist law clinics in responding appropriately to public law enquiries, particularly where there is limited public law expertise among the supervision staff. For example, in Huddersfield, referrals are dealt with by clinic students and the clinic coordinator, all of whom may benefit from greater understanding of public law and judicial review. An example of the potential benefits of training and support in dealing with referrals is the email exchange with a clinic student in Huddersfield, which appears in *Appendix 4 – an exchange of emails between Ravi Low-Ber of PLP and a student at Huddersfield Legal Advice Clinic.*

Bespoke training on public law issues of particular relevance to law clinics

149. Many law clinics offer specialist rather than merely general legal advice (for example, Liverpool's work on statelessness, Cardiff's work on the issues affecting people with learning disabilities, and Kent's work on a variety of areas of law including immigration, public access to land, welfare benefits, housing, employment and family law). Even where expertise exists in house, PLP's input into bespoke training could add capacity to clinical supervision staff. The potential for PLP to offer bespoke training where clinic students are co-opted by voluntary sector agencies is considered further below.

Specialist support to assist clinics with public law referrals

150. There is also a perceived need for an associated specialist support service, operated by telephone or email, whereby PLP could assist clinics in dealing with public law referrals. This would plug a gap where clinic supervision staff do not have public law expertise (eg Huddersfield), and would add capacity where supervision staff have public law expertise but have to personally assess each referral (e.g. Liverpool). Such a service would have to take into account PLP's own capacity limitations, and in particular, the ability of PLP's casework team to respond to every enquiry at short notice. PLP might be able to overcome these challenges by seeking to refer out work on urgent requests for specialist support to public law chambers, who might be attracted to such an arrangement both as part of their pro bono work, and also because some such enquiries may end up as paid work in chambers.

Continuing specialist support during the lifetime of a case or project

151. Specialist support (as opposed to training) could be offered during the course of a case or project. The precise form of the support would be project specific, but could include:

- 1) The provision of public law advice for participating law clinics on individual cases or generic public law issues;
- 2) Supervision of students' written advice or legal analyses;
- 3) Real-time supervision of students' work, either face to face or remotely by Skype, or telephone.

152. It is envisaged that the provision of specialist support by PLP will be a feature of most projects undertaken with law clinics. But there is paradoxically little to say about it, as the content of the support will depend on the needs of the particular project. From PLP's perspective, specialist support must be planned and agreed so as not to cause capacity problems for PLP. So, for example, supervision provided on a dedicated rather than responsive basis may be preferable¹⁴ and consideration

¹⁴ See the Centre for Criminal Appeals supervision arrangements at paragraph 140 6) above

should be given to outsourcing the provision of advice and supervision services where this is appropriate.

Diverse initiatives which could be supported by PLP through training and specialist support

Detailed below is a non-exhaustive list of the types of initiatives by which PLP might assist a university law clinic to have a greater impact on social justice.

PLP's Exceptional Funding Project

153. Legal aid is made available to individuals in accordance with the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Schedule 1 to that Act contains a list of types of legal case for which legal aid is in principle available (subject to the individual being able to demonstrate to the Legal Aid Agency that criteria relating to his or her means, and the merits of the case are met). If a type of legal case is not listed in Schedule 1 to the Act, it means that legal aid will not be available for that type of case unless the individual is eligible for exceptional funding.
154. Exceptional funding is available to people whose human rights or European Union law rights would be breached if they did not have legal aid (section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012). This was intended by the last government to be a high threshold, with only a small number of cases receiving exceptional funding.
155. The most relevant human right in this context is Article 6 of the European Convention on Human Rights, which guarantees the right to a fair hearing when someone's rights and obligations are being determined. In practice, where the refusal of legal aid would make it practically impossible for someone to bring their case or would result in obvious unfairness in the proceedings, legal aid may have to be provided under Article 6. Other human rights may also require the provision of legal aid, including the right to a private and family life under Article 8 of the European Convention and the right to life (and associated right to an enquiry into the circumstances of death) under Article 2, pursuant to which legal aid may be available to fund representation at inquests. Legal aid may also have to be provided under European Union law as a result of Article 47 of the Charter of Fundamental Rights of the European Union: the criteria for this are similar to the criteria under Article 6 of the European Court of Human Rights. Guidance on exceptional funding has been published by the Lord Chancellor.
156. Solicitors are unable to grant exceptional funding. This means that all applications for exceptional funding must be sent to the Exceptional Cases Team at the Legal Aid Agency, and should be determined by the Legal Aid Agency within 20 working

days.

157. If an application for exceptional funding is unsuccessful the applicant can apply for an internal review of the refusal by submitting grounds of review and supporting documentation to the Legal Aid Agency. If the refusal of funding is upheld on the internal review, the only way of bringing a further challenge is by judicial review.
158. PLP's exceptional funding project (which has run since April 2013) was designed to assist people in need of legal advice, assistance or representation with making exceptional funding applications and challenging refusals of funding where appropriate. Solicitors can in principle assist individuals with making an application for exceptional funding. However, legal aid for making the application will only be available retrospectively if the application is subsequently granted. PLP's concern when the scheme came into force in April 2013 (subsequently borne out by PLP's experience) was that many solicitors would refuse to make them.
159. For this reason, PLP developed a project to assist those that cannot get help from another source to make an application for exceptional funding. Typically referrals to PLP are received from solicitors and voluntary sector organisations. PLP then worked with the individual to make the exceptional funding application, and in some instances challenges a refusal of exceptional funding through the review process or by way of judicial review. If and when exceptional funding is granted, PLP returned the case to the organisation that referred it, or sought a solicitor to take the case forward (which is less difficult if legal aid for the case is guaranteed).
160. As a consequence of this focus, PLP has been at the forefront of the exceptional funding scheme and has brought challenges both to decisions on individual cases to refuse exceptional funding, and into the procedures and guidance by reference to which all cases are considered (see a case brought by PLP, *J.S.(by his litigation friend the Official Solicitor) v Director of Legal Aid Casework and the Lord Chancellor* [2015] EWHC 1965 (Admin) which established that the Exceptional Case Funding scheme was operating unlawfully as it gave rise to an unacceptable risk that an individual would not obtain funding where a failure to do so would breach her rights under the European Convention on Human Rights or under EU law).¹⁵
161. PLP will not have the resources to continue to make exceptional funding applications indefinitely, nor would it be considered desirable or appropriate for it to do. (If the system is to offer access to justice, it needs to do so independent of one specific charitable initiative). PLP is currently exploring how in future it can work to increase the capacity and willingness of lawyers, front line advice agencies and

¹⁵ This judgment was subsequently overturned by a majority Court of Appeal. An application for permission to appeal to the Supreme Court is pending.

other voluntary sector organisations to make exceptional funding applications by providing training and support to share its learning and experience and facilitate the making of exceptional funding applications in areas of need.

162. PLP could offer specific training to law clinic students and supervisors to enable them to make applications in certain cases referred by local solicitors, law centres and civil society groups. PLP already offers a half day course on exceptional funding for practitioners. This could perhaps be adapted and spread over two days to go at a slower pace to reflect clinic students' early stage of professional development.
163. Law clinics could control their referrals by accepting them only from a trusted pool of local solicitors and voluntary sector organisations. Although PLP's success rate in making exceptional funding applications had increased dramatically in the three years since the scheme has been in operation, it remains the case that exceptional funding is only granted in a minority of cases, and overall application numbers remain much lower than originally anticipated. It is therefore not the case that clinics would necessarily be overwhelmed with cases, and the number of referrals could easily be managed in line with clinics' day to day capacity.
164. This project would be compatible with law clinics' existing referral networks, as the cases would all be outside the scope of general legal aid. It would have the benefit of helping to foster good professional links between clinics and local practitioners.
165. Clinic students would compile case papers, obtain evidence in support of the exceptional funding application, and make the application on behalf of the client under supervision. PLP could offer specialist support on a case by case basis, and could also assist with challenging any unlawful refusals by the LAA. A scheme of this sort would enable PLP to roll out its expertise in relation to exceptional funding in a managed way, while retaining some involvement in cases to ensure high professional standards are maintained.
166. Participation in the exceptional funding project appeared to be of some interest to all the participating law clinics. Huddersfield, which is not SRA regulated (the clinical staff do not have current practicing certificates) expressed some concern about whether work on the preparation of exceptional funding applications would be reserved activity that would necessitate SRA regulation and the changes to its practice arrangements that SRA regulation would entail. An analysis of the relevant regulatory issues is contained in Appendix 2. PLP's view is that work on a project of this sort would be unreserved legal activity for the purposes of section 12 of the Legal Services Act 2007.

Complaints, in particular in relation to (a) failures by public bodies and others exercising public functions to discharge their public law duties

167. As noted above, current public law contracts (unlike public law contracts pre-2013) do not permit solicitors to provide publicly funded advice and assistance to clients in connection with complaints against public bodies (including complaints to ombudsmen). Complaints to the ombudsman can promote societal change (for example the LGO's findings of maladministration in a number of cases in which local authorities had used bankruptcy to collect arrears of council tax, before trying other, less Draconian remedies – see <http://www.lgo.org.uk/complaint-outcomes/benefits-and-tax/benefits-and-tax-archive-2005-to-date/wolverhampton-city-council-06b16600/>). The law in relation to many public authority and ombudsmen complaints procedures tends to be straightforward (otherwise ombudsmen tend to refuse to investigate) but preparing complaints can sometimes be time-consuming and factually complex.
168. PLP's experience has been that work preparing complaints to the ombudsman can increase the chances that those complaints will be investigated and therefore increase the chances of a positive outcome, possibly because ombudsman investigators seem not to be resourced to do justice in cases that require a large amount of unpacking. So work preparing complaints could significantly add value. Clinics may be able to receive selected complaints from existing referral networks, who would not be funded to carry out the necessary work, despite the public benefit of such complaints being advanced in a well-focussed manner. A project of this sort would also help clinics foster good professional links with local law firms and voluntary sector organisations by providing a service to their clients for which there is otherwise no available funding.
169. PLP could offer training on making complaints as part of the general introduction to public law and judicial review referred to above. Some specialist support could also be offered by PLP to supervise clinic students' work on the complaints and to challenge decisions by ombudsmen not to investigate or to reject a complaint.

Strategic support for local projects in conjunction with local advice agencies

170. One solution to law clinics' general capacity problems appears¹⁶ from Cardiff's working relationship with Hugh James Solicitors, Liverpool's working relationship with Liverpool CAB, and Huddersfield's working relationship with Kirklees Citizens Advice and Law Centre. These arrangements allow law clinics to increase front line capacity because supervision costs are shifted to the external body. In Cardiff, Hugh James benefited from being able to offer high profile community-based pro bono work, and assisting with clinic students' education and training, whilst also being able to recruit the best of those students as paralegals and trainees. In

¹⁶ See paragraphs 66 and 136(1)

Liverpool and Huddersfield, the advice agencies' scarce resources, and their culture of working with volunteers, mean that a supply of (relatively) untrained, unskilled students with limited availability is nevertheless worth the necessary investment in training and supervision.

171. PLP could build on such arrangements with the advice sector on select projects on particular areas of local concern and of interest to the advice agency, the clinic and PLP. PLP could offer bespoke training, and work with the law clinics and the local advice agencies on a legal strategy to address particular local or national issues.
172. An example of such an issue is benefits sanctioning. PLP has received some funding to explore legal solutions to the unlawful use of sanctioning, and so has an interest and some legal expertise in the topic. Similarly, the consequences of sanctioning decisions occupied a significant part of the casework of both Kirklees Citizens Advice and Law Centre and Liverpool CAB. Both agencies were interested in any training PLP could offer in relation to sanctioning. Both understood the potential for test case litigation: in Kirklees, there is a direct interest in bringing test cases, as the law centre part of the organisation has recently established a public law team and has a public law contract; in North Liverpool, the CAB gave the impression that they would be open to being involved in the formulation of a legal strategy, and - if it makes sense to them – supporting a litigation strategy. The focus of both agencies is in meeting their clients' advice needs.
173. Kirklees Citizens Advice and Law Centre has its own public law team, and is keen to increase links with Huddersfield Legal Advice Clinic. Liverpool Law Clinic is managed by experienced judicial review practitioners, who understand how test case litigation works. Both sets of relationships (PLP/Liverpool law clinic/ Liverpool CAB, and PLP/Kirklees Citizens Advice and Law Centre/Huddersfield Legal Advice Clinic) could be mutually beneficial and effective; the law clinics could offer such a project the time and energy of their students, who would receive in return experience of an innovative community law project; the advice agencies would offer front line experience, and – where appropriate - clients for litigating issues of concern, and would gain bespoke training on the law relating to benefits sanctioning, and input into the formulation of a legal strategy to obtain better outcomes for their clients; PLP could offer bespoke training, specialist support on individual cases as they arose, and expertise in strategic litigation, and would in return be able to formulate and implement – with potential access to litigation clients - a legal strategy in one of its key areas of interest.
174. By way of example, a legal strategy could involve making arrangements to work with community and local advocacy groups (a) to advise those clients for whom there is a legal remedy (e.g. an appeal right), (b) to make some provision, if possible, for those without a legal remedy (e.g. a referral to another agency where one exists, such as a food bank), and (c) to identify potential clients who may wish to bring strategic litigation in accordance with a legal strategy developed and overseen by PLP. Law clinic students could be involved in researching the law,

making FOIA requests, drafting advice notes, and working with community groups to organise meetings and ad hoc drop in sessions. The law clinics could provide meeting room premises and a supply of volunteer students.

175. In addition to benefits sanctioning (which was also of interest to Kent Law Clinic), other areas of mutual interest that were discussed with participating law clinics, including issues relating to Universal Credit (Liverpool and Huddersfield), the use of bailiffs to collect magistrates court fines (Liverpool), the support needs of migrants and failed asylum seekers (Kent), and s.21 of the Immigration Act 2014, which allows for permission to be given for a migrant to rent, but provides no proper procedure by which a migrant might access that 'right' (Kent).
176. In addition, there was some discussion of a potential project between Cardiff Law Clinic and Riverside Advice in Cardiff by which clinic students could be trained to provide representation before the First-tier Tribunal in selected benefits cases. Participating students could be drawn from final year law students and Bar and LPC students as part of an assessed module. PLP's input would be to provide training for participating students at the beginning of the academic year. Day to day supervision would be offered by Riverside Advice and the law school.

Specialist support for local or national projects in conjunction with NGOs and university research teams

177. This report has already described the partnership work between Cardiff Law Clinic and the NGOs Cerebra and Mencap Cymru¹⁷, which represents a different form of community engagement from the traditional model of support for local social welfare advice services. Particular strengths of the Cerebra/Mencap Cymru model are that:
- a) It seeks to provide generalised rather than client-specific advice. This minimises the capacity problems - identified above - that arise when individuals are advised (because (a) advice needs to be given at a time and in a manner consistent with the individual clients' circumstances; and (b) there is a consequent need for ad hoc, and hard-to-plan-for supervision of students' work).
 - b) It lends itself to strategic litigation, strength of PLP. This is because:

¹⁷ At paragraphs 52, 60 to 64 and 67

- i. The involvement of a partner NGO with a policy agenda and a university research department means that the potential for strategic thinking is present in the project from the outset.
 - ii. The NGO's client group provides a potentially rich evidence base, and source of test case litigants.
- c) the clinical work supports the department's research. If PLP's participation in clinic would add real world impact to academic research efforts, it may be perceived to add value to the academic institutions in a way that social projects divorced from a research programme would not (however worthy they are, and however much PLP might want to support them).

178. This was recognised in Access to Justice through University Law Clinics, at page 33:

“While clinics can lay claim to enhancing pedagogic developments and employability agendas, as yet there is insufficient evidence of REF [Research Excellence Framework – the system for assessing the quality of research in UK higher education institutions] standard research being developed, despite the potential for empirical work and associated policy impact. A missing research focus may create institutional vulnerabilities for clinics, where the pedagogically focused access to justice benefits are not seen as an adequate trade-off. Universities are publicly funded institutions, but their funding is connected to education – in all its manifestations – and the proposal that universities should also deliver access to justice services, or should use their educational mission as the means to deliver access to justice, may have only limited purchase in the face of more pressing institutional demands”

179. Without impact in the research sense, there is a risk that universities will gain neither funding nor prestige from the law clinics' work. So funding clinical work (and PLP's work in support of law clinics) may be easier because it will directly benefit the universities, if specialist support projects can be developed that add research impact in support of social welfare research initiatives.

180. The participating law schools at Cardiff and Kent in particular appeared alive to this possibility. Kent Law Clinic has in recent years produced a significant body of research work on asylum and immigration. The head of Kent Law Clinic, Professor John Fitzpatrick, commented as follows:

“ In the Law School and the School of Social Policy, Sociology and Social Research alone (both top REF ranking UK departments) there is clearly much research activity relevant to our joint concerns.

Our difficulty is one of resources. KLC has only been able to develop our research activity by specifically allocating time from the outset for this purpose in these newly created posts (immigration and asylum solicitor and research assistant). This was a new development for KLC, given our longstanding emphasis on providing a real and serious high quality and effective service to clients and students. Clearly further resources will be needed to develop this more fully, but we intend to press ahead as best we can in developing this dimension of work. This is why we are very interested in the possibility of developing research projects in conjunction with PLP – in relation to public services, legal services or on other public law issues.”

Assisting clients to apply for fee remissions for appeals to the First-tier Tribunal (Immigration and Asylum Chamber)

181. IHRP's work¹⁸ highlights an area for potential future collaboration between PLP and law clinics. Helping individuals to obtain fee remissions for appeals falls squarely within PLP's access to justice agenda and does not require highly developed legal skills.¹⁹ Students could readily be trained to identify individuals who are exempt and to assist those who are not exempt, but who cannot realistically afford high fees for appealing, to apply for fee remissions. PLP could provide training and supervision, as well as working with law clinics to monitor the outcomes. Such collaboration would provide a useful evidence base for research into the impact of increased court and tribunal fees which could inform PLP's policy and strategic litigation work in this area. Funding would be needed for PLP's time delivering training, supervision and co-ordinating monitoring of outcomes.

Crossover with PLP research

¹⁸ See para 128 B)

¹⁹ PLP has asked the OISC to confirm its position as to whether this work constitutes immigration advice and services which can only be carried out by authorised providers. The OISC's position is that assisting with evidencing an individual's finances for the purpose of an application to the Home Office for a fee waiver is not the provision of "immigration advice and services". This proposal could only be taken forward if it takes the same position with respect to appeal fee remission applications.

182. PLP will be considering the future direction and focus of its research as part of an overarching strategic review. PLP's previous Research Director formed a useful partnership with Professor Maurice Sunkin (amongst others) at the University of Essex, and their joint research was of considerable use in evidence to oppose the restrictions on judicial review proposed by Government in 2012-13. Considering a relationship with a university that combines clinical and research partnership may be a pertinent addition to that strategic review.

The potential for PLP to have input into undergraduate academic courses

183. All the above initiatives could potentially be enhanced by PLP input into the universities' academic public law courses. Public law and judicial review are often taught together with constitutional law at degree level. Since PLP's expertise is practical rather than academic, PLP input into a public law module may be of limited appeal, particularly to the more academically-focused legal departments. However some law schools may be open to a practical element to their public law course, perhaps if combined with lectures on public interest litigation, and human rights.

184. There was some discussion of this during our visit to Liverpool. Colleagues there explained that the process of changing the syllabus is protracted – for example, any changes to the existing syllabus would have to be finalised around March 2017 for amendments to the modules for the academic year 2017/8.

185. This was not the main focus of our enquiry during our visits to the law schools, but it is recommended that PLP should be open to having some input into academic public law courses in the medium to longer term, as part of any work in support of law schools' clinical work.

The use of technology by law clinics in their existing service delivery

186. In his December 2014 paper *Digital delivery of legal services to people on low incomes, summary and recommendations*, Roger Smith categorised the current pattern of digital provision as follows:

- a) For-profit legal providers using the Internet to provide high-volume, low-cost services
- b) Online communities free to users
- c) Government free information websites

- d) Not-for-profit legal portals and “triaging” websites (eg directing individuals towards particular services such as legal aid or alternative dispute resolution)
- e) Stand-alone specialist not-for-profit information websites
- f) Assisting self-represented litigants
- g) Online Dispute Resolution and Online Dispute Determination
- h) Websites that link legal assistance to the development of skills, including emotional support
- i) Websites that provide textbook-level information on a shareable basis

187. All of these are models that could in principle – given the appropriate allocation of resources – be adopted by law clinics in the development of their public law work. But in practice, with some notable exceptions referred to below, law clinics appear not to have been at the forefront of such novel methods of service delivery. This should not come as a surprise:

- 1) Experience of traditional (rather than novel) forms of legal service delivery will likely be attractive to many students looking for work experience that will confer an advantage in the (traditional) legal job market;
- 2) The skills of law clinic supervisory staff are more likely to lie in traditional rather than novel forms of legal service delivery. Clinical work appears to be viewed by some law schools (for example, Liverpool) as part of a rounded practical legal education, with supervisory staff teaching crucial practical legal skills such as interviewing techniques.

188. The following observations might also be drawn from the work that has gone into this report:

- a) Any digital service that offers high-volume casework would risk serious capacity problems given students’ limited availability, and the limited capacity of supervision staff. These pressures were apparent even where third party organisations found it viable to supervise students acting as unskilled paralegals in the delivery of high-volume casework (e.g. Hugh James Solicitors in Cardiff, and Liverpool CAB in Liverpool);

- b) The law is constantly evolving - digital delivery of information on the state of the law therefore requires sufficient resources to ensure that the information is up to date. But the resources needed for maintenance depend on the speed with which the area of law (and consequential policy) in question develops, which may be hard to predict, and therefore to budget for.

189. That said, we have seen that where the development of specialist online information services is (a) adequately funded, (b) supported by specialist NGOs (e.g. Cerebra and Mencap Cymru), and (c) linked to academic research (offering the potential for research impact), the results can be impressive. The toolkits produced by Cerebra and Mencap Cymru are examples of innovative Public Law clinical work, tailored to offer access to justice to members of the public in general, in light of the capacity and supervision pressures that arise where law clinics offer individualised advice to clients²⁰.

190. It may be that the link between this type of clinical work and departmental research is more likely to lead to innovative forms of service delivery, because the focus of the participating students is less on the acquisition of traditional legal skills through work experience, and more on departmental research, to which the service being delivered is closely connected; i.e. the profile and motivation of the participating students and supervisory staff may tend to make projects where service delivery is linked to departmental research more open to the development of innovative services. And more generally, the effective use of new technology is one area in which students' skills may be more advanced than those of their supervisors, and might in certain circumstances be effectively harnessed in developing innovative forms of service delivery.

191. As Roger Smith notes in his 2014 paper, and elsewhere, access to digital legal services excludes some of the most marginalised members of the community with the greatest need for legal support. None of the above should therefore detract from the important role that law clinics and other partner organisations play in offering more traditional face to face advice and representation.²¹

²⁰ See paragraphs 52 and 63 above

²¹ For the purposes of this report PLP has proceeded on the basis that accurate legal diagnosis in public law matters continues to require individual, tailored input. There may be some categories of legal problem in which technology can now or may in future be successfully employed in a diagnostic capacity, but at present it is widely recognised that public law/judicial review is not one of those areas. See for example Roger Smith's evidence to the Bach Commission.

The potential use of technology by PLP to support law clinics

192. To consider the extent to which advances in technology might assist PLP to support law schools' clinical work, it is necessary to identify the problems which the technology could usefully solve. The services that it is envisaged PLP might provide to support law clinics' public law work can be categorised as follows:

- 1) Training
- 2) Assistance with public law referrals
- 3) Remote supervision of certain types of public law case
- 4) Specialist support (i.e. an advice-giving role to law clinics).

193. All of these raise logistical problems for which existing technology may offer a full or partial solution.

194. In relation to training, PLP has already provided some law clinic participants in this study places on its full day "How to do judicial review" course. The feedback received from students and supervisors from those days was generally extremely positive. But given the large number of law clinic students for whom this course or other PLP training courses may be appropriate, consideration should be given to issues that may arise were the PLP training programme to be rolled out to one or more law clinics. Potential problems include (a) timetabling difficulties (given students' and PLP many and varied commitments), and (b) location (given PLP's central London base). Solutions that might be considered include greater use of remote training systems, such as web conferencing ('webinars') and recorded training videos. Solutions of this sort would be attractive to PLP as they would increase and diversify the general public law resources PLP offers, as well as developing in-house skills.

195. In relation to any advice-giving or supervisory role for PLP, particularly in relation to individual law clinic clients, systems would have to be developed for effective remote supervision, one of the factors limiting clinical capacity. Where law clinic students research and deliver individualised legal advice, supervision is required during at least the following distinct stages:

- 1) On referral of the case to students, to ensure that the matter is appropriate for the clinic in light of the facts of the case and any complicating factors, such as the imminent expiry of a limitation period.

- 2) During students' engagement with clients (to ensure that that engagement is appropriate), and during the course of students' research into the clients' matters (to support the students in the conduct of the research).
- 3) Prior to delivery of advice to the client, to ensure that the advice given to clients is correct.

196. In this regard, the experience of the Centre for Criminal Appeals, where law clinic students are given access by Skype to a supervising solicitor at set times may be considered instructive²².

197. Further, it is clear that in the vast majority of public law cases, particularly those involving socially disadvantaged clients, advice cannot be given, or matters properly supervised, without reference to the clients' documents. This is because hardly any clients will have the skill, understanding, or time required to provide the clinic supervisor with all the material facts of their case, either in writing or orally. Scrutiny of the documents is therefore likely to be required at an early stage in all public law cases.

198. Document management systems would therefore also need to be developed to ensure the transfer of information between law clinics and PLP in ways that:

- 1) Ensure that the information can only be accessed by authorised people;
- 2) Enable documents to be tagged, commented and exchanged electronically between PLP and members of the clinical team;
- 3) Provide for remote access to documents to save time and maximise capacity²³.

199. The technology for all the above processes is likely to already exist, and, it is considered, could be relatively cheaply adapted to solve the particular logistical problems thrown up were PLP to support law clinics' public law work in one or more of the ways envisaged in this report. For present purposes, this report merely flags up issues to be considered on a case by case basis if such working relationships can be developed.

²² See paragraph 140. 6)

²³ See paragraph 140. 4)

Funding PLP's work

200. Consideration of funding models requires a number of different assessments. In the first instance, law clinics' casework profiles depend on a number of factors, including:

- (1) The purposes for which the clinical work is being undertaken and funded within the institution in question (whether it be to facilitate students' education, to provide skills training or work experience, to support a research programme, to meet local need for legal services, or some combination of these or other reasons).
- (2) The expertise of the supervisory staff;
- (3) The resources available to the law clinic, including for training and supervision of students, for management of referrals and casework generally, and for premises;
- (4) The size of the law clinic and volume of casework undertaken;
- (5) To the extent that clinical work is optional, students' preferences;
- (6) The accessibility of the law clinic to clients; and
- (7) The availability of services both locally and nationally, both for client to access and for law clinics to partner with.

201. The desire to meet pressing social need for legal services was evident as a motivational factor on the part of each of the clinic directors, and most of the supervisory staff we met, albeit within a viable academic and business model. That motivation has found expression in a number of different initiatives, for example:

- (1) Partnership working by Liverpool and Huddersfield law clinics with, respectively, Liverpool CAB and Kirklees Citizens Advice and Law Centre;
- (2) The immigration test cases run by Kent Law Centre, and the possibility, raised by practitioners there, that – where a judicial review claim was considered viable but a legal aid practitioner could not be found because of the lack of guaranteed payment of legal aid where permission is not granted, the claim could be brought pro bono by the law clinic, and transferred to a reputable legal aid practitioner (for whom any grant of legal aid would then mean guaranteed payment of their fees) following the grant of permission;

- (3) The collaboration between Cardiff law clinic and Cerebra and Mencap Cymru, which are intended to meet pressing social welfare advice needs (albeit on a national rather than local basis).
202. But it is clear that a commitment to facilitating access to justice cannot be a law clinic's primary motivation, given its other overriding responsibilities to students and the institutional aims of the law school more generally. And whatever a law clinic's motivation, meeting any external demand is impossible without building sufficient capacity.
203. In order to explore funding options, PLP has spoken with a range of colleagues working in law clinics, both in the participating law clinics and beyond. The following points can be gleaned from those conversations.
204. Most law schools, which fund law clinics' core costs like staff and premises, are presently being forced to reconfigure the services they offer to meet future challenges. These challenges include:
- a) Changes to the qualification route for solicitors, which will place a greater emphasis on skills-based learning, and qualifying legal work experience (see para * above re context). The present SRA consultation envisages the possibility that clinical work might be taken into account as qualifying legal work experience (see para * above).
 - b) Changes in recent years to the traditional career path for solicitors: graduates increasingly face a period of employment as an unpaid intern or a paralegal doing poorly paid and relatively unsatisfying work before they will be considered for a training contract. The importance of internships to prospective legal employers (particularly blue chip employers) and for barrister's chambers puts a premium on the acquisition by students of practical legal skills that will prepare them for employment. In this regard, law schools may (to varying extents) view law clinics as an important means to implement the Widening Participation agenda, since they offer work experience that may not in practice be available to those students from more deprived socio-economic backgrounds.
 - c) A realisation on the part of law schools that it is increasingly important to offer a student experience that responds to students' wishes. As tuition fees have risen, students and their families are treated more like consumers of services than was previously the case. This is evidenced by the increasing weight given by universities to the National Student Satisfaction Survey, and other measures of what students want.

205. It might be anticipated that the present period of uncertainty regarding law schools' future development will result in law schools taking a more risk averse approach to investment in relatively expensive (in staffing terms) law clinics.
206. Law clinics are popular with students (all the clinical placements considered as part of this study were over-subscribed), and are perceived by law schools to be a major selling point, both in terms of recruitment, as law schools compete for students, and in terms of the student experience, an increasingly important consideration, as surveys such as the National Student Survey grow in importance.
207. However, law clinics are a greater drain on law schools' resources than other more traditional types of legal educational activity, because of the higher staff to student ratio that is required to ensure students' clinical work is adequately supervised. The costs to law schools of supporting law clinics are correspondingly higher. High staff student ratios are considered normal in vocational undergraduate courses like medicine where clinical work is a better established part of the curriculum. But while law schools have good reasons to support law clinics (in terms of recruitment, reputation, community engagement and research impact), some may balk at their relatively high staffing costs. Law schools have always to decide which areas of teaching and research to focus upon, and staff costs may weigh against clinical work. On the other hand universities may decide to invest further in law clinics because they attract students (and thus income for all purposes) and also as being appropriate for their students in the context of the new SQE route. It should also be noted that some law clinic respondents perceived themselves to be operating in a funding environment where they are expected by law schools to take on an increasing number of students, without corresponding increases to staff costs²⁴.

²⁴ The above contrasts with the US experience, where law clinics have been established in their present form for decades. While the development of law clinics in the USA is outside the scope of this report, some information was gleaned from a seminar organised by LEF on 5 October 2016 to which PLP was invited (referred to in paragraph 137 above), and which was addressed by Professor Peter Markowitz from Cardozo School of Law in New York. Of particular note is that some US law clinics are able to bring funding into the law school through donations from alumni and from fee income. These sources of funding are less available to law clinics in England and Wales. That is because law clinics are - with some exceptions - less well established here, and so have fewer alumni to look to for financial support.

In relation to fee income, some public law claims in the USA are subject to one way costs shifting, so that where a law clinic acts for a claimant, it can recover fees if the claim is successful, without the law clinic client being exposed to a risk of paying the other side's costs if the claim is unsuccessful. Rules apply conferring rights of audience in US courts, so that law students are able in certain cases to have more direct involvement in the conduct of litigation. These features taken together make it far easier for law clinics in the USA to have conduct of litigation, and easier for them to recover fee income by so doing.

208. None of the law clinic respondents to this study considered that the law school imposed strategic objectives or other KPI on the clinic's activities (save, in some cases, in terms of administration). Law clinics' strategic objectives appeared to vary. In particular, the degree to which each law clinic pursued objectives such as facilitating access to justice, serving the local community, legal skills training, and providing legal work experience to students (alongside in every case providing students with a legal education) appeared to vary from clinic to clinic depending on factors such as the law school's ethos²⁵, the drive, interests and expertise of the clinical supervisors, and the support given to the clinic by the school. Having a supportive senior voice in the faculty hierarchy was widely considered to be an important factor in the degree to which a clinic might be supported by a school.
209. Paying for external supervision of specific projects (e.g. the Centre for Criminal Appeals model) may become increasingly difficult for law clinics to justify in light of the challenges highlighted above, particularly where subsidies initially provided by charitable funders are withdrawn over time. Since supervision of work by students of any legal complexity (whether provided by the law clinic or by external lawyers directly funded by the law clinic) is necessarily time-consuming and expensive, the number of students who will benefit from project work of this sort is likely to be limited. As law schools seek to offer clinical experience to more students, there is likely to be pressure on law clinics to allocate their resources to benefit a wider number of students (rather than a chosen few selected to work on select flagship projects). While an increase in supervision capacity through the use of external lawyers (such as PLP) might relieve some of the pressure on law clinics' in house supervisors, such an increase, in itself, appears unlikely to benefit significant numbers of students unless additional funding is secured.

Funding PLP's work

210. We have sought, below, to identify the main funding models through which PLP might fund the type of work envisaged in this application. It is relevant that the services that PLP can usefully offer any individual law clinic must to a greater or lesser extent be bespoke. While it is conceivable that some projects, such as an initiative to facilitate the making of exceptional funding applications within law clinics, for example²⁶, could be rolled out in partnership with more than one law clinic, the precise needs of each participating law clinic are bound to be different.

It should also be noted that in the US student fees are typically significantly higher than in the UK, and this may contribute to a better funding environment for clinics.

²⁵ Including the extent to which its activities are research or education focused.

²⁶ see paragraphs 153 to 166

Further, a number of the potential projects envisaged above, are driven by local advice agencies responding to local needs, with locally agreed partnerships between NGOs and/or local solicitors, and the law clinics. Any services offered by PLP will have to be compatible with, and meaningfully support, those existing local arrangements.

PLP bears cost

211. PLP has a very small number of core or close to core grants. Its primary sources of income are casework fee income, events income and specific (restricted) project funding. It does not have cash reserves required by the reserves policy considered prudent and necessary by its Board. Whilst it is not inconceivable that in future PLP might be in a position to bear the costs of such an initiative as core work it cannot currently do so.

University bears cost

212. There may be limited circumstances in which a University's strategic/academic objectives can be satisfactorily allied with the advancement of access to justice agenda (the possibility of developing a support arrangement which draws on the Centre for Criminal Appeals franchise model is discussed further below) but in general universities do not have the same charitable focus or interest as PLP, and law clinics may not have so much budgetary freedom to divert money or resources to that end.

Third Party bears cost

213. For the purposes of this report it is assumed that the ultimate intended beneficiary (the recipient of clinical legal services) cannot afford to contribute to the costs of their delivery.

214. It might be possible to develop a model of in which other advice agency/NGO's may have an interest, although it is rare in the sector for such organisations to have sufficient unrestricted funds to consider purchasing specialist support. The conclusion of this report is that in the majority of cases PLP's time working with university clinics will need to be directly or indirectly grant funded by philanthropic trusts or foundations concerned with social justice (or otherwise charitably funded).

Conclusions and recommendations

215. Charitable funding has been identified as the most likely funding model because the primary purpose of any intervention by PLP will be to support law clinics to improve access to justice. Pure market assumptions about supply and demand simply do not apply: the activities are ultimately designed primarily for the benefit those who do not have the means to pay for them, not the students and not the law schools. Within this broad heading there are a number of options that might apply:

- (1) Such funding might include the diversion of PLP's existing project funding streams, where undertaking work with law clinics is properly compatible with existing contracts. An example of this might include work to further develop an incipient project concerned with mitigating the effect of benefits sanctioning, in respect of which PLP has some secured grant funding in this and coming years. The limitations with this proposal are that existing project plans/agreed objectives leave only limited opportunity to develop work in new directions, and will not create any new capacity within PLP other than to redirect existing resources. Also, the case for working with a clinic might need to be weighed, potentially, with alternative models which involved less mediated access to clients, i.e. working directly with advice services that are not part of a clinic (for any number of reasons).
- (2) Similarly, such funding might be enabled through the diversion of existing project funding held by law clinics or other potential partner advice agencies / NGOs. (It is not clear whether any such funding pots are in fact in existence, but it would appear to be an option in theory at least).
- (3) PLP and/or the law clinics and/or interested third parties such as NGOs or advice agencies could make an application for funds to support a new or expanded initiative. This could include the development of a bespoke specialist support product to meet the particular requirements of law clinics and their local partners. For example, work in support of Huddersfield Legal Advice Clinic's work with Kirklees Citizens Advice and Law Centre might fall within this model.
- (4) PLP and/or the law clinics could make an application for funds to support the development of a product which might ultimately be effectively "franchised" to a number of participating law clinics. The Centre for Criminal Appeals' work seeks to trial such a model. It is possible that an initiative to support the making of

exceptional funding applications in a clinical environment might be designed to work on a similar basis, although it would remain to be seen whether universities hosting law clinics were sufficiently convinced of the value of such a project to their own commercial/charitable focus on the provision of a high quality legal education. In the longer term it will be instructive to consider the experience of the Centre for Criminal Appeals and their partners, and the extent to which university law clinics are sufficiently convinced of the 'value added' by their students' learning and experience within the project to continue to divert their own funds to the initiative as charitable funding wanes. It might also be possible to aim to supplement such a project with pro bono assistance from national firms with more developed CSR agendas.

- (5) The universities apply (alone or jointly with PLP) for research funding (which may come from a wider range of third party sources than those concerned with social justice) that includes the cost of PLP's services, where those services are provided to help give research impact²⁷.

217. This report has concluded that a major problem for those law clinics wishing to pursue access to justice initiatives (being the law clinics for whom PLP would wish to offer support), is lack of capacity resulting from relatively high supervision costs. One way of building capacity is for law clinics to partner with NGOs and other organisations that have a shared interest in offering training and supervision to students in return for students' unpaid legal work. Such shared interests between the law clinics and external organisations will not always be present because supervision and training costs can be relatively high, and students' commitment to the legal work can only be piecemeal because of their other educational, working and accommodation arrangements. But, as indicated above, where shared interests can be identified, there is potential for fruitful collaboration.

218. A number of examples of potential projects involving PLP have been identified above, following discussions with the participating law clinics. However these ideas are not set in stone, and should be seen as a starting point for further discussion between these and other stakeholders. A key feature of partnership working is to ascertain where interests converge, as between law clinics, PLP, and any other NGO or other partners. That necessarily involves all concerned in ascertaining shared interests on a case by case basis.

²⁷ see paragraphs 177 to 180 above.

219. The opportunity for PLP to work with future lawyers at a formative stage in their legal education has a value in itself, separate from the improved casework outcomes that it is hoped will accrue to clients. That said, it must be born in mind that, despite its reach throughout England and Wales PLP is a small organisation with limited resources. Its strengths include strategic litigation, public law expertise generally, and in relation to specific areas of expertise (such as legal aid and exceptional case funding), and a proven track record of delivering training in public law-related subjects.
220. When considering the viability of work with one or more law clinics, PLP should ensure that its limited resources are enhanced by the proposed relationship, not absorbed by them without appropriate impact.
221. PLP is currently undertaking a strategic review with a view to setting new strategic objectives for the coming five years. This report will feed into that review process. and recommends that to further its aims and objectives and make the best use of its skills, PLP might wish to:
- 1) Encourage and support any aspirations on the part of law clinics to provide access to justice to marginalised and disadvantaged members of their communities;
 - 2) Seek out those law schools whose clinical work shares PLP's access to justice focus, both:
 - A) in partnerships between law clinics and voluntary sector or other external organisations (which PLP's involvement might enhance), through which law clinics' capacity, and ability to deliver access to justice, will be enhanced; and also
 - B) in their research programmes, to which PLP's research and strategic legal skills may add impact;
 - 3) Consider offering support for a range of bespoke initiatives²⁸ to different law clinics, subject to PLP's input being (a) adequately funded and (b) manageable in terms of capacity.

²⁸ A non-exhaustive list of potential projects for development are summarised at paragraphs 145 to 185. It is clear that no one model of support will fit each law clinic's circumstances.

Public Law Project

20.10.16

Appendix 1 - PLP questionnaire for participating law clinics

Please answer the following questions as best you are able to. Please do not feel constrained by the format. Whilst we want to elicit useful information from you we do not want to make this questionnaire unduly onerous. So please feel free to supply as much or as little information as you see fit, including any extra information or comments you feel may be relevant.

1. What is the clinic's current capacity in terms of devoted student hours per week, and supervisor hours per week? You can estimate and comment on your estimation, It may be useful for us to understand typical equations (for instance 5 hrs student time equates to 1 hr supervision, etc.)
2. What areas of law does the clinic undertake, and which of these would you classify as "public law"?
3. If the clinic undertakes public law work of any description, please go to Q 4 below. If not, then:
 - (1) please explain:
 - (a) whether the clinic would like to do some public law work,
 - (b) what sort of public law work the clinic would like to do;
 - (c) what prevents, or may prevent, it from doing this work
 - (2) Please indicate how PLP could help develop the clinic's public law work:
 - (a) in terms of training
 - (b) otherwise (for instance with a specific project focus)
4. If the clinic does undertake some public law work
 - (1) Please estimate:
 - (a) how many public law cases the clinic undertakes each year
 - (b) in what categories of substantive law
 - (c) involving how many student hours per week; and
 - (d) how many supervisor hours per week.
 - (2) Would the clinic ideally undertake more public law work, and if so, what prevents this?
 - (3) please indicate how PLP could support the clinic's public law work:
 - (a) in terms of training
 - (b) otherwise.
5. Does the clinic currently work with other advice services or groups in the community?
 - (1) If so, how would you describe the clinics role in that partnership?
 - (2) If so, do you feel that PLP could enhance that relationship in any way, and if so, how?

6. Does the clinic currently work in partnership or on projects with national organisations, such as the Centre for Criminal Appeals?
7. Is public law taught as a distinct module, or as part of another course (for instance a constitutional law module)?
8. Do students need to elect to do a clinical module in order to be part of the clinic, and if so is this mandatory?
9. Would you see a useful academic role for PLP associated with the clinic, for instance, teaching an introduction to judicial review, or to strategic litigation?
10. PLP's aim is to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. Does the university undertake any research which might be relevant to PLP's aims (for instance on delivery of public services, or indeed legal services) which might be developed in conjunction with the law clinic and PLP. If so, please give details.

Many thanks on behalf of PLP.

Ravi Low-Beer

Appendix 2 - An overview of the regulation of legal services in England and Wales

1. Regulation of legal activity arises in three distinct ways:
 - (1) The Legal Services Act 2007 defines “legal activity” and “reserved legal activity”, and provides that the latter can – as a general rule - only be carried out under regulatory frameworks set by bodies such as the Solicitors Regulation Authority or the Bar Standards Board. Such frameworks provide that only authorised persons (eg solicitors) may carry out certain types of work, impose burdens on lawyers in terms of client care, and confer rights on clients, eg to particular complaints procedures.
 - (2) some legal activities that are unreserved are nevertheless regulated because they are the subject of legislation that imposes a regulatory structure on the conduct of the specific unreserved legal activities. Examples are immigration, insolvency, and claims management.
 - (3) further some regulation of legal activities arises because of regulation of the individual practitioners or entities that carry them out (eg solicitors and legal executives). The individual authorised person might not be authorised in respect of all legal activities, but only those that their regulator has been approved to authorise.
2. Unreserved legal activities not subject to regulation by statute, and not carried out by persons or entities whose conduct is regulated as a matter of course, are not regulated.

Reserved legal activity

3. As a starting point, it is important for law schools to determine whether the clinical services they offer comprise reserved or unreserved legal activity so as to be able to determine which individuals are able to carry out the work and under what conditions.
4. Reserved legal activity is defined in section 12(1) of the Act, as any one of the following activities:
 - The conduct of litigation
 - The exercise of a right of audience in the courts
 - Reserved instrument activities
 - Probate activities
 - Notarial services
 - Administration of oaths
5. These terms are explained in Schedule 2 to the Act. Of all the types of reserved legal activity, it is the conduct of litigation that will be relevant to most law clinics, as other types of reserved legal activity are unlikely to be provided in a clinical context. It is important therefore for law clinics to determine whether the services they offer fall within the meaning of “the conduct of litigation” for the purposes of section 12(1) of the Act, so that they can determine whether appropriate regulation is required, (typically in relation to the conduct of litigation, from the Solicitors Regulation Authority).
6. Paragraph 4 of Schedule 2 to the 2007 Act, states:

“(1) The “conduct of litigation” means—

- (a) the issuing of proceedings before any court in England and Wales,
- (b) the commencement, prosecution and defence of such proceedings, and
- (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

(2) But the “conduct of litigation” does not include any activity within paragraphs (a) to (c) of sub-paragraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity.”

7. Law schools therefore must be aware of what is meant by the “performance of any ancillary functions” in relation to proceedings before any court²⁹ in England and Wales. Unless they are SRA regulated or otherwise appropriately regulated, such ancillary functions cannot be conducted.

8. The meaning of this term was considered by the Court of Appeal in Agassi v Robinson (HMIT) [2005] EWCA Civ 1507, a case decided the context of the Courts and Legal Services Act 1990, the forerunner to the Legal Services Act 2007. Section 70 of the 1990 Act made it an offence to do any act in the conduct of litigation when not so entitled. Section 119 of the 1990 Act defined the right to conduct litigation as:

“the right—

- (a) to exercise all or any of the functions of issuing a writ or otherwise commencing proceedings before any court; and
- (b) to perform any ancillary functions in relation to proceedings (such as entering appearances to actions)”.

9. At paragraphs 53 -56 of its judgment, the Court of Appeal stated:

The right to conduct litigation: the 1990 Act

53. Depending on the context, the word 'proceedings' may have a very wide ambit (see *Callery v Gray* (No1) [2001] EWCA Civ 1117 at [54]; [2001] 1 WLR 2112; and, for an extreme example, see *Crosbie v Munroe* [2003] EWCA Civ 350 at [34]). In the present context the word undoubtedly includes ancillary applications and appeals in the course of litigation. Only a litigant in person or an authorised litigator may issue proceedings. But what is the scope of the right "to perform any ancillary functions in relation to proceedings (such as entering appearances to actions)"? The background material to the 1990 Act that we have been shown sheds no light on the meaning of these words. Mr Drabble and Mr Carr rely on the statutory objective and the general principle stated in section 17 in support of the submission that the words should not be given a narrow meaning. They submit that there are powerful policy reasons why litigation which

²⁹ “Court” is defined in s.207 LSA 2007 and includes many tribunals.

is not being conducted by litigants in person should be conducted by authorised litigators. The scheme introduced by the 1990 Act was intended to make provision for new and better ways of conducting litigation and a wider choice of persons providing them "while maintaining the proper and efficient administration of justice". It is an essential part of the scheme that the enlargement of the class of persons available to conduct litigation is properly regulated.

54. We recognise the importance of these considerations. But the language of section 119 must be interpreted in accordance with the usual rules for statutory interpretation. These include that the starting point is that words should be given their plain and natural meaning. It is also important to bear in mind the penal nature of section 70. If a person purports to exercise the right to conduct litigation when he is not entitled to do so, he commits an offence. This is not directed at the person who pretends that he is entitled to exercise the right to conduct litigation: that is the subject of the separate offence created by section 70(3). Section 70(1) is directed at the person who, whatever his state of mind, actually issues proceedings or performs any ancillary functions in relation to proceedings when he is not in fact entitled to do so.

55. If Parliament had intended to introduce a broad definition of the right to conduct litigation, it could have defined it as the right "to issue *and conduct* proceedings before the court". That would have been all-embracing and the second limb of the definition that was adopted would have been unnecessary. Instead, Parliament decided to limit the first limb of the definition to the initial formal step in proceedings, namely their issue. It then added a second limb, which, if its meaning is ambiguous or otherwise unclear, should be construed narrowly.

56. The word "ancillary" indicates that it is not all functions in relation to proceedings that are comprised in the "right to conduct litigation". The usual meaning of "ancillary" is "subordinate". A clue to what was intended lies in the words in brackets "(such as entering appearances to actions)". These words show that it must have been intended that the ancillary functions would be formal steps required in the conduct of litigation. These would include drawing or preparing instruments within the meaning of section 22 of the 1974 Act and other formal steps. It is not necessary for the purposes of this case to decide the precise parameters of the definition of "the right to conduct litigation". It is unfortunate that this important definition is so unclear. But because there are potential penal implications, its very obscurity means that the words should be construed narrowly. Suffice it to say that we do not see how the giving of legal advice in connection with court proceedings can come within the definition. In our view, even if, as the Law Society submits, correspondence with the opposing party is in a general sense "an integral part of the conduct of litigation", that does not make it an "ancillary function" for the purposes of section 28" (emphasis added).

10. In summary, therefore, the Court concluded that the giving of legal advice in connection with court proceedings and correspondence with the opposing party were not ancillary functions in relation to proceedings for the purposes of s 28 of the 1990 Act. In *Heron Bros Ltd v Central Bedfordshire Council* [2015] EWHC 1009 (TCC), Edwards-Stuart J concluded that "In the light of these observations [in *Agassi*] I see no reason to construe the definition of the conduct of litigation as extending to any activities that take place prior to the issue of proceedings and which do not involve any contact with the court. For example, advising on the merits of starting proceedings or

drafting Particulars of Claim”. Pre-action work would also include the sending of a pre-action protocol letter.

11. The Bar Standards Board has issued guidance as to what amounts to the conduct of litigation as part of its *The Public Access Scheme Guidance for Barristers*. Barristers are not normally entitled to conduct litigation, although they can be specifically authorised to do so. The Bar Standards Board states that the following ancillary activities amount to the conduct of litigation:
 - issuing proceedings or applications;
 - acknowledging service of proceedings;
 - giving your address as the address for service;
 - filing documents at court or serving documents on another party; and
 - issuing notices of appeal.

11. “Legal activity” is defined for the purposes of the Act, in section 12(2) as:
 - (a) an activity which is a reserved legal activity within the meaning of this Act as originally enacted, and
 - (b) any other activity which consists of one or both of the following—
 - (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes;
 - (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.

12. It follows that the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes, that does not fall within the definition of “the conduct of litigation” in paragraph 4 of Schedule 2 to the 2007 Act is unreserved legal activity. This is referred to below as “general legal advice”, and is at the heart of what most law clinics are able to do (although three of the four law clinics considered in this study undertake reserved legal activity in addition).

13. At present (although consideration has been given by the Legal Services Board to making general legal advice into reserved legal activity), general legal advice is unreserved, and is only subject to regulation if (a) statute imposes a distinct regulatory regime; and/or (b) those providing the advice are subject to regulation because of regulation that attaches to their professional status or the status of the entity they work for.

14. The SRA has indicated (consultation response – July 2012³⁰) that its position is that where a body is authorised to provide reserved legal activities, all of its mainstream legal activities (reserved and unreserved) should be provided through that regulated entity, rather than through a separate business.

30

http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/special_bodies_non_commercial_bodies/sra.pdf at para 38

Regulation imposed by statute in respect of unreserved legal activity

15. As a result of Parliamentary intervention, some services that would fall within the definition of 'legal activity' in section 12(3)(b) of the Legal Services Act 2007 are regulated by statute, even though they are not listed as reserved legal activities in the Act. For law clinics, the most important type of legal activity regulated in this way is immigration.
16. Section 84 of the Immigration and Asylum Act 1999 provides that immigration advice and services may only be provided by qualified persons. It states:
 - (2) A person is a qualified person if he is–
 - (a) a registered person [by section 85, registration is by the Immigration Services Commissioner],
 - (b) authorised by a designated professional body to practise as a member of the profession whose members the body regulates,
 - (ba) a person authorised to provide immigration advice or immigration services by a designated qualifying regulator,
 - (c) the equivalent in an EEA State of–
 - (i) a registered person, or
 - (ii) a person within paragraph (b) or (ba)
 - (d) a person permitted, by virtue of exemption from a prohibition, to provide in an EEA State advice or services equivalent to immigration advice or services, or
 - (e) acting on behalf of, and under the supervision of, a person within any of paragraphs (a) to (d) (whether or not under a contract of employment).
17. Schedule 18 to the Legal Services Act 2007 establishes the Law Society, the General Council of the Bar, and the Institute of Legal Executives as qualifying regulators for the purposes of authorising solicitors, barristers and legal executives to provide immigration advice and services under the Immigration and Asylum Act 1999.
18. In practice, this means that law clinics must ensure that immigration advice is either given by persons registered with the Office of the Immigration Services Commissioner ('OISC'), by solicitors or barristers, or persons working on behalf of and under the supervision of a person so registered or authorised.
19. In August 2016, the OISC issued guidance setting out its position that where immigration advice or services are provided on behalf of an entity, which is not itself regulated by one of the qualifying regulators, that entity must be registered with the OISC in order to comply with section 84. This means for example that where immigration advice is provided by a solicitor or barrister employed by a law centre (which, unlike a solicitors' firm, will not normally be regulated as an organisation by the SRA), the law centre needs itself to be registered with the OISC. The OISC's position also appears to be that other advisers in the law centre, who are not solicitors or

barristers, need to be individually registered with the OISC, even if they are working under the supervision of a solicitor or barrister. That is because, in order to be authorised to provide immigration advice under s.84(1)(e), a person must be working **both** under the supervision of **and** on behalf of a qualified person. It is currently unclear, however, whether it is sufficient for the organisation to be registered with the OISC, and for supervision to be provided by qualified persons, such as solicitors or barristers. PLP has sought clarification from the OISC on this question.

20. This guidance raises a number of issues for law clinics who wish to provide *pro bono* immigration advice and services. It may be necessary for clinics to become registered with the OISC and, pending clarification of the position relating to supervision, to ensure that only qualified or OISC registered individuals provide immigration advice and services.
21. In addition to the above, the Bar Standards Board has issued guidance for barristers which states that self-employed barristers may only act as supervisors for the purposes of s.84 IAA 1999 if they are public access qualified.

Appendix 3 – public law provision in England and Wales - specifically in proximity to participating law clinics

General distribution of public law and related advice services in England and Wales

In order to help us locate and describe services and levels of provision we mapped the distribution of LAA contract holders in England and Wales. The maps are linked below.

Map of the distribution of all legal aid public law contract holders in England and Wales is here: http://www.easymapmaker.com/map/public_law

Roughly 40 out of 110 contract holders are spread outside of the London area. The law clinics we are working with on this project, with the exception of Kent, are not in the advice desert areas; the very North of England, all of Wales outside of South Wales, almost the entire east of England and Cornwall and the South West outside of Bristol.

Map of the distribution of all legal aid welfare benefits contract holders in England and Wales is here: http://www.easymapmaker.com/map/welfare_benefits

There is a less clustering apparent than that of Public Law contract holders, but then there are very few welfare benefits contract holders now.

Map of the distribution of all legal aid housing and debt contract holders in England and Wales is here: http://www.easymapmaker.com/map/housing_and_debt_LAA_contract_holders

This includes CAB's with legal aid contracts.

Map of the distribution of all legal aid asylum and immigration contract holders in England and Wales is here: http://www.easymapmaker.com/map/immigration_and_asylum

Map of the distribution of all legal aid Mental Health contract holders in England and Wales is here: http://www.easymapmaker.com/map/mental_health

Map of the distribution of legal aid community Care Contract holders http://www.easymapmaker.com/map/Community_Care

The next page shows the tabled contact informing our narrative analyses in paragraphs 39 to 46

Appendix 3 (ii) Tabled data for the distribution of public law and related services in areas of clinics

The tables list public law contract holders with the LAA, then related services that may have a public law element to their advice and / or casework.

CARDIFF – LAA Public Law Contract Holders			
Name	City	Postcode	Advice areas
Watkins & Gunn	Cardiff (Newport)	NP20 4PH	Public Law
Harding Evans LLP	Cardiff (Newport)	NP20 1TE	Public Law, Prison Law, Actions against the police, Debt, Housing,
Sinclair's law Solicitors	Cardiff (Penarth)	CF64 1AB	Community Care, public law
Duncan Lewis	Cardiff	CF24 0AD	Prison Law, Community Care, Debt, Housing, Immigration, Mental Health, Public Law
Cardiff - related services			
Welsh Housing Aid Ltd Ta Shelter Cymru	Cardiff	CF81 8QU	Housing and benefits
Welsh Housing Aid Ltd Ta Shelter Cymru	Cardiff	CF10 1BS	Housing and benefits
Migrant Legal Project	Cardiff	CF24 2BW	Immigration and Asylum
The Speakeasy	Cardiff,	CF24 3BX	Debt, welfare benefits, housing, fuel debt, employment law
Trinity Centre (With Wales Refugee Council)			Refugee and Asylum support
Mencap Cymru - Wales Learning Disability helpline			Advice and information to anyone who is affected by learning disability.
Riverside Advice Ltd	Cardiff	CF11 6LW	Welfare Benefits, Housing, Debt

HUDDERSFIELD – LAA Public Law Contract Holders			
Firm Name	City	Postcode	Advice areas
Kirklees Law Centre	Dewsbury	WF12 8DJ	Community Care, Immigration and Asylum, Public Law, Welfare benefits
Huddersfield - related services			
Switalski's Solicitors Ltd	Huddersfield	HD1 2SP	Debt, Immigration and Asylum,
NB Switalski's do not have a public law contract but may issue judicial review claims due to the nature and areas of their work			
Fusion Housing Ltd	Huddersfield	HD1 1BA	Debt, Housing

KENT - Public Law Contract Holders			
Firm Name	City	Postcode	Advice areas
Kesar & Co Solicitors	Dover	CT16 1PW	Immigration and Asylum, Public law
Kent - related services			
Shepway Citizens Advice Bureau	Folkestone	CT20 1RH	Debt, Housing
Medway District Citizens Advice Bureau	Gillingham	ME7 4PF	Debt, Housing
Medway District Citizens Advice Bureau	Sittingbourne	ME10 3DU	Debt, Housing
Canterbury Housing Advice Centre (CHAC)	Kent	CT1 2HA	Housing
Clarke Kiernan LLP	Tonbridge	TN9 1DU	Prison law, Debt, Housing
NB: Clarke Kiernan's areas included actions against The Prison Service, Social Services and various actions against Local Authorities			
Elder Rahimi Solicitors	Folkestone	CT20 2RD	Immigration and Asylum

Liverpool Public Law Contract Holders			
Name	Location	Postcode	Advice services
Swain & Co Solicitors LLP	Liverpool	L3 9DG	Crime, Prison Law, Mental Health, Public Law
Qs Jackson Canter Ltd	Liverpool	L2 2HD	Crime, Debt, Housing, Immigration, Prison Law, Mental Health, Public Law, Welfare Benefits
Liverpool – related services			
Merseyside Welfare Rights.	Liverpool	L1 4DN	Debt, housing, welfare benefits
Shelter	Liverpool	L2 5RH	Debt, Housing
Liverpool Community Advice	Liverpool	L15 4LP	Debt, Housing
NB: There are several offices of Liverpool Community Advice (previously CAB's) in the area.			
Greater Manchester Immigration Aid Unit	Liverpool	L1 4DN	Immigration
Vauxhall Community Law and Information Centre	Liverpool	L5 8UX	Debt, Welfare Benefit, Housing
Halton Citizens Advice Bureau	Runcorn	WA7 2HF	Debt, Housing

Stephensons Solicitors LLP	St Helens	WA10 1SX	Crime, Prison, Debt, Housing
NB: Stephensons do not have a public law contract but their areas of work mean that they do issue JR's, for instance in relation to prison law.			
Warrington Citizen's advice bureau	Warrington	WA1 1SR	Housing, Debt, benefits, Education

The Public Law Project: discussion paper on access to justice and public law in Wales.

1. This paper was written in preparation for a meeting at the invitation of the Counsel General for Wales. It draws on recent statistics gathered and analysed by the PLP, and on anecdotal evidence provided by associates of our organisation and participants at our annual Wales conference.
2. PLP is an independent, national legal charity which aims to improve access to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers. We provide training to lawyers and advisers as well as taking on case work, research and policy work. PLP's main objectives are:
 - Increasing the accountability of public decision makers;
 - Enhancing the quality of public body decision making; and
 - Improving access to justice

Some aspects of our work is similar to that carried out by other charities that are public interest litigation specialists and to charities that focus on improving access to justice of specific client groups, such as Child Poverty Action Group. The PLP is unique, however, in our focus on public law remedies and the breadth of our activities, including targeted litigation, training, organising national conferences, providing written guides, responding to consultations, and carrying out major empirical research projects.

3. Our work benefits from the extended network of practitioners we work with in the private and voluntary sectors and pro-bono support we receive from some of the best advocates in the country. Our work is also dependant on the links we have to other charities and campaign organisations representing and advising marginalised groups.

PLP's experiences in Wales

4. The PLP has provided support for the advice sector in Wales as part of our CLS funded specialist support service, and has been involved in JR litigation in Wales³¹ when we successfully represented a number of service users of the Riverside Advice centre in Cardiff in *R (Keating & Others) v Cardiff Local Health Board*, a case which concerned the extent to which Local Health Boards could fund or facilitate particular activities.
5. PLP held its first conference in Wales in January of 2009, shortly before the opening of the Administrative Court in Cardiff. We titled the event 'Judicial Review Wales'. We received just 25 bookings, of which only two were claimant solicitors working in the public law field, and one was a housing case worker. There were eight bookings from lawyers working for public bodies, and the rest were lawyers, such as barristers from Civitas Chambers, and solicitors in private practice typically advising public bodies, such as Geldards LLP.

³¹ <http://www.bailii.org/ew/cases/EWCA/Civ/2005/847.html>

6. To make the event more widely accessible and relevant, we decided to expand the subject matter of the conference to public law more generally, and reach out specifically to the voluntary sector. In 2012 we held our 4th annual conference in Wales, and of The 66 bookings 38 were from the public sector. We would describe three of the bookings as from claimant solicitors in the public law field, and, interestingly, 16 were from the voluntary sector, all of whom were advisers, advocates or policy professionals.
7. We can compare the delegate profile for the event in Wales with PLP's sibling event in Manchester (our 'JR North' conference), an annual conference which has been running two years longer than our Wales conference, but drew almost exactly the same number of paying delegates in 2012. At our North conference we
8. We received no bookings from local authorities, and only one booking from a public body (from an administrative court lawyer). The entire delegate list is made up of specialist public advisers, claimant solicitors and barristers working in the public law field. It should be noted that we advertise the event across the board, to the public, private, voluntary and academic sector, as we do in Wales.
9. There may be a number of factors influencing the profile of the delegates for these events, for instance the catchment area for the event probably includes a populace three times that of Wales and public law is a well-developed field in the North West and Midlands. Also, the conference probably covers three regional administrative court 'areas'. Regardless of the reasons, our Wales conference delegate list clearly reflects a smaller public law community, at least with regards to advice and claimant services.

PLP's Research; a snapshot of JR cases in Wales

10. The PLP is currently conducting a major empirical research study on the value and impact of judicial review, jointly with Prof Sunkin of the University of Essex. It is funded by the Nuffield Foundation. As part of that project, we compiled a database of all reported civil judicial review cases decided in a 20 month period between July 2010 and February 2012.
11. We carried out a preliminary analysis of JRs brought against Welsh public bodies for the purpose of this meeting. These data are presented to aid a discussion, but are not to be published as yet. A more detailed analysis will be included in our final report due to be published later this year.
12. Looking at the Welsh cases, several aspects are immediately striking, namely: the small number of challenges brought, and the fact that only 2 out of the 13 challenges against Welsh public bodies were brought by individuals. These claims by individuals being determined in Wales represents only 15 per cent of claimants overall in Wales, compared with 74 per cent of claims in the database as a whole (i.e. for England and Wales). In all the other cases determined the claimant was a commercial entity/legal person, or in one case, a board of school governors.
13. These data show that the number of final hearings is small, compared with the size of the population, and the number of public law decisions made in Wales each year.

14. Obviously, the number of final hearings does not present a full picture of judicial review activities in Wales. For example, we have not considered data as to how many claims are being issued in the administrative court and how those cases that do not reach substantive hearing conclude. Our previous research³² suggests that approximately a third of cases settle after they are issued but before they are considered by a judge for permission. Post permission, a further 60 per cent of cases settle. In order to obtain a fuller picture of JR activity in Wales, it would be interesting to know what the equivalent trajectory is in Wales, i.e how many claims are issued, and at what stage they are determined; how many claims are issued by LIPs (litigants in person) and with what results? How many challenges are brought through solicitors/advice centres? At what stages do settlements occur, and to what effect? PLP would be interested in being involved in a research project to that effect.

Why are there so few JR challenges in Wales?

15. Regardless of the further data that PLP would be interested in collecting and analysing, what data we have raises a number of questions, in particular, why are so few Civil JRs determined by the Administrative Court in Wales, and why are the vast majority of JRs of a commercial nature, and so few are challenges by individuals?
16. In an ideal world, in which public bodies consistently arrive at the correct decisions, or alternatively deal with challenges swiftly and efficiently, there would indeed be few JRs. Could this be said to be the case in Wales? If not, then the absence of challenges may need to be addressed and redressed; not only for the benefit of citizens who are entitled to obtain remedies for unlawful decisions, but for the benefit of local and central government for whom challenges would contribute to lesson-learning and improvement in governance.
17. Is it therefore time to engage in a discussion as to the extent and nature of awareness of, and access to, public law remedies generally, and JR in particular, among the Welsh population, Welsh voluntary sector and legal practitioners?
18. If considered appropriate by those attending the meeting, it may be worth considering what options currently exist for addressing the situation as we see it now.

³² <http://www.publiclawproject.org.uk/documents/TheDynamicsofJudicialReviewLitigation.pdf>

Appendix 4 – an exchange of emails between Ravi Low-Beer of PLP and a student at Huddersfield Legal Advice Clinic³³

From: Ravi Low-Beer
Sent: 28 January 2016 23:30
To: xxx
Cc: Law Clinic
Subject: RE: Judicial review case at UOH Legal Advice Clinic

Dear XXX

Thank you for your email. I am now away from the office until Monday afternoon, and am writing in haste, so please excuse me if this response is briefer and a little more rushed than it should be.

You have helpfully and skilfully conveyed most of the key pieces of information that a solicitor would need to know before accepting a referral.

On the basis of that information, I can confirm that PLP will not be able to assist with bringing a judicial review claim on behalf of the client. This is because we don't have capacity at the moment to take on a new matter requiring a significant amount of urgent work where the merits are unclear.

It seems likely from your email that work on a potential judicial review would have to start straight away (as the decision to be challenged was taken around 6 weeks ago). In a case like this, where 3rd party commercial interests are likely to be affected by any judicial review litigation, "promptly" is very likely to mean less than 3 months. I cannot advise with certainty without seeing the papers, but my gut feeling is that the client may already be out of time. Even if that is not the case, it will certainly be a struggle for the client to find a solicitor who will carry out a legal analysis, arrange funding for the case, and send a letter before claim in accordance with the Judicial Review Pre-Action Protocol, with the urgency that is undoubtedly now required.

In relation to funding, eligibility for legal aid in relation to means is very important (although not sufficient to deal with all the funding issues in this case, since, as I indicated in my first email, even if legal aid is granted, the Legal Aid Agency would be highly likely to require a fighting fund to be established to meet a proportion of the cost of the case - and this would have to be done urgently as well).

The final issue that, it seems to me, may make the case unattractive to solicitors who might consider acting on a judicial review is that it is unclear on what grounds the claim may be brought. You mentioned fairness, and may be right about that, but there is no indication in the information you have provided about how the decision-making process might have been unfair.

If I was analysing the case papers I would look at the ombudsman's decision and see if the authority's subsequent decision-making met the ombudsman's stated concerns, and if it did, whether there is some other reason for impugning the decision. But without identifying some

³³ Reproduced by permission of Huddersfield Legal Advice Clinic

issue of concern (the precise category of public law error doesn't really matter as long as the concerns can be properly summarised), the case is less attractive to firms of solicitors who might consider taking it on. This is particular so following recent reforms to legal aid in judicially review cases, which have had the effect that - even if legal aid is granted - claimants' lawyers are unlikely to get paid for their work if permission to apply for judicial review is not granted by the court. So solicitors will tend only to be able to invest a limited amount of time in analysing a case - if they had a steer about what sort of public law error they should look for, it would probably motivate them to make their initial research into the case a little more thorough. And that would increase the chance that they would find something to work with.

I don't mean to sound negative about the case, and certainly not about your work on it which has been excellent. But for the reasons given, PLP would not be able to assist, and I suspect it will be difficult to find reputable solicitors to take it on in time. Local firms may be well aware of the background to the case and motivated to get involved. Have you tried Kirklees Law Centre?

Thank you again for providing such full instructions. They were well drafted and very helpful. If you would like to discuss the case or correspond further about it, feel free to contact me after I return to work on Monday afternoon.

Best wishes

Ravi

From: XXX
Sent: 28/01/2016 17:00
To: YYY
Cc: Ravi Low-Beer; Law Clinic
Subject: Re: Judicial review case at UOH Legal Advice Clinic

Hi Ravi,

Thank you for your speedy response, I was having trouble with my emails but this issue has been resolved.

In relation to the questions you have asked the answers are as follows:

1. The decision was initially made without any public consultation in December 2013, as the cabinet of the council have said that the report contained exempt information regarding financial and business issues. However, the client has already made a complaint to the Local Government Ombudsmen about his matter, who have held in his favour. The Council agreed to carry out a publicised meeting which took place on 17th December 2015. The Ombudsmen also found that the Equality Impact Assessment had not been carried out and that the screening was inadequate. The Ombudsmen did however note that it was not possible for the Council to re-run the decision making process in its entirety. At the publicised meeting, the same decision was made to close down the sports centre. The council have also carried out a full equality impact assessment.
2. The client is an individual person but is also representing other members who use the sports centre.
3. The client has been using the sports centre for 27 years. He prefers the facilities there as they are more disabled user friendly than the alternatives that have been offered by the Council.

4. As far as we are aware the clients only source of income is a state pension. I do not think he would be able to privately fund judicial review. We are not certain as to whether he would be able to get legal aid, as this is not something we assess.

5. We are not sure as to how many people are affected, but around 100 people and attended the publicised meeting. Of those who attended, we are not sure as to how many opposed the closure.

6. The sports centre is attached to a school. The school has attained funding to have it demolished and rebuilt under a priority programme built. The Sports centre also receives its utility supply from the school. The Education funding agency provided the council with two options:

(A) To keep the sports centre and it would fix any external damaged caused to the outer building due to demolishing the school free of charge. However, it would not reinstate the utility supply which is housed at the school. The cost to reinstate the supply would cost £500,000.

The council have also claimed that a further investment of £1.5 million would be needed to make the sports centre fully disability discrimination act compliant and to repair the fabric of the building, improve changing facilities and the reception area.

The council have also invested £15million on another sporting facility to accommodate more users moving from the current sports centre to the alternative one.

(B) The second option was that the Education Funding Agency would demolish the sports centre free of charge when it was to demolish the school for the re-build.

7. The relevant ground may be fairness in relation to the ground of judicial review. However, the council have done the public consultation and the equality impact assessment has been done after the complaint to the Ombudsmen.

8. As far as I am aware, I do not think there are any other appeal options available to the client.

9. The official reports of the Council reports and the Ombudsmen report is also available online. We also have copies of these.

10. Unfortunately, I will not able to disclose any of the clients personal information at this point due to the clinic's protocols. If you do require this information then I will have to consult the client and [the clinic Director].

Once again thank you for your response and time.

Regards,

XXX

-----Original Message-----

From: Ravi Low-Beer

Sent: 27 January 2016 16:48

To: XXX

Subject: RE: Judicial review case at UOH Legal Advice Clinic

Hi XXX

Thank you for your email. This is the sort of case in which PLP might be able to support the Legal Advice Clinic's work in the future, but precisely how remains to be worked out.

For now, all I can say is that it would massively help any firm of solicitors (be it PLP, or a firm near you) to respond positively to a request that they take this case on, if they had the following information:

(1) When was the decision made? This is relevant to the deadline for bringing a claim for judicial review (promptly and in any event within 3 months, except in planning cases where the time limit is 6 weeks, and procurement cases where it is 4 weeks).

(2) Is the client an individual person or a company or association of individuals?

(3) What is the client's interest in the decision?

(4) How would the costs of bringing a claim be paid? Is the client eligible for legal aid, or can the client pay his or her solicitors privately (and keep money in reserve to cover potential liability to pay the public authority's costs if litigation is brought but is unsuccessful)?

(5) How many others (in addition to the client) are affected by the closure decision? If the client is eligible for legal aid, then the Legal Aid Agency is likely in a case like this to require a fighting fund to be raised to cover part of the costs of the case.

(6) What is the authority for the decision (ie what power was the public authority exercising, or what duty was it discharging when it took the decision to close the sports centre)? This is relevant to the legal analysis requested in question (7) below.

(7) What is wrong with the decision in public law terms? This is a difficult question to explain. Generally public law allows public authority decision makers to exercise their powers free from judicial interference. However, the law recognises that certain types of legal "error" in public authority decision-making are so serious, that the court will be justified in intervening. If, on proper analysis, what happened in this case places the case in one of these categories, then a judicial review may be viable.

(8) Is there an appeal or review process that the client could pursue to get what he or she wants?

(9) If having gone through this rough checklist of questions (which I have drawn up on the spur of the moment, and which please therefore do not treat as complete), it appears that a judicial review may be appropriate, do you have all the relevant papers (including, but not limited to, documents considered by the public authority decision maker, evidence of, and reasons for, the decision)? If you do have papers, how quickly can you get them to the solicitors?

(10) What are the client's contact details?

Most of these questions can be far from straightforward. But all of them would have to be given some consideration before most solicitors would be able to commit time to getting involved. Since you have been proactive enough to contact me, I would be happy to discuss this case with you, if that would help.

Thanks again for getting in touch.

With best wishes

Ravi

-----Original Message-----

From: XXX

Sent: 27 January 2016 16:12

To: Ravi Low-Beer

Subject: Judicial review case at UOH Legal Advice Clinic

Hi Ravi,

Hope you are well.

My name is XXX and I am a student advisor at the University of Huddersfield Legal Advice Clinic. We have had a case at the legal advice clinic involving a public authority decision (closure of sport centre) and the client wanted advice concerning judicially reviewing the decision. [The clinic Director] has suggested this is something that PLP might be interested in? If you could let me know as soon as possible that would be great due to limitation.

I look forward to hearing from you.

Regards,

XXX

