

Perceptions and Understandings of PLE in Scotland

When the civil courts review's public consultation was published in November 2007, the first question in the Access to Justice chapter asked "What contribution can Public Legal Education make to improving access to justice?"¹ The inclusion of this question in such a high profile review belies the fact that the phrase 'Public Legal Education' has emerged only recently in Scotland and there has been little formal debate of the topic. Whilst championed by organisations such as SCOLAG and the Scottish Consumer Council (now Consumer Focus Scotland), there has been little discussion as to what Public Legal Education (PLE) is, what benefits it might offer Scotland and how it might be taken forward. Prompted by the civil courts review's consideration of PLE, in 2008 I undertook research into the topic, including interviewing eleven stakeholders with an interest in access to justice, ranging from representatives of national organisations through to advice providers. Through this research I was keen to explore what understanding there was of PLE in Scotland, as well as what could be learnt from other jurisdictions: although the concept of Public Legal Education is relatively new in Scotland, it is more widely used elsewhere and has recently come to prominence in England and Wales through the Public Legal Education and Support (PLEAS) Task Force, set up to consider the case for a strategic approach to Public Legal Education in England and Wales. As we await Lord Gill's recommendations, this article reflects on current perceptions of Public Legal Education in Scotland, as well as potential support for developing this area.

International lessons

Public Legal Education is well established or better developed in many other countries and looking to such jurisdictions should offer the opportunity to improve our understanding of the concept of Public Legal Education. Closer examination of PLE in the international context, however, presents a confusing picture. Different jurisdictions have adopted different definitions of it and even different names for it. In countries such as Australia it's called Community Legal Education, while others like New Zealand make a clear distinction

¹ Scottish Civil Courts Review (2007) Scottish Civil Courts Review: A Consultation Paper, The Scottish Civil Courts Review

between Public Legal Education and Public Legal Information.² Some jurisdictions, such as England and Wales, take a very wide definition of the type of activity referred to, including activity such as information materials, media, and telephone helplines as examples of PLE,³ while New Zealand and Australia take a much more narrow approach, referring mainly to formal education such as workshops and community seminars.⁴ In Canada, where PLE emerged as a prominent discipline in the 1960s, different connotations of the concepts “public,” “legal” and “education” mean there is still little agreement about what PLE actually is, or its purpose.⁵ It has been suggested that this is because PLE “is not an end in itself” but rather a means that can be used in a variety of ways to meet any number of ends desired by the different organisations undertaking this activity.⁶ Lois Gander, a prominent scholar in this area in Canada suggests that the best way to understand PLE is to look at what it is not. It is “not legal advice, not legal representation, not continuing education for lawyers.”⁷ In fact, she argues PLE is more easily described than defined.⁸

In Scotland, the approach most familiar to many with an interest in this area is the definition of the Pleas Task Force:

“PLE provides people with awareness, knowledge and understanding of rights and legal issues, together with the confidence and skills they need to deal with disputes and gain access to justice. Equally important, it helps people recognise when they may need support, what sort of advice is available, and how to go about getting it. PLE has a further role in helping citizens to better understand everyday life issues, making better decisions and anticipating and avoiding problems.”⁹

² Nicholas, R. (2007) *New Zealand's 2006 National Survey of Unmet Legal Needs and Access to Services: Implications for Information and Education*, Paper presented to the International Legal Aid Group Conference, Antwerpen: June 2007.

³ PLEAS Task Force (2007) *Developing Capable Citizens: The Role of Public Legal Education*. The Role of the PLEAS Task Force, London: PLEAS Task Force.

⁴ National CLE Committee (1995) Quoted in Community Law Online, Community Legal Education, http://www.communitylaw.org.au/cb_pages/community_legal_education.php; Nicholas, R. (2007) *New Zealand's 2006 National Survey of Unmet Legal Needs and Access to Services: Implications for Information and Education*, Paper presented to the International Legal Aid Group Conference, Antwerpen: June 2007.

⁵ Gander, L (2003) 'The Changing Face of Public Legal Education in Canada,' *Canadian Forum on Civil Justice*, Issue 6 (Summer 2003), 4-9

⁶ See Note 5

⁷ See Note 5

⁸ Gander, L (1999) *The Radical Promise of Public Legal Education in Canada*, LLM thesis, University of Alberta, <http://www.plecanada.org/RadPromise.pdf>

A founding principle of the English approach is that PLE is about more than simply improving legal knowledge; it aims to equip individuals with the skills and confidence, the 'legal capability' to act upon this knowledge.¹⁰

The Task Force identified that PLE's lack of a “coherent identity” presented an obstacle to its effective development in England and Wales¹¹ and clearly this is a problem even in jurisdictions where PLE is well established. That there is no common definition of PLE or its purpose demonstrates forcibly the need for consideration to be given to how PLE is understood in Scotland. Different jurisdictions have adopted approaches to suit their individual needs, and therefore to simply adopt an approach from other jurisdictions in Scotland would be unwise. It should perhaps be borne in mind that Public Legal Education appears to be more prevalent in jurisdictions where there is a lack of publicly funded legal advice and this has influenced the ends that public legal education has been used to achieve. That Scotland has in fact seen a potential rise in eligibility for legal aid through the increase in upper disposable income limit provides a different context within which PLE might be used and developed.

Understanding the meaning and purpose of PLE in Scotland.

As part of my research, I asked interviewees what they thought public legal education was, and what they saw its purpose as being in Scotland. Tellingly, one interviewee had not heard the term prior to interview, while for several others, their familiarity came principally from an awareness of the work undertaken in England and Wales. This lack of familiarity with the term perhaps raises doubts as to whether people, in their responses to the civil courts review, will be discussing a consistent concept. Yet despite this lack of familiarity, there was a high degree of consensus. Reflecting, and possibly resulting from, the approach taken in other jurisdictions, overwhelmingly participants talked of PLE as instilling knowledge of legal rights and legal responsibilities, and to a lesser extent, knowledge of the legal system and structures. Missing from many interviewees' responses was a direct reference to what the PLEAS Task Force considered a fundamental element of PLE, the provision of confidence and skills enabling that knowledge to be acted upon. Yet the meaning and purpose of PLE

⁹ See Note 3

¹⁰ Sefton, M. (2006) Public Legal Education Strategy (PLES) Task Force Scoping Report, Department of Constitutional Affairs

were intertwined in many responses, and the provision of these skills was implicit within the purpose of PLE. While the knowledge of legal rights and responsibilities was considered by some to be important in its own right, emerging from the interviews were three distinct streams of thought about the overarching purpose of PLE in Scotland:

- To ensure individuals are able to enforce their rights by accessing the appropriate help at the appropriate time if they have a problem relating to their legal rights or responsibilities;
- To prevent problems from occurring or escalating, by being able to identify, anticipate or avoid problems, and resolve them at an early stage;
- To improve people's sense of engagement in society.

Not surprisingly, those interviewees involved in direct advice provision more commonly regarded PLE as a means of directing people to appropriate help. This is perhaps to be expected, given their experience and knowledge of their often very vulnerable client base, and impacted on their perceptions of what PLE could achieve. Those not directly involved in front-line advice provision were perhaps better able to approach the subject from a “bigger picture” perspective. They were keen to stress that PLE offered an opportunity to do things differently, and change the traditional “disaster management” model,¹² preventing problems reaching the critical stage by enabling people to resolve problems earlier or even avoid certain problems altogether.

The third identified purpose, although a minority view, presents an interesting perspective. While the first two have a clear access to justice agenda, this purpose views PLE as having a wider social purpose, that increased knowledge of how law impacts on people’s lives can make people feel more included in society. While that could then have the benefit of making people more likely to seek help if they needed it, greater engagement on its own merits, whether or not that led to advice seeking behaviour, was seen as a justifiable end in itself.

Who is the ‘Public’ in Public Legal Education?

Three distinct concepts emerged when discussing the nature of the “public.” Firstly, there was

¹¹ See Note 3.

¹² Genn, H. And Paterson, A. (2001) *Paths to Justice Scotland: What People in Scotland Do and Think About Going to Law*, Oxford – Portland Oregon: Hart Publishing.

the view that “public” should mean the public as a whole. A key argument was that raising awareness about rights and responsibilities generally would instil within individuals an ‘instinct,’ so that when faced with a problem they would react proactively. Knowledge would be retained to be drawn upon when needed. Whilst there was recognition that educating the public *en masse* would be difficult, more proactive use of the media was suggested, as was integration of legal rights and responsibilities within “citizenship education” in schools.

The second view disputed the usefulness of such blanket education. Whilst acknowledging it might be of some limited benefit, these interviewees pointed to evidence from research such as Paths to Justice which suggested people want help and information at the point they have a problem rather than in the abstract. There was a strong opinion that PLE initiatives should target specific groups, namely those most vulnerable, or with the greatest need who were experiencing problems, or were likely to experience such problems.

Thirdly, a minority view was PLE would be of most benefit when directed towards intermediaries, sometimes described as “problem noticers.”¹³ People in contact with individuals, not necessarily in an advice capacity, are potentially well placed to identify problems, and reaching the public through such groups is a key objective of New Zealand’s approach to PLE.¹⁴ Paths to Justice found that people seek help from a wide range of sources when confronted with a ‘justiciable problem.’¹⁵ Offering more support to the people or agencies individuals commonly go to in response to certain types of problems, would result in their being better able to assist the individual. This would perhaps be of greater benefit than trying to change people’s advice seeking behaviour, acknowledged to be a challenging objective for PLE.¹⁶

These three positions all have their merits and it would therefore be a mistake to think of one ‘public’ for the purposes of PLE. The approach required is likely to be linked to the desired outcome.

PLE as a means to self-help.

¹³ See Note 10.

¹⁴ See Note 2.

¹⁵ See Note 12.

Though treated as a separate issue in the Civil Courts Review, self-help activity is considered an example of PLE in other jurisdictions. My research therefore sought to capture views on self-help and some interesting observations emerged. No interviewees mentioned self-help without prompting, and whilst agreeing self-help was an example of PLE, support for this activity was mixed. Interestingly, the divide was again most obvious between those who provided direct advice and those who did not. Advice providers were more sceptical, even dismissive, of self-help's potential. Studies have shown a successful self-help strategy is dependent on a number of factors, including “the type of problem, the capability of the person dealing with the problem and the intransigence of the opposition.”¹⁷ Although some interviewees maintained that individuals with the capacity to do so should be assisted to take action for themselves wherever possible, perhaps unsurprisingly, those involved in “disaster management” advice provision often felt their clients were too vulnerable to utilise self-help, though there was more support for ‘supported self-help’ whereby advisers provided assistance to individuals, for instance checking over forms before submission or explaining what information to provide. That 'supported' self-help can be more beneficial to many clients than 'unsupported' self-help has been ratified by evidence from other jurisdictions.¹⁸

That self-help was raised only when prompted perhaps indicates this activity is a lesser consideration for interviewees. In contrast to other jurisdictions such as Canada, Australia and the USA where there is a lot of focus on assisting people to take action themselves because of a lack of access to legal representation,¹⁹ in the current context in Scotland, a greater priority appears to be placed on helping individuals to avoid problems or to access the correct help at an early stage to prevent problems escalating.

¹⁶ Buck, A., Pleasance, P., and Balmer, N.J. (2007) *Report to the Public Legal Education and Support Task Force: Education Implications from the English and Welsh Civil and Social Justice Survey*. London: PLEAS Task Force.

¹⁷ See Note 12.

¹⁸ See for example Meeker, J.W. and Utman, R. (2002) *An Evaluation of the Legal Aid Society of Orange County's Interactive Community Assistance Network (I-CAN!) Project*, University of California, Irvine; Legal Services Society (2007) *PLE Review: Reflections and Recommendations on Public Legal Education Delivery in BC*, Legal Services Society, BC, http://www.lss.bc.ca/assets/communityWorkers/pleReview_en.pdf.

¹⁹ See for example Hunter, R., Banks, C., and Giddings, J. (2008) *Australian Innovations in Legal Aid Services: the Good, the Bad and the Unclear*, Paper delivered at the 7th LSRC International Research Conference, Reaching Further: New Approaches to the Delivery of Legal Services, Greenwich, 18-20 June 2008; Legal Services Society (2007) *PLE Review: Reflections and Recommendations on Public*

Stakeholder Support for PLE

All interviewees agreed that PLE activity, in principle, was of value and a number of arguments were advanced for the need for a PLE strategy in Scotland. Mentioned frequently was the belief that a strategy was needed to counteract the inaccurate information reaching individuals through the media. A number of interviewees commented that much of the legal content people are exposed to, particularly through television, is English or American. In the absence of alternatives, the media is often the main source of legal information for the public²⁰ and this raises the potential for incorrect perceptions of the law and its remedies.

Many interviewees were involved in, or knew of, activity that fell within their perception of PLE. As elsewhere, their criticisms were that these activities tended to be *ad hoc* and isolated. One of the key arguments advanced in support of a PLE strategy was that it would enable experience and knowledge to be shared. In particular, a strategy was seen as offering the opportunity to have a national overview, identifying areas where successful initiatives could also be of benefit.

Yet whilst there was support for PLE in principle, there were mixed responses to the level of priority that should be afforded this type of activity. Those interviewees with strongest links to direct advice provision were of the opinion that priority for funding should always be given to advice provision, because that is where the most acute need exists. Several interviewees were keen to stress, however, that PLE provides the opportunity to do things differently, and that its potential in helping people to avoid problems or get help at an early stage meant it should be considered a high priority for funding. What was agreed by all participants, however, was that PLE should not be considered a replacement for direct advice provision.

Conclusion

Although my research does not purport to offer a conclusive view of PLE in Scotland, it does provide a larger evidence base than was previously available upon which to build further

discussion of PLE. While interviewees disagreed on the level of priority that PLE should be afforded, all agreed that this activity was of value and could be a useful tool to fulfil a number of important functions. Yet any development of PLE in Scotland will need to respond to the particular challenges Scotland faces, and be appropriate in the wider advice context. To use that old adage, Scottish solutions must be found for Scottish problems.