

## **The Challenges for Developing PLE in Scotland.**

Previous articles in this Journal have attempted to take forward an understanding of the term Public Legal Education in Scotland, as well as looking at its potential to improve access to justice. It is clear Scotland lags behind other jurisdictions in terms of PLE development, and this article outlines some of the challenges to be faced if PLE is to be developed in any strategic way.

### **Improving Understanding of Public Legal Education**

Although the inclusion of a question on Public Legal Education within the civil courts review may have increased the profile of PLE, there still seems to be a lack of understanding about what Public Legal Education is and what role it might have in access to justice resulting from its relatively recent emergence as a concept. Part of the problem is the name itself; the words 'public,' 'legal' and 'education' all have connotations, that PLE is purely about 'the law' or that it is something taking place in a formal education setting, for example. While certainly there could be scope for trying to integrate more PLE in formal education and knowledge of law and its context might be important in certain situations, Public Legal Education can be said to be much broader than this, integrating tools to build confidence and skills to encourage people to act upon their knowledge.

Another difficulty with the recent emergence of the phrase 'public legal education' is that it implies it is something new. The kind of activity we are commonly talking about, however - helping people to better understand their rights and responsibilities, where to get help, or how to pursue a remedy themselves – has been undertaken by many organisations for a long time: it's just not been called public legal education. Because of this, there is a lack of knowledge of what PLE activity is currently being undertaken in Scotland.

In taking PLE forward, it is important to realise we are not starting from scratch, and potentially have a good foundation upon which to build. Mapping current initiatives would help identify how strong that foundation is, and allow identification not only of best practice but also where gaps in provision exist. Overcoming misinterpretations of the term public legal education will be an important task in developing this area, as will promoting understanding of what this activity involves. Attempts have been made in previous articles to discuss some of these issues, and a recent seminar organised by the Scottish Government and Consumer Focus Scotland provided the opportunity for interested parties to debate PLE in more depth.<sup>1</sup> A key challenge before this area can be developed further, however, will be to improve clarity and understanding of what public legal education is, and what benefits it can bring to the current justice system. As discussed in an earlier article, Scotland faces particular challenges in improving people's understanding of their rights and responsibilities, with much of their exposure to legal concepts through the media being English or American for example, and therefore solutions appropriate to Scotland's needs will have to be found.

### **Justifying resources**

There is evidence that people in Scotland lack knowledge of their legal rights and what sources of help are available to them when experiencing a problem with a potentially legal solution.<sup>2</sup> Further research has been undertaken in England and Wales, where it has been found that 63 per cent of research

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<sup>1</sup> Seminar report is available at <http://www.consumerfocus.org.uk/en/content/cms/Scotland/Legal/Publications/Publications.aspx>

<sup>2</sup> 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.

respondents did not know their rights at the time they had a problem and 69 per cent didn't have knowledge of the associated legal processes. This lack of knowledge was found to have a negative impact on outcomes, whether the respondent's objectives were met, and such respondents were significantly more likely to regret the way they handled their problem.<sup>3</sup>

On the face of it, this provides a strong case for investing more resources to improve people's knowledge of their rights and how to take action to enforce them, particularly when a conservative estimate is that one in four Scots experienced a civil problem with a potential legal solution.<sup>4</sup> Yet despite this evidence having been well documented for years, investment in PLE appears to be a low priority. The question is, therefore, how can this issue be pushed onto the agenda?

An obvious place to start is with the National Performance Framework, setting out the Scottish Government's strategic objectives, to be achieved through pursuit of fifteen National Outcomes, with progress measured against 45 National Indicators, all contributing to achieving the Government's Purpose of "[focusing] the Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth."<sup>5</sup>

The most obvious connection with the National Performance Framework is with the outcome "we have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others." Stated within this outcome is that "fundamental to the development of stronger communities is a modern legal framework which commands public confidence and protects people from unfair treatment by the state, by businesses or by other people. A framework which provides access to justice, allows disputes to be resolved effectively and holds public services to account for their actions."<sup>6</sup> Unfortunately the lack of civil justice indicators means progress in achieving this outcome is measured against criminal law indicators. This perhaps demonstrates the familiar problem of trying to justify funding for civil justice problems over more high profile criminal concerns.

Looking at civil justice problems in their wider context does, however, provide further evidence of PLE fitting within the National Performance Framework. Civil justice problems can both cause, and be caused by, wider social problems.<sup>7</sup> Research in England and Wales has found that "an adverse consequence on one or more of a respondent's health, family, housing, income, employment, personal safety or confidence was reported to follow from 52 per cent of civil problems."<sup>8</sup> Taking health as an example, the survey found that 34 per cent of justiciable problems adversely affected the individual's physical and/or mental health, and resulted in visits to a number of health professionals. Other problems have also led to costs to the economy, for example employment problems causing costs to the benefit system, and housing problems leading to costs in social housing.<sup>9</sup> "Over the three and a half-

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<sup>3</sup> 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

<sup>4</sup> See note 2.

<sup>5</sup> Scottish Government (2007) *The Government Economic Strategy*. Edinburgh: The Scottish Government.

<sup>6</sup> Scotland Performs (2008) Scottish Government <http://www.scotland.gov.uk/About/scotPerforms>

<sup>7</sup> Pleasance, P., Balmer, N., Buck, A., Smith, M., and Patel, A. (2007) 'Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems' in Pleasance, P., Buck, A., and Balmer, N. (eds.) *Transforming Lives: Law and Social Process*. United Kingdom: The Stationary Office.

<sup>8</sup> See note 7.

<sup>9</sup> See note 7.

year period covered by the 2004 English and Welsh Civil and Social Justice (CSJ) Survey it is estimated that the cost to individuals, health and other public services was at least £13 billion.”<sup>10</sup>

While the figure in Scotland will be substantially less, this does illustrate the impact that such problems can have on the Government’s key priorities, not only in costs to the economy, but in people’s ability to contribute actively to it. Forty per cent of respondents to the CSJ survey reported spending all or most of their time worrying about their problem(s), and a similar proportion reported their problems impacted on their ability to lead a normal life.<sup>11</sup> Crucially, as was noted, these ‘knock on effects,’ particularly those with links to mental health such as stress and loss of confidence, can have a much longer-term impact on the lives of the individual than the civil justice problem itself.<sup>12</sup> The links between civil justice problems and wider problems have been recognised by the UK Government in its recently published Consumer White Paper, ‘A Better Deal for Consumers: Delivering Real Help Now and Change for the Future.’<sup>13</sup> This paper announced that the Department of Health is to invest £1.5 million in a dedicated NHS helpline, to be launched this summer, providing healthcare advice and support to those suffering stress and anxiety as a result of problems resulting from the current economic downturn and which will be able to refer those suffering from debt-problems to appropriate agencies. Improved guidelines will also be provided to NHS staff to better help patients who are suffering from mental health difficulties resulting from problems such as debt. That the link is being made between the experience of civil justice problems and health issues suggests that doing more to help people access advice about such problems might have a positive impact on other government priority areas.

Recent research analysing the CSJ survey findings in more depth points to further links with the Government’s outcomes. Focusing on money and housing problems, this research found although there was no significant difference in the likelihood of suffering from these problems, there were significant differences in outcomes experienced by different socio-economic groups.<sup>14</sup> Those of low socio-economic class were more likely to suffer either one or multiple negative outcomes as a result of these problems, particularly impacts on their health and loss of income,<sup>15</sup> even when suffering from the same problem and taking the same action to resolve it as those of higher socio-economic class. The negative outcomes of those of a low socio-economic class were also found to be more severe. This provides evidence that “the experience of civil justice problems is an engine of social inequality: the experience of these problems not only reproduces differences between groups, but may exacerbate them, as working class people experience more negative outcomes from the same problems experienced by others.”<sup>16</sup> Reducing inequality and creating social equity is one of the key aims of the Scottish Government’s Economic Strategy and is reflected in other key policies, such as its framework to tackle poverty and income inequality.<sup>17</sup> That the experience of civil justice problems can be shown to exacerbate social inequality strengthens the case for introducing measures to resolve or prevent these problems. Such

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<sup>10</sup> Pleasance, P. (2006) *Causes of Action: Civil Law and Social Justice* (2<sup>nd</sup> Edition), Norwich: The Stationary Office.

<sup>11</sup> See note 7.

<sup>12</sup> See note 7.

<sup>13</sup> Available at <http://www.berr.gov.uk/files/file52072.pdf>

<sup>14</sup> Sandefur, R. (2008) *Experience with Civil Justice Problems: Strategies and Consequences*, Paper delivered at the 7<sup>th</sup> LSRC International Research Conference, Reaching Further: New Approaches to the Delivery of Legal Services, Greenwich, 18-20 June 2008.

<sup>15</sup> Though it was noted this impact on income was not statistically significant.

<sup>16</sup> See note 14.

<sup>17</sup> See Scottish Government (2007) *The Government Economic Strategy*. Edinburgh: The Scottish Government; Scottish Government (2008) *Achieving our Potential: A Framework to Tackle Poverty and Income Inequality in Scotland*. Edinburgh: The Scottish Government.

measures would contribute to the pursuit of the outcome “we have tackled the significant inequalities in Scottish society.”<sup>18</sup>

Using Public Legal Education as a way to improve people's knowledge of their rights and responsibilities, increasing awareness that problems have a potential solution and where help for these problems can be found, therefore stands to be an important tool not only in assisting people to resolve their civil justice problems, but preventing or minimising the wider social impacts of these problems.<sup>19</sup> Evidence suggests education about rights and responsibilities on civil justice problems can contribute to the Government's key outcomes. It is highly likely that such evidence will have a key role to play in justifying future investment in PLE.

### **Proving its Value**

My previous article looked at how PLE could contribute to access to justice. In particular, PLE is thought to have the potential to play an important role in helping people avoid problems, or to identify their problems at an early stage and equipping them with skills and knowledge to take appropriate action, be it pursuing a remedy themselves, or seeking assistance from an appropriate advisor. As was seen above, this might have benefits in improving health or helping reduce poverty and inequality. Yet making such arguments involves the use of lots of coulds, mights and maybes and this highlights another of the principle challenges for developing Public Legal Education: the difficulties in evaluating it. Even in jurisdictions where PLE is well established, there has been very little evaluation, resulting from difficulties in defining PLE activity, and the fact that its aims and objectives are often unquantifiable.<sup>20</sup> The problems in evaluating PLE activity are also compounded by difficulties in proving the causal link between PLE and its potential outcomes. The emergence of outcomes of certain PLE activity, particularly citizenship in schools, will probably be longer-term. This then raises the difficulty of attributing the positive outcome to the PLE activity, rather than anything else, and this will likely be particularly difficult if the connection is to be made between PLE and wider social benefits. Thus while there is a body of evidence pointing to the potential need for PLE, the lack of evaluation causes difficulties in providing evidence of what PLE can achieve in practice. This is a problem that the Public Legal Education Network in England and Wales are working to overcome.<sup>21</sup>

What is interesting is that other areas of Government have gained support for pursuing activity with less quantifiable outcomes, with similar difficulties in proving the practical benefits. There has been a wider move within Government over the last few years towards preventative measures rather than purely crisis management. The highest profile example of this, health, has seen the emphasis shift to programmes which tackle the development of health problems, but the shift from crisis intervention to prevention and early intervention is also key to other strategies such as the poverty framework and early years framework.<sup>22</sup> Interestingly, there has also been such a move in relation to criminal justice.

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<sup>18</sup> See note 6.

<sup>19</sup> See note 7.

<sup>20</sup> Cader, L. (2002) *Evaluation of Public Legal Education and Information: An Annotated Biography*. Ottawa, ON: Department of Justice Canada.

<sup>21</sup> See for example Public Legal Education Network (2009) *Researching and Evaluating Public Legal Education: Principles and Practice*, available at <http://www.plenet.org.uk/data/files/researching-and-evaluating-ple-principles-and-practice-66.pdf>

<sup>22</sup> See for example Scottish Government (2009) *Changing Scotland's Relationship with Alcohol: a Framework for Action*. Edinburgh: The Scottish Government; Scottish Government (2008) *Healthy Eating, Active Living: An Action Plan to Improve Diet, Increase Physical Activity and Tackle Obesity (2008-2011)*. Edinburgh: The Scottish Government; Scottish Government (2008) *Achieving our Potential: A Framework to Tackle Poverty and Income*

The Government's framework "Preventing Offending by Young People: a Framework for Action" stresses that it is outcomes and not outputs that will be the measure of success: "everyone working in this area knows that the success of our efforts to tackle offending by young people cannot be measured by the number of persistent offenders or Anti-Social Behaviour Orders. It will be shown in the positive outcomes of all our children, families and communities."<sup>23</sup> Inherent within this framework is the idea that "prevention is the most cost-effective cure" and that steps must be taken to prevent those at risk of offending from doing so.

That other areas have developed support for more preventative activity, even where the outcomes are hard to measure and difficult to prove, show that these are not insurmountable challenges. There is therefore much to learn from other sectors about how we might develop strategic support for PLE.

### **Cause for Optimism**

Civil justice has often struggled for priority for funding in comparison to criminal justice.<sup>24</sup> If a positive can be found from the current economic downturn, however, it is that it has pushed civil justice problems firmly back up the Government's agenda. In January 2009, the Scottish Government set up the Debt Action Forum to look at measures which could be introduced to respond to problems arising from the economic downturn, and a Repossession sub-group, to consider specific issues relating to housing repossessions.<sup>25</sup> One of the key stages to help struggling homeowners identified by the Repossessions Group was "preventing problems from emerging or escalating, through advice and other forms of assistance."<sup>26</sup> Among other recommendations was the need for clear and understandable information from lenders and courts, and recognition of the need for help to be sought at as early a stage as possible. The Debt Action Forum also reported on a need for much more information to be provided to individuals suffering from problems relating to the economic downturn. Among the recommendations supported by the Debt Action Forum, are those contained within the Access to Advice paper drafted by members of the Debt Action Forum and Repossessions Group<sup>27</sup>. Identified within that was the need to link individuals with:

- Early intervention – information and self-help materials
- Advice to help take practical steps to use the remedies
- Representation if advice does not resolve the issues.<sup>28</sup>

Inherent among the recommendations of both the Debt Action Forum and the Repossessions Group is the need to assist individuals to seek the appropriate help from the appropriate advisor at the

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*Inequality in Scotland*. Edinburgh: The Scottish Government; Scottish Government (2008) *The Early Years Framework*. Edinburgh: The Scottish Government.

<sup>23</sup> Scottish Government, COSLA, ACPOS, Scottish Children's Reporter Administration, Crown Office and Procurator Fiscal Service (2008) *Preventing Offending by Young People: A Framework for Action*, <http://www.scotland.gov.uk/Resource/Doc/228013/0061713.pdf>

<sup>24</sup> Scottish Executive (2007) *Modern Laws for a Modern Scotland. A Report on Civil Justice in Scotland*. Edinburgh: Scottish Executive

<sup>25</sup> Debt Action Forum – Final Report. Available at <http://www.aib.gov.uk/Resource/Doc/4/0000813.pdf>

<sup>26</sup> Repossessions Group – Final Report (2009) available at <http://www.scotland.gov.uk/Resource/Doc/274765/0082205.pdf>

<sup>27</sup> Included at Annex C of the Debt Action Forum – Final Report. See note 25.

<sup>28</sup> See note 25.

appropriate time. There is clearly a role for PLE in helping people to identify they need help, identify sources or assistance, and building confidence to seek such assistance.

## Conclusion

The suggestion in earlier articles, which seems to be supported by the Access to Advice paper referenced in the Debt Action Forum report, is that PLE is the first stage in a continuum of assistance in dealing with problems.<sup>29</sup> It is designed to help people identify when they have a problem, and ensure they reach the appropriate assistance for dealing with that problem, be it pursuing remedies themselves, seeking advice from the appropriate advisor, and if appropriate, accessing representation. There are, however, several challenges to be overcome before we can hope PLE will be seen as an integral part of such a continuum and this is not likely to be a short-term process. The current focus on responding to the economic downturn does present the opportunity to overcome one of those challenges, namely gaining political support for investing resources. Both the Debt Action Forum and Repossessions group seem to view PLE activity as having a significant role to play in such a response. To ensure that this opportunity isn't wasted, however, regard must be given to the other challenges outlined here. Public Legal Education is about more than just information: it is trying to equip people with skills, knowledge and confidence to act upon that information. Increasing understanding of what this means in practice, and using this to respond to what we know of how people react to such problems, will improve the impact and success of any initiatives. Organisations such as Plenet are providing guidance on developing and evaluating PLE activity<sup>30</sup> so there is much to learn from other sectors and other jurisdictions. There are many links to be made with the Government's current priorities, its poverty framework being an obvious example, and if the response to the economic downturn is used to build an evidence base for the benefits of PLE, making the case for longer-term, strategic investment in a broader approach to PLE may not seem such a daunting task. With the civil courts review due to report in the Autumn, which hopefully will include some recommendations in regards to PLE, the time may be right to face these challenges head on.

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<sup>29</sup> See for example 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](http://www.lss.bc.ca/assets/communityWorkers/pleReview_en.pdf)

<sup>30</sup> See note 21 and Advicenow Better Information Handbook, available at <http://static.advicenow.org.uk/files/bih-final-71.pdf>