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DIGITAL DELIVERY OF LEGAL SERVICES
TO PEOPLE ON LOW INCOMES
LEADERSHIP, CULTURE & CREATIVITY

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The Legal Education Foundation

This Report was commissioned by The Legal Education Foundation and we are very pleased to publish it as a contribution to identifying the advances being made in the use of information technology to aid the provision of legal services for people on low incomes.

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1. Introduction

Many jurisdictions have institutions, organisations or individuals developing innovative programmes for the digital delivery of legal services to those with low incomes.

Three, however, stand out as in the lead in terms either of the breadth of developments or their substance.

In the USA, the Legal Services Corporation (LSC) has run a Technology Initiative Grants (TIG) Scheme on a competitive bidding model since 2000.

The Netherlands' world-leading *Rechtwijzer* programme is the product of a partnership between the Dutch Legal Aid Board and two academically orientated organisations, Tilburg University (originally) and (latterly) the Hague Institute for the Internationalisation of Law (HiIL).

The Canadian province of British Columbia (BC) has no fewer than four separate, if linked, institutions - the Ministry of Justice, the Legal Services Society, the Justice Education Society and the Courthouse Libraries - with cutting edge projects.

These are worth considering to see if lessons can be derived.

2. The Netherlands

HiiL is a unique institution: it describes itself as ‘an advisory and research institute for the justice sector, based in The Hague’. It arose as a combination of a defunded, and otherwise redundant, research funding agency in relation to international law with Tilburg University.¹ HiiL describes itself as having three functions; to provide clients with:

Justice strategy advice to make processes more accountable, efficient and attuned to justice needs; measuring and assessment to make progress visible, comparable, showing where more effort is needed; a justice innovation lab for developing, testing and improving prototypes of new approaches.

As part of these roles, HiiL has, since 2009, facilitated an ‘*Innovating Justice Hub*’:²

A unique, world-class platform comprising a fast growing community of justice innovators, rule of law leaders, justice experts and potential funders. The platform is supported by an interactive website www.innovatingjustice.com, regular knowledge products, and opportunities to meet and connect.

The institute supports its approach with such additional ventures as annual awards for innovation in ideas and programmes.

HiiL owes much to a particular combination of happenstance and underlying structure. Much of its driving force is provided by its Chief Executive Officer, Dr Sam Muller. He provides a charismatic dynamism which has clearly driven the organisation forward in its current distinct form. Dr Muller has transformed HiiL into a particular combination of academic institute and not-for-profit organisation, with a dash of NGO-like evangelism for innovation. He has a background in international organisations and played a part in the creation of the International Criminal Court. He is the sort of well-connected and fluent enthusiast for change that you might find at the World Economic Forum in Davos (and, indeed, has been there twice). He revels in the fact that HiiL has now floated free of general grants

¹ <http://www.hiil.org>

² This was originally a collaboration with three other organisations: the Microjustice Initiative (MJi), the European Academy for Law and Legislation (EALL) and the Center for International Legal Cooperation (CILC)

into the world of winning competitive bids to provide its continued funding. He admits that this task 'keeps me awake at night' but has resisted, at least for the moment, seeking contracts that are solely commercial. He wants to maintain its interest in the public realm. It is pretty clear that somebody made a good appointment: he is a classic example of the right person in the right place at the right time. As a consequence, HiiL's continued existence depends on obtaining continued funding either from within the Netherlands or abroad. At home, it is developing the *Rechtwijzer*: abroad its staff have fanned out across the world in a proselytising evangelism.

HiiL's success has not only been due to personalities: it has benefited from the Dutch government's careful strategy of building up law as part of the country's contribution to the international economy. In consequence, a number of Dutch ministries funded HiiL during its start-up period between 2005 and 2012, and its Innovating Justice initiative received support both from agencies of central Government and from the City of The Hague (which promotes itself as a 'city of peace and justice'). In addition, HiiL was able, through a partnership with Tilburg University, to take over both projects and people that had been developed there. Its team has worked on a number of interesting projects, both at Tilburg and now at HiiL. These include an online Personal Injury Claims Express (PICE) which provided a platform for the collaborative settling of personal injury claims. Another project (called *M-Sheria*) used basic SMS communication in Kenya to facilitate the use of lawyers on a pro bono basis to provide answers to a range of legal questions. A further offshoot from the team's work was *Burenrechter*, an online approach to solving neighbour disputes. None of these projects has, however, developed beyond the pilot stage - at least yet.

HiiL's most successful initiative has been its development with the Dutch Legal Aid Board of the *Rechtwijzer*. This was developed by a multi-disciplinary team of five under Corry van Zeeland. The freshness of approach that came from the engagement of different disciplines was crucial. She reported:

We had backgrounds that included artificial intelligence, sociology, psychology, social work. As lawyers, we had pretty atypical backgrounds. That was a really important element of the work. It really helped us to work out the methodology. The process - orientated nature of the approach can be seen in the job title of Jin Ho Verdonschot, one of the team, as 'justice technology architect'.

All this experience - and the personnel engaged in obtaining it - was essential to the development of the *Rechtwijzer*. It has undergone a number of transformations in its short life. Corry van Zeeland numbers five distinct versions but an outsider might reasonably settle for three: *Rechtwijzer 0.0, 1.0 and 2.0*. In the course of this development, the ambition of the project has been transformed. It began in version 0.0 as a 'choice facilitator', a referral tool in a number of specific areas including divorce. It was, thus, pretty uncontroversial in terms of the interests of the legal profession and, indeed, generated referrals. Version 1.0, described in *Face to Face*, remained on the near side of the legal information-advice line: lawyers were invited to incorporate it within their websites and to use its interactive capacities to prepare their clients for their consultation and the preparation of the divorce and parenting plan required from them. Version 2.0, described in Working Paper 7, takes the project a whole step further.

3. The USA

In the USA, the organisation leading technological change in legal services for those on low incomes is the Legal Services Corporation (LSC), a non-profit Corporation that is the vehicle for Federal funding. The LSC has had a somewhat chequered political history since being established in 1974. President Carter favoured the Corporation and appointed Hilary Clinton, then known as Hilary Rodham to its Board. President Reagan, infuriated by the LSC's funding of California Rural Legal Assistance while he had been Governor of that State, tried to eliminate the Corporation, a battle in which other Republicans like Newt Gingrich joined with gusto. To its credit, the legal profession - in the form of bodies like the American Bar Association - stood firm with the work of the LSC through a long period of White House and Republican hostility.

The LSC has now entered a relative period of calm. Its current president is Jim Sandman, a well-respected former managing partner of the commercial law firm Arnold and Porter, who provides a degree of all-party reassurance.

He also provides the kind of independent and individual figurehead for legal services which has been lacking in England and Wales, certainly since the integration of the Legal Services Commission into the Ministry of Justice.

One of the legacies of earlier political battles is that restrictions remain on the work that LSC-funded organisations can undertake even when funded by other sources - for example in relation to class actions and undocumented immigrants. A consequence of that has been to reduce the role of the LSC as a national representative of the legal services movement because organisations in some States, particularly those which are relatively rich and liberal (for example, Massachusetts), have taken the strategic decision to avoid LSC funding altogether, or to limit it to particular aspects of the work such as pro bono or intake. However, a national grant programme for technological innovation has been proof of the LSC's continuing leadership role.

Some care has been taken to hone its role in grant making for maximum benefit to the interest groups that the Corporation must keep onside. Some of the funding is directed at improving pro bono arrangements which, no doubt, helps to keep the private profession on board. The LSC clearly goes to some trouble to make lawmakers aware of who is receiving grants, particularly when they are to organisations in their constituencies. Its website lines up examples of

2013 technology projects with suitably appreciative quotes from Senators and Representatives from the successful States.

For all its past setbacks, the LSC has held onto its national resourcing role and dispenses funds in amounts which, though less than the figures for the United Kingdom, remain significant and retain its national role as champion of the sector. For 2014, the LSC budget totals \$365m (£216m or €267m). Since 2000, Congress has specified set figures for the LSC's TIG programme.

In recent years, this has amounted to about 1% of the total spend. In 2014, it will be \$3.45m (£2.04m or €2.52m). The drive for the TIG arose partly out of realisation of the possibilities of new technology, but partly also as recognition of the desirability of leveraging LSC coverage of the eligible USA population. Estimates suggest that services are actually available to only around a fifth of the financially eligible population.³

In this context, the TIG is more than a grants programme. It has become part of a drive, as articulated by the LSC, to provide some form of 'effective assistance' to those whom LSC programmes are unable fully to represent. From 2000 to 2013, LSC has funded around 550 projects to a total of over \$40m (£24m or €29m).⁴ The LSC's overall strategy for the use of technology to expand access to justice was decided after 'technology summits' held in 2012 and 2013, the findings of which were set out in a report published in December 2013.⁵ The summits spawned a lot of thinking and papers - six, together with an introduction, were published as an edition of the *Harvard Journal on Law and Technology in the Autumn* of 2012.⁶

The TIG programme merits its own section on the LSC's website.⁷ Since 2007, it has held an annual conference which has acted both as a meeting place for TIG grantees and a venue for wider discussion. One of the most interesting sessions at the 2014 conference was, in fact, provided by two non-LSC grantees: the California Courts and the Justice Education Society of British Columbia, which presented the 'Families Change' programme developed by the latter and shared by the former.

³ <http://tig.lsc.gov/about-us/background>

⁴ <http://tig.lsc.gov/about-us/background>

⁵ <http://www.lsc.gov/media/in-the-spotlight/report-summit-use-technology-expand-access-justice>

⁶ <http://jolt.law.harvard.edu/articles/pdf/v26/26HarvJLTech241.pdf>

⁷ <http://tig.lsc.gov>

As a sign of corporate commitment to the TIG programme, the LSC's President, Jim Sandman, attended - making his way from Washington DC to Jacksonville, Florida.

The TIG programme itself is, therefore, a way of leveraging the LSC's influence in favour of innovation, but the LSC has other means of influence as well. It funds the National Technology Assistance Project as a continuing technology resource for LSC grantees, providing training, information, online tools and online forums. The project delivers webinars at an impressive average of just over one a month on various technology-related issues: it posts videos of many of them on YouTube.⁸ Other TIG funded projects play a role in feeding back into the initiative. For example, LawHelp Interactive (*lawhelpinteractive.org*) provides a national server with templates to help in the creation of various documents or court forms throughout the USA. It is a project of *probono.net*, which is itself committed to 'innovative programs that increase access to justice'.

The goals of the TIG programme are to stimulate LSC grantees to use technology in innovative ways to provide 'legal information, advice and representation'; to improve service to clients or their own management, and to develop replicable projects amongst the LSC network. Below is an extended quote from the LSC on how it saw itself achieving the five goals set by its 2013 technology summit, which gives a flavour of how it sees its leadership role:

Access portals

- *Every State will create a statewide access portal that provides an easy way for a person to obtain assistance with a civil legal issue.*
- *The portal will use an automated process to refer each requester to the lowest-cost service likely to produce a satisfactory result in her or his case.*
- *The automated process will ultimately be informed by a sophisticated "triage" algorithm continually updated for each State by feedback data on the outcomes for persons who have previously sought assistance through the portal.*

⁸ This was originally a collaboration with three other organisations: the Microjustice Initiative (MJl), the European Academy for Law and Legislation (EALL) and the Center for International Legal Cooperation (CILC)

- *The portal will support a broad variety of access-to-justice services provided by courts, the private bar, legal aid entities, libraries, and others who collaborate in implementing the initiative. The systems of all collaborating entities will exchange information automatically to support each other's applications and to enable the accumulation and analysis of information on the functioning of the entire access-to-justice process.*
- *The baseline service available in a State will be a website accessible through computers, tablets, or smartphones that provides sophisticated but easily understandable information on legal rights and responsibilities, legal remedies, and forms and procedures for pursuing those remedies.*
- *The statewide access portal will link a requester with the most appropriate section of the website.*

Document assembly

- *All of the collaborating entities in a jurisdiction will employ the same document assembly application, which will generate plain-language forms through an interview approach. Litigants will use the application themselves, or with lay or legal assistance, to choose a legal form or forms appropriate for their personal objectives and to complete the form by entering all required information through an on-line interview process.*
- *The document assembly application will employ automated "smart document" tags for the information entered by a requester so that the information can be reused by all access-to-justice entities without requiring re-entry of the information.*
- *The document assembly application will be linked to: - the website for access to detailed information about the legal principles and terms underlying the form - legal services providers, court self-help centers, and libraries and other support entities for assistance that does not include legal advice - legal aid lawyers or private lawyers providing pro bono services (or private lawyers providing unbundled legal services if the requester is unable or unwilling to receive free legal services) for legal advice on some aspect of the requester's legal situation - the court's electronic filing and electronic payment applications - the access-to-justice entity's case management application to store all tagged data for reuse.*

- *Forms generated by the document assembly application will be universally accepted by courts in the State.*

Mobile phone

- *Mobile applications will be deployed to assist requesters/clients/litigants. Access to justice services will be location-dependent and accessible using smartphones, tablets and other mobile devices.*

Business processes and expert systems

- *All access-to-justice entities will employ a variety of automated and non-automated processes to make the best use of lawyers' time to assist requesters with their cases, including: - conducting business process analyses to streamline their internal operations and their interactions with all collaborating entities - having clients/litigants perform as much data entry and handle as many of the functions involved in their cases as possible (given the nature of the case and the characteristics of the client/litigant) - having lay staff perform a broad range of assistance activities not requiring the expertise of a lawyer - having expert systems and checklists available to assist and save time for lawyers and lay service providers - maximising the extent to which services are provided remotely rather than face- to-face, to save the time of both the clients/ litigants and the service providers ...*

The advantage of the TIG process is that it creates a groundswell of innovation. The LSC puts a lot of weight on projects that can be replicated and devotes part of the TIG website to projects in this category. One of the most useful parts of its website is its collection of self-assessment reports on past funded projects. For example, Pine Tree Legal Assistance, an LSC-funded project with a long track record of an interest in Internet provision, filed a really interesting report on a project to develop a mobile app to assist in legal referrals. It again is worth quoting at length - if only as an example of how to report truthfully on a project where all did not go as smoothly as intended.

Rapidly Changing Technology

The primary lesson learned from this project is that developing native mobile apps is a never-ending project. Mobile technology changes rapidly, with both Apple and Google releasing new versions of their operating systems at least once a year. For instance, when Illinois Legal Aid Online (ILAO) released the Illinois Legal Aid app, iOS was at version 4.3 and Android was on versions 2.2 and 2.3. In the year since the launch, Apple has released versions 5.0, 5.1, and 6.0, and Google has released version 4 (Ice Cream Sandwich) and version 5 (Jelly Bean). Keeping the apps functional on new operating systems (especially for iOS 5 and iOS 5.1) requires staff time for further code changes.

Challenges with iOS

Another lesson that should be considered by other app developers stems from the nail-biting experience with the Apple review process. Apps may be developed, but for iOS, they may only be available as native apps once the Apple review team approves them. As stated above, Pine Tree had two apps rejected by Apple because the reviewers did not feel the apps had enough native functionality, did not possess adequate “entertainment” value, and/or had limited utility. Illinois submitted an app outside of this grant (a Spanish-language version of the Illinois Legal Aid app) that was rejected because the reviewers had issues with the fluidity of the user interface. There is a risk inherent in developing for the iOS platform in that one may spend hundreds of hours developing apps only to have Apple reject them. Pine Tree would recommend that developers either skip the Apple submission process and directly create a Web App or incorporate elements that Apple likes such as “add to contacts” and geographical location.

Thorough Testing

Developers must plan ahead for the challenges of testing. Without investing thousands of dollars in devices, programs developing apps are limited in how thorough their testing can be by the devices that the program has on hand through staff or volunteers.

Return on Investment

Finally, there is an important question about the return on investment in developing mobile apps. For instance, Illinois Legal Aid Online staff spent far more time on this project than originally anticipated. If they had it to do over, ILAO staff may have been better off developing robust mobile websites instead of mobile apps. While there are some nice elements in the Illinois mobile apps that would be impossible to do in a mobile site, such as saving events to the user's calendar or adding a legal aid organization's information to a user's contacts, much of what the apps accomplish could be done just as easily using HTML5 in the device browser, without the daunting review process of Apple or needing to keep up with the breakneck pace of mobile device updates. That said, ILAO's visibility increased in being the first to market for apps in the legal aid community. ILAO staff also developed significant expertise in HTML5, Javascript, and mobile optimization through this project that will carry over to future technology initiatives.⁹

Some TIG-funded programmes have been intended to deliver systems that can be generally used by LSC. For example, a number of States have used templates for their legal aid websites that were originally TIG-funded. The result is a common, clear format with information clearly displayed. Great use has also been made of the 'A2J' software, developed through TIG funding by the Center for Access to Justice and Technology at the Illinois Institute of Technology at Chicago-Kent College of Law (see above), in other document assembly programmes developed by *LawHelp Interactive*. A2J Author is a package which allows customisation through scripted interviews on screen linked to document assembly software which, thereby, allows the production of, for example, a court form.¹⁰ This has been developed as an educational package so that law students can assist in the drafting of packages tailored to different States.

Other grant programmes have followed a common theme. In particular, there has been a drive to adapt to the growth in the use of mobiles with TIG funding for programmes experimenting with SMS text messaging (regarded as rather successful), QR codes (which are those block codes that are widely available but which do not seem to have caught on), and the use of scanning on smartphones and tablets.

⁹ <http://tig.lsc.gov/sites/default/files/TIG%2010015%20Final%20Report.pdf>

¹⁰ <https://www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author>

4. British Columbia Canada

Like the USA and the Netherlands, British Columbia also has a legal aid funder which has taken an active role in the use of digital delivery as part of a historical commitment to a wider public legal education. It was formed in 1979 as a merger between two existing organisations. From the beginning, its purpose has been not only to provide representation in core cases but to deliver self-help and advice designed to assist people to resolve legal problems on their own. It always displayed a commitment to public legal education.

In 2002, the Legal Services Society (LSS) encountered a major set of cuts, comparable to those faced by the LSC in the USA but motivated less by hostility to its mandate and more by a desire to cut back provincial spending more generally. The cuts were, as currently in England and Wales, directed particularly at civil legal aid expenditure with crime, to some extent, protected. Overall, they amount to around 25% but were particularly severe in Family Law where Heidi Mason, then responsible for Family Law services, saw her budget cut first from \$18m (£10m or €12.6m) to \$10m (£5.9m or €7m) and then finally to \$2.5m (£1.4m or €1.76m).

The difference from the position in England and Wales comes in the response. The LSS lost about three-quarters of its salaried staff, mainly directly employed practising lawyers, but it retained key staff during the carnage. The existing Board refused to implement cuts at this level and the Minister appointed a trustee to take over. She did but, within ministerial direction on cuts to be made, the LSS retained discretion over how it delivered its services. Facing the near elimination of her total budget, Ms Mason headed for California where she had heard of the self-help centres established in the courts. She was impressed that, in San Francisco, the commitment had been such that a court had been converted to a self-help centre. She decided that Vancouver should go in the same direction, and a consortium involving the Society and the Justice Education Society set up a centre. She also established a family duty counsel scheme to provide some form of minimal representation, and a family advice telephone hotline, *LawLine*. And, crucially, the LSS published an early Family Law website to assist litigants in person. *'We have always worked in a culture of trial and error'*, she said, *'and we gave it a go. We found it was very successful. We started winning awards. The trustee was a champion of "try it, evaluate, sell it". We found out a number of things, including the value of using senior lawyers to deliver services.'*

Discovering that lawyers were using the website more than their clients, they tried adding videos to bring in more ordinary people. It worked. In the same way, the LSS eventually added outreach workers to provide face-to-face assistance where required. The shift from a litigation culture chimed with the Family Law zeitgeist more widely, with the growth everywhere of mediation and collaborative lawyering: 'we were inadvertent change agents,' Ms Mason said. LSS now runs a Family Law website (<http://www.familylaw.lss.bc.ca>) and is developing, as noted elsewhere, *MyLawBC.com* as an interactive provision.

The LSS was operating in a context where public legal and education information was a well ingrained part of the legal culture of both Canada in general, and British Columbia in particular.

A number of institutions in the province were involved. One was the People's Law School, founded in 1972 and still going strong. Its then director contributed to a Legal Action Group book on *Shaping the Future: new directions in legal services* published in 1995.¹¹ Another is the Justice Education Society (JES), formerly the Law Courts Education Society. There are now plans for the two organisations to merge. In general, the Public Legal Education Institute (PLEI) in Canada has permeated legal and political culture to an extent much greater than in the United Kingdom. Engagement in public legal education remains a strain in the work of the current British Columbia Courthouse Libraries. They run *Clicklaw* as a website which 'provides legal information, education and help for British Columbians'. It is sponsored by a number of British Columbia organisations. It began in 2009; operates as an 'aggregator' website pulling together resources from other providers, and has recently expanded to include a number of '*wikibooks*' which are 'collaboratively developed, plain language legal publications that are born-wiki and can also be printed'. These provide solid, detailed analysis of the relevant law and practice.

The engagement of the JES in Family Law was as a result of the consequence of the same package of cuts to legal aid provision as hit the LSS in 2002. The Ministry of Justice approached JES for an answer to the questions that parents were asking about what to tell their children about family breakdown. JES began with guides for separation and divorce and moved through to devising a parenting and separation course. Research suggested that parents who took

¹¹ Chapter 6, G Hardy 'Pioneers in Legal Education'

the courses spent less time in court. JES started to develop the courses online. These are now being adapted for other Canadian provinces. Linked to the courses were guides for parents and for children. For pre-teens, this developed into the impressive *Changeville* website discussed in Working Paper 3 on services for family breakdown. This, like the *Rechtwijzer*, was developed by a multidisciplinary team that included a psychologist and a family counsellor as well as lawyers. *'It is really about emotions and re-orientation of relationships. About 70% is not actually about the law,'* said David Nolette, in charge of the project at JES.

A recent study charts the continuing importance but changing role of PLEI in the pattern of delivery.¹² It places it in the context of Professor Hazel Genn's study *Paths to Justice: What People Do and Think about Going to the Law*, and the following work of the Legal Services Research Centre.

PLEI is ... seen as a critical component of legal services, assisting people to identify, avoid or resolve problems, and where necessary to obtain legal advice, assistance or representation from lawyers or community advocates. Basically, the classic model has been PLEI followed by legal advice, followed where appropriate by legal representation (an example of this path is Dial-a-Law/Lawyer Referral/ lawyer). For the numerous instances where this model does not apply (e.g. legal aid unavailable; private bar does not do poverty law), the British Columbia model is often PLEI/community-based advocate. In the continuum of service model, PLEI has always been and remains an important pathway to in-person service. In the current environment, people are being asked or expected to resolve many more legal problems using PLEI materials. The research indicates that many people with legal issues do not follow the traditional models of using legal information as a pathway to legal assistance ... If they do interact with the legal system, they may for a range of reasons "go it alone" with the help of the Internet and the goodwill of family and friends. Some people "go it alone" through choice; for others, the decision is economic. Further, with the rise of self-representing litigants, adult PLEI users are being asked to complete complex legal procedures.¹³

¹² <http://www.pleiportal.org/wp-content/uploads/2009/06/clicklaw-and-beyond-public-legal-education-and-information-materialsin-bc.pdf>

¹³ p13, *Clicklaw Clicklaw and Beyond: public legal education and information materials in BC* G Reid, D Jackson, C McEown, May 2009

The commitment to innovative delivery of legal services and to public legal education is more complicated than a countercultural impulse amongst providers. It is clearly an impulse shared by Ministers of Justice and those in their Ministry. The objects clause of the Legal Services Society Act 2002 reads:

9 (1) The objects of the Society are,

- (a) ... to assist individuals to resolve their legal problems and facilitate their access to justice,
- (b) ... to establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia, and
- (c) to provide advice to the Attorney General respecting legal aid and access to justice for individuals in British Columbia.

9 (2) The Society is to be guided by the following principles:

- (a) the Society is to give priority to identifying and assessing the legal needs of low-income individuals in British Columbia;
- (b) the Society is to consider the perspectives of both justice system service providers and the general public;
- (c) the Society is to coordinate legal aid with other aspects of the justice system and with community services;
- (d) the Society is to be flexible and innovative in the manner in which it carries out its objects.

The Ministry itself is engaged in an ambitious bid to establish a Conflict Resolution Tribunal, as reported in the Working Paper 7 on Online Dispute Resolution.

6. Conclusion

From these jurisdictions at the cutting edge of developments, some common elements emerge.

First, there is leadership by government ministries or statutory bodies charged with delivering legal aid.

Second, they can be seen to operate within entrepreneurial and competitive cultures.

Third, there is a willingness to innovate and to take a degree of risk with new forms of provision.

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