

The
Legal
Education
Foundation

DIGITAL DELIVERY OF LEGAL SERVICES
TO PEOPLE ON LOW INCOMES
EVOLVING DELIVERY MODELS -
THE EXAMPLE OF FAMILY LAW

December 2014



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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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All the information in this Report is verified to the best of the author's and publisher's ability, but they do not accept responsibility for loss arising from decisions based upon them and whilst Internet addresses were believed to be accurate at the time of publication they may have changed since then. Where opinion is expressed it is that of the author, which does not necessary coincide with the editorial views of The Legal Education Foundation.

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1. Introduction

Family Law provides a useful lens through which to look at some of the ways digital delivery is changing how legal advice and information is given. The law itself may be national - with different substantive provisions - but the need for advice and information is global. This is particularly apparent in family breakdown, where the legal issues and their emotional context vary little from jurisdiction to jurisdiction. Relevant law, practice and procedure are generally sufficiently complex that most people going through a divorce or similar family breakdown will derive some benefit from assistance.

There are, of course, differences - both from other areas of law (eg higher emotional content) and in relation to the prevailing regulation of practice (eg laws in, for example, the USA inhibiting the unauthorised practice of law). Nevertheless, it seems one of the best subject areas to look at across national borders.¹

¹ The paper follows on - as does the Report as a whole - from work published in January 2014 by the University of Strathclyde as *Face to Face Legal Services and their Alternatives: global lessons from the digital revolution* ('Face to Face') by Roger Smith and Alan Paterson. To avoid repetition of its content, reference is made to this in the text.

2. Background

Divorce has been at the heart of legal aid in the United Kingdom since the inception of the Law Society's Legal Aid Scheme in the 1940s. It provided the very impetus for its formation. As time has progressed, so the incidence of divorce and family breakdown have increased with, until the recent funding cuts, consequent pressure on the cost of legal aid. Legislation for England and Wales in 2012 substantially reduced the scope of legal aid and advice except in cases involving domestic violence; mediation (though take up seems to have slumped as lawyers have been removed from their 'gatekeeping role' to services); and some telephone advice.

Family Law's initial importance in publicly funded legal services was replicated in those countries which followed the United Kingdom's lead in establishing similar legal aid schemes, such as British Columbia and Ontario in Canada and some of the states of Australia. The cost has gradually weighed heavier on providers: they have responded differently. Most interestingly in terms of digital provision of legal information has been the Netherlands where the Dutch Legal Aid Board has developed the Internet-based programme, *rechtwijzer.nl*, heavily praised in *Face to Face* as an innovative way of assisting those going through family problems to negotiate settlements.²

However, one of the characteristics of Family Law is that legal aid is by no means the only funder of advice and assistance. There are others with an interest in the smooth resolution of family disputes. Prime among these are privately funded lawyers and their clients. Most Family Law advice has always been provided in all jurisdictions by private lawyers to privately paying clients. The withdrawal of legal aid has provided an impetus for private providers to extend their services to those whom hitherto they served on legal aid. However, other state agencies and institutions also have an interest. Judges find unrepresented litigants in family cases difficult, particularly in adversarially based jurisdictions: lack of representation by one party alters the balance of the litigation. This has spawned innovative provision such as the Justice Education Society of British Columbia's Families Change Programme assisting those going through divorce. Its work so impressed the California courts, the USA's leader in the provision of self-help

² see chapter 6

assistance to litigants in person, that they have borrowed the programme in order to assist their unrepresented litigants. Family Law involves Government ministries other than those relating to justice. Those concerned with social security are also engaged.

Thus, the Child Maintenance Agency in England and Wales, whose sponsoring ministry is the Department of Work and Pensions, has a programme involving the Internet for supporting those going through family breakup.

Since all these providers are affected by digital innovation, there is an increasingly wide range of ways in which digital delivery is being used for the low income recipients with which we are particularly concerned.

3. Digital delivery can aid the distribution of information formerly in written form

Many organisations and institutions have historically written and published leaflets and handbooks on Family Law. An obvious first response to the Internet is simply to put these up unchanged on websites as a resource. This has the advantage of increasing their accessibility and reducing their cost. Often, however, the language of physical publication remains: information is often referred to as the 'factsheet' or a 'handbook' in which it was once published. For example, Resolution (the representative organisation of family lawyers in England and Wales) publishes *Separation together: your options for separation and divorce* on its website and describes it as a 'handbook'. It is, at least, well designed and survives the transposition rather well; it has advice both on the legal and emotional and remains a good resource on the Internet: see http://www.resolution.org.uk/site_content_files/files/handbook_in_order_layout_1.pdf. The value of design can be seen by comparison with the information on the Citizens Advice Adviceguide website, which is fine as to substance but significantly less effective in its presentation: see http://www.adviceguide.org.uk/england/relationships_e/relationships_relationship_problems_e/ending_a_marriage.htm.

A further illustration of comprehensive web-based assistance is provided by the <http://www.familylaw.lss.bc.ca/> established by British Columbia's Legal Services Society (LSS).³ This provides a good example of how services may be packaged around a website. The website itself was developed in 2002 as a response to legal aid cuts to Family Law similar to those now introduced in England and Wales. It has evolved to become more than 1,400 web pages and has seen a sustained increase in visits to the website – from approximately 32,570 visits per month to 65,648 a month between 2011/12 and 2012/13. Research from the LSS corroborates the importance of 'proxy users'. An LSS survey in 2013/14 found that a quarter of all users were helping someone else.

The website's key components include traditional digital delivery, fact sheet style information, frequently asked questions, information tailored to unique

³ familylaw.lss.bc.ca

communities such as Aboriginal people. It incorporates videos and links to other useful websites. Resources in multiple languages are highlighted. The self-help guides walk individuals through the processes and law to start, or respond to, a court application, or vary an order, in either of the two court levels that have jurisdiction over family matters. Resources are also provided on how to stay out of court.

The website contains a number of integrated supports, ranging from a telephone hotline to community partners whose involvement is designed to mitigate digital exclusion. It contains reference to the Family Law Line, a toll free number where one can get legal information, be assessed for legal aid eligibility and/or transferred to a lawyer for legal advice. Another support is the LiveHelp chat service, a pilot project using volunteer law students to answer user questions, primarily with prepared answers based on commonly asked questions but also with an ability to give information, though not legal advice. LSS's Sherry MacLennan explained:

'The main drawback to this model is that students are generally not available during exam periods and are less likely to volunteer over the summer so we plan to expand the volunteer base, but engaging with students was a strategic goal for us in terms of connecting them with legal aid and PLEI (Public legal Education Information) and building a legal aid culture with the new generation of lawyers.'

Email questions to the website are also answered through a Family Law enquiries mailbox - staffed by law students overseen by a lawyer. Personal support for people using the website is provided through a centrally supported network of resources across British Columbia, which include staff and contracted service partners. LSS also provides regular training. Updates on the website and self-help guides, and other resources, are delivered through conferences, workshops, webinars and electronic updates which include a blog and Rich Site Summary (RSS) feeds for new items on the Family Law website. LSS was thrown into developing alternative forms of support for Family Law when its more conventional legal aid scheme was cut in 2002, just as in England and Wales a decade later, its provision is an interesting example of what can be done by a provider wishing to do the best to fill the gap.

British Columbia also houses Internet based provision developed by the Justice Education Society (JES). This contains a Parenting After Separation package which provides an online version of a course originally developed by JES as face-to-face and which deals comprehensively with different issues through a number of segments and videos with different issues. JES is also responsible for *Changeville*, both are mentioned below but dealt with in more detail in Working Paper 5.

4. Digital delivery can aid the development of ‘aggregator’ websites that can pull together different resources and assist in signposting

Face to Face described LawAccess New South Wales Australia, saying that ‘it hints at an evolving model for the overall delivery of legal services’ with a combination of a state-wide telephone advice service, an information website (*Law Access Online*) and a self-help court representation website (*LawAssist*).⁴ Similar provision is available through the Legal Information Access Centre (LIAC), originally established by the Law Foundation of New South Wales (NSW). LIAC is integrated within the NSW library service and so operates within a more public legal education than legal information/advice framework. It has a physical presence in the State Library in Sydney but also contributes to a section on the State Library’s website ‘Find Legal Answers: information about the law in New South Wales’.

This signposts information currently on 12 topics, one of which is ‘family, relationships and children’. Click on that and you are into a set of pages dealing with ‘What happens when your relationship ends, or if you’re suffering abuse or violence? What rights do children and young people have - their care, schooling, with the police?’ Follow through to ‘Family Law and divorce’ and you are through to short descriptions and links to 17 publications from a wide range of sources including Legal Aid NSW; two chapters of Family Law books published by Thomson Reuters; and publications from the Family courts, community law centres and others. These include a ‘hot topic’ publication by LIAC itself. This is one step up from material produced solely by one organisation because it uses the resources of the Internet to direct to different sources of material with different emphases.

⁴ Chapter 7

5. Digital delivery can encourage interactive, personally tailored information and assistance

The Dutch *rechtwijzer.nl* website is described in detail in the *Face to Face* study and elsewhere in this Report.⁵ It is an interactive website supplemented by access to staff on ‘counters’ or offices around the country which takes someone through the process of the break up of a relationship. It asks questions about how the parties might like to proceed, unashamedly backs mediation, and is based on the principle of ‘integrative negotiation’ which means exactly what you would think. At present, it limits itself at the moment to giving information (staying shy of explicit advice) and suggesting appropriate referral. For now, its most extensive provision is on family breakup but it does cover other issues and is planned for extension. The website can be embedded in that of a third party such as a lawyer.

Face to Face described *rechtwijzer.nl* as a ‘game changer’ - though we await fully translated research on how it works in practice. It offers an interactive service which moves someone through the process of breakup and does not just give static advice drawn from the equivalent of printed advice sheets. Those developing it use the concept of a ‘journey’ towards agreed arrangements. The next stage of the programme - *Rechtwijzer 2.0* - is considered elsewhere.

The *Rechtwijzer* approach has been a catalyst for a new generation of developments. British Columbia’s Legal Services Society is working towards the release of *MyLawBC.com* which is planned to take its family provision to a new level by the introduction of an interactive ‘journey’ style approach. This promises that:

‘At the core of MyLawBC, is an idea that we call guided pathways. In these pathways, you will be asked a series of questions that will help diagnose exactly what your legal problem is and how you can best address it. Once you’ve reached the end of your pathway, MyLawBC will give you an action plan that is unique to your problem and maps out the steps you can take to resolve your problem.’

Delivery is planned for the spring of 2015.

⁵ Chapter 6 *Face to Face*

6. Digital delivery can encourage the formation of 'communities' for mutual assistance

Digital delivery can encourage the formation of 'communities' for mutual assistance or enlightenment, linked to advice and information provision.

The establishment of digital communities in which people with a common problem share their experiences and knowledge was predicted by Professor Richard Susskind:

online communities will burgeon, where useful materials are made available in open source spirit and built up using wiki techniques; citizens will record their legal experiences on blogs, for others to examine; and they will pose and answer questions on discussion forums.⁶

These communities are beginning to emerge: they are a distinct product of the Internet. One of the most well known in the United Kingdom would be *mumsnet.com*. This covers a range of topics of interest and concern to mothers but also contains a section on divorce and separation. It gives information and promotes referral. It also draws attention to contributions from the members' chat facilities. For example, these are three contributions on the subject of DIY divorce:

- *My ex-husband and I did our divorce ourselves - just rang the court and asked for the forms. We were in full agreement re custody of the children and so on, and had no assets - it was very straightforward. And where it wasn't, there was a helpful booklet telling us what to do.*

Hassled

- *My friend just got a DIY divorce and it took her three years. All was fine at first because her ex agreed... then he changed his mind re access and custody, and solicitors had to get involved. So yes, you can do it, but be prepared for it to go wrong if he decides he's not happy.*

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⁶ R Susskind *The End of Lawyers: rethinking the nature of legal services* OUP, 2010, p242

- *There's no reason why you can't act in person with regards to divorce. The court staff are quite helpful and will give you guidance on completing forms, though they can't give you legal advice. You'll need your marriage certificate to enable you to complete parts of the petition and this will need to be lodged at the court with the petition. Assuming there's no dispute about where the children will reside and contact arrangements, there's absolutely no need for the court to get involved with regards to the children.*

Mumoverseas

The next step from open chat facility is some form of mediated conversation with the participation of an expert to assist in the resolution of issues or referral to such an expert. Wikivorce (wikivorce.com) is a United Kingdom example of something moving in this direction. It was founded by non-lawyer Ian Rispin and offers this description of its origin and nature.⁷ The website explains its origin:

Ian Rispin, the founder and managing director of Web Communities, is a social entrepreneur who believes in the power of the Internet in general, and of online support communities in particular, to deliver improved and more cost effective support services. For the last 10 years Ian has been at the forefront of the eCommerce revolution in the travel industry. As a Senior Management Consultant at Accenture, he provided strategic business and technology advice to companies such as British Airways, Thomas Cook and American Express. Later, as a Director for Cendant TDS, he led the strategic acquisition and integration of their online hotel booking business in international markets. In early 2007, whilst in the midst of a difficult divorce, it became apparent to Ian that there was a tremendous opportunity to improve the availability of information, advice and services to people facing divorce. This led Ian to found his first 'web community', namely Wikivorce - an online community for people going through divorce or separation.

Wikivorce's website gives information; provides such assistance as a free DIY divorce guide; and allows referral to solicitors. The default referral is provided by the solicitors' firm Bretherton's. Wikivorce describes itself as 'a well respected, award winning social enterprise - volunteer run, government sponsored, charity

⁷ <http://www.wikivorce.com/divorce/About-Wikivorce.html>

funded. Our organisation helps 50,000 people a year through divorce'. It offers free telephone advice and also online discussion for members.

Some interesting feedback on the effectiveness of this provision is obtained from other discussion fora. This is somewhat mixed and includes some criticism, such as:

A warning... a friend (and fellow Mumsnetter) used a Wikivorce solicitor to prepare her consent order. It was drafted incorrectly and she ended up being unable to enforce the child maintenance payments against her ex. It cost her several thousand £ in lost payments and proved to be an expensive way to save money.⁸

Wikivorce's founder was goaded to enter the discussion to defend the project. A discussion thread on *moneyexpert.com* was more favourable, with an assertion by one user that 'the forums on wiki will definitely help you'.⁹

Wikivorce is but one of a number of similar websites: *divorce-guide.org.uk* is another. The latter combines free information; facilities for chat; and referral - which is presumably a source of income.

The concept of online unregulated communities raises obvious issues of quality. California Courts' Bonnie Hough reports:

One of the reasons that we coordinated the California Courts self help website in 2001 was that the info that was easily accessible was just dreadful. One of the first sites I found searching for legal info on divorces included paragraphs with case law and citations, presumably to be used for legal memos with citations including one to a 1932 case which stood for the proposition that if a mother was dating a new man, she was obviously not qualified to be the custodial parent. Not overwhelmingly helpful to rely on 70 some years later. I have really struggled with crowd sourcing, and like the concept, but I worry about it.¹⁰

⁸ 'nocake 5 april 2013 Mumsnet.

⁹ tinkerbelle 73 on 3 March 2013. Spelling has been corrected.

¹⁰ email 23 May 2014.

There is a further element to communities in the field of divorce: there are a number of websites aimed at a distinctly partisan approach. These include websites in the USA such as *divorced-womenonline.com* with helpful articles such as 'Should you ask for the house during divorce settlement negotiations'.¹¹ The Women's Institute for Financial Education (Wife) weighs in with articles that underline some of the practical complications that undermine those looking too rosilily at the issues that arise on from divorce such as 'Six places to Look for Hidden Assets During Divorce'.¹² Rest assured: the equivalent exists for men. Men's Divorce Headquarters includes articles such as 'Learn how to win your divorce without losing your shorts or your kids'.¹³

¹¹ <http://divorcedwomenonline.com/category/tenother-topics/legal-divorce-tips/>

¹² <http://www.wife.org/six-places-look-hidden-assets-divorce.htm>

¹³ <http://www.mens-divorce-tactics.com/?hop=bass2324>

7. Digital delivery can aid the delivery of fixed fee, 'unbundled' services by private providers

The Internet, particularly, as argued in *Face to Face*, when combined with the access to new funding encouraged by new practice models in England and Wales, encourages transparency on fees and a drive towards unbundling as a way of keeping these low.

Co-op Legal Services (CLS) and Quality Solicitors (QS) provide two examples of firms reaching towards low income clients with divorce or other family breakdown problems. *Face to Face* argued that CLS in particular had been a mould-breaker with its visually attractive website, national provision and transparent pricing for a range of different packages.¹⁴

Its website gives a certain amount of free general information in an attractive form. For example, it contains short videos on a range of topics including one on options when a relationship breaks down. It explicitly steers people away from litigation: 'Agreeing things between yourselves is always best. However, if there remain differences between you, mediation can help'. It offers a clear set of fixed price packages - for example a basic DIY divorce for £118.80;¹⁵ a DIY divorce with a check by 'an experienced specialist lawyer' at £238.80.¹⁵ Court fees, rather shockingly, add another £410 to these prices. A 'managed' divorce is available, again in two packages (eg basic for a petitioner £570,¹⁵ or with bells and whistles £900).¹⁵

QS, which was more reticent on prices when *Face to Face* was researched, now has a similar - but not identical - list of services at comparable prices. Subject to these firms attaining sufficient quality (and there is no reason to think that they will fall below the level of solicitors more generally), the two firms provide a good argument for the benefits of external investment and, in CLS's case, external ownership.

¹⁴ Chapter 4

¹⁵ As at 8 April 2014 all prices include VAT at 20%

The financial viability of this model of provision is yet to be seen: CLS was recently reported as incurring a £22m annual loss.¹⁶ The individual commercial success or failure of either of these providers does not, however, necessarily affect the likely triumph of the model that they both demonstrate.

¹⁶ <http://www.lawgazette.co.uk/practice/co-op-legal-services-posts-22m-loss/5040879.article>

8. Digital delivery can provide the basis for virtual law practice

There are a number of websites, both in the not-for-profit and public sector, which offer email advice. Below is a nice example from British Columbia's Family Law Inquiries. The exchange is a good example of assistance for which the recipient is grateful but which indicates that a degree of detail and complication that others might have found off-putting. It is quoted at length to convey the complexity involved and high literacy skills required to make use of this sort of detailed written information. The advice ends with encouragement to consult a lawyer face-to-face.

Subject: Re: Changing parenting time/child's preference

Thank you very much for your comprehensive report.

This single email was more informative to me on this singular most important issue to my divorce than 3 lawyers, 6 years and \$230,000 were able to provide.

Thank you again.

From: "familylawinquiries@lss.bc.ca" <FamilyLawInquiries@lss.bc.ca>

Hello,

Thank you for your inquiry. Please note that this is an information service only; we cannot provide legal advice. We provide information and resources for Legal Services Society of BC ("LSS") Family Law Inquiries emails.

Your Question:

I have a Supreme Court decision (agreement) that is extremely onerous and was a result of my not being able to continue to finance fighting my now ex-wife in court.

Part of this was that she has full custody of the children, and I am only allowed supervised visits. Generally speaking, what is the age that a child can decide when they wish to visit me unsupervised?

Reply:

Please note that while we are unable to provide legal advice specific to your situation, we can provide general legal information. For legal advice resources, please see below.

For your general legal information, on March 18, 2013, BC's new Family Law Act ("FLA") came into effect replacing the Family Relations Act ... For information about how the new FLA impacts pre-FLA court orders, please see the following Legal Service Society Family Law Website factsheet at ...

Under the FLA, parents who lived together with the child for some period of time after their child was born are presumed to be the guardians of their child during their relationship and after they separate (subject to the terms of any written agreements or court orders). However, please note that if there is a written separation agreement or a court order in existence made under the former Family Relations Act giving one of the parents sole custody and guardianship of the children, then only that person is a "guardian" of the child under the new FLA. As set out in a Ministry of Attorney General's "FAQ" document at <http://www.ag.gov.bc.ca/legislation/family-law/pdf/faq.pdf>, at page 4 .

Most "sole guardianship" agreements or orders under the Family Relations Act also provide that parent with "sole custody". In this case, that parent will remain the only guardian under the Family Law Act. The other parent would not be a guardian, since they did not have either custody or guardianship, and time with their child would be "contact".

You may find it helpful to look at the following LSS Family Law Website fact sheet ...

More specifically, in response to your question, if there is a written separation agreement or court order in place providing for parenting arrangements (including supervised contact), the legal document needs to be followed until it is changed or cancelled (either by the consent of the parties or by a judge as a result of a court application made by one of the parties). However, while the parties to the separation agreement have

a legal obligation to comply with the written agreement or court order, in practical terms, an older child may refuse to comply with it and it is not possible to physically force the child to comply with it. See lawyer JP Boyd's Clicklaw wikibook page about parenting after separation at: http://wiki.clicklaw.bc.ca/index.php/Parenting_after_Separation#Common_visitation_issues.

Where a separation agreement has been filed in court (and is therefore as effective as a court order), and where one party wishes to change the filed agreement (to seek, for example, increased and unsupervised contact with an older child who wants to see the other parent more) and the other does not, it is possible for a court application to be made to change the agreement. Reference can be made to the following free, online self-help guides on the LSS Family Law Website for making such an application ...

For your general information, the contact preferences of older children (for example, children 11 or 12 or older) are considered by courts and the older a child is, his or her wishes are given more weight. However, there is no specific age set out in British Columbia Family Law at which a child can decide on the type of contact s/he can have with the other parent. For more information, you may find it helpful to look at the following LSS Family Law Website FAQ and factsheet at ...

For more information, you may also want to look at Mr. Boyd's Clicklaw wikibook ...

Given the legal questions raised, we recommend that you have an "in person" legal advice consultation with a lawyer about your specific situation. To do so, you may be able to meet with a Family Duty Counsel lawyer in your area ...

We hope the above is helpful. Thank you for your inquiry and best of luck.

As was noted in *Face to Face*, legal practice can be conducted entirely over the Internet and by telephone. This has become prevalent in the USA¹⁷ and is advancing elsewhere: *divorceonline.co.uk* is an English example which offers an online managed package for a fixed sum of £399 (it also offers a DIY one as well). This is what you get (there may be an issue here about the assumption that divorce will be simple which is not always, of course, the case):

Below you will find the simple steps you need to take to get divorced with this service;

- 1. Complete our simple order form.*
- 2. Fill out a quick & simple online application form for your divorce.*
- 3. Complete an online application form for your consent order.*
- 4. Have all of your completed divorce forms posted or emailed to you within 24 hours.*
- 5. Sign your divorce papers and then return them to your solicitor to file with the courts.*
- 6. Your consent order will be sent to you for approval and signature.*
- 7. Approve and sign your consent order and then return your consent order, for us to file at court.*

After you have ordered this service, our solicitor will contact you, to inform you that they will be dealing with your case and have received your details. You will receive a log in to your account which will enable you to track your divorce 24/7 with our case tracking system. This same service with a high street solicitor could cost up to £1,500, without free telephone and email support!

¹⁷ As has been developed in the USA, see eg S Kimbro Virtual Law Practice: how to deliver legal services online American Bar Association, 2010.

9. Digital delivery can help litigants to use the courts

The state courts of California have led the USA - and the World - in the provision of assistance to self-represented litigants. So, it is unsurprising that they are developing methods of digital assistance. For example, Riverside County Superior Court has implemented a programme that assists an applicant alleging domestic violence to issue an application for a restraining order. The applicant can access a document assembly programme on the website and be automatically assisted in filling in the appropriate form - which can then be filed by fax. Users are guided to provide details of the abuse or harassment alleged in a structured way. The system certainly has judicial fans:

The benefits of the online interview continue after the DVRO [Domestic Violence Restraint Order] has been filed – regardless of how it was filed. Judge Lucky explained that it is much easier to review forms that were completed online. “I can count on certain things being consistently correct,” he explained. “It becomes more of a quick review for formal defects versus an extensive review that a document filled out by hand requires.” And of course, forms completed using a computer do not run the risk of being illegible. Judge Lucky also explained that the consistent format of the form allows him to more easily find the information he needs to review. He noted that he tends to reject fewer cases that are done through the online system for a lack of specificity, because the interview prompts applicants to supply enough information about the case. The praise for the system is not limited to the courthouse; users have been thrilled with its ease and simplicity. “This is a wonderful program,” reported one user, “the final product is perfect.”¹⁸

The conclusion may be the same as can be drawn from the example of the letter from the LSS above. These are systems which could be of immense use to literate and confident users: others are more likely to depend on face-to-face assistance to take full advantage of them.

¹⁸ M Halley <http://www.connectingjusticecommunities.com/efax-filing-at-riverside-county-superior-court-increases-ease-and-efficiency/2014/05/>

10. Digital delivery can provide emotional assistance

British Columbia's use of the Internet for its Parenting after Separation classes, and projects like its child-oriented *Changeville*, is dealt with in the Working Paper 5 on Litigants in person.

An example from England and Wales, also discussed in *Face to Face*, raises an issue about how good governments can be in the direct delivery of services designed to encourage mediated settlements and amicable agreements.¹⁹ *Sorting out Separation (SoS)* is described as a 'web app' by the Department of Work and Pensions (DWP). SoS's origin lies in a reform of child maintenance provision designed to encourage separating parents to settle their own affairs. This is a major issue in the United Kingdom where 5m parents are said to have gone through a separation and 4m dependent children, a third of the total, are not living with both parents.²⁰ It is intended to be a 'one stop shop'. One of the observations of a recent research team was that:

'if there is interest in engaging individuals without children, the site would need significant revision to the logo, video content and general site copy to avoid perceptions that it is too "family focused" to be relevant.'

The website contains a range of information on various topics including child benefit calculators and copies of family agreement forms but most relevant for this purpose is the 'app'. It contains seven videos on different topics. These are professionally made and professionally acted. Research funded by the DWP itself noted, however, that:

Participants raised frustrations around the low level of detail provided by the website itself prior to signposting. Given the impossibility of providing specific information to respond to all user needs, research suggests it would be useful to focus additional content on mapping the range of issues that may take place and the questions that users may need to ask themselves now and in the future. This should recognise and acknowledge realistic problems around separation – both in terms of the

¹⁹ p47-8

²⁰ Government Social Research Sorting Out Separation Web App; evaluation of effectiveness, 2014, Department of Work and Pensions, p15.

messiness and unpleasant emotions involved for those separating, and in terms of potential problem points around the solutions and support. The website will lose credibility if it is perceived as offering unrealistically positive solutions or does not acknowledge real-world situations.²¹

It is unfortunate that the videos consistently underplay the tensions that are often exist when a relationship breaks up. There is, for example, no reference to juggling the demands of second families or new relationships in any of them. As the Relate website, to which the app gives a link, indicates:

'An extra-dimension, of course occurs when step-siblings enter the equation, each having to adjust to the new family framework'. The DWP has recently revealed that the app cost around £400,000 and that 'it is in the process of considering the future direction of the SoS web app and will shortly be taking steps to improve the profile of the app through search engine optimisation.'²²

This suggests that the DWP itself recognises problems with the website as it is.

In addition to the app, the DWP has developed an accreditation scheme for those assisting separating families. It invites accreditation on the basis of meeting the following four 'elements':

Element One: The organisation has a vision/mission/strategic aim that includes the promotion of collaboration and reduction of conflict in the best interests of children.

Element Two: The organisation consistently demonstrates its commitment to the promotion of collaboration and reduction of conflict.

Element Three: The organisation is effective in the promotion of collaboration and reduction of conflict.

Element Four: The organisation's service users/clients/patients/callers/website visitors report positive, helpful, negative and unhelpful experiences that help the organisation redesign services to improve them.

²¹ As above, p13

²² Parliamentary Question 8 April 2014

Rather oddly, these criteria omit reference to the accuracy of the information provided on the website to be accredited nor on the rights of any party or to those of any children. They were, the website explains, '*developed by the Tavistock Centre for Couple Relationships, following a competitive tender*', without, it would seem, lawyer input.²³

²³ https://www.sortingoutseparation.org.uk/media/246742/hssf_briefingpack.pdf

11. Digital delivery can be directly used for the resolution of disputes through online mediation

This is discussed more fully in Working Paper 7. The *Rechtwijzer* programme steers those consulting it towards a mediated separation. Others directly purport to provide online mediation. A recent Australian study stated, in rather general terms:

It also seems clear that Online Dispute Resolution (ODR) is extending well beyond the resolution of electronic commerce disputes. This broader expansion is likely as international trends and perspectives continue to have an impact in all areas of law including in Family Law ... the Canadian report on the Evaluation of the Distance Mediation Project notes that "Information and communication technologies can, indeed, be used to deliver family mediation services in a competent, safe, and appropriate manner". A similar development has occurred in the USA where online mediation is conducted in cases where "one parent has moved out of state and/or when there are concerns about past incidences of violence between the parties". These statements indicate the broad areas where ODR could be useful. In the Australian legal and dispute resolution scenario, the use of ODR mechanisms for the resolution of family disputes has been supported and is likely to develop further due to two factors. First, the development of laws which require most family disputes to be mediated through a family dispute resolution process as a mandatory requirement before resorting to the relevant Court, and second, the increase in the use of technology.²⁴

²⁴ The Promise and Reality of Online Dispute Resolution in Australia' Tania Sourdin and Chinthaka Liyanage, published in Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution, Mohamed S. Abdel Wahab, Ethan Katsh

12. Implications for substantive law

In conclusion, discussion of delivery needs to be brought together with consideration of the substantive law on which advice and information is being given. If we are to adapt successfully to reduced legal aid and, thereby, a growth in self-represented litigants, we have to address some of the wider consequences. There is increasing judicial recognition in England and Wales of the need for simplification of substantive provisions. This is Lord Justice Munby in April 2014 on Family Law:

So much for the institutions; what of the substantive law? I should be very surprised if our law of ancillary relief does not undergo more or less radical reform over the coming years. The process has already started, prompted by important re-direction of the law by the Supreme Court and the recent report of the Law Commission ...

We need to reconsider practice and procedure so as to facilitate the use of out-of-court methods of resolving financial disputes, whether by mediation, arbitration or other appropriate techniques, at the same time further reforming the court processes in such cases to bring to bear all the techniques of judicial continuity and case management which have been so successful in children cases. Our aim, as with every aspect of the family justice system, must be to simplify and streamline the process so as to make it more user friendly for litigants in person and cheaper for all.²⁵

The Dutch government has formally recognised that simplification is required.²⁶ Both the United Kingdom Parliament and the Ministry of Justice need similarly to recognise that there is even more pressure than previously for statutes to be in Plain English and their content to be coherently set out. It may be that we should consider such reforms as a Plain English report to Parliament on the third reading of all but urgent legislation.

²⁵ 29 April 2014

²⁶ Letter from Minister of Justice to Parliament, Brief van de Staatssecretaris van veiligheid en justitie 12 July 2013

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