

Access to justice in Scotland

Scottish Universities Law Clinic Network conference
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I'd like to thank Malcolm and Elizabeth and Scottish Universities Law Clinic Network for inviting me to speak with you today about access to justice in Scotland.

For me justice is a pathway to social change.

We all have a part to play in effecting social change. I began volunteering as a law student at Castlemilk Law Centre back in the late 80's, before we had University Law Clinics. And it's why I wanted to become a law centre lawyer.

Winning a social security appeal can mean the difference between someone having enough money to live on or not. As can winning an Employment Tribunal. Defending an eviction or mortgage repossession action means the difference between having a home and being homeless. Ultimately all of these things impact on a person's quality of life. And if they have children, how can they do well at school when their parent's life is in chaos? Accessing legal advice and representation can literally change someone's life for the better.

If I can begin by talking about technology. We aren't utilising it enough. Earlier this year the Payment Services Directive revision – PSD2 – came into force and creating “*Opening Banking*” across the EU. In a

nutshell, in the UK, this means all of your financial data has to be accessible to a third party with your consent in a standard format.

In the private sector, debt management firms have used “*screen scrapping*” for years. This allows them to automatically capture your bank statements to populate income and expenditure statements, and verify spending. With Opening Banking this can be done instantly to produce, for example, a Common or Standard Financial Statement. The advice sector in Scotland spends hours in every debt or money advice case doing this manually. The Scottish Legal Aid Board could easily develop the tech to enable advice providers to produce financial statements instantly. The time saved would increase the capacity of advice providers.

Likewise, the Board could facilitate the roll out of software to enable agencies to send text reminders to clients. The amount of time lost in missed appointments is significant. Not everyone can afford to pay for this tech through the private sector.

Technology can also be used as a platform for self-help toolkits. Where people can be empowered, we should make toolkits accessible not just in PDFs, but in online or app formats.

My first experience of self-help toolkits was when we put ‘**D-I-Y**’ **bank charge refund letters** online in 2004. I had set up a £30 website and within a year, over 1 million had been downloaded for free. In fact, someone had taken our free letter templates and was selling them on E-Bay for £10. We took that as a compliment.

The bank charges campaign went viral across the UK in 2005, and the engine room was Govan Law Centre, powered by consumers from across the UK who helped find different terms and conditions for different years by UK banks, which we needed to lodge in court in contentious cases. The campaign helped get £1.7bn refunded for free to UK consumers. We were acting in cases across Scotland and England, working with an English banking law Q.C.

If that campaign took place today, you would have Claims Management Companies charging you a third of your claim to access justice. CMCs are big business and have literally made billions from mis-sold PPI. Why pay upwards of a third of your own money for something you can do yourself?

Toolkits can be very powerful indeed. In 2013, I wrote a free **Payday Loan Survival Guide**, which set out the arguments to challenge rollover interest and fees, with style letters. That Guide went viral across the UK, and was about payday lenders not doing affordability checks at the point of rollover. That's how they made their super massive profits, but under the 2006 Consumer Credit Act they had to assess affordability. The Guide worked and the following year the FCA told Wonga to write-off £220 million pounds of customer debt.

We did a similar thing with our **Bedroom Tax Toolkit**. This was downloaded for free across the UK, and had been inspired by an Opinion from Jonathan Mitchell Q.C., which we turned into a menu of self-help arguments to challenge the bedroom tax. I used one of these arguments in a Tribunal and secured the first unlawful discrimination success for a lady with primary progressive MS. I got a tweet this week from an advisor who said that Toolkit inspired her to challenge a case, which has since ended up

being successful before the UK Supreme Court. Self-help guides can cover any subject, and I'm sure Law Clinics will have opportunities to develop these.

We also have the opportunity to use technology to extend the reach of our services, or indeed, to work together more. Rural communities often don't have access to specialist legal services but they can do using **virtual legal services**. For example, a local organization can connect to a law centre using **Skype**.

We are currently looking at rolling out such a service utilising a **smart phone app** to enable documents to be securely scanned and uploaded. Ideally, a client or local organization should be able to do this in advance of a meeting over Skype. Instructions are obtained, advice given, and the solicitor or caseworker can then get on with opening and progressing a file.

There must be scope for law clinics and law centres to harness this tech to undertake strategic public interest litigation and pro bono legal work in Scotland. I don't think we have enough public interest litigation in comparison to London. There is no reason we shouldn't be doing UK-wide test cases in the Court of Session, as well as cases distinct to Scots law. Once you have invested in the tech, it can easily be utilised to help empower law clinics.

If I can turn now to the role of access to justice in the wider social and economic context.

I remember watching the decline of my working class community as a kid in Dundee's Whitfield. It was the story then – and the story now - of so many

working class communities across the UK. I don't believe that unemployment, poverty, discrimination, poor housing and destitution are accidental.

They are the product of political choices. The politics of omission.

The last eight years of UK austerity policies has been a return to the squalor of 1980's inequality. Social security law is being used to punish people with nasty Dickensian sanctions that create destitution. The security of full-time employment has been fragmented with the gig economy; people have been borrowing to make ends meet with 8.3m people with problem debts in the UK.

The greatest irony of all is that austerity was, and is, unnecessary. The great film director Alfred Hitchcock always used an absurd mystery to drive his plot, which he called the "**MacGuffin**". The story was never about the MacGuffin – which was literally guff – but a mystery was needed as a device to set up the real story.

The MacGuffin for austerity was the 2008 financial crisis. A self-made implosion caused by ethically corrupt, greedy casino traders and bankers. The bail out of the banks was always a balance sheet exercise, but the UK Government used that crisis as an excuse to get nasty with people they didn't like or value when they got into power in 2010.

For me politics, economics and the law are manifestations of power. And power isn't inherently bad or good. The reason we have good or bad laws is because **legislation is the manifestation of choice.** It's made up of

who we want to help, who we want to exclude, prejudices, favoritism, and often some good intention.

The law should always be a force for good, fairness and what is just.

And when it is not – like now - it's our job as law students or lawyers to campaign for change – and until change happens – use the law as best we can to mitigate detriment to the communities we serve.

I would like to give as an example, how Govan Law Centre has responded to the crisis of rough sleeping and homelessness in Glasgow.

The official statistics belie the true extent of homelessness and rough sleeping. Some years ago we realised we weren't connecting with many vulnerable groups, particularly rough sleepers, so we created our "**Rights Hubs**". These are multidisciplinary services including legal, debt and money advice, welfare rights, social care, with the ability to link in to various other statutory and third sector services.

We placed our Hubs in various locations, initially, within City Centre homelessness charities supporting rough sleepers, and then within mental health hospitals, social work care centres and health centres. The idea was to be as accessible as possible, and provide access to a range of services at a time and place convenient to the potential client.

Our Rights Hubs have been a great success and last year we secured half a million pounds from the Big Lottery to set up a similar model but focused on the private rented sector across Glasgow; and using a multidisciplinary team. While relative poverty in Scotland has declined for homeowners and those in the social rented sector, it has grown in the private rented sector.

The private rent sector has trebled in size in recent years, and rents have increased by 25% across Scotland's central belt in the last 6 years – double the rate of the Consumer Price Index. The problems associated with this sector will be very familiar to anyone practicing housing law.

Law centres and law clinics are in a prime position to use their casework experience to identify systemic problems within an area of social policy or legal practice. In my view, that experience should be used to develop solutions, backed up with hard empirical evidence, and used as a springboard for campaign work, lobbying and public legal education.

Returning to the issue of rough sleeping, Govan Law Centre has used its casework knowledge from the Glasgow Winter Night Shelter to highlight systemic failures, and campaign for change. We use judicial review assertively for clients – which we can do in-house with extended rights of audience – and have had over 20 cases in the last year or so. We've got 300 rough sleepers into temporary or permanent accommodation.

But we've also recognised casework in itself isn't enough, you need to get to the root of the problem. Last year we worked with the First Minister's Policy Unit, and were delighted to see the Scottish Government commit to eradicating rough sleeping, with an additional £50m over the next 5 years.

There is also a willingness to change practice and the law, and the work of an Action Group set up to make recommendations to the Government on how we can end homelessness will be debated in Parliament on the 27th June.

Of course there are many different ways to use the law as a tool for social change. The common thread is that building partnership support is essential for success. All things are possible, if you never lose heart, never give up hope, and keep trying.

**Mike Dailly
Principal Solicitor &
Solicitor Advocate
Govan Law Centre**

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