

## Vulnerability, legal need and technology in England and Wales

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### Abstract

This paper explores legal need and legal advice in England and Wales during the COVID-19 pandemic. It uses the lens of vulnerability theory to examine the ways in which this crisis exposed pre-existing fragilities between the state and its relationship with the advice sector, and the individuals who experience social welfare problems. The paper commences by exploring Fineman's vulnerability thesis and its application to those experiencing social welfare-related issues, as well as the vulnerability of the systems operating to give advice. The paper then considers the specific context of the COVID-19 pandemic and the impact on needs, and the ability of the sector to meet these needs. Drawing on policy documents, reports and three case studies from law centres in England and Wales, it discusses the concept of legal need and the realities being experienced. These case studies assist us in being able to critically consider the topics of vulnerability, changing needs and the role that technology is, and can play during the pandemic and beyond. Lastly, the paper points to the need for a critical consideration of the sustainability and format of legal advice in addressing legal need in the post-COVID-19 landscape.

### Keywords

Vulnerability, legal need, legal advice, social welfare law, technology

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## Introduction

Increased demand for legal advice following the outbreak of COVID-19 has amplified several of the existing challenges facing individuals experiencing social welfare law problems, as well as the advice sector in England and Wales. For decades, this sector has been subjected to an increasingly harsh funding environment under long-standing austerity measures, and providers have been challenged to meet increasing levels of demand following simultaneous retrenchments of legal aid and bureaucratisation of their practices (see Cookson, 2013; Morris and Barr, 2013). It is unsurprising, yet remains confronting, that unmet legal need has always been disproportionately experienced by those who are the most marginalised or disadvantaged within society, and particularly in relation to their interactions with society's institutions. It is against this contextual backdrop, this paper employs vulnerability theory, as theorised by Martha Fineman, as a lens through which to firstly, examine the implications of the COVID-19 pandemic for legal needs and the future sustainability of the advice sector, and secondly, to reimagine this trajectory in a way that is centred around Fineman's 'vulnerable legal subject'. The application of vulnerability theory in this way allows us to ground discussions in the dual recognition of the precarious position of those who require legal help and also the institutions that exist to provide such help, and in what formats this help can, or should take during a global pandemic.

Firstly, this paper discusses the significance of Fineman's (2013) theory of vulnerability, before demonstrating how the theory can be applied in a way that exposes the existing vulnerabilities of individuals, social groups, and institutions, as well as to reflect upon the respective roles of the state and its institutions in ensuring that citizens are able to access required support when they experience social welfare law problems. Secondly, the paper explores the context of legal need and legal advice in social welfare law in England and Wales and uses vulnerability theory to reflect on the consequences and implications of the COVID-19 pandemic. We use documentary analysis, drawing upon available policy and workshop reports to explore the perceived impact of the pandemic on social welfare law needs. Here, we demonstrate that this is not simply a case of increased legal need among those population groups who have traditionally experienced social welfare problems, but rather a situation in which there are a newly fragmented and diverse range of legal needs, as the pandemic has affected people from several different walks of life.

Further, we draw on three case studies accessed from law centres in England and Wales during the UK's first lockdown, which provide critical insight into how those working in the legal advice sector have had to adapt swiftly to these increased and changing legal needs, and do so through remote arrangements of working to provide advice. Throughout this discussion, vulnerability theory enables us to consider all of this in light of institutional and state responsibility, and reflect upon the extent to which the advice sector is able to respond to these increased and changing legal needs, in light of their existing infrastructural problems caused by limited resources and support from the state. Lastly, the paper considers the sustainability of legal advice in a post-COVID landscape and also highlights that the UK may benefit from what other jurisdictions such as Australia are pioneering, utilising technology to provide legal advice. This

section outlines that more consideration needs to be given to the role that technology is playing, and can play during the pandemic and beyond, as a means of reaching a diverse range of people with legal needs. In doing so, we demonstrate the need for a responsive state which supports the success of such innovations.

The paper concludes by arguing that the lens of vulnerability theory provides a useful means of exposing the historically problematic way that the relationship between the state, the advice sector, and individuals experiencing legal need, has been defined under neoliberal approaches to governance. Rather than conceptualising the advice sector as a vital conduit through which the state may provide its citizens with essential resources required to navigate their legal problems, the advice sector has been caught in an increasingly impossible position, where it is both struggling to meet its obligations to an enormously increased number of users, and is subject to infrastructural constraints from the state. By reimagining this crisis as one in which the state is responsive to the inherent vulnerability of its citizens, and recognises the vital role of the advice sector, we suggest that technology may be a potential way forward in ensuring that the sector is instilled with adequate investment that will enable it to continue providing vital services. Through the advice sector in England in Wales is used to explore these issues, with the subsequent critique referring specifically to the UK at which level social security and the justice system are both administered.

## **Fineman's theory of vulnerability**

At root, everyone is vulnerable. Fineman's (2013, p. 21) vulnerability thesis is premised on vulnerability as 'universal and constant when considering the general human condition', albeit this vulnerability 'must be simultaneously understood as particular, varied, and unique on the individual level'. The differences include physical, disability, chronic health conditions, and mental ill-health. These are some of the attributes or experiences that a lay person or, indeed, the legal system, might consider in order to view an individual as more vulnerable. Fineman's (2013, p. 21) thesis, however, goes beyond this narrow conceptualisation and allows us to also explore how some of this difference is 'social and constructed, resulting from the fact that individuals are situated within overlapping and complex webs of economic and institutional relationships'. Our relationship to the state and place in society, with its political and economic structures, is also an important part of our broader vulnerability profile.

The language used in relation to the concept of vulnerability is important to unpack, as there is a tendency to conceptualise vulnerability as synonymous with weakness. Rather, Fineman (2008, p. 9) argues that vulnerability should be reframed as 'a universal, inevitable, enduring aspect of the human condition that must be at the heart of our concept of social and state responsibility'. To this end, she has developed the notion of the vulnerable legal subject. This provides a vital metaphor through which to reimagine the relationship between individuals and the state in two ways. Firstly, it reframes the concept of vulnerability as an inherent prerequisite of the human condition – one that is both embodied in the very nature of being human, as well as embedded within society and the institutions that we all interact with throughout the life-course as a consequence of being embodied (Fineman, 2018, p. 62). This debunks the dominant liberal idea that

citizens are by default autonomous and self-sufficient individuals whose needs for support can be met informally or through traditionally 'private' structures like the family. As Fineman explains, under this rhetoric, 'when the state concedes it has some responsibility, it is only to serve as a highly stigmatized backup' for the failures of individuals (Fineman, 2017, p. 143). By reimagining this relationship by positioning the legal subject not as an autonomous citizen, but as a *vulnerable* legal subject, it recognises that every citizen, to fluctuating extents, experiences need for support at various points during their life, such as when they are very young, very old, experience misfortune or abuses of power, or simply fall unwell.

Secondly, therefore, it reframes our expectations about how the state should respond to support its citizens as they navigate its various institutions. For example, what Fineman's (2010, p. 269) thesis alerts us to is that, 'the counterpoint to vulnerability is not invulnerability, for that is impossible to achieve, but rather the resilience that comes from having some means with which to address and confront misfortune'. By 'resilience', Fineman is referring to the kinds of structural resources that state institutions can and should provide to individuals to enable them to weather difficult events in their lives, such as those listed above. She indicates that there are 'five different types of resources', namely 'physical, human, social, ecological or environmental, and existential' (Fineman, 2010, p. 270). These are essential for addressing the shared vulnerability of legal subjects, as they provide a baseline level of support to citizens. Imperatively, this reimagines the relationship between state and citizen as one in which the state is responsive to the needs of its citizens and recognises the inherent and fluctuating presence of vulnerability. This contrasts with the liberal fiction which depicts citizens as by default autonomous and self-sufficient, and only exceptionally in need of support. The state itself is, of course, a construct, and this construct may be understood as vulnerable in its own right – vulnerable to economic and global threats and pressures, and the ways that it responds to these may be proactive or reactive: austerity measures are just one of several ways that a state may respond. However, such a choice undermines a state's long-term ability to reproduce itself justly. Therefore, the vulnerable legal subject does not simply provide a way of critiquing the relationship between the state, its institutions and its citizens, but rather a method of reimagining what it might look like for the state to take a different response: one that involves investing in the long-term sustainability and health of the structures on which its citizens rely. Once we accept the key responsibilities of institutions in fostering these resources, it should be receptive to human vulnerability when considering 'the effectiveness and the justice of the operation of those institutions' (Fineman, 2010, p. 269). Importantly, by reframing legal subjects as vulnerable legal subjects, it is possible to appreciate the responsibilities of institutions to provide support to citizens, and the need for these responsibilities to be realised during unprecedented times of crisis such as a global pandemic.

The idea that the state should grow to recognise our universal vulnerability and the need to provide the scaffolding that can hold us up, was a principle of the post-war welfare state that was developed in the UK. The 1942 *Beveridge Report*, on which it was based, offered a system of social insurance accessible to every citizen. This system was to offer a state that would be there for citizens from the cradle to the grave. The offer is most obvious in terms of the National Health Service, with universal coverage that meant

anyone who fell ill had the help when they needed it, without judgment or stigma. The system of social welfare law that operates in the civil justice system under the legal aid scheme is supposed to underpin citizens' access to such crucial welfare entitlements and, as such, can be conceived as a crucial element of the UK's institutional offering to deal with our shared vulnerability. For Fineman (2019, pp. 368–369), 'policies and laws must construct and sustain an adequately responsive state – one that is grounded in vulnerability [and] addresses the range of dependencies inherent over the life-course', which speaks to the importance of a state institution such as the advice sector and the value of understanding this institution through a vulnerability lens.

## **Applying vulnerability theory**

Although the premise of the vulnerable legal subject is that we are all owed a baseline level of security in the form of resources from state institutions, vulnerability theory is also nuanced enough to recognise that there are differing levels of need for these resources. For instance, people who are in low paid or insecure employment, struggling to pay bills or perhaps in debt and worried about a visit from the bailiffs; those frightened about losing the roof from over their heads or maybe their immigration status is insecure and they risk being thrown out of the country. Contextually, austerity and the cuts under the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) have reduced the institutional resilience for many people who were already positioned precariously as a result of prior cuts to welfare and state support – or have suddenly realised their vulnerability due to an unexpected change of circumstances, like family breakdown or becoming embroiled in the criminal justice system (Mant, 2020; Newman, 2013). As an example, housing advice was removed from the legal aid scheme under LASPO except where there is a risk of homelessness. Legal aid for early advice is not available for disrepair issues until an issue is serious and impacts a resident's health. Further, while legal aid is still available to defend possession proceedings, this is only where loss of a home is imminent, and the landlord has sought an order for possession. Despite the government preserving public funding for homelessness cases, applications for legal aid in such cases has collapsed by a third (34%) since the cuts, while at the same time the number of rough sleepers has dramatically increased by 165% since 2010 (Heath, 2020).

In housing, as with so much of social welfare law, the decline in legal aid has meant that the legal advice sector has been decimated (see Robins and Newman, 2021). A third of legal aid areas in England and Wales now have one or no local legal aid housing advice provider (Law Society, 2019). One of the chief benefits of using Fineman's vulnerability thesis here is that her work does not simply focus on individuals or how institutions can shape their vulnerability, rather, it enables us to also recognise that institutions themselves are vulnerable; institutions can be 'captured and corrupted' and 'damaged and outgrown' (Fineman, 2008, p. 18). For Fineman (2008, p. 18), institutions 'can be compromised by legacies of practices, patterns of behavior and entrenched interests that were formed during periods of exclusion and discrimination but are not invisible in a haze of lost history'. This is no more evident than in the impact of neoliberal approaches to governance, which have reshaped society as one big market, in which notions like justice have been redefined in economic terms (Mant, 2017). One

of the most visible forms of this governance has been the austerity programme under the UK Conservative-Liberal Democrat coalition from 2010 and, thereafter, by the Conservative majority government). Austerity implemented following the post-2008 financial crisis has allowed for a punitive attitude towards the poor alongside the redistribution of income and wealth away from the poor towards the rich, and the deterioration of public services. Importantly, cuts to advice sector institutions and organisations that have traditionally supported precariously positioned citizens with legal needs, have been easily justified within this neoliberal political context. The advice sector, therefore, can also be understood as vulnerable, in the sense of being caught between the constraints imposed upon it by neoliberal governance, and its obligations to meet the legal needs of those who require its services.

Social welfare law has been hit particularly hard by austerity and LASPO, with whole areas taken out of scope for funding. The Legal Aid Practitioners Group has described smaller practices doing social welfare law as being ‘on their knees’, with only one in eight cases being taken forward through lack of legal aid, and a growing loss of practitioners and skills that is taking place (see Low Commission, 2014). There were over 1,000 fewer civil legal aid firms in 2017/18 compared to 2011/12 (Gilbert, 2018). Some firms have had their specialist casework capability undermined by the legal aid cuts. The ecosystem of legal aid provision here is fragile, which impacts on the providers but also the litigants who would rely on them. Vulnerability theory can therefore be used to push back against these antagonistic and suspicious approaches that dominate contemporary policymaking. It can be used to challenge the individualistic approach of neoliberalism, and has already been employed to explore the impact of neoliberal austerity in other areas of law – for example, Dehaghani and Newman (2017) utilise the vulnerability thesis to highlight that the institutions of criminal justice, such as legal aid, are vulnerable. By using vulnerability to show that the legal aid lawyer is supposed to provide resilience to the defendant Dehaghani and Newman (2017) argue that cuts to legal aid raise questions about whether this institutional protection functions in any more than a symbolic manner after austerity. The vulnerability in criminal legal aid must exist to the same – or to a likely greater degree – in the social welfare context considering, as per Robins and Newman (2021), that social welfare law was harder hit under austerity than criminal law.

The value of using vulnerability theory in this paper is to expose and bring into focus this ideological context of austerity politics, as we explore the consequences of the pandemic and demonstrate that this crisis has amplified several existing problems relating to systemic under recognition of the responsibilities the state owes its citizens, as well as to the advice sector organisations that exist to support them. This section has provided an overview of the vulnerability of both those who rely on social welfare law and the advice sector that underpins this aspect of civil justice. We will now move to explore questions of legal need and how this has been complicated by the COVID-19 pandemic. We will show how the crisis can be used as a reminder of the importance of recognising state obligations to provide advice and support for those struggling with social welfare-related issues, which have been further compounded by the impact of the pandemic.

## **Legal need in England and Wales**

Several studies over the past two decades in England and Wales have indicated that around a third of adults at any one time experience a civil, family or administrative justice problem (see Genn, 1999; Pereira et al., 2015; Pleasence and Balmer, 2014; Pleasence et al., 2004, 2006, 2010). Across both England and Wales, there is a relatively high prevalence of legal problems relative to population. However, understanding the nature and extent of legal need is more complex, because on one hand, experiencing a problem that has a potentially legal dimension does not necessarily mean that people need legal help to resolve it. On the other hand, many people may not be able to seek help, but nevertheless need this help to prevent their problems from escalating. An understanding of legal needs, therefore, must incorporate an understanding of the different strategies that people may take to resolve their problems, as well as the barriers they may face when doing so.

There are a broad range of strategies that people may take when they experience a legal problem. Some people may take no action because their problems are trivial or resolve themselves in time. Some may be able to negotiate a solution informally with the other party, avoiding the need for action or discussion of legal rights. Others may need to use more formal processes such as dispute resolution or court procedures to obtain a resolution. Typically, people will seek advice and guidance about what their options are, and which route would be most appropriate and useful for them given the nature of their problem and their individual circumstances. This advice may be from a law firm, or it may be from the broader advice sector. The advice sector in England and Wales plays a crucial role in providing legal assistance, advice and support to communities in relation to a wide range of legal problems. This sector is made up of multiple organisations offering non-legal support and information about the law, as well as advice from legal aid lawyers. Within the legal need literature from England and Wales, there are two important factors that underpin whether and where people seek advice, as well as the barriers that may prevent them from doing so: the type of problem and the circumstances of the individual experiencing the problem.

The actions that people take in addressing their legal needs may vary significantly across ‘population groups’ – in other words, the actions people take depend heavily on who people are, and the opportunities and resources they are able to draw upon when they experience these problems. The need for legal assistance and advice is often characterised by structural and institutional barriers, which relate to the ways that people are positioned within society. For example, on this point, scholars have discussed the importance of ‘legal empowerment’ and ‘legal capability’ (Mirlees-Black, 2019). These concepts refer not only to the difficulties that people may face when they try to seek help, but also the confidence that is required for people to believe that they can take action, and that taking action will improve their situation or resolve their problem (Gramatikov and Porter, 2011). Generally speaking, people do not tend to recognise that their problems have a legal dimension, and even if they do, either the actual or perceived costs of lawyers prevents people from conceptualising formal action as a realistic option for them (Franklyn et al., 2017). The extent to which people are empowered to articulate their legal needs and to make use of available support, is much more constrained for

particular groups who face broader barriers within society. While a liberal conception of legal needs might imagine these groups as deficient or lacking in personal responsibility, a vulnerability lens allows us to recognise that these population groups are those who have been let down by their interactions with the state, in that they have been denied a baseline level of resources that might enable them to navigate resolutions to their legal problems. In particular, it is a consequence of failing to acknowledge the truly embedded and connected nature of our vulnerability, and how unequal levels of resilience can become compounded by interactions with state institutions.

Unsurprisingly, unmet legal need is disproportionately experienced by those who are marginalised within society, and who are unable to obtain resources of support from their interactions with other state institutions. For example, those relying on the state for welfare, those with unpredictable and insecure employment arrangements, as well as those contending with circumstances like poverty, low levels of education, domestic abuse, mental health problems, health conditions and disabilities all increase the likelihood that people will experience problems that require legal resolutions (Mirlees-Black, 2019). In addition to being more likely to experience serious legal problems, these population groups are also more likely to face barriers that may prevent them from accessing assistance to resolve these problems. This is because even when advice is available for free, a basic level of resources and support is required in order to enable people to engage with sources of advice. Economic and physical resources are needed in order to travel between different services, invest time in advice-seeking and relevant research, source relevant forms or print paperwork (see Newman, 2016; Pereira et al., 2015; Pleasence and Blamer, 2014). Simultaneously, social and cultural resources are also needed in order for people to be able to understand the legality of their problem and where to seek help, as well as to rely on others for things like childcare and moral support.

Despite providing a vital lifeline of support for particular groups, the advice sector has itself experienced vulnerability, in the sense of having been subjected to an increasingly harsh funding environment under decades of long-standing austerity measures. Across England and Wales, providers have been challenged to meet increasing levels of demand following simultaneous retrenchments of legal aid and bureaucratisation of their practices. For context, in England and Wales, the overall budget for the Ministry of Justice has been reduced by 40% in the past decade, which is one of the deepest cuts that have been made to any government department (Law Centres Network, 2020). The effects of this are combined with the implications of broader austerity measures within society, such as more limited availability or punitive approaches to the provision of state welfare, as reports suggest that while the number of third sector legal aid providers has more than halved since 2013, demand for help has increased by as much as 400% in some areas of England and Wales (Law Centres Network, 2018). As such, the advice sector has already been placed under significant strain. Nevertheless, it continues to provide a vital source of legal expertise and support to communities who would otherwise be unable to resolve their problems.

## **Impact of COVID-19 on social welfare law and legal needs**

In order to explore the impact of the COVID-19 pandemic on social welfare law, we use documentary analysis of key sources which have emerged during the aftermath of this

crisis. These include, firstly, the series of Legal and Advice Sector Roundtables organised by LawWorks (2020a, 2020b, 2020c, 2020d, 2020e), which brought together approximately 40 leading legal and access to justice organisations across England and Wales to consider legal needs under the crisis as well what challenges they were facing in meeting them. These roundtables took place across the first period of lockdown in England and Wales, with meetings in March, April, May and June. Secondly, the Law Centres Network (2020) has compiled a report which has the dual purpose of marking their 50th anniversary and providing a key overview of how demand for their services has been affected by the COVID-19 pandemic, and how Law Centres are adapting to help their clients. Thirdly, Byrom et al. (2020) produced a rapid review into the impact of Covid-19 on the civil justice system based on online submission from practice and lay stakeholders who had experienced the justice system in the early stages of the pandemic. These sources bring together expertise and experience from the front-line of the civil justice system and provide the first initial evidence on the context and impact of COVID-19 on legal advice and the justice system.

It is, of course, difficult to draw together a comprehensive understanding of the impact of COVID-19, as many of these consequences are likely to have long-term effects for the extent and nature of legal needs. However, these sources indicate that both the threat of the virus as well as policies implemented by the English and Welsh governments in response, have had a range of short and long-term consequences for both the extent of legal need and the capacity of the advice sector to meet this need. These consequences include a reduction in available services – in terms of legal aid providers, provisional statistics indicate that in civil law, the pandemic-related restrictions led to a 34% reduction in legal help new matter starts in England and Wales (Ministry of Justice, 2020).<sup>1</sup> This consequence is combined with the necessary suspension of face-to-face advice provision, and the backlog of delayed court cases which left many people in difficult circumstances with unresolved and potentially escalating legal problems during the lockdown (Byrom et al., 2020). Both of these consequences are further compounded by the reality that the economic aftershock of the pandemic has also led to increased financial and social instability among those on low incomes – meaning that more people are now in need of their services (Halliday et al., 2020).

Taken together, this data suggests that the pandemic has had two important implications for advice provision. On the one hand, advisors are facing practical and logistical challenges of how to continue to support their service users in the midst of a pandemic. For example, as the government imposed lockdown measures, organisations had to quickly adapt their practices for home-working, which comes with practical and logistical difficulties, including advisors using personal computers and phones in order to provide support to clients, and redirecting letters to home addresses (LawWorks, 2020a, 2020b). Lawyers working either privately or for advice sector organisations are facing significant challenges maintaining confidentiality, and communicating effectively with clients contending with learning disabilities, autism spectrum disorders and mental health conditions (see Equality and Human Rights Commission, 2020; House of Commons Justice Committee, 2020). On the other hand, they are also faced with changing demands – not only an increasing number of new clients requiring their services due to the impact of the pandemic, but also a concerning absence of those groups who have

traditionally relied upon these organisations. These implications raise important questions about the potentially expanding scope of unmet legal need, the specific population groups who are most likely to fall into this category, and how the advice sector may continue to support these communities long-term, given the precarious political and funding contexts in which these organisations were already operating.

One of the immediate and most obvious consequences of COVID-19 was an increase in demand for advice and support. Following the imposition of lockdown measures, organisations have reported a sharp increase in demand for support across the services being offered via telephone and online and expressed concern about their ability to meet this level of need (LawWorks, 2020a). Importantly, this demand has comprised of a far greater prevalence of those needing help in relation to employment law and debt, as jobs become more insecure and more people are moving into poverty. Specifically, compared with the same period in 2019, England and Wales have seen a 67% increase in queries relating to employment issues at the CAB, unprecedented traffic on websites providing information on social welfare and employment issues, and an enormous 551% increase in the number of people starting to claim Universal Credit (Law Centres Network, 2020; LawWorks, 2020c). Viewing this through the lens of vulnerability theory, it is possible to appreciate that large sections of society are now experiencing a lack of resilience in the sense of finding themselves suddenly in need of these resources. The pandemic has highlighted that vulnerability is not a personal characteristic that can be isolated or attributed to particular population groups who might be dismissed as deficient in personal responsibility. Rather, it has exposed the fiction of invulnerability: those who previously did not consider themselves vulnerable – and were not constructed as exceptionally vulnerable under state policies – are suddenly confronted with their own vulnerability. In turn, institutions such as the state, the legal system, and the advice sector are also facing the consequences of their own susceptibility to failure or collapse. Arguably, the state is – perhaps for the first time – being forced to engage with the interconnectedness of human vulnerability, and the need to ‘pull together’ during a time of crisis. However, responses have continued to be framed along neoliberal notions of exceptionalism, for example by introducing specific, temporary initiatives such as the furlough scheme or the top-up to Universal Credit. A significant concern, therefore, is that the broader under-recognition of the vulnerability of legal subjects, and the related historical underfunding of the advice sector, has impaired the ability of these organisations to provide adequate support.

This increased demand for support is only likely to continue increasing as the long-term economic impact of the pandemic become more apparent, as government support schemes begin to come to an end (LawWorks, 2020c, 2020d).<sup>2</sup> For example, the Law Centres Network have drawn attention to the way that COVID-19 has led to an expansion of the population of those in legal need to include a demographic they have termed ‘LOLAs’ – people Living Outside of Legal Aid, due to falling into the gap between the eligibility threshold for legal aid and realistically being able to afford to pay for legal help privately (Law Centres Network, 2020). While there have always been a significant proportion of the population who are caught in this gap, the consequences of the pandemic mean that an unprecedented number of these individuals are now beginning to experience legal problems for the first time. Importantly, even if some LOLA clients can

pull funds together to pay average legal fees, the cost of doing this is likely to push many of them into poverty, which will come with further problems and circumstances with which they will need support from the advice sector (see Hirsch, 2018). The proportion of LOLAs who may begin to experience legal problems as a result of the pandemic, and who are likely to seek help from the sector is an enormous proportion of the population – according to the Law Centres Network (2020), those who would have to choose between poverty or no legal protection include 44% of working single individuals, and 65% of working parents with multiple children. Within this increased population of those in legal need, therefore, there are important differences in the levels of resources that people are able to draw upon when they try to access the support available from the advice sector. LOLAs, therefore, consist of vast numbers of people in need of vital resources and support. However, the demands that these numbers are placing on the sector have raised important concerns about whether this new demand may in practice be drowning out the needs of those marginalised population groups who have formed the traditional client base of the advice sector.

Digital equality has been identified as an important consideration (see Byrom et al., 2020). Demand varies hugely depending on the service model. Those organisations such as Citizens Advice that relied more on telephone-based advice had received many calls (Byrom et al., 2020). But a telephone-based service was widely acknowledged as inadequate for addressing legal need. Law Centres, for example, were seeing fewer of their most marginalised clients. There was a concern that people who might most need them were not able to access their services. Most Law Centre work now came through emails and advisors were worried that many litigants in person could be missing out. The feeling was that, those in the greatest need do not have the technology – the broadband or even the phone account – to be able to access services (Byrom et al., 2020). Many clients had no credit on their mobile to call in. Phone services could cause significant difficulties for many disabled people. Overall, the sense was that within the increased numbers of people experiencing legal need, there are different population groups with varying levels of resources, which can determine the extent to which they are able to seek help from the advice sector. Importantly, those people falling into the groups who have been traditionally served by the advice sector, are likely to be in the greatest need, but in practice may be left entirely without support due to the shift away from face-to-face legal assistance, and a lack of access to resources that would enable them to access these services digitally. Moreover, if the sector is already working beyond capacity to meet the needs of LOLA clients, they are unlikely to be able to extend their efforts to reaching their traditional client groups, who may now be an effectively hidden population of unmet legal need.

As well as the short-term impact of those needing help during the current crisis, many legal issues tend to co-occur. There may be immediate demand for help with employment or welfare issues but there will also be knock-on effects and accumulation of need for other issues, for example family problems, mental health issues, or housing problems. The concern, then, is that legal need is being stored up with some of these problems yet to hit. COVID-19 has impacted the underlying legal need – those being financial volatility, job security and family stability. Further, the full impact of COVID-19 is likely to be delayed by some of the interim government measures that sought to mitigate these

impacts, such as the moratorium on evictions or furlough scheme. It may be that some of these changes will persist. What we see now may or may not be an indication of longer-term trends.

Importantly, the crisis of the COVID-19 pandemic has exposed existing fragilities in terms of the sustainability of the advice sector. Funding is a big issue for these organisations, one that they acknowledge has merely been exacerbated by the pandemic (Law Centres Network, 2020). The three key issues for the sector that have been highlighted during the pandemic are: cash flow; loss of income, and; the difficulties and uncertainties in future financial planning and fundraising. Providers have fixed costs of delivering services that cannot be easily be deferred or shifted through other forms of financial relief that are available. Legal aid providers are facing particular problems where this is their core income. Without secure funding, unmet need as the pandemic goes on and when England and Wales move beyond the crisis, is uncertain. The pandemic has therefore emphasised the existing vulnerability of the sector. Having always being caught between the need to support the populations of citizens with unmet legal needs, and the constraints of limited state support, the sector is now vulnerable to falling short of its obligations to respond to this unprecedented increase in unmet legal need from a diverse range of people experiencing a lack of resilience and requiring support. This sector is now characterised by concerns about widespread collapse and continued doubts over sustainability.

## **Case studies capturing views from the frontline**

This section sets out three case studies from law centres in England and Wales. These are provided by Jane Emmanuel, Development Manager at Bristol Law Centre in the south west of England; Sue James, Supervising Solicitor at Hammersmith and Fulham Law Centre in the south east of England, and Warren Palmer, Centre Director at the Speak-easy Law Centre in south Wales.

Law centres have existed for several decades and play a key role in working within their communities to defend the legal rights of local people. They are independent charities, not-for-profit legal practices with local organising committees and specialise in social welfare law, with staff trained to offer legal advice, conduct casework and represent individuals and groups. They take a holistic approach and consider themselves part of the communities they serve. The core services are provided without charge to the public, with funding coming largely from local authorities, the Legal Aid Agency and charitable foundations. Therefore, they are fundamentally different from private practice legal providers in that they are not subject to the same market pressures of profitability. They also often provide training and education to local residents. Law centres typically offer lower wages to their practitioners and have less support staff such as paralegals and secretaries compared with firms in private practice. Following austerity in the United Kingdom, many law centres have closed, though their ranks have been swelled by five new centres opening in the last decade (Mayo *et al.*, 2015).

We asked senior practitioners at three law centres based in England and Wales, to reflect on the impact of the COVID-19 pandemic on their work over the first 6 months of the pandemic. In particular, we were interested in the extent to which they have been able

to reach traditional clients, who may now be hidden within the post-COVID context of increased legal need. Asking practitioners for reflections is an effective method utilised by researchers to gain insights and perspectives from the ground (Asquith and Bartkowiak-Theron, forthcoming). We set them the following three questions to consider and asked for a short reflective account in response to them:

1. How has their work changed since the outbreak of COVID-19 pandemic?
  - a. Specifically, how has their client base changed in this time?
  - b. Specifically, how have they had to adapt their approach in this time?
2. Are there any needs that cannot be met remotely?
3. How did/does technology factor into the work?
  - a. before the pandemic;
  - b. during the pandemic;
  - c. what are the opportunities and challenges of using technology post-pandemic?

### *Human faces behind the statistics: The experience of Betty*

Discussions with those working in law centres demonstrate the need for resources and systems which operate to protect the rights and well-being of everyone in society. Lack of resilience was evident in the human stories and lived experiences, such as the following law centre client's described by Sue James:

Betty is 88-years-old. She has one kidney and a gastric ulcer . . . is in pain but can't get her hospital treatment and neither can the surveyor attend to prepare a report on the disrepair (of her home). Everything has been paused . . . She has a background of health issues and domestic abuse . . . The psychiatrist appointment was cancelled because of lockdown and we are now organising a capacity assessment via Zoom with assistance from her family. She struggles to speak on the phone because she is hard of hearing . . . and has difficulty using digital technology without assistance . . . We are assisting her in an application to set aside a possession order and injunction. The hearing of the application was listed for a telephone hearing . . . The Court does not provide clear guidance on how a telephone hearing operates and the prospect . . . made Betty withdraw even further. Fortunately, the application to set aside the order was granted . . . Legal proceedings are frightening for our clients in ordinary times. Face-to-face appointments enable us to support . . . clients through the uncertainty. Our office is a safe space away from their homes, where they could provide instructions without interruptions, especially for those with caring responsibilities. It is impossible to provide that same support remotely.

Betty's experience demonstrates vulnerabilities in relation to health, disability, past trauma, and needs in relation to support and the digital divide. Further, the importance of face-to-face engagement for many clients is also clear. In particular, by viewing this through the lens of the vulnerable legal subject, it is possible to appreciate that Betty requires support in relation to her housing problems, and the advice sector would traditionally have operated as an important conduit through which the state could provide

vital resources to ameliorate her vulnerability. However, due to the requirement to work remotely, the law centre has struggled to find alternative means of providing this support.

### *Needing to adapt during the pandemic*

As demonstrated by the experience of Betty above, the changes that occurred during the lockdown have brought many challenges and the need to adapt is a common theme discussed by those working and managing law centres. As Jane Emmanuel states:

when the Government announced lock-down . . . in common with many advice and advocacy organisations . . . we saw a sharp decline in the number of people approaching us for our services, although we had quickly switched to working from home.

Jane Emmanuel outlines that Bristol Law Centre has been able to ‘maintain the scheme with law students now providing telephone support for clients’, with all of their services moving to ‘telephone advice’, the staff have ‘seen a significant decline in the mental health of our clients, and telephone conversations exacerbate this’. The only face-to-face work is for cases involving immigration issues, as ‘language difficulties and the poor mental health of . . . clients’, would make telephone or other means challenging or impossible. Similarly, Sue James states that, ‘[d]uring the pandemic we closed our physical office and moved all our services online’ and notes that in order to ensure people were aware of the changes they:

advertised on social media and produced a leaflet to be sent out with every food parcel delivered by the Foodbank. We are also working with the Foodbank by calling back people who have received food parcels to assess their legal needs.

These ways of adapting appear to have been implemented swiftly, with the needs of clients prioritised. The changes however bring many additional pressures for law centres, as Jane Emmanuel observes, they are now ‘having to cope with the muddle of the court services, and different interpretations being made at different courts, particularly the Immigration Tribunals’, and ‘cases . . . taking longer’. Warren Palmer describes the ways that they adapted to an exclusively remote service (and how some contact options were more popular than others):

we extended the hours during which our phone lines are open and advertised by way of social media and our website that we are still able to offer advice for debt, benefits, housing and employment problems by way of telephone, email or webchat. Interestingly, there is little or no interest in the webchat option, but email enquiries increased from their usual level quickly. Phone enquiries were initially quiet but have increased over recent weeks.

It is evident that those law centres that did not offer online assistance to clients prior to COVID-19, have had to adapt in a quick timeframe. Significantly, this involved adapting to other systems not operating the way they once did, such as hearings and other referral services, are noted as affecting their clients’ access to services more widely. This demonstrates an impressive ability of the advice sector to adapt their approaches in a

way that is responsive to the vulnerability and needs of their clients. However, as explored in the previous sections of this article, this creativity is ultimately constrained by their own vulnerability to a historic lack of infrastructural support from the state.

### *Impact during the pandemic: Legal need and unmet legal need*

Each of the law centres notes a change in the client population, a notable increase in the amount of legal advice need required, differences in the types of social welfare issues clients require advice on and the predicted legal need when protections against evictions, furlough procedures and state benefits are removed. They each also note an increase in the number of clients reaching out from the beginning of the pandemic. Sue James observes that the closing of their ‘physical office has meant our usual clients are not accessing our service . . . we have seen a rise in clients who are outside the scope of legal aid and their means too high’, such as ‘more private tenants with higher income and students’. Similarly, Jane Emmanuel notes the change in ‘our cohorts’, with now ‘greater numbers of younger working people approach us’.

The types of legal needs have also been impacted upon. Warren Palmer outlines some of the difference:

we have noticed a change in the types of benefit enquiry that reflect changes both in the demand for benefits and the operation of the Department for Work and Pensions. We continue to receive significant numbers of enquiries for disability benefit appeals, but since the suspension of medical assessments, appeals against decisions regarding fitness for work . . . have been nearly non-existent. We have seen an increase in the number of enquiries regarding Universal Credit, including enquiries from people who have no real knowledge or experience of the benefit system but have to claim . . . as a result of the loss of work. We had a large number of enquiries about the Furlough Scheme, reflecting uncertainty over eligibility regarding the scheme.

Each of the representatives predict that there will be additional pressures for certain aspects of social welfare legal needs. In particular they predict that those navigating COVID-19 related illnesses are likely to be those already claiming state support/benefits and they are likely to require additional support. There are already unmet legal needs due to shortages in resources, staffing constraints and a rise in demand for services, with concern existing that this is predicted to increase substantially. As Jane Emmanuel observes:

weekly the demand for employment advice has been accelerating, and we are unable to fulfill demand – this ranges from issues of furlough and safety of returning to work, to now, more frequently issues relating to redundancy and unfair dismissal. Our Discrimination work, in so far as it affects employment is similarly full . . . In order to address the need we need further resources to increase capacity.

As the contributors note, while legal need is increasing, state resources are not. This is resulting in unmet legal need, and an inability to support clients in accessing services available prior to the pandemic – particularly among those population groups who have

traditionally relied upon the sector, who may now be hidden within the swathes of people now experiencing legal need for the first time. The pandemic has therefore had the important effect of exposing the fragility of the advice sector as it is currently conceptualised within neoliberal governance.

Through vulnerability theory, it is possible to appreciate the deeply problematic way in which citizens have been conceptualised as individually responsible for sourcing the support they need to resolve their legal problems, especially when those problems stem from interactions with the state itself, as is the case in social welfare law. Additionally, this conception of vulnerability as a problem that lies with the individual alone has justified a historic misrecognition of the crucial role of the advice sector in providing people with vital support and resources when these circumstances emerge. It is only now, where a global pandemic has exposed the susceptibility of individuals to crisis, that the extent to which the state has fallen short on its responsibility to support this sector has become apparent.

Nevertheless, as we can see from the case study of Betty above, law centres are well practised in the task of innovating with limited resources. Staff working in law centres play key roles in reaching out to hidden groups, identifying the needs of clients and supporting them as much as possible. As the swift actions of law centres launching social media campaigns and contacting recipients of food parcels indicate, many law centres are still doing their utmost in terms of reaching out to potential clients, and this social justice role is vital. An important part of this innovation centres around the use of technology, and its usefulness in light of the 'digital divide'.

*Benefits and constraints of technology.* When asked to consider the benefits and/or constraints of utilising technology during the pandemic and what the opportunities and challenges of using technology post-pandemic might be for law centres and their clients, there were mixed responses. While Jane Emmanuel notes positives in relation to training staff and having meetings online 'enabling us to participate equally and without expense and time of travel' and Warren Palmer explains how they were able to realise some of the potential of existing digital systems noting:

we have used an online case management system for approximately six years, but this was essential during the pandemic, allowing advisers to work remotely, accessing documents and case notes.

Warren Palmer also notes how they could achieve similar with some clients: 'we have increased the use of email with our clients and, occasionally, WhatsApp or other secure messaging options, although there are limitations to these'.

The limitations Warren Palmer speaks of are what has come to be referred to as the 'digital divide',<sup>3</sup> clients' lack of accessibility to suitable equipment, internet access and data, are clearly presented as serious issues in meeting legal need and providing advice. As the contributors note:

we are . . . concerned that those most disadvantaged by not having access to technology . . . are being excluded, and we are leading a project to get information to households . . . that we are all open, albeit through phones. (Jane Emmanuel)

we believe that there are a number of clients who have not been able to access our advice because the office is physically closed . . . These would particularly include those who struggle to communicate in English, but also those who do not have good access to the internet or are uncomfortable in using IT. This is likely to include some of the most vulnerable of our usual clients, which is why we are keen to open up . . . as soon as possible. (Warren Palmer)

The contributors also outline that there are certain social groups and specific social welfare issues that are acutely affected during the pandemic. In particular those working in legal centres note that those from BAME communities and those for whom English is an additional language, appeared to not be accessing services via technological means:

we know from other advice agencies who are our referral partners . . . that there has been a decline in BAME communities approaching us for services – this is mainly because they are more likely to access services through drop-ins offered by our partners. (Jane Emmanuel)

unsurprisingly . . . almost all enquiries by phone and email were by people who were able to communicate well in English . . . over the period of lockdown, a far lower percentage of our clients struggle with English than would be the case when clients can access our office and see advisers face-to-face. (Warren Palmer)

Similarly, the contributors note that those experiencing homelessness, mental ill-health and addictions were also less likely to engage with technology, preferring face to face advice and hearings in person:

staff are using Zoom and Teams to communicate but this is much harder for our clients. They rarely use this technology or even email. The telephone is the main means of communication. This is particularly so for the elderly . . . Our immigration team have used video conferencing more with clients and interpreters. Housing not at all. Our clients have not wanted to take part in remote welfare benefit telephone hearings, preferring to wait for a face-to-face hearing. Those most affected . . . are clients who are homeless, have mental health or drug/alcohol addiction, who often have their mobile stolen or lose/sell/replace their mobile, so they come into the office regularly in order to maintain contact and provide instructions. Without having the office open, we are losing contact with those that are most vulnerable, technologically illiterate or don't have access to phone/internet/email. (Sue James)

The section that follows will consider whether such measures are sustainable, and considers, by drawing upon comparisons with Australia, what a post-COVID-19 legal advice landscape might look like and the role that technology is playing and can play during the pandemic and beyond. Importantly, this section will reflect upon the imperative role of state resources in supporting technological innovation, and a broader recognition of the responsibilities inherent within the relationship between the state and its

citizens in ameliorating the vulnerability that stems from the experience of social welfare law problems.

## **Sustainability and a post-COVID landscape of advice**

As noted above, the COVID-19 pandemic has exposed many important questions about how the advice sector may continue to support communities in the long-term, especially as legal needs are likely to remain high for the foreseeable future. Using Fineman's vulnerability thesis, we are able to understand the vulnerability profile of both service users and the sector; matters of individual and institutional resilience. One major challenge is the capacity of the sector to meet broad and varied legal needs, while accommodating potentially huge levels of demand, as well as finding new methods of outreach, such as using social media.<sup>4</sup> This is compounded by the political environment in which the advice sector has been operating, with austerity measures resulting in tenuous funding arrangements, coupled with increasing demand for free advice, due to greater precarity within society. So far, vulnerability theory has been utilised to explore the fluctuating nature of vulnerability as experienced by both individuals experiencing legal need, as well as the advice sector which exists to support these individuals to resolve legal problems. Now, this theoretical lens will be used as a means of imagining a future trajectory for the advice sector and its users – one in which the inherent vulnerability of citizens is recognised, as is the need for the advice sector to be able to provide vital resources and support, through a responsive state.

In practice, the COVID-19 pandemic has exposed and amplified pre-existing concerns about the sustainability of the advice sector in this context and the lack of institutional resilience following austerity. For example, there is not a transparent or evidence-based assessment of how much legal assistance is required to meet legal needs, nor how much this financially costs in reality. This makes it difficult to recruit and retain staff (LawWorks, 2020e). In England and Wales, the survival of the sector has depended on its ability to subsidise these shortcomings with income from other departments or grant funding – both of which tend to last year to year, rather than providing long term security (Minnoch and Teather, 2020; Shearer, 2020). At the point of the first United Kingdom lockdown, 76% of Law Centres had less than 6 months' worth of reserve funding, leading to significant concerns about the kinds of services that the sector can offer, loss of income, practical difficulties and uncertainty in terms of future funding (LawWorks, 2020c).

Some short-term security has been made available through special one-off grants such as the Community Justice Fund, which was launched to help social welfare agencies with the immediate impact of the pandemic and begin to lay foundations for the future (LawWorks, 2020c). The UK's Ministry of Justice offered an emergency £3million grant to help many Law Centres avoid closure as a result of the immediate cash flow problems (Law Centres Network, 2020). These initiatives were welcomed by the sector and demonstrate some acknowledgement of state obligations to keep these services running and actively supporting citizens experiencing vulnerability in light of their legal problems. However, the short-term nature of these interventions still falls short of recognising that these obligations are not limited to the aftermath of the pandemic – rather, these are

obligations that have been surpassed for decades during austerity, and the consequences of this have only been further exacerbated by the pandemic. The short-term nature of this funding means that organisations will still have to rely on precarious year to year funding models as this demand continues to persist after this initial period of lockdown (LawWorks, 2020e). A consistent unease among the sector is that the historical constraints of bureaucratic barriers and strict eligibility measures imposed by the Legal Aid Agency will prevent advisors from effectively responding to these changing legal needs, and severely impair their ability to support individuals in the post-COVID-19 landscape (LawWorks, 2020a). As noted in one of the LawWorks (2020b) roundtables, ‘the sector is on a knife-edge already’, and this pandemic has only amplified these existing tensions.

Given the financial and pragmatic constraints that have always framed the context of advice provision, this sector is by no means unfamiliar with innovation. As demonstrated above, even at the early stages of lockdown, organisations have invested time and effort into developing shared systems and platforms in order to provide a single point of access for clients, ease the process of referring clients between services, and sharing resources and methods for working remotely (LawWorks, 2020b). In the longer term, there is significant concern across advice sectors that their organisations continue to rely largely on the government for funding, as well as short-term grants, the availability of which can both be affected by events such as the pandemic (Alford and Farrell, 2016; Law Centres Network, 2020). As such, the pandemic has prompted the advice sector in England and Wales to consider new ways of demonstrating the importance of their work. The Law Centres Network (2020) has argued that greater engagement with the legal community and the public is imperative to ensure that lawyers are encouraged to participate in pro bono activities and fundraising, as well as raise public awareness of their work. Innovation within the sector is therefore as impressive as ever, however it remains ultimately constrained by the infrastructural limitations imposed upon it by the state. In light of the increased need for legal support during the pandemic, we suggest that there may be some appetite for the government to begin investing in technology, and that this would provide a more stable, long-term source of financial security for the advice sector.

In light of the pandemic, organisations have identified that there will be a much bigger role for technology in the delivery of their services (LawWorks, 2020a). As discussed in the case studies section, in response to the lockdown measures law centres have had to transition to utilising technology as their main medium of communicating with clients. Prior to the pandemic there have been some technological advancements in the UK, such as FLOWS and CourtNav. These platforms have already shown valuable potential in helping to direct survivors of domestic violence who are still eligible for legal aid towards legal services, and similar innovations may be extremely useful for easing some of the current demand for free advice (LawWorks, 2020d). This idea of directing clients to other sources of help is likely to be particularly pertinent for the new LOLA clients, who the Ministry of Justice suggest are likely to be generally confident and digitally competent (LawWorks, 2020c). These users may be assisted via several technological innovations, such as greater use of the AdviceNow online guides, which would potentially ease demand on services and enable organisations to devote more time to providing immediate and targeted assistance to traditional sector clients who are at risk of disappearing and falling into cycles of precarity and escalating circumstances.

Prior to the pandemic, community legal centres in other jurisdictions such as Australia have been utilising video conferencing as a substitute for face-to-face consultations with clients, utilising social media and smartphone applications as an information tool (see Sam and Pearson, 2019, pp. 68–70). Notably technology is at the centre of two innovations currently being proposed in England and Wales. Firstly, a ‘Free Legal Answers’ website which is based on a model from the US, and secondly, a portal to connect and co-ordinate organisations offering pro bono services called ‘Justice Connect’, which has been successfully piloted in Australia (LawWorks, 2020d, 2020e). Significant evaluation of such platforms should take in to account diverse user perspectives in accessing effectiveness. As demonstrated above, while those working in the law centres acknowledge that technology has been useful in facilitating staff meetings, training and recruitment of additional volunteers, the ‘digital divide’ and existing inequalities have been further exacerbated. It is therefore imperative to embrace technological innovation as a means of helping to meet the needs of those for whom such methods are appropriate, and freeing up the time and space for advisors to continue their outreach strategies to meet the needs of hidden population groups, who may be unable to access services digitally.

Rather than conceptualising technology as an effective replacement for legal aid and advice services, we suggest that when drawn together with research that examines the nature and extent of legal needs, technological innovation can play an important role in facilitating the targeting of advice and support towards the different population groups that now comprise the client base. Importantly, this may provide an important means of addressing at least some of the historical problems relating to the obligations of the state to respond to the vulnerability of both the advice sector and the who rely upon it, now that the pandemic has exacerbated these problems. Such investment in technology must be done in a way that accounts for the different ways that people are experiencing legal problems, and in light of the reality that the parameters of these population groups may continue to shift as the implications of the pandemic become more apparent. As we have seen in the case studies above, the example of the ‘missing middle’, who are individuals who are working (thus, over the financial income threshold to receive free services) and are now contacting law centres for advice about issues such as housing during the pandemic, may be one group for which greater use of online guides, and other advice platforms such as live chat functions and AI Chatbots for initial support, may have the potential to ease the increases in legal need (see Sam and Pearson, 2019).

In order for legal technologies to cater for the diverse needs in existence during and following the pandemic, systems must be designed holistically and ultimately as the building body of evidence is demonstrating, they may not be accessible to all clients. As this paper has demonstrated, while technology appears to be assisting law centres in England and Wales to meet organisational needs in a more efficient manner, there is the potential for inequalities in client services to persist as they are being exacerbated by the ‘digital divide’. Nevertheless, the use of technology highlights a potentially useful avenue through which the advice sector may be able to encourage the state to fulfil its responsibilities in terms of providing infrastructural support, and enabling this sector to use its own expertise to pass on the required resources that specific individuals need when they experience legal problems. While complete reliance upon technology to

address legal need is likely to create additional barriers for those who are not digitally literate, do not have access to technology or are otherwise vulnerable, we argue that a blend in traditional and technological support to provide services to clients may, at present, ensure that the most vulnerable clients are not denied much-needed access to justice at a time of increasing need.

## **Conclusion**

This paper has utilised Fineman's vulnerability theory as a lens through which to examine the implications of the COVID-19 pandemic for the extent, and nature of legal need in social welfare law, as well as the impact that this crisis has had on the advice sector. By drawing upon emerging documents and case studies from the advice sector, it has been possible to reflect upon the specific ways in which both individuals and the sector are lacking resilience. Further, it has drawn attention to the ways in which the pandemic has in practice, exposed several existing fragilities that characterised the relationship between the state, the advice sector, and individuals experiencing legal need. As argued, while the sector has traditionally fulfilled the important role of a conduit for state resources to those in need, this has been significantly impaired by decades of neoliberal approaches to governance. Such has seen institutional resilience depleted and this, in turn, adversely impacts on the resilience of those navigating the social welfare system. We have witnessed the relationship between citizen and state being reconceptualised as one in which individuals are responsible for their own circumstances, and the state having limited obligations to ensure a baseline level of security and resources for its citizens. Caught between these tensions, the advice sector has been subjected to underfunding and a lack of infrastructural support. In the wake of the pandemic, increasing numbers of people are experiencing legal needs for the first time, and this reality has exposed the liberal notion of self-sufficient citizens as a fiction. Rather, through a vulnerability lens it is possible to appreciate that the advice sector in practice performs a vital role in providing citizens with the necessary resources to resolve their social welfare problems, and that this is now even more important in the post-COVID-19 context, where traditional client groups are beginning to disappear among the swathes of people now in need of support.

As Shearer (2020) notes, there will always be a 'missing middle' of people who are LOLA. However, the extent of the economic impact on society, and the financial, social and employment (in)security of individuals, will likely only be clear once government-funded schemes have come to an end, and we move beyond the need for lockdowns as a tool for managing Covid-19. In turn, those working within the advice sector itself have predict that services are likely to shrink within the next year due to a lack of secure funding and irreversible damage to finances, as well as fewer people willing to work on a face-to-face basis (see LawWorks, 2020e). By reimagining this crisis as one in which we have a responsive state, we have been able to suggest that the pandemic – in exacerbating these problems to such a degree – may in practice provide an opportunity for the state to begin investing in technology. Given the innovation of the advice sector to date, we suggest that technology may be employed in such a way as to appropriately address the

increasing need for legal advice, while also freeing up the time and space necessary to continue the vital work of reaching out to hidden populations experiencing legal need.

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### Notes

1. The figures are for April 2020 compared to the monthly average between January and March 2019.
2. Projections from the Bank of England's monetary forecast suggests a rise in unemployment to 9% in England and Wales during 2020, particularly once the furlough and mortgage payment holiday schemes ends. See Bank of England Monetary Policy Committee (2020).
3. Thus, exacerbating existing problematic trends (see Burton, 2018; Compaine, 2001).
4. This has been written about in relation to utilising social media to provide information during natural disasters and emergencies as in Matherly (2011).

### References

- Alford A and Farrell J (2016) Community legal centres face funding crisis. *Alternative Law Journal* 41(1): 2–2.
- Asquith NL and Bartkowiak-Theron I (forthcoming) *Policing Practices and Vulnerable People*. London: Palgrave Macmillan.
- Bank of England Monetary Policy Committee (2020) *Monetary Policy Report*. London: Bank of England Monetary Policy Committee.
- Burton M (2018) Justice on the line? A comparison of telephone and face-to-face advice in social welfare legal aid. *Journal of Social Welfare and Family Law* 40(2): 195–215.
- Byrom N, Beardson S and Kendrick A (2020) The impact of COVID-19 measures on the civil justice system. Available at: <https://www.judiciary.uk/wp-content/uploads/2020/06/CJC-Rapid-Review-Final-Report-f.pdf> (accessed 7 September 2020).
- Compaine BM (2001) *The Digital Divide: Facing a Crisis or Creating a Myth?* Cambridge, MA: MIT Press.
- Cookson G (2013) Analysing the economic justification for the reforms to social welfare and family law legal aid. *Journal of Social Welfare and Family Law* 35(1): 21–41.
- Dehaghani R and Newman D (2017) 'We're vulnerable too': an (alternative) analysis of vulnerability within English criminal legal aid and police custody. *Oñati Socio-Legal Series* 7(6): 1199–1228.
- Equality and Human Rights Commission (2020) *Inclusive Justice: A System Designed for All: Interim Findings*. London: Equality and Human Rights Commission.

- Fineman MA (2008) The vulnerable subject: anchoring equality in the human condition. *Yale Journal of Law and Feminism* 20(1): 1–24.
- Fineman MA (2010) The vulnerable subject and the responsive state. *Emory Law Journal* 60: 1–41.
- Fineman MA (2013) Equality, autonomy, and the vulnerable subject in law and politics. In: Fineman MA and Grear A (eds) *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*. Abingdon: Routledge, pp. 12–28.
- Fineman MA (2017) Vulnerability and inevitable inequality. *Oslo Law Review* 4: 133–149.
- Fineman MA (2018) Injury in the unresponsive state. In: Bloom A, Engel D and McCann M (eds) *Injury and Injustice: The Cultural Politics of Harm and Redress*. Cambridge: CUP, pp. 50–75.
- Fineman MA (2019) Vulnerability and social justice. *Valparaiso University Law Review* 53: 341–369.
- Franklyn R, Budd T, Verrill R, et al. (2017) *Findings From the Legal Problem and Resolution Survey, 2014–15*. London: Ministry of Justice Analytical Series.
- Genn H (1999) *Paths to Justice: What People Do and Think About Going to Law*. Oxford: Hart.
- Gilbert D (2018) Legal aid advice network ‘decimated’ by funding cuts. *BBC News*, 10 December. Available at: <https://www.bbc.co.uk/news/uk-46357169> (accessed 7 September 2020).
- Gramatikov M and Porter RB (2011) Yes, I can: subjective legal empowerment. *Georgetown Journal on Poverty Law and Policy* 18(2): 169–199.
- Halliday S, Meers J and Tomlinson J (2020) Public attitudes on compliance with COVID-19 lockdown restrictions. *Constitutional Law Association*, 25 June. Available at: <https://ukconstitutionallaw.org/2020/06/25/simon-halliday-jed-meers-and-joe-tomlinson-public-attitudes-on-compliance-with-covid-19-lockdown-restrictions-part-2/> (accessed 7 September 2020).
- Heath L (2020) Housing legal aid cases given funding fall by almost 40% in a decade. *Inside Housing*, 7 February.
- Hirsch D (2018) *The Affordability of Legal Proceedings for Those Excluded From Eligibility for Criminal Legal Aid*. London: The Law Society.
- House of Commons Justice Committee (2020) *Coronavirus (COVID-19): The Impact on the Legal Professions in England and Wales*. London: House of Commons Justice Committee.
- Law Centres Network (2018) *LASPO Act 2012 Post-Implementation Review: Submission From the Law Centres Network*. London: Law Centres Network.
- Law Centres Network (2020) *Law for All: The 50th Anniversary Campaign for Law Centres*. London: Law Centres Network.
- Law Society (2019) Legal aid deserts. Available at: <https://www.lawsociety.org.uk/campaigns/legal-aid-deserts> (accessed 7 September 2020).
- LawWorks (2020a) Legal and advice sector roundtable. Available at: <https://www.lawworks.org.uk/sites/default/files/files/LW-LegalAdviceSector-RoundTable-Responding-COVID19-24.03.20.pdf> (accessed 7 September 2020).
- LawWorks (2020b) Second legal and advice sector roundtable. Available at: <https://www.lawworks.org.uk/sites/default/files/files/LW-LegalAdviceSector-RoundTable-Responding-COVID19-31.03.20.pdf> (accessed 7 September 2020).
- LawWorks (2020c) Third legal and advice sector roundtable. Available at: [https://www.lawworks.org.uk/sites/default/files/files/Roundtable%20notes%20-%2029%20April%202020\\_0.pdf](https://www.lawworks.org.uk/sites/default/files/files/Roundtable%20notes%20-%2029%20April%202020_0.pdf) (accessed 7 September 2020).

- LawWorks (2020d) Fourth legal and advice sector roundtable. Available at: [https://www.lawworks.org.uk/sites/default/files/files/4th%20Cross-Sector%20Roundtable%20May%2021st%20Notes\\_1.pdf](https://www.lawworks.org.uk/sites/default/files/files/4th%20Cross-Sector%20Roundtable%20May%2021st%20Notes_1.pdf) (accessed 7 September 2020).
- LawWorks (2020e) Fifth legal and advice sector roundtable. Available at: [https://www.lawworks.org.uk/sites/default/files/files/Roundtable%20notes%20-%20June%2016th\\_0.pdf](https://www.lawworks.org.uk/sites/default/files/files/Roundtable%20notes%20-%20June%2016th_0.pdf) (accessed 7 September 2020).
- Low Commission (2014) *Tackling the Advice Deficit: A Strategy for Access to Advice and Legal Support on Social Welfare Law in England and Wales*. London: Legal Action Group.
- Mant J (2017) Neoliberalism, family law and the cost of access to justice. *Journal of Social Welfare and Family Law* 39(2): 246–258.
- Mant J (2020) Placing LIPs at the centre of the post-LASPO family court process. *Child and Family Law Quarterly* (forthcoming).
- Matherly D (2011) *Communications With Vulnerable Populations*. Berkley, CA: University of California Press.
- Mayo M, Koessl G, Scott M, et al. (2015) *Access to Justice for Disadvantaged Communities*. Bristol: Policy Press.
- Ministry of Justice (2020) *Legal Aid Statistics Quarterly, England and Wales, January to March 2020*. London: Ministry of Justice.
- Minnoch C and Teather R (2020) The time has come to bring the legal aid sector's sustainability issues into the public domain. *Legal Aid Practitioners Group*, July. Available at: <https://www.lag.org.uk/article/208432/-the-time-has-come-to-bring-the-legal-aid-sector-s-sustainability-issues-into-the-public-domain-> (accessed 7 September 2020).
- Mirlees-Black C (2019) An indicator of need for community legal centres: introducing NLAS(CLC). *Justice Issues* 29: 2–3.
- Morris D and Barr W (2013) The impact of cuts in legal aid funding on charities. *Journal of Social Welfare and Family Law* 35(1): 79–94.
- Newman D (2013) *Legal Aid Lawyers and the Quest for Justice*. Oxford: Hart.
- Newman D (2016) Attitudes to justice in a rural community. *Legal Studies* 36(4): 591–612.
- Pereira I, Perry C, Greevy H, et al. (2015) *The Varying Paths to Justice: Mapping Problem Resolution Routes for Users and Non-Users of the Civil, Administrative and Family Justice Systems*. London: Ministry of Justice Analytical Series.
- Pleasence P and Balmer N (2014) *How People Resolve 'Legal' Problems*. London: Legal Services Board.
- Pleasence P, Balmer NJ and Buck A (2006) *Causes of Action: Civil Law and Social Justice*, 2nd ed. London: Legal Services Commission.
- Pleasence P, Balmer NJ, Buck A, et al. (2004) Multiple justiciable problems: common clusters, problem order and social and demographic indicators. *Journal of Empirical Legal Studies* 1(2): 301–329.
- Pleasence P, Balmer NJ, Patel A, et al. (2010) *Civil Justice in England and Wales: Report of the 2006–2009 English and Welsh Civil and Social Justice Survey*. London: Legal Services Commission.
- Robins J and Newman D (2021) *Justice in a Time of Austerity*. Bristol: Bristol University Press.
- Sam S and Pearson A (2019) Community legal centres in the digital era: the use of digital technologies in Queensland community legal centres. *Law, Technology and Humans* 1(1): 64–79.
- Shearer E (2020) Access to justice: a decade for justice. *Proctor* 40(2): 1321–8794.