

Vulnerability, Legal Need and Technology in England and Wales

Authors

[Dr Daniel Newman](#), Cardiff University

[Dr Jess Mant](#), Cardiff University

[Dr Faith Gordon](#), Australian National University

Research Summary

This research explores legal need and legal advice in England and Wales, during the COVID-19 pandemic. It uses a theoretical understanding of vulnerability to examine the ways in which this crisis has in practice exposed several pre-existing fragilities in the relationship between the state, the advice sector, and individuals who experience social welfare problems. Our research commences by exploring the concept of vulnerability. In this part, we discuss three things: firstly, the broad range of ways in which vulnerability is experienced by those experiencing social welfare-related issues, secondly, how the idea of vulnerability is often used under austerity-informed policies to identify a limited class of people who are in need of social welfare, and thirdly, the vulnerability of the systems themselves which support those individuals through the provision of legal advice. Our research then considers the specific context of the COVID-19 pandemic: it interrogates how social distancing and lockdown measures, in combination with the threat of the virus itself, have compounded the existing fragilities within this relationship. Drawing on policy documents, reports and three case studies accessed from law centres in England and Wales, it discusses the concept of legal need, and demonstrates how the pandemic has transformed the way that social welfare law needs are experienced, as well as impaired the ability of the sector to meet these needs. These case studies assist us in being able to critically consider the topics of vulnerability, changing needs and the role that technology is playing, and can play, during the pandemic and beyond. Lastly, on the basis of these findings, our research advocates a critical consideration of the sustainability and format of legal advice in addressing legal need in the post-COVID-19 landscape. Drawing on examples of technology being utilised in legal advice sectors in other jurisdictions; this paper considers the future potential of technology for addressing legal need in England and Wales. This is important given that the sector continues to be left vulnerable to funding cuts, and at the same time, society is predicted to experience a continued increase in legal need post-pandemic.

Key Findings

1. The Vulnerability of the legal advice sector and the individuals who rely upon it

As a result of austerity measures and decreasing availability of state support for those on low incomes, there was already an increasing amount of social welfare law need within England and Wales before the pandemic. Our research identifies that such measures, including the budgetary cuts introduced under the Legal Aid Sentencing and Punishment of Offenders Act (LASPO), had already left the legal advice sector with a diminished capacity to respond to this increasing amount of social welfare law need within England and Wales, and an eroded ability to support many people who were already positioned precariously as a result of prior cuts to pre-COVID welfare and state support.

Our research also suggests that 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, we suggest that the pandemic has exposed the true extent to which we are all potentially vulnerable to circumstances in which we may experience legal need. 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 this reality, 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 which underpins the findings of our research, 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.

2. Impact of COVID on Legal Need

Our research indicates that both the threat of the virus, as well as policies implemented by the English and Welsh governments in response to the pandemic, have had a range of short and long-term consequences for the extent of legal need across different legal problems that is experienced across England and Wales. Each of the case studies explored in the research noted a change in their 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.

In the short term, we identified the following consequences of the pandemic for the extent and type of legal need in England and Wales:

- The backlog of delayed court cases which has accumulated during the pandemic has left many people in difficult circumstances with unresolved and potentially escalating legal problems. As legal problems tend to ‘cluster’, the unresolved nature of these cases can often mean that people experience further, different, and more complex legal problems which require additional intervention, support and assistance.
- The immediate economic aftershock of the pandemic has also led to increased financial and social instability among those on low incomes – in particular, there has been a disproportionate increase in the number of people who are beginning to rely on social welfare such as Universal Credit for the first time, and the amount of people who are precariously employed or facing issues of unemployment. 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.
- The social consequences of the pandemic are also significant for understanding legal need, as with national and local lockdowns came a significant increase in the amount of people experiencing domestic abuse and mental health problems.

- Following the imposition of the initial lockdown measures, organisations have reported a sharp increase in demand for support across the services being offered via telephone. 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.

In the long-term, we identified that 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 - such as furlough or the moratorium on evictions - begin to come to an end, we can expect a more permanent expansion of the category of people who fall into the gap between the eligibility threshold for legal aid and realistically being able to afford to pay for legal help privately. While there have always been a significant proportion of the population who are caught in this gap, the proportion of these clients who may begin to experience legal problems as a result of the pandemic is predicted to increase significantly in the years following the peak of this crisis. For example, those who are likely to seek help from the sector about pandemic-related legal issues is an enormous proportion of the population – according to the Law Centres Network, 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. Importantly, even if some of these 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.

3. Impact of COVID on the Legal Advice Sector

The legal advice sector has been faced with the challenge of meeting this increased amount of legal need during the pandemic, despite already having a significantly diminished capacity to do so as a result of pre-COVID austerity measures. However, our research found that this has been further complicated by the logistical and practical challenges of sustaining services in the middle of a pandemic. For example, challenges included:

- A reduction in the number of available services.
- A necessitated shift to remote advice delivery, which in practice meant advisors working from home, with limited equipment and space.
- Difficulties maintaining confidentiality and communicating effectively with clients who may have learning disabilities, autism spectrum disorders and mental health conditions.

Additionally, we found that the sector is not simply facing the challenge of supporting a greater number of clients during the COVID-19 pandemic. Rather, there is also the concerning absence of groups who have traditionally relied upon their services. While legal need overall 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. Specifically, our research revealed that:

- Those in the greatest need often do not have the technology, such as broadband, data plans, or devices – to be able to access services remotely.
- Telephone-based services could cause significant difficulties for many disabled people.
- If the sector is already working beyond capacity to meet the needs of ‘new’ 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.

4. The Current and Future Role of Technology in Responding to Legal Need During and After the Pandemic

Our research identified a range of benefits of technology for the sector’s ability to respond to the immediate requirements of remote working and advice delivery. For example:

- Widespread use of videoconferencing and emails.
- Increased use of case management systems which were underused before the pandemic.
- Shared resources across the sector to assist with streamlined signposting.

Further, in light of the pandemic, we identified that there will be a much bigger role for technology in the delivery of advice services in the future. There are already examples of innovation within the sector in England and Wales, 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 in the future. This idea of directing clients to other sources of help is likely to be particularly pertinent for the vast number of ‘new’ clients relying on the advice sector, who are likely to be generally confident and digitally competent. These users may be assisted via several technological innovations, such as greater use of online guides, and other advice platforms such as live chat functions and AI Chatbots for initial support. This may have the potential to ease the 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.

Despite this potential value, our research indicates that significant evaluation of such platforms must account for diverse user perspectives in assessing effectiveness. As demonstrated above, while our research found that technology has been useful in facilitating remote working for many in the sector, the ‘digital divide’ has also meant that existing inequalities have been further exacerbated. It is therefore imperative to consider technological innovation as a delicate balance – as a means of helping to meet the needs of those for whom such methods are appropriate, with the goal of 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. This approach to incorporating technology into advice delivery is already well-established within other jurisdictions. For example, prior to the pandemic, community legal centres in Australia have already been utilising video conferencing as a substitute for face-to-face consultations with clients, utilising social media and smartphone applications as an information tool.

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. 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.

5. Future Concerns Regarding the Sustainability of the Legal Advice Sector

Our research found that the crisis of the COVID-19 pandemic has exposed existing fragilities in terms of the sustainability of the advice sector. The three key issues for the sector that have been highlighted during the pandemic are:

- Cash flow
- Loss of income
- Difficulties and uncertainties in future financial planning and fundraising

In practice, the COVID-19 pandemic has exposed and amplified pre-existing concerns about the sustainability of the advice sector and the lack of institutional resilience within this sector following more than a decade of austerity measures. 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.

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. At the point of the first lockdown, 76% of Law Centres had less than six 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.

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 to begin to lay foundations for the future. The Ministry of Justice also offered an emergency £3million grant to help many Law Centres avoid closure as a result of the immediate cash flow problems. 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.

Without secure funding, the extent of 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 lacking resilience and requiring support.

Further Information

Further details about our research can be found in our [recent blog](#), written for the Information, Law & Policy Centre at the Institute for Advanced Legal Studies.

The full findings of this research are due to be published in a special issue of the [International Journal of Discrimination and the Law](#), in September 2021.