



PLP RESEARCH PAPER

# Exceptional Case Funding Clinics

A study into the feasibility of extending access to legal aid through clinical legal education programmes

Emma Marshall



The Public Law Project (PLP) is an independent national legal charity. Our mission is to improve public decision making and facilitate access to justice. We work through a combination of research and policy work, training and conferences, and providing second-tier support and legal casework including public interest litigation.

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## EXECUTIVE SUMMARY

The research presented here focuses on the feasibility of developing access to legal aid through the Exceptional Case Funding (ECF) scheme, by setting up and running ECF projects in university law schools. This report contributes to PLP's existing research undertaken in partnership with university law clinics,<sup>1</sup> which seeks to develop knowledge and understanding about the opportunities that clinical legal education programmes offer for extending access to justice.

The research was conducted between September 2017 and February 2018 with universities that were either setting up ECF projects, considering setting up ECF projects, or already assisting with ECF applications. The purpose of the research was to investigate the ways in which university law clinics can improve access to support with ECF applications, and the potential advantages and/or challenges of using the university law clinic as a setting to advance access to legal aid through the ECF scheme.

The report makes the following findings on the limitations and opportunities for establishing or developing ECF clinics in university law schools:

### Limitations

- **Administration of the ECF scheme** – the problems with the ECF scheme itself (e.g. the time and technical expertise required to make an application, and the delays applicants face), which make university-based projects more difficult to manage in terms of resources and capacity;
- **Balancing competing interests and motivations** – universities must balance their commitments as educational institutions with the aims of running a project for general community benefit; and
- **Managing capacity issues** – the involvement of other partners, such as not-for-profit or voluntary sector organisations and legal aid providers, which may have limited capacity, must be managed alongside the busy timetable of universities and existing pressures on staff and students.

### Opportunities

- **Improving access to advice** – the input of legal skills in drafting ECF applications, and the potential benefits this offers to those who need to access ECF, can be highly beneficial;
- **Raising awareness of ECF** – the opportunity to open-up discussion about ECF in a local community offers potential to raise general awareness of the ECF scheme;
- **Monitoring and reporting** – the opportunity to draw on the expertise of universities as research institutions can help to increase capacity of independent bodies (i.e. non-governmental organisations) to monitor and report to the Government on the operation of the ECF scheme; and
- **Student learning and engagement** – there are benefits to engaging students in a project that not only allows them to apply their developing legal skills in practice, but also offers the opportunity to recognise the challenges of the legal aid system and how to address them.

The report also identifies nine key considerations for universities engaging students in ECF work:

- **Location** – The location of a clinic is likely to influence the nature of referrals and capacity to respond to requests for assistance;
- **Scope** – The scope of university-based ECF projects – in terms of the areas of law covered – is likely to be influenced by the expertise of supervisory staff, as well as local need;
- **Scale** – The size of a project is an important operational consideration. The scale of a project must take account of local need as well as the resources available to run the project;

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<sup>1</sup> PLP, 'Public Law and Clinical Legal Environments' (*Public Law Project*, April 2018)

- **Regulatory frameworks** - The regulatory frameworks for ECF are favourable to universities seeking to involve students in pro bono schemes, but universities must still consider how to mitigate the risks of offering a service to assist with form-filling without the provision of advice;
- **Training** - Providing effective training to students can be time consuming, but is essential for enabling students to be able to assist with ECF applications, as well as being valuable for student learning;
- **Supervision** - Supervision arrangements must provide sufficient support for students, including the input of legal expertise where necessary;
- **Managing capacity** - Referrals from external organisations can be difficult to manage, and ECF projects are likely to work best with clear guidelines and referral pathways;
- **Resources** - Recognising the resources available, as well as the additional resources that may be required to make the project successful (such as funding for interpreters, travel or volunteer expenses), is an important part of ongoing work to meet demand for an ECF project; and
- **Social and pedagogical value** - ECF projects at universities can benefit student learning whilst also offering a service to the wider community.

The report makes recommendations to university law clinics seeking to start, or expand, work on ECF applications. It concludes that universities can play an important role in extending access to ECF in communities where individuals would otherwise be unlikely to get assistance in securing legal aid for out of scope matters. There are some specific challenges that universities face in establishing ECF projects, but these are outweighed by the opportunities that ECF clinics can offer.

PLP recognises that the expertise it has developed on ECF over the last five years can be of great value in assisting universities to establish ECF projects, and will continue to explore ways of supporting universities to develop such programmes.

## RECOMMENDATIONS FOR UNIVERSITIES

University law clinics interested in setting up an ECF project, or developing existing projects to cover work on ECF applications, may wish to:

- Map existing service provision in the local area and identify potential referral agencies. Identify legal aid providers that will take successful grants of ECF, and set up accessible signposting lists where possible;
- Build on existing strengths, by exploring areas of law where staff members have relevant expertise, and identify other local providers or experts who might be able to assist with the supervision of students working on ECF applications;
- Where capacity is an issue, start by training a small number of students to assist in one area of law, as this can be a good way of developing a project. Explore opportunities to expand the project by building relationships with local community organisations and services, and identify where resources exist to sustain a project. Once potential partner organisations have been identified, devise working methods that will suit external partners and the university;
- Put protocols and procedures in place to ensure that assistance with an ECF application is limited to completing the form and not providing legal advice. This is important from both a student and institutional perspective. For immigration matters, it is particularly important for universities to ensure that students do not provide unregulated advice, as it is a criminal offence;
- Engage external partners to assist with the delivery of training where possible, particularly where there is the opportunity to share expertise;
- Agree the supervision arrangements to be put in place alongside training materials, to ensure that any practical guidance or input of supervisory staff is manageable, as well providing sufficient guidance to students. Seek to secure additional resources where necessary in order to make supervision arrangements sustainable e.g. extra hours of time allocated for paid staff;
- Establish ways of screening cases from partner organisations, to identify the cases that may be eligible for ECF. It is important that individuals receive some initial advice, to mitigate the risk that a case may already be in-scope for legal aid, and to maximise the chance of an ECF application being successful;
- Speak with partner organisations to identify the resources that are required to run the project effectively and meet the needs of service users, and establish whether these resources can be provided, or whether funding applications need to be made;
- Students and staff can bring important skills and expertise to a project – and student engagement can be an extremely valuable resource to assist who may have limited time available. Create a steering group or committee to lead the project, including student representatives where possible.

University law clinics are encouraged to make the most of existing PLP resources, by attending training sessions, reading the online ECF information and guides, and getting in touch for additional guidance or to explore opportunities to develop partnerships.

## INTRODUCTION

One of the changes introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), was the introduction of Exceptional Case Funding (ECF). Public Law Project (PLP) has made significant efforts to extend access to the ECF scheme, since the changes came into effect in 2013, by:

- Making applications on behalf of individuals through the Legal Aid Support Project (until March 2017);
- Raising awareness of the ECF scheme through advocacy and legal challenges;
- Providing practical assistance through training and support to organisations that wish to make ECF applications on behalf of their clients or service users.

As part of its charitable remit, PLP remains committed to extending access to the ECF scheme, in order to ensure that legal aid is available for those who need it.

PLP's research report *Public Law and Clinical Legal Environments*, demonstrates that providing assistance with ECF applications is an area of work that law schools are keen to develop.<sup>2</sup> The report identifies that one of the main challenges for universities, in setting up pro bono schemes, is negotiating the regulatory frameworks that govern the provision of legal assistance. The research carried out by PLP found that ECF applications are not regulated legal help, and consequently it is relatively straightforward (in terms of regulation, at least) for universities to develop ECF projects, as well such projects providing important opportunities for students and the wider community. Previous research by Drummond and McKeever also examines regulatory issues, and in their report, *Access to Justice through University Law Clinics*, they identify that university law clinics often need better support through regulatory processes.<sup>3</sup> The charity, JUSTICE, has also recently published a report that finds that – despite the challenges facing university law clinics, including regulatory issues – university law clinics offer three distinct benefits: “*improving education, access to justice, and research*”.<sup>4</sup>

To supplement PLP's research on *Public Law and Clinical Legal Environments*, the research presented in this report follows up on the question of how ECF projects can be established, and developed, at university law schools in practice. As such, this report identifies the opportunities, risks and limitations for university law schools in setting up ECF clinics, and examines the considerations around the extent to which students can or should assist with ECF applications.

In December 2016, the University of Exeter – in collaboration with the University of Law – began to consider the possibility of setting up an ECF clinic within the University of Exeter Law School, primarily to assist individuals living locally seeking immigration advice funded by legal aid. PLP offered to support this task, whilst carrying out research to assess the feasibility of creating a model for other universities to set up similar projects. There are a handful of other universities running similar projects across the country, and PLP was keen to develop a better understanding the potential opportunities – and challenges – that such projects could offer for improving access to legal aid through the ECF scheme.

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<sup>2</sup> PLP, ‘Public Law and Clinical Legal Environments’ (Public Law Project, April 2018)

<sup>3</sup> O Drummond and G McKeever, ‘Access to Justice through University Law Clinics’ (Ulster University Law School Report, 2015) <[https://www.ulster.ac.uk/\\_\\_data/assets/pdf\\_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf](https://www.ulster.ac.uk/__data/assets/pdf_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf)> accessed 14 March 2018

<sup>4</sup> JUSTICE, ‘Innovations in personally delivered advice: surveying the landscape’ (JUSTICE, January 2018) <<https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2018/02/Innovations-in-personally-delivered-advice-report-FINAL-v20-Feb-2018.pdf>> accessed 14 March 2018



The report that follows reflects on research carried out between September 2017 and February 2018, including PLP's involvement in setting up the ECF Clinic at the University of Exeter, and the findings of discussions with similar projects in various stages of development.

## BACKGROUND

LASPO removed many areas of law from the scope of civil legal aid, as part of the Government's attempt to reduce public spending.<sup>5</sup> Since the introduction of LASPO, state funding of civil and family legal aid has been significantly reduced, along with broader cuts to the overall legal aid budget. In 2010/11, the Government spent a total of £2.51bn on legal aid. By 2016/17, this had fallen to 1.55bn. Civil and family law was 45% of the total budget in 2010/11, which dropped to 42% by 2016/17.<sup>6</sup>

Prior to LASPO coming into effect in 2013, legal aid was available in all areas of civil proceedings with a few specific exceptions. The changes made by LASPO took many areas of legal aid out of scope, limiting the availability of legal aid for immigration, family, housing, debt, welfare benefits, discrimination, clinical negligence and community care matters. Under LASPO, ECF was introduced for non-inquest cases to make legal aid available to those whose cases were no longer in scope, but whose rights would otherwise be breached.<sup>7</sup>

Since its introduction, LASPO has come under widespread and significant criticism from legal practitioners, the not-for-profit sector, and academics.<sup>8</sup> In June 2017, The Law Society published its report *Access Denied? LASPO four years on: A Law Society Review*, which argues there is significant evidence of LASPO's "corrosive impact on access to justice".<sup>9</sup> The Bach Commission has published two reports: *The Crisis in the Justice System in England and Wales*,<sup>10</sup> and, *The Right to Justice*,<sup>11</sup> which assess the extent of the crisis of the justice system under LASPO and urge significant reforms. A group of concerned stakeholders have recently put pressure on the Government to continue with the delayed post implementation review of LASPO – the Advice Services Alliance, Legal Aid Practitioners Group, LawWorks, the Law Centres Network, Legal Action Group, the London Legal Support Trust, Project for the Registration of Children as British Citizens, MIND, Advice UK, Personal Support Unit, Youth Access, Coram Children's Legal Centre, The General Council of the Bar, The Law Commission and the Immigration Law Practitioners Association – have called for the Justice Select Committee to re-examine its own findings that LASPO had "harmed access to

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<sup>5</sup> For further background on the purposes of LASPO, see Ministry of Justice, 'Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-legislative Memorandum' (Cm9486, Ministry of Justice, 30 October 2017) Pages 5 – 10 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf)> accessed 14 March 2018

<sup>6</sup> Ibid. Page 51

<sup>7</sup> Legal Aid Agency, 'Lord Chancellor's Exceptional Funding Guidance (Non-Inquests)' (Legal Aid Agency, 9 June 2015) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/477317/legal-aid-chancellor-non-inquests.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/477317/legal-aid-chancellor-non-inquests.pdf)> accessed 14 March 2018. ECF was available for inquest cases prior to LASPO.

<sup>8</sup> S Cobb 'Legal aid reform: its impact on family law' [2013] *Journal of Social Welfare and Family Law* 35(1); S York, 'The end of legal aid in immigration: A barrier to access to justice for migrants and a decline in the rule of law' *Journal of Immigration, Asylum and Nationality Law* 27(2).

<sup>9</sup> The Law Society, 'Access Denied? LASPO four years on: A Law Society Review' (The Law Society, 29 June 2017) <<http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/>> accessed 14 March 2018

<sup>10</sup> Fabian Society, 'The Crisis in the Justice System in England and Wales: The Bach Commission on Access to Justice' (Interim Report, Fabian Society, November 2016) <[https://www.fabians.org.uk/wp-content/uploads/2016/11/Access-to-Justice\\_final\\_web.pdf](https://www.fabians.org.uk/wp-content/uploads/2016/11/Access-to-Justice_final_web.pdf)> accessed 14 March 2018

<sup>11</sup> Fabian Society, 'The Right to Justice: Final Report of the Bach Commission' (Fabian Society, September 2017) <[https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission\\_Right-to-Justice-Report-WEB.pdf](https://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf)> accessed 14 March 2018

*justice*".<sup>12</sup> Likewise, academic research indicates that the impact of LASPO has serious implications for society as a whole, as it is detrimental to the principle of access to justice in practice.<sup>13</sup>

The Legal Aid Practitioners Group's *Manifesto for Legal Aid* also calls for urgent action to address the crisis of the current legal aid system under the cuts enforced by LASPO, finding "*systemic and inherent failings*" of the ECF scheme.<sup>14</sup> In relation to ECF, Amnesty International's report, *Cuts That Hurt*, concluded, "*systemic and inherent failings mean that the scheme does not in practice provide the promised safety net for vulnerable or disadvantaged people who are struggling to navigate complex legal processes and effectively advocate for their rights*".<sup>15</sup> Overall, there is much evidence to suggest that the ECF scheme is not as accessible as it should be in order to ensure: a) the protection of individual rights, and b) access to justice as a fundamental principle of a fair and equal society.<sup>16</sup>

## Access to ECF

The problems with the ECF scheme have prompted legal challenges to improve access, including *Gudanaviciene & others v the Director of Legal Aid Casework and the Lord Chancellor*,<sup>17</sup> and *I.S. v the Director of Legal Aid Casework and the Lord Chancellor*.<sup>18</sup> However, PLP finds that the ECF scheme "*remains inaccessible in practice for many people, particularly those who are trying to apply without the assistance of a legal aid provider*".<sup>19</sup> Since LASPO, there has been an overall increase in the number of ECF applications (although, the number dropped in 2014/15 before rising again), and success rates have risen since the outset of the scheme.<sup>20</sup> For example, as shown in Table 1 below, in the financial year 2013/14, of the 1,316 non-inquest applications for ECF received by the Legal Aid Agency, just 16 were granted. In the statistics available for the first half of 2016/17, this had risen to 816 grants from 1,591 applications.<sup>21</sup>

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<sup>12</sup> Advice UK et al., 'Post implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Memorandum to the Justice Select Committee (JSC)' (LawWorks, 13 September 2017) <<https://www.lawworks.org.uk/sites/default/files/files/Consortia-Legal-Aid-review-outline-memo-sent.pdf>> accessed 13 March 2018

<sup>13</sup> E Palmer, T Cornford, Y Marique and A Guinchard, *Access to justice: Beyond the policies and politics of austerity* (Hart Publishing Ltd, 2013); see also, Family Law and Social Welfare Journal, *Special Issue. The post-LASPO landscape: Challenges for family law* [2017] 39(2)

<sup>14</sup> LAPG, 'Manifesto for Legal Aid' (2<sup>nd</sup> edition, Legal Aid Practitioners Group, 9 October 2017) Page 17 <[http://www.lapg.co.uk/wp-content/uploads/LAPG\\_Manifesto\\_A5\\_FINAL.pdf](http://www.lapg.co.uk/wp-content/uploads/LAPG_Manifesto_A5_FINAL.pdf)> accessed 14 March 2018

<sup>15</sup> Amnesty International, 'Cuts That Hurt: The impact of legal aid cuts in England on access to justice' (EUR 45/4936/2016, Amnesty International UK, 11 October 2016) Pages 3-4 <[https://www.amnesty.org.uk/files/aiuk\\_legal\\_aid\\_report.pdf](https://www.amnesty.org.uk/files/aiuk_legal_aid_report.pdf)> accessed 14 March 2018

<sup>16</sup> PLP, 'Written evidence of the public law project to the joint committee on human rights' inquiry into human rights: attitudes to enforcement' (Public Law Project, 13 February 2018) Page 2 <<http://www.publiclawproject.org.uk/data/resources/275/Written-submission-of-PLP-to-JCHR-inquiry-on-attitudes-to-human-rights-enforcement.pdf>> accessed 14 March 2018

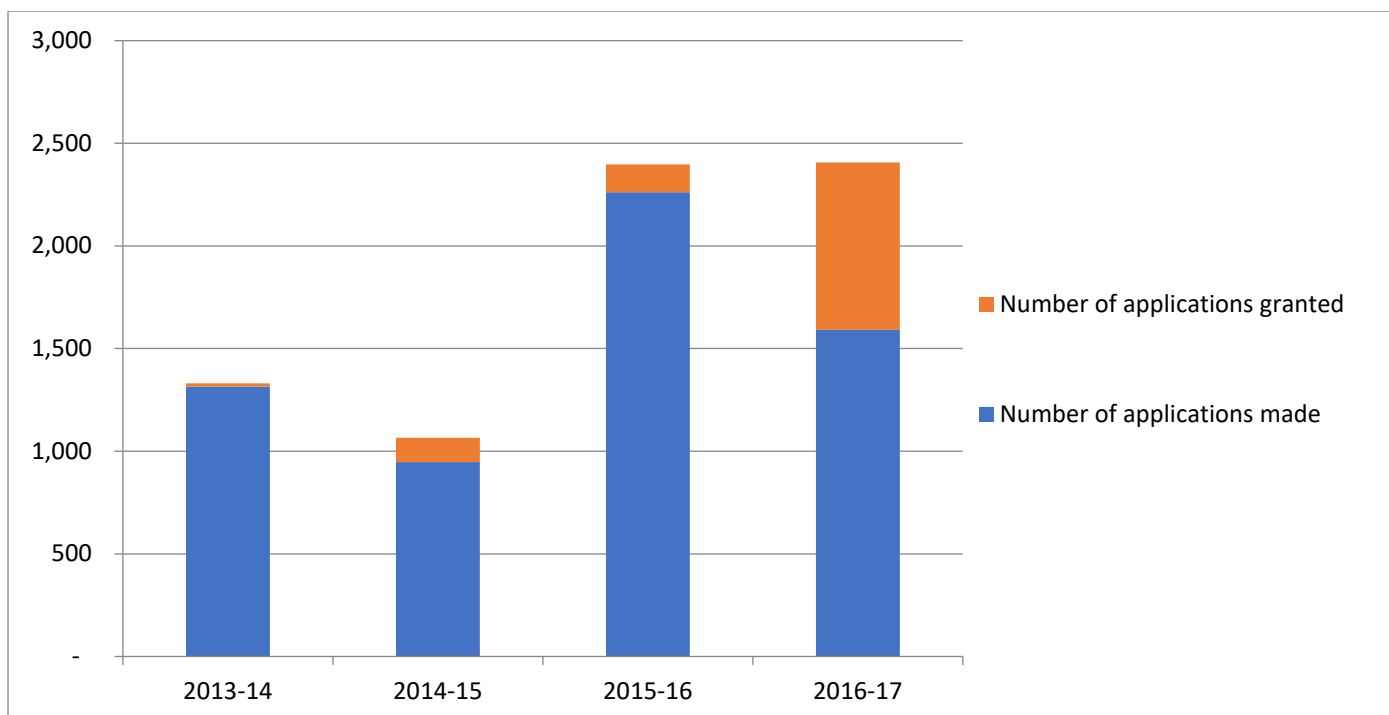
<sup>17</sup> *Gudanaviciene & others v the Director of Legal Aid Casework and the Lord Chancellor* [2014] EWCA Civ 1622

<sup>18</sup> *I.S. v the Director of Legal Aid Casework and the Lord Chancellor* [2015] EWHC 1965 (Admin) and [2016] EWCA Civ 464

<sup>19</sup> PLP, 'Written evidence of the public law project to the joint committee on human rights' inquiry into human rights: attitudes to enforcement' (Public Law Project, 13 February 2018) Page 2 <<http://www.publiclawproject.org.uk/data/resources/275/Written-submission-of-PLP-to-JCHR-inquiry-on-attitudes-to-human-rights-enforcement.pdf>> accessed 14 March 2018

<sup>20</sup> Ministry of Justice, 'Legal Aid statistics England and Wales tables July to September 2017' (Ministry of Justice, 14 December 2017) <<https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2017>> accessed 14 March 2018

<sup>21</sup> *Ibid*



**Table 1: Non-inquest ECF applications and success rates April 2013 – September 2017**

The statistics provided by the Legal Aid Agency indicate some further problems with the ECF scheme. First, whilst ECF is available across many categories of civil law, most of the ECF applications submitted have been for immigration cases, which also have a higher success rate than other categories of application. In the financial year 2016/17, of 1,591 non-inquest ECF applications made to the Legal Aid Agency, a majority were for immigration (1,007), with lesser numbers for family (303) and housing/land law (48), and the rest spread across other areas of civil law. In the same year, there were 688 successful applications for immigration cases, with 98 grants for family and just 7 for housing/land law.<sup>22</sup>

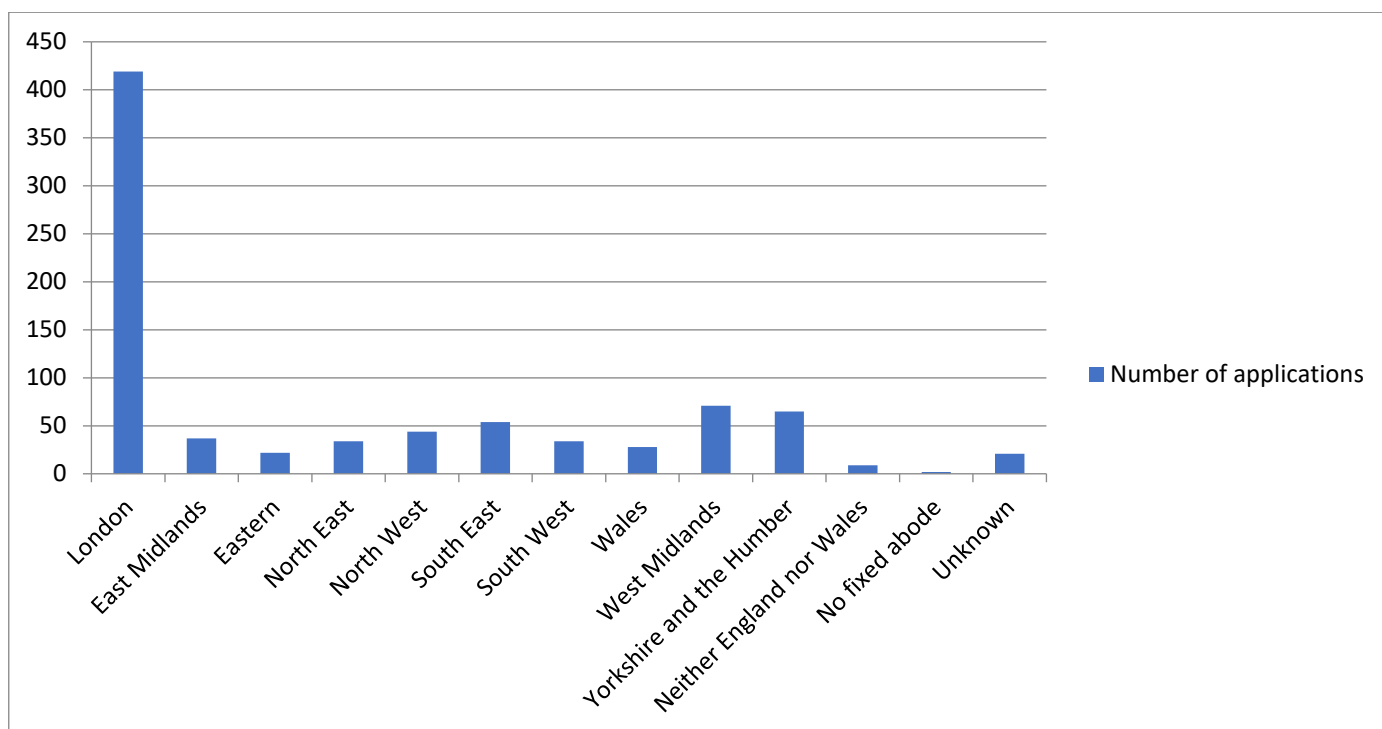
Second, a majority of ECF applications are made by legal aid providers, rather than by individuals. This is significant where the availability of legal aid providers has been affected by LASPO,<sup>23</sup> so there may be fewer providers to approach for assistance in some regions or areas of law. Further, as providers are only paid retrospectively for time spent on an application when the application is successful, this may limit the capacity of some providers to make applications. In 2016/17, of the 1,243 non-inquest applications from providers determined by the Legal Aid Agency, 711 were granted (a 57% success rate). In comparison, in the same year, of the 348 non-inquest applications from individuals, 119 were granted (a 34% success rate). The rates of success have risen since 2013/14, when only 16 of 1,239 non-inquest applications made by providers were granted (a 1.3% success rate), and only 2 of 76 non-inquest applications made by individuals were granted (a 2.6% success rate). The difficulties faced by individuals applying for ECF led to the development of projects to provide assistance with the application process, including PLP's Legal Aid Support Project.

Finally, there is evidence to suggest that access to ECF relates to the location of individuals seeking legal aid. Statistics demonstrate that a majority of ECF applications submitted are made in London, as shown in Table 2 below. Data requested from the Legal Aid Agency by PLP showed that between 9 November 2015 and 30 June 2016, 419 out of 840 ECF applications were made in London (across all areas of law), which

<sup>22</sup> Ibid

<sup>23</sup> PLP, 'Written evidence of the public law project to the joint committee on human rights' inquiry into human rights: attitudes to enforcement' (Public Law Project, 13 February 2018) Page 2 <<http://www.publiclawproject.org.uk/data/resources/275/Written-submission-of-PLP-to-JCHR-inquiry-on-attitudes-to-human-rights-enforcement.pdf>> accessed 14 March 2018

was approximately 50% of the total applications received by the Legal Aid Agency.<sup>24</sup> For example, in the same period, just 34 ECF applications were from the South West of England, and only 28 were from Wales.



**Table 2: Number of applications by region 9 November 2015 – 30 June 2016**

The issues around access to ECF have informed PLP’s interest in projects designed specifically to assist individuals who do not have a legal aid provider to make an application on their behalf, as one way to improve the availability of legal aid. As it is possible to apply for ECF across different areas of civil and family law, it is common for projects to limit assistance with ECF applications to very specific categories. Of the projects that PLP is aware of, a majority assist with one area of law, which is most often immigration.<sup>25</sup>

Recent literature recognises the growing role for law clinics in response to the legal aid cuts,<sup>26</sup> and there is growing interest in the work that university law clinics do to promote access to justice.<sup>27</sup> PLP’s report *Public Law and Clinical Legal Environments* examines the work of university law clinics, and the extent to which they promote access to justice.<sup>28</sup> Whilst PLP recognises that the work of university law clinics may not be

<sup>24</sup> Ministry of Justice, Freedom of Information Act (FOIA) Request No. 108597 (sent to PLP). The Ministry of Justice provided the following explanation about how the regional data was compiled:

*“Please note that the region listed here uses a combination of sources. Around 80% relate to the provider, found using the office code of the provider submitting the application. Bear in mind that this may be the lead office location and so does not necessarily indicate the geographic location of the individual involved. Around 20% of the regions have been found using the postcode supplied alongside a direct client or assisted client application. Lastly, for some it has not been possible, using the data already in existence, to find either the office code or the direct client post code and so the region for these applications has been recorded as unknown”.*

<sup>25</sup> PLP, ‘Organisations Supporting ECF Applications’ (Public Law Project, 2018) <<http://www.publiclawproject.org.uk/database-of-organisations-supporting-ecf-applications>> accessed 14 March 2018

<sup>26</sup> LawWorks, ‘LawWorks Clinics Network Report April 2016 – March 2017’ (LawWorks, 22 December 2017) <<https://www.lawworks.org.uk/sites/default/files/LawWorks%20Clinics%20Report%202016-17.pdf>> accessed 14 March 2018

<sup>27</sup> O Drummond and G McKeever, ‘Access to Justice through University Law Clinics’ (Ulster University Law School Report, 2015) <[https://www.ulster.ac.uk/\\_\\_data/assets/pdf\\_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf](https://www.ulster.ac.uk/__data/assets/pdf_file/0003/132654/Access-to-Justice-through-Uni-Law-Clinics-November-2015.pdf)> accessed 14 March 2018

<sup>28</sup> PLP, ‘Public Law and Clinical Legal Environments’ (*Public Law Project*, April 2018)

able to address all of the issues around access to legal aid, there is nevertheless significant value to the work done by university law clinics, which is why this report explores their potential for improving access to ECF.

## METHODOLOGY

The research presented in this report was devised when a group of representatives from the University of Exeter and Refugee Support Devon, a local charity that had come across a few cases eligible for ECF, attended PLP's training course in Bristol on 6<sup>th</sup> March 2017 on how to make ECF applications. Prior to the training, a meeting was organised between PLP, the University of Exeter and Refugee Support Devon to discuss access to ECF in the South West, and the possibility of the University of Exeter setting up an ECF clinic to assist individuals seeking immigration advice. It was during the discussion that the idea emerged of conducting research on the feasibility of extending access to ECF by developing the work of university law schools.

During the meeting, some of the problems of setting up an ECF clinic at a university were discussed, including:

- The need to have adequate supervision in place for students;
- The need for legal input in the process;
- How to make it clear what advice can be provided for ECF applications – as work that is unregulated – and what constitutes broader advice that must be provided by a practitioner; and,
- How to ensure that cases are screened, so that any individual whose case is in scope does not pursue the ECF route.

Having previously conducted research with university law clinics,<sup>29</sup> PLP recognised that there were important questions to be addressed, such as whether it is possible to set up a model for universities to adopt – and adapt – to fit their clinical education programmes, and whether this was a desirable way to deal with the impact of LASPO and the issues around access to ECF. The central research question was whether it would be feasible to set up a model for university clinics to adopt, to increase the support available for ECF applications by training student volunteers.

### Legal ethnography

Ethnography is traditionally an anthropological method, defined as “*the recording and analysis of a culture or society, usually based on participant-observation and resulting in a written account of a people, place or institution*”.<sup>30</sup> Legal ethnography has a long history of use by scholars to understand the relationship between society and the law.<sup>31</sup> As a method, it can be used to develop knowledge about processes of

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<sup>29</sup> PLP, ‘Public Law and Clinical Legal Environments’ (*Public Law Project*, April 2018)

<sup>30</sup> S Coleman and B Simpson, ‘Glossary of Terms’ (Royal Anthropological Institute, 2018) <<https://www.discoveranthropology.org.uk/about-anthropology/glossaryofterms.html>> accessed 14 March 2018

<sup>31</sup> P Bohannan, ‘The differing realms of the law’ [1965] *American Anthropologist* 67(6); JM Conley and WM O’Barr, *Rules versus relationships: The ethnography of legal discourse* (The University of Chicago Press, 1990) Chapter One; CD Cunningham ‘Lawyer as translator representation as text: Towards an ethnography of legal discourse’ [1991] *Cornell L Rev* 77(6); S Coutin and B Yngvesson, ‘Technologies of Knowledge Production: Law, Ethnography, and the Limits of Explanation’ [2008] *PoLAR: Political and Legal Anthropology Review* 31

justice and the law,<sup>32</sup> for example what goes on inside a courtroom,<sup>33</sup> or the effects of the law and legal institutions on different people and places.<sup>34</sup>

Ethnography can include participant observation (i.e. observing a particular process or set of processes by taking on a role that requires the researcher to participate in the process or processes), alongside other methods, such as questionnaires, interviews, textual analysis, or archival research.<sup>35</sup> Participant observation is used by ethnographers to gain deeper insight into how social processes develop, by allowing for first-hand experience of the day-to-day interactions and processes occurring in a particular place or institution. By placing a researcher in the field, the objective is to gain situated knowledge of the actions that take place, which could not be accessed by other means alone, such as by reviewing statistics or conducting interviews with research participants.<sup>36</sup> As a method, it is subjective and requires reflexivity on the part of the researcher to consider how to produce broader claims or generalisations from the evidence. Ethnography requires a process of sifting and sorting data in order to construct meaning from it.<sup>37</sup>

## Methods

The research was conducted using ethnographic methods, consisting primarily of participant observation – with the researcher collecting data whilst assisting to set up the ECF Clinic at the University of Exeter – and a survey of other university law clinics running, or interested in running, similar schemes.

### Participant observation at the University of Exeter ECF Clinic

PLP seconded a Postgraduate Researcher from the University of Exeter from September 2017 to March 2018 to conduct the research and assist with the publication of this report. PLP was fortunate to benefit from the work placement scheme provided by the University of Exeter and the South West Doctoral Training Partnership, as the researcher was supported by these institutions and received funding from the Economic and Social Research Council. As a student at the University of Exeter, the researcher had unique access to the field site and understanding of the background, having been involved in discussions about setting up the project since November 2016.

The researcher assisted the University of Exeter to set up the ECF Clinic, whilst recording observations of the process. In February 2018, the observations were compiled using research journal and diary entries, meeting minutes and email correspondence: the observations were collated into a document containing just under 11,000 words. The observations also included research notes collected by the researcher prior to September 2017 as part of her PhD fieldwork. These observations were then added to other data collected from the research, and coded according to the main themes arising from the data.

To supplement the observations, an anonymous questionnaire was circulated to the student volunteers on the project, and they were invited to provide feedback. The questionnaire received three responses, which were added to the data. Initially, the researcher intended to hold a focus group with the other members of

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<sup>32</sup> J Flood, 'Chapter Two: Socio-legal ethnography' in R Banakar and M Travers (eds) *Theory and method in socio-legal research* (Hart Publishing, 2005); B Latour, *The making of law: an ethnography of the Conseil d'État* (Polity Press, 2010); J Starr and M Goodale (eds) *Practicing Ethnography in Law* (Palgrave Macmillan, 2016)

<sup>33</sup> M Travers, *The British immigration courts: a study of law and politics* (Policy Press, 1999); A Good, *Anthropology and expertise in the asylum courts* (Routledge-Cavendish, 2007); ME Sylvestre, W Damon, N Blomley and C Bellot, 'Spatial tactics in criminal courts and the politics of legal technicalities' [2015] *Antipode* 47(5)

<sup>34</sup> SE Merry 'Anthropology, law, and transnational processes' [1992] *Annual review of anthropology* 21(1); NP De Genova, 'Migrant "illegality" and deportability in everyday life' [2002] *Annual review of anthropology* 31(1) Pages 419-447

<sup>35</sup> M Crang and I Cook *Doing ethnographies* (Sage, 2007)

<sup>36</sup> T May *Social Research: Issues, methods and processes* (3<sup>rd</sup> edn, Open University Press, 2001) Page 153

<sup>37</sup> M Crang and I Cook *Doing ethnographies* (Sage, 2007)



the steering group for the ECF Clinic. However, due to the busy timetables of university staff and the need to keep capacity free to deal with incoming referrals, instead an invitation to give feedback was provided via a web form. Refugee Support Devon, the local charity that had been involved in setting up the clinic, provided feedback on the project in this way.

### Survey of other university ECF projects

In December 2017, PLP sent a survey to 53 university law school pro bono projects. The list was assembled from information downloaded from the LawWorks website, and from some of PLP's existing contacts. A questionnaire was attached to the emails that were sent out, for participants to complete and return. The questionnaire contained three sections:

- Questions for clinics that have decided not to make ECF applications or have previously assisted with ECF applications;
- Questions for clinics setting up ECF work or with an interest in making ECF applications; and,
- Questions for clinics that regularly make ECF applications as part of their legal education programme.

An email exchange with an existing ECF project informed the development of the questions, as the types of questions asked by PLP in this initial conversation indicated the need for a more systematic way of collecting and collating details about similar projects. Participants were given the opportunity to provide information in other formats if they felt it to be more appropriate, for example by telephone.

PLP received six responses in total, with three responses from participants that provided details about their work on ECF: two universities that were assisting with ECF applications (The Immigration Human Rights Project at City University, and Swansea University); and one university interested in setting up a project (University of Huddersfield). For the other respondents, either ECF was not relevant to their work, or they did not feel able to provide sufficient information.

### Scope of Findings

The findings in this report are categorised into nine key considerations for universities engaging students in ECF work, with a conclusion that summarises the main limitations and opportunities identified from the findings. During the research, conversations emerged with other universities keen to set up similar projects. The findings do not cover all of the university law clinics in the UK either working on ECF applications or considering setting up ECF clinics as part of existing or developing pro bono schemes.

## SUMMARY OF FINDINGS

### Finding 1: Location

**The location of a clinic influences the nature of referrals and capacity to respond to requests for assistance.**

Recommendations:

1. Universities interested in setting up an ECF project, or extending existing services to cover work on ECF applications, can map existing service provision in the local area and identify potential referral agencies.
2. Identify legal aid providers that will take successful grants of ECF, and set up signposting lists where possible.

The existing infrastructure of a particular place is an important consideration in the process of setting up an ECF clinic. The availability of support for making ECF applications varies across regions. Individuals may find that legal aid providers will make an application on their behalf, and some areas have projects dedicated to assisting individuals with ECF applications.<sup>38</sup>

The research identified two context-specific influences over the feasibility of setting up a service to assist with ECF applications. The first of these was whether there were already services available in an area to provide assistance with ECF applications, or to provide referrals to the clinic. The second was whether there were legal aid providers that would benefit from assistance and that would be able to take on cases if ECF was granted. As providers can only reclaim their costs if an application for ECF is successful, it means that legal aid providers who make ECF applications do so at risk of not being able to recover their costs.

The Immigration and Human Rights Project in London, which is a collaboration between City University and No 5 Chambers, has referral agencies that make referrals to the service and support individuals to find a legal aid provider if the ECF application is successful. The referral agencies sometimes arrange a legal aid provider to take a case ahead of an ECF application made, but one disadvantage with this approach is the delay that can occur with ECF applications being dealt with by the Legal Aid Agency. Jennifer Blair, an Immigration Barrister at No 5 Chambers involved in the running of the project explains:

*“We don't arrange [a legal aid provider] before making an application, but we know that referral agencies sometimes would. We (student volunteers) do not have the contacts to do this. There are vast disparities in the quality of legal advice out there and the student volunteer will not know how complex the case is compared with other cases in the field.*

*In general, once ECF is granted we signpost the client back to the referral agency for help finding a solicitor. In a few cases, volunteers have been keen to help and I have provided a list of solicitors to try. Cases are then placed, but sometimes there can be a delay. I know of one case where there has been a 4 month delay after the grant of ECF, but that is very unusual” (Jennifer Blair, Immigration Barrister at No 5 Chambers).*

In Exeter, PLP's experience of helping to set up the Exeter ECF Clinic was that there were very limited options for referring on cases following a successful grant of ECF. Nelida Montes de Oca, the Casework

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<sup>38</sup> PLP, 'Organisations Supporting ECF Applications' (Public Law Project, 2018) <<http://www.publiclawproject.org.uk/database-of-organisations-supporting-ecf-applications>> accessed 14 March 2018

Coordinator at Refugee Support Devon, which is the main partner organisation for the University of Exeter ECF Clinic, identified the lack of immigration advice in Devon as one of the key risks:

*"[There is a] risk of giving wrong expectations to clients, and not being able to find a solicitor that could take a case on. There is a big lack of legal advice in this area"* (Nelida Montes de Oca, Casework Coordinator at Refugee Support Devon).

PLP also observed the following, in relation to the availability of immigration advice in the South West:

*"The availability of immigration advice in the county of Devon is very limited; there is only one, small, provider with a legal aid contract in immigration in the whole of Devon and Cornwall, which is based in Plymouth. As Plymouth is a dispersal area for asylum seekers, most of the capacity of the legal aid provider is taken up by advising people with initial asylum claims, who are living in accommodation provided by the Home Office. People who have other types of immigration application, for example fresh asylum claims or Article 8 applications usually have to wait many weeks or months to see an adviser in Plymouth, and sometimes there is no capacity at all for new referrals.*

*Since the closure of Devon Law Centre in 2010, Devon has not had a law centre and, other than the legal aid provider in Plymouth, the only free advice available in the area is short (half hour) appointments with private firms on a pro bono basis. For example, there is one firm in Exeter that will offer an initial free consultation, but they do not hold a legal aid contract and are unable to provide further advice unless individuals are able to pay. If individuals cannot see an immigration adviser in Plymouth, the next nearest place with a legal aid provider is Bristol, where capacity is also limited".<sup>39</sup>*

The motivations to set up ECF projects were closely linked to the context of a particular place, and the ways that ECF applications could benefit the community, as well as the opportunities for student learning. Swansea University has recently set up a project to assist with ECF applications in addition to its existing clinical legal education programme. The Director of Swansea Law Clinic at Swansea University explained:

*"[Assisting with ECF applications] was a way of working with, and complementing, existing advice providers and the legal profession. As solicitors are not paid for making ECF applications we thought that no one else would do the work"* (Richard Owen, Associate Professor and Director of Swansea Law Clinic, Swansea University).

The University of Huddersfield does not currently assist with ECF applications, but is interested in developing pro bono work in this area to increase the capacity of local firms seeking legal aid for their clients:

*"ECF is incredibly important and I know that - because of time constraints - a lot of firms would welcome assistance and because obviously if they're not successful they don't get paid, they have to be quite selective over the ones they do. Whereas, obviously, if we get involved then we can still be selective, but we do not have the financial constraints to worry about that law firms do. [ECF is] hugely important, but current rejection rates are very high, which is concerning, and the number of applications being submitted is very small. And probably those two are correlated by the fact that because the rejection rate is high, firms are put off from doing it when they might not necessarily be successful"* (Phil Drake, Senior Lecturer and Director of the Legal Advice Clinic, University of Huddersfield).

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<sup>39</sup> PLP, 'Written evidence of the public law project to the joint committee on human rights' inquiry into human rights: attitudes to enforcement' (Public Law Project, 13 February 2018) Paras 55-57 <<http://www.publiclawproject.org.uk/data/resources/275/Written-submission-of-PLP-to-JCHR-inquiry-on-attitudes-to-human-rights-enforcement.pdf>> accessed 14 March 2018

Whilst universities recognise that ECF is an important area of work, setting up projects in locations where other services are limited requires careful consideration to ensure that the quality of applications being submitted will maximise the chances of success for individuals seeking legal aid, and also to ensure that individuals who are granted ECF are able to access a legal aid provider.

## Finding 2: Scope

### The scope of university-based ECF projects – in terms of the areas of law covered – is influenced by the expertise of supervisory staff, as well as local need.

#### Recommendations:

1. Universities can build on existing strengths by exploring areas of law where staff members have relevant expertise.
2. Universities can identify other local providers or experts who might be able to assist with the supervision of students working on ECF applications.

Developing knowledge of ECF in a specific category of application (e.g. immigration or family) does not equate to automatically having competence to assist with ECF applications in other areas of law. It can be possible to build up the knowledge and skills to assist in other areas of law, by identifying the areas of expertise needed and who may be able to offer training or supervision.

All three of the participating ECF projects that were already operational focused specifically on immigration, rather than other categories of law. This was in part because of the recognised need for legal aid in immigration cases, as well as the better success rates for immigration applications. Jennifer Blair, Immigration Barrister at No 5 Chambers explained why the ECF applications made by the Immigration and Human Rights Project were largely limited to immigration:

*“We are the City University and No5 Chambers Immigration Human Rights Project, so we are focused on migrants’ rights. We have done one or two family law cases, but I understand it is harder to get ECF in those areas. The family ECF applications have been in relation to migrants. We are not limited to immigration ECFs if there were good reasons for one in another area, but it is harder to ensure the clients have good legal advice first (for example, in a family case I had to ask one of my colleagues to provide a pro bono advice, which we could do on occasion but obviously not in every case)”* (Jennifer Blair, Immigration Barrister at No 5 Chambers).

Focusing on one area of law can make it easier to train students and supervise the work carried out. In order to complete an ECF application, it is necessary to have expertise in the area of law in order to a) identify whether a case may be eligible for legal aid and on what basis, and b) identify the relevant facts of a case and translate them into an ECF application. As Phil Drake, Director of the Legal Advice Clinic at the University of Huddersfield noted, *“quite often with applications there’s a certain technique – it’s not necessarily what you say, and it’s how you say it”*. In this respect, law students can bring a particular set of skills to the process of making an ECF application, but focusing on one area of law makes ECF work more feasible.

Whilst setting up the clinic in Exeter, it initially made sense to focus on immigration, as that was the area of law that the supervisory team and steering group had expertise in, and the area of law in which students were trained. The relatively small number of referrals received during the course of PLP’s research meant that the project was exploring other options to extend the work of the Clinic. It was felt necessary to have regular referrals in order to balance the flow of work for students (and the need to have applications to work on in order to develop the skills to be successful), with the need to have expertise in specific areas of the law. For each area of law considered it was also necessary to explore who might have the time, expertise and inclination to train and supervise the work done by students. Possibilities included other academics within the law school, local law firms or appropriate advice agencies, or community projects, working within a particular area, although all of these options have associated limitations – particularly around capacity and motivation to take on (often additional) pro bono or unpaid work. At the time of writing in February 2018, the possibility of extending assistance to ECF for family applications in particular was under investigation.

### Finding 3: Scale

**The size of a project is an important operational consideration. The scale of a project must take account of local need, as well as the resources available to run the project.**

Recommendations:

1. Start by training a small number of students to assist in one area of law, as this can be a good starting point for developing a project.
2. Explore opportunities to expand the project by building relationships with local community organisations and services, and identify where resources exist to sustain a project.

The size - or potential size - of an ECF clinic is likely to relate to the area in which it is set up for two reasons. First, the number of referrals received is likely to relate closely to the local infrastructure of a particular area, in terms of awareness of the ECF scheme and whether other providers or agencies have capacity to make ECF applications. The three operational clinics that participated in the study had close links with partner organisations. Second, the number of providers that a successful claimant could be referred to is important, as being granted ECF is only one part of the process, and the next step is seeking a representative to take on the case.

In London, the Immigration Human Rights Project facilitated by City University and No 5 Chambers has completed 28 ECF applications since it was established in 2015, 91% of which have been successful. The project takes referrals from three local organisations: Haringey Migrant Support Centre (HMSC), Hackney Migrant Centre (HMC), and - to a lesser extent - Migrants Organise. Virtually all of the referrals to the project come from London, with only one or two outside. The number of students volunteering on the project has changed each year, although this is down to supervisory considerations rather than in response to the need for the project:

*“We increased from the pilot to 30 trainees in the second stage. In the third intake we have decided to reduce the number of trainees - we are currently training 18 but there are usually some immediate drop outs after training, so we really want around 12 committed people - and the smaller group will allow us to assign cases on a rota and monitor them more closely”* (Jennifer Blair, Immigration Barrister at No 5 Chambers).

Whilst the overall number of ECF applications has risen since the scheme was introduced in 2013, there are particular factors that may make it more difficult to access ECF in areas outside of London, including the availability of legal aid providers.

The Exeter ECF Clinic trained eight students to work on applications in March 2017, and has so far assisted with five applications, with three new referrals pending at the time of writing. From the outset, it was clear that the project would be dealing with relatively small numbers of - infrequent - referrals, particularly as the primary aim was to offer assistance with immigration cases. Locally, Refugee Support Devon, a charity based in Exeter, offers assistance with ECF applications to its service users for immigration work. However, the limited availability of immigration advice means that fewer referrals are likely to come from providers, and much of the work of the ECF Clinic so far has been to raise the profile of ECF to encourage referrals. From the outset, a list of places to contact was established and students helped to disseminate information about the project by passing information to their contacts and distributing flyers to public places.

Managing a small number of applications brought distinct challenges, because students had been trained, and had the expectation of being involved in assisting with applications. Significant time also passed

between the training and assisting with an application, and there was not likely to be a regular flow of referrals for students to work on.

*"I spoke to Neli, the Casework Coordinator at Refugee Support Devon by telephone. We discussed how the ECF Clinic might work in practice, as Refugee Support Devon only had one application to make for ECF every two or three months. I had planned to spend some hours each week at Refugee Support Devon setting up the clinic, but as PLP were also able to offer Refugee Support Devon some direct support with ECF applications Neli wasn't sure how much additional help she would need, particularly as there were a couple of volunteers who would also be able to assist with ECF applications"* (Extract from observations, 27/09/2017).

By the end of the research, the number of referrals to the project was beginning to increase as other local charities became more aware of the project and the opportunity to secure legal aid for their service users.

Swansea University has also started to assist with ECF applications on a relatively small scale as part of the Legal Clinic, which has only recently been set up:

*"The Clinic was only established in January 2017. It began with a miscarriage of justice project and prison law clinic. Since October 2017, we have had face-to-face client interviews mainly in housing, employment, relationship breakdown and equality issues, following which clients get an initial advice and assistance letter. There are currently four students involved with the work on ECF applications. It is less than other clinical work which has thirty-six students, but we have just started"* (Richard Owen, Associate Professor and Director of Swansea Law Clinic, Swansea University).

Referrals to Swansea University Law Clinic, for assistance with ECF applications, come from a partner organisation, which means that the Clinic Director cannot identify the exact demand in the region, but he believes it to be "*immense*". Arguably, the need for assistance with ECF is immense everywhere, as following LASPO the number of people eligible for legal aid reduced dramatically, and since the scheme was introduced the numbers of ECF applications being submitted and granted has increased.<sup>40</sup>

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<sup>40</sup> Ministry of Justice, 'Legal Aid statistics England and Wales tables July to September 2017' (Ministry of Justice, 14 December 2017) <<https://www.gov.uk/government/statistics/legal-aid-statistics-july-to-september-2017>> accessed 14 March 2018

## Finding 4: Regulatory frameworks

### The regulatory frameworks for ECF are favourable to universities seeking to involve students in pro bono schemes.

#### Recommendations:

1. Putting protocols and procedures in place to ensure assistance with ECF applications is limited to completing the form – and not the provision of advice on a legal matter – is necessary.
2. For immigration matters, it is particularly important for universities to ensure that students do not provide unregulated advice, as it is a criminal offence.

In terms of the regulatory framework for ECF, the form for making an ECF application (which is available online) is not regulated form, which means that anyone can assist an individual to complete one. This means that ECF applications are an opportunity for students to apply their developing legal skills, whilst university law clinics have less complex regulatory considerations.

Following conversations with staff at the University of Exeter and the University of Law, the Exeter steering group decided that it would be possible to set up an ECF clinic. During meetings, the fact that the work done to put together an ECF application does not constitute the regulated provision of advice was considered to be particularly important, as students would not be required to make decisions about whether an individual's case had merit, they would only need to put together relevant evidence to present to the Legal Aid Agency. Swansea University also identified as ECF being an area where students could gain experience of assisting with immigration matters without the law clinic being set up to deliver regulated immigration advice.

Whilst the ECF application process is not regulated, there are regulatory issues that need to be considered by universities. First, students can assist individuals to complete an ECF form and compile the evidence, but arrangements will need to be in place to ensure that the student does not provide legal advice to an individual during the process, as this would be regulated work. In the case of applications for ECF on immigration grounds, the issue of regulation is particularly relevant, as immigration is a highly regulated area of law. It is a criminal offence to provide immigration advice without the appropriate regulation. The Office of the Immigration Services Commissioner (OISC) provides details of what counts as the provision of regulated immigration advice. The OISC *Guidance on Competence* states that immigration advice “relates to an individual; and is given in connection with a relevant immigration matter”.<sup>41</sup> It does not cover work that is restricted to signposting or the provision of general information. The OISC has published guidance to specify that ECF applications are not a regulated matter.<sup>42</sup>

Second, to mitigate the risk of a student providing immigration advice, for example by commenting on whether the facts of an individual's case have merit in the context of the claim itself rather than for the ECF application, it is necessary for universities to ensure that there are protocols in place to prevent this. As one tutor at Exeter acknowledged during the process of establishing the clinic, law students are often seeking a career in legal practice, which means it is essential for them to be protected from inadvertently providing advice. Training and supervision can be used to this end, as well as having specific procedures in place, such as providing a structured list of questions to follow and students taking a note of attendance to ensure that

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<sup>41</sup> Office of the Immigration Services Commissioner, ‘Guidance on Competence’ (OISC, 2017) Page 4 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604807/OISC\\_GoC\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604807/OISC_GoC_2017.pdf)> accessed 14 March 2018

<sup>42</sup> Office of the Immigration Services Commissioner, ‘Guidance: Clarification of OISC’s jurisdiction’ (OISC, 3 June 2016) <<https://www.gov.uk/government/publications/clarification-of-the-oiscs-jurisdiction/clarification-of-oiscs-jurisdiction#direct-exceptional-case-funding-applications>> accessed 14 March 2018



an accurate version of the conversation is recorded. Training and supervision are discussed further under the next two findings: *Finding 5: Training*, and *Finding 6: Supervision*.

## Finding 5: Training

**Providing effective training to students can be time consuming, but is essential to enable students to assist with ECF applications, as well as being valuable for student learning.**

Recommendations:

1. Universities can make the most of existing PLP resources, by attending training sessions, reading the online ECF information and guides, and getting in touch for additional guidance or to explore opportunities to develop partnerships.
2. Engage other external partners to assist with the delivery of training where possible, particularly where there is the opportunity to share expertise.

Training plays an important role in developing the knowledge and confidence of staff and student volunteers to work on ECF applications. In both Exeter and Swansea, the training provided to students was based on the training delivered by PLP, which supervisory staff at both clinics had attended.

The PLP training on ECF, which members of the University of Exeter ECF steering group attended, covered the history of ECF and how it was brought into effect by LASPO. It included the main implications of the changes to the legislation, and the practicalities of making ECF applications. For example:

- The usual timeframe for ECF decisions, which is 20 working days, or 5 working days for an urgent application;
- When to mark an application as urgent, and the evidence to provide;
- How to provide evidence that an individual is unable to represent themselves on a matter;
- The relevant case law and how to include it in an application; and,
- The legal framework that provides rights to legal aid in the UK.

Following an overview of the basic information required to make an ECF application, the training offered participants the chance to discuss case studies in order to see how ECF is applicable in practice.

Having attended the PLP training, staff at the University of Exeter delivered training to the ECF student volunteers. This was also facilitated by external visitors, who were brought in to share their expert knowledge.

*"We trained our first group of eight student volunteers on 29<sup>th</sup> March 2017 at the end of the second university term for 2016/17. We invited others to help us run the training, including the Director of another university law clinic, and a private solicitor from London, both of whom had experience of making ECF applications. Alongside the students, staff and volunteers from the British Red Cross attended. Tia Matt, Director of the University of Exeter Community Legal Clinic provided a training session on client care, and Nelida Montes de Oca attended from Refugee Support Devon provided background on the work of the charity and why access to immigration advice is important for the charity's services users.*

*We blocked out the afternoon to brief the students on a range of important issues, which included: the background of the Clinic and how ideas had developed; the "art of the interview" and how to provide good quality client care; the context of legal aid in the South West; what ECF is and how the system works; and, how to make ECF applications. The students were then given the opportunity to apply this information to case studies." (Extract from observations, 29/03/2017).*

Following the initial training session, additional 'recap' sessions were offered in October 2017, once students returned from the summer break. These sessions included an overview of how the ECF Clinic would work in practice, the reasons that individuals might need ECF for immigration cases, and some case studies to discuss. Prior to the training, staff circulated the *Gudanaviciene* judgment, and the students were asked to read it to refresh their memories of the details. At the end of the first recap training sessions, the students were asked to do split into two groups of four and organise a time to meet to apply a case study to an application, in order to practise filling in the ECF application form and the CW1 form for the means test. The students had a chance to discuss their experience of this at the next meeting.

The experience of providing the training in Exeter was that it was quite time consuming, particularly as there was a changeover of students, as some of the students from the University of Law left and new students started between the initial training March and the opening of the clinic after the summer break. Following these experiences, the steering group has planned to train all students in September for the 2018/19 academic year.

Students found that useful aspects of the training included being provided with applications to work on, learning the procedures and implementation of the law, and putting their knowledge of the law into practice, as well as the chance to develop transferable skills:

*"It has provided useful guidance on interview techniques which are transferable, in particular how to approach sensitive situations with a clear and collected manner"* (Student Volunteer, University of Exeter ECF Clinic).

However, the students also identified the need for more structured training provided to all students at one time (rather than new members of the group being introduced following the first training session) and the need for more succinct paperwork: *"there were many useful outlines/tips though spread over many documents which was a little confusing to follow at times"* (Student Volunteer, University of Exeter ECF Clinic). Having developed an initial training pack, the steering group plans to continue to develop the guidance materials for students to make the information easier to follow.

The University of Huddersfield expressed an interest in PLP's capacity to provide training to staff or students, as one of the factors that could assist them to establish work on ECF applications. Phil Drake, Senior Lecturer and Director of the Legal Advice Clinic, said that the University of Huddersfield was very interested in working on ECF applications, but explained that they had not made ECF applications previously because they did not feel they had the expertise. PLP is keen to continue to develop conversations with universities, and other organisations, about how to extend capacity to assist with ECF applications.

## Finding 6: Supervision

**Supervision arrangements need to provide sufficient support to students and include the input of legal expertise where necessary.**

Recommendations:

1. Agree the supervision arrangements to be put in place alongside training materials. Ensure that any practical guidance or input of supervisory staff is manageable in terms of staff capacity, as well providing sufficient guidance to students.
2. Seek to secure additional resources where necessary to make supervision arrangements sustainable e.g. extra hours of time allocated for paid staff.

The supervision of work on ECF applications can be an important way to develop the expertise of students and helps to ensure the quality of applications meets the needs of applicants. The less stringent regulatory framework also means that clinics can take a more flexible approach to ensuring that any work done by students is appropriately supervised. Whilst it is possible for projects to have more limited supervision, in comparison to a pro bono project where advice is being provided, the nature of the direct work with individuals – combined with the level of expertise needed to complete ECF forms – means that supervision needs to be carefully considered. Projects need to develop methods of working that do not place an unreasonable burden on supervisory staff, but nevertheless provide sufficient support and guidance to students where necessary.

In the Immigration and Human Rights Project at City University and No 5 Chambers, students are provided with training and support from lawyers, but students take responsibility for a majority of the operational aspects of the clinic:

*“The students take on an ECF application. They are trained, and it is for them to meet the client, explain the forms, provide an advice letter and then – once the information is collected – provide a covering letter. Their work (the attendance notes and letters they write) are saved on the drop box, which is moderated by student directors. It is predominantly a student led project with support from the university, chambers and partnership with referral agencies. If there are questions about the content of letters they can ask the student directors, but often these are passed onto me. We are in the process of establishing a monthly drop-in surgery to develop more in depth (and one-stop) feedback from a lawyer. Thus far it's been by email” (Jennifer Blair, Immigration Barrister at No 5 Chambers).*

In Exeter, documents were developed to guide students through the process of making an ECF application. These documents were initially developed by University of Law students that attended PLP’s training session on ECF in Bristol in March 2017, and later amended by the steering group of the University of Exeter ECF Clinic, as well as having input from PLP staff. The purpose of creating guidance documents was to ensure that students:

- Received clear guidance on the appropriate questions to ask and how to maintain professional conduct in dealing with what, at times, could be very sensitive issues;
- Would be able to produce high quality applications;
- Would be protected from inadvertently providing immigration advice, as they would have a script of questions to follow when interviewing visitors to the ECF Clinic.

The documents are still being developed, as it was difficult to get all of the information into one cohesive document. Having the input of lawyers has been beneficial for ensuring that the structure of the documents provides clarity to students on how to conduct the work of the ECF Clinic.

At Swansea, the supervision arrangements involved the Clinic Director interviewing clients initially:

*“As we are in a pilot stage the Clinic Director interviews the client initially and then students do a follow up interview. The students draft applications, which are supervised by the Clinic Director. The students work in pairs”* (Richard Owen, Associate Professor and Director of Swansea Law Clinic, Swansea University).

In Exeter, it was also found that peer support could be useful, particularly where undergraduate students could work with postgraduates.

Richard Owen, Director of Swansea University Law Clinic, also noted the sensitivity of the cases received, and that how to respond to the challenges arising from this was an important consideration:

*“The challenge is that clients are very impecunious and cannot come to the Clinic in person. We cannot allow students to travel to them so it can be hard to communicate with them. Safeguarding student well-being is another issue, as both cases we have dealt with have been harrowing”* (Richard Owen, Associate Professor and Director of Swansea Law Clinic, Swansea University).

The capacity of staff can be a limiting factor for work on ECF, as the applications themselves are time consuming and specific expertise is required. The University of Huddersfield identified that staff capacity had been a limiting factor for developing work on ECF, although it also identified that PLP’s expertise could be an important resource for expanding the Law Clinic’s work to cover ECF. These are important considerations when ECF applications are not only important to the individuals concerned, but may raise issues around safeguarding; especially where the potential service users of an ECF project are subject to particular vulnerabilities, such as mental health conditions or precarious immigration status.

One risk, which was encountered at Exeter, was that if staff became too involved in assisting with the drafting of applications it could take considerable time and resources – as well as detracting from the opportunity for students to develop their own skills. Getting the right balance involved staff being on hand to provide assistance, particularly when students were working with an individual, but also allowing students to do most of the drafting of the application and compiling documents. In Exeter, the work completed on the university campus in the law clinic room seemed to facilitate the balance more appropriately than the ECF applications being prepared at the local partner organisation Refugee Support Devon. Working from the law clinic room helped to ensure it was clear who was helping an individual (i.e. that the service was being provided by university volunteers, rather than the volunteers of the partner organisation). It also meant that student volunteers could work more flexibly by conducting an initial interview and then going back to the clinic in their own time to prepare the applications, and arranging follow-up meetings with the individual to provide additional paperwork or sign the form as necessary.

## Finding 7: Managing capacity

### Referrals from external organisations can be difficult to manage, and work best with clear guidelines and referral pathways.

#### Recommendations:

1. Identify potential partner organisations to develop working relationships with, as well as establishing working methods that will suit external partners and the university.
2. Establish ways of screening cases from partner organisations, to identify cases that may be eligible for ECF. It is important that individuals receive some initial advice, to mitigate the risk that a case may already be in-scope for legal aid, and to maximise the chance of the ECF application being successful.

Whilst universities have some resources to allow pro bono schemes to operate within law schools, the capacity of staff is often already stretched with teaching duties and other responsibilities. Law schools may allocate specific staff or a number of hours for pro bono work, but these often have to be carefully managed in order to make pro bono schemes possible in terms of day-to-day operational considerations and long-term sustainability. ECF applications can be time consuming and are in some cases urgent; they can also be difficult to predict in terms of need (in part, because one of the functions of the clinic may be to raise awareness of the scheme, as well as to provide assistance). The demands of ensuring an effective service whilst also balancing the capacity of staff, and student timetables, can be a challenge.

The experience of setting up the University of Exeter ECF Clinic was that time needed to be spent to raise awareness of the scheme in order to generate applications, which the project initially underestimated. The steering group was aware that there was a great demand for assistance with immigration cases in Devon, as there is so little immigration advice available. The partner organisation for the ECF Clinic, Refugee Support Devon, had dealt with a handful of cases eligible for ECF, but found that the main issue with making them was the time it was taking volunteers. Setting up a project at the university offered an opportunity to make use of the time and skills of students, whilst also offering students a chance to apply their learning in practice.

There was also recognition of the need to offer the opportunity to assist with ECF applications to all students who had volunteered with the project. Deciding how to allocate referrals was important, to ensure that all students had a fair chance to participate. The decision was made to send an email out, and those first to respond would be able to take the case, whilst also ensuring preference was given to those who had not previously helped during the initial stages.

Screening potential applications can be helpful for generating and managing referrals. During the first term of the research (September 2017 to December 2017) there was limited need for assistance with ECF applications. During this time, students assisted with three ECF applications at Refugee Support Devon. However, at the time of writing (February 2018) the number of referrals received was beginning to grow, particularly as the Immigration Clinic, which had just been launched at the University of Exeter in January 2018, started to receive more cases, some of which were suitable for ECF applications. Swansea University also works with a partner organisation that provides referrals for suitable cases, although noted that they do not see the cases that the partner organisation does not forward. Whereas in London, the Immigration and Human Rights Project at City University has three referral agencies with clear procedures for the screening of cases and input of legal expertise:

*“Both Haringey Migrant Support Centre (HMSC) and Hackney Migrant Centre (HMC) have drop-in services, and Migrants Organise has a support project where legal advisers can see visitors. Where*

*the visitor needs ECF, the legal adviser confirms this and then we might receive a referral. Me, or one of my colleagues, screen all referrals and confirm whether they are suitable for the project.*

*Sometimes it seems like there is a better option or we need more information first. What sometimes happens is a lawyer has said to a volunteer at one of the charities to refer the case to us, and the volunteer obviously does not really understand what they need ECF for, so we have to ask for more information.*

*We started with more formal agreements (re paying expenses for volunteers for postage etc.), but to be honest most of the project has then been pretty reflexive. We also get a small number of referrals from other places, such as the Children's Society, Atleu etc. If a private solicitors' firm tries to refer one we say no, but I do offer to draft pro bono grounds through chambers (to try and encourage more solicitors to get used to making them)"(Jennifer Blair, Immigration Barrister at No 5 Chambers).*

The nature of having to set up the project in a slightly 'ad hoc' way was also reflected in the experiences of the ECF Clinic at Exeter. The project in London is structured so that volunteers can help to draft an application, but ultimately the responsibility remains with the individual who submits it, although there is some flexibility due to the time constraints of the ECF process:

*"The volunteer is working with the individual who is making a direct application. The student volunteer is not a representative, so in terms of responsibility it is the individual who submits the application and is ultimately responsible for it. However, we generally use the project or a referral agency inbox as the contact address, and it may go off from the project email address or a referral agency email address. Obviously, the individual gets a copy of anything sent. The referring organisations don't have much capacity and it's important to avoid delay (which could follow if the referrals were sent on to them to send off and might mean that the financial evidence would become out of date)"(Jennifer Blair, Immigration Barrister at No 5 Chambers).*

In terms of the capacity of the ECF Clinic at Exeter, the main referral organisation was a consideration, as well as student availability. Attempting to find times to complete ECF applications to suit all parties (referring organisation, service user, students and supervisory staff) could be difficult, especially when the capacity of voluntary sector staff is limited and teaching timetables generally run from 8:30 to 17:30. One student volunteer noted, *"everyone seems committed, though regrettably it has been difficult to attend some of the ECF Clinic applications around university sessions due to clashes in timing"* (Student Volunteer, University of Exeter ECF Clinic). There seemed to be a slight preference among student to find a set time – possibly a Wednesday afternoon when many teaching sessions do not run – when the ECF Clinic could hold regular activities, although at the time of writing that idea had not been implemented. The slow progress of referrals, as well as limited room space at the partner organisation, had made the option of a regular drop-in session difficult. Having explored options for clinic volunteers regularly attending Refugee Support Devon, the decision was made in February 2018 to abandon this idea in favour of all work being done from the clinic space at the university campus.

The issue of whether to focus on immigration applications only – or extend the capacity of the ECF Clinic to cover other areas of law – was also a recurring theme of conversations. In Exeter, the development of the immigration clinic made it much more feasible to run the ECF Clinic for immigration applications, because it ensures that individuals get signposted correctly from the outset (i.e. if there is little point in making an ECF application because there are other options available, then it is possible to investigate these other options first). Keeping the availability of the ECF Clinic open to referrals from agencies that had already been informed about the service also seemed important, so whilst there was an inclination to further publicise the service, this had to be carefully balanced with the need to keep the number of referrals at a manageable level (i.e. to grow the service gradually, rather than expanding too quickly).

## Finding 8: Resources

**Recognising the resources available, as well as the additional resources that may be required to make the project successful (such as funding for interpreters, travel or volunteer expenses) is an important part of ongoing work to meet demand for an ECF service.**

Recommendations:

1. Speak with partner organisations to identify the resources that are required to run the project effectively and meet the needs of service users, and establish whether these resources can be provided, or whether funding applications need to be made.
2. Students and staff can bring important skills and expertise to a project – and student engagement can be an extremely valuable resource to assist who may have limited time available. Create a steering group or committee to lead the project, including student representatives where possible.
3. Voluntary sector organisations may have capacity to offer some resources but not others, which make it important to keep conversations open about how best to manage the project.

Students are a valuable resource for community projects, because they not only have some flexibility over how they spend their time, they are also keen to gain experience and put their skills into practice. Due to the focus on immigration applications, the motivations for the students involved with the ECF Clinic in Exeter varied between an interest in issues around human rights and legal aid, and a specific focus on refugee issues. The ECF Clinic in Exeter initially recruited four undergraduate students from an immigration law module, and four postgraduate students from the University of Law. The diverse interests and developing areas of specialist knowledge that the students brought to the project were particularly valuable for keeping the momentum, especially in the first stages of setting up the project when there were very few ECF applications to be working on. The Immigration and Human Rights Project in London also recognised the significance of student input: Jennifer Blair reported that students were not involved in setting up the project, but the advice agencies that the project works with were consulted.

*“From the first volunteer intake the Student Directors for the project have been crucial for running and developing the project - they really run it. So we have changed our processes over time in line with their feedback at periodic meetings”* (Jennifer Blair, Immigration Barrister at No 5 Chambers).

Staff capacity at universities and voluntary sector organisations is also important, as setting up a project requires some input in terms of time, and not everyone may feel able to contribute. The University of Huddersfield is very interested in setting up an ECF service, but recognises the potential constraints in terms of capacity:

*“We're very busy, and the number of staff we've got involved in the clinic isn't as many as we would like. As we are very busy we have to select carefully what we do and what we do not do because of resource constraints that we have, but that is why if we could get some kind of assistance it would help. With some of our cases we take on, where we don't have the expertise with the staff, we have what we call legal friends, where when we're giving some advice agree to have a quick look over it, because they're experts in relation to that matter. That is something that maybe the PLP could do, where perhaps we draft the ECF and they could look over it just to make sure they are along the*



*right lines. That would be incredibly helpful and really help us – and would appease our insurers as well”* (Phil Drake, Senior Lecturer and Director of the Legal Advice Clinic, University of Huddersfield).

Phil Drake, Senior Lecturer and Director of the Legal Advice Clinic, University of Huddersfield identifies PLP as a potential resource for assisting with an ECF project. As a not-for-profit organisation, PLP has its own constraints on time and resources, although it is keen to maintain support to organisations assisting with ECF in order to promote access to the scheme.

The Casework Coordinator at Refugee Support Devon described the main challenges of setting up and running the ECF Clinic as *“time and money constraints, as it is run by volunteers and students, and ECF forms can take a lot of time for the clients and those helping them”* (Nelida Montes de Oca, Casework Coordinator at Refugee Support Devon). The aim of the project was to shift some of the responsibility away from the Refugee Support Devon, rather than creating additional work. The additional resources that may be needed for a project can extend to interpreter’s fees, volunteer expenses, room hire and travel costs. In Exeter, the decision was made to work on ECF applications at the university in part to avoid the cost of room hire for the voluntary organisations making referrals. Although voluntary sector organisations may be able to offer help with the cost of interpreters or travel for their clients, the stretched capacity of the voluntary sector in general makes it important to consider whether there are other ways of funding any additional costs, for example by raising funds within the university or speaking to local groups about fundraising campaigns.

## Finding 9: Social and pedagogical value

### ECF projects at universities can benefit student learning whilst also offering a service to the wider community.

#### Recommendations:

1. Universities can recognise the value of teaching students about the legal aid system, and the challenges faced, as well as the value of teaching applied legal skills.
2. ECF work can be used to promote the positive impact of the university in the wider community, by adding to existing pro bono schemes and building partnerships with other local organisations.

Whilst the motivation to set up ECF projects is generally as a response to low rates of applications and issues with the accessibility of the ECF scheme, the opportunity to provide a valuable student learning experience does not necessarily exist as a separate issue. Raising awareness of the ECF scheme – and the social issues around access to justice that it raises – is a valuable part of the learning process.

ECF clinics can offer students opportunities to learn about the workings of the legal aid system and develop their legal skills by identifying the facts of a case and applying them in practice; but the technical legal experience gained is only part of the process. The process of setting up an ECF clinic can also provide an important opportunity for students to engage with issues around access to justice in practice. Involving local organisations in conversations about the ECF scheme in order to raise awareness of it, and coming into direct contact with the types of issues faced by individuals seeking legal aid, can be an important part of the learning experience:

*“I have found the client interaction extremely valuable. Gaining knowledge of the practical application of different areas of law, like the human rights act, has also been hugely valuable. It has given me real experience of interacting with clients, enhanced my knowledge of different areas of law and made me more passionate about the problems surrounding legal aid”* (Student Volunteer, University of Exeter ECF Clinic).

At Swansea University, one of the motivations in setting up the clinic was that as staff were *“not accredited immigration advisers it was a way of offering students some experience in that area without the need for accreditation. The work is challenging enough, but not too challenging for final year undergraduates”* (Richard Owen, Associate Professor and Director of Swansea Law Clinic, Swansea University). The opportunity for students to volunteer with an ECF project offers the chance for them to apply their developing skills, as well as engaging with the broader social issues around civil justice. Immigration is an example of an area of law that is highly regulated and therefore can be a difficult area to develop expertise.

The process for submitting ECF applications to the Legal Aid Agency – through a separate route to other legal aid applications – also makes it possible to run the projects in a practical sense. The Immigration and Human Rights Project in London was feasible to run because the ECF documents are online, and ECF applications can be submitted by email, so it is possible to run the project with limited resources. For students with an interest in training to be practitioners, the accessibility of the ECF application process is also a good starting point for understanding how the civil legal aid system works. For example, gathering the documents required to be submitted alongside the CW1 form (for proof of means) gives an insight into some of the everyday tasks for legal practitioners. ECF work can help students to develop skills in client

care, including the need to have organised paperwork and administrative systems in place for compiling evidence, storing documents in line with data protection requirements, and so on.

## CONCLUDING REMARKS: OPPORTUNITIES AND LIMITATIONS

University law clinics offer potential resources for raising awareness of the ECF scheme and assisting with ECF applications, as well as offering students important learning opportunities. PLP recognises that the expertise it has developed on ECF over the last five years can be of great value in assisting ECF projects to be established in universities, and will continue to explore ways of increasing its organisational capacity to assist with such programmes.

University law clinics play an important role in extending access to ECF in local communities where individuals would otherwise be unlikely to get assistance in accessing legal aid for an out of scope matter. There are some specific challenges that universities face in establishing ECF projects, but these are outweighed by the opportunities that ECF clinics can offer.

### Limitations

#### 1. Administration of the ECF scheme

Some of the main challenges encountered by universities seeking to assist with ECF clinics relate to some of the ongoing structural issues with the ECF scheme and its administration by the Legal Aid Agency. Limited awareness of the scheme, combined with the disincentive of only funding providers for successful applications, means that university-based projects may need to carry out some initial scoping of the ECF landscape and put effort into building local partnerships and referral pathways.

The complexity of ECF applications and the technical expertise needed to identify eligible cases – particularly in terms of why an individual is entitled to legal aid in order to prevent a breach of their rights – mean that projects working on ECF applications may need to rely on the legal expertise of lecturers or practitioners in specific areas of law. The level of expertise required may limit the scope of developing projects.

The administration of the ECF scheme may also lead to additional work for those assisting with ECF applications, for example chasing up delayed applications, pushing for urgent applications to be treated as such or the additional effort required securing a suitable legal aid provider. These parts of the process can be time consuming, and whilst students may want to be involved in cases beyond assisting with an application, supervision can be resource intensive and require further expertise.

#### 2. Balancing competing interests and motivations

As an organisation, PLP is primarily interested in how to promote access to justice, and the ways in which assistance with ECF applications can improve access to legal aid. Universities as teaching institutions are primarily concerned with student learning, although law schools may recognise the importance of the community benefits that pro bono projects can offer; and universities have other recognised functions beyond teaching (such as research). Other partner organisations, such as voluntary organisations and the not-for-profit sector will most likely have the interests of their service users as a primary consideration. Attempting to balance the interests of those seeking legal assistance with the aims of student-focused legal education programmes is not always straightforward. The limitations of the university setting, including structural factors such as teaching timetables, holidays, and the time and capacity of supervisory staff, must be negotiated in order to allow for the work on ECF applications to be carried out in partnership with or on behalf of other local community services.

As the challenges of the ECF system are difficult for any voluntary sector or pro bono project to address, balancing the needs of those seeking assistance with the requirements of student learning can be very difficult. PLP recommends that any project must have the best interests of those seeking legal assistance at its heart, and there may be instances where a university-based ECF programme simply is not feasible.

However, during the course of this research PLP also observed that there are ways to address the challenges of balancing competing interests, which include practical responses such as developing structured training programmes, clear supervisory arrangements, and referral mechanisms.

### 3. Managing capacity issues

The current system of legal aid puts pressure on both legal aid providers and voluntary sector organisations to fill the gaps where legal aid is not automatically available to individuals. Universities often have capacity limitations, as do voluntary sector organisations and legal aid providers. Attempting to establish ECF services, where all those involved may have limited capacity to some extent, and for varying reasons, can be a significant challenge. Capacity limitations are likely to change from place to place, as some organisations may have access to small pots of funding, whilst others may have room space or access to interpreters. The resources available to particular organisations – whether universities, voluntary organisations or legal aid providers – will be specific to such organisations. Whilst attempts can be made to mitigate capacity issues, for example by identifying the resources that are available and what resources need to be sought, arguably the availability of legal aid should remain the responsibility of the state, rather than community organisations and pro bono projects. Managing a scarcity of resources is symptomatic of broader issues around funding cuts and the impact on state and society.

## Opportunities

### 1. Improving access to advice

Universities are able to offer additional capacity for assisting with ECF applications, in the form of the legal expertise of staff and students and the time made available for pro bono schemes to run from law schools where there are opportunities for student learning. Starting with a relatively small project and building from there may be necessary to ensure that the project is manageable and sustainable, but the problems with the general availability of legal aid providers across England and Wales mean that any projects that aim to address a gap in provision can be of significant value for the community. ECF projects can support providers by easing the burden of the time spent working on ECF applications, which a provider would otherwise have to complete at risk of not being paid for their time should the application be rejected. PLP has resources available on its website that can assist universities to develop good quality applications, and intends to further explore opportunities to develop training programmes and supervisory assistance for applications.

### 2. Raising awareness of ECF

Setting up an ECF project does not only provide practical assistance to individuals who need to make ECF applications, it also opens up conversations about the ECF scheme. As general awareness of the scheme is still relatively low among legal and non-legal professionals – and many legal aid providers are unable to provide assistance with ECF applications – promoting ECF is in itself of great value. The findings indicate that setting up an ECF project may take some time, as raising awareness of the scheme may need to be a part of the work done to generate referrals for the project.

### 3. Monitoring and reporting

Whilst setting up the ECF clinic in Exeter, it became clear that universities – as research institutions – might also play an important role in monitoring the way in which the ECF system is operating, by monitoring the number of referrals and the availability of legal aid providers in a particular region and area of law. Setting up the project in Exeter has started to generate referrals, also highlighting a local need that was previously difficult to document. Monitoring is an important part of being able to engage in meaningful conversations with policy-makers, because it provides evidence of the issues arising. As law schools have experts in particular areas of civil and social welfare law, the work done on ECF projects can also open new routes of enquiry for specialists in relevant fields, particularly where there may be opportunities to develop research alongside casework.

#### 4. Student learning and engagement

Engaging students in the process of making ECF applications is important not only from the perspective of applying legal skills; it is also of broader social value for raising awareness of issues within the civil justice system, and the necessity of legal aid from an access to justice perspective. Giving students the chance to learn some of the challenges of the system, and the role that they can play in mobilising change, is of great value not only in the present, but also for the future of the legal aid system.





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