



Learning Partner Opportunity: Using the Law to Effect Systemic Change

1. Background

Public Law Project (PLP) is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage. Within this broad remit PLP has traditionally focused on three objectives: increasing the accountability of public decision-makers, enhancing the quality of public decision-making and improving access to justice.

PLP undertakes research, policy initiatives, casework and training across the range of public law remedies. For the five year period 2017-2022 PLP has adopted the followed strategic priorities:

1. Promoting and safeguarding the Rule of Law during a period of significant constitutional change;
2. Working to ensure fair and proper systems for the exercise of public powers and duties, whether by state or private actors; and
3. Improving practical access to public law remedies, including by seeking to ensure that justice reform is evidence led and by increasing knowledge of public law.

Lankelly Chase Foundation works to change the systems that perpetuate severe and multiple disadvantage. Lankelly Chase commissions, co-designs and grant funds a variety of practice, policy and research work which supports this mission and generates learning about how change happens.

Project

Lankelly Chase and PLP have worked together for more than four years. Lankelly Chase part-funded PLP's successful work to challenge inadequate arrangements for the provision of civil legal aid to people facing extreme disadvantage. More recently we have been exploring the idea of a project to bring PLP's legal expertise to bear in support of the systems-change strategies of a group of Lankelly Chase's funded partners.

Using collective insight gathered by PLP and Lankelly Chase's partners, the ambition is to learn more about when and how to deploy legal approaches to support systemic change.

Funding for an 18-month pilot has just been agreed for this work. This is not likely to be long enough to answer all questions conclusively. It can take many years for cases to progress through the justice system, particularly if they raise significant matters of public interest

suitable for the higher courts, or for impact (intended or otherwise) to start to show. However we hope and expect that the 18-month pilot will be long enough to start a process of meaningful exploration.

2. Aims

On the face of it, strategic legal action appears to be a powerful tool for equalising power and accountability. Public law governs the relationships between individuals and the state. Judicial review offers a mechanism by which individuals can hold the state to account.

However, change can only be achieved within the framework of the existing law as made by Parliament and interpreted and applied by the Courts, albeit that it can highlight deficiencies that go on to result in law¹ or policy² being changed.

'Success' arising from litigation is not always easily identified and impact may not always be straightforward to measure. Cases may be 'won' in court but result in little if any change on the ground. Equally cases can be 'lost' but ultimately result in meaningful change.

There is a risk that legal action may result in a symptomatic 'fix' or that unintended systemic consequences result. Examples might be where *individuals* who challenge unlawful failures receive improved outcomes but that the system continues to fail significant numbers of those who cannot or do not raise challenges³, or where the particular part of the system that comes under legal scrutiny is improved, but the root cause of the problem manifests elsewhere the system.

This latter problem may be exacerbated in the post-austerity world, in which health and social care providers may not, in fact, be sufficiently resourced to meet all their statutory obligations.

We want to better understand the role to be played by legal advice and assistance in achieving systemic change. We want to ensure that energy and focus is in the right place if not to achieve change then to help put in place the building blocks for the policy and legislative change that is actually sought. We think there is a need for a systemic analysis of the use and impact of litigation to bring about systemic changes and also strategies that draw on the knowledge or deployment of public law principles.

We therefore wish to engage a learning partner to work alongside PLP, Lankelly Chase and partner organisations to examine the primary learning aim of:

How best can legal advice and assistance be deployed to achieve or facilitate systemic (rather than symptomatic) change in relation to people facing severe and multiple disadvantage?

¹ For example in *YL v Birmingham City Council* [2007] UKHL 27, the House of Lords held that in providing care and accommodation for residents placed with it by a local authority, a privately owned care home was not performing 'public functions' within the meaning of the Human Rights Act. This was widely regarded as undesirable, and led to Parliament passing s145 of the Health and Social Care Act 2008, which specifically provided for care home residents to enjoy the protection of the HRA.

² For example the House of Lords decision in one of the high profile 'right to die' cases *R (Purdy) v Director of Public Prosecutions* [2009] UKHL45 did not change the law - assisting suicide remains unlawful unless or until Parliament declares it otherwise but required the DPP "to clarify what his position is as to the factors that he regards as relevant for and against prosecution" (paragraph 55) in cases of encouraging and assisting suicide.

³ For example where the High Court previously identified that life sentenced prisoners with legal representatives who threatened or brought judicial reviews of delays of the Parole Board in deciding their cases were 'leap frogging' those prisoners who did not threaten or bring judicial reviews.

Provisional lines of enquiry might include:

- i) How effective is legal advice and assistance in helping to achieve systemic change?
- ii) What is the nature of successful system change brought about following legal intervention?
- iii) Can the impact of legal intervention in systemic change be measured?
- iv) What other interventions are effective in bringing about systemic change e.g. campaigns, policy and lobbying work, pressure from decision-makers funders and backers etc
- v) Where attempts to bring about systemic change using the law fail, why do they fail and what lessons can be learnt?
- vi) How and when can legal advice and assistance be most effective at helping to achieve systemic change for those facing severe and multiple disadvantage? Are there particular instances which are more (even disproportionately) 'successful' e.g. challenges to local versus national government, challenges to regulatory bodies etc
- vii) What factors are relevant to the accurate diagnosis of the relevance of public law rights, duties or obligations to a systemic problem affecting people facing severe and multiple disadvantage?
- viii) How can unintended consequences (including those related to communications and the public/political understanding of rights-based approaches) be avoided?

3. Key responsibilities

The role of the Learning Partner is to act as a supporter, guide and 'critical friend', with a key responsibility of supervising an action research plan for the achievement of the learning aims which enables PLP to retain as much ownership of the process as possible.

The term 'Learning Partner' is used instead of 'evaluator' or 'researcher' deliberately. We are not asking for an evaluation which establishes some key impacts of PLP's work at a set point in time, followed by a time-limited attempt to communicate this. We are looking for a dynamic rather than static approach: an ongoing action learning process of 'collecting and reflecting' with specific outputs yet to be negotiated between the project partners. This could be delivered by an independent consultant or partnership, research company, academic department or any similar organisation.

We anticipate that activities and outputs would include, but not be limited to:

- Facilitating initial stage discussions between PLP and Lankelly Chase to 'design the alliance' and establish a shared definition of "systemic change" for the purposes of this partnership.
- Establishing an idea of context by exploring the lines of enquiry set out above
- Development of a proposed framework/methodology for achieving the learning aims
- Identification and engagement with key audiences/stakeholders
- A plan for fieldwork and strategies/methods for the collection and analysis of data which focuses on PLP's work with Lankelly partners but draws on PLP's wider work where that is helpful and relevant to the aim of this project;

- Designing and implementing a process of reflection – a feedback loop which can drive our collective learning
- Production and communication of learning. 'Traditional' reports are part of a useful picture, but we are also keen to explore other forms of collecting, analysing and reporting data, plus learning events or similar. We are interested in an approach which can communicate information and data in creative ways to a variety of different audiences.
- Proposals for the continuation of learning beyond the 18 month period in this project, including the identification of future data or analysis likely to be relevant.

4. Qualities and experience/skills

The partnership is based on a strong sense of shared values and principles, so we are looking for a learning partner who shares a commitment to openness, honesty, empathy and reflection. An understanding of systems change involving those facing severe and multiple disadvantage and systemic analysis is essential, as is legal knowledge. Applied legal expertise is desirable.

In responding to this opportunity, we would expect potential learning partners to outline:

- a) A methodology for how the learning outcomes could be achieved;
- b) Knowledge, skills and experience relating to systems change, use of the law and the field of multiple disadvantage;
- c) Experience of capturing learning and sharing it in creative ways and formats;
- d) An understanding of questions relating to data protection and the management and maintenance of data
- e) Experience of, and desire to engage in, relationship building and stakeholder engagement.

5. Responding to this opportunity

We are open to informal approaches and discussions about this opportunity, but will require written information on the above to enable a shortlisting/decision process between PLP and Lankelly Chase.

Please contact Cathy Stancer at Lankelly Chase in the first instance:

cathy@lankellychase.org.uk

Tel: 0203 747 9930/07860 949003

Interested parties should produce a proposal, in no more than 3 sides of A4, detailing how you would approach this request and what you will do to meet the specification detailed above in section 4.

In addition, applicants should supply a summary of the costs and resources for the work. It is suggested that at a minimum this sets out the different types of costs the project will incur, and when these are likely to occur.

The budget available for this work is £20,000. The work will take place over 18 months.

Please send your proposal to Yasmin Belgrave at Lankelly Chase:
yasmin@lankellychase.org.uk

Timescales

Monday 19 June - call for learning partner issued

Tuesday 29 August - deadline for proposals

Shortlisting in the week commencing w/c 4 September 2017

Interviews on 14 September 2017 at Lankelly Chase in London

2 October - learning partner appointed and work begins.

The majority of work will take place in London (where PLP and Lankelly Chase are based) but some travel may also be required.

Appendix I: PLP's history and context

PLP is a national legal charity founded in 1990. PLP employs specialist lawyers to advise the organisation, to contribute to our training and public legal education initiatives, and to act for external clients. These clients may be individuals affected by unfair or unlawful policies or decision-making, or other charities, law firms or campaign groups acting in the interests of disadvantaged groups.

In addition to casework, we run a diverse conferencing and training programme, attracting a range from delegates from members of judiciary through to students, grassroots campaigners and lay voluntary sector advisors. We publish accessible guides to improve awareness, understanding and use of public law redress mechanisms. We also undertake and publishes empirical research, and engage constructively with policy issues impacting the public law/access to justice landscape.

PLP has a strong track record of litigation on matters of public interest and/or constitutional significance.

PLP received the Legal Aid Lawyer of the Year 2015 'Outstanding Achievement' Award. It is a Halsbury Award winner having received the Special 'Rule of Law' Award in 2013, is a Guardian Charity Awards 2012 Winner. It is accredited by Lexcel and as a London Legal Support Trust Centre of Excellence. PLP's lawyers are frequently individually recognised as experts in their field.

Appendix II: Lankelly Chase and the 'system conditions'

Over time, Lankelly Chase has refined the best way of achieving our mission from 'funding what works' to 'spreading the *preconditions* of what works'. Across a wide range of current and previous projects working on various elements of multiple disadvantage, we have learned that the most successful change projects tend to have the same fundamental principles in common, and exhibit the same basic pillars in their approach. We describe these 'system conditions' as:

- People see themselves as part of an interconnected whole

- There is shared purpose and vision
- Feedback and collective learning drive adaptation
- People are viewed as resourceful and bringing strengths
- Leadership is collaborative and promoted at every level
- Power is shared and equality of voice is actively promoted
- Decision making is devolved
- Open, trusting relationships enable effective dialogue
- Accountability is mutual.

We try to model these conditions in our own activities, and are hoping for a learning partner who can help to exhibit and test this approach during the contracted partnership.

www.lankellychase.org.uk