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INTRODUCTION

Samuel Kirwan, John Clarke, Morag McDermont and Alison Kite

Increasing numbers of people in the United Kingdom find themselves needing advice and support in dealing with a growing range of problems. Whether it is a dispute with one's employer, a stop on one's benefit payments, an impending eviction, or a default on a debt, the background to this book is the rising number of individuals with 'civil law' issues that can rapidly lead to situations of crisis. These growing problems have a troubled relationship to the current period of 'austerity'. Presented alongside an increasingly familiar narrative of 'tightening our belts' and 'living within our means', a series of policies pursued by UK governments since 2010 have intensified such problems, while the reductions in public funding that they have mandated, most notably to the Civil Legal Aid budget, have reduced the range and scope of many public organisations to offer advice or support. At the same time, there has been an expectation that voluntary organisations would somehow 'fill the gap' left by the withdrawal of public services – an expectation exemplified in David Cameron's image of the 'Big Society'. As a consequence, voluntary organisations providing advice and support find themselves at a particularly acute junction of these social and economic pressures – while facing problems of their own, not least reductions in their funding as the 'austerity' cuts work their way through the funding system.

This book explores this conjunction of needs and pressures around advice. It is particularly concerned with how people's troubles bring

them into contact with advice agencies, and with the relationship between those troubles and the official worlds of policy and law: for example, how does the experience of being unjustly treated at work become a legal matter? The relationship between law and justice is a critically important one for many of these troubles – whether they are matters of immigration, housing, benefits, indebtedness or redundancy. The book emerges from the ‘New Sites of Legal Consciousness’ Research Programme. Based at the Universities of Bristol and Strathclyde and running between 2012 and 2015, it set out to understand the world of advice and its relationship to the law. The focus on advice and law is one way of capturing the wide-ranging political and social changes in this period that shaped the changing *need* for advice and the increasing difficulties encountered by the public in dealing with the problems they faced.

We have called the book ‘Advising in Austerity’ as a way of identifying the current political period – a period characterised by concerted attempts to shift the relationship between the individual and the state in the name of economic necessity. However, our use of the term ‘austerity’ does not mean we think it is a credible description of the claimed economic necessity, nor is it even a particularly accurate term for describing the policies pursued by UK governments since 2010. Indeed, inasmuch as ‘austerity’ indicates a conservative caution with managing the ‘public purse’ (aka ‘living within our means’), claims a spirit of solidarity that transcends wealth and class (aka ‘we are all in this together’), and celebrates an ethic of saving rather than accruing debts, it bears little relation to current social and economic policy (see the discussions in Evans and McBride, forthcoming; Clarke and Newman, 2012; Wren-Lewis, 2015). It may be more helpful to think of current policies as being legitimated or authorised by the *idea* of ‘austerity’ – a ‘dangerous idea’, as Mark Blyth calls it (Blyth, 2013; see also Levitas, 2012). These policies have deepened and extended existing tendencies, which can be grouped with others under the label of ‘neo-liberalism’, including dismantling protection, stability and security in the employment and private housing spheres; cutting welfare entitlements to the bare minimum required for survival coupled

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with a stigmatisation of claimants; and the encouragement of unsecured debt as a way of making ends meet in the context of stagnating wages (see Peck, 2012, on ‘austerity’ urbanism).

In the UK, each of these areas of changes has been underpinned by a growing reduction of access to specialist legal advice, assistance and representation. While ‘Access to Justice’ is typically conceived in the context of criminal law, the extraordinary cuts to Civil Legal Aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) have made clear the critical importance of ‘access to justice’ in the context of, among other issues, redress in the face of government error, mitigating the power imbalances between employers and employees, and of preventative help to fend off default on household debts.

The subtitle of the book – ‘Reflections on challenging times for advice agencies’ – reflects our desire that this be a book not only about advice but *from* advice; we wanted the voices and opinions of clients, advisers and managers to come to the fore. In addition to weaving material from the project through the book chapters, we have included three ‘case studies’ – stories of individuals participating in our research that trace their encounter with advice services. We have used these as the basis for reflections on the issues at stake in the individual cases, on the processes that people encounter when they seek advice, and on the practices, possibilities and problems of advice work in ‘austerity’.

How to use this book

The book is separated into three parts, each covering a different area of concern that guided the research project. Each part begins with an introductory page setting out the questions to which the grouped papers are responding and the narrative threads that link them. Unlike other texts in this field, across these three parts the reader will find a variety of writing styles and chapter formats. The book combines personal vignettes* with presentations of research; legal analysis with

* All participant names used in the text are pseudonyms.

theoretical perspectives; and edited interviews with agendas for political change. It can be read from cover to cover, moving between styles and narrative threads, or across points of interest that move between chapters. Some chapters are designed to speak directly to each other. Thus the ‘case studies’, which present the stories of research participants as they interact with advice services, are followed by ‘Reflections’ in which three advice experts reflect upon what these vignettes say about their area of work. The final chapter of the book reflects upon the issues and themes raised across the different contributions, considering what they tell us about the current (and future) political situation and the role of advice in resisting dynamics of social and economic dislocation.

We hope this distinct approach provides an engaging and novel reading experience for the variety of individuals with interests in the field of advice. To give an idea of where these varied interests are addressed across the text, for readers coming into advice either as a subject or a practice, Eleanor Kirk (Chapter Five) and Samuel Kirwan (Chapter Nine) describe the experience of advice and its effects upon advisers and clients, while the contributions of Sue Evans (Reflection on Case study one) and Joe McGlade (Reflection on Case study three) provide first-hand accounts of the challenges facing advisers and the teams that support them. For readers looking for indications of how advice is changing, Jennifer Harris (Chapter Three) and John Clarke (Chapter Ten) indicate respectively the changing technological and social dynamics that shape the work of advice services; Nicole Busby (Chapter Four) and Eleanor Kirk (Chapter Five) examine the growing importance within the advice sector of employment law; and Morag McDermont (Chapter One) and Gail Bowen-Huggett (Chapter Two) analyse how funding patterns and relationships are changing. For readers looking for practical guidance on ‘good’ advice, Alison Kite (Chapter Seven) explores how advice work can empower clients while Emily Rose (Chapter Eight) examines effective ways in which stories are transformed into practical information. For readers looking for the broader social and legal implications of advice, Adam Sales (Chapter Six) examines how employment advice relates to the contemporary condition of ‘precarity’, while Michael Ford (Reflection

on Case study two) argues that the problems faced by employment clients indicates a ‘new normal’ in which access to justice is blocked by procedural reforms. Finally, for readers wishing to understand what advice tells us about political action, Nicole Busby (Chapter Four) details the necessary changes within the Employment Tribunal (ET) context if clients from all backgrounds are to access ‘justice’, while John Clarke (Chapter Ten) situates a narrative of ‘citizenship’ as a rallying point for a politics attentive to injustices and struggles that compose contemporary society.

We hope that the book will offer readers, both within and outside the field, different perspectives on the role played by advice work, as well as a celebration of its importance and centrality to the current political situation in the face of considerable challenges. We hope it serves as a tool, a guide and an inspiration.

What is advice?

Many of our participants were quick to tell us that, contrary to received opinion, to receive advice is not to be told what to do. Several advisers emphasised instead, when describing their work, the provision of accurate and appropriate information in a language the client can understand – work oriented towards enabling clients to make informed decisions. Advice was seen as making comprehensible what was distant and unintelligible; it made possible those future actions that had been riven with foreboding and anxiety. Some questioned whether the term ‘advice’, with the emphasis upon directing an individual towards a certain course of action, was the right term for this work. It is important to note also that the typical advice ‘journey’ with the Citizens Advice service will begin with something very different again: a diagnostic interview in which no information is given at all (see Reflection on Case study one). Following this, there may be a wait before an advice appointment, as it is typically imagined, takes place.

With these considerations in mind, we continue to value the term ‘advice’ as a description of the provision of information and all that happens around it: the work of translating law into the everyday

language of the client; the work of diagnosing and prioritising problems; the work of teasing out what the actual problems are behind what the client has been comfortable to present with; and also the institutional and procedural work of organising, funding and publicising services. We hope that across the text an image of advice that carries these complexities, whilst retaining the importance of advice both to the advisee and the adviser, is able to take shape.

Tackling 'austerity': changing times for advice

Among the many 'austerity' policies of the Coalition and Conservative governments, in this section we focus further on two particular areas that played a key role in shaping the advice field during the period of our research: cuts to legal aid and 'welfare reform'. It is important to begin, however, by noting that attempts to scale back the provision of legal aid, and the ensuing effect upon advice agencies, have been a defining feature of political approaches to 'access to justice' long before the introduction of LASPO in 2012.

Thus, when the new Labour government introduced Community Legal Service Partnerships (CLSPs) in 1999, with the idea that providers and funders of advice services would form partnerships at a local government level, their implementation was coupled to a cap on the civil legal aid budget as part of a move from a demand-led system of legal aid funding to a planned system based on local legal needs assessments. CLSPs therefore were constituted within the context of rationing of legal aid and increased competition for resources between advice providers (Moorhead, 2001: 556). Partnerships were able to raise the profile of legal advice services, and to build relationships between funders, between providers and between funders and providers. However, resource restraints often made it difficult for partnerships to move into joint strategic action (Moorhead, 2001: 558)

In 2006, the Legal Services Commission (LSC) stopped facilitating CLSPs and their attention turned instead to working with local authorities to jointly commission advice services in the form of Community Legal Advice Centres and Community Legal Advice

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Networks. Again, however, the commissioning model was developed within the context of significant changes to legal aid, including making payments to providers through fixed fees rather than through hourly rates, and setting targets for the number of cases which providers had to take on. The competitive nature of the commissioning process threatened the existence of advice services; large private sector companies could come in and successfully bid, leaving the local advice agencies without funding. The process of drawing up the service specifications was also contentious; the needs assessments were criticised by advice agencies, as were the targets for client numbers, and in addition advice organisations argued that the process threatened their independence and freedom.

Nonetheless the scale of the cuts implemented through LASPO, underpinned by the replacement of the Legal Services Commission (a non-departmental public body) by the Legal Aid Agency (housed within the Ministry of Justice), represented a new era of 'late modern' or 'austerity' justice (Maclean and Eekelaar, 2016; Hynes, 2013). As Steve Hynes argues, following the 'Rose Garden' meeting between David Cameron and Nick Clegg that formed the Coalition Government in 2010, 'it had taken ... just under two years ... to introduce legislation to dismantle a large chunk of the civil legal aid system which had evolved since 1949 to provide access to justice for the public' (Hynes, 2013: 125).

In the intervening years it has been the cuts to criminal legal aid that have received greatest attention; following sustained criticism and legal challenge the moves to significantly cut the number of criminal practices providing duty solicitor work were shelved by the new Justice Minister Michael Gove in 2016. Yet it is civil legal aid that bore the brunt of the cuts, with family, debt, housing and other issues being subject to a near-total removal of support.¹ This has led to stark changes in the family courts; in 2014 NAPO (the Probation and Family Court Union) reported a rise since 2012 from 18% to 42% of cases in which both parties were unrepresented, parties being ten times more likely to be appearing without legal representation (NAPO, 2014). This has created, they report, severe disruptions to court time and procedure

and increased unjust and inappropriate decisions. The principal effects for participants in our research are, however, more diffuse and harder to measure, being shaped by the disappearance of trained legal experts able to advise individuals in these areas of civil law as independent law centres were forced to close (Mayo et al, 2014) and private solicitors were unable to provide free advice.

The second area of change affecting the demand for advice concerns the misleadingly named programme of ‘welfare reform’. The potentially most wide-reaching change was the introduction of ‘Universal Credit’ (UC) in the Welfare Reform Act 2012, yet owing to ongoing implementation problems, UC had not yet been introduced in any of the localities in which our research took place. Nonetheless, several changes implemented by the Coalition government had significantly affected welfare entitlements. The ‘under-occupancy penalty’ (otherwise known as the ‘bedroom tax’) reduced entitlements to Housing Benefit for social housing tenants judged to have a surplus of bedrooms, creating reductions of benefit or housing displacement for many people. A ‘tougher regime’ of sanctions for Job Seeker’s Allowance (JSA) claimants led to people who had missed an appointment being left with no money at all; while more stringent regulations and assessments, and a lengthy waiting period, for the two principal sickness and disability benefits in the UK (Employment and Support Allowance and Personal Independence Payments) caused many individuals with no capacity for work being forced into the pressures of claiming JSA. These changes were widely agreed by those participating in our research, both clients and advisers, to have created a system that is both more punitive and unfairly weighted against the most vulnerable in society. In addition to their frustrations with a system that was seen to be failing those in need, advisers noted that these problems typically created many-stranded household debt burdens, and that cases were, on average, becoming far more complex.

About the research programme

The very significant changes described above form the backdrop to the research programme that led to this book. In 2011 the European Research Council awarded a grant to fund a four-year research programme, ‘New Sites of Legal Consciousness: a Case Study of UK Advice Agencies’. The rationale behind the programme, as described in the bid, was that:

advice organisations, rather than professional lawyers, are becoming key actors in legal arenas, particularly for citizens whose relationship to rights is most precarious. At a time of ever deepening inequalities, it becomes crucial to understand how institutions such as advice agencies can mediate and make possible interventions into those spaces of everyday life that become infused with law, such as workplace relations, consumer relations and caring relations. (NSLC, 2011)

The programme contained three separate but interlinked projects, two of which focused on the work of the Citizens Advice service. A number of distinguishing features led to our focus on Citizens Advice Bureaux (CAB)² as a significant site for research. First, as is discussed in Chapter One, as a long-established advice organisation it is a leading player in the UK advice sector with a training programme for volunteer advisers considered to provide a benchmark for other advice organisations. Secondly, as is explored in Chapter Ten, at the time of writing the funding bid it was the largest voluntary organisation that explicitly defines itself in terms of *citizens*, thus providing a rich site to investigate how horizontal conceptions of citizenship as mutuality and egalitarianism are experienced and enacted in the advice setting (see Jones, 2010; and Kirwan et al, 2016). The following sections set out the methods employed for each research project.³

Project 1: Citizens Advice Bureaux and employment disputes

With the decline of trades unions and the growth in small and non-unionised firms, Citizens Advice has become increasingly important as a source of advice, and sometimes representation, for people with problems at work. This project focused on the role the CABx play when faced with clients who arrive with employment disputes that are judged to be appropriate to take to an Employment Tribunal. The research was interested in how these clients pursue their dispute following their first interaction with the CAB, on how participants identify issues and make decisions as to which routes to dispute resolution they follow, whether to pursue the dispute through the Employment Tribunal, or choose other options, or take no action at all.

Researchers worked with seven Citizens Advice Bureaux in England, Scotland and Northern Ireland, following CAB clients from their first point of contact with the bureau. Once the client had agreed to take part in the research, a researcher would observe advice appointments, interview clients and keep in contact through email and phone calls. If the client's case ended up at an Employment Tribunal, the researcher would observe the Tribunal hearing. In all we followed 158 CAB clients of whom 56 submitted a claim to the Employment Tribunal.

Project 2: Homelessness, advice provision and technology

This project explored how homeless people are using technology to access advice, information and other forms of assistance, such as Job Seeker's Allowance; and how homeless people's use of technology is affected by the ways in which ICT is provided within different organisations. Research was carried out through empirical investigation at three homelessness organisations providing ICT access and advice: a drop-in day centre; a Nightstop scheme; and a drop-in centre offering IT training. Data was collected through interviews with key stakeholders, observations at the homelessness support organisations, and interviews with homeless people using these services.

Project 3: Citizens Advice Bureaux workers and volunteers, ideas of legality and citizenship

This project examined how ideas of legality and citizenship shaped Citizens Advice, in terms of daily practices of advice-giving, their training of volunteer advisers, and their approach to social policy and campaigning. A number of distinguishing features led to our focus on the CAB as a significant site for research. First, as is discussed in Chapter One, it is a long-established generic advice organisation, a leading player in the advice sector in the UK and Europe; its training programme for volunteer advisers is considered as providing a benchmark for other advice organisations in the UK. Secondly, it is the only large-scale voluntary organisation that explicitly defines itself in terms of citizens, reflected in a horizontal conception of citizenship as mutuality – advice is offered between citizens, in keeping with an ethos of egalitarianism and anonymity.

The data for this project was collected in 2014 through 42 interviews and five focus groups with advisers, managers, trainers and trainees at CAB in England and Scotland. The researcher trained as a CAB adviser, enabling participant observation of the training process as well as producing three further diaries of the interviews recorded by other trainees.

Scope of the book

While we hope this book speaks to all those with an interest in the field of advice, covering both paid and voluntary work, and national and local services, there are two limiting factors to note in this respect. The first is that most of our fieldwork was conducted with the Citizens Advice service, for reasons discussed above. Chapters One and Ten explore further the particular organisational shape and cultural specificity of the service, rooted in its own distinctive history, that mark it out from other providers in the field.

The second relates to the attention paid to particular fields of advice work (to the exclusion of others), specifically the focus upon

employment advice. The choice of employment as a field of study was deliberate. In our research we wanted to understand how people related to and engaged (or did not engage) with law as part of everyday life. However, despite the fact that the term ‘the law’ is in common use, law does not exist as a single entity. Different areas of life are suffused by different forms of law, some formal, some less so. The field of employment relations is a highly *legalised* field, as many advisers and lawyers with whom we spoke noted. Despite the best efforts of judges to make employment law accessible to those who seek to access it, the legal framework has developed as a series of specialised and highly specific decisions issuing from decisions of employment tribunals. Given the centrality of work in people’s lives, and the intensity of emotion surrounding employment troubles, employment advice, it appeared to us, opened a particular window upon how law affects people, and how individual disputes and experiences become ‘legal’.

The book has ten chapters divided into three parts.

Part One explores the forces shaping the organisation and delivery of advice services. We begin with a case study of Lucy’s experiences of the barriers to accessing advice, which is followed by some reflections from Sue Evans of Bristol Citizens Advice. In Chapter One, Morag McDermont examines the changing resourcing of Citizens Advice Bureaux with a particular focus on how resources affect the way advice is organised and provided. Chapter Two broadens the focus beyond Citizens Advice to a more general discussion of the pressures, problems and possibilities of advice work in one area – Bristol and Avon – through an interview with Gail Bowen-Huggett. Finally, Jenny Harris considers the implications of current moves towards the digitisation of benefit and advice services.

Part Two examines the field of employment disputes, a highly legalised area in which advice workers are making an increasingly important contribution. We begin with a case study of Laura, dismissed from her job on grounds that she, and her advisers, considered to be unfair. Ultimately, Laura could not afford to pursue her dispute through the Employment Tribunal because of the high cost of tribunal fees. In his response, employment barrister Michael Ford examines

the problems of advising on unfair dismissal cases, and the dramatic impact of fees cases brought to ETs. Nicole Busby follows with an overview of key areas of employment law dealt with by CABx. Eleanor Kirk then explores the interaction between law and access to justice through the research data, focusing on two key questions: how do people think about the law in relation to disputes with their employers, and how do advisers transform these notions into action or inaction in relation to employment disputes? In the last chapter of Part Two, Adam Sales focuses on the precarious workers who formed a large proportion of the CABx clients in our research. For these workers, the intervention of CAB advisers could at times offset some of the increasing exploitation of the worker's labour.

Part Three explores some of the complex dynamics of advice work. Beginning from Brian's case, we consider how charging fees for tribunals has implications for people seeking advice, with a discussion by Joe McGlade. This raises wider issues about the 'costs of justice' that are probed in a chapter by Nicole Busby. In the following chapter Alison Kite examines the powerlessness which people can experience in their encounters with the benefits system and the ways that advice can help to address this. Then Samuel Kirwan looks at the emotional labour of advice work, considering how advisers respond to, and manage emotionally charged issues and experiences presented to them by clients.

The book concludes with a reflection on the role advice work plays in practising citizenship (exploring the citizen in Citizens Advice) and the possibilities and problems of doing such work in 'austere' times.

Notes

- ¹ While it was recognised that exceptional cases, including individuals facing domestic violence, remained deserving of funding, significant problems remain with regard to the 'additional hurdle of exceptionality' (Cobb, 2013: 15) one must negotiate to access this support.
- ² In this book we use the term 'Citizens Advice service' to refer to the two national organisations, Citizens Advice (commonly known as CitA, which covers England Wales and the North Ireland/Northern Ireland) and Citizens Advice Scotland (CAS) and the local organisations, until recently known as 'the CAB' or Citizens Advice Bureau. CitA has recently undergone a somewhat controversial rebranding exercise, one result of which was to remove the term 'bureau', which was considered old-fashioned. However,

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we have found it difficult to come up with another term which denotes the local offices of Citizens Advice, and so have maintained the usage of CAB throughout this book

³ More details of all publications and work of the research programme are available on the project website (NSLC, 2016).