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MAKING LEGAL INFORMATION ACCESSIBLE

Lessons from the CLARiTY
Project



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An easyread summary of this report is available online at: www.legalcapacity.org.uk/clarity-project/

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EXECUTIVE SUMMARY

The Capacity Law and Rights Information to You (CLARiTY) project (www.legalcapacity.org.uk/clarify-project) was an accessible public legal education project that ran from October 2020 - March 2021. The aim of the project was to enhance access to justice by providing legal information in accessible ways to people with learning disabilities and family carers. The CLARiTY Project focused on legal information relating to health and social care, capacity law, and the coronavirus lockdown rules.

In this report, we discuss existing legal duties to provide accessible information, including those arising from the Equality Act 2010, the Accessible Information Standard that applies in health and social care contexts, and website accessibility requirements for public bodies. We also discuss the international context of these rights and duties in the UN Convention on the Rights of Persons with Disabilities.

We reflect on our experience of providing accessible information about a wide range of legal issues and topics, including supported decision making under the Mental Capacity Act 2005, Lasting Powers of Attorney, best interests decisions, deputyship, the Care Act 2014, complaint-making and using Ombudsman services.

Finally, we offer guidance on how to communicate legal information accessibly in both verbal and written formats.

We conclude with five key recommendations:

1. Legal service providers should develop accessible information resources, in consultation with local disabled people's organisations, to help reduce the levels of unmet legal need in their area.
2. Law firms and other legal service providers should be aware of, and take steps to address, the accessibility of the information they provide.
3. Public sector legal service providers should be aware of, and take steps to fulfil, their increased duties regarding both accessible information and online accessibility.
4. Legal service providers should be aware that accessible communication is a skill that can (and should) be supported and developed through appropriate training and development activities for staff at all levels of their organisation.
5. Overarching legal services regulators and professional bodies should ensure that guidance on providing accessible legal information and developing accessible communication skills are highlighted in relevant policies, practice notes, and training standards.

1. INTRODUCTION: ABOUT THE CLARITY PROJECT

The Capacity Law and Rights Information to You (CLARiTY) Project was an accessible public information project that ran from October 2020 to March 2021. Over five months, the CLARiTY team hosted six free public ‘zoom room’ information sessions for disabled people and family carers. The aim of these sessions was to enhance access to justice by providing complex legal information in a clear and accessible format, followed up with plain language and easy read guides published online at www.legalcapacity.org.uk/clarity-project/. Sessions also included space for questions and discussion including opportunities for participants to tell their stories and share their experiences. Over the course of the CLARiTY sessions, we covered a wide range of legal issues relating to capacity and care. Topics included:

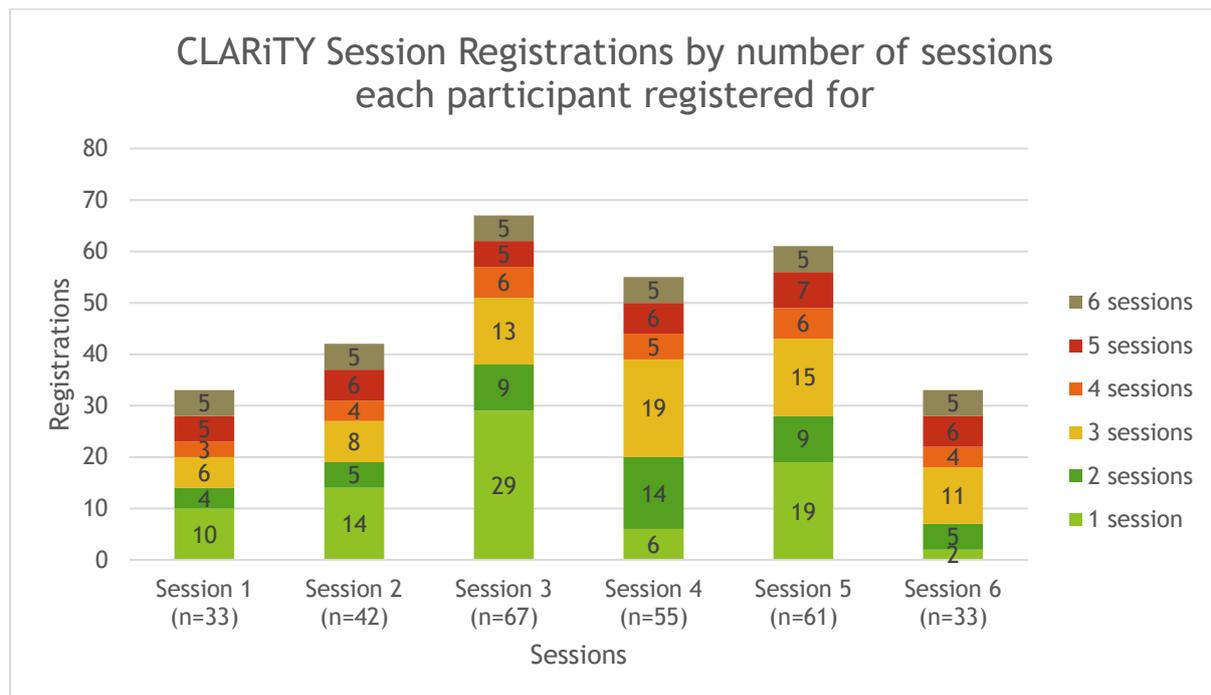
- Understanding the Coronavirus Regulations (Session 1)
- Hospital and Care Home Visiting Restrictions (Session 1)
- Supported Decision-Making (Session 2)
- Best Interests in the Mental Capacity Act 2005 (Session 2)
- Lasting Power of Attorney (Session 3)
- Deputyship (Session 3)
- Banking and finance (Session 4)
- The Health and Social Care Accessible Information Duty (Session 4)
- Communicating effectively with people in power (Session 4)
- Challenging Care Act Decisions (Session 5)
- The Ombudsman Service (Session 5)
- Working together for positive social and legal change (Session 5)
- Signposting to further information and legal advice (Session 6)

Initial topics were chosen through discussion between the project partners, drawing on our professional experience and research. As the project developed, further topics were added through suggestions from disabled people and family carers.

Each ‘zoom room’ session was open for registration through Eventbrite for up to 50 people. Three sessions (sessions 3, 4 and 5) were oversubscribed, and additional registrations were added offline. Across the life of the project, a total of 146 people registered for at least one session. Most participants registered for one (80) or two (23) sessions, but a core group of 43 people registered for three or more CLARiTY sessions. Session 3 (LPA and Deputyship) and session 5 (Challenging Care Act Decisions) attracted the greatest number of single session sign ups (29 and 19 respectively). This suggests that there is a particularly high level of unmet legal need in these areas. A breakdown of registration figures is available in Figure 1.

As is common with free online events, not all who registered attended the session, but all sessions were well attended. The average number of attendees was 33, which we found to be a manageable number of people for the interactive format. In the sessions with greater numbers of attendees (Session 3, LPA and Deputyship; Session 5, Challenging Care Act Decisions and working for social change) not all those who had questions for the speakers had the opportunity to ask them, and not everyone who wished to contribute to the discussion was able to do so.

Figure 1: Registration Detail



The sessions attracted a mix of disabled people and family carers. Session 2, on supported decision-making had a greater number of disabled participants, and session 3 (LPA/Deputyship) and session 5 (Challenging Care Act Decisions) attracted greater numbers of family carers. The vast majority of those who attended session 6 had attended at least one previous session.

Throughout the project, the CLARiTY team made clear that we could not offer individual legal advice at the CLARiTY sessions, and that the aim of the project was to provide generic, accessible legal information. Where attendees had specific queries, we signposted them on to appropriate sources of advice and support.

THE CLARiTY TEAM

The CLARiTY Team was formed from a collaboration between Rosie Harding (Birmingham Law School), Sophie O’Connell (Wolferstans Solicitors), Philipa Bragman (consultant), and Bringing Us Together, a community interest company run by and for family carers. Magda Furgalska provided administrative support for the project.

Rosie Harding, Professor of Law and Society, University of Birmingham

Rosie Harding (LLB, LLM, PhD, PgCHE, FHEA, FAcSS) is a socio-legal academic with particular interests in how law works in everyday life. Her research focuses on social justice and human rights, particularly in the context of family, health and social care law. She is author of *Duties to Care: Dementia, Relationality, Law* (CUP, 2017) and *Regulating Sexuality* (Routledge, 2011). Her work has been supported by research grants from the AHRC, ESRC, British Academy and Leverhulme Trust. She was awarded a Philip Leverhulme Prize for law in 2017. She is editor of the *Law, Society, Policy* series for Bristol University Press, Chair of the Socio-Legal Studies Association and a Trustee of Changing our Lives.

Philipa Bragman, Consultant Facilitator

Philipa Bragman is skilled and experienced facilitator trained internationally in Theatre of the Oppressed and Deep Democracy process orientated facilitation, and a qualified Embodied Relational Therapist. She works across the UK and globally, bringing together communities who do not usually meet, to work together to explore new ways of thinking, using innovative and transformational approaches. She focuses on exploring new ways to embody access, inclusion and co creation and address power imbalances to create real sustainable organizational, structural and systemic change.

Philipa has over 25 years setting up and working in the third sector as the chief executive of a national human rights based charity that developed and embodied true inclusion. Our approach has been shared and adopted nationally across the UK and internationally in many countries across the world. Philipa is currently working with colleagues in Nepal to develop similar approaches.

Sophie O'Connell is a partner at Wolferstans Solicitors and leads their Court of Protection Team. She supports clients, who have a Court of Protection deputy, with the management of their financial affairs. She is experienced in making applications to the Court of Protection for both property and affairs, personal welfare deputies and statutory wills. As well as Court of Protection matters she also advises on health and social care funding. Sophie works with clients with brain injuries, learning disabilities and dementia. Sophie is a member of the Law Society Private Client Committee and Solicitors for the Elderly (SFE).



Bringing Us Together

Bringing Us Together is a family led organisation that brings together families from across England to have a voice and feed into national strategic work.

Find out more at: <https://bringingustogether.org.uk/>

Magdalena Furgalska, PhD Candidate, University of Birmingham

Magda Furgalska is a final year PhD student at Birmingham Law School. Her doctoral research focuses on mental health law, especially advance consent to mental health treatment.

We invited a number of guest speakers to contribute to sessions. Each guest speaker had specific expertise, either from their professional practice or from their personal experience.

Guest speakers:

Session 1: Dr Oliver Lewis, Barrister, Doughty Street Chambers, on the Coronavirus lockdown rules.

Session 2: Christopher Burns and Joanne Kennedy on their experiences, good and bad, of supported decision-making.

Session 3: Caroline Bielanska, Solicitor, TEP, Independent Consultant, Mediator, Author and Trainer, on her new easyread support pack on Health and Welfare Lasting Power of Attorney (available at: <https://www.mencaptrust.org.uk/guides-lasting-power-attorney>).

Session 4: Prof Elizabeth Peel, Professor of Communication and Social Interaction, Loughborough University, on successful communication with people in powerful positions.

Session 5: Dr Ossie Stuart (<https://www.ossiesway.com/>) on working together for positive social change.

FEEDBACK FROM PARTICIPANTS

After each CLARiTY Session, we asked registered participants for their feedback. Only a minority of participants completed the online feedback form, but those who did, generally reported finding the sessions useful or very useful (Figure 2). That 43 people registered for three or more sessions highlights how valuable they found the sessions, and that there is a significant need for accessible legal information in this area.

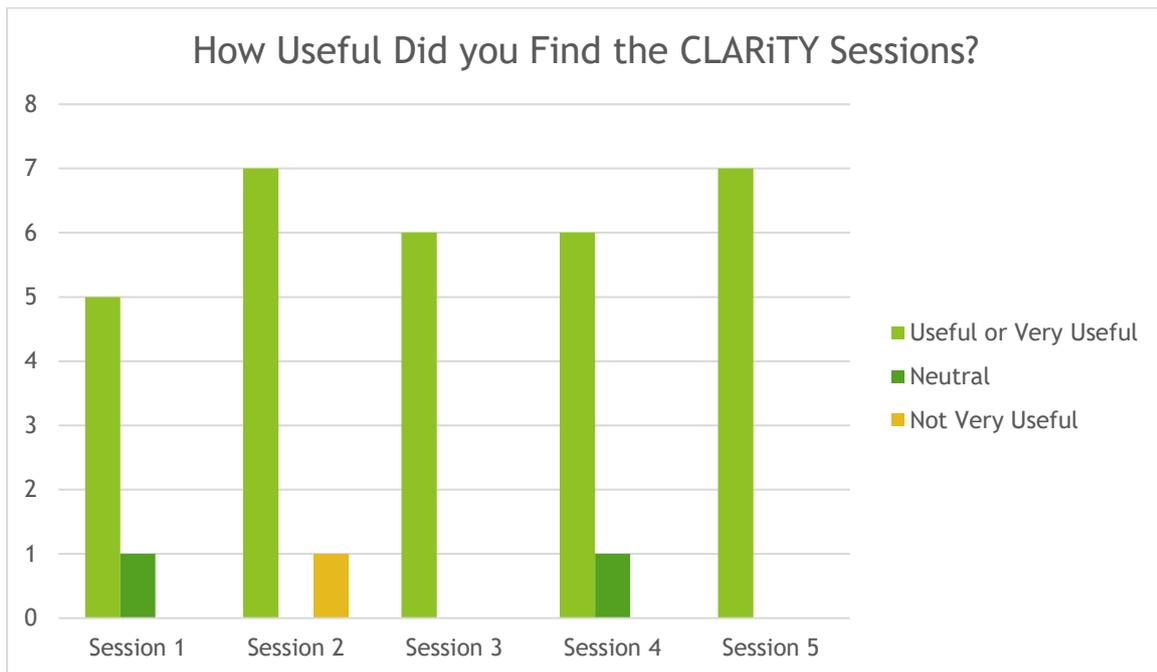
One participant said that they: “Just love these sessions they are SO helpful and so needed. Always go by far too quickly.”

Qualitative feedback from the sessions highlighted the accessibility of the sessions:

“I very much liked how accessible the session was. I’ll be recommending it to those our service works with, who have lived experience.”

“the warmth of the presenters, how accessible it was, slow pace and the knowledge of the speakers.”

Figure 2: Participants reported ‘usefulness’ of the session.



Participants also mentioned the positive aspects of being in a mixed group of people with learning disabilities and family carers.

“I enjoyed the mixed environment and hearing those with learning disabilities voices. The way it should be, and having other family members like myself too. I thoroughly enjoyed the session.”

“[I enjoyed] Being together with a mix of Carers and those with LD. Listening to lived experience was humbling and eye opening.”

Participants found value in meeting others in similar situations, developing new connections and being able to support each other:

“For me personally, attending the final two sessions reminded me that I am not alone in what I’m doing, there IS help and support out there, I don’t have to struggle in isolation to try and chase it down and along the way I encounter other awesome parent-carers or self-advocates who keep me bolstered and energised!”

“Great to be in the room with like-minded people. These sessions have been well and sensitivity delivered taking everyone’s needs into account. A real privilege to be a part of.”

“[I enjoyed] meeting such lovely people and not feeling so alone in this challenge”

Most importantly, perhaps, participants noted how the CLARiTY sessions enabled them to better understand the legal frameworks we discussed “[they] made law

accessible and broke it down so it isn't so intimidating." Participants also noted how their participation in the CLARiTY project showed them that "some law people are willing to help and share learning."

Finally, one participant told us that:

"I am feeling so much gratitude today (the day after the wrap-up session) and have felt empowered to challenge some b*****it email I had received yesterday from [my adult son's] new Social Care team - politely - but very clearly telling them what they had sent to me was out of order! I don't think I would have felt like this had I not attended last night - I think it would've set me back emotionally and physically."

2. ACCESSIBLE INFORMATION: THE LAW

Accessible information is extremely important in breaking down barriers to the full participation of disabled people in society, and access to information is already protected and encouraged by a range of national, international, and service specific legal frameworks. These include: the Equality Act 2010, the UN Convention on the Rights of Persons with Disabilities, the NHS Accessible Information Standard, and the Public Sector Bodies (websites and mobile applications) Accessibility Regulations 2018. In this part, we outline some of the main points in each of these legal frameworks, before highlighting how these frameworks should inform the provision of legal services.

EQUALITY ACT 2010

Accessibility is a central principle of disability discrimination law. November 2020 marked the 25th anniversary of the Disability Discrimination Act 1995, the first piece of UK legislation that made it unlawful to discriminate against disabled people in relation to employment, education, transport and the provision of goods and services. Many of the early campaigns for disability equality focused on issues of physical accessibility, but accessibility of information is just as important.

The Equality Act 2010 consolidated discrimination law in England, Wales and Scotland, and as well as prohibiting direct and indirect disability discrimination, sets out a duty to make reasonable adjustments, which includes accessible information.¹ Direct disability discrimination is when a person is treated differently because of their disability. Indirect disability discrimination is where a provision, criteria, practice puts disabled people at a disadvantage as compared to those who are not disabled. Failure to comply with the duty to make reasonable adjustments

¹ The Disability Discrimination Act 1995 still applies in Northern Ireland, and contains similar provisions around reasonable adjustments.

is a form of discrimination, which can give rise to a cause of action in law. The Equality Act 2010 applies in employment, education, the provision of goods, facilities and services, premises, the exercise of public functions, and associations.²

The duty to make reasonable adjustments comprises three requirements:

1. “where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.” (Equality Act 2010, Section 20(3))
2. “where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.” (Equality Act 2010, Section 20(4)) and
3. “where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.” (Equality Act 2010, Section 20(5)).

Section 20(6) of the Equality Act 2010 makes clear that, in respect of the first and third of these requirements, “the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.” Furthermore, a person who is subject to this duty to make reasonable adjustments is not entitled to require a disabled person to whom the duty is owed “to pay to any extent [the] costs of complying with the duty.” (Equality Act 2010, Section 20(7)).

The exact scope of the duty to make reasonable adjustments varies depending on the context that the duty arises in, but it is a key way in which equality law requires employers, educators and service providers prevent disability discrimination. The duty to make reasonable adjustments takes an objective approach to what is ‘reasonable.’ In relation to some providers, including services, public functions and associations, the duty to make reasonable adjustments is an ‘anticipatory’ duty. This means that it requires providers in those areas to consider, and act in relation to, the needs of disabled people *before* being faced with an individual disabled person who requires reasonable adjustments to be able

² There are slight differences across these areas, and various exceptions that apply to some of them. We do not have space to explore all of these in depth here. For more information, see the *Equality Act 2010 Code of Practice: Services, Public Functions and Associations* available at:

https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf and guides produced by the Disability Justice Project, available at: <https://www.disabilityjustice.org.uk/learn-more-and-take-action/>.

to access their services/functions/association. In employment, the duty only arises in response to substantial disadvantage faced by a particular disabled person.

CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The United Kingdom has been a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) since 2007, and ratified the CRPD on 8 June 2009. Ratification of an international treaty means that the United Kingdom has agreed to be bound by its provisions. The development and provision of accessible information supports many of the rights in the CRPD, including (for example) the right to enjoy legal capacity on an equal basis with others (article 12), the right to freedom from exploitation, violence and abuse (article 16), and the right to respect for home and family (article 23). Of most importance for accessible information rights are Article 9 on Accessibility; and Article 21, which includes rights to access to information.

Article 9 CRPD includes duties on the State to ensure disabled people have access, on an equal basis with others, “to information and communications.” It requires States that have ratified the convention to “promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information” and “to promote the design, development, production and distribution of accessible information and communication technologies.”

Article 21 requires States to “take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.” Examples of how this right should be implemented includes providing information to the general public in accessible formats, by “Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats” and encouraging the mass media to “make their services accessible to persons with disabilities”.

SPECIFIC ACCESSIBLE INFORMATION RULES

There are several accessible information rules and standards that apply to particular kinds of information. These include the NHS Accessible Information Standard, and the Public Sector website accessibility regulations.

ACCESSIBLE INFORMATION STANDARD

The Accessible Information Standard is a legal duty that applies to all publicly funded health and social care services.³ The legislative basis for the Standard is in

³ The text of the Accessible Information Standard is available at: <https://www.england.nhs.uk/ourwork/accessibleinfo/>

the Health and Social Care Act 2012, s. 250. It was first introduced in 2016 and it applies across all NHS and adult social care services including GPs, dentists, hospitals, care providers etc. The Accessible Information Standard means that people who use a service and have information or communication needs because of a disability or an impairment, or some kind of sensory loss like visual or hearing impairment are entitled to information in a form that is accessible to them.

Under the Accessible Information Standard, health and social care services are required to identify who has information and communication needs, and make to make a record of that. This is important, as it should stop people with communication needs having to ask for accessible information repeatedly.

In a post-implementation review published in 2017, 65.5% of respondents from health and social care services reported that their organisation had implemented the standard 'to some extent' or 'mostly'. In contrast, 43% of respondents from patients, services users, carers and parents had not heard of the Accessible Information Standard, and just 15.2% of those respondents felt that the impact of the Standard had been good or very good.⁴

PUBLIC SECTOR BODIES (WEBSITES AND MOBILE APPLICATIONS) (NO. 2) ACCESSIBILITY REGULATIONS 2018

These regulations, which have their foundations in the EU Web Accessibility Directive (Directive 2016/2102) require all public sector website and apps to implement and maintain accessibility standards for disabled users. Websites will generally be considered compliant with the regulations if they adhere to the Web Content Accessibility Guidelines 2.1, published by the World Wide Web Consortium (W3C) in 2018.⁵ Whilst these specific regulations and the duties therein only apply to public sector bodies, all service providers should seek to make their online information as accessible as possible.

Webpage accessibility can be checked relatively easily using online tools like the WAVE Web Accessibility Evaluation Tool (<https://wave.webaim.org/>), to highlight areas of technical non-compliance with current WCAG specification. The WAVE tool also facilitates human evaluation of accessibility problems with websites, enabling reflection on how best to resolve accessibility issues that arise.

ACCESSIBLE INFORMATION ABOUT LAW AND LEGAL SERVICES

Legal professionals regularly provide services to disabled clients, including clients who need information in accessible formats. The Law Society have published

⁴ NHS England (2017) Accessible Information Standard: Post Implementation Review available at: <https://www.england.nhs.uk/publication/accessible-information-standard-post-implementation-review/> accessed on 12 July 2021.

⁵ <https://www.w3.org/TR/WCAG21/>

guidance for solicitors about meeting the needs of “vulnerable clients”, which includes information about providing tailored reasonable adjustments.⁶ The Solicitors Regulatory Authority have also published information about providing legal services to people who are vulnerable.⁷ Both of these documents outline responsibilities that legal service providers have under the Equality Act 2010 and the Mental Capacity Act 2005, and offer some limited suggestions about how legal services can meet the needs of their clients.

We asked the COVID-19 Support and Action Group, some of whom took part in CLARiTY sessions, about their experience of and thoughts about legal services. They told us:

We want a legal system that will challenge decisions on behalf of us, Disabled People, in a meaningful way.

We have learning disabilities and we want to explain to you the different ways we communicate and what helps us. Instead of talking AT us in legal jargon, talk TO us in everyday language so that we can understand.

We want to work in partnership with lawyers who want to challenge the legal system where it is inaccessible to us and where it is discriminating against us.

People often think we’re stupid, but if you explain things differently, we CAN understand.

There are lots of words that are used about us that we don’t like for example the word ‘vulnerable’.

We need your support, not your care.

We have a right to understand and fight for our human rights and to stand up for what matters to us.

We don’t have a justice system that works for the Disabled People’s Movement and we don’t have enough legal people who will challenge the legal system to make sure that all disabled people have access to justice. Our rights therefore, might be written down in law, but we don’t have a way of enforcing this to make us feel part of society.

⁶ Law Society (2020) Meeting the Needs of Vulnerable Clients. Available at: <https://www.lawsociety.org.uk/en/topics/client-care/meeting-the-needs-of-vulnerable-clients> accessed on 12 July 2021.

⁷ Solicitors Regulatory Authority (2016) Providing Services to People who are Vulnerable available at: <https://www.sra.org.uk/globalassets/documents/solicitors/freedom-in-practice/vulnerable-people.pdf?version=49931c> accessed on 12 July 2021.

In our CLARiTY Sessions, we tried to present information in ways that were as accessible as possible. This was not always easy to do, as legal information can be complex. Expressing complicated legal ideas in accessible ways takes time, patience, and an in-depth understanding of the legal rules. It also requires awareness of how to communicate in clear and inclusive ways, an issue we return to below.

In summary, there are a number of existing legal frameworks that enable and require service providers of all kinds to make information they provide accessible to disabled people. These duties also apply to those exercising public functions (including, for example, the Ombudsman services and the Office of Public Guardian). Through our CLARiTY sessions, we demonstrated that it is possible to provide high quality, accessible, legal information in both plain language and in easy read formats. It is foreseeable that potential users of legal services, including in court of protection work, family law, private client law, housing law, employment law, and equality and discrimination law may need greater levels of accessible information. Given the importance of accessible information, and legal duties to provide it, we suggest that accessibility should be on the agenda for all service providers.

3. LEARNING FROM (OUR) EXPERIENCE

POWER, PROCESS, PEOPLE

Personal Reflections on the CLARiTY Project from Sophie O’Connell

Through the CLARiTY project, I have learnt that in order to communicate effectively, before I write or say anything, I need to consider the power dynamics. Participating in the sessions helped me realise that I must recognise that I have power and privilege and with this comes responsibility. Firstly, I have to redress the balance in order for the participants /clients to interact, ask questions, say when they don’t understand and not create a barrier to their understanding.

When we were preparing for our sessions, Phil advised me to use anecdotes about my own life and my own worries so participants could connect to me as another human being. Previously, I would rarely refer to anything about my personal life when with clients or speaking in public. However, I now realise this is not about oversharing, but using something relatable in your life to show that you a person too. Our first sessions was about visiting rights in hospitals, care homes and ATUs. I didn’t have any close family or friends in hospital etc at the time, but I told the group that my fear was that one of my children would end up in hospital and I would not be able to visit because they are in their teens.

Since the project, I have realised that simply producing plain English or easyread information does not make it accessible! It is a process and people need to know that it is there, how it can be useful and be able to ask questions. On some of the

topics we covered in the sessions there was easy read information available, but most people did not seem to be aware of it and it was often of varying quality.

Our virtual sessions which were informal and limited in numbers allowed us to explain the context of the legal information rather than providing written information in a vacuum. Importantly, the discussion and mainly the input from the participants illustrated how people can exercise their legal rights. The written information came after the sessions as a reminder and reference point. The post session information is written in plain English with some easy read but is not a substitute for co-produced accessible information on legal topics disseminated as part of an ongoing process.

Finally, the most important part of the Clarity Project were the people who attended our online sessions. It was a good test of my understanding trying to convey complicated legal information in an accessible way and ensuring that I was not leaving any vital information out. This is a skill I am still learning and which is not taught widely enough (if at all). I was nervous about getting this right, not losing my audience and giving them the important points. The participants were very active and there was huge amount of peer support in the discussions and after the chat. The level of peer support suggests that by working with small groups, information can be cascaded to a wider audience. Using the digital tools we have all learned through the COVID-19 pandemic through virtual meetings can help enable a wide geographical coverage.

COMMUNICATION, CAPACITY AND CLARITY

Reflections on Making Law Accessible from Rosie Harding

Throughout my academic career, I have been telling stories. A few of these stories have been about my own experiences, but as an empirical social-legal researcher, most are drawn from stories other people have told me about their lives. I've been doing research on legal issues around capacity and care for over a decade, and in that time I have heard stories from people living with dementia, people with acquired brain injuries, people with learning difficulties, family carers and health and social care professionals. My research has explored:

- how disabled people and carers experience the regulatory frameworks that govern their lives;
- how disabled people secure the support they need and want to help them live the lives they want to live;
- how family carers navigate the complexities of gaining and using Lasting Power of Attorney for their loved ones; and
- how health and social care professionals navigate the regulatory landscape of their profession.

In doing this research, I have heard many stories about how people use and experience law as it relates to ‘capacity’.

In the CLARiTY project, I used some of these stories to help introduce legal concepts and frameworks to our session participants. So, for example, I told a story about why Alex, a young autistic man, decided to register Lasting Powers of Attorney so that his mum could help him with his financial affairs (to help with budgeting) and for his health and welfare (because his autism means he really struggles to communicate in healthcare appointments). Using stories in this way helped our participants to understand what the legal tools we were talking about could do, and to relate them back to their lives.

Our second CLARiTY session was about supported decision-making. I’m really interested in how supported decision-making works both in law and in practice - my Everyday Decisions research was focused on this,⁸ and I’ve also looked in detail about how best to regulate support for making a will.⁹ One of the things that I have consistently found in my research is that we do not yet pay enough attention to the importance of support in enabling capacity. In the Everyday Decisions project, we found that whilst support for daily choices (what to wear, what to eat, where to go, what to do) was often done well, as soon as decisions became more complicated, support was less, rather than more, available.¹⁰ Since then, I have spent a great deal of time thinking about why that might be, and what needs to be done to improve decision-making support to maximise disabled people’s capacity.

Support for decision-making has been a part of English law since the Mental Capacity Act 2005 came into force in 2007. It is the second fundamental principle of the MCA - nobody should be considered unable to make a decision unless all practicable support to help them do so has been given without success. The disabled participants in our second CLARiTY session were really clear and vocal about the importance of support to help them live their lives. All too often, disabled people are excluded from decisions about their lives, especially when those decisions involve law, lawyers and legal concepts.

One of my aims in working with Sophie, Philpa and Bringing Us Together on the CLARiTY Project was to understand *why* support seems to stop at everyday decisions; why there is not more accessible information available to support more complex decision-making. My experience in the project, of translating legal

⁸ R. Harding and E. Taşcıoğlu, *Everyday Decisions Project Report: Supporting Legal Capacity through Care, Support and Empowerment* (University of Birmingham, 2017)

⁹ R. Harding, E. Taşcıoğlu and M. Furgalska, *Supported Will-Making: A Socio-Legal Study of Experiences, Values and Potential in Supporting Testamentary Capacity* (cit., 2019)

¹⁰ R. Harding and E. Taşcıoğlu, 'Supported Decision-Making from Theory to Practice: Implementing the Right to Enjoy Legal Capacity' (2018) 8 *Societies* 25

frameworks that I know well into accessible information that I can communicate to others, has given me greater insight into the implementation challenges in this area. It has also strengthened my resolve to make the case for greater levels of accessibility in public legal information.

Throughout the project, I found myself reflecting on how we teach future legal professionals to communicate about law. Clinical legal education holds an increasingly important place in law schools, often giving law students opportunities to develop client communication skills, under the supervision of qualified solicitors. As changes to legal education catalysed by the new Solicitors' Qualifying Examination framework begin to shape and change educational practice in law schools, I hope to see much more attention to the importance of accessible communication as a vital part of legal services.

ROLES, POWER AND PRIVILEGE

Reflections on Facilitating the CLARiTY Sessions from Philipa Bragman

As the facilitator of the sessions and being in regular contact with many people with learning disabilities through the Covid 19 Support and Action Group, I saw my role embedded in supporting and facilitating a process that was accessible and inclusive for everyone.

I did this by ensuring we were creating together a space that was welcoming, warm, challenging of systemic power structures and safe enough for people to both listen and understand as well as share experience and ask questions.

The process of doing this started with encouraging people with learning disabilities to come and experience the sessions as a place that they would be respected and valued and that there was information relevant to them.

I was keen to build a good relationship with the legal professionals involved. In the beginning, during our planning meetings, I realised how I sometimes felt intimidated and nervous to ask if they were talking about something I was not familiar with. I didn't want participants in the sessions to feel the same. The CLARiTY team made it easy for me to ask questions and I quickly realised that I needed to support them to make sure they were communicating using straightforward language so people in our sessions also felt comfortable asking if they didn't understand.

Our planning sessions were really important and I feel that we built a relaxed, respectful, fun and informal team sharing our ways of working and embodying our joint values of diversity and inclusion.

Working closely together as the CLARiTY team really helped the sessions feel relaxed and welcoming.

As a facilitator using process work and Deep Democracy, I feel it is important to understand the roles, rank and privilege that are at play in the room. One way we can do this is to recognise our own power and bring more of ourselves into the space. The legal professionals were brilliant at sharing and bringing into the sessions more of themselves. This immediately role modelled an openness and a vulnerability that challenged the privilege and power that legal and other professionals have over people who use services. By doing this they helped to co create a space in which I could facilitate, that felt diverse and inclusive, where everyone had a voice, and was empowered to use it to both ask questions, but also to support each other by sharing their own experiences and what they have learn through their own journeys.

4. INCLUSIVE COMMUNICATION: SUPPORTING UNDERSTANDING

In this final section of our report, we reflect on how to support understanding, as a way of sharing what we have learnt through the CLARiTY Project with others. Making legal information accessible will help everyone to understand better, hopefully leading to better services, and happier clients.

Our key suggestions for inclusive communication are detailed below and focus on three key themes: Connecting, Communicating and Checking.

CONNECTING

As the more powerful person in an interaction, it is your responsibility to break down barriers relating to power and privilege. Recognise that you have power, acknowledge it and give some of it up. Recognise that your role is to support service users or clients to understand what you are communicating to them.

Top tips for building rapport:

1. Recognise your power, privilege and rank;
2. Use stories to put things into context;
3. Be warm, friendly, and approachable - break down barriers;
4. Don't be afraid to ask if you are being clear enough;
5. Find points of connection, things in common.

Connecting with clients or service users will enable them to feel more confident in the interaction. This will help them when asking questions or asking you to reframe or rephrase things that they find unclear or difficult to understand. If you are warm and friendly, it may make it feel safer or easier for people to say they don't understand.

It is important to recognise what can be at stake for disabled people when they say they don't understand: it can lead to capacity assessments, greater interference in the privacy, and ultimately losing control of important decisions about their lives.

COMMUNICATING

Good communication is key to accessibility. Ways of communicating well are different depending on whether you are communicating verbally, or in writing.

When talking, try to use straightforward language. Be aware of the amount of jargon in your industry or profession. Plan how you will explain technical terms. Avoid using acronyms, or if you do use them, explain what they mean the first time you use them. Wherever possible, try to speak in plain English, using short words.

Professionals often use acronyms, jargon and technical terms, particularly when communicating with other professionals. Doing so can be an important part of demonstrating your professional abilities. Using acronyms and jargon can be about showing knowledge, demonstrating cultural capital and performing professionalism, but it can exclude and disempower those who are not insiders. Undoing exclusion and increasing accessibility means avoiding these practices.

If you are producing written information, then spend time (and money) on high quality easy read versions of that information. We think it is best to get help from people who have experience and expertise, as this will ensure that your easy read documents look professional, are high quality, and are useful. People with learning disabilities have that expertise.

Communication is not just about any accessible info you produce, it is also about helping people to access it. It is important to remember that many people who struggle with literacy often do not use tools like twitter. Go to organisations who work in the field you are supporting to help advise you how to reach them. Consider working with organisations that are led by and employ people with learning disabilities like People First organisations.

CHECKING

Once you have produced easy read information, test it with people who struggle with literacy to see if it works. Many professional producers of easy read information can help with testing.

It is not enough to just producing your easy read information and put it online, you need to let people know where it is, and help them to understand it.

Work with people with learning disabilities, like People First organisations, to work out the priorities for accessible information in your area. This will help to ensure that your information is relevant to the needs of the people you serve, and will increase the chances of it being well used.

We encourage service providers to think about developing inclusive services as a whole system approach; think about your policies on communication and

accessibility together, and develop strategies for how to best serve your disabled clients.

You could also get feedback on your accessible information. You can do this through web feedback forms, focus groups and/or accessible questionnaires.

Top Tips for Producing Easy Read Information:

1. Part of easy read is about having a summary that includes the most important points. Do not try to convert every sentence into easy read.
2. The idea of images in easy read is a visual representation of the text. So you need to make sure that the image matches the text. Cover the text - can you get the idea of the text from the story?
3. Think carefully about how you get easy read information out to the people who will use it.
4. Consider recording videos or short films to sit alongside or introduce easy read information presented online. Do make sure these are accessible!
5. Also consider your website architecture for online information. Can people easily find your easy read information?

5. CONCLUSIONS AND RECOMMENDATIONS

In summary, the CLARiTY project identified that disabled people and family carers have high levels of unmet legal needs. Greater availability of high quality accessible legal information can help to reduce these legal needs. Importantly, accessible information provision is already required through legal duties placed on all service providers under the Equality Act 2010.

The focus of our project was information relating to capacity law and health and social care law. We also covered legal aspects of understanding coronavirus rules around lockdown, and visiting family members in hospitals, care homes and supported living placements, as these were particularly urgent at the time the project was undertaken. These are not, however, the only legal issues where greater accessibility of information is needed or desired.

Legal issues that affect the daily lives of disabled people arise across a wide range of areas of law and regulation, including criminal justice, court of protection practice, discrimination law, employment law, family law (both public and private), healthcare law, land law, landlord and tenant law, mental health law, private client matters (power of attorney, tax law, trusts, wills etc) and welfare law. The lack of availability of high quality, easy read and plain English information about these legal topics disadvantages disabled people and family carers in many areas of their lives.

Legal professionals and other advice service providers can help to address this disadvantage, and reduce the levels of unmet legal need, by producing accessible legal information. Working with local community organisations can help to identify areas of unmet legal need in that community to ensure resources are targeted where they can make the most difference.

In addition to the clear accessibility and inclusion benefits of producing accessible legal information, investing in and developing accessible resources can benefit law firms and other legal advice providers in a range of ways. For example, widely available accessible legal information could improve community understandings of common legal problems, reducing pressure on free advice services. Providing accessible legal information could help to reduce the additional time needed in face-to-face client interactions with disabled clients by supporting understanding before and during the conversation. Making accessible information freely available could also increase the visibility of legal services providers in their communities, and help demonstrate their commitment to access to justice for disabled people. Improving access to legal information will also help to increase public legal education, and enable people to understand when they have a legal issue and how to access qualified support to help them resolve it.

RECOMMENDATIONS

From our experience in running the CLARiTY Project, we recommend:

1. Legal service providers should develop accessible information resources, in consultation with local disabled people's organisations, to help reduce the levels of unmet legal need in their area.
2. Law firms and other legal service providers should be aware of, and take steps to address, the accessibility of the information they provide.
3. Public sector legal service providers should be aware of, and take steps to fulfil, their increased duties regarding both accessible information and online accessibility.
4. Legal service providers should be aware that accessible communication is a skill that can (and should) be supported and developed through appropriate training and development activities for staff at all levels of their organisation.
5. Overarching legal services regulators and professional bodies should ensure that guidance on providing accessible legal information and developing accessible communication skills are highlighted in relevant policies, practice notes, and training standards.

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