

ANNEX 3

Good law

Introduction

The essential underpinning of every justice system is the law of the land: the statute law and, in common law countries, the case-law developed by the judiciary. On these depend all the other elements that enable citizens to resolve their problems and for society to enforce rights and responsibilities. Most people live their lives without realising that they do so within the rule and compass of the law. It is only when problems arise that they have need of the law – whether they realise it or not.

It is at this point that clear statute law and clear case-law can support the effective resolution of these problems. Conversely, complex, opaque or ambiguous law militates against that effective resolution. Where the law and its interpretation are clear, this facilitates the provision of public legal education and of internet, telephone and leaflet enabled information and advice. It makes easier the task of volunteers and general advisers and makes the most efficient use of specialist and legal help.

Clear law also facilitates negotiation and settlement. An understanding of the likely outcome of a case going to court, because of a clear line of case-law or clear statute law, can also support efforts to mediate.

The Good Law Initiative

Often enough the human story of the problems of everyday life is complex in itself, with misunderstandings and gaps in memory or record of crucial facts. The task for the adviser should be to disentangle this – not the law itself. We therefore welcome the Good Law Initiative¹ launched by Richard Heaton, First Parliamentary Counsel, who rightly says: ‘Legislation affects us all ... So the digital age has made it easier for people to find law, but once they have found it they may be baffled. The law is regarded by its users as intricate and intimidating’.² His vision is that ‘the user should experience good law that is necessary, clear, coherent, effective and accessible’.³

The Good Law Initiative will be consulting lawyers, academics and judges to ascertain how to make law better and clearer. We encourage them also to engage

1 See: <https://www.gov.uk/good-law>.

2 *When laws become too complex. A review into the causes of complex legislation*, Cabinet Office, April 2013, Foreword; available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf.

3 *Good law – an introduction*.

with those who provide public legal education and information and advice on law-based issues: organisations such as Law for Life and Advicenow; Shelter (as housing is a particularly complex area of law); Child Poverty Action Group (as the interaction of tax, tax credits and welfare benefits is often more complex than the tax affairs of the wealthy); and AdviceUK and Citizens Advice whose members have day-to-day experience of legal problems. We suggest that this will further their aim of making new legislation, particularly on matters such as welfare benefits, as accessible as possible.

We have also suggested that they engage with the Civil Procedure Rule Committee who have a long-standing interest in using concepts within the rules that have the same meaning and intent wherever they occur in the rules, and which abide by the over-riding principles of good law – a useful concept for primary legislation as well as rules of court.

Other good law initiatives

Good clear law has the potential to make a significant difference in these areas and there is already an excellent blueprint for how to make housing law and tenancy agreements better and simpler in the work on housing law done by the Law Commission,⁴ but never implemented in England and only now being revisited in Wales. Some measure of what a difference this might make can be gauged from the outstanding success of the tenancy deposit protection schemes⁵ which have been established following the Law Commission recommendations. These schemes now provide a self-financing, free to tenants, secure independent holding of deposits, as well as highly respected arbitration schemes. This is an example of a combination of good law and good practice which has identified a common problem affecting thousands of people and through good design has provided a pragmatic solution. What is interesting here is that there are several competing schemes, each with a slightly different business model. Competition keeps each of them on their toes.

We urge the Ministry of Justice and the Cabinet Office to use all the information at their disposal to identify other areas where practical, well-designed law can provide more accessible answers to problems through better, clearer law and innovative problem-solving arrangement such as this.

4 *Renting homes: the final report*, Law Commission 297 Vol 1, available at:

http://lawcommission.justice.gov.uk/docs/lc297_Renting_Homes_Final_Report_Vol1.pdf.

5 See: <https://www.gov.uk/tenancy-deposit-protection/overview>.