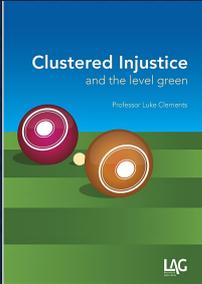


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Clustered Injustice and the level green

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1

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Disadvantage

Stephen Wexler

- *Poor people get hit by cars too; they get evicted; they have their furniture repossessed; they can't pay their utility bills. But they do not have personal legal problems in the law school way. Nothing that happens to them breaks up or threatens to break up a settled and harmonious life. Poor people do not lead settled lives into which the law seldom intrudes; they are constantly involved with the law in its most intrusive forms . . .*

2

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Disadvantage

- *Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things. The law school model of personal legal problems, of solving them and returning the client to the smooth and orderly world in television advertisements, doesn't apply to poor people.*

'Practicing Law for Poor People', The Yale Law Journal (1969-1970) 79, pp1049-1967 at 1049-1050

3

Disadvantage

Not simply 'poverty' or 'social exclusion'

- *People experience disadvantage if they have need for a level of support from the state – support that a responsive state would provide – and the state has fails to meet this need*

4

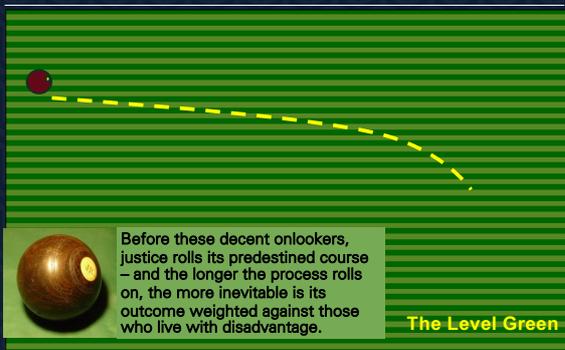
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5

The law's 'bias'



Before these decent onlookers, justice rolls its predestined course – and the longer the process rolls on, the more inevitable is its outcome weighted against those who live with disadvantage.

The Level Green

6

Clusters of problems



People who experience clustered injustice don't have single legal problems that come along at well spaced intervals – a house purchase, a road accident , a divorce - 'normal' people's problems which the law can handle

They have multiple problems at anyone time

And when one is resolved another comes along to fill the space

7

Clusters of problems



Parents of disabled children

- Social care (direct payments, respite care, safeguarding, transitions, ...)
- Education (exclusions, bullying, SEN ...),
- NHS (diagnosis / misdiagnosis / CHC funding ...),
- Blue badges,
- DFGs,
- PIPs,
- ...

Each a different silo; a different department / authority; a different budget

8

Fragmenting interconnected problems



Every public body has a separate complaints' process – every complaint has to be broken down into its elemental particles

Everything treated as a simple, unconnected, linear problem –

Fragment / disintegrate / distill

9

Fragmenting to simplify

Reductionism (breaking down and separating clusters of problems) is a way of dealing with complexity.

For public bodies – it is the 'only way'.

But 'what if the problem is complex, messy and 'entangled' where the essential features of [the problem] are embedded in [their] interconnectedness?'

Jake Chapman System failure. Why governments must learn to think differently (Demos 2nd ed 2014)

10

Fragmenting to simplify

'Systems thinking' takes a different approach in cases of complexity.

- Rather than trying to simplify by breaking down the problem, it advocates 'going up a level of abstraction' or 'zooming out' ... and seeing the 'big picture'.
- As Chapman explains: '

Higher levels of abstraction lose detail, and it is the loss of detail that provides the simplification . . . But the interconnection of the components is largely maintained in the process of abstraction

11

Harm to families

Impact on families

- Cognitive overload
- PTSD
- 'difficult clients':
- warrior mothers and fathers ;
- Unacceptable behaviour policies
- Parent blame

12

Harm to the state

Economic madness

- DoLS
- ATUs
- DFGs

13

DFGs

2017 research concerning adaptations to provide sensory space for young people with autism and behaviours that challenged.

- It found that DFG expenditure of £300,000 had led to minimum five-fold saving for the authority – ie £1.5 million

L Clements & S McCormack, *Disabled children and the cost effectiveness of home adaptations* (Cerebra, 2017).

See also You Tube

Luke Clements talk for Foundations 26 April 2021

<https://www.youtube.com/watch?v=hp0BqBglfUk>

14

Systems boundaries

Housing Budget

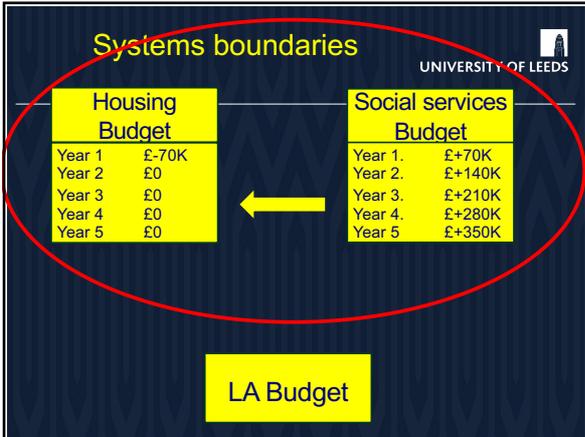
Year 1	£-70K
Year 2	£0
Year 3	£0
Year 4	£0
Year 5	£0

Social services Budget

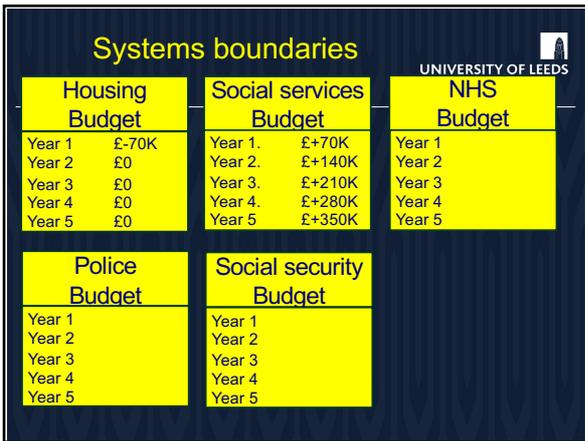
Year 1.	£+70K
Year 2.	£+140K
Year 3.	£+210K
Year 4.	£+280K
Year 5	£+350K

LA Budget

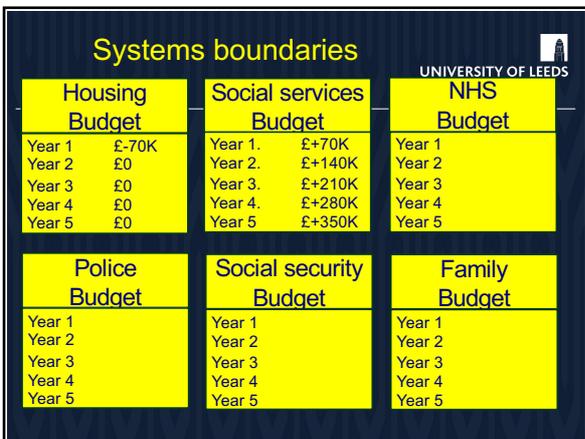
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16



17



18

Cost effectiveness Data

Housing officers' comments

"No brainer"

BUT

Housing managers jobs depend upon them staying 'within budget'

"Who got promoted for putting their own Agency's future second?"

L Clements Clustered Disadvantage and the level green (LAG 2020) p 46

19

Juridification

- the proliferation of law.
- serves many purposes – and one that can relocate troubling issues from the overt political domain – into an ostensibly independent and technical space: the zone of law.

Deprivation of Liberty Safeguards DoLS

H.L. v. UK Application no. 45508/99 5 October 2004

Compare to Rachel Carson's *Silent Spring*. In response to an insect problem at Clear Lake in California.

20

Juridification

North Yorks CC v MAG [2016] EWCOP 5: 12 hearings over 5 years, costs exceeding £230,000

A & B (Court of Protection: Delay and Costs) [2014]

EWCOP 48 Mr Justice Peter Jackson considered to be illustrative and in no way 'exceptional'. One had lasted 18 months and incurred legal fees of £140,000 and that the other had taken five years at a cost of £530,000

a danger that 'we become habituated to ... "this madness", and that we admire the problem instead of eliminating it'.

this misses [the big picture] –that the whole [point] of the juridification in this field of social welfare rights,

21

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Navigating the silos

- Liberating experienced practitioners**
- Restoring 'discretion'**
- Unpicking 'command and control' managerialism**
- Reconceptualising 'forms'**
- Reprogramming the computer system**

22

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Barricading the back office

Call centre theology

- Desperate attempts to manage demand (drives up demand)
- People who need help are confronted by inexperienced staff working to a highly controlled script;
- A process that deters and exhausts all but the most determined

Putting the back to front

- Putting the most experienced worker on reception
- Old fashioned social work, law centres, advice networks
- In praise of generalists

23

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The importance of support

Small, local and independent

- Emotional support
- support from people who have personal experience of trying to work through the same impossibly messy problems – complex administrative public sector challenges
- support of this kind not only provides those in need with practical advice on how to proceed, it also gives them a sense of 'external validation' – that (for example) they are right to trust their senses: right to feel that they have been treated badly by the system. In so doing, it empowers individuals to persevere – to believe that they are not being unrealistic.

24

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Discussion

25
