

Working in Law's Borderlands: Translation and the Work of an Advice Office

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Abstract

Increasingly people in the UK are turning to voluntary sector advice organisations for help and support in dealing with everyday problems. Here we argue that advice organisations, who work in the borderlands of law, are nevertheless key players in legal arenas, focusing on local Citizens Advice offices supporting clients with employment problems. We look at the making of advisers as *border-workers* through programmes which turn volunteers into employment advisers; and the paid advisers who inhabit spaces on the edges of the profession. We examine the social practices of these advisers, the ways in which law-work becomes translation and advice-work becomes a process of co-production between adviser and client. In concluding, we consider how far into the legal arena it is possible to go with limited resources; and what happens when translating the technicalities of law no longer works. Translation comes to mean advisers turning to their activist-selves and adopting political tactics.

Key words

Voluntary sector; advice organisations; volunteers; translation; employment disputes; legal profession; legal consciousness

Resumen

Las autoras del artículo argumentamos que las organizaciones de asistencia, que operan en los límites de la legalidad, son no obstante actores claves en el campo jurídico. Nos centramos en las oficinas locales de Atención al Ciudadano, y nos

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fijamos en los asistentes como *trabajadores en los límites*, a través de programas que forman a los voluntarios para ser orientadores laborales; y los asesores pagados que habitan espacios en los márgenes de la profesión. Examinamos las prácticas sociales de estos asesores, las formas en que el trabajo jurídico se convierte en trabajo de interpretación y el trabajo de asesoramiento se convierte en un proceso de coproducción entre asesor y cliente. Para concluir, reflexionamos sobre cuán lejos se puede llegar en el campo jurídico con recursos limitados, y sobre qué sucede cuando ya no sirve la interpretación de los tecnicismos legales. La interpretación viene a significar que los asesores recurren a su papel de activistas y adoptan tácticas políticas.

Palabras clave

Voluntariado; organizaciones de asesoramiento; voluntarios; interpretación; disputas laborales; profesión jurídica; conciencia jurídica

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1. Introduction

Increasing numbers of people in the UK find themselves turning to voluntary sector advice organisations for help and support in dealing with the problems of everyday life. A dispute with an employer, a stop in benefit payments, an impending eviction, or a default on a debt, are all problems of law where voluntary sector advice agencies are becoming key actors.¹ This is especially so in the current period, where narratives of *austerity*, *tightening our belts* and *living within our means* have sustained a series of policies pursued by UK governments since 2010 which have intensified such problems. At the same time, cuts in public funding, particularly the Civil Legal Aid budget, have reduced the range and scope of many organisations to offer advice or support.

This phenomenon, however, is not unique to the UK, neither in terms of dwindling state funding of legal aid nor the increasing role played by voluntary organisations. In the US legal aid for millions of poor Americans is threatened by Trump's first budget (McCarthy 2017); and in Australia, which spends half the mount per capita on legal aid of England and Wales, 45,000 people were forced to represent themselves in court (Legal Action Group 2016). Outside the UK, declining trade unionism and a dearth of advice and support in employment disputes has given rise to many worker centres and community-organising initiatives. Fine (2006) surveys the expanding terrain of "worker centres" in the US, "community-based mediating institutions that provide support to low-wage workers" (Fine 2006, p 2). These centres offer basic legal advice and representation in recovering unpaid wages as well as broader advocacy, support and organising assistance, particularly though not exclusively for migrants. Just as a myriad of civil society organisations (e.g. Stonewall, Carers UK) take an increasing role in the UK employment advice sphere (Williams *et al.* 2011), similar responses to institutional inadequacies and economic realities can be observed internationally in the developed (Michelson *et al.* 2006) and emerging economies (Cooke and Wood 2011). Neither are these phenomena unique to the employment sphere, but can also be observed in adjacent areas such as debt and housing. In Spain, following the burst of the *housing bubble*, thousands of people threatened with eviction turn to organisations like Plataforma de Afectados por la Hipoteca (coalition of people affected by mortgages) in Parla, Madrid for help and support (Ana Gutiérrez, *¿Ser Cañeros o negociar?*, paper for Oñati *Working the Boundaries of Law* International Colloquium, 2016; unpublished, copy held by authors).

In this paper, we use data from a four-year research programme, *New sites of legal consciousness: a case study of UK advice agencies* (McDermont 2012), to examine the position and social practices of advisers and voluntary sector advice organisations in the UK.² We argue that these actors are key players in legal arenas (see for example Abbott 1998 on Citizens Advice as a new industrial relations actor), working in the *borderlands of law*. Like Clifford Geertz (2001) we believe that we can learn a great deal by looking at borders and the edges of things: through examining social practices in law's borderlands perhaps we can understand better how law is used (and not used) by citizens, and possibilities for those who are not legal professionals to engage and intervene in legal arenas.

Our subject of study, Citizens Advice, is an important player in the field of advice in the UK. Citizens Advice comprises a network of local offices, often located in town centres, libraries and local council offices. Each local Citizens Advice – until recently

¹ In the 2010 and 2012 English and Welsh Civil and Social Justice Panel Surveys, respondents attempted to resolve 87% of reported legal problems. However, in only 6% of cases did respondents make use of a law firm, and in a further 4% the advice sector. The most common problem resolution strategy respondents adopted was to handle problems entirely alone (43%), without even informal advice from family or friends (15%) (Pleasence *et al.* 2015, p. II).

² *New sites of legal consciousness: a case study of UK advice agencies* was funded by the European Research Council under a Starter Investigator Grant, award no: 284152. For more on the research programme see www.bristol.ac.uk/law/research/advice-agency-research/.

known as the Citizens Advice Bureau or CAB – is an independent charity, connected to and supported by national bodies (Citizens Advice and Citizens Advice Scotland). Citizens Advice was first established in 1939 as a response to anticipated disorders and dislocations of citizens during wartime. From the beginning it was committed to what it termed the "voluntary principle" (Citron 1989): volunteer citizens providing advice and support to other citizens. Until recently, local Citizens Advice were primarily funded by grants from central and local government (see Forbes and James 2017). Numbers of local bureaux have fluctuated over the years from the peak of 1,000 in 1942; at the time of the research there were 338 bureaux in England and Wales, 28 in Northern Ireland (Citizens Advice [CAS] 2016), and 61 in Scotland (CAS 2016).

The paper proceeds as follows. In the second section we set out our argument as to why advice-work should be considered as border-work, and why this matters. We examine the how regulation of the profession of law and the definition of what counts as law create boundaries, whilst at the same time leaving openings for the performance of law beyond the legal profession. In this context, we set out the research environment and research methods, which examined advice practices in supporting clients with employment disputes, a field that has become heavily legalised.

In the following section, we look at the making of what we have come to term *border-workers*: mechanisms for turning volunteers into skilled employment advisers; and the *making up* of the paid advisers, mostly those with some form of legal qualification but who all inhabit spaces on the edges of the legal profession. In the third section, we focus on the social practices of advice, examining law-work as translation and advice-work as a process of co-production between adviser and client. In concluding we consider the limits of working in the borderlands of law: the ever-narrowing scope of worker rights, coupled with resource constraints which limit time-consuming interventionist adviser strategies. This is the despair of law's boundaries. *Translation* comes to mean advisers turning to their activist-selves and adopting political tactics.

2. Advice-work: working in law's borderlands

To stake out claims to expertise and authority, law draws boundaries around itself. From the outside *The Law* can seem like an immense body of rules and knowledge that is only intelligible to those who have been through the necessary education and training to become *lawyers*. To be able to work inside law, it seems, you must understand the language, rules, customs and procedures; in short, how to access the body of knowledge that is termed *The Law*. To be a *practising lawyer* you must have undergone a specified education and training path. In England and Wales this means a university degree or equivalent which includes subjects specified by the Solicitor Regulation Authority, a Legal Practice Course and then a specified period as a trainee solicitor or barrister.³ Having passed through these knowledge hoops and rites of passage the lawyer must register with the relevant regulatory authority and can then *practise law*.⁴

Despite these significant barriers that exclude the non-specialist from working in the field termed *law*, in the UK, not having the required qualifications does not preclude giving advice about legal matters.⁵ This means that advice organisations like Citizens

³ And most recently the announcement of the Solicitors Qualifying Examination (Solicitors Regulation Authority 2017).

⁴ In fact it is more complicated than that. There are a great number of regulatory bodies, e.g. the Solicitors Regulation Authority, the Bar Standards Board, CILEx Regulation, Council for Licensed Conveyancers, Intellectual Property Regulation Board (for Patent Attorneys and Trade Mark Attorneys), Costs Lawyer Standards Board, Master of the Faculties (for Notaries), Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland and the Association of Chartered Certified Accountants.

⁵ For the purposes of this paper we are not going to attempt to define what is *law* or *legal* since this gets us into contorted circular thinking as demonstrated by the definition of 'legal activity' in the Legal Services

Advice advise clients on issues with legal elements, allowing the boundaries of law to be more porous than might be imagined. Nevertheless, there is an immense difference between being allowed to give legal advice, and being able to intervene effectively in highly legalised fields. The knowledge, expertise and experience, alongside the understanding of (often arcane) language and ritual, that come with having been trained as a lawyer, act as considerable exclusionary barriers for anyone without this background attempting to enter such legalised fields. Which is why we have begun to think about advice work as operating in law's borderlands, and advice-workers as border-workers.

2.1. Advice-work in the employment field

Our research project focused on the role played by Citizens Advice in supporting people with employment problems. In part, we chose this as a field of study because it had become a particularly difficult area of law in which to work for those without the specialist education, training and experience of employment lawyers. Over the last few decades, employment relations have moved from being predominantly conducted through processes of collective bargaining between employers and trades unions, to sites in which terms and conditions have become highly individualised through the worker's contract and individual rights and, should a dispute arise which could not be resolved through negotiation in the workplace, would end up in the Employment Tribunal (ET). Our pilot study found that the process of taking a claim to an ET was experienced by workers as overly legalistic, time-consuming and extremely stressful, particularly if they were not represented by a lawyer. ET hearings, where employers were frequently represented by barristers, were baffling and exclusionary (Busby and McDermont 2012). The effect has been that employment relations have become juridified - infused by legal norms and procedures (Teubner 1987, Corby and Latrielle 2012, Busby and McDermont 2016). Employment disputes can only be pursued at great cost: the financial cost of employing a solicitor (and often barrister); or, for those who try DIY law, the great cost to mental and physical health (Aston *et al.* 2006, Denvir *et al.* 2007). Dealing with employment disputes has therefore become a specialist field that even those with law degrees feared to enter if they were not employment specialists.

Nevertheless, there is a substantial need for support from those with employment disputes. At the time of establishing this research, employment was one of the top four fields of inquiry for Citizens Advice (the others being housing, debt and benefits). Here was the difficulty: how does an organisation that relies on volunteer advisers who in the most part do not have law qualifications, intervene in the highly legalised field of employment problems?

It was within this context that we began to consider the work of Citizens Advice as operating in the borderlands of law. We term them borderlands partly from the nature of the workers in the space – largely they were not legal professionals, let alone employment lawyers: they were volunteers trained up to a variety of levels to deal with the specialisms of employment disputes; or advice-workers who, whilst having engaged in legal training to varying degrees, have turned to other means in pursuit of a commitment to social justice. They are also borderlands because of the nature of the clients: those who found themselves enmeshed in law in dealing with everyday problems but were unable to engage directly with the legal profession. For the most part, Citizens Advice clients could not afford to consult a solicitor, nor did they have family or friends who were lawyers: turning to an advice agency was their only option. They frequently sought advice not realising that their problem was an employment

Act 2007: i) an activity which is a reserved activity; ii) any other activity which consists of one or both of the following: the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; the provision of representation in connection with any matter concerning the application of law or any form of resolution of legal disputes.

one (for it had materialised as a problem of debt, or in a notice to quit from their home) let alone that it might have possible legal *solutions*.

So, these borderlands are *relational*: they come into being through particular relationships with law that entail different relations and social practices from those that operate *within* the territory of law. Elsewhere we have written about the experiences of clients trying to find some sort of resolution to their dispute (Busby *et al.* 2013, Busby and McDermont 2016); in this paper we focus on the advisers, volunteers, paid Citizens Advice offices (termed *CAB* in this paper) staff and occasionally lawyers. In considering them as *border-workers* we are in part borrowing from the work of Janet Newman, whose book *Working the Spaces of Power: Activism, Neoliberalism and Gendered Labour* (Newman 2012) concerns women "who have taken activist commitments into their working lives" (Newman 2012, p IV). Although not all our border-workers would identify themselves as *activists* we believe there are many points of comparison and thinking through the lens of border work "produces different possible mappings of space and power" (Newman 2012, p 130). The women in Janet's book described their working as "inside-outside", "close to the ground", "working on the edge", "marginal", terms we can imagine our advisers using, terms that describe a complex place, of being both at the edge as well as "insider". Our *CAB* advisers similarly occupied multiple positions, not quite within the system but able to use their identity as Citizens Advice advisers as authority when speaking on behalf on their clients.

Why might looking at border-work in law be useful? Clifford Geertz suggests that

[I]ooking obliquely at the edges of things, where they come together with other things, can tell you as much about them, often, as can looking at them directly, intently, straight on. (Geertz 2001, p. 12)

By looking at what happens at the borders of law, perhaps we might come to understand legal systems better, and how it might be possible to intervene and reshape them. Those on the inside of a system, who have been shaped by the system's norms through education and experience, are often unable to see the barriers the system has thrown up which make engagement with the system difficult or impossible. Similarly, being on the outside means it is often not possible to see in, and so equally (but differently) difficult to see or understand the barriers. Working in the borderlands, being inside-outside, enables engagement with the system and the frustrations of its exclusionary practices. So, in being concerned here with the social practices of border-work (cf. Newman 2012), practices which arise out of the creativity and entrepreneurialism of advice agencies and their workers/volunteers in adapting to ever-changing environments, funding regimes, and legal systems, it might be possible to formulate ways in which law/legal systems could be different, ways in which they could better enable engagement from those beyond the usual experts. Border-work does not take place "after policy, in the spaces of implementation or in the use of discretion by *front line* workers"; rather border-work is – or has the potential to be – "integral to the generation of new governing rationales" (Newman 2017, p.9), itself productive of new ways of performing law.

In what follows we describe the ways in which advice workers *perform law*, through social practices developed in the training of volunteers and put in place in order to operate and survive in these difficult, complex and shifting borderlands. However, first we provide some detail of the research that gave rise to the data used in this paper.

2.2. The research: location and methods

Having located employment disputes as a site of highly-legalised activity, we designed a research project that would attempt to capture how non-legal actors negotiated this terrain. We sought to understand how people with work-related disputes dealt with them with the support of a local Citizens Advice office. From our

pilot study we knew that those who attempted to engage with the formal structures of law through the Employment Tribunal system, often workers in precarious, badly-paid and badly-managed work, all too frequently experienced systemic barriers to justice: workplace grievance procedures that seemed stacked against them; an Employment Tribunal system that operated highly formalised, court-like procedures where they are outnumbered and out-skilled by the employer's legal team; and settlements which left them without jobs, inadequately compensated and often traumatised by the experience (Busby and McDermont 2012).

For two and a half years the research team conducted observations and interviews in seven local Citizens Advice offices in England, Scotland and Northern Ireland. With the help of the national organisations, Citizens Advice and Citizens Advice Scotland, and through an email to all CAB in the North of Ireland/Northern Ireland, we identified those bureaux with a high employment advice case-load, casework which included negotiating behalf of clients and supporting them in taking cases to the ET. These were therefore not typical CAB: most local Citizens Advice limited their service to signposting – to the Advisory, Conciliation and Arbitration Service (Acas) Helpline (Acas n.d.), the Employment Tribunal service website, and trade unions if appropriate.

In our study sites, CAB workers identified clients who, at the initial advice contact, appeared to have a work-related problem that could potentially become a claim to an Employment Tribunal. This sifting mechanism was chosen because we wanted to investigate both how employment problems were dealt with and how the legal system of the Employment Tribunal was negotiated. 158 CAB clients in all were recruited, and were followed by our researchers as they worked their way through the advice system and the legal system. Where possible we followed them from the initial meeting between advice-worker and client through to resolution of the dispute, using observations, interviews (in person and by phone) and through email exchanges. Where a client's case reached the stage of ET hearing we sat in as observers at these hearings. We also carried out interviews with advice workers (volunteers and paid staff) and managers to build up a picture of the work of an advice office.⁶ In a related research project, the researcher trained with Citizens Advice as an adviser, generating further data from diaries completed by himself and other trainees.

3. Becoming border workers

In this section we consider how people come to be working in the borderlands of law and what sort of subjectivities are developed in this complex, difficult zone. We first examine how CAB volunteers who have been trained as generalist advisers become able to operate in the employment field. We then look at the paid advisers who carry out much of the specialist employment advice and support the volunteers; these paid advisers all had a level of education/training in law. All workers went through processes of *translation* – of their own experience and expertise, and of their understandings about fields of competence – so that they could act as translators for those who become clients of CAB.

3.1. Turning volunteers into employment advisers

75 years or so on from its formation, Citizens Advice continues to be an organisation that relies on volunteers in a wide range of roles: in Scotland volunteers form three quarters of bureaux staff (Citizens Advice Scotland 2017). The local offices and central organisations invest considerable time and personnel in making volunteers into generalist advisers who can deal with the wide range of problems they will

⁶ We interviewed upwards of 35 advisers, volunteers and CAB managers: This number relates to those that were formally interviewed, where this data was audio recorded and transcribed. Many more participants featured in the research in more informal ways, appearing in field notes or as detailed in descriptive data relating to bureaux staffing (e.g. short self-completed profiles of advisers' backgrounds, jobs titles and expertise)

encounter. It takes around nine months to turn a volunteer into an adviser which includes an extensive training programme and a period of observation by experienced advisers before being allowed to take on casework. Volunteers are supported by salaried, specialist advisers who oversee the volunteer's handling of cases in the *backroom* of the CAB.

Until recently the aim has been to produce volunteer advisers who work on the *front-line* as generalists, conducting the initial advice interview, providing generalist advice, referring clients to specialists where advice work appeared more heavily legal. This was particularly so for employment problems, where very few bureaux had in-house legal expertise in employment:

Employment advice is different (...). It's a legalistic area (...) that carries real risk for the bureau because if you get it wrong, you can be sued for real money that people have lost, so you have to be trained up properly. (Rhea, Chief Executive, urban CAB)

Unless we've got some specialism within the bureau (...) it tends to be handled by the book (...) we rely on what the information system tells us, so we're more about giving the client information about their rights and responsibilities, time limits and deadlines, how employment law works, rather than interpreting that or taking on the client in the sense of being an advocate or a caseworker. (Richard, Advice Service Manager, urban CAB)

Such reluctance to enter the legal arena of employment advice is motivated by material considerations: a financial risk to the bureau if they get advice wrong, should disgruntled clients use law to attempt to reclaim losses perceived to arise from bad advice. Indeed, we came across one bureau that had withdrawn from giving employment advice for precisely that reason: even the insurance policy all bureaux must hold did not help as they were required to deposit a large sum before the insurance company would proceed to instruct solicitors.

This led most CAB to take what the Advice Service Manager above termed the "traditional" approach – advice as an information service – relying on the Citizens Advice internal information system to inform clients about how the legal system works. This "traditional" approach nevertheless entailed moving clients in their relationship to the legal system, for our research found that many who approached Citizens Advice had little or no knowledge of the existence of the Employment Tribunal system nor of the time limits for lodging a claim with the ET.

However, one of the many functions of the central organisation Citizens Advice is to collect and analyse data about the thousands of problems presented to the local offices: at a local and national level, it was known that employment was one of the most frequently occurring problem areas. This knowledge led one large urban bureau to set up a programme to train up a team of volunteer generalist advisers to be able to provide employment advice under the supervision of paid staff. The programme was run through a series of webinars and training sessions carried out with the support of Citizens Advice Specialist Support Unit.

The initial training seminar surfaced the anxieties of volunteer advisers. The trainer asked why advisers did not want to be involved in negotiating with employers:

[We had the] feeling that we could be interfering (...) we don't have the legal skills, we might get ourselves into a difficult argument with an aggressive employer and we might damage that person's relationship with their employer (...) [the trainer] said, 'listen, are you not all trained negotiators?' 'Yes'. 'Would you think twice about ringing up (...) City Council or any other landlord?' 'No'. 'So what is it about employers?' Ah! And it was sudden (...) light bulb moment. (Richard, Advice Service Manager)

The critical turning point, making it possible for the advisers to overcome a fear of employment advice, was to translate understandings of what was required into the terms of their existing expertise. Advisers were made to understand that it was not so much a matter of in-depth legal knowledge, but of using relational skills developed in other fields which enabled them to speak on behalf of clients, negotiating with

those (the Council, employers) who frightened, frustrated or excluded their clients. What was needed was the expertise of an *adviser*, not necessarily a lawyer.

Once trained up the employment team became more interventionist, contacting employers to try to negotiate on their client's behalf:

Our early involvement with cases has transformed the outcomes (...) two cases (...) got as far as a tribunal hearing. All the other cases we've taken on have settled. And in most instances it's helped to get the employer on board and it seems our involvement, far from being a negative, it's been an extremely strong positive (...). I think we brought in about £42,000 of compensation since the beginning of this calendar year. (Richard, Advice Service Manager)

This work moved away from the *specifics of law* to advice-giving as a skill developed in one field that could be translated into another. They were to become brokers, who could use the authority that the title *CAB adviser* suggested, to negotiate settlements.

However, this enthusiasm for volunteer advisers' potential to intervene in the employment field needs to be tempered by a perspective from another bureau. As our research developed, so the environment of advice-giving changed. The Citizens Advice office that had been able to employ a solicitor to run the difficult employment cases had been able to do so with legal aid funding, drastically cut by the Coalition government in 2012.⁷ As a result, this local office of Citizens Advice also shifted to a volunteer-run employment advice service, with the solicitor training up a group of volunteers to run the employment casework under her supervision.

I had a look at the audits, and they want a lot from these volunteers, and a lot of them I think just don't have the capability, even in these one-off appointments (...), it just assumes you've got resources to then do further work for them, and in our Bureau we don't necessarily have that. There's been cuts all around. (Suzanne, solicitor-adviser, urban bureau)

Suzanne's concerns were multiple: limited resources of volunteer advisers who only work for two half days a week, coupled with limitations in levels of education of volunteers, meant that complex, time-consuming employment cases were beyond many. For employment advice work, she commented, "you would need a really good volunteer who's not going anywhere (...) maybe retired, someone who'd worked in industry and has that level of education and will put in that time". Here are borders to the extent that volunteer advice-work – and translation itself – can hope to assist clients with their disputes. We return to this in the concluding section.

3.2. Legal expertise in law's borderlands

Although most people who work in advice organisations, either as volunteers or paid staff, are not lawyers, the highly legalistic nature of employment problems has led local Citizens Advice offices to look for those with some form of legal expertise to support the service. A number of the paid staff in the offices involved in the research had some form of legal training, but might be considered as boundary lawyers:

- Alice had a law degree and legal practice qualification but without two years as a trainee so was not a *qualified* solicitor. She used her specialisation in employment law during her degree to take on employment advice and support volunteer advisers.
- When Alice went on maternity leave, Josie, a paid generalist adviser, covered her post. She had a law degree and had been working as an adviser while studying for a post-graduate degree in advocacy.
- Hugh, a generalist adviser, had studied law at university, then found himself in advice work after a number of other jobs. Gradually he built up an expertise in employment, taking cases through to tribunal (and winning).

⁷ The Coalition Government's Legal Aid, Sentencing and Punishment of Offenders Act 2012 drastically cut civil legal aid funding, see Hynes 2012.

Then there were others who were fully trained and qualified as solicitors but who were nevertheless occupying non-standard, hybrid positions as legal professionals:

- Henry, a qualified solicitor, had previously worked for the local law centre. When the Council stopped funding the law centre they transferred the funding for this solicitor to the local CAB. Under the service agreement with the bureau, Henry's charging rate was well below the rate high street solicitors would charge clients.⁸ The manager of the bureau described the unorthodox nature of this relationship: "It's only ever going to work with Henry, I don't see it working with anyone else because he doesn't even come close to legal aid rates but he loves what he does and he can afford to do it the way he does it".
- One bureau had what looked like a more *standard* arrangement for providing legal advice, employing Suzanne, a solicitor funded through legal aid, to take on housing and employment cases. However, she had to be *re-made* when legal aid for most employment casework was removed, becoming trainer and supervisor to volunteer advisers, only taking on casework for those discrimination cases that still fell within the boundaries of legal aid funding.

In addition, other local Citizens Advice had lawyers acting in a voluntary capacity:

- A solicitor providing evening advice sessions to people with employment problems once a month at the local CAB; he does this work pro-bono in part as a mechanism for generating work for his private practice;
- Kirsten, who in her capacity as a local authority solicitor dealt with employment law matters, was a regular volunteer for the local bureau, where she was allocated cases that made the most of her expertise.

These border-workers were the experts because they had legal training (albeit to different levels) – so in this sense they might be considered as *insiders*. But as advisers in an advice office whose clients had an enormous range of problems, experiences and socio-economic backgrounds, they also had to transform and translate between their different selves:

I draw on my uni experience a bit when I'm [advising on employment], certainly in terms of kind of drafting the ET1 et cetera (...) but also kind of draw on my CAB training in the way I would advise them. (Josie, Specialist Adviser)

For some this meant adopting different personas to adapt to different advice scenes and clients' advice needs. In observing Hugh, the researcher's field notes commented on the way he occasionally changed his accent, sometimes taking on a *posh* inflection, to be closer to the client's identity and so make them feel comfortable. This might elicit fuller disclosure of difficult or personal aspects of the dispute with the employer.

Nearly all who worked in advice offices, volunteers and paid advisers, whilst they might not necessarily identify as social activists, were driven by a sense of values:

I was unemployed for a wee while (...) [I thought volunteering] may actually help me get into a job (...) but once I actually got in here I actually found that I enjoyed it, it's helping folk that need the help (...). I felt like I was wasting my time in that office [of the bank he previously worked in] (...) you feel you are at some level making a difference to people's lives and that's a good thing. [Simon, benefits and appeals adviser (paid)]

I would say that the majority of people that do apply to us are people who have used the service (...) 'you helped me, I want to give something back'. (Marilyn, CAB office manager)

⁸ Our research assistant commented: "He would make less at an ET hearing than I would observing at my research assistant rate".

Like Newman's women activist boundary workers, their identities were multiple, shaping and reshaping over time.

I don't ever remember agreeing to become an employment adviser (...) needs must, because in an ideal world, we'd refer on at the right time to absolutely the right person and then go onto the next person. But a lot of cases that we're dealing with, it's because we can't get them placed anywhere and it's either we help them, or they do it on their own. (Hugh, paid adviser and employment specialist)

So the legally trained move between adviser training and legal training, clients become volunteer advisers, volunteers become paid advisers. As the delivery of services to publics have become more complex through partnering, contracting and shifts to the voluntary sector driven by funding cuts, these multiple and hybrid identities have become necessary for many involved in public service delivery. Leadbeater and Goss (1998) have coined the term "civic entrepreneurs" for these workers who are plugging gaps, inventing new forms of expertise and reshaping old. These are Silbey's "sociological citizens" who see "their work and themselves as links in a complex web of interactions and processes rather than as a cabin of limited interests and demarcated responsibilities" (Silbey *et al.* 2009, p 203), their complex, heterogeneous identities arising out of the "reconfiguration of the regulatory world" (Silbey 2011, p 8). They recognise their work as fundamentally social; they work with their clients, but also a myriad of resources, institutions, practices and knowledges. Their work is relational, "mobilising ongoing transactions as resources" (Huisings and Silbey 2011, p 18), translating between worlds, enabling clients to cross borders and working on others to shift borders.

This inside-outside role is a difficult position to occupy. Doing law-work outside the legal profession is hard. Particularly paid staff working as specialists often feel isolated: "it's quite a lonely place", Hugh told us,

If one of our advisers is progressing [an employment case], I'd be looking over their shoulder and then hopefully somebody's looking over my shoulder.

Having someone to look over your shoulder meant working on the relational elements of the spaces they occupied. They would make links with local law centres (where they existed) and would use them as sounding boards, trying to get the law centre to take on the more complex cases (but lack of funding meant that generally law centres could only take on cases of strategic importance; see Mayo *et al.* 2015). Sometimes it was the researchers who helped fill that *lonely space*. Several advisers told us how much they valued having the researchers in their offices, discussing with them the difficulties of cases and thinking aloud through their next tactics.⁹ Being involved in the research led one adviser to set up an Employment Law Casework Unit within the Citizens Advice region. And when the possibilities of law-work were exhausted, some would push the boundaries of advice and turn to their activistselves: advice-work would be transformed into lobbying and campaigning for change, as we discuss in the final section of this paper.

3.3. The social practices of advice-work: acts of translation

In the previous section we examined how advisers came to be working on employment disputes in the borderlands of law. We suggested that generalist volunteer advisers were translated into *experts* in the field in part through a recognition of their skills as advisers rather than through the acquisition of a specific *legal* training – though of course the training they went through did engage with the technicalities of law in the employment field.

⁹ Another adviser asked our researcher if she could be put in touch with our other CAB employment advisers as she felt so alone in the work she was doing - she wanted others to bounce ideas off - there was no one else in the bureau with an appropriate level of employment law expertise.

Nevertheless, many advisers struggled with the law/not law boundary, both when reflecting on their work and in their day-to-day activities:

I wouldn't say legal advice, no (...). I don't think we can give legal advice (...) because we're not solicitors, we're not allowed to call it that (...) generalist advice, giving people their options, and then they choose what they want to do. That's what we do, I'd say. (Sumeiya, volunteer adviser)

Obviously the fact that we're not lawyers, we're not full-time trade union officials that can represent (...) the emphasis is on giving advice and self-help as far as possible (...) to avoid a legal route and a legal challenge wherever possible. And to do a nice phone call if that's suitable or a nice letter if that's suitable rather than be heavy [with employers]. (Emily, volunteer adviser)

Emily was one of the advisers who had recently completed a law degree and was volunteering as a means of getting experience. Our interviews with those with legal qualifications often demonstrated they had greater concerns about the problems of *boundary-crossing* into legal territory, a subject we suggest should be investigated in future research. For some this came out as a desire to translate into more activist engagements with law: Alice told us she wanted to find new ways to do paid work that remained faithful to the public service ethos of Citizens Advice. She considered setting up a campaigning centre on workers' rights, and/or doing a PhD in social/legal studies related to employment law and the employment tribunal system.

Emily and Alice's struggles with which side of the legal boundary they should operate in was reflected in other interviews and focus groups with advisers across the research projects. We think this is, in part, a result of the professionalisation of law which has developed cultural understandings of law as conducted by experts with years of training and experience. Expertise is exemplified in the many TV and film depictions of *law and order* as painstaking investigation involving the latest scientific techniques, as arcane technical language, and as lawyers and judges in gowns and wigs. In this understanding of being *before the law*, law is quite separate from everyday life, something that is beyond the experience of all but the select few, to be revered and feared (see Ewick and Silbey 1998).

However, many of the social practices of law-work are practices of translation; they are much more mundane, not necessarily recognised as legal; they are practices that many must engage in, as James Boyd White discusses in his work *Justice as Translation*:

[I]n her conversations with her client, from the beginning, [the lawyer's] task is to help him tell his story, both in his own language and in the languages into which she will translate it (...). The client is thus led to learn something of the language of the law; at the same time, the lawyer must learn something of the language of the client. (Boyd White 1990, p 261)

We use the idea of translation not simply in a linguistic sense (translating the arcane and technical language of law into everyday terminology), but more importantly as a way of thinking about how heterogeneous things (people, concerns) are brought into a relation with each other through social processes and practices of *translation* (e.g. Law 1999). In so doing new sets of relationships are brought into being, relations which change the characteristics of the objects – things or people. Translation is not merely a technical process but also a political one in which translators actively choose between alternatives (Freeman 2009, p 435, Newman 2014). It is a collaborative process, one of "mutual definition and inscription" (Callon 1991, p 143) where transformation and change take place (Law 1997). Translation places the translator in a pivotal role, for "to translate is to speak for, to be indispensable, and to displace" (Callon 1986, p 28). As Newman (2012) observes, translation helps us think about the nature of border-work:

rather than viewing them [border-workers] simply as boundary-crossing actors, they can be seen as engaged in a creative process that opens up new potential pathways and generates new emergent practices. (Newman 2012, p 147)

After months of observing advisers at work, the researchers in the field summarised advice-work like this: firstly, advisers elicit clients' narratives by carefully listening, obtaining and deciphering information and documents, and begin to impose order and structure on what are often jumbled or confused narratives. Second, advisers diagnose problems, providing information that is relevant to participants in relation to their dispute, and may begin linking their situation to legal implications. Third, they may considerably escalate a claim by legalising language, performing law through, for example, writing a grievance letter or filing an ET claim form. Fourth, they may close down disputes, advising against progressing, and warning of risks or otherwise discouraging the continuation of disputes.

So much of the work carried out to get a dispute into, or out of, law is procedural – indeed for Alice (the paid specialist employment adviser in site F), employment advice

is definitely specialist but I don't think it's the legal knowledge (...), it's more procedural and it's more like running a case as in kind of managing a case that's ongoing and it takes up a lot of work.

The adviser's work in the borderlands of law requires doing legal work, but this is work that adopts hybrid tactics as much concerned with the social relationships they generate and work on as with the technicalities of law. In what follows we explore these practices as acts of translation, beginning by tracing translation work across the border of law and voluntary expertise.

3.4. Advice-work as co-production

We found that much of what advisers do was to look for ways of sharing out the legal work, to encourage/support their *clients* to do the legal work themselves – "self-help" as one of the advisers termed it. Indeed, the terminology of *client* at times seemed inappropriate, for the relationship between advisor and advisee was often much more equal than the term implies.¹⁰

Engaging clients in the work of finding solutions to the problems they bring to the bureau was not simply an adviser choice, but is enmeshed in the mechanisms, procedures and ethos of Citizens Advice, part of the procedural systems local bureaux adopt inculcated in advisers through training. It is tied up with discourses of empowerment of clients; but it is also about conserving the energy and sharing out the time of advisers in order that bureaux can deal with as many clients as possible with the resources they have. The bureaux in England operated the Gateway Assessment process, a system of triage developed at the national level by Citizens Advice. The outcome of the initial triaging appointment is intended to determine the correct advice path for the client, of which there are three options: to be referred elsewhere; to be given a full advice appointment; or to be given instructions on how to solve the problem themselves (for an analysis of triage within the advice office see Kirwan and McDermont with Evans 2017).

Some clients came to the local advice office having already carried out research about their case, and so use the CAB adviser as a sounding board to check this out and get a *second opinion*. For example, Barry was working as a labourer via an employment agency earning £6.55 an hour (just over the national minimum wage at the time). From talking to colleagues, he began to suspect that he was being underpaid as he was getting £2 an hour less than directly employed staff for the same work. He had worked there for more than 12 weeks and had heard that this meant he should be due the same wage as other staff and entitled to paid holiday. He carried out an internet search on "agency worker rights" and found that there had been some new legislation put in place recently. On visiting his local Citizens Advice, he had an appointment with a generalist adviser who helped him clarify his entitlements and

¹⁰ It is interesting to compare this with the relationships between lawyers and their clients. See for example Sarat and Felstiner 1995 on clients' and lawyers' negotiations of power in divorce cases; also review by Chambers, 1997.

was made an appointment with the CAB-affiliated solicitor. After this point Barry felt he knew his rights as a worker but needed an external, legal expert to help him put pressure on his employer to pay up. Barry was a proactive participant in this meeting, telling advisers what he thought he was entitled to.

So some have already taken on the *do-it-yourself* mantle, conducting their own research through the internet or through friends and colleagues, but then do not know what to do with the information

I've had a couple that have come in saying they've looked it up and they can't do this and they think it's discrimination or I had a client saying that, 'can I use this as a disability discrimination?' (...) some people research it and then don't know how to apply it or don't know how to approach it and others come in saying, 'my manager's done this, this, this, this, this, this, this, 'what do I do?' (Josie, Employment Specialist Adviser)

Often those who were knowledgeable before visiting Citizens Advice drew upon networks of advice other than Citizens Advice webpages or leaflets. They would involve friends and family who were trade unionists, legally trained persons, or simply those who worked for larger, more sophisticated organisations and workplaces where formal employment policies, procedures and contracts were more widely available and understood. Jane had been a shop steward in a previous job, had knowledge of employment law and policies and procedures; she did a good deal of her own research into her case, drawing on a number of advice providers, her trade union, Acas, and a private practice employment lawyer. She also sought the help of family members who had administrative expertise and experience in human resources. She was thankful for her "strong family support network" and friends with whom she could discuss matters to help make decisions and generally seek emotional support. She had also used quite complex and legalistic mechanisms, such as a Freedom of Information Act request to obtain information from her organisation. In an advice appointment at bureau B she asked the solicitor whether her case merited a claim for "constructive dismissal".

Once the client has presented their narrative, an adviser will clarify and probe for relevant information, verifying that adviser and advisee share the same conception:

Well, it's exploring what the problem is as best you can (...) establishing first of all that their notion of the problem is the same as mine and discussing that, and then considering the options for resolving what is the agreed problem. (Sumeiya, volunteer adviser)

This approach to advice-work made us question the terminology of *client* that is prevalent in Citizens Advice. Sumeiya seems to be considering her *client* as an equal expert in understanding the story and importance of various events. Advisers will try to use their own expertise, their understanding of the complexities of law, as a mechanism for enabling the client to engage in the law-work:

I do that quite often, bullet-point [the advice given] because we've gone through some quite complex stuff and they're like, 'oh what is that? What is the Equality Act?', so we've just bullet-pointed the key things to have in your appeal letter and then they've kind of [included] that, and then they've got their appeal letter. (Alice, Employment Specialist)

These processes of *co-producing* the legal story is an approach that can save resources in the Citizens Advice office and can enable a transformation – perhaps quite small – in clients like Janis:

There's no way I could have done it without his [the CAB-affiliated solicitor] help, even just something like casting his eye over the small claims form, making sure that what I had down was correct (...) the wording and things like that, now, I wouldn't have known that. I couldn't afford to pay for somebody to tell me that either.

Such boundary-work is an attempt to work with the resources and expertise that come together in an advice agency, to utilise practices that can enable engagement in legal fields by those who (largely) would not identify themselves as law-workers.

This work aimed to create spaces where what counts is the expertise of advisers *qua* advisers. We have come to see this work as *brokering*: facilitating, mediating, negotiating and nurturing, deploying knowledge and expertise "in ways that enable traditionally *silent* voices to be heard" (Larner and Craig 2005, pp. 417-418). Broker activities are process orientated, involving translation, coordination and alignment between perspectives (Wenger 1998).

In describing the success of the employment advice service above, the manager focussed on the work of advisers in negotiating with employers, attempting to keep away from the technicalities of law. Advisers had gained the confidence to intervene by translating skills developed in other advice fields (like debt advice) where they had success; they also deployed the expertise implied in the identity of *CAB adviser*, a title that creates a space in which they were taken seriously when talking to employers. The successful volunteer adviser was not necessarily the one who could engage with the technicalities of law, but the one who could "get things moving" (Osborne 2004, 440). They focused on finding a negotiated settlement between employer and employee, one that would enable both sides to walk away from the site of conflict, without perhaps, the expense of a tribunal hearing.¹¹

4. Conclusion: The limits of border-work

There are many difficulties for advice-work in the borderlands of employment law, the field for potential action can seem narrow. Brokering only works if the employer is willing to communicate, or as one adviser put it, "it takes two to tango, and if the employer doesn't dance, there's only one option". If negotiation proved impossible, engaging with law's technicalities became essential. However, here we encountered one of the limitations for advisers working at law's boundaries: *time* as a resource. Preparing a case for a tribunal, particularly complex claims like discrimination and unfair dismissal, requires putting law's technicalities to work, technicalities that have become highly complex as the Employment Tribunal has become dominated by the norms and practices of the legal profession. This boundary does not appear so porous: the skills of translation required are those of one who knows the technicalities, too big a demand for a volunteer resource, too time-consuming for the paid specialists for whom taking a case to Tribunal hearing could mean ignoring the problems of many other clients.

Or worse, how to advise clients when politically-motivated legislative changes mean that it is not possible to get inside the boundary? For many of those who turned up at their local CAB, no matter how unjustly they felt they had been treated, their feeling of injustice could not be translated into a legal argument: the difficulties of translating experiences of bullying and intimidation into a legal claim, or those on zero-hours contracts, or who had been in the job for less than two years (and so did not qualify under the new regulations to make a claim for unfair dismissal); here the legal rules simply did not allow the possibility of translation. Or perhaps the client's problems could be translated into a legal claim but the fee to lodge a claim with the Employment Tribunal (£160-£250 depending on complexity) and another fee to get the case heard at a Tribunal hearing (£230-£950) barred this legal route to many.

So here is the despair of law's boundaries – how do border-workers operate when the boundary appears as a border reinforced by an impermeable wall? In the space that is employment relations the power imbalances between employer and worker can become a cavernous gap (see also Kirk and Busby in this volume). At these points of extreme pressure, advice-work is no longer just technical, it needs to become political, not an individual translation but a collective one. Advice organisations can become broker organisations in multiple planes, acting as "local intermediaries responsible for fostering and convening partnerships and networks of relations among existing organizations" (Chaskin 2001, p 143). Local CAB often would be

¹¹ See Sarat and Felstiner 1995 as above on how lawyers "negotiate realism" with their clients.

found co-ordinating local advice alliances, working with charities, trades unions and churches to establish a food bank when changes in benefit regulations left them with no answer to clients whose income had been drastically reduced by discriminatory legislation such as the *bedroom tax*, alongside setting up citizens' forums where *clients* too perform acts of translating, re-telling their problems as *real-life* experiences of the impact of legal regulation.

It is in these spaces where advice-workers must confront power relations that the activist identity of advice-workers can re-assert itself. Some advice organisations would ignore law and utilise relations with local media to "name and shame" employers operating bad practices (Kirk 2015). Or advice-workers would use political connections to turn the multiple experiences of malpractices of care agencies into lobbying of members of the local health board who awarded care contracts to the same agencies.

Advice work becomes about the hierarchical ordering of language, of different forms of expertise. So the work of Citizens Advice in using their power to engage in 'politics' operates another kind of translation, between informally acquired knowledge in the advice consultation and political discourse. Through policy reports such as CAS (2015) *Fair Enough: Protecting Scotland's Workers from Unfair Treatment* and Citizens Advice Bristol (2016) *None of the freedom, all of the risk: Delivery drivers and 'bogus self-employment' in Bristol*, the dispassionate, apolitical role of volunteering can become a politically engaged role of advocacy and protest.

Of course, here too there are strains and pressures. Advice organisations, like others in the voluntary sector reliant on contracts with public and private bodies, worry about the effect political action might have on funding streams. And sometimes there seems to be no room for manoeuvre even in the political space, as workers' rights are subverted and wiped out in the name of *the economy*. Occasionally, however, there are chinks of light. As I finished this paper and news came out that the Uber taxi drivers had won their case in the Employment Tribunal to be classified as workers not self-employed, one of the advisers sent me a text.¹² "Uber is a deadly judgment", he said, seeing the re-opening of possibilities for supporting the marginal workers who occupy the waiting rooms of advice offices throughout the UK.

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¹² One of a series of cases going through the UK courts concerning the *gig economy*. The tribunal decided that drivers for the firm were "workers" not "self employed" and therefore eligible for workers' rights. See The Institute for Employment Rights 2017.

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