

## Legal aid – what’s in scope?

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## Programme

- An over-view of the legal aid scheme
- Scope
- Housing, Consumer/contract, Employment and Family law
- Exceptional case funding
- Means and merits
- Making referrals

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## How we got here

- Legal aid – after WWII
- Law Society until the 1980s
- Legal Aid Act 1988 – Legal Aid Board
- Access to Justice Act 1999 – Legal Services Commission
- Legal Aid Sentencing & Punishment of Offenders Act 2012 – Legal Aid Agency from 2013

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## LASPO Cuts

- All welfare benefit issues (£25m)
- Debt issues (£20m)
- Consumer issues (£5m)
- Employment (non-discrimination) issues (£4m)
- Housing issues (not involving immediate loss of home) (£7m)
- Immigration issues not involving asylum or detention (£20m)
- Education issues (£1m)
- Clinical negligence (£17m)
- Family law not involving domestic violence/child protection (£188m)

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## LASPO impact

- Cuts targets exceeded by £32m (NAO)



- Check out @igavels on Twitter.....

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## Legal aid statistics

- Over 2,500 legal aid providers in 2012
- Now - about 1,800
- Crime and civil legal aid £2.1 billion pre LASPO
- Around £1.6 billion now (mostly crime)
- Before LASPO scope changes, 925,200 'acts of assistance'
- 2013-14 - 441,500
- 2/3rds decrease in Legal Help (i.e. advice and assistance not involving the issue of legal proceedings) across all civil categories

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## Civil legal aid

- The top three civil areas of law are:
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- Mental health - £40m a year
- Immigration/asylum - £40m a year
- Housing - £30m a year
- BUT housing cases have halved post LASPO

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## What's in scope now? LASPO schedule 1

- Judicial review and public law
- Homelessness, i.e. eviction/possession proceedings, statutory applications
- Discrimination (both workplace and consumer) and equality law
- Public law family, child care/protection cases
- Domestic violence/abuse and related cases
- Family mediation
- Human Rights
- Civil Liberties
- Mental health detention and related cases
- Community Care
- Asylum, and legal aid for those in immigration detention facilities

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## Telephone gateway

- Debt (owner occupied housing at risk)
- Discrimination
- Education (special educational needs)
- Must use the Civil Legal Advice Telephone service
- **0345 345 4 345**
- Advice also on in-scope housing and family matters; but it is not compulsory to go through the telephone service

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### Green list – legal aid is available

- **Clinical Negligence**
- The only type of clinical negligence cases eligible are where a child suffers a neurological injury resulting in them being severely disabled during pregnancy, child birth or the postnatal period (8 weeks)

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### Green list – legal aid is available

- **Debt**
- Must be referred to the telephone service
- Mortgage possession of the home
- Orders for sale of the home
- Involuntary bankruptcy (including dealing with a statutory demand) where the person's estate includes their home

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### Green list – legal aid is available

- **Discrimination**
- Must be referred to the telephone service
- Breaches of the Equality Act 2010 – not category specific

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## Green list – legal aid is available

- **Education (Special Educational Needs)**
- Must be referred to the telephone service.
- Special educational needs (matters arising under Part 4 of the Education Act 1996)
- Assessments relating to learning difficulties for young people under the Learning and Skills Act 2000

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## Green list – legal aid is available

- **Family 'private law'**
- Domestic abuse cases
- Child abduction
  - Note that legal aid is available to recover a child who has been removed 'unlawfully' but is only available to **prevent** unlawful removal if that would be outside the jurisdiction of England and Wales
- Wardship cases
- Representation for child parties in private family cases
- Legal advice in support of mediation
- Forced marriage protection order cases
- EU and international agreements concerning children and finances
- Mediation to resolve family law disputes

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## Green list – legal aid is available

- 'Public' family law regarding the protection of children from abuse, eg Care and Supervision Orders, Emergency Protection orders etc.
  - Legal aid is available to children and parents/those with parental responsibility – non-means and merits tested in the above cases
- Adoption

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### Green list – legal aid is available

- **Housing**
- Possession of the home (owner occupiers are Debt)
- Eviction from the home (including unlawful eviction)
- Seeking repairs to rented accommodation where the disrepairs pose a serious risk of harm to health or safety
- Homelessness assistance for persons who are homeless or threatened with homelessness
- Injunctions under the Protection from Harassment Act 1997 in the context of housing and ASBO matters in the county court
- Provision of housing by way of community care (overlaps with Community Care)
- Accommodation and support for asylum seekers
- Advice and representation under Housing Possession Court Duty Schemes

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### Green list – legal aid is available

- **Immigration & Asylum**
- Asylum cases
- Detention, bail and residence restrictions pending deportation
  
- Immigration (non-Asylum) – very restricted:
- Applications to remain under domestic violence provisions
- Applications for leave to enter or remain in the UK by victims of human trafficking
- Terrorism prevention and investigation measures
- Special Immigration Appeals Commission proceedings

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### Green list – legal aid is available

- **Welfare Benefits**
  
- Appeals on a point of law in the Upper Tribunal (Administrative Chamber)
- Onward appeals on a point of law to the Court of Appeal and Supreme Court

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## Green list – legal aid is available

- Mental Health – Mental Health Act 1983 and Mental Capacity Act 2005 cases. Repatriation of Prisoners Act 1984 Sch para 5(2)
- Community Care – provision of community care services and facilities for disabled persons
- Actions Against Public Authorities – abuse of children or vulnerable adults, victims of sexual offences, significant breaches of human rights
- Protection from harassment where not arising from a Family or Housing relationship
- Environmental pollution
- Gang related violence injunctions
- Damages claims by victims of trafficking
- Public Law (e.g. judicial review cases)

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## Legal aid available – conditions

- **Family**
- Divorce, financial and child arrangements matters
  - With specified forms of evidence of domestic abuse
- Child arrangement matters
  - with specified forms of evidence of child abuse

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## Legal aid available – conditions

- The most common evidence of domestic abuse is
- A letter from a refuge
- An injunction
- A letter from the GP or other health professional
- Guidance on the full list of acceptable evidence of being at risk of domestic abuse/child abuse can be found at
- <https://www.gov.uk/legal-aid/domestic-abuse-or-violence>

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### Legal aid available – conditions

- Legal Help is not available to assist the client to obtain the evidence or to pay the costs of obtaining it, e.g. GP’s report fees
- LAA has issued some standard letters
- <https://www.gov.uk/government/collections/legal-aid-cases-of-domestic-violence-and-child-abuse-letters-for-professionals>

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### Legal aid generally not available for

- Asylum support (except where accommodation is claimed)
- Consumer and general contract (unless there is discrimination)
- Criminal Injuries Compensation Authority cases
- Debt (except where there is an immediate risk to the home, see above)
- Employment cases (unless there is discrimination)
- Education cases (except for Special Educational Needs, see above)

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### Legal aid generally not available for

- Housing, except those where the home is at immediate risk, homelessness, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the county court)
- Immigration cases (unless in detention or victims of trafficking/domestic abuse)

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## Legal aid generally not available for

- Contentious probate or land law,
- Wills
- Tort and other general claims (unless covered above (e.g. Actions Against Public Authorities)
- Welfare benefits (except for appeals in the Upper Tribunal; onward appeals to the Court of Appeal and Supreme Court)

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## Legal aid generally not available for

- Private family law:
  - Divorce
  - Finance issues
  - Child arrangements
- Other than cases where criteria are met regarding domestic violence or child abuse
- Don't forget about mediation

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## LASPO S.10 - Exceptional case funding

- *'That it is necessary to make the services available to the individual because failure to do so would be a breach of—*
- *the individual's Convention rights (within the meaning of the Human Rights Act 1998), or*
- *any rights of the individual to the provision of legal services that are enforceable EU rights, or*
- *That it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.'*

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## LASPO S.10 - Exceptional case funding

- ☹️ Around 2000 applications a year  
– far fewer than anticipated
- ☹️ About 50% success rate
- ☹️ Lawyers only get paid if ECF is granted

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## LASPO S.10 - Exceptional case funding

- 😊 Public Law Project – help and support
- Helpline re. exceptional case funding and civil legal aid – 0808 165 0170
- 10 am to 11 am every weekday  
– except Thursday
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## Exceptional case funding - case study

- Application by the mother in a private law children case
- The children were living with their father, and she had not had any contact for some time. Ongoing care proceedings in respect of her two other children with another father. Concerns around mental health and neglect
- The mother wanted some form of contact with her children but the father was not allowing any contact
- The intermediary service for vulnerable defendants assessed the mother as having difficulty in understanding and coping with the court process
- Solicitors applied for exceptional case funding for a Child Arrangement Order for contact under Section 8 of the Children Act 1989
- ECF was granted after an appeal against the original decision. It took approximately 1-1½ hours to make the application

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## In scope? Non means tested

- Special Children Act cases and related proceedings
- Family Help (Lower) in cases where Children Act 1989 s31 proceedings are contemplated and the client is a parent or person with parental responsibility
- Mental Health Tribunal cases
- Certificates in Mental Capacity Act 2005 s21A cases before the Court of Protection where the client is deprived of their liberty
- Terrorism Prevention and Investigation Measure applications, notices and proceedings
- Hague Convention and European Convention on Child Custody cases
- Various cases concerning international enforcement of child maintenance etc. under the United Kingdom's international treaties and obligations
- Mediation Information and Assessment meetings and mediation in Hague Convention cases

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## In scope? Eligibility waivers

- In family cases concerning injunctions for domestic violence and forced marriage the eligibility limits – but not contributions – can be waived
- In inquests (where exceptional funding is granted) multi-party actions and cross-border disputes, eligibility limits and contributions can be waived

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## Means and merits tests

- Legal Help (advice) – tests carried out by legal aid lawyer
- Legal Representation – tests carried out by LAA
- Capital
- Income and disposable income
- Client and partner
- Civil Legal Aid calculator <http://civil-eligibility-calculator.justice.gov.uk/>

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### Income passporting benefits

- Income support
- Income-based jobseeker’s allowance
- Income-based employment and support allowance
- Guarantee state pension credit
- Universal Credit (for now)
- BUT – capital still needs to be assessed in all cases

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### Merits test for Legal Help

- *‘An individual may qualify for legal help only if the Director is satisfied that the following criteria are met—*
- *it is reasonable for the individual to be provided with legal help, having regard to any potential sources of funding for the individual other than under Part 1 of the Act;*
- *and*

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### Merits test for Legal Help

- *‘there is likely to be sufficient benefit to the individual, having regard to all the circumstances of the case, including the circumstances of the individual, to justify the cost of provision of legal help.’*

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## Merits test for Legal Representation

- Can be complex
- If someone seems to be eligible for legal aid
- Signpost or refer and the organisation should be able to get paid for initial advice on 'Legal Help'
- Make sure the client takes evidence of their means to the appointment

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## Signposting and referral

- To an appropriate agency or firm of solicitors which holds a contract with the LAA  
<https://www.gov.uk/check-legal-aid>
- Signposting is when you provide the contact details and they make contact by themselves
- Referral is where you contact the organisation on their behalf

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## When might you refer?

- Characteristics of the client, such as language needs or mental health problems
- Characteristics of the problem - you may be needed to explain the issues if they are complex
- To explain anything you have done

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## Guidelines for successful signpost/referral

- If there is a choice, ask the person if he/she has any preferences
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- Ensure that the person is provided with the name and contact details of the organisation
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- As far as you can, explain to the person what will happen next and what you expect the referral organisation to do
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- Explain any time constraints
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- Discuss any cost implications
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## Guidelines for successful signpost/referral

- Ensure the person takes documentary evidence of their means with them –
  - Evidence of any passporting benefit
  - Last three months bank statements if possible
- Also evidence of being at risk of domestic abuse/child abuse if applicable

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## Is legal aid available for?

- Advice on rent/mortgage arrears
- Court action on disrepair
- Domestic violence injunctions
- Divorce
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- Preventing your ex-partner from removing your child
- Challenging the local authority which wants to take your child into care

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## Is legal aid available for?

- Consumer problems
- Discrimination at work
- Illegal deductions from wages
- Judicial review of a welfare benefits decision

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