

LAS Roundtable: Policy Subgroup briefing

Issues for the policy subgroup as we come out of lockdown

As it becomes clear that Covid-19 pandemic will have a long-term rather than short term social and economic impact, and Government begins to wind down the policy interventions and protections put in place at the start of the crisis, key policy priorities for the sector and policy subgroup going forward are:-

- Identifying the full spectrum of impacts, needs and stresses, including hidden needs
- Housing rights and preventing possession proceedings
- Employment rights, work safety and labour market impacts as lockdown begins to wind down and the furlough scheme is adjusted
- Income security, the significant risks of increased poverty, deprivation and unmanageable debt, and the role of the benefits system
- Protection of vulnerable groups and mitigation of sharpened inequalities, with particular focus on the hardest hit, the most vulnerable (e.g., those exposed to domestic abuse), and/or those with least protection (e.g., due to immigration/ citizenship status), or inability to access justice
- Developing the legal and advice sector's collective policy voice, role and capacity, including common position statements and shared influencing strategies, connecting with wider civil society response and resilience to enhance the rule of law and social justice advocacy.

The spectrum of impacts and needs

The scale of the economic impact of coronavirus is still not clear, with different estimates emerging of the depth and length of recession from the unprecedented shock to the UK and global economy and impact on living standards. The crisis has had a sudden and dramatic effect on the incomes of many, through loss of jobs, lower earnings while on furlough and cuts to hours reducing pay. Low-paid workers have borne the brunt of the crisis as over a third have been furloughed or lost their jobs completely, whilst many of those who have continued to work (i.e., in essential services sectors) have risked their lives in doing so - youngest and oldest cohorts have been especially hard hit to date.

Vulnerable groups impacted by the pandemic are not only elderly people, those with health conditions, or homeless or underhoused people, but also people from a gradient of socioeconomic groups who have been struggling to cope financially, mentally, or physically with the crisis.

The subgroup has been adopted an analysis which distinguishes current presenting "demand" that agencies are seeing, from the underlying developing "needs" as the longer term impact develops. As has been noted by Professor Chris Whitty, the impact of lockdown on poverty and mental health is itself a public health issue and a key consideration for policymakers over when and how to withdraw the restrictions, and support economic recovery.

Housing rights as we come out of lockdown

Protection from eviction provided by the 90 day 'stay of proceedings' under Practice Direction 51Z lasts until June 25, although the Practice Direction itself remains in place until October 30th. Across the spectrum of tenures many fallen behind with housing costs since the coronavirus outbreak, social renters have been hit hardest, followed by private renters. There are concerns that 2.5 million people (Citizens Advice figure) could be immediately exposed to potential eviction and the court system is unprepared - currently it is unclear whether possession cases will be heard physically and remotely at that point, and there is a major concern that duty schemes will not running in courts, raising a significant access to justice issue as well as wider concerns for housing rights.

Whilst it has always been accepted that the stay would be a temporary measure, there is strong case for tenants who may have built up (or continue to be building up) payment arrears over the past few months due to no fault of their own and/or circumstances related to coronavirus to be offered some further protection at this time. The Government included a provision in its March emergency

legislation (Coronavirus Act) to extend landlords' tenancy termination and possession notice periods from 2 to 3 months, effective until end of September - however this only applies to regulated tenancies and licences, and does not ban landlords issuing notice, merely requires them to abide by the 3 month rule.

UPDATE – on Friday evening (June 5th) it was announced that the stay would be extended; details forthcoming this week.

The Financial Conduct Authority scheme to enable mortgaged homeowners to request a 'payment break' (which if refused by lenders could breach their regulatory code) of up to 90 days has been extended until end of October, and mortgage lenders must not start or continue possession proceedings during this time.

Whilst the above interventions are all welcome and have acted to prevent an increase in homelessness at this time, it is important for different policy interventions to be aligned, and followed through where Government have made undertakings that no-one should lose their home as a consequence of the pandemic. Government should therefore consider:-

- Extending the stay (if so by how long for?), and/or review options for a partial extension (which might for example allow for any urgent backlog of pre-practice direction claims to start proceedings). – See update above
- Keeping the extended minimum notice period of 3 months until the end of the year
- That when repossession cases do start processing through the system again, introduce measures to ensure defendants have access to appropriate legal support either through existing possession duty schemes (which may require additional support to start running again), or an equivalent remote advice and representation access scheme (for example if possession hearings are to be heard remotely).
- It is also vitally important that Government follows through on its previous undertaking to look at reforms providing a securer basis for tenancy rights at this time. Government should therefore
- abolish the section 21 (Housing Act 1988) "no fault" eviction provision (legislation has been long promised on this)
- change ground 8 (section 8 of the Housing Act 1988) from a mandatory ground to a discretionary ground for a 6 month period (as recommended by the Housing, Communities and Local Government Committee)
- extend pre-action protocol provisions from social to private housing (Government indicated that they would work on this)

To consider a common position statement? Extending the stay as part of wider package?

Employment rights, work safety and labour market impact

The COVID-19 crisis impacts both short and long term on both the demand and the supply sides of the labour market, and has presented major challenges for employers and employees, workplace practices, job security and a more complex landscape of employment rights (and their enforcement) following from the furlough scheme. ELAN have been proactive in navigating this new landscape and developing a community of practice to address key issues such as

- furlough and discrimination <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/covid-19-legal-pro-bono-and-volunteering-while-furlough>
- vulnerable employees, homeworking rights, and workplace safety
- enforcement of employment rights, and safety compliance

As different sectors struggle to recover from the immediate public health crisis, there is an emerging risk of being hit with a fresh pandemic of unemployment and business downturn. Whilst the furlough scheme is continuing until October, employers are having to bear more of the risk. Ongoing and new issues around furlough include

- volunteering (see LawWorks guidance)
- the closing gateway (old scheme June 10th, new scheme June 30th)
- new part-time/part furlough arrangements and introduction of employer contributions

- 'one size fits all' approach insensitive to different sectors' needs (e.g., hospitality sector reliant on seasonal demand likely to make significant redundancies over the summer)
- impact on redundancy calculations and collective consultations
- interaction with self-employment, UC and the benefits system

Income security and benefits

Consideration of the benefits system follows from some of the income security concerns touched in above. Universal Credit claims have surged in the last 2 months with around 3 million claims now made, and new people coming into the benefits system will often be experiencing a financial shock.

Benefits problems

- Universal credit system falling short of minimum income standards, and the emergency increases in UC and tax credits have not extended to other out of work benefits
- UC advances (repayable) potentially putting claimants into UC debt
- Overpayments recovery holiday to end by July
- Young peoples' safety net is more limited
- Loophole in 'settled status' scheme leaves some EU nationals blocked from Universal Credit
- How realistic are claimant commitments going forwards
- There is a backlog of disability benefit claims as DWP have diverted resources to UC claims, and backlog in the appeals system

Rising debt

- Coronavirus household spending impact (e.g home schooling etc) pushing families further into debt
- About a fifth of adults are struggling to pay the bills, including essential ones (Money and Pension Service)
- Up to 30% households are using savings to get by (Money and Pension Service)
- Poverty impacts – all indicators show risk of rising poverty issues, fuel poverty, food poverty.

A noticeable development over the period of the pandemic has been the increased interest by think tanks, social policy commentators and some politicians on the idea of a universal basic income (UBI), though Government have been opposed to the idea. There is considerable economic uncertainty in looking at the future, and concerns about impact of Brexit on the economic uncertainty also.

Vulnerable groups, risks, inequalities, and weakened legal protections

The roundtable has been addressing and should continue to consider the concerns about especially vulnerable groups and the impact of the pandemic. Covid is not an "equalities neutral" disease, so there is only so far that it can be said that we are "in this together". As well of the risks that older people, those with health and underlying conditions (the "shielded" population), there is a significant concern over the evidence of disproportionate mortality and morbidity amongst black, Asian and minority ethnic (BAME) people who have contracted COVID-19, and there has also been some evidence also of disproportionate clustering of the virus amongst some demographics, and socio-economic community profiles. Key concerns from the roundtable have been:-

- **Those in care settings**, exposed to greater health risks whilst local government Care Act duties have been weakened and ombudsman/administrative justice redress not functioning as before
- Ongoing rise of **domestic violence** reports
- Lack of rights of **undocumented immigrants and asylum-seekers** to support, healthcare etc; infection rates have been higher among ethnic minorities.
- **Digital exclusion** is a cross-cutting issue that is especially pertinent to the justice system and the operation of the courts, and a major concern for the sector itself that it has been harder to

reach digitally excluded groups. Those with sensory impairments (sight and hearing) have particular needs in this respect.

- **Mental Health**, both in terms of the elevated rates of stress or anxiety but also impact on longer-term mental health and wellbeing.

The legal and advice sector's collective policy

There has been joint work, such as the (LIPS) family law briefing, and the roundtable itself has had an impact on policy-makers especially with Ministry of Justice (our voice on the need for bespoke funding for the sector, and for policy interventions such as an extended stay of possessions proceedings has been heard), but there is more potential to speak with a stronger collective policy voice.

The policy subgroup's activity also supports the roundtable in seeking to position the roundtable as a "critical friend" and vehicle for dialogue with Government, including making the case for the sector's importance, and the value to Government of supporting the sector. The subgroup will continue to canvass and collate (and co-ordinate where appropriate), policy focussed and influencing activities across the sector.

- **All feedback and intelligence on activity and strategy is welcome**