



Submission to the Justice Select Committee: Inquiry on the future of Legal Aid

Introduction

1. We are pleased to make this submission to this welcome inquiry into the future of legal aid. Whilst this subject has been quite recently considered by the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and the resulting Legal Support Action Plan, much has happened since these were published last year, including the impact of the Covid-19 pandemic.

2. However many of the issues that we made in our submission to the review,ⁱ and also in advance of the review in a joint memo of stakeholders to the Justice Select Committee,ⁱⁱ are still just as relevant. Whilst our submission is not able to cover all of this inquiry's terms of reference, the impact of LASPO, court reform and Covid-19 and the challenges for access to justice and the legal aid system in general are core concerns for us. A particular issue for LawWorks is about the role and interest of pro bono in this area of policy and practice. We emphasise and restate our position, supported by successive Law Officers and leaders of the legal professional bodies, that pro bono *cannot* replace a properly functioning legal aid system or fill the vacuum in response to unmet need left by significant reductions in public funding for the free legal advice sector over the past decade. Pro bono does have an important contribution to make to enabling access to justice, and can provide a space for innovation. However, it is important to note that given specialisation issues, only a proportion of pro bono is devoted to social welfare and family law. More importantly, pro bono does not operate in a vacuum and needs an infrastructure provided, for example, through a strong network of community legal advice agencies. So the retrenchment of law centres and community advice centres, not only reduces the legal services delivered by those organisations themselves but also the contribution and impact of pro bono.

About LawWorks

3. LawWorks is the operating name of the Solicitors Pro Bono Group, an independent charity which provides a range of projects and brokerage services to bring together lawyers and law students who are prepared to give their time without charge and individuals and community groups in need of legal advice and support. Our work includes:

- Supporting a network of around 300 independent legal advice clinics hosted through law schools, advice agencies and other non-profit partnerships across England and Wales;
- Brokering pro bono legal advice for small not-for-profit organisations;
- Running 'secondary specialisation' bespoke pro bono casework and representation projects;
- Developing new online platforms for facilitating and delivering pro bono online such as our Free Legal Answers website;



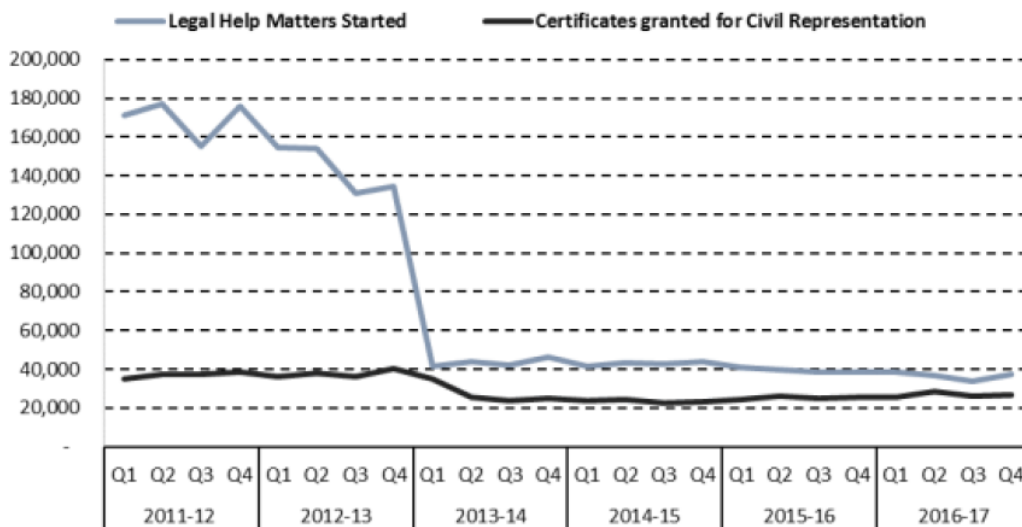
- Providing training and resources for individuals, firms and in-house teams undertaking pro bono, and celebrating excellence in pro bono through our annual awards;
- Collaborating with others in the legal support sector, for example: as partners with the Litigants in Person Support Strategy, engaging across the legal profession, and providing a “policy voice” for pro bono.

How LASPO has impacted access to justice and for views on the post-implementation review and the criminal legal aid review.

4. Here we focus on the impact of LASPO and civil and family law rather than criminal defence issues (criminal legal aid was largely unaffected by LASPO, though we understand the significant strains in this sector and welcome the criminal legal aid review as an opportunity to address these). The most significant impact of LASPO has been in the area of access to early legal advice, especially in social welfare law, tribunal procedures and family breakdown matters. The scope of civil legal aid was significantly narrowed, so that it is no longer available for most private family, housing, debt, welfare benefits, employment, immigration and clinical negligence matters; financial eligibility was also narrowed, and civil legal aid fees were reduced.

5. These changes have severely impacted on the supply and availability of free legal help, especially for access to advice delivered through the private practice and the not-for-profit sectors. The amount of legal aid provided for both advice and representation has reduced significantly since LASPO came into effect; the number of cases where legal aid was provided for initial advice fell by more than 75 per cent compared with pre-LASPO levels, and the number of grants for legal aid for representation fell by 30 per cent in the first year of LASPO implementation. The number of civil legal aid providers also nearly halved, falling from 4,253 providers in 2011-12 to 2,824 in 2017-18, including solicitor firms and not-for-profit organisations. The Ministry of Justice's own memo captures how stark the reduction in publicly funded legal help has been (see figure 6 reproduced below).ⁱⁱⁱ

Figure 6: Civil legal aid workload summary, legal help and civil representation 2011–12 to 2016–17



Source: Legal Aid Statistics, January to March 2017

6. There are significant areas of England and Wales where there are 'advice deserts'. For example, the Law Society's analysis of the Legal Aid Agency's data on housing legal aid showed that that in 2019 almost one third of legal aid areas in England and Wales had one, or no, provider for this area of law, and more recently the Law Society have found 78% of local authorities in England and Wales do not have a single community care legal aid provider.^{iv} Given the size of procurement areas, failure to ensure an adequate minimum level of provision cuts-off access to vital support. There are also fewer specialist lawyers and caseworkers in some areas of social welfare law, making the sustainability of legal aid supply more difficult.

7. Year on year we have seen an increase in demand across the network of independent pro bono clinics LawWorks supports. Between April 2014 and March 2015, there were 43,000 individual enquiries at clinics in the period, between April 2015 and March 2016, there were 53,000 individual enquiries, a 24% increase, and between April 2016 and March 2017 58,000 enquiries at clinics in the period, a 10% increase on the previous year. In 2019 there were over 77,000 recorded inquiries in clinics.^v

8. In collecting evidence for the LASO review we undertook a survey of clinics about the impact of the funding reforms. Those responding said it had become harder to refer clients to legal advice providers, and that there was also an increase in litigants in person. The following are some comments from the survey: .

- *The greatest impact has been in relation to the removal of legal aid funded workers from the local citizens advice service and Law Centre; there are now so few case workers available in areas such as welfare benefits, housing, debt and employment. Employment cases dropped significantly in 2013 with the introduction of Employment Tribunal fees, but we are already seeing a rise in the number of enquires since the fees were abolished last year.*
- *It has added immense pressure to an already strained service. With no or very limited access to legal aid, many clients are left with the daunting issue of being litigants in person or just giving up the fight without access to justice.*
- *Not only a decrease in number of people receiving representation, but [a] breakdown in referral systems for complex problems because of a lack of legal help. Often we have clients who think there is no legal aid available at all any more, even when it might be possible for them in their case.*
- *We are unable to provide advice in certain areas of law, such as welfare benefits, immigration and debt, due to the lack of qualified/experienced supervisors in these areas. As a result of LASPO, and the reduction in specialist case workers in the voluntary sector, it is becoming increasingly difficult to refer people seeking help in these areas. We have also seen a significant rise in family law cases, particularly in relation to child contact disputes.*
- *The perfect storm of LASPO, welfare benefits cuts, increasing indebtedness and reduction in Norfolk of the number of firms doing legal aid work has made for a very hostile environment for anyone seeking access to justice & equality. The NfP sector in Norfolk, in partnership with the private sector, is working hard to meet demand but ultimately we cannot run services on a neutral cost basis, and the short termism of the funding regimes place added planning and bureaucratic burdens on an overstretched sector.*

9. For clients, there is a significant body of evidence that civil legal and family law problems, or the inability to resolve them, can have wider social and economic costs, including for the criminal law system and the NHS. We evidenced this in our submission to the LASPO post implementation review.^{vi}

The role of the Legal Aid Agency

10. Under LASPO, the governance and administration of legal aid was subsumed (through the Legal Aid Agency) into the Ministry of Justice. The Bach Report (Commission on Justice, Fabian Society, 2017), the Legal Action Group (LAG) and others have made strong and persuasive arguments that the oversight of the legal aid system needs a greater degree of independence from central Government, both to protect the transparency of decision making, but also to ensure that the system does not become overly centralised and bureaucratic.

Recruitment and retention problems among legal aid professionals

11. This is a challenge for which we would defer to our legal aid colleagues to comment on, and we note that the Legal Aid Practitioners Group (LAPG) have been running an extensive survey of legal professionals covering recruitment, retention and future workforce issues. However, an important issue to also consider here is the role of the training system and, in particular, the impact the introduction of the Solicitors Qualifying Exam (SQE) is likely to have on the sector. Alongside other stakeholders we have voiced some concerns that social welfare law and practice is entirely absent from the SQE assessment framework, although it may be that opening up the qualifying work experience element (QWE) to assisting in pro bono clinics can offer opportunities to learn relevant skills.^{vii}

The impact of the court reform programme and the increasing use of technology for legal aid services and clients

12. On the court reform programme, we would point to our evidence to the Justice Select Committee's previous inquiry into this issue.^{viii} Whilst we have welcomed many of the reforms – including an online money claims resolution process proposed by Lord Justice Briggs review of the civil courts - we have highlighted that online and digitised procedures cannot wholly compensate for long-term underinvestment in our courts and tribunal facilities and operations. This has led to IT failures, a crumbling courts estate with increasing travel distances for litigants, and delays to cases being heard.

13. LawWorks are supportive of harnessing new technology in the access to justice sector, including for legal aid work. However, technology is not a magic bullet. Given the levels of digital exclusion in the population, it is also vitally important for HMCTS to deliver or enable “assisted digital” support for the online process. The problem of digital exclusion is very real and can be an aspect of vulnerability. Over 4 million people in the UK have never used the internet and at least a further six million adults lack basic digital skills, such as being able to complete online forms or locate relevant websites (ONS data).^{ix}

The impact of Covid-19 on legal aid services and clients

14. The immediate impact of Covid-19 on legal aid was a significant downturn in work, whilst some court and tribunal jurisdiction shifted to remote hearings, other stopped taking new claims and housing repossession were stayed. With courts and other parts of the justice system running a reduced service, the last two quarters

legal aid statistics show large decreases compared to the same quarters last year – although the July figures show signs of a slight upturn compared to the previous 3 months.^x This situation has left many legal aid practices struggling. For the non-profit sector (e.g., Law Centres) there was some increased financial support through the Community Justice Fund, however it has been harder for the private practice sector to replace lost income. The Legal Aid Agency’s response of offering payments on account has not in itself been sufficient.

15. As regards clients: different groups have been impacted differently. We would recommend that the Committee consider the findings of the Law Society’s recent report – *Law under lockdown: The impact of COVID-19 measures on access to justice and vulnerable people*.^{xi} This draws particular attention to the impact of Covid-19 restrictions on access to legal advice and representation for those living in institutionalised settings such as mental health units, immigration detention centres, youth offender institutions and prisons.

16. LawWorks have been working collaboratively with many legal and advice sector representatives as part of a regular set of roundtable meetings, bringing together organisations from the voluntary and legal sectors, including funders, with a common purpose to discuss and address the issues, challenges and legal needs raised by the crisis.^{xii} Service providers had to adapt very quickly to remote working, which involved many challenges from IT to data protection and collection, and wellbeing of the workforce, and then re-adjust again to re-introducing some face to face capacity after risk assessments and ensuring that premises and processes are covid-19 secure. A common challenge raised by many advice providers has been that of “the disappeared”: a significant cohort of clients often from vulnerable, digitally excluded or shielded groups who have not accessed legal advice. A concern is that it may be difficult for people to re-engage, but does not mean that the need is any less. Evidence of the impact of legal need, for example from the Legal Services Board’s (LSB) coronavirus impact dashboard tracker,^{xiii} suggests that whilst some categories of legal need (e.g., consumer and housing) are down, demand for employment advice has significantly increased, incidents of domestic violence have increased, and there are more people claiming and needing advice on benefits issues.

What the challenges are for legal aid over the next decade, what reforms are needed and what can be learnt from elsewhere.

17. There is a challenge about the essential sustainability of the legal aid and support system. Discussions with the Ministry of Justice suggest that they are aware of this, and are open to a more comprehensive review of policy options, recognising the important value that the sector brings not only to assisting vulnerable people, but in relieving some of the strain on public services. Covid-19 has had immediate and short-term impacts; the longer term economic impact on personal debt, employment, income and housing security is of concern for the whole sector.

18. A wide range of stakeholders believe there is a strong case for investing in more preventative strategies focussed on early advice, information and public legal education in a manner that complements reforms to the way that our justice system works, from tribunals to the family courts. Partnership approaches are needed which support integration, recognising, in the words of the Low Commission, that there is “a continuum including public legal education, informal and formal information, general advice, specialist advice, legal help and legal representation.”^{xiv}

19. The Legal Support Action Plan that came out of the LASPO post-implementation review, was a good starting point but much more needs to be done. It set out a welcome commitment to enhance the support offered to litigants in person – including ‘assisted digital’ support - and to improve access to early legal advice and support and the sector’s use of technology. We cannot overstate the importance of the Government delivering on this agenda, alongside the wider recommendations of the Briggs review for developing online dispute resolution and making public legal education (PLE) and improved information about rights and the civil justice system mainstreamed aspect of court reform programmes and legal support.

20. However, to address the longer term challenges for legal aid and access to justice, some of the fundamental policy issues around scope and eligibility will need revisiting, partnership working needs to be embedded, and administrative reforms are needed to achieve a procurement system that is far less burdensome and bureaucratic for both providers and commissioners alike.

October 2020

Endnotes

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- ⁱ <https://www.lawworks.org.uk/about-us/news/lawworks-submission-laspo-implementationreview>
- ⁱⁱ <https://www.lawworks.org.uk/about-us/news/new-justice-select-committee-memo-laspo-review>
- ⁱⁱⁱ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655971/LASPO-Act-2012-post-legislative-memorandum.pdf
- ^{iv} <https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/>
- ^v <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/lawworks-clinics-network-report-2019>
- ^{vi} <https://www.lawworks.org.uk/about-us/news/lawworks-submission-laspo-implementationreview>
- ^{vii} <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/briefing-new-route-qualification-solicitors>
- ^{viii} <https://www.lawworks.org.uk/solicitors-and-volunteers/resources/courts-modernisation-justice-select-committee-inquiry>
- ^{ix} <https://www.ons.gov.uk/peoplepopulationandcommunity/householdcharacteristics/homeinternetandsocialmediausage/articles/exploringtheuksdigitaldivide/2019-03-04>
- ^x <https://www.gov.uk/government/publications/legal-aid-statistics-quarterly-april-to-june-2020/legal-aid-statistics-england-and-wales-bulletin-april-to-june-2020>
- ^{xi} <https://www.lawsociety.org.uk/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>
- ^{xii} <https://www.lawworks.org.uk/about-us/news/legal-and-advice-sector-response-covid-19-pandemic>
- ^{xiii} https://www.legalservicesboard.org.uk/coronavirus_impact
- ^{xiv} <https://www.lag.org.uk/article/202491/low-commission-reports-on-the-future-of-advice-and-legal-support>