

Post implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Memorandum to the Justice Select Committee (JSC).

Supported by:



Dear Select Committee Chair,

CC. Members and Clerks

Our call on the Justice Select Committee in relation to the review of LASPO

We are a diverse group of stakeholders with a shared interest in the legal aid system and access to justice. We welcome that the Government is now undertaking a review of the changes to the legal aid system introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and consequential reforms, and we look to the Justice Select Committee – in responding to any post legislative memoranda produced by the Ministry of Justice – to provide the Ministry of Justice with a clear steer on the priority areas that need to be looked at, and the challenges that need to be addressed.

In the Justice Select Committee's (JSC) last inquiry into the civil legal aid reforms, the Committee concluded that LASPO had "harmed access to justice" and "had not achieved the other three out of four of its stated objectives for the reforms" (*Eighth Report: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*). This in itself suggests a need to look again at those underlying objectives, and for the review process to adopt a clear set of principles and outcomes that it would like to achieve. We suggest four guiding principles:-

- **Client focus.** The legal aid and support system needs to be designed for its users, ie for those on low incomes struggling with legal problems and issues, and for those with wider support needs and vulnerabilities. This means working to achieve an operationally simpler and less bureaucratic system which both users and providers can navigate more easily, taking into account the need some groups may have for additional support, and an emphasis on intervening earlier in the cycle of legal problems to avoid dispute escalation and adverse impacts. Changes in the type of assistance available under civil legal aid, has shifted the focus away from early intervention in civil and family law problems. The complex and bureaucratic approach is difficult to reconcile with the Government's stated objective for the justice system that it should be "just, proportionate and accessible" as set out in the Ministry of Justice's document *Transforming our justice system* (September 2016). See **Appendix 1** for further evidence on this.
- **A coherent and rational scope.** The LASPO Act significantly reduced the scope of legal aid but failed to base assumptions around scope on the significant body of research and evidence, much of it the government's own, about legal needs, problem prevalence and clusters. Whilst we appreciate that governments under budgetary pressures make rationing decisions about which issues should qualify for legal assistance, it is essential that Government adopts a coherent and rational approach to questions of scope and enable "problem clusters" to be solved, rather than working on a narrow issue by issue basis. In our view, there are too many contradictions and exclusions in the current framework of the legislative scope of legal aid. Now is the time to review the whole approach. See **Appendix 2** for further evidence on scope and restrictions.
- **Embedding the principle of accessibility as a feature of the rule of law.** The quality and impartiality of our justice system underpins the reputational values of the English and Welsh jurisdiction and legal services sector within a rule of law framework. This is essential to our global brand and to both business and society. Sustaining these values requires that the system is accessible for citizens and that it upholds the fundamental

rights of a democracy, such as the capacity of citizens to challenge unlawful actions by public bodies and private corporations. See **Appendix 3** for further analysis on this.

- **Basing decisions on evaluation of impact and evidence.** Noting the JSC's previous concerns about the insufficient evidence-base behind the reforms, it is essential that future decisions are more thoroughly evaluated before implementation and that the review fully analyses all the data relating to the impact of the reforms to date, understands the unmet needs, the cost-benefit output ratios and the equality framework outcomes. The review should look not just at impact on the justice system, but the impact beyond including knock-on costs to health, local and social services, the DWP and criminal justice. Similarly, it should be acknowledged that growing demand for legal assistance is sometimes driven by government policies (e.g. welfare reform) and reflects real legal need that must be met. We hope the review retests the assumptions of the 2012 pre-legislative impact assessments, and looks again at disproportionate impacts on women and children, disabled people, those with mental health issues, ethnic minority groups and people on low incomes. See **Appendix 4** for our summary of impact evidence.

For each of these principles we attach a detailed appendix on the issues and evidence

The Justice Select Committee has an opportunity to shape the direction of this review once the Ministry of Justice (MoJ) have published the post-legislative memoranda. The review is an important milestone in the wider policy debate on access to justice, and we urge that the review opts for the widest possible consultation process with stakeholders, including user groups, the professional bodies, and the voluntary sector. We have therefore come together as a community of stakeholders to present our views.

Next steps and scope of the review

The next stage of the review should be undertaken under a framework of independence from the Ministry of Justice's administrative machinery. A good model might be the recently announced Scottish Government's review of the Scottish legal aid system. This year long review is being chaired by the chief executive of the Carnegie Trust, and supported by a panel comprising experts from across Scotland's justice sector. An 'in-house' review by the Ministry of Justice may lack the necessary independence to tackle current policy or operational challenges, and a restricted scope for the review would be a wasted opportunity to shape the future. We therefore hope that the Justice Select Committee, as part of this review process, will challenge Government to adopt a positive policy narrative and aspiration for legal aid and access to justice based on coherent principles, needs analysis and forward looking solutions. The Justice Committee may also take account of the post-election political landscape in which there is a growing consensus that the Government's approach to funding public services should be rebalanced to move away from year on year of "austerity" budgeting, and consider issues of sustainability.

The review should look at how innovation in the sector can be encouraged and supported to address unmet needs, noting that the legal system itself is undergoing significant change with the digitisation of court and tribunal services, a project that is presenting both opportunities and challenges. We were encouraged to hear that Government have been considering a wider policy paper on the subject of "Legal Support" and assert our view that the fundamental pillar of legal support is citizens being able to obtain appropriate legal expertise at the right time from a mixed economy of diverse providers, and that no citizens should be priced out of getting expert help proportionate to the problems experienced. The framing of the debate around legal aid should not just be about what happens to citizens in courts and tribunals and

the 'inequality of arms' issues, but also what happens before and after citizens engage with the justice system. Information and advice provision should be looked at in the round, and within a context of 'legal capabilities' and legal needs. The expectations of the court modernisation programme that people can help themselves more from available digital information does not, and cannot, apply to the entire population.

This submission focuses on civil legal aid, as the LASPO (Part 1) reforms left criminal legal aid largely untouched, although the subsequent "*Transforming Legal Aid*" programme went on to make significant changes to criminal defence policy. In the appendices that follow we set out our four guiding principles and objectives for the review, and the key issues and data that need to be looked at in relation to those principles. By following this approach, we believe it will be possible to achieve a better mix of solutions from contracted "judicare" models (see appendix 4), to market approaches to delivering free access to legal services, using the third sector to help hard to reach communities, and developing assisted technology and outreach strategies to empower citizens to assert their legal rights and resolve legal problems constructively. This is an urgent task; the data shows that there has been a decline in civil legal aid supply, throughput and capacity of 75% since LASPO came into effect, removing advice from 650,000 people against a backdrop of growing unmet legal needs. There has also been a reported rise in the number of Litigants in Person, which has consequences for the court system.

Recently, the Grenfell Tower disaster has captured public attention, exemplifying what many see as going wrong in the UK today: put simply, that poverty is exacerbated by disadvantage and disenfranchisement including from our legal system. It is a particularly harrowing thought that concerned tenants were unable to access legal assistance to challenge the Tenant Management Organisation to install safety features that could have averted tragedy or reduced damage. Last year, civil legal aid helped only 253,000 civil cases, out of 13.5 million people living in poverty in the UK – less than 2% of its target population. Legal aid helped in none of the new disability benefit appeals last year (87,886 new Employment Support Allowance appeals and 104,236 Personal Independence Payment [PIP] appeals), even though most have been shown to have merit.

We hope that the forthcoming review can generate some new ideas to help policy and procurement officials, the Judiciary and Her Majesty's Court and Tribunal Service (HMCTS) as well as legal aid professionals, information providers and service managers to focus more on clients, their context and the challenge of navigating, processing and progressing through a complex system. Work already undertaken in the justice system on improving and understanding users support needs (see appendices) provides much to build on.

We ask the Justice Committee under your leadership to help ensure that we have a comprehensive and critical re-evaluation of the LASPO Act and its implementation. We believe that a more provident and sustainable legal aid system should be possible without significant increases to overall levels of spending. We hope that the Justice Committee facilitate a discussion of alternative approaches to the current legal aid regime and look forward to contributing to it.

Yours sincerely,

Stakeholder group comprising; Advice UK, Advice Services Alliance, Coram Children's Legal Centre, Mind, JustRights, Legal Aid Practitioners Group, Law Centres Network, LawWorks, Legal Action Group, London Legal Support Trust, Personal Support Unit, Youth Access, Bar Council, Immigration Practitioners Group.