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The All-Party Parliamentary Group on Legal Aid

APPG on Legal Aid Bulletin

13th Edition - November 2018

Welcome to the 13th bulletin from the APPG on Legal Aid. This edition has four sections:

1. Events
2. Dates for your Diaries
3. APPG+ Training Events
4. Legal Aid news

1 Events

APPG Meeting – Justice Week – Tuesday, 30 October 2018 (10-11.30 Committee room 14)

The APPG on Legal Aid together with The Law Society hosted a panel discussion on the topic “Access to Justice – What Next?” on Tuesday, 30 October 2018. We had a stellar line-up with Lucy Frazer QC MP, Parliamentary Under-Secretary of State at the Ministry of Justice kicking off proceedings and Richard Burgon, Shadow Secretary of State for Justice and Shadow Lord Chancellor, Andrew Walker QC, Chair of The Bar Council and Simon Davis, Vice-President of The Law Society all contributing their thoughts to the debate. Speakers from the floor included Lord Jeremy Beecham, Lord Colin Low and Andy Slaughter MP.

Minister Frazer started her speech by paying tribute to all who work within the Justice System. From Barristers, to City Solicitors to those in legal aid and not for profit organisations. She confirmed that the review will be produced by the end of the year and added that a third round of consultative group meetings will take place shortly to discuss 'further legal support'. Ms Frazer went on to add that the review team has met with organisations throughout the sector as well as Lord Bach and Lord Low to discuss the reports produced by their Commissions.

Ms Frazer highlighted the advantages that technology can bring to improve people's access to courts at the same time as changing outdated back-office systems.

She defended the government against criticisms over its level of legal aid support, telling the meeting that it is important to remember the government spends £1.6bn a year on legal aid in addition to other sources of funding. Additional support includes £6.5m to support litigants in person. Online forms have been made easier, she added. The error rate for divorce applicants has fallen from 40% to 0.5% since the process was digitised. With social security applications, Ms Frazer said the government is hoping to bring in a system where judges will be able to liaise with applicants directly and hopefully result in fewer adjourned hearings.

Richard Burgon told the meeting that the government should conclude from its review, amongst other things, that funding should be restored for early legal advice, stressing that cuts to early legal advice have been a false economy.

Andrew Walker, warned the Group of his fears that the judiciary, the advice sector and the profession in general was being hollowed-out and de-skilled. He added that £6.5m in support to litigants in person is just tinkering around the edges and that none of the Leaders of the political parties were making it a priority. The Bach Commission is still “informing” us and not directly “influencing” policy and until this changes, the future of legal aid will remain uncertain.

Simon Davis, replying to Karen Buck’s question as to why it was so hard for government to recognise the knock-on costs of the loss of early legal advice, said that the government looks upon the legal profession with cynical eyes. Successive governments have thought that the

legal profession is just out there to make money and that this attitude has underpinned so much of policy.

You can read the minutes from the meeting [here](#).

2. Dates for your Diaries

APPG+ Training Events – Intro to Housing Law - Friday, 30 November 2018

On Friday, 30 November 2018 we are extremely excited to host the first Housing Law training course for caseworkers in connection with the House of Commons Library. This will be a one day course entitled “An Introduction to Housing Law.” Four practitioners from various Housing law practices will be covering the following topics:

- Security of tenure - an overview of the most common tenancies in the public and private sector and associated security of tenure.
- Disrepair – the remedies available to tenants who need repairs to their homes. Advising tenants facing eviction.
- Homelessness – an overview of the assistance local authorities should offer and to whom. This will include new duties introduced from 3 April 2018.
- Social housing – tenants’ succession rights/removing & adding names to a tenancy agreement/termination of joint tenancies/applying for social housing and transfers.

Training will be given by Diane Astin of Deighton Pierce Glynn (author of the ‘Handbook of Housing Law’), Tessa Buchanan and Connor Johnston (Garden Court Chambers and co-authors of ‘Housing Allocation and Homelessness Law’) and Giles Peaker (Partner at Anthony Gold Solicitors, co-author of the Homes (Fitness for Habitation) Bill with Karen Buck MP and the writer of the Nearly Legal blog). Both Connor and Giles are Legal Aid Lawyer of the Year winners. It will be a brilliant line-up and we very grateful to all of the trainers for giving their time up for this initiative.

Drinks Reception – Access to Justice ‘ We all stand together’ 30 January 2019

We will be hosting an event in the Attlee Suite of Portcullis House from 6-8pm on Wednesday, 30th January 2019 to bring all of the organisations that provide resources that are useful to busy caseworkers together and to publicise the training programme that we have put together for MPs and their casework staff. Canapes and wine will be provided.

If you would like further information about either of these events or would like to hear more about the work of the APPG on Legal Aid, please contact Rohini Teather at

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3. Legal Aid News

Justice Select Committee

In a meeting of the Justice Select Committee, Richard Heaton, the permanent secretary at the Ministry of Justice (MoJ), has told MPs that two of its main spending assumptions have turned out to be “fundamentally unrealistic”.

Mr Heaton said the MoJ was seeking additional funds from the Treasury after it wrongly assumed that demand for services would go down and fee income would go up. He added that demand for legal aid had risen, particularly in family law cases, and the prison population had gone up.

He told the committee that the assumptions were made “way before” his time as permanent secretary, and he could not say how they were arrived at.

Looking surprised and disappointed, Bob Neill, Chair of the Committee, said: “The principal cost that drives demand for services is prison places.

“Given that the demand for prison places has gone up year on year for a considerable amount of time, what on earth was the basis for saying demand would fall?” For further information click [here](#).

Budget

Any hope that rising concern about the state of the justice system would prompt an outbreak of Treasury generosity were dashed when the chancellor of the exchequer, Philip Hammond, announced the latest Budget.

The Treasury’s [Budget Document](#) reveals that the departmental resource budget for the Ministry of Justice will shrink from £6.3bn in 2018/19 to £6bn in 2019/20. The capital budget will fall from £600m in 2018/19 to £400m in 2019/20 - and just £100m in 2020/21.

The following day the ministry announced it had secured £52m for 'targeted expenditure', which includes £15m for court maintenance and security this year. The treasury will fund the cost of building a new prison at Glen Parva in Leicestershire. It has also committed to funding a review by the Law Commission into simplifying the rules around marriage ceremonies in England and Wales.

Survey finds people believe system favours the wealthy

The Populus survey was commissioned by the Law Society, Bar Council and Chartered Institute of Legal Executives (CILEx) to mark the launch of Justice Week. It found that:

“Justice is as important to most people as health and education, according to far-reaching research into public attitudes to the justice system in England and Wales, but only 20% think there is sufficient funding in place for those who need legal advice.”

According to the survey of 2,086 people, more than three-quarters agreed that justice is as important as health of education. A similar figure agreed that people on low incomes should be able to get free legal advice. Nearly two-thirds of respondents would feel uncomfortable dealing with the law and legal processes themselves if they were accused of a crime which could result in a custodial sentence. Only 13% think the state should not have to pay for

people's legal expenses if they are accused of an offence that could land them in prison. For all types of legal issues listed in the survey, at least half of respondents said they would feel uncomfortable dealing with them without a lawyer. Six in 10 believe people on low incomes are more likely than wealthy people to be convicted of crimes."

The survey of 2,086 people also revealed the widespread belief that justice favours the wealthy.

More details [here](#).

Justice cuts: The stories behind the cuts

The Bar Council have produced a short film interviewing a number of individuals including Bob Neill MP about the cuts to legal aid and their consequences for members of the public. It's well worth a watch as an overview to LASPO and the effects that the cuts had. To watch, click [here](#).

LASPO – Five Years On

The Bar Council's response to the Ministry of Justice Post implementation Review of LASPO confirmed just how hard justice was hit by the austerity cuts. For a taste, here is paragraph 10:-

"10. However, specifically, and as immediate priorities, the Bar Council calls upon the Government to do the following:

(1) Crime:- reverse the "innocence tax" upon those acquitted of criminal offences who are unable fully to recover the reasonable costs of a privately funded defence.

(2) Family:- reintroduce legal aid in a range of family law proceedings:

for respondents facing allegations of domestic abuse in applications under sections 33-41 of Family Law Act 1996 (occupation orders), section 42 (non-molestation) and section 8 of the Children Act 1989 (child arrangement orders for contact/residence); for legal help and representation for private law children proceedings.

1. *(3) Civil:- welfare benefit cases - reintroduce a legal help scheme.*

(4) Coroners Inquests:- relax the criteria for exceptional case funding where the death occurred in the care of the state and the state has agreed to provide separate representation for one or more interested persons.

2. *(5) Means testing:- introduce a simplified and more generous calculation of disposable income and capital so that the eligibility threshold and contribution requirements are no longer an unaffordable barrier to justice."*

To read the response in full click [here](#).

Access to Justice and Technology

The Legal Education Foundation has commissioned a [Report](#) from Roger Smith OBE (researcher, solicitor, journalist and consultant in the field of legal services and human rights and a past director of the Legal Action Group, JUSTICE and West Hampstead Community Law Centre). Their intention is to stimulate discussion of the advances being made in this

important area of using information technology to provide low cost legal service to people. These developments are not seen as a magic bullet but taken together they can make a difference to the lives of a lot of people. Regular updates are published on their website and this month's discusses some of the digital projects planned by HMCTS.

Here's a snippet of his findings:

"The problems of the programme remain, however, threefold. First, the more that the processes of the courts are made transparent, the more the need for assistance for litigants in person becomes apparent. The current draft of the online divorce petition lacks the 'red flags' that you would expect for domestic violence and is poorly integrated with sources of assistance that can be more advocacy oriented than a court – for example, citizens advice's CourtNav programme. HMCTS might argue that this is a bit unfair because the previous paper systems were not that accessible. So, why should it have to face this problem, compounded as it is by the Government's desecration of legal aid? However, there clearly is a problem and, cut it as you will, about a quarter of prospective users probably cannot access digital court processes – through a mixture of both a lack of digital and legal capability. Something has to be done... Secondly, we do not know the detail of much of what will be implemented – and detail is, of course, the residence of the devil. What will be the final draft of forms on which there is currently consulting? Are we dealing simply with work in process which will be improved or with documents that show fundamental flaws? And what about costs? Ministers deliberately choked off cases to the employment tribunal as a political gesture until told their vastly inflated costs were unconstitutional by the Supreme Court. Will they threaten access by imposing massive fee increases for lower level cases when the court sales run out? Simple things like video and wifi need to be done well – and, indeed, rather better than presently. Otherwise the foundations of the digital edifice will crumble before the full superstructure is in place.

The third set of problems are the macro ones well beyond any member of the HMCTS implementation team (and well explored in previous posts). Funding digitalisation by selling courts might have looked like a good wheeze but it associates the new programme with exaggeration of old problems about travel and physical access. There remain no access to justice indicators driving the programme – only financial and staff savings. And Ministers in this Government do not have a creditable track record in relation to access to justice (see legal aid cuts; the Supreme Court's criticism of tribunal fees; the 'hostile environment' in immigration cases and the substantive unfairness and protection from appeal of much social security decision-making)."

Debates in Parliament

'Future of Legal Aid' Westminster Hall Debate 1 November 2018

Andy Slaughter MP (Vice-Chair of the APPG on Legal Aid) and Alistair Carmichael MP led the three hour debate on "Future of legal aid". There was a wide ranging discussion and you can read the transcript [here](#).

Andy, early on, makes it clear that more money is needed;_

“This is a complex and many-faceted subject, and I will not be able to cover all areas and concerns, so let me start with my requests to the Minister, because I do not want them to get lost. We have just heard from the Chair of the Select Committee on Health and Social Care, the hon. Member for Totnes (Dr Wollaston), that cuts to prisons are causing serious deterioration in the health and welfare of prisoners. We should not be surprised. The Ministry of Justice budget will be cut by almost half in little more than a decade of continuing austerity. It is the biggest cut to any Department, and it is a relatively small Department, with only three major areas of spend. Inevitably, all three areas—not only prisons and probation and the courts service, but legal aid—are going through debilitating change. My first request to the Minister is that she tackle the funding issue head on. No one is saying that all the cuts since 2010 will be reversed, or that the clock will be turned back, but if the Government wish to honour their stated objectives for LASPO, and in particular, “To target legal aid at those who need it most”, they must put something extra in the pot.”

Bob Neill MP, Chair of the Justice Committee agreed with the points that were being raised and made the further point that the legislation had cut too much:

“The problem is that successive Governments seeking to reform—it is worth remembering that changes to legal aid did not begin with LASPO or the coalition Government; they were set in train initially, in some measure, during the Blair and Brown Governments—have run the risk of throwing out the baby with the bathwater. In cutting down on some instances of needless expenditure that went beyond what was necessary to ensure justice, there is always a risk that the pendulum will go too far the other way. Having looked at the matter and tried as a lawyer to look at the evidence, I am sorry to say that I am driven to the conclusion that that is what has happened here.”

Alex Chalk MP, agreeing with the points that Karen Buck MP was making, added:

“There is no point in our standing up, making speeches, passing legislation and pontificating grandly if the laws that we give effect to are ultimately not capable of being enforced. Is that not a crucial point?”

Justice Questions in November

Richard Burgon MP (Leeds East) asked the Secretary of State for Justice:

- what estimate his Department has made of the potential cost of not taking into account jointly-owned homes when assessing the eligibility of victims of domestic violence for legal aid.
- what estimate he has made of the annual cost to the public purse of legal aid for bereaved families for inquests under the exceptional case funding scheme in the last five years.
- what the cost to the public purse was for legal aid funding for inquests under the exceptional case funding scheme in the last five years was; and how many applications for that funding

were (a) made, (b) granted and (c) denied broken down by reason for refusal in the same period.

- what the average length of time between an application for legal aid for inquests under the exceptional case funding scheme and a decision made was in each of the last five years.
- what the average length of time between an application for legal aid for inquests under the exceptional case funding scheme and a decision made was in each of the last five years.
- what estimate his Department made prior to enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 of the annual number of cases that would be funded as exceptional cases.
- what estimate his Department made prior to the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 of the total annual cost of exceptional case funding after its enactment.
- what was the total (a) expenditure (b) number of cases granted under exceptional case funding in each year following the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- in how many inquests was legal aid granted in each year since 2012.
- what estimate he has made of the spend by (a) each Government department and (b) the Government on legal representation at inquests in each year since 2012.
- what estimate he has made of the number of applications for exceptional case funding for legal aid for inquests that have been refused and subsequently granted following an appeal.

Karen Buck MP (Westminster North) asked the Secretary of State for Justice:

- which Government departments his Department has consulted as part of the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- when he plans to publish the post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- what assessment he has made of the effect on access to justice of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Louise Haigh MP (Sheffield, Heeley) asked the Secretary of State for the Home Department, with reference to his Department's report entitled Understanding organised crime 2015-16, published in November 2018, what assessment he has made of the reasons behind the £9.3 billion rise in the social and economic cost of drugs to society; and if he will make a statement.

Mr Gregory Campbell MP (East Londonderry) asked the Secretary of State for Justice, how many applications for legal aid in criminal cases were refused in each of the last five years.

Gloria De Piero (Ashfield) asked the Secretary of State for Justice:

- how many law centres have offered legal aid in each region in each year since 2010.
- how many legal aid providers there were in each region of England and Wales in each year since 2010.
- how many procurement areas have (a) no and (b) one **legal aid** advice provider.

Paul Blomfield MP (Sheffield Central) asked the Secretary of State for Justice:

- pursuant to the Answer of 1 November 2018 to Question 185051 on Legal Aid Scheme: Slavery, whether the specific legal aid provision for victims of modern slavery and human trafficking for immigration advice and representation, including assistance with applications for leave to enter or remain, subject to means and merits, applies to applications for (a) permanent residence, (b) pre-settled status and (c) settled status; and if he will make a statement.
- pursuant to the Answer of 13 November 2018 to Question 188815 on Legal Aid Scheme: Slavery, whether the specific legal aid provision for victims of modern slavery and human trafficking for immigration advice and representation, including assistance with applications for leave to enter or remain, subject to means and merits testing, applies to applications for (a) permanent residence and (b) pre-settled status.

Mr Paul Sweeney MP (Glasgow North East) asked the Secretary of State for Justice:

- how many successful applications for exceptional case funding were made in relation to an application for refugee family reunion in (a) 2016 and (b) 2017.
- what assessment he has made of the potential merits of providing legal aid support to potentially trafficked people to ensure that they are able to make an informed decision on whether to enter the National Referral Mechanism.

Bambos Charalambous MP (Enfield, Southgate) asked the Secretary of State for Justice: -

- whether members of the legal profession and the judiciary were (a) consulted as part of the review of the (i) civil legal aid means test threshold in 2008 and (ii) criminal legal aid means test threshold in 2009 and (b) consulted when the government has evaluated the legal aid means test thresholds since those dates.
- what estimate the Government has made of the cost to the Ministry of Justice budget of the increased number of litigants in person as a result of the means test threshold not being updated in line with inflation in (a) civil legal aid since 2008 and (b) criminal legal aid since 2009.
- how many successful applications for exceptional case funding were made in relation to an application for refugee family reunion in (a) 2016 and (b) 2017.
- what assessment he has made of the potential merits of providing legal aid support to potentially trafficked people to ensure that they are able to make an informed decision on whether to enter the National Referral Mechanism.

Jim Shannon MP (Strangford) asked the Secretary of State for Justice:

- how many successful applications for exceptional case funding were made in relation to an application for refugee family reunion in (a) 2016 and (b) 2017.
- what assessment he has made of the potential merits of providing legal aid support to potentially trafficked people to ensure that they are able to make an informed decision on whether to enter the National Referral Mechanism

You can read all of the questions and answers [here](#).

Rohini Teather
for the APPG on Legal Aid
21 November 2018

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About the APPG on Legal Aid

The All-Party Parliamentary Group on Legal Aid aims to promote parliamentary and public understanding of the importance of the role of publicly funded legal services. It is chaired by Karen Buck MP. Secretariat support is provided jointly by the Legal Aid Practitioners Group (LAPG) together with Young Legal Aid Lawyers (YLAL) with funding from The Legal Education Foundation.

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About the APPG Plus Project

LAPG and the APPG on Legal Aid have been funded by The Legal Education Foundation to engage with MPs and councillors and their caseworkers to ensure that there is a good understanding of what is left in legal aid in the wake of LASPO, and to offer constructive advice, resources and training on how busy MPs and their caseworkers can engage better with lawyers and advice charities in the legal aid sector. In doing so, we aim to assess current access to justice issues facing the public and to help inform future decision making at a policy level.

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