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## The All-Party Parliamentary Group on Legal Aid

**APPG on Legal Aid**

**Special Bulletin**

**March 2018**

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Welcome to this Special Bulletin from the APPG on Legal Aid which aims to bring you relevant information about the LASPO Post-Implementation Review (the PIR) announced by the Secretary of State on Thursday, 8 March 2018. If you are going to be involved with the LASPO review, we hope that the information set out below is useful to you.

This Bulletin will include the following sections:

1. An Executive Summary
2. Background to the Review
3. Reports of the National Audit Office and the Justice Committee
4. Justice Committee letter March 2018
5. Post LASPO Reports
6. Reviews of Legal Aid in Northern Ireland and Scotland
7. Post LASPO Litigation

## **1. Executive Summary**

Five years after the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the Government has announced its long-awaited review of the act. The original aim of the legislation, as set out by the Coalition Government in its 2010 consultation *'Proposals for the Reform of Legal Aid in England and Wales'*, was:

- to discourage unnecessary and adversarial litigation at public expense;
- to target legal aid at those who need it most;
- to make significant savings to the cost of the scheme; and
- to deliver better overall value for money for the taxpayer.

The PIR will be evidence-based and led by a team of Ministry of Justice officials. It aims to consider the policy changes made by Part 1 of LASPO against the aforementioned objectives and estimates outlined prior to LASPO's implementation.

Consultative groups have been set up to provide evidence and data for the review. These will be meetings in the categories of Civil Justice, Criminal Justice and the Advice Sector. Meetings will commence on 16 April 2018. Officials will also be looking to engage with certain individuals and interested parties to allow them to take in the experiences of those who have received government-funded legal advice and representation.

The officials also want to look at the future including significant developments and

technological advancements in the justice system.

The Terms of Reference of the Review are [here](#).

## **2. Background to the Review**

LASPO removed legal aid from whole areas of civil and family law in April 2013, as well as introducing Lord Justice Jackson's civil litigation funding reforms. Since then, it has faced mounting criticism from within the legal profession, with members of the public often unable to find or afford vital legal advice on housing, family, immigration and social welfare issues.

In accordance with Parliamentary procedures a [Post-Legislative Memorandum](#) was served on the Justice Committee on 30 October 2017. The Justice Committee [replied](#) to that on 19 December 2017. Here's a snippet talking about the need for a literature review:-

"Taking all this into account, we think it would make sense and be more resource-efficient for the first stage of the LASPO review to take the form of a literature review of the large body of formal research and other evidence already published on the impact of the reforms, on the consequences of having access - or not having access - to early legal advice and on advice seeking behaviour."

The timing of the review is yet to be confirmed. It was originally intended to be concluded by the summer recess. However, the Secretary of State, while giving evidence to the Justice Committee on 7 March 2018, explained that the timeline was an ambitious one, and that it was more important for the review to be done well but that he certainly did not want the review slipping into next year.

## **3. Reports of the National Audit Office and the Justice Committee**

### **National Audit Office Report 2014**

The National Audit Office report in November 2014 ["Implementing Reforms to Civil Legal Aid"](#) concluded *inter alia* that:

"16 The Ministry is on track to meet its main objective of significantly reducing spending on civil legal aid in a short timeframe. The extent to which it has met its wider objectives is, however, less clear. Although the Agency now funds fewer cases, litigation has only just started to decrease in the areas of family law removed from civil legal aid. In addition, the increase in people representing themselves is likely to create extra costs for the Ministry.

17 In implementing the reforms, the Ministry did not think through the impact of the changes

on the wider system early enough. It is only now taking steps to understand how and why people who are eligible access civil legal aid. The Ministry needs to improve its understanding of the impact of the reforms on the ability of providers to meet demand for services. Without this, implementation of the reforms to civil legal aid cannot be said to have delivered better overall value for money for the taxpayer.”

#### **Justice Committee report 2015**

You may also recall that the 2015 Justice Committee expressed some significant concerns over the legislation ([Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 – March 2015](#)):-

“181. The Ministry of Justice has failed in three of its four objectives for LASPO: it has not discouraged unnecessary and adversarial litigation at public expense because the courts and tribunals are having to meet the costs of a significant rise in litigants in person and a corresponding fall in mediation; it has failed to target legal aid at those who need it most because it has failed to properly implement the exceptional cases funding scheme; and it has failed to prove that it has delivered better overall value for money for the taxpayer because it has no idea at all of the knock-on costs of the legal aid changes to the public purse. The Ministry of Justice has made significant savings in the cost of the scheme but we conclude that it could have achieved greater savings if it had reduced the knock-on costs of the reforms.

182. The Ministry of Justice has achieved its primary objective of making significant savings in the cost of legal aid in civil cases but in doing so it has failed fully to meet three of the four objectives it set out. It has failed to target legal aid at some of those who need it because of the wholly inadequate implementation of the exceptional cases scheme. It cannot demonstrate that it has achieved better overall value for the taxpayer because it has no estimate of how great the knock-on costs on the rest of the system have been as a result of the changes. The changes appear at best to have had effect in discouraging unnecessary and adversarial litigation at public expense.”

#### **4. Justice Committee letter March 2018**

The Justice Committee sent a further letter to the Secretary of State on [Tuesday, 20 March 2018](#), emphasising three points that were made in the evidence session on Wednesday, 7 March. These were the need for a rigorous review with the Ministry of Justice able to commission additional research if there is seen to be gaps in available evidence; their concerns about the creation of a two-tier system which may compromise the quality of justice received by sections of society; and the need for early intervention and advice to help people as soon as possible after they encounter legal problems.

#### **5. Post LASPO Reports**

Since LASPO there have been a number of reports. It is hard to think of any part of LASPO or the subsequent [Transforming Legal Aid consultation](#) that has not been looked at in some detail.

There are overviews of legal aid and the impact of the LASPO legislation in these reports:

- Amnesty's ["Cuts that Hurt"](#);
- The Bach Commission's ["The Right to Justice"](#);
- Justice's reports ["Innovations in personally-delivered advice"](#) and ["Delivering Justice in an Age of Austerity"](#);
- The Law Society's ["LASPO 4 years On: Law Society Review"](#);
- The Law Society's Early Advice [research report](#);
- LAPG Manifesto [here](#);
- The Low Commission's ["Tackling the Advice Deficit"](#); and
- Public Law Project sent a very thorough letter to the then Lord Chancellor in December 2016 [here](#) about the review and a number of stakeholders sent a further letter about the review – see letter to Justice Committee chair [here](#).

For information on more specific areas:-

- Children: the report from the Coram Children's Legal Centre [here](#);
- Domestic Violence: various reports from [Rights of Women](#) and the UN CEDAW committee e.g. p32 [here](#) and [here](#);
- Effect on vulnerable people: all reports mentioned above;
- Exceptional Case funding: much work has been carried out by the Public Law Project [here](#) and see the [Amnesty report](#);
- Government failure to consider evidence before making cuts: [Amnesty report](#);
- Human Rights. The [Joint Committee on Human Rights](#) is currently looking at enforcement of rights;
- Inquests: the [letter](#) from the Joint Committee on Human Rights to the Secretary of State dated 12 March 2018 sets out some of their concerns in this area;
- The website of the [European Union Agency for Fundamental Rights](#) explains the Charter of Fundamental Rights really clearly and in particular Article 47 – Right to an

- effective remedy and to a fair trial;
- Judicial Review- Research from the Public Law Project, LSE and University of Essex [The Value and Effects of Judicial Review](#);
  - Litigants in Person – see the House of Commons Library [briefing paper](#);
  - Mandatory Civil Legal Advice Gateway? [Here](#) is PLP’s research;
  - Social Mobility. “[Young Legal Aid Lawyers: Social Mobility in a Time of Austerity](#)”;
  - Sustainability of the profession - see all reports;
  - Technological Innovation?
    - See The Law Society report January 2017 ‘[Capturing Technological Innovation in Legal Services](#)’ Chapter 5 is particularly useful as it sets out a list of examples of technological solutions – digital guidance, smart forms, mobile technology, advice apps and solutions like ‘Ask a Lawyer’ and [www.donotpay.co.uk](#);
    - Professor Roger Smith posts quarterly updates [here](#).
  - Brexit and the effect on legal aid. This is harder to find but The Law Society has prepared a [report](#) which covers some points of relevance to legal aid lawyers.
  - Crime: [Otterburn's survey](#) in 2013. And see the resources on [CLSA's website](#) and [LCCSA's website](#).

## 6. Reviews in Northern Ireland and Scotland

There are a number of analyses of other parts of the UK’s legal aid provision.

Colin Stutt’s report on legal aid in Northern Ireland is [here](#).

Martyn Evans was asked to review the Scottish legal aid system and has come up with a ten year plan for Scottish legal aid and the report dated 9 March 2018 is here:

<http://www.gov.scot/About/Review/legal-aid-review>. Page 4 summarises the strategic aims he proposed:-

1. Placing the voice and interest of the user at the centre
2. Maintaining scope but simplifying
3. Supporting and developing an effective delivery model
4. Creating fair and sustainable payments and fees

5. Investing in service improvement, innovation and technology
6. Establishing effective oversight.

There is a good summary of his recommendations on page 5 and some very interesting comments on morale and fees – see page 80:-

“Public messaging about solicitors who provide legal aid should be rebalanced to illustrate the positive impact solicitors can have on lives...While fees and income undoubtedly play a part in the attractiveness of legal aid work, being valued and respected are also important”. His recommendation was that there should be a “robust and independent evidence-based process for reviewing and agreeing fees with the outcome binding by all parties. That is intended to benefit funders and service providers, both private and third sector. But I ask in return for flexibility and clarity over what service the public can expect...”

## **7. Post LASPO Litigation**

Here is a summary of some of the litigation that has arisen in relation to the LASPO reforms over the last five years:-

Domestic Violence: <https://www.judiciary.gov.uk/wp-content/uploads/2016/02/queen-v-sos-rights-of-women-judgment.pdf> [2016] EWCA Civ 91.

Exceptional Case Funding: [Gudanaviciene and ors v Director of Legal Aid Casework and the Lord Chancellor \[2014\] Civ 1622 \(Admin\)](#) and the systematic challenge in *I.S.(by his litigation friend the Official Solicitor) v Director of Legal Aid Casework and the Lord Chancellor* [2015] EWHC 1965 (Admin)).

Prisons: [R \(Howard League for Penal Reform and The Prisoners' Advice Service\) -v- The Lord Chancellor \[2017\] EWCA Civ 244 Case No: C1/2014/0953 & C1/2014/1262](#) See information [here](#).

Residence Test: [R \(on the application of The Public Law Project\) \(Appellant\) v Lord Chancellor \(Respondent\)](#).

Tribunal fees: [R \(UNISON\) v Lord Chancellor \[2017\] UKSC 51](#).

Criminal fees challenges: various cases but see [here](#) for the most recent challenge.

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**27th March 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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You are receiving this email because you have expressed an interest in the work of the APPG on legal aid or generally in issues affecting access to justice.

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