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## May Bulletin from the APPG on Legal Aid

### Legal Aid in Lockdown



Welcome to the May Bulletin of the APPG on Legal Aid. Everywhere, people are marveling at the half-remembered beauty of birdsong, the pleasure of gardens with no aircraft overhead and the peaceful quiet of the streets. All the while, trying to work out how and when we go back to something approaching the world that we knew before. We hope that you are all keeping safe and well as we tentatively navigate our way back into Westminster and beyond.

With Parliament returning from recess we have seen a number of interesting discussions on the legal aid consequences of COVID-19 as well as an uptick in justice questions. As a Group we held an EGM on the 19<sup>th</sup> of May to discuss our work going forward. Additionally, we are continuing to develop COVID-specific training courses with the House of Commons Learning and Development team and, as ever, would love to hear your experiences, so please do get in touch.

This edition has four sections giving you a round-up of all things legal aid related from May.

1. Recent Events
2. APPG+ Training Events
3. Legal Aid news
4. Justice Questions

#### 1. Recent Events

##### APPG Extraordinary General Meeting, 19<sup>th</sup> May 2020

We recently held an online EGM in order to elect new officers for the group and to discuss the group's plans going forward. The main purpose of the meeting was to elect a number of new vice chairs and we are pleased to announce that the following were elected unopposed:

- Baroness Natalie Bennett (Green party)
- James Daly MP (Conservatives)

- Gareth Bacon MP (Conservatives)
- Daisy Cooper MP (Liberal Democrats)

Also in attendance were: Karen Buck MP, Yvonne Fovargue MP and Lord Bach.

After electing new vice chairs the group discussed plans to hold an online APPG meeting focussing on the impact of, and the Government response to, the COVID-19 pandemic in relation to legal aid practitioners. The practicalities of this are still being finalised but keep an eye out for further details to be announced shortly.

## 2. APPG+ Training Events

We have been working with the House of Commons Library and Learning and Development Teams to develop a range of COVID-19 specific training courses. These are tailored towards MPs and their caseworkers and structured around questions frequently submitted to the House of Commons Library specialists. The courses are online and are free to attend and will be advertised on the ACT website in the coming weeks. The first three courses will cover COVID-19 and the law in relation to Possession, Homelessness and Employment rights. Please contact [Rohini.teather@lapg.co.uk](mailto:Rohini.teather@lapg.co.uk) or see the ACT website for further details.

## 3. Legal Aid in the News

### LAPG Call on Justice Secretary to Use 'LASPO Powers' to Save Firms

In a briefing prepared for Parliamentary Under-Secretary of State with responsibility for legal aid, Alex Chalk MP, LAPG warns that without further action, many firms will fold over the next few months and that by Christmas there is a risk there will "not be a provider base left to underpin the justice system". The briefing highlights the wide discretionary powers available to the Lord Chancellor under the Legal Aid, Sentencing and Punishment of Offenders Act to do anything to facilitate the carrying out of the Lord Chancellor's functions, including making "grants or loans to enable persons to provide services".

LAPG suggests three key measures that the Lord Chancellor should implement. These are:

- For the MoJ to press the Treasury to extend business rate relief for legal aid practitioners required to maintain physical premises as part of their legal aid contracts.
- For current remuneration systems to be temporarily amended, allowing for payments on account of up to 100% of work carried out as well as monthly claims and also introducing a system for interim payments to allow practitioners to claim for work already done.
- For the MoJ to create a grant-based crisis fund that providers can apply to if they can show they have taken appropriate and available steps to mitigate the impact of the pandemic but still face severe financial difficulties.

The briefing concludes by highlighting the "pressing need for immediate action to prevent the collapse of a sector that is crucial to the proper functioning of the state".

LAPG met with Minister Chalk on 20 May 2020, to discuss these and other recommendations concerning the means test review and work of the APPG.

You can read more about the LAPG's briefing and three suggested measures [here](#)

### A tale of two Ministers

It is worth mentioning here, that we have had a lot of engagement as an APPG and LAPG with the civil service in connection with the LASPO Review. The same is certainly true now and has been throughout the weeks of the crisis. Whether that translates into measures being put in place that will provide an adequate safety net for providers teetering ever closer to the edge of the cliff face remains to be seen. What is perhaps worth adding here is that with Alex Chalk and Karl Turner especially, we have policy-makers who not only understand the unique position that legal aid providers hold within the justice ecosystem, but who genuinely want to change the system for the better. Whether this is possible within the current political climate, and against the worst recession that we have ever seen, is up for debate. There is much work to be done before Justice gains the more universal appeal of it's sisters, Education, Healthcare etc. But there is no doubting the genuine desire and willingness to roll up their sleeves and get involved.

### Ministry of Justice Urged to Lift Legal Aid Claims Limit

Karl Turner MP, the shadow legal aid minister has [called for the Government to lift the rule on some civil legal aid contracts](#) that "restrict firms to two claims per annum, at no more than 75% of total value". One West Midlands Firm mentioned by the shadow minister allegedly has £288,000 worth of unpaid work in progress under its civil legal aid contract that it is presently unable to claim for due to the limit. [Karl Turner MP has also penned a letter to the Lord Chancellor, Robert Buckland MP, setting out how lifting the claim limit would help as well as further requesting "flexibility for firms claiming for work already completed"](#).

The Shadow Minister's comments come in response to Justice Minister Alex Chalk MP's statement to the justice select committee that [legal aid firms are sitting on potentially £100m in unbilled fees](#) and that claiming for these fees may be one way firms can reduce the financial impact of COVID-19.

There has been much talk in recent weeks between the LAA, MoJ and various rep bodies about these unbilled fees and how these figures were reached by the LAA when the evidence that we are being given by providers paints a very different picture. Chris Minnoch, CEO of LAPG, notes that:

'It is concerning that the Legal Aid Agency is using the 'unclaimed fees' argument for not putting further measures in place to support legal aid providers. This is the wrong message to be sending to providers who are struggling due to restrictions imposed on them and their clients. There will always be an element of unclaimed fees within the system; the system has been designed that way. But this doesn't change the fact that many providers are on a financial precipice and have fully utilised the payment on account

process, but cannot access payments for work they have carried out because of rigid system design. It would be relatively simple, and present little or no risk, to the LAA to tweak the system to enable providers to obtain payment for their work. These are not advance payments or loans. And processes are already in place to recover any overpayment if they arise.'

### £5m Coronavirus Grant Pot Available to Legal Aid Advice Providers

Law Centres and legal advice agencies are being invited to apply for grants of up to £100,000 from a more than £5m pot established to support social welfare specialists. Grant applications can be backdated to the 1<sup>st</sup> April to cover urgent, unplanned spending.

The pot includes a Community Justice Fund set up by six grant-giving foundations and administered by the Access to Justice Foundation as well as £3m of funding administered by the Law Centres Network. There will be a single portal for applying for grants however the Community Justice Fund and Law Centres Network will operate their own assessment panels. The pot includes £5.4m of Treasury support as well as contributions from grant giving organisations, the Law Society and several law firms.

Julie Bishop, director of Law Centres Network, said: 'We welcome the speed with which funders have come together and understood the desperate situation we are in. Law centres and other legal charities live on a knife edge and it takes very little to knock them over. The funders have spoken to us to understand what's needed and when. They are trusting the organisations to understand their own needs and how best this funding can help. That is very welcome.'

### Legal Advice for Arrested Children May Become Automatic

The Government is considering whether children in police stations should have to opt out of receiving legal advice, rather than opt in as it is now. This comes as part of the Ministry of Justice's wider review into legal aid and was mentioned in their [recent update on the actions taken in response to the 2017 Lammy Review](#) of the treatment of BAME people in the criminal justice system.

One of the problems found in the Review was that children and young people did not always utilise their right to legal advice and that, despite being informed of their entitlement to free legal advice, children do not always understand what this means or how this could benefit them. The Ministry of Justice's update states they are working closely to ensure that young people engage with legal advice in the police station which "excludes exploring the potential for children to opt out of, rather than into, receiving legal advice".

More information about this potential change can be found [here](#)

### Legal Support for Litigants in Person

The Ministry of Justice in partnership with the Access to Justice Foundation have announced the introduction of a new £3.1 million grants for services that support litigants in person. The grant will run for two years and has been established as part of the Ministry of Justice's Legal Support Action Plan. The new grant is additional to the funding provided by the Ministry of Justice since 2015 through the Litigants in Person Support Strategy. The grant will be available for new, expanded or scaled-up services that support early interventions for litigants in person, this is in line with the goals of the Legal Support Action Plan to focus on the most effective ways of preventing people's legal problems escalating.

You can read Ministry of Justice's announcement in full [here](#)

### Debates in Parliament

#### Pro-Bono Work

On the 18<sup>th</sup> April 2020, questions to the Attorney General included a discussion raised by John Lamont MP and Sarah Atherton MP on what recent steps the Government have taken to support pro bono work by lawyers.

Michael Ellis MP, the Solicitor General, replied by applauding all "the efforts of law clinics and pro bono services to continue to provide advice", further the Solicitor General recognised "that it makes a real difference to people, communities and those who would otherwise be denied access to justice".

The Solicitor General's response was followed up by a further question from Ellie Reeves MP about the Government's response to the impact of the current pandemic on the publicly funded legal sector.

The Solicitor General responded by affirming the Government's aim "to prioritise legal aid for the matters that need it most" whilst recognising "pro bono work is an adjunct to, not a substitute for, legal aid funding". He further recommended the guidance "published by the Legal Aid Agency and the Courts and Tribunals Service" on how publicly funded legal providers can deal with the current pandemic.

You can read the full debate [here](#).

## 4. Justice Questions

**Afzal Khan** (Manchester, Gorton), asked the Secretary of State for Justice, if he will restore **legal aid** for asylum seekers in the UK.

**Lord Taylor of Warwick** asked her Majesty's Government:

- what assessment they have made of the risk posed to **legal aid** lawyers who have to attend police stations and psychiatric hospitals during the COVID-19 pandemic.
- what assessment they have made of the (1) financial impact of COVID-19 on **legal aid** lawyers, and (2) the long-term impact of court trials that need to be restarted as a result of the COVID-19 pandemic.

**Karl Turner** (Kingston upon Hull East) asked the Secretary of State for Justice:

- what assessment he had made of the effect of means testing for **legal aid** on victims of domestic abuse.
- what steps he has taken to expedite claims made to the **Legal Aid** Agency by civil **legal aid** practitioners.
- what steps he has taken to provide non means-tested **legal aid** for victims of domestic abuse during the covid-19 outbreak.
- what assessment he has made of the adequacy of **legal aid** provision for victims of domestic abuse during the covid-19 lockdown.

**Mr David Lammy** (Tottenham), the Secretary of State for Justice:

- how many applications have been made to the **Legal Aid** Agency hardship fund in each of the last six months; and what the average amount was paid to successful applicants.
- how many (a) chambers and (b) solicitors firms are registered as practising solely in criminal **legal aid**.
- how many times the **Legal Aid** Agency has been successful in seeking repayment of overpaid **legal aid** to a provider in each of the last 12 months.
- how many times the **Legal Aid** Agency has assessed that **legal aid** has been overpaid to a provider in each of the last 12 months.
- how many applications have been made for **legal aid** to the **Legal Aid** Agency in each of the last 12 months; and what proportion of those applications were successful.
- what assessment his Department has made of the potential number of (a) chambers and (b) solicitors firms that will cease trading in the next (i) six months and (ii) twelve months due to financial pressures caused by the covid-19 outbreak.
- what steps his Department has taken to identify the number of (a) chambers and (b) solicitors firms facing financial difficulties due to the covid-19 outbreak.

**Lord Boateng** asked her Her Majesty's Government what representations they have received about the impact of COVID-19 on the (1) livelihoods, (2) retention, and (3) recruitment of lawyers who are dependent on the **legal aid** scheme; and what action they intend to take as a result of any such representations.

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

**Ro Teather**  
**Head of Parliamentary Affairs**  
**22 May 2020**

Visit the APPG on Legal Aid website

The APPG on Legal Aid is co-sponsored by the Legal Aid Practitioners Group



In association with Young Legal Aid Lawyers



Supported by The Legal Education Foundation.

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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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