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## The All-Party Parliamentary Group on Legal Aid

**APPG on Legal Aid Bulletin**

**11th Edition - September 2018**

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Dear Colleague,

Welcome to the eleventh bulletin from the APPG on Legal Aid. This edition has two sections:

**Events:**

1. Conservative Party Conference – Fringe meeting Tuesday, 2 October 17.00-18.00
2. Justice Week including APPG Meeting Tuesday, 30 October 2018 10.00-12.00
3. APPG Meeting – AGM and Joint Committee on Human Rights, 11 September 2018
4. Liberal Democrat and Labour Party Conferences

**Legal Aid news:**

1. LASPO Post-Implementation Review
2. Justice Select Committee
3. Joint Committee on Human Rights
4. Briefing on Legal Aid means regulation
5. HMCTS research highlights challenges of virtual justice
6. FT: Justice for all? Inside the legal aid crisis
7. Westminster Hall debate 4 September 2018- LASPO PIR
8. Justice Questions this month

**1. Events**

**Conservative Party Conference – Fringe meeting Tuesday, 2 October 17.00-18.00  
'Rethinking access to justice – risks and opportunities from the Ministry of Justice's Legal Aid (LASPO) review'**

The APPG is delighted to be collaborating with the All Party Parliamentary Group (APPG) on Pro Bono and Public Legal Education on this panel event discussing the ongoing LASPO review. Chaired by Alex Chalk MP, the discussion panel will include Parliamentary Under Secretary of State Lucy Fraser QC MP, Justice Select Committee Chair Bob Neill MP, James Sandbach Director of Policy, LawWorks, Carol Storer, Director of the Legal Aid Practitioners Group (LAPG), and Oliver Carter from Irwin Mitchell who co-chairs Young Legal Aid Lawyers. Tuesday, 2 October 2018 17.00-18.00 Irwin Mitchell LLP. Imperial House 31 Temple Street, Birmingham B2 5DB

**Justice Week and APPG meeting– w/c Monday, 29 October 2018**

The Law Society, the Bar Council and the Chartered Institute of Legal Executives (CILEx) have

set up a new initiative to promote the value of justice to the public. Justice Week commences on Monday 29 October 2018 with an event that will seek to answer the question: 'Does "justice" need a makeover?'

The APPG on Legal Aid together with The Law Society will be hosting a meeting of the APPG on Legal Aid with a panel discussion from 10.00-12.00 on Tuesday, 30 October 2018 in Committee Room 14. Speakers will be confirmed at a later date.

### **APPG Meeting – AGM, “Enforcing Human Rights” and the Equalities Commission on Human Rights – Tuesday, 11 September 2018- 10.30-12.00 in the Grimond Room**

The APPG was delighted to host its Annual General Meeting on 11 September 2018 and to welcome back Karen Buck MP as its Chair. We were also pleased to elect Lord Willy Bach, Lord Jeremy Beecham, Yvonne Fovargue MP, Dominic Grieve QC MP and Andy Slaughter MP as Vice-Chairs. The AGM was followed by a discussion of the recently published tenth report by the Joint Commission on Human Rights, “Enforcing Human Rights” led by that Committee’s Chair, the Rt Hon Harriet Harman QC MP. Other Speakers included Jeremy Lefroy MP, Fiona Rutherford from the LASPO PIR team who updated the meeting on the progress of the review and Libby McVeigh and Steve Lodge from the Equalities Commission on Human Rights who reported on the Commission’s Inquiry and LASPO submission.

The event focused on human rights, especially the impact of growing advice deserts and wide imbalances in provision of civil legal aid. Ms Harman highlighted the serious problems people have in accessing justice to enforce their human rights and declared that ‘human rights are not worth the paper they are written on if they are not enforceable’. Dwindling access to legal aid is making enforcing human rights far more difficult. She told the meeting that in 1979, 77 per cent of the population were eligible for legal aid, while now this figure is around only 25 per cent, and the areas of law for which people can get advice on have also been cut. ‘Access to legal advice is about equality,’ Ms Harman emphasised, and the ‘law is supposed to be there for everyone’, but so often people who don’t have funds can’t access it effectively. You can read the minutes from the meeting [here](#).

### **Legal Aid and the Party Conferences**

#### **Liberal Democrat Party Conference**

There was a discussion on the future of legal aid covering the recent barrister’s strike, to the Bach Commission report and the Secret Barrister’s book. Evidence abounds of the crisis in legal aid and the wider justice system. The Government is now reviewing the 2013 (LASPO Act) cuts to legal aid – what needs to change to restore access to justice?

#### **Labour Party Conference**

A Labour government would build more law centres, Shadow Justice Secretary Richard Burgon has announced, as justice issues dominated the first day of the party’s annual conference in Liverpool. Mr Burgon told a fringe event ‘The Future of Justice in the UK’ that his party will

‘return legal aid to be a pillar of the welfare state and properly support law centres as engines of empowerment for working-class communities’.

He added that he has teamed up with the Law Centres Network to draft ‘detailed’ proposals ‘and put this into reality when [Labour] come into government’.

There was also an Access to Justice Fringe with Lord Bach talking about the Fabian Society “Right to Justice” (Bach Commission) and others.

## **2. Legal Aid News**

### **LASPO Post-Implementation Review**

Fiona Rutherford of the LASPO PIR team, speaking at the APPG on Legal Aid meeting confirmed that the PIR team (the “team”) will publish its findings by the end of the year and they remain on track for this. The evidence gathering phase of the review is ongoing and the second round of consultative group meetings took place in July.

Ms Rutherford went on to explain that the team would conclude the evidence capture at the end of September, then write the report and submission to the ministerial team with the aim of concluding the review by the end of the year.

She reported that the team have now met with over 70 different interested parties – practitioners, representative bodies, academics, advice providers and so on. Through the ministers, she added, the team are engaging with members of both houses and the judiciary – the team met with Mr Justice Robin Knowles and the Civil Justice Council recently.

Some initial findings of the LASPO team include that:

Generally speaking, the earlier the advice is given, the better. Preventing problems from escalating is important from all angles – it leads to easier solutions and no added expenditure for the state. Litigants in person pose different challenges for the court system, such as requiring the judge to provide support to the unrepresented party. Recruitment and retention of the next generation of legal aid lawyers is a concern. The team are aware of the growing burden on the advice sector to fill the gaps in legal aid provision.

Ultimately, Ms Rutherford explained, the team’s goal is to present to the ministerial team, toward the end of the year, the following:

- A comprehensive assessment of the impact of LASPO against the four key objectives
- A proposed outline for areas to explore further with the sector in terms of where next for support for those accessing the system, which will go beyond legal aid.

### **Justice Select Committee**

#### **Justice Committee report: Disclosure of evidence in criminal cases**

The Committee produced a very hard-hitting report considering the disclosure of unused

material in criminal cases. By way of background, police investigators have a duty under the Criminal Procedure and Investigations Act 1996 to pursue all reasonable lines of enquiry including those that point away from the suspect and to retain material deemed to be 'relevant'. Should the prosecution not use that material in its case, the 'unused' material need not be disclosed to the defence unless it could reasonably be considered capable of undermining the prosecution's case or assisting that of the defendant. Routine examples of disclosed, unused material include the statement of an eyewitness with a materially different recollection from others or the previous convictions of a prosecution witness. But when it comes to dealing with the vast amount of material generated through social media, the system appears to be struggling. Problems with disclosure came into sharp focus following the high-profile collapse of a number of cases between December 2017 and spring 2018.

"We recommend that restoring legal aid payments for reviewing unused material above a certain page threshold be considered as part of [a] comprehensive and independent review of criminal legal aid"

"We recommend that the Government conduct an urgent cross-departmental review of funding for all elements of the criminal justice system, including criminal legal aid and the Crown Prosecution Service".

[See here](#) for the full report.

### **Joint Committee on Human Rights**

'Enforcing Human Rights' – [see here](#). The report summary notes that:

*"Access to justice is fundamental to the rule of law. We are concerned that the reforms to legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) have made access to justice more difficult for many, for whom it is simply unaffordable. Moreover, there are large areas of the country which are "legal aid deserts", as practitioners withdraw from providing legal aid services since they can no longer afford to do this work following reductions in legal aid funding by successive governments over the past three decades. The Government is currently reviewing LASPO and we make recommendations for that review. There also needs to be a broader review into access to justice and the provision of advice and assistance, going beyond matters which might be seen as purely legal, to ensure that people can get the help needed to enforce their rights before matters escalate into expensive adversarial court proceedings. The remit of the Equality and Human Rights Commission should be extended so that it can take human rights cases on the same basis as it supports equality cases. It should use those powers assertively and be given adequate resources to allow it to do so. Its work should be more closely scrutinised by Parliament accordingly.*

*There is a need for better general understanding of the role of the courts in enforcing human rights, and in balancing the rights of one group against another. Ill-informed media criticism*

*can undermine support for the legal system which protects everybody's rights—even those of groups who are unpopular. There is also a need for better education about the legal system in general, and the way in which it protects people's human rights, and the Government should do more to support and encourage this."*

The report examines a wide range of issues impacting on the practical enforceability of human rights in the UK, and makes recommendations covering:

- Access to justice and the rule of law
- The damaging effects of legal aid reforms
- The importance of a robustly independent judiciary
- The importance of a robustly independent legal profession
- The crucial role of the Equality and Human Rights Commission and other UK National Human Rights Institutions
- The need for a culture of human rights

See the minutes of the APPG on Legal Aid meeting for a further discussion of these issues by Chair of the Joint Committee, the Rt Hon Harriet Harman QC MP.

#### **Briefing on Legal Aid means regulation**

The Public Law Project has just published a briefing called 'The gap between the legal aid means regulations and financial reality' by Isaac Richardson. You can download it here: [https://publiclawproject.org.uk/wp-content/uploads/2018/07/Means\\_threshold\\_for\\_web.pdf](https://publiclawproject.org.uk/wp-content/uploads/2018/07/Means_threshold_for_web.pdf)

#### **HMCTS research highlights challenges of virtual justice**

As the government prepares to convince practitioners of the benefits of moving remand hearings for defendants in custody out of court and into a 'video space', research released by HM Courts & Tribunals Service has revealed significant concerns from those on the front line. A reply to an FoI request by former magistrate Penelope Gibbs, director of Transform Justice, revealed that HMCTS published a 'user research report' last December based on a 'condensed two-week discovery' to understand what defendants, lawyers, police, probation and judges require from virtual remand hearings.

HMCTS says the findings suggest that the 'virtual remand hearings team' should first consider current user needs around information, communication and transparency before designing a solution to administer the hearing itself, due to the 'complex, time-bound and reactive nature' of remand hearings. 'Failure to do this may impact on value, adoption and ability to scale future solutions - as well as exacerbate current challenges and create further strain and pressure on key users'.

The report states that 'quantitative insight' is central to the design of the service, 'however

HMCTS lacks the capacity to provide reform projects with the data and analysis they need'. It later says: 'As a result of this initial study, knowledge gaps have been identified - such as the need for primary research with defendants and prison and probation staff to gain a deeper understanding of defendant and key user experiences.'

Ms Gibbs told the *Gazette*: 'Academics and campaigners such as Transform Justice have been begging HMCTS for months to commission and publish proper research on the digital court reform programme. Releasing this document is a good first step but it still doesn't answer how reforms will impact access to justice.'

### **FT: Justice for all? Inside the legal aid crisis**

*The FT's legal team has written a detailed account of the human impact of legal aid cuts. The full article can be found online. Excerpts below:*

The changes to legal aid are not the only manifestation of a justice system that, for many ordinary citizens, seems to be falling apart at the seams. Many law firms across the country have given up their provision of various legal aid services entirely because it is so unprofitable. This in turn has led to legal advice deserts blooming in places such as Devon and Cornwall, where there is currently only one legal aid provider for immigration law.

The pressure on the system can also be seen in places such as the duty housing desk at Croydon County Court, where two solicitors often have just 10 minutes to assess the problems of individuals at risk of being evicted and made homeless before they stand up and represent them in court.

And while access to legal aid still exists for criminal cases, more and more applicants are having to pay contributions to their defence if their income is above a certain threshold – depending on whether the case is heard before a magistrates or a crown court – which can make the cost prohibitively high and force them to self-represent.

“Ensuring everyone can resolve their legal problems is vital to a just society and last year we spent £1.6bn on legal aid – just over a fifth of the department’s budget,” said the Ministry of Justice in a statement. “The reforms under LASPO were intended to target resources at those who need it the most and for the most serious cases, for example where life or liberty is at stake.”

But the conclusion of those who work in the justice system, and of the people who have been left to grapple with it on their own, is damning. In a highly critical report published in 2017, the Law Society stated: “In legal areas that are now no longer in scope, people now have a stark choice: to pay for their own legal advice, represent themselves, or be excluded from the justice system altogether.” Baroness Hale, President of the Supreme Court said the cuts were “probably a false economy”, pointing out that LASPO withdrew legal assistance that would have helped people sort out their legal problems at an earlier stage – keeping them out of the

courtroom.

Full report in the [FT](#)

## **Debates in Parliament**

### **Karen Buck – Westminster Hall debate 4 September 2018**

#### **Karen Buck, MP and Chair of the APPG on Legal Aid requested a debate on the LASPO PIR.**

“A few weeks ago, the Joint Committee on Human Rights, of which I am a member, published its report, “Enforcing human rights,” as a contribution to the wider debate. It stated: *“Access to justice is fundamental to the rule of law. We are concerned that the reforms to legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ([LASPO](#)) have made access to justice more difficult for many, for whom it is simply unaffordable.”* Six years on from the Act’s passage, it is clear that the system is in crisis. Cuts to the Ministry of Justice were higher than to any other Department, at 40%. The impact of cuts on that scale is simply unsustainable.

#### **Ms Buck went on to ask about the transparency of the review process:**

“No minutes have been published of the meetings that have been held. We understand that no independent research has been commissioned either. Will the Minister confirm whether that is the case? Will she also confirm that the report will definitely be published by the end of the year? How long does she estimate it will take the Government to respond? Critically, what will happen next? Will the review be affected in any way by Brexit? How long will the response take? What steps will be put in place to safeguard the current situation and prevent more providers from closing before there is an opportunity for recommendations arising out of the review to be implemented?”

#### **And raised concerns about disadvantaged individuals bearing the burden of the cuts:**

“In summary, legal aid is no longer available to many of those who need it. Even those eligible for help find it hard to access it, and major gaps in services are not being addressed. As is so often the case, the most disadvantaged and the disempowered bear the burden. To take just one group, important research by the mental health charity Mind found that half the people facing legal problems that were removed from the scope of legal aid by LASPO have mental health problems...

The Equality and Human Rights Commission drew attention to how the removal of most welfare benefits law from the scope of legal aid disproportionately affected disabled people. It

flagged up the fact that the number of benefits disputes cases in which legal aid was granted fell by 99% post-LASPO, from 29,801 in 2011-12 to just 308 in 2016-17. When individuals are able to challenge benefits decisions, the [majority](#) are overturned. Since 2013, 63% of appeals against personal independence payment decisions and 60% of appeals against employment and support allowance decisions have been decided in the claimant's favour.

The Equality and Human Rights Commission also drew attention to the fact that the removal of most private family law from the scope of legal aid affects women disproportionately, and of course the removal of most immigration law impacts people from certain ethnic minorities."

**Andy Slaughter, MP and Vice-Chair of the APPG on Legal Aid summarised his views as:**

"[The] point I wanted to emphasise was that legal aid was an important part of the welfare state settlement. It was about looking after vulnerable people; it was about providing a safety net; and it was about providing justice and equality for people. That is how important it is to our society and that is what LASPO has destroyed."

For a full transcript of the debate, please click [here](#).

### **Justice Questions this month**

Lord Bassam of Brighton asked Her Majesty's Government how many instances of crowdfunding to cover the cost of legal representation for families involved in inquests have taken place in the last five years.

[Lord Bassam of Brighton](#) asked Lords

Her Majesty's Government what criteria were used in the assessment of legal aid support to families involved in the inquests covering the deaths of the victims of Stephen Port.

[Lord Rosser](#) asked Her Majesty's Government in what circumstances, to whom, and to what extent, is legal aid available to challenge public spaces protection orders under the statutory appeal procedure provided in section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014.

[Grahame Morris](#) MP (Easington) asked the Secretary of State for Justice, if he will make (a) legal aid and (b) a legal advice and guidance helpline available for people representing themselves in civil court.

[Lord Roberts of Llandudno](#) asked Her Majesty's Government how many unaccompanied and separated children seeking asylum have accessed exceptional case funding for legal aid in each year since 2012.

[Lord Roberts of Llandudno](#) asked Her Majesty's Government what percentage of

unaccompanied minors seeking asylum who have applied for exceptional case funding for legal aid since 2012 have been successful.

[Grahame Morris](#) MP (Easington) asked the Secretary of State for Justice, what steps is he taking to improve access to the civil courts for people with limited financial means.

[Lord Judd](#) asked Her Majesty's Government what action they are taking to ensure that LGBT people seeking asylum, who have experienced torture and forms of violence that may be difficult to disclose, have access to legal representatives who are allowed time and capacity to obtain the requisite evidence.

[Lord Judd](#) asked Her Majesty's Government what action they are taking to ensure that women seeking asylum, who have experienced forms of violence which may be difficult to disclose, have access to legal representatives who are allowed the time and capacity to obtain the requisite evidence.

[Hugh Gaffney](#) MP (Coatbridge, Chryston and Bellshill) asked the Secretary of State for Justice, what his Department's policy is on Law Centres.

[Bridget Phillipson](#) MP (Houghton and Sunderland South) asked the Secretary of State for the Home Department, whether he has plans to ensure that (a) people seeking asylum are able to access legal advice prior to their screening interviews and (b) screening interviews for asylum are not used during credibility assessments.

[Laura Smith](#) MP (Crewe and Nantwich) asked the Secretary of State for Justice, how many unsuccessful applications for legal aid have been made in the last 12 months.

[Jo Stevens](#) MP (Cardiff Central) asked the Secretary of State for Justice, what assessment his Department has made of the (a) number and (b) geographical distribution of practicing legal aid solicitors.

[Alex Sobel](#) MP (Leeds North West) asked the Secretary of State for Justice, what steps the Government is taking to ensure that women claiming asylum who have experienced forms of violence that may be difficult to disclose have adequate access to legal representation.

[Alex Sobel](#) MP (Leeds North West) asked the Secretary of State for Justice, what steps the Government is taking to ensure that women seeking asylum who have experienced forms of violence that may be difficult to disclose have adequate access to legal representation.

[Alex Sobel](#) MP (Leeds North West) asked the Secretary of State for Justice, what steps the Government is taking to ensure that LGBTQ+ people seeking asylum who have experienced forms of violence that may be difficult to disclose have adequate access to legal representation.

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

**Rohini Teather**  
**APPG Project Co-ordinator**  
**September 2018**

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