

Country Report- England and Wales

In summary, what is happening to poverty law services in England and Wales is that the government is no-longer supporting them. As part of their deficit reduction program, the Government have decided to reduce all legal aid services down to a minimal safety net to comply with supranational and international law, and no more. Arguments such as the importance dealing with peoples' clusters of problems and providing early advice to tackle legal problems before they spiral out of control have been dismissed.

1. Austerity Justice

In England and Wales the last couple of years in legal aid policy have been dominated by the debate over the Legal Aid Sentencing and Punishment of offenders (LASPO) Act which became law on 1st May 2012. The Act is in three main parts. Part one concerns legal aid and was the focus of much of the political debate parliament. The second part of the Act deals with the funding of litigation and the third sentencing reform.

Legal aid in England and Wales serves a population of 56.1 million. The budget for the service had remained at around £2.1 billion (2.415billion Euros) for the last seven years. The main priority of the government has been to tackle the public spending deficit. As part of this the Ministry of Justice (MoJ) has had to find cuts of 23% to reduce its budget from £9.3billion to £7.3billion (Euros 10.7 billion to Euros 8.395 billion). It chose to implement the bulk of the originally planned cuts of £350m to legal aid through the LASPO Act.

Until April this year legal aid was administered by the Legal Services Commission (LSC) which had independent governance arrangements. Under the LASPO Act it has now been replaced by the Legal Aid Agency (LAA) which is directly controlled by government, but with a system in place to (arguably) protect decisions on individual cases from interference from government ministers.

Previous governments have tended to use adjustments to the means test and the scope of legal aid to find savings without re-course to legislation. Perhaps to reduce opposition, as well as to attempt to make the cuts irreversible, the government decided to incorporate the changes in new legislation. One of the few significant successes of the campaign against the legal aid cuts was to amend the original proposals to allowed changes to the scope of legal aid without new legislation. In the main though, the cuts, which were first proposed in a consultation paper published in November 2010, have made it to the final Act.

According to the updated estimate from the MoJ the planned cuts will save £410m (471.4m Euros), a £60m increase on their original estimate, with £250 coming from the changes to scope and £160m coming from the changes to fees.ⁱ In April last year (2012) a 10% cut in legal aid fees for both civil and criminal cases was introduced.

At an early stage the Government took the decision that they would create a reduced civil legal aid system intended only to meet international human rights legal obligationsⁱⁱ. For this reason the scope of criminal legal aid remained intact with the bulk of the cuts falling on areas of law in the civil legal aid scheme which are less likely to directly engage human rights principles.

Overall the assessment of the UK government's changes to legal aid can be nothing more than bleak. Whether the austerity justice system they have created can be

expanded to provide greater access to justice will depend on a future government being persuaded by public opinion and interest groups that it is a priority to do so. In the short-term practitioners and their clients will have to cope with what is the lowest ebb of the civil legal aid system in forty years.

2. Civil Legal Aid

Impact on clients

The largest number of cases lost from the scope of legal aid are, private law family cases. These are cases to do with relationship breakdowns and include access/custody arrangement for children, maintenance and the division of any assets. Legal help, which is the system of initial advice and assistance, will be cut by 100% in four areas of law, welfare benefits, employment, clinical negligence and consumer. Legal help in other areas of law including housing and immigration has been reduced to cover mainly asylum and cases in which a client's home is at risk. Also Controlled Legal Representation (CLR) work, which a full casework and representation service controlled on a case by case basis, has been cut.

The major changes to the scope of civil legal aid which were introduced from April 2013 will result in many members of the public no-longer receiving a service. The impact of the scope cuts is outlined in the following tableⁱⁱⁱ-

Area of law	Cases
Family	232,500
Debt	105,050
Employment	24,070
Housing	53,200
Welfare Benefits	135,000
Immigration	53,290
Other	19,890
Total	623,000

The Government's equalities impact assessments, which were published along with their proposals for legal aid, give a detailed picture of how the cuts will impact on groups protected by equalities legislation. For example they estimate women will be more affected by the reduction in legal aid for family law (62%), housing law (61%) and Education law (72%).^{iv} Vulnerable groups of people will also be disproportionately hit. For example they estimate 54% of welfare benefits clients cut from scope will have a disability.^v Ministers knew from the outset that targeting what is a means tested benefit would lead to the very poorest and most vulnerable people being the biggest losers, but argued that they had no choice if they were going to meet the required budget cuts.

End of the line

In 2012 around 270 not for profit (nfp) organisations and 1,700 firms contracted with the Legal Services Commission (LSC) to provide civil legal aid services.^{vi} For many legal aid providers specialising in family law, as well as poverty law (or Social Welfare Law as it is most often referred to in the UK) the scope cuts, which were introduced from April 2013, will mark the end of the line for them in providing legal aid services.

Tyndallwoods, a firm of lawyers based in Birmingham, is an example of a firm which has taken the decision recently to give-up legal aid work. LAG understands that the firm withdrew from both civil and criminal legal aid work after some of the partners became disenchanted with the bureaucracy involved with dealing with the LSC and the continued uncertainty over the future of legal aid. According to sources close to the firm the 10% reduction in fees and the scope cuts outlined in the November 2010 consultation paper were contributory factors in the partners agreeing to discontinue legal aid work from September 2012. This led to the closure of the firm's central Birmingham office at which most of the legal aid work was undertaken and redundancy for the staff there. The firm continues to trade from its offices in the Birmingham suburb of Edgbaston, but now only undertakes private client work.

LAG believes the most immediate impact of the cuts in scope to civil legal aid will be felt by the not for profit (nfp) sector, as they have tended to specialise exclusively in legal help work in poverty law. Shelter, a large housing charity, which provides legal services from thirty centres across the country, has said that ten of these are likely to have to be closed with the loss of 100 jobs due to the reductions in legal aid.^{vii} According to Citizens Advice Chief Executive Gillian Guy^{viii}, "The overwhelming majority of our frontline caseworkers and managers have told us that it will be incredibly difficult for many Citizens Advice Bureaux to carry on providing a specialist service, and over half say that it may be impossible to continue providing any advice service at all - leaving tens of thousands of people with nowhere to turn with serious but everyday legal problems that could see them homeless, jobless and penniless." The number of NfP organisations contracting with the Legal Aid Agency (the successor of the LSC) will probably reduce to perhaps a few dozen.

Some NfP organisations in response to the cuts in scope are experimenting with providing fee paying services. Rochdale Law Centre was one of the first NfP organisations to establish a Community Interest Company separate to the Law Centre to charge fees in immigration and employment cases. Julie Bishop, the Director of the Law Centres Federation sums up the general feeling of uneasiness in the sector regarding such initiatives, "no one is under any illusion that this is a solution to replace legal aid. It is not, as it will not change the fact that the people who got help from legal aid got it because they could not afford to pay for legal advice."^{ix}

Telephone Gateway

One of the measures in the LASPO Act which led to much debate in the House of Lords, the second chamber which scrutinises legislation in the UK parliament, was the telephone gateway proposal. The government's original plan was to make it compulsory for all civil legal aid cases to pass through a telephone service for initial advice and screening. After pressure from practitioners they eventually relented and decided only to introduce the compulsory telephone gateway for special education needs, discrimination and debt cases.

LAG believes that telephone services do have a role to play in reaching clients, but can only do so if they are supported by adequate face to face services. Researchers are identifying the limitations of telephone and internet services.^x Elizabeth O'Hara, policy officer at Shelter, says "We (Shelter) have a website service which receives thousands of hits a day, but it is largely not used by the people who use our face to face Housing Advice Centre services. People are not channel shifting between different types of services." Shelter believes that more tangible outcomes are associated with face to face services and that while the government seems to think telephone services are cheaper to provide, according to Shelter housing advice on the phone takes longer.^{xi}

Exceptional Cases

The exceptional cases provisions in the LASPO Act are intended to act as a human rights safety net. Some research indicates that the numbers cases covered by the exceptional cases provisions contained in s10 of the LASPO Act might exceed the government's estimates.^{xii} Firms which specialise in mental health, community care and human rights law could build-up the numbers of cases they undertake under CLR through the exceptional cases rules. The service will be patchy though and very dependent on good referrals especially in those geographical areas without a specialist firm or NfP organisation. Also, practitioners will have to make speculative applications to the LAA, with no guarantee of payment to support clients' cases. This could reduce the potential take-up of exceptional cases.

3. Further Cuts to Civil and Criminal Legal Aid

The Ministry of Justice has issued a consultation on further changes to the civil legal aid scheme and price competitive tendering for criminal legal aid work. The consultation document, "Transforming legal aid: delivering a more credible and efficient system" was published on 9th April and the deadline for responses is 4th June.

The paper puts forward measures to cut an additional £220m from the legal aid budget. These include a cut of 10 per cent to fees in child care proceedings and reductions of up to 35% in fees for representing in civil and criminal cases. Lawyers are furious that the government published details of proposed further cuts only nine days after they had commenced new civil legal aid contracts.

Much of the document is devoted to plans to introduce price competitive tendering (PCT) for criminal defence services. Firms will be invited to tender for contracts in police station, magistrates court and running cases in the Crown Court. Based on data provided by the LAA firms will be expected to bid for between 4 and 38 contracts in each procurement area. Successful bidders will be awarded a set proportion of the work in each area. Clients will not have a choice of lawyers as they currently do, but will be allocated to a firm on a random basis. The MoJ says that the proposals will reduce the number of firms from the current 1600 to 400.

The government intends to commence the competitive tendering process in autumn 2013 and to award contracts in the summer next year to commence autumn 2014. The invitation to tender will be split into two parts. The bidder's quality and capacity to provider the service will be assessed first, followed by an evaluation of their bid price.

The proposals have managed to do something unusual which is to unite all the lawyer groups against the government. Robin Murray, vice-chair of the Criminal Law Association described the proposals as an “appalling attack on client choice, treating them as an economic unit rather than a person.” He said that practitioners would resist “these totally unworkable proposals.” Andrew Keogh, a specialist criminal lawyer and respected commentator on criminal legal aid is assisting some firms in launching a legal action known as a judicial review against the proposals based in part in what he believes is the “flawed data which is used in the consultation document.” LAG understands firms are also looking at other potential legal challenges to the plans.

At the time of writing (early May) the government is giving no hint about any possible concessions. Speaking at a conference in London on 23rd April the minister responsible for legal aid, Lord McNally, said that the “profession itself needs to restructure and produce efficient business models, but as we know from other sections of the economy this can be painful.” He also pledged that while they would consider responses to the consultation the Ministry of Justice “wants to keep momentum going on the planned reforms.”

Opinions differ on whether the legal profession can resist the proposals. LAG believes that the government might make some concessions, such as on the starting price for bids, to ensure firms will bid for contracts. The government will also need to revise its cuts to fees in more complex cases which require the services of a barrister or other specialist advocate, as we think there is a risk a boycott or strike if they do not.

4. Conclusions

The cuts in civil legal aid will lead to many people with civil legal problems being denied redress. A good few will continue to pursue their cases as litigants in person, leading delays and other costs in the civil courts and tribunals system.

Organisations which campaigned against the changes, including LAG, argued that cutting people off from early legal advice was a false economy as their problems would become more acute and eventually need greater state spending to resolve.^{xiii} For example providing early advice to a family with money troubles is preferable, we argue, to waiting for their debts to spiral out of control leading to them losing their home through rent or mortgage arrears and the knock on costs to the state of re-housing the family. The government did not want to consider this as they preferred to concentrate on finding budget reductions in individual departments like the MoJ rather than consider any wider impacts.

Under the previous government, civil legal aid policy was driven by the analysis that clients tend to face clusters of interrelated problems and that services need to be configured to deal with these and to ensure early intervention.^{xiv} Through its planning and procurement strategy the MoJ and LSC attempted to do this. What is now emerging from a combination of the LASPO Act changes and the latest proposals is a rump legal aid scheme with very limited coverage of civil legal problems and little guarantee that there will be lawyers to assist with the cases which are supposed to be still covered under legal aid.

It is difficult to escape the conclusion that as regards central government taking the lead in providing poverty law services in England and Wales we are back to square one.

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- ⁱ Cumulative Legal Aid Reforms, MoJ p2 13 July 2012
- ⁱⁱ For a full discussion of the LASPO Act and the background to it see Austerity Justice, by Steve Hynes pub LAG Nov 2012.
- ⁱⁱⁱ Reform of Legal aid in England and Wales: equality impact assessment, updated June 2012
- ^{iv} P125 Reform of Legal Aid in England and Wales: Equality Impact Assessment July 2012 see <http://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/Royal-Assent-IAs-and-EIAs.zip>
- ^v P127 above
- ^{vi} P8 LSC Annual Report and Accounts 2011/12
- ^{vii} <http://www.guardian.co.uk/society/2013/feb/05/legal-aid-cuts-threaten-shelter>
- ^{viii} Citizens Advice is the largest network of NfP advice providers. It delivers advice services from around 3,500 locations in England and Wales.
- ^{ix} Rochdale pioneers: innovations in the not for profit sector, Legal Action September 2012 p7
- ^x See p137-138 Austerity Justice, Steve Hynes, Nov 2012 pub LAG.
- ^{xi} Policy Briefing: Shifting channels- Housing advice and the growth of digitisation, pub by Shelter
- ^{xii} See p139-140 Austerity Justice.
- ^{xiii} Towards a Business Case for Legal aid, Paper to the Legal Services Research Centre's eighth international research conference, Citizens Advice July 2010
- ^{xiv} See Causes of action: Civil law and Social Justice Pascoe Pleasence et al 2004 pub Legal Services Commission