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PLP Research Briefing Paper

# Legal aid and access to early advice

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### Summary

The overview provided in this briefing paper identifies five key issues relating to the availability of early legal advice,<sup>1</sup> which arise from the reforms to civil legal aid made by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This briefing paper reviews existing research conducted by other organisations that documents how the availability of early advice has an impact on individuals and the civil justice system. The five key issues identified are as follows:

**1. Escalation of problems.** The provision of early legal advice and assistance at the outset of a case can help to prevent issues escalating into more complex and severe problems, which the courts and tribunals often end up resolving. The reduction in the availability of early legal advice means that opportunities to resolve issues earlier in the process are often missed. The cost of delivering early advice is minimal in comparison to the consequences that arise without it (e.g. taking a case to court) and access to early legal advice can also help to prevent the escalation of broader issues such as youth crime, homelessness, and immigration detention.

**2. Access to justice and the growth of advice deserts.** Cuts to legal aid have resulted in the availability of most areas of legal aid advice being significantly limited. The closure of advice and not-for-profit organisations has contributed to the growth of ‘advice deserts,’ where individuals are unable to access any initial advice or legal assistance. Many providers have also voiced concerns about the lower quality of services delivered, as well as the reduction of specialist advice services available.

**3. Role in alternative dispute resolution.** With the introduction of LASPO, the Government aimed to discourage costly court proceedings and considered whether the use

of alternative dispute resolution could offset the impact of cuts to early advice. However, as the evidence reviewed in this briefing demonstrates, early legal advice plays an important role in providing opportunities for alternative dispute resolution outside of the courts.

**4. Increase in Litigants in Person.** Since LASPO the number of Litigants in Person (LiPs) within the court system has risen, including those bringing unmeritorious claims. The rise in LiPs is, in part, likely a consequence of the diminished availability of early advice, and there is mounting evidence to indicate the costly burden this has on the courts and tribunals.

**5. Wider costs to society.** There is evidence that indicates that the reduction in early legal advice shifts the burden of public spending, rather than reducing it. Where individuals are unable to access initial advice for their legal issues, there may be wider societal costs. For example, an additional burden placed on the NHS and the welfare system where legal issues escalate to greater social problems such as homelessness.

### Escalation of problems

The inaccessibility of early legal advice and assistance under LASPO has been widely criticised by lawyers and the not-for-profit sector.<sup>2</sup> There is significant evidence to indicate that the funding cuts implemented by LASPO have caused the escalation of legal issues at a higher cost to the public purse. The Bach Commission *Right to Justice* report calls for a refocus on early legal advice to help prevent problems developing later on.<sup>3</sup> The Legal Aid Practitioner’s Group (LAPG) similarly calls for the reinstatement of initial legal advice in the *Manifesto for Legal Aid* (2017),<sup>4</sup> to allow people to be equipped to solve their problems at an early stage. The *Manifesto* argues that the cost of early advice is

relatively low and allows disputes to be resolved without the additional expense of going through the courts system.

The 2014 report by the Low Commission highlights the importance of getting decisions right first time, noting that the cost of appeals against welfare benefits trebled from £21 million in 2009/10 to £66 million 2012/13.<sup>5</sup> Preventative measures could help to mitigate such costs, and if early advice was available for individuals, mistakes by decision makers could be quickly resolved. The report emphasises that early action would reduce the number of people needing specialist advice later on, reducing the intensity of demand and the repeated demand made on the system in some cases.

The House of Commons Justice Committee report into the impact of LASPO<sup>6</sup> notes that witnesses reported early intervention to be considerably cheaper than waiting until issues escalated. It also highlights evidence of increased costs to public authorities in homelessness cases, and emphasises that in immigration cases, the use of detention could be avoided if individuals were told the merits of their immigration claim from the outset via early intervention.

The Bar Council argues that addressing problems at the earliest point means that issues can be prevented from escalating and becoming an unnecessarily complex burden on the courts.<sup>7</sup> Similarly, the Welsh Government, in a 2013 Advice Services Review,<sup>8</sup> noted that early intervention could reduce the need for costlier intervention at a later stage. The Justice for All report, *Saving Justice*,<sup>9</sup> demonstrates how the removal of civil legal aid has seriously harmful legal consequences. The report contains evidence from a range of not-for-profit groups, including the Howard League for Penal Reform, which draws attention to how initial intervention is no longer available for family breakdown. This can lead to educational underachievement, resulting in increases in youth crime and greater economic risks in the long term.

The Law Centre's Network, when providing evidence to the Bach Commission, highlighted that recent Ministry of Justice statistics demonstrated the average cost per case for civil legal has increased post-LASPO, indicating that more severe cases are costlier.<sup>10</sup> Early intervention may help to achieve cost reduction.

However, the Home Office carried out a pilot study for the introduction of early advice in the asylum process. The Early Legal Advice Project (ELAP),<sup>11</sup> found that the average costs of a case receiving publicly funded legal aid increased. It is important to note that the Home Office statistical analysis of the costs for the ELAP did not include the costs of processes not included in the model, for example removals, detention or public services associated with refugee integration.<sup>12</sup> The ELAP also found that fewer cases were going to appeal, which could result in savings by the MoJ due to the overall fall in refusals within the early advice process.

In contrast to the Home Office study, the Irish Refugee Council report, *Providing protection - Access to early legal advice for asylum seekers*,<sup>13</sup> highlights the importance of early legal advice for asylum seekers. The report emphasises that the ELAP found early advice to be more expensive due to the extended time frame, and because the legal representatives were paid differently to the usual process. Additionally, the definition of cost was questioned as to whether the calculation of costs could be limited to the amount spent on legal aid, or whether the cost of detention and longer term costs associated with challenges were deemed relevant. Overall, the Irish Refugee Council conclude that early advice can have a positive impact on the outcome of a claim for international protection, and thus can be a "vital part of a high quality system of international protection."<sup>14</sup>

## Access to justice and the growth advice deserts

The sparse availability of early advice creates challenges for access to justice. It has been argued that cuts to early advice introduced by LASPO have resulted in the formation of 'advice deserts', which threaten access to justice.

The House of Commons Justice Committee report on the impact of changes to civil legal aid criticised the Government for the lack of information concerning the geographical coverage of advice.<sup>15</sup> Data published by the Legal Aid Agency has shown that areas in a third of England and Wales have either one or no source of housing advice and, in a briefing in 2016, the Law Society called for the commission of a second provider for areas that only had one provider.<sup>16</sup> The Law Society noted that families on low income may not be able to travel a long way to see a provider, and one firm serving a large area may not have the capacity to advise all of those in need.

The Bar Council 2014 report observed that Citizens Advice has found it hard to refer people to specialist advice needed.<sup>17</sup> Similarly, the Low Commission report, *Tackling the Advice Deficit*,<sup>18</sup> demonstrates that many not-for-profit agencies have had to generalise their services, so that specialist advice is not always available. The waiting list for an appointment can be as long as 5 weeks in some areas, which can have a serious impact on access to justice.

Advice services are also facing high rates of closure. A survey of local advice agencies found that Shelter had to close nine of its advice centres, and the Citizens Advice in Gloucestershire went into administration.<sup>19</sup> In the 2014/15 Law Centres Network Annual Review, *Picking up the Pieces*, it was reported that Law Centres had on average lost 40% of their funding since 2011, including "a cut of over 60% to legal aid revenue as a direct result of LASPO."<sup>20</sup> The cuts to funding also resulted in the closure of eleven law centres by 2015.

The Children's Society 2015 report, *Cut Off From Justice*,<sup>21</sup> found a 30% reduction in regulated immigration advice services across the country, and almost a 50% decrease in the number of non-fee charging services regulated to deal with appeals and representation. It also reported that for children who are in local authority care, the advice they can access is limited and inconsistent, with significant variance across local authorities.

Academic research carried out in Liverpool in 2013 on the impact of the legal aid cuts on advice found that 86% of respondents reported an unmet need for advice services, and 91% of respondents reported to be delivering a worse service.<sup>22</sup> This is an example of how the cuts had a significant impact on the quality of service delivered to individuals.

The Bar Council recommends that increased funding for basic, initial legal advice would provide considerable value for money and reduce the burden on not-for-profit and charitable agencies, as the demand for services is "far-outstripping" the pro-bono community's capacity.<sup>23</sup>

## Role in alternative dispute resolution

The role of early advice in enabling alternative dispute resolution, such as mediation, requires further investigation.<sup>24</sup> The Government aimed to offer legal aid to those in greatest need and discourage cases from coming to court through advice or mediation. It was estimated that the level of mediation in family law would increase and offset the cuts to early advice. However, mediation assessments have continued to decrease since the reforms. According to the latest MoJ statistics, there were around 1,500 Mediation Information and Assessment Meetings between October and December 2017, the lowest quarterly figures since the implementation of LASPO.<sup>25</sup>

Amnesty International's *Cuts that Hurt* report highlights that more cases are being resolved by the courts, rather than through mediation,

at greater cost to the state.<sup>26</sup> Similarly, the Law Society, in their submission to the Labour Party Review of Legal Aid,<sup>27</sup> recommended restoring early advice and echoed the statement that the Government underestimated the role that solicitors play in making referrals to mediation. LAPG argued that quick advice could steer individuals to mediation and other dispute resolution, but such cost-effective solutions at present are not being used.<sup>28</sup>

Following the cuts, the Mandatory Civil Legal Advice Gateway was introduced to meet client need whilst delivering a service that was value for money. PLP's own research into the Gateway as an alternative to early advice found that there were low levels of awareness of the service, lower volumes of advice than the MoJ had anticipated, and low levels of referrals to face-to-face advice.<sup>29</sup> Moreover, the research found that the cost per Gateway debt matter in 2013/14 was about 110% higher than the cost per debt matter in 2012/13 in the not-for-profit advice service, once the additional costs of the Gateway had been included. It determined that the cost to be around 70% more than the cost of a debt matter in 2012/13 in a solicitors' firm setting. Similarly, the system resulted in high levels of outcomes that were 'not known' or where the 'client ceased to give instruction.'

## Increase in Litigants in Person (LiPs)

The cuts to legal aid have had an impact on the number of LiPs, particularly within the family courts. The House of Commons briefing paper on Litigants in Person from 2016,<sup>30</sup> cited estimates provided by the National Audit Office, that the increase of LiPs in family courts had cost the Ministry of Justice £3.4m in 2013/14, and the impact of increased number of LiPs in family courts alone, where cases can take 50% longer on average than with represented parties, could cost around £3m. Respondents to the Justice For All report, *Saving Justice*,<sup>31</sup> reported that an increase in LiPs would clog up the courts and

tribunals system, which in turn would be a significant cost to the public purse.

Written evidence from the Judicial Executive Board echoes these claims, noting that the reduction in legal advice following LASPO has had "the most marked effect" on the courts and tribunals.<sup>32</sup> The report argues that whilst there is limited qualitative data on the impact of LASPO, there is much anecdotal evidence reported by judicial office holders, which is enough to conclude that the increase in LiPs has put significant pressure on the system. Included in the evidence it presents is the observation that there has been an increase in unmeritorious claims, most likely as a result of individuals being unable to obtain advice before taking a case to court, and that there are "almost certainly, some meritorious cases never being brought."<sup>33</sup>

## Wider societal costs

There is a growing body of literature that emphasises the wider societal costs incurred as a result of the cuts made by LASPO, and specifically the financial and social costs where early intervention and advice are not available.

Research conducted by LSE into the cutbacks in legal aid funding pre-LASPO found that early intervention saved money in the longer term.<sup>34</sup> The Citizens Advice Bureau published a report in 2010, *Towards a business case for legal aid*, which looked at the economic value of advice and concluded that the value of advice work "more than pays for itself."<sup>35</sup> For every £1 spent on legal aid, the state was estimated to save £2.34 on housing advice, £2.98 on debt advice, £8.80 on benefits advice, and £7.13 on employment advice. Following this in 2014, a study into the impact of Citizens Advice services found that for every £1 spent on Citizens Advice services in Bath and North-East Somerset, a value of between £33–£50 was generated.<sup>36</sup> A significant social return on investment was found from delivering advice services.

The Committee of Public Accounts 2015 report on the LASPO reforms to legal aid criticised the Ministry of Justice for failing to

show evidence of the knock-on costs of the reforms.<sup>37</sup> It argued that the projected £300m spending reduction in the legal aid budget was outweighed by costs elsewhere, for example in the inability to access advice to resolve legal problems, which resulted in increased physical and mental health problems. Likewise, the National Audit Office report into implementing the reforms to civil legal aid confirmed that the additional costs to society had not been considered, for example costs to welfare programmes or the NHS.<sup>38</sup> Unite the Union and Goldsmiths University published a paper focusing on LASPO and its effect on access to justice, which also concluded that the costs of cutting advice and legal aid had merely shifted the costs onto other areas of the public purse.<sup>39</sup>

There is also further evidence that demonstrates the wider effects of civil legal problems. The 2017 Law Society Review: *LASPO 4 years on* cites research by Balmer and Pleasence that shows a typical young person with a civil legal problem costs local health, social, and housing services £13,000 if they cannot find early advice.<sup>40</sup> A 2011 report by Youth Access, pre-LASPO reforms, estimated the costs of unresolved welfare issues in young adults were £1 billion per year to society.<sup>41</sup> Additionally, the Legal Action Group looked into the effects of legal advice on health by carrying out an opinion poll of GPs.<sup>42</sup> It found that a majority of GPs noticed an increase in patients who would have benefitted from legal advice on social welfare issues in the year following LASPO, and 88% agreed that the denial of access to advice would have a negative effect on health either

to a great extent (48%), or to some extent (40%).

## Conclusion

The existing evidence suggests that the cuts to legal aid that have been implemented by LASPO have had significant and widespread impact on access to early legal advice, with broader implications for access to justice and the effective functioning of the justice system. The reintroduction of early advice is now being requested by many.

The announcement of the LASPO review highlighted that the reforms had originally been based on delivering better value for money for taxpayers and discouraging unnecessary litigation. Across the literature, a common view is that the failure to offer early intervention results in costly consequences, which could be prevented if advice was available to individuals from the outset of their case. Similarly, the rise of unmeritorious claims and LiPs within the family courts has been linked to the inability to access initial support.

The wider societal costs that result from a lack of early advice has been raised in many reports, but the Government has not completed a formal review of this issue. Evidence and research from various organisations suggests that early advice prevents escalating costs, for example those incurred where the inaccessibility of advice contributes to health issues or homelessness.

## References

<sup>1</sup> “Legal help is the term used by the Legal Aid Agency to refer to legal advice and assistance, but not representation, for a legal problem” from the Bach Commission’s glossary of terms. See, The Bach Commission, *The Right to Justice* (The Fabian Society, 2017), p.4.

<sup>2</sup> Amnesty International, *Cuts That Hurt* (2016).

<sup>3</sup> The Bach Commission, *The Right to Justice* (The Fabian Society, 2017).

<sup>4</sup> Legal Aid Practitioners Group, *Manifesto for Legal Aid* (2<sup>nd</sup> edn, 2017).

<sup>5</sup> The Low Commission, *Tackling the Advice Deficit* (2014), citing ‘Crackdown on disability benefits costs taxpayer £66m in appeals costs’,

*Independent*, 21 July 2013, available at: <[www.independent.co.uk/news/uk/politics/crackdownondisability-](http://www.independent.co.uk/news/uk/politics/crackdownondisability-)

benefits-costs-taxpayer-66m-in-appeals-costs-8724779.html>.

<sup>6</sup> House of Commons Justice Committee, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (HC (2014-15) 311).

<sup>7</sup> The Bar Council, *The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): One Year On Final Report* (2014).

<sup>8</sup> Welsh Government, *Advice Services Review: Final research report* (2013).

<sup>9</sup> Justice for All, *Saving Justice: Where next for legal aid?* (no date of publication stated).

<sup>10</sup> Law Centres Network, *Evidence to the Bach Commission on Access to Justice* (2016).

<sup>11</sup> Home Office, *Evaluation of the Early Legal Advice Project Final Report* (2013).

<sup>12</sup> *Ibid*, p.41.

<sup>13</sup> Irish Refugee Council, *Providing Protection, Access to early legal advice for asylum seekers* (2014), p.28.

<sup>14</sup> *Ibid*.

<sup>15</sup> House of Commons Justice Committee, *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (HC (2014-15) 311).

<sup>16</sup> The Law Society, *Legal aid deserts in England and Wales* (2016).

<sup>17</sup> The Bar Council, *The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): One Year On Final Report* (2014).

<sup>18</sup> The Low Commission, *Tackling the Advice Deficit* (2014).

<sup>19</sup> *Ibid*, p.7.

<sup>20</sup> Law Centres Network, *Picking up the Pieces: LCN Annual Review 2014/15* (2015), p.2.

<sup>21</sup> The Children's Society, *Cut Off From Justice* (June 2015).

<sup>22</sup> Charity Law and Policy Unit, *The Impact of Legal Aid Cuts on Advice-Giving Charities in Liverpool: First Results* (2013).

<sup>23</sup> The Bar Council, *The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): One Year On Final Report'* (2014).

<sup>24</sup> R. Hunter, *Inducing demand for family mediation – before and after LASPO* (Journal of Social Welfare and Family Law, 2017).

<sup>25</sup> Ministry of Justice, *Legal Aid Statistics Quarterly, England and Wales, October to December 2017* (2018).

<sup>26</sup> Amnesty International, *Cuts That Hurt* (2016).

<sup>27</sup> The Law Society, *Submission of the Law Society of England and Wales to the Labour Party Review of Legal Aid* (2016).

<sup>28</sup> Legal Aid Practitioners Group, *Manifesto for Legal Aid* (2<sup>nd</sup> edn, 2017).

<sup>29</sup> Public Law Project, *Keys to the Gateway: An Independent Review of the Mandatory Civil Legal Advice Gateway* (2015).

<sup>30</sup> House of Commons Library, *Litigants in person: the rise of the self-represented litigant in civil and family cases* (HC (14 January 2016) Briefing paper 07113)

<sup>31</sup> Justice for All, *Saving Justice: Where next for legal aid* (no date of publication stated).

<sup>32</sup> *Written evidence from the Judicial Board (MSC 84)* (2014), p.2.

<sup>33</sup> *Ibid*.

<sup>34</sup> London School of Economics, *Research impact: making a difference* (2014).

<sup>35</sup> Citizens Advice Bureau, *Towards a business case for legal aid* (2010).

<sup>36</sup> University of Bath, *Proving the value of advice: a study of the impact of Citizens Advice Bureau services* (2014).

<sup>37</sup> Committee of Public Accounts, *Implementing reforms to civil legal aid* (House of Commons, 4 February 2015, HC 808).

<sup>38</sup> National Audit Office, *Implementing reforms to civil legal aid* (House of Commons, 17 November 2014, HC 784).

<sup>39</sup> Unite the Union and Goldsmiths, *Magna Carta today?* (2015).

<sup>40</sup> The Law Society, *Access Denied? LASPO Four Years On: A Law Society review* (2017).

<sup>41</sup> Youth Access, *The outcomes & impact of youth advice – the evidence* (December 2011).

<sup>42</sup> Legal Action Group, *Healthy Legal Advice: Findings from an opinion poll of GPs* (2014).



