

COST IMPLICATIONS AND POTENTIAL SAVINGS

Prepared by staff at the Fabian Society

Bach Commission on Access to Justice – Appendix 7

This paper sets out the cost implications of the proposals in the final report, and explores the possible savings that our reforms could make.

Please note: This appendix was prepared by staff at the Fabian Society and considered by the Bach Commission. It should not be read as the collective work of the commission.

Bach Commission

Appendix 7: Cost implications and potential savings

When the government introduced LASPO, they set out to cut a significant proportion of legal aid expenditure. The documentation presented to parliament alongside the bill estimated savings of £450m (in today's prices) but legal aid spending is now £950m less annually than in 2010.¹

We estimate that the annual costs of the proposals in this report will be less than this unplanned government underspend of £500m, at least for the period of the next spending review. Table 1 below explains our rationale for each estimate, and demonstrates that we expect to see our proposals lead to an annual increase in spending of around £400m per annum. The significant components of this figure are an additional £120m for changed eligibility requirements, and £180m for a wider scope for legal aid.

We have not costed the cross-government savings that we would hope to see as a result of the proposed reforms, but have analysed a wide range of literature which suggest that significant savings could be possible. Our reforms will lead to a reduction in administration costs, fewer litigants in person and savings secured by providing help at an early stage rather than at crisis point.

The Commission accepts that legal aid expenditure was too high before LASPO, and does not seek to simply return to pre-LASPO levels in the short term. In the longer term, as we move towards our ambition of a right to affordable justice for all, we anticipate that further increases in spending may be necessary across government departments, but these should be gradual and must take into account the state of public finances. Justice expenditure will remain a tiny share of overall public spending.

Anticipated costs

We have made a series of estimates about what additional government spending might look like in the first few years of the Right to Justice Act. We have not costed every recommendation in the report as many should be achievable within existing budgets, and others will require further consultation. The total costs of the recommendations listed below is approximately £400m per annum.

Recommendation	Estimated cost	Notes
Part 1: Legal aid appeals based on the right to justice	£16m	<ul style="list-style-type: none"> Spending arising from extra eligibility for legal aid as a result of individual Right to Justice litigation cannot be forecast For the next Spending Review period a maximum annual allocation of £16 million is assumed, as this reflects the current underspend of Exceptional Cases Funding - which is designed to secure people current rights to justice, beyond the normal scope of legal aid (ECF spending was originally intended to be £22m and is currently £6m per year).
Part 1: The Justice Commission	£7m	<ul style="list-style-type: none"> Assumed budget, based on comparable inspectorates – between the Equality and Human Rights Commission (£19m) and HM Inspectorate of Prisons (£4m).
Part 2, 1 to 10: broader eligibility for legal aid	£120m	<ul style="list-style-type: none"> We have costed the combined impact of all reforms that will broaden eligibility for civil legal aid, by assuming an overall increase in the percentage of households eligible Our mid-range estimate for the number of households eligible for civil legal aid is 25 per cent today and 33 per

¹ We have used estimates and date from: Cumulative impact assessment (RA stage) found at <https://www.justice.gov.uk/legislation/bills-and-acts/acts/legal-aid-and-sentencing-act/laspo-background-information> & LAA legal aid statistics at <https://www.gov.uk/government/collections/legal-aid-statistics>

		<p>cent after reform, an increase in the eligible population of one third.</p> <ul style="list-style-type: none"> • 19 per cent of households currently receive ‘passporting’ benefits and this figure would rise to 29 per cent with the inclusion of all households receiving universal credit. Both before and after reform an additional number of households are eligible, following application of the legal aid means-test. • Survey evidence indicates that the level of civil legal need is over twice as high among households already eligible for legal aid, as those that are not, implying that the volume of claims will rise by no more than one sixth – ie £109m.² Spending would build up gradually as awareness increased. • This estimate is much greater than the government’s costing for extending eligibility to all universal credit claimants (£14m), which assumes no other changes to eligibility and appears to disregard the behavioural impacts of a more generous means test. • Extra spending on criminal legal aid is significantly lower. If
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² We used the following sources to make our estimate: http://budgetresponsibility.org.uk/docs/dlm_uploads/UC-caseload-forecasts-supplementary-forecast-information-release.pdf; <https://www.gov.uk/government/publications/benefit-expenditure-and-caseload-tables-2017>; <https://www.gov.uk/government/statistical-data-sets/live-tables-on-household-projections>; <http://asauk.org.uk/wp-content/uploads/2013/09/Dramatic-drop-in-civil-legal-aid-eligibility.pdf>; https://consult.justice.gov.uk/digital-communications/legal-aid-eligibility-and-universal-credit/supporting_documents/annexauniversalcreditimpactassessment.pdf;

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		<p>all unsuccessful applications for legal aid in magistrates' courts were granted this would cost £8m per year. If crown court contribution rules were relaxed to reduce gross income from orders by a quarter it would cost less than £4m net.</p>
<p>Part 2, 11 to 17: Wider scope</p>	<p>£180m</p>	<ul style="list-style-type: none"> • <u>Legal help:</u> Our proposals for extending the scope of legal help would not fully restore 2009-10 spending in this area. This is because 1) we are not proposing the extension of controlled legal representation, 2) there has been a decline in infrastructure and awareness, and 3) some areas of law covered before LASPO will remain out of scope. • We assume 70% of cuts since 2009-10 are reversed - ie £122m extra spending in today's prices. We have been unable to cost the extension of legal help for prisoners due to a lack of available data. • <u>Representation:</u> Family law cases made up 85% of all civil representation costs met by the LAA in 2009-10, but some aspects have remained in scope and we only suggest that certain areas of family law should be restored. Immigration cases are a tiny fraction of costs, and there is insufficient data on cases concerning children.

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		<ul style="list-style-type: none"> • We assume that our reforms will lead to up to 50% of the savings since 2009-10 being reversed - ie £58m in today's prices. • <u>Inquests and Judicial Review</u>: The number of extra cases that can be expected to receive funding is very low – proposals in these areas can be expected to cost no more than £2m.
Part 2, 18 to 20: Administrative changes	n/a	<ul style="list-style-type: none"> • No increase in spending. These changes should be completed within existing budgets, with the aim of saving money where possible.
Part 2, 21: Mandatory gateway	£2m	<ul style="list-style-type: none"> • The government estimated the cost savings it would make by making advice in these three areas mandatory in its 2012 impact assessment, estimating savings between £2m and £1m per year. In the same impact assessment, the government discusses an increase in Operator Service costs of 33%. It estimated this would cost £0.4m.
Part 2, 22: Independent review	n/a	<ul style="list-style-type: none"> • No increase in spending. This should be undertaken within existing budgets.
Part 2, 23: Ofsted	n/a	<ul style="list-style-type: none"> • No increase in spending. This should be undertaken within existing budgets.

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24: New portal	£1m	<ul style="list-style-type: none"> • Law for Life, who run the Advice Now website, spent £248,924 on their activities to advance public legal education in 2016.³ • A new platform will require ongoing staff support, so a figure up to £1m is reasonable.
Part 2, 25: Advice fund	£50m	<ul style="list-style-type: none"> • The Low Commission called for the creation of a £100m fund, with half the funding coming from government (to be administered by the Big Lottery Fund), and half from a combination of other local and national statutory, commercial and voluntary providers. • The Commission echoes this call, and supports the introduction of a new, ring-fenced fund for advice providers who are able to evidence the effectiveness of their approach to delivering advice to people within their communities. • See here for more information on Low Commission costings. • Estimated annual cost to government of £50m.
Part 2, Additional allowance for the	£30m	<ul style="list-style-type: none"> • Simultaneously extending the scope and eligibility of civil legal aid costs more than each policy in isolation.

³ http://www.lawforlife.org.uk/wp-content/uploads/LfL_AR2015-2016_finallo2.pdf

combined impact of scope and eligibility changes for civil legal aid		
Total cost per annum	In the region of £400m	

Expected savings

We expect that a number of our recommendations will ensure significant savings for the exchequer. These savings include downstream cost savings as a result of the provision of early legal help and advice, a reduction in the number of litigants in person and a reduction in administration costs.

The costs and benefits of advice and early legal help

While the social benefits of legal aid are clear, it is also important to keep in mind the potential economic benefits of ensuring access to early legal help. The coalition government's main objective in introducing LASPO was to save money. The sledge hammer approach adopted under LASPO has ostensibly succeeded in that aim.⁴ Yet what that approach overlooks is the downstream cost to the public purse caused by the adverse consequences associated with legal problems, especially in light of the fact that social welfare problems (in particular) often cluster.⁵ When a person's legal problem is allowed to spiral out of control, this can lead to the burden being shifted from the justice system to elsewhere in the public sector, for example the health service.⁶ Damningly, the National Audit Office (NAO) in its review of the implementation of LASPO, concluded that the Ministry of Justice (MoJ) failed to estimate the scale of the wider costs of reforms, "because it did not have a good understanding of how people would respond to the changes or what costs or benefits might arise".⁷

A lack of reliable empirical data is an unfortunate hallmark of the legal aid debate. In an evidence review for the Low Commission on the business case for legal aid, Professor Cookson and Dr Mold call for more "good quality [peer reviewed] research on the economic value of legal aid".⁸ But as noted, the MoJ is just as guilty of failing to account for the impact of its reforms, with the National Audit Office concluding that it is unclear whether the department has met any of its wider objectives for LASPO.⁹ This is a highly concerning state of affairs, given its implication that the devastating cuts have not even achieved what they were meant to. The commission encourages an increase in both independent and MoJ commissioned research into the full economic picture of legal aid provision.¹⁰

While hard statistical data on the economic case for legal aid is elusive, there is a stream of studies primarily from the UK advice sector which point toward the conclusion that an investment in legal aid, and particularly early legal help, results in significant savings in other areas.^{11 12}

4 National Audit Office: Report by the Comptroller and Auditor General, *Ministry of Justice and Legal Aid Agency: Implementing reforms to civil legal aid*, HC 784 Session 2014-15, 20 November 2014, pp. 6-7.

5 G Cookson and F Mold, Low Commission, *The business case for social welfare advice services: An evidence review – lay summary* (2014), p. 2.

6 Citizens Advice, *Towards a business case for legal aid: Paper to the Legal Services Research Centre's eighth international research conference* (2010), p. 2. See also, Pleasance et al, 'The Health Cost of Civil Law Problems: Further Evidence of Links Between Civil Law Problems and Morbidity and the Consequential Use of Health Services', 5(20 *Journal of Empirical Legal Studies*, pp. 351-374.

7 Note 3, p. 6.

8 Note 4, p. 5.

9 Note 3, p. 8.

10 For a suggestion of what any comprehensive survey of the impact of LASPO should look like see, R Smith, 'The Coalition Government's Cuts to Legal Aid: Who is Counting the Cost?' (2015), Goldsmith's University of London, PERC Papers Series: Paper No. 4, pp. 7-8. See also, A Houseman and E Minhoff, *The Anti-Poverty Effects of Civil Legal Aid*, Prepared for the Public Welfare Foundations., October 2014.

The most commonly cited study in favour of expansive legal aid is a 2010 report from Citizens Advice which concluded that legal aid “delivers a substantive economic benefit”.¹³ Relying on data from the Civil and Social Justice Survey, and the Legal Services Commission’s outcomes data for legal aid, Citizens Advice developed a model which estimated that for every £1 spent, the state potentially saves:¹⁴

- £2.34 from legal aid spent on housing advice;
- £2.98 from legal aid spent on debt advice;
- £8.80 from legal aid spent on benefits advice;
- £7.13 from legal aid spent on employment advice.

Likewise, in 2010, the New Economics Foundation (NEF) and AdviceUK estimated the social return on investment for debt advice and housing advice as more than £9 for every £1 spent.¹⁵ In 2011, Scope made found that legal aid expenditure on disabled people’s welfare benefits cases provides value for money, noting that the low cost of fixed fee advice on such cases provides high quality early intervention and prevents costly appeals.¹⁶

There has also been research into the socio-economic value of legal aid to individuals, wider stakeholders, organisations and the local community.¹⁷ Research by NEF from 2008 on the socio-economic value of law centres reported (albeit cautiously) that an example used for eviction prevention had a socio-economic benefit to cost ratio of 1:6, with the result that for every £1 spent, a socio-economic value of £6 was generated.¹⁸

These findings, in turn, underpinned the Law Centre Network’s 2014 report *Funding for Law Centres* which was prepared for them by ICF Consulting Services Ltd.¹⁹ They included an estimate that law centres delivered significant economic impacts, with benefits largely accruing in the form of direct and indirect savings in publicly-funded services which would otherwise be incurred in the absence of the services delivered by Law Centres:

- Between £446.5m and £519.5m in direct cost savings by reducing the annual costs associated with debt and temporary accommodation;
- Approximately £450.6m in indirect cost savings by reducing downstream or “spill over” costs associated with homelessness, stress, anxiety and ill health; and
- £99.8m in additional tax revenues to the Exchequer as employment is created and/or safeguarded.

The resulting net impacts were assessed at £212-247m for direct cost savings, £214-294m for indirect cost savings, and £48-65m for net revenue benefits.

11 Ibid. pp. 3-4.

12 This paper relies heavily on the extensive literature review undertaken in 2014 for the Low Commission, see note 4. The Low Commission evidence review provides a comprehensive snap shot of the costs-benefit data and research up until 2014.

13 Ibid. p. 2.

14 Ibid. p. 2 and pp. 16-31.

15 NEF and AdviceUK, *Outcomes in Advice* (2010), p. 12.

16 C Sarb and M Bush (Scope), *Legal aid in welfare: the tool we can’t afford to lose* (2011), <http://baringfoundation.org.uk/wp-content/uploads/2011/10/LegalAidinWelfare.pdf> (accessed 17 August 2017).

17 NEF, *The socio-economic value of Law Centres* (2008) <http://www.lawforlife.org.uk/wp-content/uploads/2013/05/nef-socio-economic-benefits-of-law-centres-129.pdf> (accessed 17 August 2017).

18 Ibid. p. 19.

19 <http://www.lawcentres.org.uk/policy-and-media/the-case-for-law-centres> (accessed 18 August 2017).

Finally, there are clearly a range of economic benefits to accessing early legal advice which are almost impossible to monetise or estimate.²⁰ The Low Commission evidence review lists the following as examples: “*the lower educational attainment of children living in temporary accommodation following an eviction or repossession, or the psychological impacts on household members which may lead to increased healthcare expenditure and benefits claims, or poorer labour market outcomes*”.²¹

Evidence from the US and across the Commonwealth bears out our view on the medium and long-term gains to the exchequer our proposals would create. In the Australian context, research by PricewaterhouseCoopers (PwC), commissioned by National Legal Aid, concluded that direct legal aid provision for family matters had a net benefit for the justice system of approximately Aus\$1.60 to Aus\$2.25 for every dollar spent.²²

Similarly, the Canadian Bar Association estimated savings from legal aid as between CAD\$1.60 and CAD\$30 for every dollar put into legal aid.²³ These figures were reached by synthesising evidence from around the world, including studies from the UK.²⁴

A significant volume of research has emerged in the US context. A study looking at legal aid in Nebraska found that for every USD\$1 spent on legal aid in that state, saved the government USD\$3.97.²⁵ A 2010 study in New York similarly found that every USD\$1 spent on legal aid would generate USD\$5.²⁶ Similar studies have also been carried out in Florida, Texas, Louisiana and Massachusetts, all of which found that spending on legal aid has positive overall economic benefits.²⁷

Litigants in person

In addition to the wider economic benefits of providing legal aid, particularly in support of early intervention in social welfare cases, we must also take into account the savings made within the justice system itself through the provision of publicly funded legal advice and assistance. Since LASPO, there has been a clear and sharp increase in litigants in person (LiPs), ie litigants who represent themselves in court. In the year following LASPO, there was an increase of 18,519 (30 per cent) cases in which both parties were self-represented in the family courts. Judges have estimated that cases involving LiPs can take 50 per cent longer and many legal professionals have said that this puts greater demand on court staff.²⁸

While this clearly has a negative impact on the administration of justice, is it also a waste of costly resources. The Public Accounts Committee estimated that the increase in self-representation would result in an additional cost of HM Courts & Tribunals Service at £3m per annum, in addition to direct costs to the MoJ of £400,000 per annum.²⁹ While the MoJ identified the potential for wider costs to the public sector as a result of LASPO in its 2012 impact

20 Note 4, p. 3.

21 Ibid.

22 PwC, *Economic value of legal aid: analysis in relation to Commonwealth funded matters with a focus on family law* (2009) http://www.legalaidact.org.au/pdf/economic_value_of_legalaid.pdf (accessed 17 August 2017).

23 S Matthews, *Making the case for the economic value of legal aid: briefing note*, Canadian Bar Association (CBA), British Columbia Branch (2012).

24 Note 4, p. 2.

25 R Feelhaver and JA Deichert, *The economic impact of legal aid in Nebraska – 2007*, Center for Public Affairs Research, University of Nebraska, 2008.

26 *The Task force to expand access to civil legal services in New York: report to the Chief Judge of the State of New York*, Task Force to Expand Access to Civil Legal Services in New York (2010) <http://www.nycourts.gov/accesstojusticecommission/PDF/CLS-TaskForceREPORT.pdf> (accessed 17 August 2017).

27 Note 4, p. 2 for details and references.

28 Committee of Public Accounts (HoC), *Implementing reforms to civil legal aid*, Thirty-sixth Report of Session 2014-15, [http://www.parliament.uk/documents/commons-committees/public-accounts/HC%20808%20civil%20aid%20final%20\(web%20version\)%20v2.pdf](http://www.parliament.uk/documents/commons-committees/public-accounts/HC%20808%20civil%20aid%20final%20(web%20version)%20v2.pdf) (accessed 17 August 2017), p. 6.

assessment, the Public Accounts Committee notes that it has done nothing since to measure the scale of the cuts. The Public Accounts Committee thus concludes that the MoJ is “unable to say whether the cuts that it made to legal aid spending have simply shifted costs elsewhere in the public sector”.³⁰

Again, research from overseas lends credence to this scepticism. Like the Public Accounts Committee, the Canadian Bar Association found that self-represented litigants consume more public resources, for example because of lengthier trials due to unfamiliarity with court procedure and the need for more judicial intervention throughout proceedings. This finding played a significant role in the overall level of savings it calculated investment in legal aid as creating.³¹

Administrative costs

In the main body of the report we discuss at length the burden that excessive bureaucracy in the Legal Aid Agency places upon both providers and clients. It also burdens the exchequer. The LAA was founded in 2013-4, and its administrative costs in its four years of existence have been £106m, £110m, £112m and £95m respectively.³² These figures are in line with the administrative costs of the LAA’s predecessor, the Legal Services Commission.³³

But some of the work they do could be done more cost effectively. Our report suggests a number of these measures, including:

- Removing the needless duplication of means-testing for legal aid eligibility and instead deeming those in receipt of benefits automatically eligible
- Creating a single, composite audit to replace the overbearing auditory regime legal aid providers face
- Scrapping separate capital assessments for legal aid and adopting the same capital provisions as for means-tested benefits

29 Ibid.

30 Ibid, p. 7.

31 S Matthews, *Making the case for the economic value of legal aid: briefing note*, Canadian Bar Association (CBA), British Columbia Branch (2012).

32 See Legal Aid Agency. (2015) *Annual Report and Accounts 2014-15*, p. 66. Accessed September 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434072/laa-annual-report-accounts-2014-2015.PDF and Legal Aid Agency. (2017) *Annual Reports and Accounts 2016-17*, p. 74. Accessed September 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/632150/laa-annual-report-2016-17.pdf

33 Legal Services Commission. (2013) *Annual Reports and Accounts 2013-2013*, p.26. Accessed September 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246661/O337.pdf