

THE CURRENT STATE OF ACCESS TO JUSTICE

The Written Evidence

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Bach Commission on Access to Justice – Appendix 2

This paper sets out answers to questions 2 and 3 of the Bach Commission's public call for written evidence:

- *In a sentence, what are your biggest concerns about the state of access to justice?*
- *Please outline in more detail the way in which you/your organisation's work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice*

It is arranged in accordance with the sub-questions asked in the call (with exceptions that cannot be neatly categorised) but there are many overlaps

Please note: The contents of this appendix were collated by Sir Henry Brooke and considered by the Bach Commission. They should not be read as the collective work of the commission.

September 2017

Explanatory note

In 2016, the Commission on Access to Justice issued a public call for written evidence to assist its work exploring access to justice as a fundamental entitlement. The response to the call was impressive, the Commission receiving evidence from a large variety of sources. The call for written evidence contained questions based around two headings:

1. The current state of access to justice
2. Transforming our justice system

This document, Appendix 2, was prepared for the benefit of Commissioners on 5th June 2016. It contains extracts from the evidence received under the first heading up to the end of May 2016. Given the volume of written material, it makes no attempt to reproduce the evidence in full. The complete evidence of any of the contributors listed in the Index of this document is available on the Commission's website at <http://www.fabians.org.uk/right-to-justice-the-appendices/>

Throughout this document, contributors are referred to by acronyms. Please refer to the Index at the end for contributors' names in full.

Questions – Respondents were asked to provide answers to the following:

- In a sentence, what are your biggest concerns about the state of access to justice?
- Please outline in more detail the way in which you/ your organisation's work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice. Examples include the following:
 - What would you describe as the biggest impact of LASPO?
 - What difficulties do you, your clients or the people you represent face in enforcing their legal rights?
 - What difficulties do you, your clients or the people you represent face in navigating bureaucratic legal procedures?
 - How have court and tribunal fees affected you, your clients or the people you represent's capacity to enforce their legal rights?
 - What, as a user of the system, are you or your client's biggest frustrations?

These extracts from the evidence were loosely grouped under seven themes suggested in a paper from the Secretariat: Establishing a minimum standard; Legal aid (its uses and abuses); Education and public awareness; Legal advice; Integration of public services; Technology; and Building public support.

Contents

ACCESS TO JUSTICE: FIRST THEME	6
History of legal aid	6
Relevant rights under international law	8
Absence of any over-arching strategy	11
ACCESS TO JUSTICE: SECOND THEME	14
The legal aid agency	14
The legal aid gateway telephone service	15
Financial eligibility.....	18
Legal aid in the criminal courts	22
Only part of a case is in scope.....	24
Exceptional case funding	24
The residence test.....	32
Wrongful use of LASPO delegated powers	34
Family law	35
Family law - domestic violence – the gateway criteria	39
Family law: cross-examination by the alleged abuser	61
Family law – local authorities and care cases	62
Family law – impact of the cuts on experts	63
Family law – increase in arbitrations	64
Housing	65
Housing cases.....	67
Housing law – complexity	73
Immigration law and practice	73
Immigration: what is in scope under LASPO	76
Immigration - complexity of law	77
Immigration: complexity of procedure	77
Immigration – the knock-on effect of the cuts	78
Immigration – impact of cuts on separated migrant children	79
Undocumented children and young people	79
Impact for those who are still eligible for legal aid in immigration claims	80
Immigration – the effect of restricted appeal rights	81
Welfare law	81

Crime.....	87
Duty solicitors	98
Employment law issues.....	99
Employment advice out of scope.....	103
The effect of the Trade Union Bill.....	103
Discrimination cases	103
Personal injury claims and claims against the police.....	106
QOCS and the need for ATE insurance	113
Prisoners and prison law.....	114
Legal Aid for inquests.....	118
Women – the effects of current policies	126
Barriers between BME women and the statutory services	130
Children – the effect of the cuts	133
Impact of cuts to legal aid on destitute families.....	141
Enforcing children’s rights within immigration cases	144
The needs of the most vulnerable	144
The cost and stress of litigation	146
General concerns post-LASPO	147
Inability to assert and enforce one’s rights	149
Inability to hold the state to account.....	154
Cost: the effect of charges and fees in immigration cases	161
Court closures, court fees, and the impact of staff reductions	163
Courts – the effect of court closures	169
Courts – the effect of staffing problems.....	171
Litigants in person.....	172
The need to simplify language and procedure in courts and tribunals	178
ACCESS TO JUSTICE – THIRD THEME.....	179
Public legal education	179
Lack of awareness that a problem is within scope of legal aid.....	179
ACCESS TO JUSTICE: FOURTH THEME	180
Legal Aid law firms: the effect of LASPO	180
Lawyers: The effect of the cuts.....	185
Religious forums and tribunals	188

ACCESS TO JUSTICE – FIFTH THEME.....	191
Too much weight placed on crisis, not prevention.....	191
Poor decision-making leads to preventable demand for advice	192
Pro bono, advice agencies and other assistance for litigants	194
Transfer of responsibility to local authorities	208
ACCESS TO JUSTICE – SIXTH THEME	209
The new online court	209
The need to encourage early resolution by ADR	210
ACCESS TO JUSTICE: SEVENTH THEME.....	214
Stories	214
INDEX OF CONTRIBUTORS	224

ACCESS TO JUSTICE: FIRST THEME

History of legal aid

FLDSM It had always been widely accepted that access to justice was a mark of a civilised society, and this was confirmed by the introduction of legal aid in 1949 as a pillar of the welfare state. Legislation has been passed since that date governing the rules around the availability of legal aid.

The Access to Justice Act 1999 saw the biggest changes to the system for fifty years. This Act ensured that while legal aid was available to those who needed it, it was subjected to independent government assessments to ensure that every application met the necessary requirements in terms of the merits of the case, and to ensure that the applicant did not have the financial means to pay for their representation themselves. This meant that every case where legal aid has been granted it has been assessed as requiring legal advice and representation to progress or conclude the matter for the families involved.

Many cases where civil legal aid was granted under the Access to Justice Act were subject to what was commonly known as the “statutory charge liability” which protects public money and ensures that monies that were utilised on individual cases were repaid by that individual at the conclusion of the case, or at a later date, where property or other assets were recovered or preserved. In addition, in many cases the applicant would be required to pay a monthly contribution to the costs.

In April 2013 LASPO was implemented which saw substantial cuts to the scope of work that can be carried out under civil legal aid. Civil legal aid is now governed by Part 1 of LASPO 2012. The cuts removed the majority of private family law – that is primarily divorce, financial issues on separation and disputes between parents about the arrangements for the children - from the remit of legal aid and left millions of people, many vulnerable and many who simply cannot afford to take the matter to Court themselves, unable to access the legal advice they would have been able to previously.

HSSL When the civil legal aid scheme was set up in 1950, it provided 80% of the population with a means-tested entitlement to civil legal aid. By 2009, only 36% of the population was financially eligible. The impact of LASPO restricted financial eligibility for civil legal aid to just 20% of the population.

PLP LASPO was borne of the 2010 Coalition government’s drive for austerity. The stated intention in the November 2010 consultation paper “Proposals for the reform of Legal Aid” was to cut £350 million from the legal aid budget.¹ As is well known, LASPO introduced a fundamental shift in the legal aid scheme, from a presumption that a matter was “in scope” for legal aid, absent express provision otherwise, to the presumption that a matter was “out of scope”, absent its express inclusion in Part One Schedule One of LASPO. In so doing, LASPO took many areas of law out of scope for legal aid. The matters retained in-scope were those identified as being priority areas in the context of access to justice. LASPO also moved the administration of the legal aid scheme away from the Legal Services Commission (“LSC”), an independent executive non-departmental public body, to the Legal Aid Agency (“LAA”), an executive agency within the Ministry of Justice headed by the Director of Legal Aid Casework, a civil servant

¹ Ministry of Justice. (2010) *Proposals for the reform of Legal Aid*; Accessed September 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf (Accessed

appointed by the Lord Chancellor. The LASPO legal aid scheme does not, therefore, have the same level of independence as its predecessor.

The impact of LASPO on the number of civil cases funded by legal aid was dramatic: the November 2014 report of the National Audit Office (“NAO”) observes that 28% fewer civil legal representation certificates were issued by the LAA in 2013-2014 than in 2012-2013, and that there was a drop in civil legal help (initial advice and assistance) matters funded of 70% in the same period.² LASPO came into force at a time when there had been no increase in civil legal aid fees since 1998-99, and a 10% cut in 2011. The NAO has calculated that this amounts to a 34% real-terms reduction in civil legal aid fees over that 13-year period.³ In these circumstances it is not surprising that the Law Society has warned that “the future sustainability of legal aid practice is in significant doubt.”⁴

TCS In 2010, the incoming Government developed plans to cut public spending significantly. The Ministry of Justice (MoJ) was required to find budget cuts of around £2 billion from an overall budget of £9.8 billion. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was intended to reduce the civil legal aid budget by £350 million per year by removing whole areas of law from scope and changing the financial eligibility criteria. In 2014, the National Audit Office (NAO) estimated that the reforms could reduce spending on civil legal aid by £300 million a year in the long term.⁵ So the MoJ appears to be on track to make a significant and rapid reduction to the amount that it spends on legal aid. However, during the consultation process and passage of the LASPO Bill, The Children’s Society and others raised concerns about the limitations of the impact assessments in examining the likely effects of these reforms, and the likelihood of ‘costs shifts’ to other areas of public service such as health, police and social services⁶ as well as the significant social and individual costs to those affected by these reforms.

Some of these concerns were echoed recently by the Public Accounts Committee which found that the Government introduced major changes on the basis of no evidence in many areas, and without making good use of the evidence that it did have in other areas. The Committee also found that there were considerable gaps in understanding and that the Government had not properly assessed the full impact of the reforms.⁷ The changes have been beset by problems in properly evaluating the impact of reform, with the MoJ unable to properly articulate the cost benefit of the decision to reduce access to support,

² National Audit Office. (2014) *Implementing Reforms to Civil Legal Aid*, p.22. Accessed September 2017: <https://www.nao.org.uk/wpcontent/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>

³ *Ibid*, p.33.

⁴ House of Commons Justice Committee. (2015) *Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*, HC 311 of session 2014–15, p 31. Accessed September 2017: <https://publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/31102.htm>

⁵ National Audit Office (2014) *Implementing reforms to civil legal aid*. See fn 3 above.

⁶ For example see the concerns raised by the Local Government Association to the House of Lords on 21 November 2011 with respect to immigration cases and the likely costs hit to local authorities

⁷ House of Commons Committee of Public Accounts. (2015) *Implementing reforms to civil legal aid*, Thirty-sixth Report of Session 2014–15. Accessed September 2017: [http://www.parliament.uk/documents/commons-committees/publicaccounts/HC%20808%20civil%20aid%20final%20\(web%20version\)%20v2.pdf](http://www.parliament.uk/documents/commons-committees/publicaccounts/HC%20808%20civil%20aid%20final%20(web%20version)%20v2.pdf).

and whether other areas of public service have simply had to pick up the slack. This means that it is hard to say whether the changes even represent value for money.

An example of this can be gleaned by considering the impact on family law cases. The MoJ expected that removing funding for civil legal aid for private family law matters would “divert people away from courts and increase mediation referrals by 9,000 per year.”⁸ However, mediations for family law matters fell by 38% in the year after the reforms, rather than increasing by 74% as the Ministry expected.⁹ In the year following the changes, there has been a 30% increase in the number of family court cases in which neither party has legal representation. The NAO estimates¹⁰ the consequence of this situation will cost HM Courts & Tribunals Service an additional £3 million a year, together with direct costs to the Ministry of approximately £400,000.

UKAJI The above echo the findings of the National Audit Office in its 2014 report ‘Implementing Reforms to Civil Legal Aid’.¹¹ This highlighted additional costs and challenged the government’s assumption that money would be saved by the reforms. It concluded that ‘the Ministry [of Justice] did not estimate the scale of the wider costs of the reforms – even those that it would have to bear – because it did not have a good understanding of how people would respond to the changes or what costs may arise (emphasis ours). Among the NAO’s recommendations is that the Ministry develop measures to evaluate more fully the impact of the reforms.’

Relevant rights under international law

EDF We consider that account needs to be taken of the EC Directives which require Member States to put in place provisions to ensure that ‘judicial procedures for the enforcement of obligations under this directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them...’ The imposition of ET/EAT fees means that this provision is not complied with.

Additionally, these same European Directives provide for accessibility of judicial procedures and the need for Member States to make provision for an ‘effective, proportionate and dissuasive’ sanction. Sanctions that are dependent on payment of fees at these levels are unlikely to be considered ‘effective’.

UNCRC

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his

⁸ See fn 4 above.

⁹ See Fn 7 above.

¹⁰ See fn 5 above.

¹¹ Ibid.

or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

JR The right to effective access to justice is a general underpinning for all the rights in the UN Convention on the Rights of the Child (UNCRC), since without the ability effectively to request, inform or challenge decisions, rights cannot be secured.

In September 2014, the Office of the Children's Commissioner (OCC) in England published a Child Rights Impact Assessment examining the impact on the rights of children and young people under the UNCRC of changes to civil and prison law legal aid implemented since April 2013.¹² The following potential impacts on children and young people were identified:

- Children and young people attempting to deal with decision-makers directly without support, including pursuing formal proceedings as a litigant in person (or through an adult litigation friend). Children and young people reported feeling intimidated from appearing unrepresented at hearings. The OCC report states that "in these circumstances, it is very unlikely that a child or young person can effectively participate in the hearing nor that all relevant information can be put before the tribunal to enable them to make a decision fairly and in the child's best interests."
- Children and young people seeking alternative dispute resolution, including using complaints systems in which they had little confidence.
- Children and young people attempting to obtain legal assistance pro bono or from the voluntary sector, which was unable to cope with increased demand.

¹² Office of the Children's Commissioner. Joel Carter. (2014) *Legal Aid changes since April 2013: Child Rights Impact Assessment* Accessed September 2017:
http://dera.ioe.ac.uk/21642/1/Child_Rights_Impact_Assessment_on_changes_to_Legal_Aid_since_2013.pdf

- Children and young people paying privately for legal advice, assistance or representation – an option it considered only available to very limited numbers of young people acting without adult support.
- Children and young people ceasing to attempt to resolve their legal problems, leaving “significant numbers” of children and young people with problems requiring resolution which are no longer in scope for funding, and in respect of which alternative help is limited, resulting in “a negative impact on them and their families”.

The OCC concluded that a wide range of rights under the UNCRC are likely to be negatively impacted by the civil and prison law legal aid changes:

“These include both the rights enjoyed during proceedings – those under Articles 2 (non-discrimination), 3(1) (best interests to be a primary consideration), 12 (right to be heard) and the specific guarantees attached to specific proceedings (e.g. in Article 9 re separation from parents) – and substantive rights which are being infringed because of the legal problem that the child or their parent/carer is encountering. Therefore, we consider that urgent review and reform is needed in order to ensure that the Legal Aid system can adequately protect the rights of children and young people and that the Government’s obligations under the UNCRC are met.”

Influential parliamentary committees have repeatedly criticised legal aid cuts for their failure to comply with the UK’s duties under international legal obligations. In December 2013, the Joint Committee on Human Rights, in its report¹³ on the Government’s ‘Transforming Legal Aid’ proposals issued a clear reprimand to the Government for its failure to fulfil its duties to consider the specific needs of children and young people. The Committee stated unequivocally: *“We do not consider that the removal of legal aid from vulnerable children can be justified”*. Whilst commenting that it was *“sure that the Government does not intend vulnerable children to be left without legal representation”*, it said that the Government had failed to fully consider its obligations under the UNCRC.

In March 2015, the Joint Committee on Human Rights lambasted the Government once again for its failure to fulfil its duties under the UNCRC, this time in even starker terms:

“The Government’s reforms to legal aid have been a significant black mark on its human rights record during the second half of this Parliament.... the evidence we heard from the outgoing Children’s Commissioner for England and from all the NGOs we took oral evidence from provides firm grounds for a new Government of whatever make-up to look again at these reforms and to undo some of the harm they have caused to children.”¹⁴

¹³ Human Rights Joint Committee. (2013) *The implications for access to justice of the Government’s proposals to reform legal aid* Accessed September 2017: www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm

¹⁴ Human Rights Joint Committee. (2015) *The UK’s compliance with the UN Convention on the Rights of the Child* Accessed September 2017: <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/144/144.pdf>

The UN Committee on the Rights of the Child, which will be examining the UK Government's record on children's rights later this year, has recently signalled that access to justice for children in the context of cuts to legal aid is amongst its primary concerns.¹⁵

Absence of any over-arching strategy

Respondents' biggest concerns about the state of access to justice:

HSSL We believe that if litigation is inevitable, then all parties to the litigation should be properly funded and receive high quality legal representation, regardless of their ability to pay. A justice system that upholds the rule of law, and equality of arms in court, must receive sufficient investment, so as to enable citizens to protect or extend their rights in court, if necessary. We regard this as a basic tenet of a functioning justice system in a modern democratic society.

LCN With no agreement on a basic standard of access to justice – nor a commitment to provision at least parts of it from the public purse – the current predicament is set to deteriorate further.

PLP The Court of Appeal in *Rights of Women* referred to legal aid as “the hallmark of a civilised society.”¹⁶ The implementation of LASPO has created barriers to access to justice, as is borne out by PLP's direct experience with the ECF scheme, and indicated by our review of the mandatory Gateway. The development of ‘advice deserts’¹⁷ and increasing numbers of litigants in person appearing, particularly in family courts, are also indicative of a justice scheme that is failing to provide access to justice.¹⁸

Other respondents, such as the Law Society, have highlighted the importance of a working justice system to social cohesion and the rule of law, the social and economic value of early access to legal advice, and the significance of legal representation in enabling access to justice,¹⁹ and we will not make detailed submissions on this point. However, we do wish to emphasise the need for a legal aid scheme that is genuinely accessible to all. This has to be the start-point of any proposals for change.

Unfortunately, the current environment is such that, without the work that PLP has been able to do since April 2013, the barriers to access to justice would be far higher and far fewer individuals would find that a “safety net” prevented a breach of their fundamental rights.

¹⁵ Committee on the Rights of the Child. (2015) *Seventy-second session 17 May-3 June 2016, Item 4 of the provisional agenda: Consideration of reports of States parties: List of issues in relation to the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*.

¹⁶ *R (Rights of Women) v the Lord Chancellor* [2016] EWCA Civ 91, para. 1. Accessed September 2017: <http://www.bailii.org/ew/cases/EWCA/Civ/2016/91.html>

¹⁷ For example, the National Audit Office records that “in 14 local authorities no face-to-face providers based in the area started any legal aid-funded work during 2013-14” *Implementing Reforms to Civil Legal Aid* p.35. (See fn 5 above).

¹⁸ *Ibid*, pp 16-17.

¹⁹ The Law Society: (2016) *Submission of the Law Society of England and Wales to the Labour Party Review of Legal Aid*; Accessed September 2017: <https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/submission-to-the-labour-party-review-of-legal-aid/>

UKAJI UKAJI is an independent, UK-wide initiative funded by the Nuffield Foundation. Its primary task is to encourage the expansion of empirical research on administrative justice in the UK in order to enhance knowledge of the way the administrative justice system is used and operates and thereby to inform policy making and academic work in the area. The quality of evidence relating to access to justice (and in particular administrative justice) and user perspectives are of central interest to UKAJI.

We are concerned that major policy and procedural reforms affecting access to justice, and in particular the ability of vulnerable groups in society to challenge decisions made by public bodies, are made without a sufficient evidence-base. This exacerbates the risk that reforms will have serious unintended adverse consequences for access to justice.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

CS I have worked on access to justice issues almost for my whole career, particularly in my role as Head of Funding at the Legal Aid Board / Legal Services Commission where I was responsible for the rules under which civil cases were granted legal aid. I worked more broadly on access to justice issues as a member of the Civil Justice Council and as part of Lord Justice Jackson's panel for his review of civil costs. I have had the pleasure of working with many members of the Bach Commission in various capacities over many years.

In the context of this review however I believe my most valuable experience has come from my more recent work with the Department of Justice, Northern Ireland on their Access to Justice review. My report for them "*A Strategy for Access to Justice*" was published in September 2015 and is available on that Department's website. A copy of the report's executive summary is attached.²⁰

I hope members of this Commission will find the report useful. It covers criminal, family and civil justice. It seeks to look at access to justice issues from first principles both in relation to the future of legal aid and the wider justice systems it operates within. Of course some parts of the report are specific to Northern Ireland or are concerned with bringing that jurisdiction up to date with England and Wales (for example through the introduction of a unified family court or the implementation of post-Jackson CFAs). For the most part however the same access to justice issues and potential solutions arise across the United Kingdom and each jurisdiction has much to learn from the others.

I should also make clear that my starting point is not one of wishing to turn back the clock and argue for a general expansion of spending on legal aid and the justice system. I am not opposed in principle to austerity and the need to reduce costs. However, I am very concerned with the way savings have been achieved in England and Wales, especially the family cuts. I believe that it would have been better to look more closely at the underlying court-based procedures which generate the costs. There is surely a better way of achieving the necessary savings.

²⁰ CS Add 1.

LCN We find that current government policy acts in effect as a hindrance to access to justice. The policy is inconsistent and changes repeatedly, and the effect of changes is little understood and even less remediated. It is ill-informed, now even more so than three years ago, being the product of tendentious use of evidence that is often patchy and out of date.²¹ Access to justice policy lacks a clear statement of its purpose, a coherent, systemic vision, or a firm commitment to a basic standard of provision and its resourcing. Correspondingly, the system of access to justice reflects a jaundiced view of people and citizens – especially those in disadvantage – and the idea of their equal standing before the law. Even within the confines of current fiscal restraint, the civil legal aid budget is miserly and is meted out reluctantly to prop up an inefficient system that can be fiendishly difficult to access. Complementary services to legal aid are still a patchwork and insufficient for meeting widespread need.

Law Centres' biggest frustration with LASPO and related reforms is that, in part because they were so ill-informed, they have created a service not designed with its target audience in mind. Legal services for people in poverty and disadvantage, many of them vulnerable, ill or otherwise functionally impaired – need to be designed and delivered so as to take account of the circumstances and needs of their client groups, as we highlight below.

SBS We believe access to justice to be about more than just access to legal advice and representation, although these are fundamental aspects. It is also about fair and equal access to services which enable ordinary people to uphold their legal rights, hold the state to account, and achieve fair outcomes. For example, it is about BME women being able to obtain their rightful entitlements from key statutory services such as the police and social services without facing discrimination or judgment. It is also about being able to effectively challenge statutory and professional agencies when they act unlawfully or in ways that are not adequate, fair or transparent.

²¹ The then-permanent secretary at the Ministry of Justice, Dame Ursula Brennan, admitted as much to the Public Accounts Committee during its inquiry into the delivery of civil legal aid reform. Accessed September 2017:: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/publicaccounts-committee/reducing-the-cost-of-civil-legal-aid/oral/16101.pdf>.

ACCESS TO JUSTICE: SECOND THEME

The legal aid agency

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

AT *Bureaucracy*

The second concern is bureaucracy, the implementation of a "*Cost Case Management System*" (CCMS), which will be brought in on 1 April 2016, remains a concern. It currently has very significant down time, or slow time, such that applications cannot be submitted in a prompt and quick manner. Further the costs of actually using the system are often borne by the provider of legal aid, in terms of time spent in completing the funding application.

Prior to 2010, funding was granted under devolved powers, such that the issue remained simply that the LAA would review the decision subsequently. This was allowed so long as the provider was successful overall in 50% of his claims.

Once devolved powers had been removed, under the paper system providers would expect a response often the same day on a matter. Now some applications are taking days if not weeks or months to be completed, during which time the providers are not remunerated, and cannot lodge applications or comply with client care issues. The Court of Appeal has repeatedly stated that the failure of the Legal Aid Agency will not be an excuse for not complying with deadlines. Currently the position remains that our clients are simply advised to lodge their own applications if they can. They rarely do, and we are pursuing a line of cases to resolve this issue, to draw attention to the Court of Appeal the fact that legal aid applicants who should be granted legal aid are not in the same position as a litigant in person, in that they await the outcome of the legal aid application and it can be the day before that they suddenly find that they aren't going to get legal aid.

BHB The compulsory online application system frequently crashes, does not work effectively, does not allow for emergency applications and is on a regular basis leaving children in situations of significant harm for weeks, often months at a time.

MWLC The ever increasing level of bureaucracy involved in the provision of legal aid. The change to the capital threshold brought in by LASPO means that even people who have a straightforward financial situation are required to complete a 13-page form about their finances. Previously these clients would simply have had to complete a four-page form. Every individual must now provide details about every bank account they hold dating back over a three-month period. For people who live chaotic lives and struggle to manage their day to day financial affairs, just providing this information can be a real barrier to obtaining advice. As a result, some people are deterred from seeking the advice they need right from the outset. The bureaucracy is also a deterrent for providers. Trying to get paid by the Legal Aid Agency at the end of a case can be as much of a battle as getting the legal aid funding granted in the first place.

YLAL In the post-LASPO landscape, even the fate of many clients who are eligible for legal aid depends upon a labyrinthine, piecemeal and excessively bureaucratic system of funding that impedes access to justice and serves to exhaust practitioners' morale.

The legal aid gateway telephone service

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

CCLC CCLC holds a specialist help education law contract with the LAA. This is part of the legal aid "gateway" system, in which callers are triaged through a telephone system to ascertain their eligibility and are then passed on to a provider for advice. There is very limited scope for face-to-face advice, even where this might appear necessary to the client and/or the provider. The system is overly complex. The operator service helps callers determine if their query is in scope for legal advice. The operator does not (we believe) employ lawyers and we are concerned that there is a high risk of callers being diverted away from specialist legal advice because they are unable to fully explain the scope and nature of their problem.

DDPO Firstly the arrangements under LASPOA mean that disabled people must use a telephone gateway to access advice on discrimination cases. This is operated by three providers none of whom as far as we are aware have any specialist expertise in bringing disability discrimination claims in relation to goods and services (for example access to shops, transport and so on). It is only these providers that can then obtain a full legal aid certificate to enable a disabled person to bring a challenge in the courts. The gateway raises significant hurdles for disabled people in accessing advice in itself. In addition, the lack of expertise in the three providers and the very small number of legal aid certificates granted in recent years for any discrimination cases (fewer than five in any one year as we understand it) would suggest that it is now virtually impossible for disabled person to secure legal aid – or the necessary expert advice - to bring a private law disability discrimination challenge in the county court for a breach of the Equality Act 2010. None of the providers' websites refer to their expertise in disability discrimination specifically, and the only discrimination work they appear to specialise in relates to employment or education cases. Disability discrimination arising from the provision of goods, services and transport is a particularly complex area and requires specialist representation; this is simply not available to disabled people under the current arrangements.

HLPA Another concern of HLPAs is the telephone gateway. If potential clients want to obtain advice in respect of certain areas of law, including advice on a mortgage arrears possession case (which after LASPO was re-categorized as a debt matter rather than housing) and discrimination, they must first contact a telephone advice service. If the advice service decides that it is necessary for the client to obtain face to face advice, they can authorize this. HLPAs are concerned that particularly vulnerable clients may struggle to articulate their issue meaning that exactly the kind of client who is likely to require face to face advice, will be unable to obtain it.

ILC The Public Law Project's work on the mandatory telephone gateway illustrated the ways in which this has failed to provide access to justice for people who need it. We have spent many hours (funded under our local authority grant) attempting to ensure that someone with a discrimination case was able

to get assistance, and she had to return to us frequently as the nature of her disability meant that she found it incredibly difficult to give informed instructions remotely. This has diverted money away from front line provision, has created duplication, and has been a major barrier to many people, without evidence that other equally high needs are being effectively met.

JR JustRights is strongly opposed to the telephone gateway. Not only does it introduce unnecessary steps and bureaucracy when accessing advice, there is plentiful evidence that children and young people are less likely than other age groups to access advice services via the telephone.²² More fundamentally, however, awareness of the service is so low amongst both children and young people and professionals who work with them as to render it invisible.

LCN The number of new legal aid discrimination cases has declined sharply, due in part to telephone's limitations as a delivery channel and the complexity of this developing area of law.

PLP The LASPO scheme also introduced the Civil Legal Aid Gateway as the only way to obtain publicly funded advice and assistance for debt, discrimination and special educational needs matters. An individual seeking legal aid for such cases now must first telephone the Operator Service (manned by operatives who are not legally trained) who will determine whether the individual is financially eligible; whether their case is in scope; whether their case is within one of the Gateway categories; and whether their case meets the merits criteria for legal aid. If the Operator Service assesses the matter as meeting those requirements, they will refer the individual to a Specialist Telephone Advice Provider to give telephone advice. The Specialist Telephone Advice Provider will also decide whether to refer the individual for face-to-face advice.

In March 2015 PLP published a report of our research into the operation of the Gateway.²³ Our findings indicated a risk that, contrary to the stated policy intentions, the Gateway hindered access to justice for those who had to use it. We found that there were significantly lower volumes of advice being given than had been anticipated and an ongoing reduction in volumes of advice being given;²⁴ that service users experienced difficulties in navigating and proceeding beyond the Operator Service;²⁵ that there was a very low level of awareness of the service amongst potential service users; and that significant numbers of matters resulted in 'outcome not known or client ceased to give instruction',²⁶ indicating that individuals were struggling to engage with it. Our findings further indicated that in some areas the Parliamentary and policy intentions in introducing the Gateway might in fact be being undermined, and

²² Youth Access & JustRights. James Kenrick. (2009) *Young people's access to advice – the evidence*. Accessed September 2017: [http://www.justrights.org.uk/sites/default/files/Youth%20Access%20-%20YYPs Access to Advice colour.pdf](http://www.justrights.org.uk/sites/default/files/Youth%20Access%20-%20YYPs%20Access%20to%20Advice%20colour.pdf)

²³ Public Law Project. (2015) *Keys to the Gateway: An Independent Review of the Mandatory Civil Legal Advice Gateway*; Accessed September 2017: <http://www.publiclawproject.org.uk/data/resources/199/Keys-to-the-Gateway-An-Independent-Review-of-the-Mandatory-CLAGateway.pdf>

²⁴ *Ibid*; Chapter 6.

²⁵ *Ibid*; see e.g. pg. 41.

²⁶ *Ibid*; pg.4 and Chapter 7.

that the system may not be achieving value for money (and could be more expensive than face-to-face advice) across its services.²⁷

Whilst technology can and should play a role in the future of legal aid, it is no substitute for face-to-face advice. Our research into the Gateway points to the risks posed by 'one size fits all' entry routes, particularly when manned with gate-keepers who are not legally trained. It must be remembered that many of those who require legal aid are vulnerable individuals who may struggle to engage with technology and, vitally, will not always have a clear idea of why they need advice or be able to provide a coherent account of their experiences. A legal aid scheme must be designed to be accessible by such people if it is to be genuinely accessible to all.

TCS The Government removed debt from the scope of legal aid, arguing that there was minimal take up of support. However, it was found that failing to provide adequate public information on the Civil Legal Advice telephone gateway was one of the primary reasons why the gateway was underused. During the Parliamentary scrutiny of LASPO, it was recommended that 'the Ministry of Justice undertake an immediate campaign of public information on accessing the gateway for debt advice, as well as for the other areas of law it covers.'²⁸ Our work on the impact of problem debt has shown that the strain of living in debt can be simply too much to bear.²⁹ It can not only mean that children miss out on the things their peers take for granted, but can cause problems in every area of a child's life - arguments at home, isolation and being bullied at school, to name just a few.

UKAJI Another example which illustrates the value of research in showing the effects of reforms concerns the establishment in April 2013 of the Civil Legal Advice telephone line as the only route by which legal aid services in certain areas of law could be accessed. Research has shown this to have had significant unintended consequences. The rationale for the reform was said to be to ensure access to legal aid in the 'highest priority cases', as identified by Parliament, while modernising the service and ensuring that it is affordable and constitutes better value for money.

Work by the Public Law Project³⁰ has shown numerous undesirable consequences, including that 'the number of Debt matters started under the Gateway has been about 90% less than the MoJ should have expected on the basis of its initial calculations on the impact of the Gateway' and '[S]imilarly, the numbers of Special Educational Needs and Discrimination matters started have been at least 45% and 60% less, respectively, than figures provided in the Legal Services Commission tenders for Gateway services'.

Following the implementation of the LASPO reforms, most discrimination claimants are required to use the Community Legal Advice (CLA) Telephone Gateway service, operated by the Legal Aid Agency, as the first point of access for advice. Cases that pass the initial screening stage may be referred to one of three contracted specialist providers who can provide up to two hours' remote advice. Claimants can only obtain

²⁷ *Ibid*; pg. 4 and Chapter 8.

²⁸ 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*. See fn 4 above.

²⁹ The Children's Society. (2014) *The Debt Trap: Exposing the impact of problem debt on children* Accessed September 2017: https://www.childrenssociety.org.uk/sites/default/files/debt_trap_report_may_2014.pdf

³⁰ See fn 23 above.

face-to-face advice if the specialist provider considers that they cannot be advised over the telephone or by email. The EHRC commented on the potential barriers presented by the gateway, particularly for disabled clients, including those with poorer mental health, or cognitive or learning impairments. Mind referred to low levels of awareness of the gateway and issues with accessibility. Issues with accessibility were also raised by the National Deaf Children's Society and Sheffield Citizens' Advice Law Centre. Other witnesses were also very critical of the telephone gateway as a means for disabled people to obtain advice.'

Financial eligibility

Respondents' biggest concerns about the state of access to justice:

ACL The restriction on access to justice created by lack of funds available to litigants with the decline of legal aid.

GMIAU Access to justice is increasingly only for those who have the money to pay for it. It is not universal and those with least resources get left out. Inequality is increasing and there are parts of the population who are being disenfranchised by the state and the law.

IM The restrictive means testing and evidential requirements for legal aid presents a barrier to accessing legal aid for whole classes of people who are unable to afford private legal fees;

YLAL The extensive denial of access to justice resulting from overly stringent financial means tests for legal aid, which undermine one of the founding principles of the legal aid system: that provision should not be limited to those normally classed as poor, but rather should be available to anyone who is unable to afford to pay for legal advice and representation;

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

GCHT *Financial eligibility*

We can only discuss the rise in the number of litigants in person anecdotally; as barristers, we are not directly involved in the funding arrangements and are only instructed if clients are granted legal aid or have agreed to pay privately. However, we notice a dramatic increase in the number of requests to chambers for a barrister to be instructed on a direct access basis; those requests come from litigants who do not have many resources but are not financially eligible for legal aid.

HSSL First, financial eligibility for legal aid has been restricted, so that legal aid is now only available to those on the very lowest incomes. In our day-to-day practice, we frequently encounter tenants who need to pursue their landlords for breach of covenant, who are not eligible for legal aid, and yet cannot afford pay for legal representation privately.

ILC The biggest impact of LASPO is that fewer people are able to access justice and defend their rights. Large swathes of law have been taken out of scope and even if an issue is within scope, there is no guarantee that a person will be financially eligible for legal help or legal aid. Unless someone has a very low income or is on benefits they may well be financially ineligible for legal aid, making it very difficult for them to get legal advice. The concept of disposable income seems to imply that a person has the money to pay for legal advice if they have over a certain amount of money spare per month. This is very short-sighted as paying privately for legal advice on some matters will start in the hundreds and quickly spiral upwards into the thousands of pounds. Most potential clients would not be willing to pay this if they are already struggling. Those that do would likely be forced into debt and further problems, and incidentally, they would not get legal aid for non-property related debt assistance as it is out of scope.

LAPG Even if a case is covered by the legal aid scheme it can be difficult for people to produce evidence of their financial position so that work can be started on the case (please see pages 13-14 of our Manifesto for detailed recommendations on financial eligibility).

RoW *The means test:*

The gap between those who are financially eligible for legal aid and those who can afford to pay privately is huge.

*"I earn a low income, yet I've been assessed as having too much disposable income (they don't take into account living costs for utilities etc...) and when you aren't eligible you're expected to pay full solicitors costs - there's no help anywhere in between. I've had to face my violent ex-partner in court twice now, and will have to continue to do so as I simply cannot afford costs."*³¹

Income: When determining whether someone has the disposable income to pay privately, the Legal Aid Agency ('the LAA') calculates their gross income and deducts their outgoings. However, when calculating gross income, the LAA includes child benefit and child maintenance (which should be spent on the children and not on parents' legal fees) and student loans for university and college fees.

Conversely, many unavoidable living costs such as food, utilities and council tax are not deducted as outgoings. Employment related costs are capped at £45 per month, (in reality the cost of travel to work is often far higher) and rent for people without dependants is capped at £545, which is unrealistic across many parts of the UK.

In short, the LAA makes completely unrealistic calculations to establish who has the income to pay privately for their own legal fees, and who should be granted legal aid.

Capital: Applicants, including those on benefits, are also assessed on their capital. The applicant's home forms part of the calculation. The mortgage is deducted, but only up to the value of £100,000. The LAA

³¹ Comment by a woman responding to Rights of Women's survey. See full report: Accessed September 2017: <http://rightsofwomen.org.uk/policy-and-research/research-and-reports/#Legal%20aid>

will disregard £100,000 of the value of the main home that the applicant lives in (known as the equity disregard).

Example: Susie's only source of income is benefits and she has no savings, but her house is worth £210,000. Her mortgage is £110,000.

Value of home:	£210,000
Mortgage (capped at £100k):	£100,000
Equity disregard:	£100,000
Amount to count towards total equity:	£10,000

Susie is therefore ineligible for legal aid.

For applicants who live in areas such as London where house prices are high, the mortgage is likely to be far higher than £100,000 and so their 'disposable capital' will be disproportionately high. For many people, their home is the only capital they have. For a woman on low or no income, her choices are either to sell the home (making herself and her children homeless) to pay for legal fees, or face her abuser alone in court.

Contributions: Even those who are eligible for legal aid may still have to pay something towards their legal costs. Many applicants are asked to pay a contribution from their income or capital. Given the problems highlighted in the way disposable income and capital are calculated, the contributions applicants are expected to pay are often unaffordable and result in the applicant losing or refusing legal aid.

Applicants seeking injunctions such as non-molestation orders and forced marriage protection orders need not provide evidence of domestic violence. They are, however, still subject to the financial eligibility test. Therefore, women affected by violence with very low income and capital are often required to make unaffordable contributions towards their legal aid.

Example:³² Nina has one child. Her total monthly income is £1,200 and she pays £500 per month in rent. After deducting rent, council tax, utility bills, travel costs, groceries, and other essential expenses for the child, Nina has about £20 left over at the end of the month. Any money left over is normally all spent on irregular items such as school trips, replacing household goods or clothing. She has some debt as she is struggling financially.

However, the LAA has assessed her disposable income as £363.51 per month.

Total income:	£1,200
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³² The figures in this example are for illustrative purposes only.

Rent:	- £500
Travel expenses (fixed amount):	- £45
1 Dependent child (fixed amount):	- 291.49
Total disposable income:	£363.51

Nina is eligible for legal aid but will need to pay a monthly contribution of £18.38 towards her legal aid.

The National Centre for Domestic Violence (NCDV) collated data on legal aid eligibility during October and November 2014. The data showed that one in five of the 2,026 callers to the NCDV helpline who wished to apply for a non-molestation order, were unable to proceed with their application because they could not afford the legal aid contributions.

Gathering evidence of means: Applicants are required to provide evidence of their means such as bank statements, wage slips, benefit letters, mortgage or rent statements and childcare receipts.³³ Many applicants, especially those fleeing domestic violence, do not have access to that evidence, resulting in the refusal of legal aid.

SBS We are disappointed and dismayed by the impact of the legal aid cuts on our users. We highlight below some of the specific difficulties they face:

- The financial eligibility criteria for legal aid are problematic because the income and capital thresholds are set so unrealistically that they exclude many women on low income. Most women therefore simply cannot bear the financial burden of bringing legal proceedings;
- Incorrect financial assessments made by the LAA;

Financial threshold for eligibility

We are also very concerned about the unrealistic way in which financial eligibility for legal aid is calculated since many of the women that we see are increasingly excluded by the financial threshold that is applied. The financial eligibility threshold is problematic because applicants must have a gross income of less than £2,657 per month and a disposable income of less than £733 per month. However, this does not take account of certain expenses, such as high child care costs, incurred by abused women who are more often than not single parents and who live on very low incomes. Moreover, our experience shows that even applicants on certain benefits or low incomes are deemed to be above the financial threshold and therefore ineligible for legal aid. Further, the LAA does not always consistently follow its own guidelines when conducting the means assessment; for example, the guidelines state that a partner's income should not be counted as part of an applicant's finances if the couple have separated. Notwithstanding this, we

³³ The evidence has to be for a specific period, normally covering the 3-month period up to the date of the application.

³³ Ministry of Justice. (2015) *Legal Aid Statistics in England and Wales January to March 2015*. Accessed September 2017: <https://www.gov.uk/government/collections/legal-aid-statistics>

have seen instances of caseworkers refusing legal aid to our clients because they have wrongly included the partner's income or assets in the means assessment as the case below shows:

Ms D was applying for divorce and financial remedies. Without legal aid she could not afford to pursue financial remedies including a lump sum and a claim for a share of the marital property. The only asset her partner had was the family home which had equity of just over £84,000. However, the LAA assessed Ms D as ineligible for legal aid as the equity of the property was deemed to be part of her disposable capital – despite the fact that the only way she could access this was through the financial proceedings which she could not otherwise fund.

Legal aid in the criminal courts

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

HSSL We highlight three main issues faced by the criminal legal aid system:

- (1) Cuts to the fees paid under the Litigators Graduated Fee Scheme ("LGFS") make much of criminal legal aid work uneconomical;
- (2) The rate of remuneration for advocates in many hearings often falls below the minimum wage.
- (3) The application of the merits test and means tests to legal aid in the magistrates' court and Crown Court prevents deserving clients receiving representation and causes delay.

First, cuts to the LGFS have caused legal advice and representation in the criminal courts to be cut to the bone. Our experience is that a cut in fees of 8.75% in 2014 has been met by the de-skilling of the workforce in some law firms, and in others orienting their practices away from criminal work. Despite the cost of attendance at court by the litigator being included within the LGFS, it has become so uneconomical for solicitors to attend court that counsel almost invariably attend court without the assistance of a representative of their instructing solicitors in all but the most serious cases. There has been a negative impact on the ability of solicitors to give adequate time to all of their clients, and client care has inevitably suffered. This is particularly concerning where vulnerable clients and those with complex cases are concerned.

Whilst the decision of the government not to proceed with a second cut of 8.75% in the LGFS is welcomed, the failure to repeal the first cut of 8.75% has left many firms in an uneconomic position, or reliant on supplementing their income with the Advocates Graduated Fee Scheme ("AGFS"). Our experience suggests that this affects the client's choice of advocate, with clients not made aware of their right to an advocate not employed directly by the litigator's firm. This is an inevitable economic consequence of the undervaluing of the essential work carried out by litigators. A further consequence is the impact on trial preparation: with the LGFS being skewed to encouraging solicitors to focus on trials, rather than early resolution of cases, there is little financial incentive to fully prepare cases, or to resolve them, at an early stage.

Second, our experience is that for the most junior barristers the level of remuneration in many cases is set at a level lower than minimum wage. The standard fees in London for magistrates' court work are: (i) £50 for first appearances, remands, bail applications, sentences, adjourned trials; (ii) £75 for half day trials, half day contested committals and where a defendant pleads guilty at trial; (iii) £150 for full day trials and full day contested committals.³⁴ The references to contested committals demonstrate the length of time for which these fees have not increased since they were abolished in 2013. Some chambers are content to allow the most junior barristers to attend court for even lower sums. The closure of courts, leading to the over-listing of cases in magistrates' courts, results in large numbers of cases scheduled to start at 10am not being called on until late in the afternoon. Where the preparation and follow-up work for a case is added to the time spent at court and travelling from chambers to court, fees regularly fall to the level of £5 per hour or less. No legal system can hope to provide adequate representation in court to a defendant at a level far below the minimum wage, let alone the living wage or London living wage.

We suggest that this system could be remedied by the creation of a simplified AGFS in the magistrates' court, separating out the payment for advocacy services from the LGFS which applies in the magistrates' court. This need not add to the financial burden on the taxpayer.

Third, the test for legal aid in both the magistrates' courts and the Crown Court prevents deserving clients receiving representation and causes delay. In respect of the merits test in the magistrates' court, the experience of our members indicates that many deserving clients are rejected, at least on the first application, when the prospect of custody is not involved. Failure to approve cases for legal aid where the assistance of a solicitor would be of real assistance to individuals facing what is an intimidating and formal experience leads to the prospect of genuine injustices being suffered by those who come before the courts. More commonly though, late approval of applications, or failure to approve applications before the first trial listing, causes avoidable stress and inconvenience to clients and witnesses when cases have to be adjourned, and results in a deplorable waste of court resources. Issues with the merits test could be resolved by allowing magistrates to grant a certificate for legal aid subject only to a means test.

The means test causes further problems. The level at which a defendant satisfies the means test in the magistrates' court is set at such a low level as to result in an increasing number of unrepresented defendants, who can neither satisfy the means test nor afford their own representation, coming before the courts. There is no reason why the means test in the magistrates' court should be set at any different level to the Crown Court.

A further obstacle to justice in respect of the means test arises out of contributions towards legal aid in the Crown Court. Where an individual receives a certificate for legal aid they may be required to provide contributions. This leads to genuine hardship for many clients, who are often required to sell their family homes to afford the contributions. Many clients find that they can obtain representation more cheaply when paying privately than when paying contributions to legal aid. Where legal aid has been granted to but then rejected by a defendant, the private costs of that defendant cannot be recovered from central

³⁴ London Criminal Courts Solicitors' Association, Criminal Bar Association, and Young Barristers Committee of the Bar Council, *Protocol for the Instruction of Counsel, Annex A*.

funds in the event that the defendant is successful at trial. If legal aid was applied for but not granted by the Legal Aid Agency, the successful defendant would be entitled to recover at least some of their costs. This position is inherently unjust.

Where an individual is investigated by the state, prosecuted by the state, judged by the state, and punished by the state we believe that the provision of quality representation for that individual by the state should be guaranteed, and should not be dependent on the state's assessment of the merits of the particular case or the state's assessment of whether the individual can afford their own representatives. At the time of receiving representation defendants are presumed innocent until found guilty. Therefore, insofar as any means test is imposed by the state it should apply equally in all criminal courts and be set at such a level that no one is forced to make a choice between continuing their normal lives or receiving proper representation.

Only part of a case is in scope

Respondents' biggest concerns about the state of access to justice:

LAPG Difficulties for the public in proceeding with those cases where post LASPO only some parts of those cases can be brought under the legal aid scheme...

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

GCIT These exclusions have led to complications with the funding regime under LASPO, where a client is raising more than one ground to remain in the UK, with one ground able to be funded under LASPO and the other not. For example, in the case of an appeal against removal the applicant may be raising asylum\Article 3 ECHR claims which are covered under LASPO and Article 8 claims as they have a British spouse or children, which are not.

Exceptional case funding

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

BHB The exceptional case funding option which was identified to the United Nations CEDAW Committee as being the "safety net" for women unable to obtain legal aid by proving they are victims of violence has been proved to be completely ineffective providing no safety net whatsoever and the recent research done by Rights of Women show that up to 43% of genuine victims of violence against women cannot access the proof that they need to obtain legal aid.

CJC The Council published its views on the legal aid reforms implemented in LASPO in 2011 as part of a consultation response. It also responded to consultations on successive reforms to judicial review, and

its views can be found on the CJC website.³⁵ One aspect of the LASPO reforms which the CJC wishes to review is in relation to the operation of the legal aid exceptional funding scheme, and it will consider this once current litigation on this issue has been concluded.

CLP During the passage of the LASPO Bill through Parliament, the Government placed great emphasis on clause 10 of the Bill and the availability of exceptional case funding (ECF). It was stated that this would act as a vital safety net. ECF is intended to ensure that the failure to provide advice and representation to someone does not result in a breach of Article 6 of the European Convention on Human Rights (the right to a fair hearing) and does not breach European Union Law. However, very few grants of ECF were made by the Legal Aid Agency.

Two cases were taken challenging the provisions with regard to ECF. The first case went all the way to the Court of Appeal and was successful.³⁶ Following that case certain amendments to the regulations were made. Recently another challenge in the High Court was successful.³⁷ The Government are appealing this decision but have made further amendments to the regulations in the meantime. [It won the appeal on 20 May 2016.³⁸]

Despite these amendments, ECF is still relatively rarely granted and a lot of legal aid providers are not willing (on a pro bono basis) to expend the enormous time and effort involved in attempting to obtain ECF. Thus ECF remains an ineffective remedy.

GCIT There is some scope for discretion via exceptional funding arrangements. The guidance for the grant of such funding identifies a number of relevant factors as to when exceptional funding should be granted including:

- * The consequences to the Applicant, whether the claim includes issues of life, liberty, health and bodily integrity, child welfare or vulnerable adults, protection from violence or abuse, or physical safety.
- * If there is factual complexity, the volume of evidence, number of witnesses, whether there is likely to be testing of expert witnesses by cross examination.
- * The likely legal complexity and evolving character of the law.
- * Whether the applicant would be substantially disadvantaged vis-à-vis their opponent, given their lack of education, English skills, any disabilities and caring responsibilities.
- * The ability of an applicant to maintain objectivity to assist the court.

³⁵ Accessed September 2017: <https://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/>

³⁶ Accessed September 2017: *R (Gudanaviciene and Others) v The Director of Legal Aid Casework and The Lord Chancellor* [2014] EWCA Civ 1622. <http://www.bailii.org/ew/cases/EWCA/Civ/2014/1622.html> .

³⁷ Accessed September 2017: *R (IS) - v - The Director of Legal Aid Casework* [2015] EWHC 1965 (Admin). <http://www.bailii.org/ew/cases/EWHC/Admin/2015/1965.html>

³⁸ Accessed September 2017: *R (IS) - v - The Director of Legal Aid Casework* [2016] EWCA Civ 464. <http://www.bailii.org/ew/cases/EWCA/Civ/2016/464.html>

The guidance reflects the factors identified in the test case of *Gudanaviciene*³⁹ [2014] EWCA Civ 1622, including the relevant test being whether withholding legal aid means that someone will be unable to present their case effectively or lead to obvious unfairness. In another challenge, *IS v. The Director of Legal Aid Casework and Anor*,⁴⁰ Collins J cited earlier authority stating that there would be no fair trial where the court “has no confidence in its ability to grasp the facts and principles of the matter”. These factors will apply in a number of immigration and human rights cases.

JR *Exceptional Case Funding scheme*

During the passage of the LASPO Bill, ministers repeatedly reassured MPs and Peers from all parties who were worried about the prospect of children and young people being denied access to advice and representation that an expanded Exceptional Case Funding scheme would provide an adequate safety net.⁴¹ The Government’s pre-LASPO estimates of the percentage of ‘out of scope’ cases likely to be readmitted under the Exceptional Case Funding scheme were modest,⁴² but nonetheless implied at least 847 children and 4,888 young adults being granted exceptional funding each year.

In the event, this “safety net” has proved inaccessible and unfit for purpose.⁴³ The Ministry of Justice’s data shows that only 8 children and 28 young adults were granted legal aid under the Exceptional Case Funding Scheme between October 2013 and June 2015.⁴⁴

Thus, despite very recent data suggesting some relaxation of the Exceptional Case Funding Scheme,⁴⁵ it is clear that it has acted as a safety net for but a tiny proportion of those children and young people whose cases have fallen out of the scope of civil legal aid as a result of LASPO. Some legal aid providers specialising in working with children and young people have reported giving up applying for exceptional funding altogether as they consider it a waste of valuable time.⁴⁶

³⁹ See fn 36 above.

⁴⁰ See fn 37 above.

⁴¹ For example, Lord McNally, then a Justice minister with responsibility for legal aid, stated on 16th January 2012 “where a child brings an action without a litigation friend, this will be an important factor in deciding whether they have the ability to present their case.” Hansard, 16 Jan 2012: Column 447.

⁴² The Ministry of Justice’s ‘Impact Assessment Annex A: Scope’ (*Reform of Legal Aid in England and Wales: The Government Response* (London, TSO, 2011), para 10, Tables 1 and 3 show forecasted reductions in the volume of cases as a result of the legal aid reforms.

⁴³ Public Law Project. M. Spurrier. (2013) *Exceptional funding: a fig leaf, not a safeguard*. Accessed September 2017: <http://www.publiclawproject.org.uk/resources/10/exceptional-funding-a-fig-leaf-not-a-safeguard>

⁴⁴ Parliamentary answer by Lord Faulks, 17th November 2015. Accessed September 2017: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-10-20/HL2802>

⁴⁵ *Legal aid statistics and the cuts that keep on cutting*. Accessed September 2017: <http://www.lawcentres.org.uk/policy/news/news/legal-aid-statistics-and-the-cuts-that-keep-on-cutting>

⁴⁶ House of Commons Justice Committee. (2015) *Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012: Eighth Report of Session 2014–15*, at para 59. See fn 4 above.

PCS The Independent reported last year that the Exceptional Case Fund (ECF) which was established to help people such as domestic violence victims get free legal assistance, received 617 applications from April to December 2013 but only eight were granted.

Statistics for April to June 2015 show that only five out of 125 applications were successful.

As these figures tell us it is proving almost impossible for the vulnerable to receive legal aid and it is therefore making cross examination by perpetrators increasingly common.

PLP The common law right to access to the court has not yet been recognised to encompass a common law right to legal aid. Thus for now, and other than those contained in domestic statute, the only sources of enforceable rights to legal aid for individuals in England and Wales are the ECHR and EU law. Section 10 of LASPO provides for ECF to be made available in a case, which would otherwise be out of scope, where a failure to do so would breach, or risk breaching, an individual's Convention or enforceable EU law rights. The ECF scheme was introduced as the "safety net" by which LASPO was supposedly made compliant with the UK's obligations under the ECHR and EU law.

Through our exceptional funding project, PLP has had a unique insight into the operation of the ECF scheme, and we have played a central role in the litigation arising from the scheme, representing the Claimant I.S. in *Gudanaviciene and Ors v Director of Legal Aid Casework and the Lord Chancellor*,⁴⁷ and *I.S. v Director of Legal Aid Casework and the Lord Chancellor*.⁴⁸ In our experience the ECF scheme has been insufficiently accessible, particularly to unrepresented individuals, to provide a genuine "safety net."

In advance of the implementation of LASPO, the Government's best estimate of the annual number of ECF applications for non-inquest legal representation was 6,500, with further applications anticipated for legal help.⁴⁹ Legal Aid Agency statistics record that they received 1,315 "applications" for non-inquest ECF in the first year of the scheme, and 947 in the second year.⁵⁰ The figure given for "applications" includes both initial applications, and applications for a review of an initial decision. In the first year of the scheme approximately 1% of all applications for ECF were granted.⁵¹ Not only were the numbers applying to the scheme a fraction of those said to be anticipated by the LAA, but those able to apply had a vanishingly small chance of succeeding.

Through our exceptional funding project, PLP assisted 25% of all applicants who were granted ECF between 1 April 2013 and 31 March 2015. We are, therefore, well placed to understand the barriers that have prevented individuals from accessing ECF. In our experience the barriers have included: the complexity of the forms the LAA required to be provided with an application; the time-consuming nature of the ECF application process and onerous evidential requirements; the need in many cases to engage in pre-action correspondence before ECF would be granted; the lack of an emergency procedure; the lack of

⁴⁷ See fn 36 above.

⁴⁸ See fn 37 above.

⁴⁹ Ministry of Justice. (2012) *Legal Aid Reform: Excluded Cases Funding Process Equality Impact Assessment*, at p. 9.

⁵⁰ Legal Aid Agency statistics (2014). Accessed September 2017 : <https://www.gov.uk/government/collections/legal-aid-statistics>

⁵¹ Legal Aid Agency statistics.

funding for providers to make applications and providers' consequent unwillingness to make them; and the LAA's decision-making when determining applications. Of particular note are the lengths that it can be necessary to go to for an applicant to obtain a grant of ECF. Of the 31 grants of ECF obtained with PLP's assistance in the first two years of the scheme, 23 required either a pre-action letter or the issuing of judicial review proceedings before funding was granted.

We have included below two case studies, taken from PLP's exceptional funding project, which are illustrative of some of the barriers to accessing ECF.

BXA

BXA was 52 years old and had been in the UK for approximately 16 years. She had a history of street homelessness, a diagnosis of paranoid schizophrenia, had been detained under the Mental Health Act 1983 on several occasions, and struggled to give a coherent account of her experiences. BXA required ECF to be represented in her immigration appeal in which she would need to argue that her removal would breach her rights under Article 8 ECHR.

An application for ECF was made for BXA, with our assistance, and marked as urgent. An immigration specialist had assessed the prospects of BXA succeeding in her appeal as good, but the LAA refused the application on the basis that, in their view, the prospects were poor. An application for a review of the refusal was submitted to the LAA, but they upheld the refusal, again on the grounds that the prospects were poor. The LAA's decision letter referred extensively to immigration case-law and asserted that the application had failed to demonstrate why BXA's Article 8 ECHR rights would be breached if she was removed. Following this, PLP instructed experienced counsel to prepare an advice, pro bono, on the merits of BXA's immigration case. Counsel advised that the case was meritorious. We sent this advice, together with a pre-action letter, to the LAA following which (nearly four months after BXA's first application was made) the LAA granted her ECF. We understand that BXA's immigration appeal was successful.

MM

MM is severely disabled, suffering from cerebral palsy, and is dyslexic. He cannot speak and relies upon a basic electronic voicebox to communicate. He required ECF to allow him to be represented in private law family proceedings that would determine the level of contact he would have with his children.

MM approached our exceptional funding project for help after an initial application for ECF had been unsuccessful and he had been unable to navigate the application process to apply again without legal assistance. We obtained a pro bono advice from counsel as to the merits, and complexity, of MM's family case, which confirmed that the case was both meritorious and complex. An application for ECF was submitted for MM, with our assistance. This application was refused on the basis that, in the LAA's view, MM's family case did not meet the merits or the ECF

test (the decision was made before the high test used for ECF was disapproved by the High Court in Gudaviciene and Ors⁵²). An application for review was submitted to the LAA, again with our assistance, but the LAA maintained their refusal to grant ECF on the basis that the merits criteria were not satisfied. Shortly after this, the judge in MM's family proceedings made an order recording his opinion that MM should be granted legal aid. Notwithstanding these judicial observations, it was necessary for PLP, on behalf of MM, to issue judicial review proceedings against the LAA before they agreed to grant ECF. The grant of ECF was made over a year after MM made his first application.

In refusing to accept that MM's case was meritorious, the LAA argued that it was unclear how he could be granted contact without support provided by the Local Authority, but that the family court was not the appropriate forum for determining such issues, rather he should challenge any refusal to support through judicial review. MM requested such support from the Local Authority, and issued judicial review proceedings when it was refused, but the judicial review claim was certified as 'totally without merit,' on the basis that the correct forum to determine the support issues was the proceedings in the family court.

One reason for the startlingly low ECF grant-rate was that, from the outset of the scheme, the government contended for a very restrictive interpretation of section 10 LASPO, arguing that a Convention right to funding arose only under Article 6 ECHR, and that it was only necessary to provide such funding if its absence would make it "practically impossible" for the applicant to bring the case. ECF was not, therefore, available in immigration cases that did not engage enforceable EU law rights, and the test to be applied in cases in which Article 6 ECHR was engaged was very high indeed.

PLP was instructed by the Claimant I.S. in *Gudaviciene and Ors*, to challenge the lawfulness of the government's interpretation of section 10, and we succeeded in both the High Court and Court of Appeal. The Court of Appeal confirmed that the need for Convention rights to be "practical and effective" meant that a right to funding could arise under Article 8 ECHR (and other Articles), and that funding would be required where it was necessary to enable an individual "to present their case effectively and without obvious unfairness (para 56)". The outcome of *Gudaviciene and Ors* was vitally important in improving access to the ECF scheme.

However, whilst clarification of the test for ECF eligibility improved access to the scheme from a legal perspective, significant practical barriers remained. Other factors affecting access to ECF were considered in *I.S. v Director of Legal Aid Casework and the Lord Chancellor*,⁵³ a challenge to the operation of the ECF scheme. In *I.S. v PLP*, on behalf of the Claimant, filed approximately 85 witness statements, including statements from legal aid providers who had made 20% of all ECF applications (and 44% of all successful ECF applications) setting out their experiences of the scheme. This included evidence of our own direct experience of assisting applicants through our exceptional funding project. The challenge was heard by the High Court on 10-12 June 2015 and in his judgment, handed down on 15 July 2015, Collins J found

⁵² See Fn 36 above.

⁵³ See fn 37 above.

(inter alia) that the scheme was operating unlawfully because it gave rise to an unacceptable risk that an individual would not obtain funding when it was needed to prevent a breach of their Convention or EU +rights. The Defendants' appeal against the judgment of Collins J was heard by the Court of Appeal on 21 and 22 March 2016 and judgment is awaited. [Appeal allowed on 20 May 2016.⁵⁴]

In response to the judgments in *Gudanaviciene* and *I.S.* the government has revised the ECF guidance available both for individuals and for practitioners, and introduced a new, shorter, application form, which provides for the possibility of applying for funding to investigate whether an ECF application is viable. The cases of *Gudanaviciene* and *I.S.* have also had a clear impact on the number of ECF applications that are being granted. The most recent LAA statistics for the quarter October-December 2015 show a grant rate of 53%. Particularly striking is the impact on the grant-rate for immigration ECF applications which in October-December 2013 was 2.4%, but in the corresponding quarter for 2015 stood at 77%.

However, the ECF application rate has remained relatively static compared with 2014/2015, and is considerably lower than 2013-2014.⁵⁵ The static number of applications suggests that providers and unrepresented individuals remain unwilling or practically unable to make ECF applications, notwithstanding the impact of *Gudanaviciene* and *I.S.* Our recent experience of the scheme suggests that there remain considerable barriers to access, particularly for unrepresented applicants who can struggle to get an application accepted as such by the LAA. We are, therefore, concerned that in practice large numbers of individuals who are prima facie eligible for ECF are still not able to obtain it.

Resolution Nor is exceptional funding providing legal aid in cases where victims do not have the headline forms of evidence and/or people genuinely cannot represent themselves. On the introduction of the LASPO Bill the then Lord Chancellor said "Fundamental rights to access to justice will be protected through retention of certain areas of law within scope and a new exceptional funding scheme for excluded cases". Yet the number of applicants securing exceptional funding is still pitiful.

SBS We also remain sceptical of the exceptional funding scheme for those who cannot access legal aid and whose human rights may have been breached. Our experience and that of experienced solicitors with whom we work, shows that obtaining funding through this scheme is a huge, uphill battle. The application process is unwieldy and unnecessarily complex and the number of successful applications remains shockingly low. A further disincentive to such applications is that solicitors are not paid for completing the extensive exceptional funding application forms unless the application is successful. We are of the view that the scheme is not fit for purpose. This is echoed by judgments of the High Court, most recently *IS v The Director of Legal Aid Casework & Anor* [2015] EWHC 1965 (Admin), that have made clear that this scheme is not operating satisfactorily.

⁵⁴ See fn 38 above.

⁵⁵ In the quarter October-December 2015 the LAA received 251 applications for non-inquest ECF. In the corresponding quarter from 2014-2015, they received 225. However, during the corresponding quarter for 2013-2014 they received 341 applications, a decrease from the highest number of applications ever received per quarter: 414 were received in July-September 2013.

TCS Yes: the key issues which we have seen through our direct work with young people and our research that have presented particularly difficult bureaucratic issues relate to the Exceptional Funding Scheme (EFS) ...

Exceptional Funding Scheme

The Government announced at the time of the LASPO consultation that there would be a 'safety net' in the form of the exceptional funding scheme for cases not covered by legal aid. However, the Government's own impact assessment estimated that only 5% of excluded cases for education will gain exceptional funding and no cases for immigration matters.⁵⁶ Unlike family law proceedings, where special provision was made for children under the age of 18 to obtain legal aid, no explicit or similar safety net was made for children⁵⁷ involved in immigration proceedings even though these engage important issues around protecting children's welfare and best interests.

Since the implementation of LASPO, practice has shown the serious deficiencies inherent in the design of the EFS. As our research highlighted, the process of applying in the first instance, is overly laborious, complex and practically impermeable. In addition, to this, the application is a high risk process for legal practitioners given that funding for making the application is only granted if the case itself is granted, the quality of decision-making is patchy and there are no provisions for access for those that do not have the capacity to litigate.⁵⁸ More specifically in relation to children, JustRights, highlighted that in the period between October 2013 to September 2014, out of 50 children that applied for exceptional funding, only 3 were successful in this.⁵⁹ The restrictive availability of exceptional funding has been put under scrutiny in a series of High Court test cases against the Lord Chancellor and the Director of Legal Aid Casework in 2014. In these cases, the High Court and Court of Appeal concluded that the thresholds, for establishing which cases are and are not 'exceptional', were too high. It was further concluded that these high thresholds hinder the ways in which immigration applicants can effectively access Article 8 of the ECHR. As such, it was determined that the ways in which the exceptional funding scheme is currently working, violates an applicant's rights under human rights law and European law. In the case of *IS v Director of Legal Aid Casework and the Lord Chancellor* the scheme was deemed unlawful, the application procedure 'far too complex' for applicants in person, while the rigidity of the merits test was deemed 'wholly unsatisfactory'.

One of the most striking findings of our 'Cut Off from Justice' research was the lack of engagement by solicitors with the exceptional funding scheme. Not one participant across the participant groups spoke about knowing children that had been assisted through this. When exceptional funding was raised during the interviews, it was highlighted as an elusive opportunity rather than the 'safety net' that it was designed to be. It was noted by some participants that lawyers did not see the point in submitting an exceptional

⁵⁶ Annex A: Scope, p. 3, table 4.

⁵⁷ Refugee Children's Consortium briefing on the Legal Aid, Sentencing and Punishment of Offenders Bill - Report stage, House of Lords, March 2012.

⁵⁸ Public Law Project. M. Spurrier. (2013) *Exceptional funding: a fig leaf, not a safeguard*. See fn 43 above.

⁵⁹ JustRights. (2015) '*Justice for the young: a snapshot*': Accessed September 2017:
<http://www.justrights.org.uk/sites/default/files/Justice%20for%20young%20a%20snapshot.pdf>.

funding application given the poor quality decision making of the process in conjunction with the long and complex process of putting an application together. It was not considered a good use of time and practitioners considered it more time efficient to secure pro-bono work. One practitioner did highlight to us the complications she saw with an 18-year-old young man going through the process. Indeed, it turned out to be too complicated for him to navigate even with the full support of his lawyer that in the end he abandoned the process altogether.⁶⁰

It is worth noting that since our research was published in 2015, there is some anecdotal evidence of slight improvements to the EFS with respect to grant rates. However, the general issues around the complexity of this process, the issues around funding and risks carried by legal practitioners still remain. The vast majority of children and young people affected by the cuts will remain unable to access legal aid through this channel. Furthermore, the unnecessary additional level of bureaucracy created by this scheme means that children and young people will continue to face delays in resolving their immigration status, prolonging their precarious situation which restricts their access to vital services and support, leaving them vulnerable to destitution, exploitation and exclusion.

UKAJI In 2014 the Children's Commissioner published a report outlining research, carried out by Just for Kids Law, on the impact on children and young adults of the changes to Legal Aid since April 2013. It concluded that a wide range of rights under the UN Convention on the Rights of the Child are likely to have been negatively impacted by the civil and prison law legal aid changes. One recommendation to mitigate this impact is to ensure that the exceptional funding procedure under Section 10 of LASPO is funding cases where children and young people's rights may otherwise be infringed and is accessible to children and young people acting without assistance.

The residence test

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

HSSL *2013 Transforming Legal Aid Consultation: the proposed residence test*

At the time of writing, the Supreme Court has declared that the proposed residence test would be ultra vires, but has not yet published any judgment and so the reasons are unknown. We agree with the Public Law Project, which brought the case, Young Legal Aid Lawyers and others who have all commented that the residence test is discriminatory and that access to legal aid should not be dependent upon residence. If, as Moses LJ said in the Divisional Court, there is a need for legal aid to be granted to a particular individual in order to assist with her or his legal dispute, it is not appropriate for legal aid to be subject to further additional thresholds.

LAPG If the residence test is brought in, it will be difficult for people to produce the required evidence.

⁶⁰ The Children's Society. Connolly, H. (2015) *Cut Off from Justice*, p. 59. Accessed September 2017: https://www.childrenssociety.org.uk/sites/default/files/LegalAid_Full_0.pdf

SBS *The proposed residence test*

We are aware that the ‘residence test’ was recently declared unlawful by the Supreme Court. (See *R (on the application of The Public Law Project) v Lord Chancellor*, decided 18 April 2016, judgment awaited).

However, we are concerned that the government may decide to press ahead with primary legislation to enact the residence test in some other form. For the sake of completeness therefore, we have set out our concerns in brief below.

We were concerned by the muddled and confused drafting of the statutory order that introduced the ‘residence test’, although we know that it has been declared unlawful by the Supreme Court. The drafting of the original statutory order did not make clear whether or not victims of domestic violence would be automatically exempt from the ‘residence test’ or what evidence (if any) they would need to present.

In any event, we remain concerned that any form of ‘residence test’ will have a highly discriminatory and devastating impact on black and minority women in particular, especially migrant women who face greater barriers when seeking exit from abusive relationships. This is due to their lack of secure immigration status, cultural or religious expectations (often embedded in the notions of honour and shame) to tolerate abuse, isolation, general hostility from within their communities and racism. All of these are well recognised by key statutory services as risk factors that heighten women’s vulnerability to abuse, violence and exploitation.

The following are examples of groups of vulnerable and destitute women who may be caught by the ‘residence test’ and therefore be unable to access legal aid if it is reintroduced in some form or other:

- a. Migrant women who are ‘overstayers’ through no fault of their own due to domestic violence and the failure of their husbands to regularise their stay;
- b. Women who arrive in the UK under spousal visas who are subject to domestic violence and who have been in England and Wales for less than a year;
- c. Women who are subject to transnational marriage abandonment (i.e. women deliberately taken abroad as part of ongoing abuse and violence) who eventually make their way back to the UK but have no proof of residence in the UK;
- d. Children who are abducted abroad or separated from their mother whilst abroad;
- e. Migrant domestic workers;
- f. Trafficked women who have not or cannot claim asylum.

Our experience shows that BME women are, and will continue to be, over-represented within all these categories. If the residence test is implemented, a large percentage of our service users are likely to be denied access to justice in the face of domestic violence and other cultural forms of harm. They are highly unlikely to have the funds to pay privately for legal representation and are as a consequence also highly

likely to be made even more vulnerable to additional harm and exploitation. We are willing to provide the Commission with case studies in respect of the implications of the residence test if needed.

We are strongly of the view that the ‘residence test’ is part of a growing climate of xenophobia and hostility against migrants and ‘foreigners’ that appears to be encouraged by the state and parts of the media. Our fear is that this anti-migration culture will be greatly exacerbated by the enactment of the Immigration Bill 2016 and other draconian immigration law and policies.

Wrongful use of LASPO delegated powers

PLP *Use of LASPO delegated powers*

The implications for access to justice on the face of LASPO were profound enough, but a particular concern arises from a pattern of attempts to use LASPO delegated powers to introduce restrictions on legal aid which go beyond the scope of the statutory scheme as approved by Parliament. LASPO was a statute framed in the need to save costs, but many of the subsequent reforms have been ideological in nature.

In addition to our focus on ECF, PLP was involved in three major challenges to the government’s implementation of the LASPO scheme: *R (Public Law Project) v the Lord Chancellor*;⁶¹ *R (Ben Hoare Bell and Ors) v the Lord Chancellor*;⁶² and *R (Rights of Women) v the Lord Chancellor*.⁶³

In these three cases the government introduced (or attempted to introduce) considerable restrictions on legal aid provision, and hence access to justice, through secondary legislation, thereby avoiding the level of Parliamentary scrutiny that would be afforded to primary legislation. *Ben Hoare Bell and Ors* was a challenge to regulations which meant that legal aid providers would go unpaid for work done on certain meritorious judicial review cases. *Rights of Women* was a challenge to regulations which imposed restrictive evidence requirements on those seeking legal aid as victims of domestic violence. The ‘residence test’ that we challenged in our own name would have restricted the availability of legal aid to those who could demonstrate that they met a requirement of 12 months or more lawful ‘residence’ in the UK. In *Ben Hoare Bell and Ors* a Divisional Court, and in *Rights of Women* the Court of Appeal, ruled that regulations introduced by the Lord Chancellor undermined the statutory purpose of LASPO. In PLP’s challenge to the proposed residence test, the Supreme Court has ruled that the test was ultra vires the enabling powers in LASPO that the Lord Chancellor proposed to use.

In our responses to the Transforming Legal Aid and Judicial Review: Proposals for Further Reform consultations PLP had expressed our concerns about the lawfulness, and the implications for access to justice, of the proposal to introduce the regulations challenged in *Ben Hoare Bell*, and the proposal to introduce a ‘residence test’ for legal aid. The recent ruling of the Supreme Court in relation to the

⁶¹ Both accessed September 2017: [2015] EWCA Civ 1193, <http://www.bailii.org/ew/cases/EWCA/Civ/2015/1193.html> ; [2016] UKSC 39, <http://www.bailii.org/uk/cases/UKSC/2016/39.html>

⁶² Accessed September 2017: [2015] EWHC 523; <http://www.bailii.org/ew/cases/EWHC/Admin/2015/523.html>

⁶³ [2016] EWCA Civ 91. See fn 16 above.

residence test, and the judgment of the Divisional Court in *Ben Hoare Bell and Ors* demonstrate that our concerns were well founded.

Family law

Respondents' biggest concerns about the state of access to justice:

CEW Our biggest concerns in the three years since LASPO came into effect are these:

1. Increasing numbers of parents in private law cases are litigants in person and have no access to representation or to expert reports, so that they and their children are denied justice in serious matters concerning sexual, physical, and emotional abuse, and neglect.
2. When expert witnesses are instructed in private and public law cases, the scope of our reports is driven by financial cuts, such that we often have available only limited documents and are allowed only limited interviews with family members, and when we request more time for complex cases, determinations are made by non-clinical Legal Aid Agency staff, who routinely over-ride the decisions of the Judge who knows the case first-hand.
3. Many highly experienced medicolegal experts from all disciplines have left or limited their Family Court work because of the rate cuts, insufficient hours allowed to properly undertake an assessment, and difficulty collecting payment from multiple parties responsible for paying bills; experience built up over years in the Family Courts has been lost.

CS In my view the three areas of greatest concern are:

1. The lack of effective access for many clients in private law family cases, following the LASPO cuts;
2. An over-reliance on the adversarial model of dispute resolution, despite it being particularly ill suited to family cases (especially public law as discussed below);
3. Failure to give effect to the principle that litigation should generally be the last resort in the civil justice system.

FNFBPMC

1. Male victims of domestic violence are less likely to be able to access legal aid;
2. Unreasonable restrictions on contact for non-resident parents;
3. The family court system needs whole sale review from a service user perspective;
4. The unfairness of requiring a £215 fee for the enforcement of an order;
5. The need for an inquisitorial system to determine the best interests of children.

GIPSIL Restriction of civil legal aid in family cases to those cases where domestic violence is effectively proven through corroboration of other agencies;

RoW

1. Domestic violence survivors are unable to access legal aid in family law cases either because they do not have the required evidence of the domestic violence or because they are financially ineligible for legal aid but cannot afford to pay privately.
2. It has become too difficult and unaffordable for many law firms to continue to provide legal aid. This has led to legal aid deserts throughout the country.
3. Only survivors of domestic violence are deemed to need legal advice and representation. Other vulnerabilities are not taken into account. Women with disabilities, mental or physical illness, language, educational, financial and social barriers are not deemed to require legal advice or representation in order to conduct litigation. It is unconscionable that a destitute woman who does not understand English should be required to draft her own evidence or be expected to understand and comply with orders of the court.

SBS We would identify three broad areas of concern for BME women in terms of access to justice:

1. Difficulty in accessing specialist and statutory services, as well as legal advice services including law centres and legal aid practitioners who can facilitate access to justice;
2. The highly restrictive nature of the legal aid 'reforms' especially the financial thresholds for legal aid and the 'gateway criteria' in domestic violence cases;
3. The 'justice gap' increasingly being filled by discriminatory and unaccountable community-based or religious based forums and 'tribunals' that seek to arbitrate using religious laws that have a profoundly negative human rights and equality impact on the most vulnerable in our society, especially BME women.

WA

1. Women survivors of domestic abuse are being put at further risk of abuse and harm by a justice system that does not hold their needs and safety at its heart.
2. Domestic abuse must be a top priority for the police and all members of the judiciary to ensure that survivors receive the support and help that they need.
3. Women's Aid is gravely concerned to still be routinely hearing from survivors of domestic abuse that they are unable to access justice commensurate to the trauma and abuse that they have suffered: the justice system needs to put them first.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

BHB Perhaps the biggest frustration for the clients is delay particularly for example in a case where children have been abducted by a dangerous former partner: Nor do they understand that there is no case for housing disrepair cases, or debt.

CLOCK As a researcher in intersectionality and transformative methodologies (2008) within Keele University School of Law, I engaged with a member of a domestic violence organisation Voices of Experience, to share experiences of how victims of domestic violence often have to engage in a number of legal pathways for criminal, family, divorce, children's arrangements, housing and social welfare needs, involving considerable costs and stresses trying to access a range of different services.

The academic/community based relationship with Voices of Experience, led to direct requests for assistance in court, for applicants who were experiencing anxiety in court proceedings which directly implicated the children and their capacity to argue for safe contact arrangements for the children.

FNFBPMC *What difficulties do you, your organisation, your clients or the people you represent face in enforcing their legal rights?*

Anecdotally there has been an improvement in the granting of 'contact' to non-resident parents following the enactment of S11 of the Children & Families Act 2014. However, we see all too often that this contact is 'token' and is predicated on a model of childcare that is a relic of the last century – i.e. that mothers stay at home and care for children while dads go out to work.

What, as a user of the system, are you or your clients' biggest frustrations?

There is a persistent and widely held view by our service users that the Family Court is not fit for purpose. This is exacerbated by statistics produced by MoJ that show that in relation to applications for enforcement of Orders only 2.1% end in an order for enforcement. A well respected Senior family court judge in Wales once remarked that he knew that people came to his court every day of the week and told him a pack of lies. In exasperation he concluded by saying '...but what can I do about that!?

It is also a too often heard comment from service users that 'the only thing that is predictable about the Family Court is its unpredictability'. It doesn't assist parents who are trying to resolve issues around the care of their children following divorce or separation to be faced with a system where they are told 'every case is different and needs to be determined on its individual merits'.

Many LiPs have the clear impression that the Court pay far more attention to the words of professionals i.e. barristers and solicitors, than to them. Paradoxically we are aware that legal professionals feel that LiPs have an unfair advantage because they are allowed to get away with saying things that the professionals would not.

Many service users have also pointed to the incongruity of a system predicated on 'the best interests of the child being paramount' yet maintaining an adversarial rather than inquisitorial system to determine that.

LLS

- Divorce is out of scope. This inevitably means that the advice which could lead to a speedy resolution of damaging disputes cannot be given.
- Disputes over contact to children are out of scope which has a potentially damaging effect on family life and will mean that children may be deprived of a relationship with one or other of their parents.

PCS Our members in family courts tell us they are worried about the added distress all this [the increase in the number of litigants in person] is causing to children caught up in disputes between parents. The Bar Council estimates that 68,000 children annually are being affected by the removal of legal aid for family contact and finance disputes.

Before the cuts lawyers were more likely to be present in family cases to encourage clients to seek mediation and agree arrangements, resolving some cases whilst the court heard others.

Resolution Since the legal aid reforms implemented in April 2013, fewer people have access to legal support during their divorce or separation. Legal Help, which is the form of legal aid used to fund legal advice on divorce and associated issues has fallen to around one third of the pre-LASPO level, and continues to fall. New cases opened during October to December 2015 were 13% lower than in the same period of 2014.

This restricts people's potential to resolve their disputes, whether or not they use the courts. Before the introduction of LASPO, solicitors provided crucial initial advice for people going through separation under the legal aid scheme, helping them to understand their options (including out of court) and steps they needed to take. They were the major point of referral to out of court dispute resolution.

In addition, publicly funded mediation numbers dropped 45% in the first two years post LASPO. They have since increased, although not on a consistent basis or to pre-LASPO levels, despite government objectives of diverting more separating couples into mediation. Almost three years on from LASPO, Mediation Information and Assessment Meetings (MIAMs) dropped by 14% from July to September 2015 compared to the same period in 2014.

Many family clients have multiple and not only family law problems. It is extremely challenging to signpost to meet other needs and for family law clients to get advice in related areas of law, including out of scope housing issues and welfare benefits, as it is now almost impossible to get specialist advice on first-tier benefit appeals.

There is an inevitable but unfortunate evidence gap around the volume and experience of those who, for example, may remain in conflicted and damaging relationships, delay resolving matters, or not resolve children and finance matters at all. We are particularly concerned about parents who may decide not to pursue contact issues or are unable to try everything to maintain contact for the child's benefit.

More people are litigants in person

Under LASPO, the majority of private family legal aid was removed from scope. Together with the current financial eligibility rules and the LAA's approach to means-testing, this has resulted in an increasing number of litigants representing themselves before the family courts. The House of Commons Library has collated evidence that says the number of litigants in person (LIPs) has increased. Their figures of 50,000 people representing themselves in family disputes in 2013 are, disappointingly, the latest official statistics available.

Some of those people would have benefited from direction to publicly funded mediation and have simply missed out. There has been a recent upward trend, but it cannot be a coincidence that the number of mediation matter starts has fallen to 60% of the previous level since the implementation of LASPO.

In terms of the impact on the family court and their client, when they act for a party and one or more of the other parties is a LIP, our members consistently report that there is less constructive dialogue between and outside court hearings, and this works against constructive negotiation and settlement before final hearing. In a Resolution survey, almost 95% of members who responded said that the case takes longer than it could do, almost 70% said final decisions have to be made by the court without necessary expert evidence, and 80% that the legal or legal aid costs of the represented party increase.

This all adds further costs to the family law system, largely due to the extra court time cases involving a LIP often require. Anecdotally, our members report more children being separately represented in private children cases. This means that, whilst money is being saved at one end (in terms of cuts through LASPO), additional money is being required at the other stages of the process (in order to deal with the consequence of more LIPs).

RoW The barriers to access to justice are numerous and significant. Whilst the redrafting of Regulation 33 may be helpful, it is not on any view going to be sufficient to provide access to legal advice and representation to those in need.

Family law - domestic violence – the gateway criteria

BHB Problems with other parts of the system (for example the recent Chief Police Officers' report indicated that the police were not able to properly identify and act on situations of assessment of risk of domestic violence, honour based violence or forced marriage) can mean that there is no safety net for children in a dangerous situation. Equally hard on the clients is when they have to be told that although they may be a genuine victim of violence, they 'can't prove it' so we can't represent them: They simply don't understand.

CLSJ This impact has been particularly felt in the family justice system. Although victims of domestic violence remain within scope, the narrowness of the evidence requirements for legal aid funding in these cases means that many victims of financial, sexual and emotional abuse as well as less overt physical abuse, who are often unable to obtain the required evidence, are now faced with the prospect of self-representation if they need to access the family court. This is by no means a small proportion of victims - *Rights of Women (ROW)* have estimated that even despite amendments to regulations in 2014, that 40%

of its users were denied access to legal advice and representation,⁶⁴ and this is likely to be a significant underestimation, as it does not take into account victims who did not make use of their services or make a legal aid application. This means that many domestic abuse victims, along with many individuals also contending with very serious problems such as disputes over children, must self-represent if they are to get their cases to court.

In the context of domestic violence cases this is a particularly urgent concern, even for those who do obtain legal aid through the narrow evidence gateway. For while this latter group will have representation, their attackers will most likely be self-represented, and as such will be responsible for conducting their own cross-examinations. Rather than protecting the alleged victim of abuse, this process may allow an alleged perpetrator to undermine the evidence of the victim through intimidation – thereby potentially perpetuating the tensions between them and the abuse that initially led them to court.⁶⁵

Rights of Women estimate that only 16% of women go on to self-represent in these circumstances,⁶⁶ but there are likely to be similar levels of reluctance among even those who are eligible for legal representation. This leads to the very serious danger that victims of abuse, in the absence of available legal help, may do nothing, and that these cases will only reach court when their situations have escalated to the point where they are at immediate risk (and can produce the required forms of evidence for legal aid). In addition, without legal aid, many individuals – especially those in precarious situations such as those on very low incomes, abusive relationships, or those with mental impairments and disabilities – may not know where to get help for their legal problems, because legal aid has historically been a significant gateway to advice and assistance. This reform comes in a political context where self-sufficiency and independence is emphasised, yet these reforms risk perpetuating the existing problem in that many people do not recognise the severity or legality of their problems in the first place. Particularly in the context of family law, the increased emphasis on autonomy and responsibility gives the clear impression that the state is not prepared to intervene in ‘private’ matters such as private law cases involving children. Even more concerning is that with the issues of evidence discussed earlier, in practice this is also the case with issues of domestic violence despite these cases being the exception to the widespread removal of family law legal aid.⁶⁷

⁶⁴ Rights of Women. (2015) *Evidencing Domestic Violence: Nearly 3 years on*. Accessed September 2017: <http://rightsofwomen.org.uk/wp-content/uploads/2014/09/Evidencing-domestic-violence-V.pdf> Also see further: Rights of Women (2013) *Evidence to the Justice Select Committee on the Impact of Changes to Legal Aid*, p.3.

⁶⁵ All accessed September 2017: Explored in cases such as: *Re C (A Child) (No 2)* [2014] EWFC 44 (Fam); <http://www.bailii.org/ew/cases/EWFC/HCI/2014/44.html> *Re A (A Child)* [2013] EWHC 1694 (Fam); <http://www.bailii.org/ew/cases/EWHC/Fam/2013/1694.html> *Lindler v Rawlins* [2015] EWCA Civ 61; <http://www.bailii.org/ew/cases/EWFC/HCI/2014/31.html> *Re C (A Child)* [2014] EWFC 31; <http://www.bailii.org/ew/cases/EWFC/HCI/2014/31.html> *Re K and H (Children: Unrepresented Father: Cross-Examination of Child)* [2015] EWFC 1. <http://www.bailii.org/ew/cases/EWFC/HCI/2015/1.html> .

⁶⁶ Rights of Women. (2013), *Evidencing Domestic Violence - A Barrier to Family Law Legal Aid* . Accessed September 2017: <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Evidencing-DV-a-barrier-2013.pdf>

⁶⁷ For further discussion of the social implications of the shift in family law, see: Julie Wallbank and Jess Mant, ‘The Mysterious Case of Disappearing Family Law and the Shrinking Vulnerable Subject: The Shifting Sands of Family Law’s Jurisdiction’ (Forthcoming, Journal of Social and Legal Studies).

FLDSM *Victims of domestic abuse*

LASPO introduced a requirement that any person wishing to apply for legal aid for a private family law matter had to have been the victim of domestic abuse and to have particular documentary evidence of that abuse as set out in regulations. Following a review, the 2012 Regulations were amended in 2014 to widen slightly the evidence that would be accepted. However, the list of documentary evidence that would be accepted by the Legal Aid Agency (LAA) was still proscriptive and restrictive.

Until very recently that evidence had to be dated within the 2 years of the date of the application for legal aid meaning that victims of historic domestic abuse could not access legal advice and representation funded by legal aid in, for example, cases that related to a dispute about the arrangements for care of a child no matter how severe the abuse they had suffered had been. Regulation 33 provided that legal aid will not be available unless documentary verification of domestic violence is provided within the 2-year period before the application for legal aid is made save for instances of an unspent conviction, unconcluded criminal proceedings and existing police bail for a domestic violence criminal offence.

That cut-off date was applied strictly without a common sense use of discretion. For example, we acted for a mother (M) where the father had been convicted and imprisoned for serious criminal offences in 2010, which including assaulting M. M was a witness for the prosecution and such were the concerns for her safety at the hands of F, she was advised by the police and social care to relocate out of the area which she did and changed her and the child's name. In 2011 (pre-LASPO) we had represented M, with the benefit of legal aid, in Children Act proceedings regarding her young child as the father was seeking contact. Clearly M was in fear of her own life and that of her child who had been exposed to domestic violence. At the end of the family proceedings an order was made for indirect contact between F and the child annually. In March 2013 F was released from prison and applied for Legal Aid to pursue an application for direct contact-prior to the changes. The application for contact was listed after April 2013 and therefore M was not entitled to legal aid as the application was made post LASPO and there had been no recent domestic abuse incidents as F had been in prison. An application for Exceptional Case Funding (ECF) was made and refused.

In February this year the Court of Appeal quashed those parts of the regulations that set out the requirement that the evidence had to be no more than 2 years old (*R (Oo Rights of Women) v The Secretary of State for Justice and the Lord Chancellor* [2016] EWCA Civ 91). The court said there was no obvious correlation between the passage of such a comparatively short period of time as 2 years and the harm to the victim of domestic violence disappearing or even significantly diminishing and declared that regulation 33 was invalid insofar as the 2-year time limited was concerned and as it does not cater for victims of financial abuse.

The Ministry of Justice responded to the decision by issuing new interim regulations which came into force Monday 25 April. These however maintain a requirement that evidence of domestic abuse is restricted by time although they have increased the time limit on verification evidence from 2 to 5 years, and introduced a provision for the assessment of evidence concerning financial abuse.

In our view there will still be many cases, in particular those relating to proceedings dealing with the arrangements for a child, where domestic abuse has occurred more than 5 years ago which would be material to the decisions a court would make in relation to the child and which will still affect the victim of the abuse so that they feel they cannot bring a matter to court. The result of this is that children may be seeing a parent in circumstances where it is not safe for them or the mother, or not seeing a parent in circumstances where they could do so safely with the proper safeguards being in place.

In relation to financial abuse, we are pleased at the recognition of this form of abuse. The regulations simply say the Legal Aid Agency may grant applications for civil legal aid where evidence is provided that the individual has been, or is at risk of, being the victim of domestic violence in the form of abuse which relates to financial matters. How that operates in practice remains to be seen.

The requirement for “acceptable evidence” from the police does not deal with the reality that many victims who do report an incident to the police then fail to press charges. In our view evidence of repeated call outs to the police even where no further action is taken at the request of the alleged victim should be sufficient evidence to satisfy the Legal Aid Agency.

The requirement to produce evidence in the forms specified still doesn’t reflect the reality that most victims of domestic abuse do not report the incidents – Women’s Aid say that on average a woman will be assaulted 35 times before reporting it to the police.

The term domestic abuse doesn’t only include physical violence, but describes any abusive behaviour repeatedly used by one person to control and/or dominate another person with whom they have had an intimate relationship. It also includes the exertion of control and/or domination of one family member over another. Financial, emotional and psychological abuse victims often don’t recognise they are being targeted.

The evidential requirements do not reflect the fact that the behaviour often experienced by the victim may not look intimidating or coercive if each incident is looked at in isolation but when looked at over a period of time a pattern of behaviour is evident.

A victim of emotional or financial abuse may report that pattern of behaviour to the police but if there is insufficient evidence to prosecute for a criminal offence that victim would not then meet the evidence requirements to obtain legal aid and access this legal advice which could help her separate from her abuser and protect her children.

The requirement that written evidence of admittance to a refuge is the only acceptable evidence from a domestic violence support organisation does not reflect the fact that many people engage with support organisations in other ways. Many of the domestic abuse organisations that we work closely with offer support to victims in the community rather than refuge facilities. In our view evidence of any engagement with a domestic abuse support organisation should be sufficient to meet the Legal Aid Agency’s requirements.

In terms of evidence from the police or health professionals frequently there is a charge for this evidence which at the present time is not funded by the LAA nor is it refundable in the event of a successful application. In our experience this presents a significant barrier to justice and in many cases leads to the victim not proceeding with an application for funding and therefore not taking the steps they need to protect themselves and their family.

On a practical level the LAA dictate the wording of the evidence that they will accept so that we will often find that when a prospective client has obtained for example a letter from their GP at an expense – which is not a refundable expense – that this is then rejected as evidence by the LAA. The LAA do not offer a checking service for documents so they will not give an indication in advance whether the document that has been obtained will meet their criteria without a full application being submitted. Every application for Legal Aid that is rejected by the LAA is a “black mark” against the Solicitors firm which can count against the firm in a later tender process or even trigger a review of the legal aid franchise. At the very least the LAA should offer a free checking service.

In our view those who assess applications for Legal Aid at the LAA and all Solicitors and paralegals who offer advice under a legal aid franchise should undergo mandatory training on domestic abuse and how to identify it. A good model would be Resolutions Domestic Abuse Toolkit. We are concerned that many Solicitors and paralegals who advise victims of domestic abuse do not themselves understand what domestic abuse is and how to identify it.

FNFBPMC LASPO has significantly disadvantaged men in the Family Justice system because they are less likely than women to be able to access Legal Aid as a result of being victims of domestic abuse. Research undertaken by Rights of Women has shown that 38% of women who were victims of domestic violence and abuse were unable to access Legal Aid because they were unable to provide the prescribed evidence. In contrast research undertaken by our charity with a sample survey of 226 male victims using the same question framework as Rights of Women discovered that 69.8% of respondents did not have the qualifying evidence.

LAPG It has been difficult for people to produce evidence to satisfy the domestic violence evidential requirements. This may well continue despite recent changes.

PCS Protection for victims of domestic violence is not working.

At the time LASPO was being introduced much was made by the then government that victims of domestic abuse and child abuse would still be protected and have access to free legal advice. The reality is that in the majority of cases this is not happening.

One in four women will suffer domestic violence in their lifetime and on average, two women a week are killed by a current or former male partner.

In the family courts since the cuts Legal Aid was only available until very recently if there had been evidence of domestic abuse or child abuse in the last two years. That can take some proving. The Ministry

of Justice has set a very high and bureaucratic threshold, requiring written proof, such as a letter from your GP (that might cost £75), or proof from a court (cost: £60).

As one of our members who is a legal adviser in a family court has put it: “To break free and survive domestic violence you need support, not bureaucratic obstacles.”

We can only guess at how many potential litigants in person simply feel unable to try and access justice alone.

In February 2016 a Court of Appeal decision quashed those parts of the regulations that set out the requirement that the evidence had to be no more than two years old (*R (Rights of Women) v The Secretary of State for Justice and the Lord Chancellor*).⁶⁸ The government responded to the decision by issuing new interim regulations which came into force on 25 April. These however maintain a requirement that evidence of domestic abuse is restricted by time although they have increased the time limit on verification evidence from two to five years, and introduced a provision for the assessment of evidence concerning financial abuse.

We support the concern that there will still may be many cases, in particular those relating to proceedings dealing with the arrangements for a child, where domestic abuse has occurred more than 5 years ago which would be material to the decisions a court would make in relation to the child and which will still affect the victim of the abuse so that they feel they cannot bring a matter to court.

Resolution Resolution is concerned that the current scheme is so restrictive and complex that even people who are eligible are not accessing legal aid, including some sufferers of domestic abuse. In our members’ experience, the eligibility and evidential requirements have not provided sufficient and flexible access to legal aid for domestic abuse sufferers. There is an evidence gap in relation to those sufferers who may no longer seek access to private family legal aid at all, or fail to obtain the required evidence, which cannot be formally reported.

There have been some changes to the gateway to private family legal aid since implementation, although government continues to resist accepting the word of the applicant and/or the solicitor regularly professionally screening for domestic abuse. The recent Court of Appeal ruling highlights some of the flaws in the system, including the misconceived and harsh two-year rule. It is surprising that new interim regulations still provide for a cut off period, albeit of five years.

Even those who Parliament intended to help can be refused legal aid. Some prescribed evidence documents don’t persuade the Legal Aid Agency (LAA) even if they objectively give the answer. For example, one of our members recently supported a client who presented to their GP. The GP’s letter stated that “... disclosed to me that her current husband has been violent towards her. Hit her on a number of occasions. She tells me that he's also forced her to have sex with him against her wishes... She is naturally very low in mood and I have referred her to primary care psychology for further advice and counselling.” In response to the letter from the GP, the LAA denied legal aid stating “it is considered the

⁶⁸ [2016] EWCA Civ 91. See fn 16 above.

evidence of actual or potential domestic violence provided does not justify the grant of public funding" and expected a second letter from the GP using template wording.

RoW We hear first-hand the impact that LASPO has had on women in the family courts. We have conducted and published extensive research on the way in which LASPO has prevented domestic violence survivors from accessing legal aid. We draw on our most recent research report *Evidencing domestic violence*: nearly 3 years on in our evidence below. Since this research was published, the Court of Appeal found in favour of our legal challenge to Regulation 33 of LASPO. The Court of Appeal ruled that the 24-month time limit is unlawful. The judgment (the Judgment)⁶⁹ also requires the Ministry of Justice to add a form or forms of evidence to the list of domestic violence evidence which will allow victims/survivors of financial abuse to apply for family law legal aid.

Since the Judgment the Parliamentary Under-Secretary of State for Justice has confirmed that the Ministry of Justice is gathering data to inform new regulations, and Rights of Women welcomes this move. In the meantime, temporary regulations have been laid and the Legal Aid Agency has provided new guidance effective from 25 April 2016.

Evidencing domestic violence:

Our research shows that the list of acceptable evidence is too restrictive. Prior to the Judgment, most of the forms of evidence were subject to an arbitrary 24-month time limit, though perpetrators may remain a lifelong threat to their victims. Our evidence showed that 23% of women would have had one or more of the prescribed forms of evidence if the two-year time limit was not in place. Disappointingly and despite the clear ruling of the Court of Appeal a new, albeit longer, time limit of 5 years has been introduced by the new interim regulations. This will mean that women with evidence of domestic violence continue to be denied access to justice due to an arbitrary time limit.

Helpfully, the new guidance to the interim regulations provides the Legal Aid Agency with discretion to accept a range of forms of evidence for survivors of financial abuse, including a letter from a domestic violence support organisation or a narrative statement setting out details of the abuse and why documentary evidence is not available. This approach is something we think should be extended to all other forms of abuse, not just financial abuse.

Our research shows that even with the 24-month time limit removed, 14% of domestic violence victims/survivors will not have the required documentation to evidence domestic violence. The regulations do not identify as victims of abuse those women who are seeking to leave long term coercive and controlling relationships where the abuse has not been reported to the police or where it has been reported but the police have considered they do not have enough evidence to pursue the allegations.

SBS Despite recent changes to the 'gateway criteria' in domestic violence cases, a significant number of BME women in particular are unable to evidence domestic violence in family cases because:

⁶⁹ *Ibid.*

- i. Often, they do not recognise that the abuse and oppression they are suffering can be defined as domestic violence and so do not report their experiences to any outside body;
- ii. Many are imprisoned in their own homes and/or are ignorant of their rights and/or do not know how to navigate the legal and welfare system and are therefore unable to seek help and support;
- iii. They fear isolation and destitution and so stay in abusive relationships;
- iv. They fear violent reprisals or deportations in circumstances where their immigration status is insecure or they are afraid of a family/community backlash and so do not report to any professionals or statutory agencies;
- v. The closed and strictly prescribed list of 'evidence' required by the LAA to prove domestic violence, means that even where women do have some evidence, unless it is in the prescribed form, it is rejected;
- vi. Inconsistencies between government agencies as to what forms of evidence of domestic violence will be accepted;
- vii. Difficulties in providing evidence that relates to incidents of domestic violence suffered abroad;
- viii. The failure of the LAA to recognise certain forms of domestic violence such as transnational marriage abandonment and financial and emotional abuse which are in any event difficult to evidence.

Women are unable to provide the prescribed form of evidence of domestic violence required under the 'gateway criteria' for legal aid.

Currently, one of the only ways by which legal aid can be accessed for private law family proceedings⁷⁰ (other than for injunctions) is by providing certain specified evidence that an applicant is a victim of domestic violence. This is commonly referred to as the 'domestic violence gateway criteria'. Regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012 sets out the forms of evidence which are acceptable. Where the 'gateway criteria' is satisfied, the applicant still has to pass the financial test for eligibility for legal aid (the 'means test') and a test to show that her case has sufficient prospects of success (the 'merits test').

A recent successful legal challenge mounted by *Rights of Women* in the Court of Appeal⁷¹ resulted in the court declaring the 'gateway criteria' to be unlawful. The requirement for evidence of domestic violence to be dated within the last 2 years prior to the application of legal aid was criticised by the Court of Appeal and explicit mention was made for the need to recognise the issue of financial abuse in abusive relationships.

⁷⁰ For example, applications for child arrangements orders for contact or residence, or financial applications.

⁷¹ *R (on the application of Rights of Women) v Lord Chancellor and Secretary of State for Justice* [2016] EWCA Civ 91. See fn 16 above.

In response to this outcome, we understand that the Lord Chancellor has issued new regulations⁷² which allow for evidence to be dated within the last 5 years and make provision for evidence of financial abuse to be submitted. However, we remain concerned by the replacement of the 2-year rule with a 5-year rule, which is in our view arbitrary and makes no sense. This together with other announced changes fail to recognise the considerable obstacles that many of our users face in reporting violence and therefore in having the requisite evidence to obtain legal aid. As stated above, for very valid cultural, religious and social reasons, many of our users do not report domestic violence to outside authorities. Often we are the only organisation to whom they will confide and trust. Others are unable to provide specific evidence of financial and emotional abuse and/or have never had the opportunity to report domestic violence because they have been subjected to domestic servitude and imprisonment, often in contexts where their immigration status is insecure.

We are not satisfied that a reformed 'gateway criteria' will serve any useful purpose. Indeed, our view is that it will do the opposite; it will continue to exclude women from obtaining much needed legal aid. We remain unconvinced that a 'gateway criteria' is necessary and believe that the 'merits' and 'means' test for eligibility is sufficient to filter out unmeritorious applications. To date, no proper evidence has been presented to suggest that the old pre-LASPO 'means and merits test' was inadequate in assessing eligibility for legal aid. Our view is that having 'gateway criteria' will not help enable all victims of domestic violence to access justice, and for this reason we urge a return to the pre-LASPO situation for all victims of domestic violence.

If there must be a 'gateway criteria', our view is that it should not be time bound and it should not matter what evidence of domestic violence is presented as long as it shows that domestic violence has been experienced.

The new regulations relating to the 'gateway criteria' in domestic violence cases may in fact be discriminatory because they do not take account of the social realities of BME women. The continuing evidential threshold will have a negative impact on BME women. The 'gateway criteria' will continue to defeat the purpose for which it was originally introduced in LASPO, as a concession to keep all victims of domestic violence within the scope of legal aid in private family law cases. Instead it will continue to exclude a large category of extremely marginalised women from accessing legal aid and therefore justice.

We present below some examples of cases where BME women, despite presenting as victims of domestic violence, have for a number of reasons been unable to satisfy the 'gateway criteria' for legal aid.

Unawareness that the abuse suffered constitutes domestic violence

Many of our users are simply not aware that the degrading and inhuman treatment they experience in their marriage and families is recognised as domestic violence. This is particularly the case where women experience non-physical violence such as emotional, financial and verbal abuse, controlling behaviour, neglect, cruelty and sexual violence within marriage. This ignorance is partly based on such women being

⁷² Civil Legal Aid (Procedure) (Amendment) Regulations 2016. Accessed September 2017:
<http://www.legislation.gov.uk/ukSI/2016/516/made/data.xht?wrap=true>

kept isolated and unaware of their rights, but also because of the values of the wider community in which they live that often normalises and justifies domestic violence and other forms of harm in the name of culture and religion. In many BME communities, women are still perceived as inferior and unequal to men; their main role is to be obedient and dutiful wives and daughters-in-law. It is still considered acceptable in some of these communities to control and chastise (including physically) wives, daughters or daughters-in-law in order to correct their behaviour. Ms N's case demonstrates this problem.

Ms N left her abusive husband in August 2013. She didn't report her experience as much of the abuse was verbal and emotional and she wasn't aware that this constituted abuse. She developed mental health problems and as a result, her husband was granted residence of their 2 children. Ms N was desperate to maintain contact with her children and therefore approached a solicitor to apply for a contact order. The solicitor informed her that she would not be eligible for legal aid as she did not have evidence to prove domestic violence as required by the domestic violence 'gateway criteria' and because there were problems in respect of her financial eligibility. Her solicitor therefore asked her for £6000 to conduct the case. Ms N borrowed this money to pay for the solicitor privately and was granted a contact order in November 2013 giving her monthly contact with the children, facilitated by her brother-in-law. However, following the grant of the contact order, Ms N's brother-in-law and husband failed to adhere to the terms of the order. When she approached her solicitor for help to enforce the contact order, she was told that she had to make further payments to cover his costs. Ms N could not afford to make further payments as she had already borrowed money and was not working. She tried writing to the court directly to ask for help to enforce the contact order, but received a response recommending that she seek advice from a solicitor. As a result, since 2014, her contact with her children grew increasingly irregular and was disrupted, causing her to become depressed and anxious. Ms N also sought advice from her solicitor regarding divorce, but could not afford the fees to pay for this.

In January 2016, Ms N came to SBS requesting help and advice with her child contact and divorce matters. She was referred to our family law advice surgery and was told that she would not be eligible for legal aid for divorce or child contact. The solicitor could only suggest that Ms N pursue a divorce herself and look for interim maintenance/a financial settlement in order to fund a private solicitor to assist with her child contact matter. However, as Ms N had never reported the domestic violence to an outside agency, she was not eligible for legal aid for her divorce. As a result, Ms N's divorce and child contact matters remain outstanding. She has not been able to achieve a clean break from her abusive husband and cannot therefore achieve independence or move forward in her life. More importantly, she has not been able to see her children regularly, causing her considerable anxiety and trauma.

The case of Ms R demonstrates how women often need support from a specialist agency to identify the domestic violence that they have experienced:

Ms R, an Indian national, was married for 17 years and has one daughter, aged 9. She lived with her husband and daughter in a house owned by her mother-in-law in the UK.

Throughout the course of her marriage, Ms R experienced verbal and emotional abuse from her husband as well as 5 separate incidents of physical violence.

Although Ms R did not describe herself as a victim of domestic violence when she accessed our services, we were quickly able to identify that what she had experienced was domestic violence. Her husband frequently humiliated her and told her she was 'useless' as a woman and mother, and that everything she did was wrong. Her husband would refer to her as 'a dog from India'. He told their child, 'here's a lesson for you, never feed the dogs in India'. He also compared her to an 'elderly pet' and said that as such his family could not get rid of her or throw her out. Ms R's husband told her she looked like a 'tramp' and said that he would have to pay someone to have sex with her. Ms R wasn't allowed to eat with the family and her mother-in-law also joined in the abuse. She was also subject to considerable financial control. Her husband earned over £100,000 a year, had multiple assets and educated their daughter in a private school but Ms R was only given a small allowance by her husband which was insufficient to meet her personal needs. Mrs. R's husband had also persuaded her to sign documents which transferred their joint assets into the names of his various family members. It appears that this was a deliberate act to prevent her from making a claim for financial remedies if they divorced.

Mrs. R did not report her husband or her mother-in-law's abusive behaviour to anyone outside the family. She was not even aware that the verbal and emotional violence that she was subjected to constituted domestic violence. She was also desperate to maintain the façade of her marriage for the sake of her daughter; she wanted to remain in the same house as her daughter despite the misery of her own situation.

On 5 April, Mrs. R's husband locked her out of the house and told her to find somewhere else to live. She managed to secure a single room with the help of her employers and has been living there ever since.

Since being thrown out of the family home, Ms R has only been given minimal contact with her daughter, which has always taken place on her husband's terms. He will not allow her overnight contact with her daughter. This has been extremely distressing for Mrs. R, who ultimately would like to have residence/shared residence of her daughter.

Mrs. R's husband has also provided her with a lump sum payment of £1500 as a gesture of 'goodwill' but which was in reality an attempt to prevent her from making any financial demands on him. He does not feel that it is his responsibility to provide her with adequate maintenance. He has also offered her £50,000 if she agrees to 'disappear' and to waive her rights to their daughter including seeking residence or shared residence. He has also tried to persuade her to sign letters admitting that she is 'mad'. Ms R is so terrified of having to return to India without her daughter that she has been prepared to sign such documents to appease her husband.

Ms R has required considerable support and assistance in understanding that the degrading and humiliating experiences to which she was subjected constitute domestic violence. What is particularly sinister about her situation is the way in which her husband has controlled her by perpetrating serious

financial abuse that has involved trying to pay her off in return for waiving her rights to her daughter, by denying her maintenance and by obtaining her signature for the transfer of property in a bid to prevent her from making any financial claims against him in the future. It is difficult to see how this level of financial abuse can be evidenced even under the new regulations for the 'gateway criteria' except through a witness statement from Ms R which, we fear, will not be considered as acceptable evidence.

Fear of reporting due to shame and dishonour

In addition, within close knit BME communities where the stranglehold of religion and culture is particularly strong, the notions of shame or dishonour can act as major constraining factors that prevent women from reporting domestic violence or other forms of abuse to outside agencies. This is demonstrated by the following case examples:

Ms G is of North African descent. She is currently involved in child arrangements proceedings in relation to her young sons. She suffered domestic abuse both during and after her marriage, from her former husband, including post-separation stalking-type behaviour. She had informed the police about her ex-husband's behaviour on a number of occasions but frustrated by the lack of an adequate police response, she declined to make further reports to the police. Ms G commented that calling the police again and again was becoming a point of deep discomfort, embarrassment and shame for her within her local community. She did not want her community to constantly see police officers coming to her home. She said that she was receiving unwanted attention from neighbours and was afraid of being stigmatised as the "the kind of family" which "attracts police attention". She therefore stopped reporting problems to the police.

The case of Ms V below, who was simply unable to report her experiences of domestic violence for cultural and religious reasons is very common. It shows how the powerful concepts of shame and dishonour can prevent women from gaining the relevant evidence they need to satisfy the 'gateway criteria.'

Ms V was married to her husband for seven years and is a British National. She has two children who are both under the age of 10. She resided with her husband in the matrimonial home but throughout her marital life, she was subjected to domestic violence and marital rape by her husband. In November 2012, Ms V was raped by her husband but she did not feel able to leave the matrimonial home because of the upheaval that it would cause her children. Also fearful of the shame she would bring to herself, especially in disclosing the rape that she had experienced, she felt unable to disclose the abuse to outside agencies. In September 2013, Ms V finally decided to leave her husband but as there had been no reports to outside agencies, she could not provide any 'proof' of her domestic violence to fund her divorce proceedings.

Fear of reporting for social and immigration reasons

We have highlighted above how many of the women that we see are kept isolated and house-bound or imprisoned so that they have no opportunity to report their abuse to outside agencies. In other cases,

women whose immigration status is insecure are fearful of being reported to the immigration authorities by statutory bodies if they disclose abuse. Ms K's case demonstrates both:

Ms K was an Indian national who lived with her husband, daughter and in-laws in the marital home in the UK. Her spousal visa had been arranged by her sister-in-law, who was an immigration solicitor. She was subject to physical violence and sexual violence by her husband, who also abused her whilst pregnant. He also took nude photographs of Ms K which he used to blackmail her. Before her daughter was born, she had been pressurised into having an earlier pregnancy terminated as the unborn child was female. She was also a victim of domestic servitude; she was made to undertake all the household chores and was not allowed to work outside the home. She was also treated like a prisoner in the home and was forbidden from using her laptop or phone and from watching television. Ms K was also warned by her sister-in-law to 'watch herself' who told her that she had the power to intervene with the authorities in relation to her immigration matter. Ms K was constantly threatened with deportation by her in-laws. As a result of her circumstances, she could not report the violence to the police or anyone else. Eventually, following an assault on her by her husband and in-laws, Ms K threatened to commit suicide. This prompted Ms K's in-laws to pre-empt the matter by calling the police themselves. They alleged that Ms K was trying to kill herself as she was 'mentally unstable'. The police took Ms K to hospital where she was assessed and found to have nothing wrong with her. On discharge, her husband and in-laws refused to allow her back into the marital home and she was forced to stay with a relative. Ms K contacted SBS for assistance and was supported in making a report to the police. Although the police pursued an investigation, Ms K did not ultimately feel able to continue with the criminal investigation. Her main concern was to be free from her perpetrators and to remain safe. She was exhausted by her experiences and wanted to move on in her life. She was anxious that if there was a trial, it would become public knowledge that her husband had abused and raped her and she feared the shame and stigma that this would bring on herself and her family, ultimately rendering her unmarriageable in the future in the eyes of the community.

Ms K was not able to obtain legal aid to divorce her husband because she did not possess the requisite evidence. There had been no criminal proceedings because she withdrew her statement. She did not have any other evidence of domestic violence that would have been deemed acceptable by the LAA, although she had been assessed by us as a victim of domestic violence and had engaged with us extensively on that basis.

A closed and restrictive list of 'evidence'

As the example of Ms K above shows, a glaring flaw in the 'gateway criteria' is that it does not permit evidence from a range of domestic violence support organisations. Women often report to a domestic violence organisation rather than a refuge. This is particularly true of BME women who for a range of valid reasons do not report their experiences to outside bodies. The following case highlights the irrational and highly restrictive nature of the 'gateway criteria' which is construed so narrowly that some BME women simply cannot meet the evidential requirement required:

Ms P, an Indian national, married her British husband and travelled to the UK on a spousal visa. In the UK, Ms P resided at the marital home with her husband and his extended family. She suffered physical, sexual, verbal and emotional abuse from her in-laws and husband which caused her first child to be born prematurely. On one occasion, Ms P's sister-in-law and husband assaulted her with a coat hanger. She called the police and her husband was arrested but Ms P decided not to support charges against him due to pressure from her mother-in-law. On another occasion, Ms P reported an incident of assault by her husband to the police, but she was instead arrested and detained for several hours on the grounds that she was an immigration 'overstayer'. She was eventually released but served with papers stating that she was liable to deportation. Ms P was then accommodated by Social Services and referred to SBS. We assisted her in making a successful application under the Domestic Violence Rule.

Ms P's husband then applied for child contact but when Ms P tried to instruct family lawyers, she was refused legal aid because she did not have the prescribed evidence of domestic violence. Her grant of Indefinite Leave to Remain (ILR) under the Domestic Violence Rule, together with a supporting letter from SBS, were both rejected. In the refusal letter, the LAA officer stated: "Although I am in no doubt whatsoever that the client has been a victim of domestic violence the letter from SBS does not state that the client was accommodated for a period of more than 24 hours in a refuge...we would need a letter from social services...showing that in their opinion the client has been a victim of DV ... I am anxious to bring the application into scope but the guidance is very strict and leaves no room for manoeuvre, the evidence must fit into one category under the regulations and must not be made up of a combination of categories."

We are concerned that although a range of organisations provide support to victims of domestic violence and carry out risk and needs assessments based on widely accepted domestic violence assessment tools, they are not deemed as valid sources of evidence. The 'gateway criteria' stipulates that only evidence from a closed and prescribed list of sources is acceptable. For example, the only acceptable evidence a domestic violence support organisation can provide is confirmation that the woman has been referred to a refuge. This is extremely restrictive given that many BME women who flee domestic violence do not report to outside organisations for a number of very valid cultural and religious reasons, or due to the lack of secure immigration status or mental illness or disability or due to mistrust and lack of awareness of their rights. Indeed, lack of immigration status prevents many migrant women from accessing refuges because refuges will not accept women who cannot access welfare benefits or pay the rent. No account is therefore taken of the social realities of women from extremely vulnerable and marginalised groups. Moreover, no account appears to be taken of the fact that women often find it extremely difficult and traumatic to reveal the true extent of violence, especially sexual violence, that is experienced or that many only reveal to a trusted specialist BME organisation that is likely to be their first and only port of call.

Inconsistency between state agencies as to what forms of evidence of domestic violence are acceptable

What makes the domestic violence 'gateway criteria' particularly illogical is that there is no consistency between governments departments as to what evidence is sufficient to demonstrate domestic violence. For example, the evidence that is acceptable to the Home Office to allow a woman to obtain ILR under

the Domestic Violence Rule in immigration cases is not considered sufficient by the LAA for the purposes of family proceedings. This is illustrated by the following case:

Ms J, an Indian national married her British husband and joined him and his family in the UK, on a spousal visa. Shortly after arriving in the UK, her husband's behaviour towards her changed. Ms J was subjected to domestic servitude and physical and sexual abuse. Her mother-in-law expected her to wake up early to perform all the household chores and she was forbidden from speaking to her family and friends. Ms J was told to work to maintain her husband, but her wages went straight into a joint account to which she had no access. If Ms J protested against her ill-treatment, she was assaulted by her in-laws and husband.

Eventually, she was prevented from going to work and was instead locked in the home.

Unable to tolerate the abuse, Ms J took an overdose of painkillers. She was kept in hospital and then discharged back to her marital home as she had nowhere else to go and had no money. She was imprisoned in the home by her husband and mother-in-law and taunted for attempting to take her own life. However, on one occasion, Ms J's mother-in-law failed to lock the front door securely and Ms J took the opportunity to escape. She was referred to SBS for support and was identified as high risk and vulnerable due to her insecure immigration status, suicidal ideation and heightened sense of isolation. She made a successful application for indefinite leave to remain under the Domestic Violence Rule, for which she was granted legal aid. She then tried to instruct family lawyers to apply for a divorce but was refused because she did not have the prescribed evidence of domestic violence required by the legal aid regulations. Her evidence which consisted of a grant of ILR under the Domestic Violence Rule, a supporting letter from Southall Black Sisters and confirmation of a report of domestic violence from the Metropolitan Police, were all rejected.

In the light of these cases, our view is that if the 'gateway criteria' is to be retained, it should not matter what type of evidence of domestic violence is presented as long as evidence is provided. We fail to understand the logic in the LAA not accepting a grant of ILR under the Domestic Violence Rule for legal aid purposes, when ILR is granted by the Home Office only on the basis that the victims have experienced domestic violence that is backed by evidence that has been accepted and assessed by the Home Office.

Other pitfalls exist for EEA and third country nationals married to EEA nationals. Whilst they can apply to remain in the UK under specific European free movement rules as victims of domestic violence, they are in effect prevented from doing so by the legal aid 'gateway criteria' in family proceedings. The domestic violence rules under the European Free Movement law requires a victim of domestic violence to have divorced her abusive spouse in order to qualify for a 'retained right of residence' (the European equivalent to indefinite leave to remain). However, the legal aid evidential rules prevent a victim from qualifying for legal aid for divorce proceedings if she does not have the requisite evidence of domestic violence. Victims are therefore caught in a vicious circle and cannot avail themselves of the right of residence as a victim of domestic violence because they are not divorced. The following is an example:

Ms T, a Sri Lankan national, had an arranged marriage to a German national with mental health problems, the extent of which she was unaware. She moved to Germany to join him but then

experienced abuse from her husband throughout their marriage. Though she recognised that her husband was ill, the full extent of his mental health problems had never been disclosed to her and this caused her considerable distress. Eventually, Ms T moved to the UK with her husband and was granted residence as the family member of an EEA National.

In the UK, Ms T was frequently assaulted by her husband. On one occasion, she awoke to find her husband standing over her with a brick. Ms T decided to leave her husband shortly afterwards. She approached SBS for help. Although under the EEA rules, she was eligible for legal aid in order to make an application for continued residence, she could not obtain legal aid for the divorce (a prerequisite to that application) because she did not have the prescribed evidence of domestic violence.

Difficulties in providing evidence that relates to incidents of domestic violence suffered abroad

Another difficulty encountered by us concerns situations where the violence takes place outside the English jurisdiction. SBS' casework experience shows that violence against women in transnational spaces is a growing but little known phenomenon. We are witness to an increasing number of cases of women who are abandoned abroad, often in their countries of origin, by their British national husbands as part of a pattern of a continuum of domestic violence and abuse that is perpetrated on them. As the abandonment and abuse occurs abroad, it can be difficult for women to provide the requisite evidence to obtain legal aid to initiate or participate in divorce and other civil proceedings in the UK. Family law practitioners have noted that there is a lack of clarity and an inconsistent approach by the LAA in accepting 'foreign' forms of evidence of domestic violence. It would appear that some evidence that originates from a source outside England and Wales in a prescribed format is accepted whilst others are not. The list presented below⁷³ shows how difficult it is to fall within the scope of the 'gateway criteria' for women who have been deliberately taken abroad and abused and abandoned, precisely to prevent them from asserting their legal rights in the UK:

- a. Unspent conviction for a domestic violence offence – this appears to cover offences that have been committed overseas. However, the experience of legal practitioners is that only evidence in the form of a letter from the relevant law enforcement agency in the country where the offence was tried is accepted. Also it must be presented on letter headed paper and with accompanying English translation;
- b. A police caution – the regulation does not specify whether overseas evidence is acceptable;
- c. Ongoing criminal proceedings – this again does not specifically refer to overseas evidence; arguably, evidence obtained overseas where the offence was tried overseas should be

⁷³ We are grateful to Sulema Jahangir from Dawson Cornwell for her assistance in compiling this list. The references to the different forms of evidence refer to Regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012. Accessed September 2017: <http://www.legislation.gov.uk/ukxi/2012/3098/contents/made>

permissible. Again, the experience of legal practitioners is that this requires official documents and an English translation;

- d. Protective injunction – the regulations refer to specific types of injunction which seems to exclude overseas evidence;
- e. Undertaking – this does not specify overseas evidence;
- f. Evidence from MARAC (Multi Agency Risk Assessment Conference) - this clearly only applies to the UK;
- g. Finding of facts – this only applies to a finding of fact made by a court in the UK;
- h. Letter from a health professional – this only includes ‘registered health professionals’; medical practitioners with a license to practice, a nurse or midwife. The experience of legal practitioners is that this does not apply to evidence from a foreign health professional;
- i. Social Services – the regulations refer only to social services in England and Wales, Scotland and Northern Ireland so would not appear to cover social services abroad;
- j. Domestic Violence Support Organisation letter confirming admission to a refuge - According to the regulations, the support organisation must be within the UK, but it is unclear whether evidence relating to a foreign domestic violence refuge will be accepted.

It is difficult to understand the reasoning behind the regulations that specify that some forms of evidence must be from a UK source, whilst remaining ambiguous about the acceptability of foreign sources of evidence. This creates inconsistent practice on the part of the LAA as to whether they will accept ‘foreign’ evidence or not and if so, in what precise format. From the experience of legal practitioners, it would appear that discretion is exercised in relation to foreign evidence but it lacks transparency, is highly ambiguous and appears to be applied inconsistently. We are aware of family law practitioners who have had cases where the LAA has refused to accept a police complaint made overseas (in one case in Pakistan) by a domestic violence victim stranded abroad. We are also aware of a case where the LAA refused to accept the Swiss equivalent of a Non-Molestation Order obtained by a domestic violence victim in Switzerland.

The LAA failing to recognise certain forms of domestic violence

The example cited at paragraphs 40-41 above illustrates the point that the LAA is simply not able to recognise domestic violence even where an incident clearly falls within the definition of domestic violence; especially where it involves controlling and coercive behaviour.

However, the issue goes beyond the LAA failing to recognise what exactly amounts to domestic violence that is sufficient to satisfy the ‘gateway criteria’. The following two examples are of cases where the family law firm, Dawson Cornwell, was initially refused legal aid for applications under the inherent jurisdiction of the High Court, in cases of child and spousal abandonment following serious domestic violence.

Applications for legal aid to pursue cases under the inherent jurisdiction of the High Court are not subject to the 'gateway criteria', and legal aid is available on a means and merits basis. However, the reality shows that obtaining legal aid is far from easy.

Ms C was from a very traditional and conservative family in Pakistan. She and her husband had lived in England and then moved to Pakistan. They had a young son. Her husband had mental health problems and he was abusive towards her. In January 2015, Ms C's husband told her that they had to return to England without their child. Ms C's husband said that if she agreed to travel to the UK, he would apply for a British passport for their son so that he could join them. He threatened Ms C with divorce if she did not agree. Due to the high level of social stigma and shame attached to female divorce, Ms C was aware that as a divorced single mother, she would have had a very difficult and uncertain future in Pakistan. She therefore reluctantly agreed for her son to be temporarily cared for by her family in Pakistan, whilst she and her husband moved back to England. However, she did so on the strict understanding that her husband would honour his promise to obtain a British passport for their son so that she could be reunited with him.

However, following their return to England, Ms C's husband consistently refused to make arrangements to bring their son back. He subjected Ms C to serious physical, emotional and sexual violence, including forcing her to undergo an abortion and frequently raping her. On one occasion, her husband raped her and tried to burn her eyelashes. As a result, Ms C fled to a refuge with the help of the police. Her husband's family in Pakistan became enraged on learning that she had reported her experiences to outside organisations. They therefore sought to remove her son from the maternal family in Pakistan. Ms C's son and his carer had to go into hiding to avoid reprisals.

Ms C then instructed Dawson Cornwell, who applied for legal aid to commence wardship proceedings and sought to have her son returned to England to be reunited with Ms C. They included with their application a detailed statement from Ms C setting out the facts and history of her marriage. In response the LAA simply stated:

"It would appear from your statement that the child subject of proceedings is not being held in the jurisdiction of Pakistan against the wishes of your client. Arrangements could surely be agreed between your client and her family for the child to be returned to your client without the need for court intervention. Please explain why a court order is necessary".

It took further lengthy representations from Ms C's lawyers stating that Ms C was a victim of serious domestic violence and that her son had been abandoned and was at serious risk of harm, before the LAA granted an emergency certificate for legal aid. The LAA did simply did not understand or accept that the abandonment of Ms C's son and the subsequent separation of mother and child in the circumstances amounted to domestic violence.

Ms Z was married to her husband, a distant cousin, in 2001 in Pakistan. Ms Z's husband had dual British and Pakistani nationality. In 2002, Ms Z travelled to England after receiving her spousal visa. She lived with her husband and in-laws. Ms Z was expected to undertake all the household

chores even though she was heavily pregnant with her eldest daughter. She was subjected to physical abuse by her husband and mother-in-law. This behaviour continued during her second pregnancy. She was verbally abused when she gave birth to a second daughter and was told that her family should 'take her back'. Ms Z briefly separated from her husband but her own family members made her reconcile with her husband. However, she continued to be subjected to serious physical and verbal abuse and to be treated as a domestic servant following the birth of two further children. Ms Z was not given any money to provide for herself or the children and she was subject to considerable control. For example, her phone conversations with her own family were monitored by her mother-in-law. The only occasions when Ms Z was permitted to leave the family home was to take her children to school. Her own travel documents and the children's were kept by her husband at all times.

All of Ms Z's four children were British Nationals and she and her children were habitually resident in England.

In 2012, Ms Z's mother died in Pakistan and she wished to return to Pakistan to attend the funeral. Ms Z's husband told her that he and the children would accompany her and that they would spend 4 weeks in Pakistan. She did not have sight of the flight tickets and so accepted her husband's plans. In addition, Ms Z's husband and father-in-law made her sign papers that she did not understand. She was told that it was a request to the children's school in England to allow them to travel to Pakistan.

Whilst in Pakistan, Ms Z's husband became verbally abusive and complained that she spent too much time with her relatives. He then insisted they should live with his family in Pakistan and not return to England. However, he later evicted Ms Z from the house in which they were living, forcing Ms Z to return to her parents' home with two of her children. Ms Z's husband then enrolled the remaining children at a local school. Ms Z and her husband briefly reconciled at the end of 2012, giving Ms Z hope that she would be able to persuade her husband to return to England. However, in 2013, Ms Z's husband made her leave the family home again but this time he retained all four of their children. As Ms Z had no money and no home as she feared returning to her parents' home as a disgraced woman. She had no choice but to move to a homeless shelter for women but her contact with her children was stopped by the paternal family. She then sought legal assistance and was advised that she should try to return to England with the children. Ms Z's mother-in-law then travelled to Pakistan and began caring for the children, whilst Ms Z's husband returned to England. Ms Z was only able to see her children because she secretly visited them at their new school. She discovered that her children had been told by their paternal grandmother that their mother was dead.

In March 2015, Ms Z contacted the firm, Dawson Cornwell and was able to instruct a solicitor who applied for legal aid to commence wardship proceedings. Attached to the application for legal aid was a twelve-page statement from Ms Z which described her marital history and outlined the list of remedies sought. It was accompanied by a letter from the homeless shelter in Pakistan where Ms Z was living, and a detailed covering letter from her solicitor. The LAA's initial response was to

refuse the application because ‘insufficient information’ had been provided. Her solicitor appealed this decision, again repeating all the information she had already provided. The LAA then referred the case to their Independent Adjudicator. The Independent Adjudicator refused the application as she believed the prospects of success to be poor. Amongst the stated reasons for this were: the length of time which had passed since the family arrived in Pakistan; the view that the children were now habitually resident in Pakistan; the belief that Ms Z’s statement did not disclose any “serious child welfare concerns”; and finally a lack of information about Ms Z’s immigration status or her plans when she returned to the country.

Ms Z’s solicitor sought an urgent review of this decision in June 2015 pointing out that:

- *The Mother and children’s human rights were engaged;*
- *The Adjudicator’s view that the children were habitually resident in Pakistan was wrong in law;*
- *The children had witnessed domestic violence and had been forcibly separated from their mother - all of which was indicative of serious welfare concerns;*

However, the LAA has refused to review its decision. The matter is still pending. In the meantime, Ms Z and her children continue to experience extreme trauma resulting from their separation.

These two extremely troubling cases call into question the ability of LAA caseworkers to recognise and correctly identify domestic and gender-based violence and its consequences. It also raises grave doubts about the level of qualitative scrutiny that the LAA actually apply to such applications. In both cases it was suggested by the LAA that the firm Dawson Cornwell had provided ‘insufficient information’ about the facts and remedies sought, when even a cursory glance would reveal that this was far the case. The solicitor in both cases has experienced similar responses from the LAA on many other occasions which leads her to speculate as to whether or not the LAA’s response is a deliberate tactic employed to discourage applicants. Even more worryingly, the LAA’s approach as indicated in the above cases reveals a lack of expertise and understanding of cultural and transnational forms of abuse against women and children. We are of the view that this lack of expertise and understanding has left the LAA extremely ill-equipped to properly assess the merits of domestic violence cases, including those that are very serious, and, as highlighted by the second case, result in a gross violation of the human rights of women and children.

Rising professional fees are also making it increasingly unaffordable for our clients to contemplate legal proceedings because many are often on very low incomes. They often cannot pay for reports confirming domestic violence from professionals and agencies such as their GP.

WA *Challenges with current policy: a focus on legal aid*

- *Women’s Aid* knows that legal aid is an essential tool for the protection of women and children survivors of domestic abuse. It enables women to apply for protection orders and injunctions and to access legal representation in order to establish safe child contact. The knowledge that women will be protected by the justice system can empower them to escape violent relationships. We welcome the Government’s decision to exempt women experiencing domestic abuse from the

reforms to legal aid but are concerned about the level of evidence which is required by women to prove their experience of domestic abuse.

- Research published in 2015 from *Rights of Women*, *Women's Aid* and *Welsh Women's Aid* shows that since April 2013:
 - 37% of women survey respondents who had experienced or were experiencing domestic violence did not have the prescribed forms of evidence to access family law legal aid.
 - 71% of respondents said it was difficult, or very difficult, to find a legal aid solicitor in their area.
 - 53% of respondents took no action in relation to their family law problem as a result of not being able to apply for legal aid.
- The concerns about victims' access to legal aid being impacted by the reforms introduced under LASPO were reflected in the UN Special Rapporteur on Violence Against Women and Girls, Rashida Manjoo's, comments after her visit in April 2014.

"While legal aid is technically still available to women survivors of violence, these changes [following the adoption of LASPO] have, in practice, led to a higher threshold of evidence that needs to be presented to be able to access legal aid. I received information indicating that women who have experienced or are experiencing domestic violence, often do not have the necessary forms of evidence to qualify for legal aid. Thus they take no action in relation to their family law problems."

- Women in abusive situations need to access legal aid for a multitude of reasons, from applying for injunctions against perpetrators of violence to child contact issues. The many women who are now unable to access legal aid are potentially at much greater risk and possibly unlikely to try and seek help again from the criminal justice system.

"Being in such an awful situation and trying to cope with abuse and caring for my children is really hard, having this additional obstacle in my way just acted as another barrier to getting some support which in turn has made it easier for my husband to continue to be abusive for longer. I understand the need for budget cuts and control over public spending but please don't make already very difficult situations even harder for victims" (survivor of domestic violence)

- *Women's Aid* welcomes the changes that were made to the Legal Aid regulations, increasing the time limit for evidence to five years, in April 2016 after a Court of Appeal ruling resulting from a Judicial Review case brought by *Rights of Women*. However, the regulations must be further altered to ensure that all survivors of domestic abuse are able to access legal aid. The guidelines should include further forms of permissible evidence, such as:
 - A letter from a specialist domestic violence support service confirming that a survivor has sought help from that organisation.
 - A letter from the 24 Hour National Domestic Violence Helpline that confirms the woman has contacted the helpline due to their experience of domestic violence.

- The Legal Aid Agency must also ensure that survivors of domestic abuse do not have to pay for the evidence required for their legal aid applications. *Women's Aid* are concerned to hear from some survivors of domestic abuse that they are being charged up to £50 for a Doctor's note to accompany their application. For some women this is simply not possible.
- The issue of limited access to legal aid for survivors of domestic abuse is particularly pertinent with regards to child contact cases in the family courts.
- *Women's Aid's* 2016 report *Nineteen Child Homicides*⁷⁴ details the cases of nineteen children, who were all intentionally killed by a parent who was also a known perpetrator of domestic abuse in circumstances relating to unsafe child contact.
The report found that, over a ten-year period, in twelve families:
 - 19 children were killed
 - Two women were killed
 - Two children were seriously harmed through attempted murder
 - **In 11 of these 12 families the perpetration of domestic abuse was known to the police.**
- Many survivors of domestic abuse who are unable to access legal aid and are unable to afford expensive solicitor's fees are having to represent themselves in court as Litigants in Person. As a result of this, *Women's Aid* has been made aware of instances of survivors of domestic abuse being cross-examined by their abuser in the family courts regarding child contact arrangements.
- The National Audit Office recently reported that in 80% of all family court cases starting in the January–March quarter of 2013-14, at least one of the parties did not have legal representation.⁷⁵
- In late 2015 *Women's Aid* conducted a survey with survivors of domestic abuse who had been through family court proceedings regarding child contact. Of the respondents a quarter (25.3%) had been cross-examined by their perpetrator in the family courts⁴. Understandably, women are telling us that this experience is terrifying, traumatising and 're-victimising'. Furthermore, we would argue that putting survivors through the trauma of being cross examined in the family court jeopardises their perceived ability to advocate for the ongoing safety of their child and is a significant barrier to women and their children achieving justice.

"It was terrifying and extremely distressing. He was very angry and aggressive when asking questions. I cried throughout the whole experience. It was horrific." (Survivor of domestic abuse)

"This man, who had raped her, beaten her and abused her over a six-year period interrogated her for three hours in the family court." (Women's Aid domestic abuse service)

⁷⁴ Women's Aid (2016) *Nineteen Child Homicides*. Women's Aid: Bristol. Accessed September 2017: <https://www.womensaid.org.uk/launch-of-nineteen-child-homicides-report-child-first-campaign/> .

⁷⁵ NAO. (2014) *Implementing Reforms to Civil Legal Aid*, HC 784 2014-15: p. 15. See fn 5 above.

Family law: cross-examination by the alleged abuser

BHB The increase in numbers of Litigants in person means that incredibly vulnerable people are having to face their abuser in court and be cross examined by them which is untenable. In many such cases the children are made parties by the Judges, given a Children's Guardian under the Children Act and legal aid in their own right to be represented in order to aid the proceedings. This is not a saving to the legal aid fund in any way.

CLSJ For while those who qualify for legal aid will have representation, their attackers will most likely be self-represented, and as such will be responsible for conducting their own cross-examinations. Rather than protecting the alleged victim of abuse, this process may allow an alleged perpetrator to undermine the evidence of the victim through intimidation – thereby potentially perpetuating the tensions between them and the abuse that initially led them to court.

FLDSM *Perpetrators of domestic abuse*

Victims of domestic abuse are frequently questioned by their abuser in the family courts – even though the victim may be eligible for legal aid to allow them to be represented in court. Their abuser frequently will not be represented by a solicitor or barrister because they are not eligible for public funding. This means that in a hearing where evidence is given they will often act as their own advocate and cross examine their victim in respect of the very allegations they have made. In cases of rape or other sexual offences this would not be permitted in a criminal court by virtue of s.34 of the Youth Justice and Criminal Evidence Act 1999. There is no such prohibition in private family law cases. Practice varies across the country and some courts will not permit the alleged perpetrator to ask questions of the alleged victim directly and this will take place through the Judge or Legal Adviser in the Magistrates Courts, although this might be said to undermine the impartial role of those hearing the case.

However, the prospect of being cross examined by the alleged perpetrator is likely to be overwhelming for many victims and may lead to them not raising or pursuing issues. In many cases this may be an extension of the abuse they have suffered. It also creates inequality of arms as the alleged abuser may not be able to afford legal representation but the alleged victim is likely to receive legal aid and therefore be represented. This could lead to the alleged abuser not receiving a fair hearing and as such there is a possible breach of their Article 6 rights.

Simpson Millar's position is that private family law matters of child arrangements and financial provision on divorce should be brought back into scope for legal aid. An immediate response we would propose:

- Where allegations of domestic abuse are made in a C100/C1A (application for a Child Arrangement Order) a private waiting room is reserved for the alleged victim at court as a matter of course where information can be given to them about being able to ask for special measures such as use of a screen for the purpose of the hearing and;

- Where allegations of domestic abuse (including sexual assault) or child abuse are made and a Finding of Fact or Final Hearing is ordered to determine the truth or otherwise of those allegations, there to be a prohibition on the alleged perpetrator cross examining the alleged victim. Legal aid should be made available on a means tested basis to provide the alleged perpetrator with representation at that hearing. This could be achieved using the existing Exceptional Case Funding regime but would require an acceptance of the necessity of legal representation in those circumstances.

PCS One of the more worrying consequences of people being left to represent themselves in court is that victims of domestic violence have increasingly found themselves in the unacceptable situation of being cross-examined in court by violent and or controlling ex-partners. Courts are being used to perpetuate the abuse.

Resolution When the MoJ was asked by Andy Slaughter MP in a Written Parliamentary Question how many LIPs there had been in each of the last three years appearing in the family court who had been cross-examined by their alleged perpetrator (and we know the serious issues this raises for the parties and the court from reported case law), the Government admitted that they did not keep a record centrally of this information.

The Government is therefore knowingly failing to collect the information necessary to fully assess the impact of LASPO. In its report *Implementing Reforms to Civil Legal Aid*, the National Audit Office has been critical of the limitations of the MoJ's data in this area. This is an issue across all courts. A recent report, *Justice Denied*, by Transform Justice concluded that the lack of data means "unrepresented defendants in the magistrates' courts are invisible in policy terms".

Most importantly, in practice this means that, for example, a rape victim, where the perpetrator applies for contact when the relevant conviction is spent, or who has simply not been able to face reporting the abuse to or been screened for abuse by any of the prescribed evidence providers, can be cross-examined by her rapist.

Family law – local authorities and care cases

FLDSM *Edge of care cases*

In our experience due to budgetary consideration many Local Authorities are not issuing Care Proceedings in circumstances they previously would have in the past where children have been placed with the wider family. Instead they are telling the wider family - who are often grandparents - to make an application to the Court for a Special Guardianship Order or a Child Arrangements Order. These are Private Family Law applications and so no longer in scope for legal aid. In these "edge of care cases" the grandparents will often be of limited financial means and would have previously been eligible for legal aid pre LASPO but find that is no longer available to them. In many instances the Local Authority is then refusing to meet their legal fees – even at legal aid rates - to enable them to obtain legal advice and representation to obtain the necessary Orders.

There is a lack of uniformity across the country and even within regions and our view is that there needs to be a common code of practice setting out that the Local Authority will meet the legal fees of kinship carers in circumstances where the Local Authority is recommending that Special Guardianship or Child Arrangement Orders are obtained to secure the placement of the child. This could be on a means tested basis and the offer limited to meeting the Solicitors costs on the basis of the Legal Aid hourly rate.

Family law – impact of the cuts on experts

CEW Access to Justice is limited not only for families who cannot obtain representation, but also for families who are publicly funded, but suffer from the cuts now imposed to our work with them.

LASPO has undermined and in some areas destroyed the innovations brought in by the Children Act 1989 to promote multi-disciplinary work towards protecting, understanding, and helping children and their families. Multi-disciplinary teams, which were once heralded as the way forward, are now restricted to just a few organisations; even most NHS services have shut down their teams for lack of adequate legal aid funding. Professional and expert meetings used to provide opportunities for social workers, Children's Guardians, lawyers, and clinicians to consider together and plan assessments that led to promoting the welfare of children and their families. Cost-cutting for all professionals has led to these meetings disappearing almost entirely. Instead, we now are asked to undertake assessments of complex family matters with little discussion in advance, late instruction, inadequate documentary evidence, and often restrictions on the number of family members we are allowed to see for our investigations.

Decisions about the scope of our work are made not by the Judges who know the complexity of the matter, but by Legal Aid Agency staff, who routinely delay proceedings by their late and wrong decisions, which appear to be led largely by financial imperatives.

One of the biggest impacts on the work of expert clinicians was the imposition by the Legal Aid Agency of prior authority guidance figures. The LAA imposed these under the guise of simplifying procedures. In fact, as we predicted, this was another cost-cutting exercise. Although the LAA said that prior authority would be readily available for expert assessments that required more time, the reality is that solicitors rapidly discovered that obtaining prior authority was so time-consuming and caused so much delay (particularly in light of the 26-week deadline for completion of Family Court cases) that they routinely refuse to instruct expert clinicians who request additional time. This leaves clinicians having to decide if they can manage to complete their investigations with inadequate time available to them, or if they will, in effect, donate their time to complete their reports. For most clinicians, although they often work for more time than they are remunerated, this is not a viable long-term possibility, particularly as our rates have remained frozen whilst the cost of running our practices has increased year on year, due to inflation.

Similarly, a recent consultation from Sir James Munby has raised the possibility of limiting the size of bundles and limiting the size of our reports, so that Judges do not have to spend as much time reading. Given that we are reporting on serious matters that concern the welfare of children, we ask where is access to justice in such a proposal, which, like prior authority, seems driven by finances, not by concerns for the children and families who come before the Courts.

It is fair to say that those clinicians who continue to provide input to the Family Courts (and to the Criminal Courts) do so out of their interest and commitment to this work. Expert clinicians who learned about medicolegal work pre-LASPO have the advantage of having had time to learn good practice, so that they can adapt it to the limited environment in which we now practice. However, these clinicians are approaching retirement; indeed, several of our members retired earlier than planned, as they felt that they could no longer work with integrity. We hear from our legal colleagues that they are concerned about the quality of clinical input they receive from newer expert clinicians, who are accustomed to working only in the setting of these cuts.

FLDSM *Expert Evidence*

How necessary expert evidence is funded in cases where one or both of the parties is unrepresented because they are not eligible for funding is a frequent issue in both public and private law proceedings. Cafcass, the child's Guardian or the Local Authority may determine that drug or alcohol testing or a psychological evaluation is necessary and the court agrees. In private law proceedings there is no-one who can afford to meet the cost or, in public law proceedings and the evidence is required of a possible kinship carer who does not have funding, the LAA will only agree to fund part of the cost. The implications of this are that in some cases vital necessary evidence has to be dispensed with, possibly putting children at risk. In other cases, it may be barrier to a parent having contact with their child where it can in fact take place safely. In September 2015 paternity testing funded by central government and carried out by CAFCASS was introduced in private law cases where paternity is in issue and that is welcome. The funding of other necessary evidence is still remains a significant issue.

Family law – increase in arbitrations

FLDSM *Court delays and an increase in arbitration – two tier justice*

The substantial delays in the listing of hearings in the family courts as a result of the impact of persons representing themselves in court post LASPO (Litigants in Person); compounded by the programme of court closures has led those who can afford legal representation to seek resolution of family disputes away from the family courts altogether. The rise in the popularity of arbitration for resolution of financial cases on divorce can be seen as a direct result of the court system 'grinding to a halt' in many locations and the legal profession responding to the needs of clients by proposing an alternative. The President of the Family Division has approved the use of Arbitration in financial remedy cases with new Practice Guidance being issued in November 2015. The Institute of Family Law Arbitrators is setting up a scheme offering arbitration for a range of private law children disputes. This is not necessarily a bad thing but as legal aid is not available for arbitration is this a partial privatisation of family law, creating a two-tier family justice system? There has been no public debate around the issue and this is perhaps something that Parliament should consider.

Housing

Shelter Access to justice is a cornerstone of civil society, and Legal Aid is a key mechanism within it. Legal Aid is the means by which people on a low income – who would otherwise be unable to access justice – can enforce their legal rights.

Britain is experiencing a housing crisis. In 2014/15, there were 112,340 applications for statutory homelessness assistance and 546,500 households accepted for statutory homelessness assistance: an increase of 33% in five years. Shelter research⁷⁶ shows that over six in ten renters have experienced at least one of the following problems in the past 12 months in their homes: damp, mould, leaking roofs or windows, electrical hazards, animal infestations and gas leaks.

Shelter has seen a large number of people calling our helpline and visiting our website for advice. 4.5 million people came to us last year - online, in person and over the phone. In 2014/15, we saw an increase of 12% increase in demand to our helpline and of 8.6% in the number of people who accessed our 'Get Advice' pages.

Legal Aid is crucial to prevent and resolve housing issues, helping people enforce their rights to housing, housing benefits and a decent service from landlords, and providing support to people at times of crisis so that a crisis does not become a disaster.

But changes to Legal Aid have meant that fewer households can get the timely advice they need, until they hit crisis point – by which time it might be too late to avoid homelessness. An increasingly crisis-driven approach to housing advice in general, and the removal from scope of housing benefit in particular, is leaving people to fall through the net.

If free legal advice and advocacy were available at a much earlier stage, it would be easier to negotiate a mutually-acceptable outcome to housing problems and many of the knock-on costs – to the court system, local councils, the NHS and, most importantly, families and individuals themselves, could be avoided.

Shelter's biggest concerns about the current state of access to justice are:

- The increasing complexity of the law, coupled with the complexity of accessing it, makes it burdensome, inefficient and expensive. Worse, it denies access to justice to many.
- There are significant practical barriers to access, including court fees, advice deserts, court closures, Legal Aid contract restrictions and bureaucracy.
- The reduction in scope of Legal Aid funding is driving an increasingly crisis-driven approach to housing advice. The lack of early prevention work adds to the cost and burden of the system, increasing costs to the wider public sector and causing additional, unnecessary distress to vulnerable households.

⁷⁶ Reynolds L (2016, forthcoming) *Results of the Shelter tenant survey*, Shelter.

Prevention is better than cure. It is more effective and less expensive. It is better to keep a person or a family in their home, rather than help them to find a new one. This is why free legal advice on issues including debt, housing and other benefits and disrepair is so important to the households who seek help from Shelter.

Housing law is enormously complex, and successive governments have continued to add to or amend existing legislation until it becomes virtually unreadable. **The law itself needs to be simplified.** This is a central aspect of access to justice, especially when many people are left to discover the law for themselves and have to decide how it applies to their case, even before they embark on the process of finding an effective remedy or working out how to defend a claim for arrears or for possession.

In the meantime, however, we have to ensure people can find their way round this complex system. Shelter's recommendations for practical solutions include:

- Make the means test for civil Legal Aid easier to apply
- Abolish the capital limit for Legal Aid
- Restore housing benefit, and any out of scope housing issues related to in-scope Legal Aid cases
- Provide access to a housing advice and representation service in every court
- Reduce the bureaucracy imposed by the Legal Aid Agency and ensure the contract requirements are simplified addressing concerns over barriers to access and advice deserts
- Create a single stream of Legal Aid funding, across Legal Help and Legal Representation (certified cases)
- Review the funding provisions for Legal Aid for judicial review applications
- Abolish the risk element introduced by the Legal Aid Remuneration Regulations 2014
- Consider bringing the Judicial Review Pre-Action Protocol in line with the Pre-Action Protocol for Housing Disrepair
- Consider introducing a simpler procedure for judicial review in emergency homelessness cases.
- Establish an alternative dispute resolution process (Early Neutral Evaluation) in the courts
- Create a statutory duty on local authorities to provide a Tenancy Relations Service commensurate with the size of the PRS in their area
- Ensure that increasing access to justice by introducing more online processes does not disadvantage people who cannot use them
- Create 'Court Access' hubs to support people to use online courts

- Address the arguments for reductions in civil Legal Aid

Housing cases

Respondents' biggest concerns about the state of access to justice:

GCHT In the area of housing law:

1. Financial eligibility has excluded too many people from legal aid: so that tenants are too often unrepresented against private or social housing landlords, who can afford legal representation;
2. The chilling effect of Reg 5A of Civil Legal Aid (Remuneration) Regulations 2013/422,⁷⁷ whereby providers may not be remunerated for judicial review claims where permission is refused; and
3. The lack of availability of legal aid in claims for damages for breach of repairing covenants and other disrepair causes of actions brought by tenants against landlords.

More generally: the overall cuts to social welfare law in LASPO 2012 and in particular the removal of welfare benefits advice from scope.

HLPAs

1. The number of housing providers, and legal aid providers in general, has reduced substantially in recent years, leading to 'advice deserts' in many areas leaving HLPAs members concerned about vulnerable clients being unable to obtain legal advice.
2. Means testing even for clients in receipt of Income Support and other means tested benefits, increases the bureaucratic burden for providers and requires vulnerable clients to produce vast amounts of paperwork before any assistance can be provided.
3. Within possession proceedings, being unable to assist clients in respect of any welfare benefit issue, leaves clients only able to obtain assistance with the symptom, not the cause of their rent arrears.

Shelter Legal Aid is a crucial part of how we help people address poor housing standards, keep their home or find a new one if the worst happens and they become homeless.

Shelter Legal Services has 17 offices around the country and provides representation to those in housing need in many homelessness, possession, disrepair and unlawful eviction cases, as well as anti-social behaviour injunctions. We provide duty possession scheme representation in 26 court locations around the country.

⁷⁷Accessed September 2017: <http://www.legislation.gov.uk/uksi/2013/422/contents/made>

At Shelter, we use Legal Aid to:

- Defend possession proceedings (social and private landlords)
- Appeal against adverse homelessness decisions, e.g. 'intentionally homeless'
- Apply for judicial review of local authorities' refusal to provide temporary accommodation
- Apply for judicial review of social services' refusal to assist families and individuals under the Children Act 1989 and the Care Act 2014
- Assist 16 and 17 year olds and care leavers who are homeless or threatened with homelessness
- Provide advice to tenants coping with disrepair which poses a serious risk of harm to their health or safety
- Defend Anti-Social Behaviour injunctions and committals
- Take cases for those who have been unlawfully evicted

Shelter is seeing a large number of people calling our Helpline and visiting our website for advice. For households that come to Shelter and other providers of specialist housing advice, Legal Aid can be the difference between a roof over their heads or sleeping on the streets. For example, a household can end up in court, about to lose their home, because they were not able to get the free advice they needed to resolve a problem with their housing benefit: a major tool in preventing homelessness.

We regularly see cases via our court duty desks where households are facing possession because their housing benefit problem wasn't resolved early on, and so their rent arrears grew until their landlord lost patience and sought to evict them.

If free legal advice and advocacy were available at a much earlier stage, it would be easier to negotiate a mutually-acceptable outcome and many of the knock-on costs to the court system, local councils and, most importantly, families themselves, could be avoided.

Topic 1: The current state of access to justice

Shelter's biggest concerns about the state of access to justice are:

1. The increasing complexity of the law makes it burdensome, inefficient and expensive. Worse, it denies access to justice to many.
2. There are significant practical barriers to access, including court fees, advice deserts, court closures, legal aid contract restrictions and bureaucracy.
3. The reduction in scope for legal aid funding is driving an increasingly crisis-driven approach to housing advice. The lack of early prevention work adds to the cost and burden of the system,

increasing costs to the wider public sector and causing additional, unnecessary distress to vulnerable households.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

CLP *Housing Law*

The Low Commission on the Future of Advice and Legal Support has been established to develop a strategy for access to justice and support on Social Welfare Law in England and Wales. The Low Commission has called for the return of Legal Aid in housing law cases.⁷⁸ The Travellers Advice Team [TAT] endorses this call.

GCHT Lack of legal aid for damages claim for breach of repairing covenants

Legal aid is only available for a claim brought by a tenant against his or her landlord for breach of repairing covenant, or other causes of action related to disrepair of the tenant's home where there is "serious risk of harm to the health or safety of the individual or a relevant member of the individual's family" (para 35, Schedule 1, LASPO).

In practice, this means that the disrepair must still be in existence when the tenant brings a claim, so that the tenant is claiming an order for specific performance or injunction requiring the landlord to remedy the disrepair. In addition, the criteria limiting the availability of legal aid requires there to be a "serious risk of harm to the health or safety of the individual or a relevant member of the individual's family". So there must be a personal injury element to the claim and that personal injury element must be serious.

The following types of claims are therefore excluded from legal aid availability:

1. A claim for damages where the disrepair is either no longer present, or the tenant has moved; and
2. A claim for damages and for injunction where there is some interference with health or safety, but the interference is not "serious".

Claims brought under s.11 Landlord and Tenant Act 1985 and/or s.4 Defective Premises Act 1972 are very complicated indeed. There are numerous authorities on what type of defect or fault might come within the definition of disrepair to the "structure and exterior" of the dwelling-house at s.11 Landlord and Tenant Act 1985. The most difficult issue is, of course, dampness and identifying whether the dampness in the dwelling-house is as a result of a defect to the structure and exterior (as might be the case with penetrating damp or rising dampness) or due to a design defect or lifestyle issue (such as condensation). This issue requires expert evidence, and familiarity with the legal authorities.

⁷⁸ See Low Commission. (2014) *Tackling the Advice Deficit*. Accessed September 2017:
<http://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf>.

The legal issue arising on claims for damages for disrepair are, therefore, not easy. In addition, social landlords are invariably represented (by their legal departments or private firms of solicitors). Private landlords are not always represented but (by virtue of their having received rent) can afford to pay for legal representation. Legal aid ensures that tenants only bring claims that have some basis in law and in fact. It also means that tenants are not disadvantaged if complex legal and factual issues (such as the provenance of damp) arise.

Whilst we understand the importance of funding a tenant to obtain immediate relief, in the form of an injunction requiring a landlord to remedy serious breaches of the repairing covenant, we do not understand why a tenant should not also be assisted to recover damages if the disrepair is no longer present. The tenant has lived with the extreme distress and inconvenience of serious dampness or other defects in his or her home. Why should he or she not be assisted to claim damages to which he or she is lawfully entitled?

This restriction on legal aid has been made particularly egregious by the increase in the small claims track to £10,000 damages. Many claims for damages for disrepair have a value of less than £10,000. If legal aid is not available (because there is no claim for an injunction), then the claim will be allocated to the small claims track. Costs will not be recovered. If a tenant seeks legal representation through a CFA arrangement, then any legal costs to be paid to the tenant's lawyer will be deducted from the tenant's damages.

We believe that the withdrawal of legal aid for claims for damages for disrepair has permitted landlords, particularly in the private sector, to let houses which breach the standards of repair required under the s.11 implied covenant and s.4 duty of care.

We also make the point that most claims for damages for breach of the repairing covenant result in a successful outcome for the tenant. If the claim is not allocated to the small claims track, costs are recoverable against the landlord. It follows that legal aid for disrepair claims has not traditionally been a significant part of the LAA's expenditure.

HLPA One of the biggest effects of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) has been a substantial reduction in the number of housing providers and the number of legal aid housing cases being undertaken. Figures produced by the Legal Aid Agency, showed a reduction in housing cases of over 50% since LASPO came into force. While at the same time rough sleeping,⁷⁹ statutory

⁷⁹ DCLG. (2016) *Rough sleeping in England: autumn 2015*. Accessed September 2017: <https://www.gov.uk/government/statistics/rough-sleeping-in-england-autumn-2015> .

homelessness⁸⁰ and evictions from rented accommodation⁸¹ are all on the rise. We find this correlation concerning.

HLPA members are particularly concerned with the removal of assistance for welfare benefit issues. The removal of legal aid for housing benefit means that clients have to wait for their landlord to threaten possession proceedings before they qualify for legal help. Even then, no assistance can be provided to resolve the housing benefit issues to resolve the consequential rent arrears problem and so the case will proceed to court. At that point, legal aid can be provided to defend the possession proceedings, but still not to assist with the benefits issue. This inevitably leads to greater costs to the legal aid budget, the cost of court proceedings that could have been avoided and, in some instances, evictions which might have been averted had it been possible to resolve the benefits issue. Prior to LASPO, assistance with welfare benefits could be provided to clients at a very low cost fixed fee. This preventative advice enabled welfare benefits issues to be dealt with swiftly, avoiding the need to put a vulnerable tenant through the stress of legal proceedings, and avoiding unnecessary costs for the landlord (both legal costs and lost rental income) and unnecessary use of court time.

The increased bureaucracy, particularly in respect of means testing, is of particular concern to HPLA members. The nature of the work undertaken by HPLA members is often very urgent. If a client has been unlawfully evicted or made street homeless they will often need very urgent assistance to ensure that they have a roof over their head that night. Clients who are street homeless or who have been unlawfully evicted are unlikely to have sufficient proof of their means (including income and capital) in order to satisfy the evidential requirements to prove financial eligibility. Even if clients can produce sufficient evidence, the forms are now so long that legal aid providers spend a considerable amount of time completing forms, much of which will be unpaid time, particularly where only a fixed fee is payable. This is therefore acting as a disincentive for providers to undertake legal aid work.

A significant proportion of work undertaken by HPLA members is to assist clients living in defective premises. In respect of disrepair cases, these remain in scope only if the client or a member of their family is at serious risk of harm. This is a very high threshold and has led to many tenants living in very poor conditions without access to free legal advice. Before LASPO HPLA members could give initial advice and send an early letter of claim to a landlord for a small fixed fee. The threat of legal proceedings would usually persuade the landlord to carry out repairs thus resolving the issue with very little public expenditure.

Even when a case passes the high threshold in LASPO, funding is only available for the injunction claim (to deal with the immediate risk of harm) and not the damages claim (to compensate the client for the

⁸⁰ DCLG. (2016) *Statutory homelessness in England: October to December 2015*. Accessed September 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509763/Statutory_Homelessness_Statistical_Release_October_to_December_2015.pdf .

⁸¹ Ministry of Justice (2016) *Mortgage and landlord possession statistics: October to December 2015* Accessed September 2017: <https://www.gov.uk/government/statistics/mortgage-and-landlord-possession-statistics-october-to-december-2015>

landlord's breach of contract or duty which led to the risk of harm). Therefore, alternative funding, such as a Conditional Fee Agreement, will need to be arranged for the damages element of the claim. This could mean that the damages could be subject to both the statutory charge (whereby the Legal Aid Agency has a first charge over any compensation awarded) **and** a success fee under the Conditional Fee Agreement, as well as any insurance premium taken out by the client. Further, legal aid is only available if the case is not suitable for a Conditional Fee Agreement.

In general, practitioners will therefore be expected to undertake these cases under a Conditional Fee Agreement. Due to the inherent risks in these cases, providers will inevitably cherry-pick cases to protect their business. This could mean that clients who are particularly vulnerable (i.e. those who need help the most) and have difficulty articulating their problems, will be unable to enforce their legal rights.

LCN In housing law, where remaining legal aid is largely focused on homelessness prevention, much of the work involving tenant rights, for example addressing disrepairs, must now be funded from alternative sources, if it can be funded at all. This means that landlords can ignore disrepair in their properties with impunity, because they know that tenants no longer have recourse to legal aid to fight their corner. Thus an already skewed relationship becomes even more imbalanced, further disadvantaging tenants as the weaker party.⁸²

MWLC Disrepair claims have virtually come out of scope for legal aid funding altogether. Someone can be living in really unpleasant conditions with a landlord who refuses to do anything about the situation and yet not be able to get any assistance at all unless they have reached the extreme situation whereby their health/safety is at risk. Even where someone's health is at risk and legal aid funding is available it is only available to get a court order to force the landlord to do works, not to obtain any compensation for the tenant. Not only is this unfair to the tenant who has a perfectly good damages claim but no way of pursuing it, it means that the unscrupulous landlord gets away without penalty.

Shelter The reduction in scope for Legal Aid funding is driving an increasingly crisis-driven approach to housing advice

It is a source of enormous frustration to Shelter that we are no longer able to provide legal advice (under Legal Aid) on most debt and welfare benefit problems and some housing matters, including tenancy deposits, disrepair and social housing allocation decisions – all of which can be precursors of threatened and actual homelessness – the point at which Legal Aid may finally become available.

Even at the point of threatened homelessness, we cannot use Legal Aid funding to resolve a housing benefit problem, or ensure that the household is getting all the benefits it should, which would prevent the situation from reoccurring. Our experience is that the introduction of the 'bedroom tax' and other

⁸² We have reported this in our evidence to House of Commons Justice Committee inquiry into LASPO. Accessed September 2017:
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/impact-of-changes-to-civil-legal-aid-under-laspo/written/8956.html>.

welfare reforms has led to the increased issue of housing possession proceedings, so housing benefit advice is needed more than ever.

There is an inherent link between housing benefit problems and homelessness. Problems with a housing benefit claim can lead to rent arrears, a breakdown in landlord-tenant relations and eviction. Our evidence suggests that this is particularly the case in the private rented sector, where landlords will be even less tolerant of tenants who fall behind with their rent and may look to evict rather than wait for housing benefit to be reinstated. A landlord's attempts to gain possession of a property via the courts is likely to be frustrated if the sole reason for eviction is non-payment of rent due to housing benefit issues, in which case a possession order, if made, may be suspended.

This is a fundamental flaw in the current dispensation of Legal Aid and should be addressed by Government as a matter of urgency.

The Government's own homelessness statistics show a steady growth over the past five years in the number of cases at risk of being made homeless due to problems relating to their housing benefit. In 2014/15, local authorities in England prevented 25,900 cases from becoming homeless by resolving housing benefit problems, a figure that has increased by almost 400% since 2009/10.

Problems relating to a housing benefit claim were the most common reason for households requiring homelessness prevention services from local authorities in 2014/15, accounting for 24% of all prevention cases. This has grown steadily from only eight per cent in 2009/10. Fewer people would need to seek homelessness assistance if they had much earlier advice to resolve their housing benefit problem.

Housing law – complexity

GCHT Housing law is a very technical and complicated area of law. The Encyclopaedia of Housing Law print version runs to over five loose-leaf volumes. There are numerous different types of tenancies (assured shorthold, assured, secure, introductory, flexible, demoted, non-secure) and each is governed by a different legal regime. Social landlords are always represented in court by lawyers, or by experienced housing officers. Private landlords may not always be represented, but can afford legal representation. If a tenant is working, then he or she is unlikely to be eligible for legal aid. This heightens the inequality in what is already not a level playing-field in court.

Immigration law and practice

Respondents' biggest concerns about the state of access to justice:

GCIT In our view there are clear and increasingly insurmountable barriers limiting the access which migrants and their families to attaining lawful status and justice. These include:

- * the complexity of immigration law and practice;

- * the financial costs associated with the application, appeal and advice processes
- * the inequality of arms in appeals and review hearings where the Secretary of State is always represented but few applicants are – and such unrepresented applicants are intended to pursue their appeals from outside the UK.
- * the exclusion of most immigration cases from access to legal aid and the diminished legal aid fees available for the remaining (often complex) cases
- * the ‘root and branch’ eradication and limitation on appeal rights and judicial review claims involving immigration decisions
- * the privatisation of immigration control so as to involve private citizen employers, landlords and most civil servants in immigration status surveillance and the associated criminalisation of the daily activities not simply of overstayers and illegal entrants but those here lawfully denied effective appeal rights and their families.

It is our considered view that the important fundamental right of access to justice – a right our constitutional and justice system has long rendered to all persons in the UK – is no longer available to or effective for migrants, asylum seekers and their families.

Some parts of the public discourse support the notion that migrants should not have the benefits of our legal system - and this is no doubt why the many barriers to justice and the discriminatory treatments are being extended and enhanced. The architects of such restrictive models appear to have given no consideration to the unintended consequences –

- * the lost family life of British citizens – and the long term consequences for the children in stranded families
- * the many lawful foreign residents who will via procedural errors or the denial of appeal and status rights become unlawful residents and thus criminally culpable carrying out their normal lives
- * the British providers of services who will now be committing criminal offences by assisting certain migrants with housing, employment or care. It is no exaggeration to say that the array of restrictions will over time erode and create divisions and enmity in social and community relations.

ILPA ILPA is concerned about the effects on restrictions on access to justice on persons under immigration control or exercising rights of free movement and their family members and in particular

1. The effect of cuts to legal aid on persons not permitted to work or claim benefits who have no means to pay for representation;
2. Loss of appeal rights and replacement with internal Home Office reviews in a broad range of decisions that cut across the whole range of persons under immigration control;

3. The loss of rights to judicial review and challenges in funding judicial review;
4. Court and tribunal fees.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

ILPA The biggest impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in the field of immigration is that persons under immigration control are no longer entitled to legal aid for immigration cases including cases in which they assert rights to private and family life under Article 8 of the European Convention on Human Rights. The loss of legal aid encompasses a loss of assistance with fees for disbursements, including translators, court fees and expert reports. This means that even where pro bono assistance is available, and it is very limited, a case cannot proceed because the costs of disbursements cannot be met. Court and tribunal fees as well as Home Office fees, are among the elements of a case which cannot be funded. These can be very significant. The Ministry of Justice is consulting on raising fees for an appeal before the First-Tier Tribunal from £140 to £800, with a further £455 to be paid to appeal against the decision of the First-tier Tribunal to the Upper Tribunal.⁸³ Home Office fees cost, for example, between £1,195 and £2,676 for a settlement (indefinite leave to remain application). Applications can be made for fee waivers, but these require considerable work by legal representatives. It is very difficult for an unrepresented person successfully to apply for a fee waiver and the Commission could usefully inquire into how many such applications are made and how many are successful.

Persons who have no permission to work, no access to benefits and are surviving on subsistence support have no money with which to pay for representation.

Immigration law is of considerable complexity and without legal representation many persons are simply not in a position to enforce their rights.

The biggest frustration is to people with no access to justice access to justice and to have to turn persons away because there is no capacity to represent them. As detailed in the documents listed at the end of this response, we are frustrated by Home Office failure to follow precedent or to manage cases effectively. All too often, winning one test case does not suffice, it is necessary to fight to win again and again for clients with identical material facts. Similarly, to get a case stayed behind a lead case it is all too often necessary to make an application to the Administrative Court, rather than being able to agree with the Home Office that no further action should be taken on the case until the lead case is decided. This approach drives up legal aid and court expenditure, as does the Home Office routinely appealing its defeats before the First-tier Tribunal, regardless of merit and despite criticism by the Tribunal.⁸⁴

⁸³ Accessed September 2017: See https://consult.justice.gov.uk/digital-communications/first-tier-tribunal-and-upper-tribunal-fees/supporting_documents/consultation%20document.pdf

⁸⁴ All accessed September 2017. See, for example, *VV (grounds of appeal) [2016] UKUT 53 (IAC)*; <http://www.bailii.org/uk/cases/UKUT/IAC/2016/53.html> *Nixon (permission to appeal: grounds) [2014] UKUT 368 (IAC)* [http://www.bailii.org/uk/cases/UKUT/IAC/2014/\[2014\] UKUT 368 iac.html](http://www.bailii.org/uk/cases/UKUT/IAC/2014/[2014] UKUT 368 iac.html), *MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC)* <http://www.bailii.org/uk/cases/UKUT/IAC/2015/29.html>

The complexity of immigration law and the pace of change, often with no notice, increase the volume of legal challenges. It is not uncommon for Ministers to say in response to a challenge that a proposal breaches human rights that this will be tested in the courts. Clauses stating “unless it would be a breach of a person’s human rights” are increasingly common in legislation and guidance,⁸⁵ tacked on at the end of provisions that risk generating unlawful conduct. Human rights alone cannot bear the weight of the constitutional settlement in this fashion, we need respect for the rule of law so that legislation rules and guidance are designed to avoid breaches of human rights in the first place.

The Legal Aid Agency operates an extremely bureaucratic process. Completing forms takes a significant amount of legal representatives’ time and is frustrating, soul-destroying work. Much of this work appears to be entirely futile as when the Legal Aid Agency is asked to interrogate the data it collects, for example by the Civil Contracts Consultative group, it proves unable to do so.

Immigration: what is in scope under LASPO

GCIT *The Legal Aid Rules*

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) completely changed the landscape for legal aid. LASPO determines the matters that remain in scope for legal aid purposes. Any matters not specified as being in scope under LASPO do not therefore qualify for legal aid and an application would have to be made for ‘Exceptional Case Funding’ (ECF) in the immigration appeal process. Legal aid is only available for

- Asylum cases – defined as cases involving the right to enter and remain arising from the 1951 UN Convention Relating to the Status of refugees and Articles 2 and 3 of the European Convention on Human Rights; Council Directive 2001/55/EC 20.7.2001 (The Temporary Protection Directive) and Council Directive 2004/83/EC (The Qualification Directive)
- Applications for leave to enter or remain by a victim of trafficking where there has been a positive conclusive decision concerning their status under the Trafficking Convention
- Applications for indefinite leave to remain under the domestic violence immigration rules and for residence permits on the grounds of a retained right of residence arising from domestic violence.
- Immigration detention including bail applications and matters relating to temporary admission and release on restrictions.
- Asylum support where accommodation is sought – but not for representation before the First Tier Tribunal (Asylum Support).

Generally, Judicial Review remains in scope for legal aid in immigration cases (whether for non-asylum or asylum), although there are specific exclusions, such as where ‘the same issue or substantially the same issue was the subject of previous judicial review or an appeal to a court or Tribunal’, the application was refused and this was less than a year before the current legal aid application (paragraph 19(5)). All cases before SIAC remain in scope under LASPO. These are usually covered under licensed work, meaning legal aid certificates rather than controlled legal representation.

⁸⁵ See, for example, the Nationality Immigration and Asylum Act 2002, Schedule 3.

The 'out of scope' work under LASPO includes anything that is not specifically identified as covered by legal aid and this 'out of scope' work thus includes:

- EU cases.
- Post-conviction deportation cases.
- Article 8 ECHR.
- Applicants with mental health/incapacity issues (other than on Article 3 ECHR grounds).
- Entry Clearance applications \ appeals for example for family members (including family reunion for the family members of recognised refugees).
- Appeals for the excluded cases listed above including to the higher courts, such as the Court of Appeal and Supreme Court.

Immigration - complexity of law

BHT The biggest impact of LASPO on those seeking immigration/asylum advice is the loss of advice for some very vulnerable clients that do not meet the new criteria. These clients will have to fund their advice themselves which is not possible for many. This means that they have to represent themselves which is difficult in an extremely complex area of law that is constantly changing.

GCIT Immigration law is voluminous, complex and unintelligible to all but working specialists. This helps no-one. The Chambers' text Macdonald's Immigration Law and Practice – generally seen as the leading text on the subject – has grown from a single to a 2 volume work. The commentary (volume 1) and legislative instruments (volume 2) texts are each over 2000 pages in length and as the preface to each recent edition has made clear - the text is 'out-of-date' and therefore inaccurate in certain respects generally within weeks of publication.

Immigration: complexity of procedure

GCIT *Complexity*

The statutory and rule based appeals scheme is highly complex. Due to repeat legislative changes there are a number of transitional arrangements requiring consideration of whether the person has an appeal right, an in-country appeal right and the relevant grounds of appeal and the evidence that may be relied upon in support of the appeal. This complexity is well-recognised and much criticised. Thus:

- The Administrative Justice and Tribunals Council considers immigration to be an area of "extraordinary complexity".
- In just one of many judicial criticisms concerning complexity -in November 2011, Lord Justice Jackson said of an issue affecting the situation of persons liable to removal: "...this area of immigration law has now become an impenetrable jungle of intertwined statutory provisions and judicial decisions..."⁸⁶ The Immigration Services Commissioner's scheme to regulate immigration

⁸⁶ *Sapkota* [2011] EWCA Civ 1320. Accessed September 2017:

advice and services regards work on family reunion, removals and deportation, cases of illegal entrants and over-stayers, Article 8 applications, lodging notices of appeal and applications outside the rules as too complex to be done by those who have attained competence at only Level 1 of her scheme. Very few not-for-profits have attained competence beyond Level 1.

- The UK Visas and Immigration website section on “Staff guidance, instructions and country information” contains 14 distinct sets of policy guidance, many of which contain detailed chapters and sections making up a vast array of immigration policy and instructions, which is frequently subjected to revision and restructure.
- The Immigration Rules are frequently changed. For example, they have been substantially changed 33 times from January 2012 to date.

The laws and rules not only prescribe the criteria for entry and stay but set strict procedural requirements requiring applicants to submit the correct application form, complete all the necessary components in the form and provide prescribed evidence via prescribed documentation. If applicants fail to comply with these procedural requirements, the application can be returned as invalid and the applicant in many cases will lose their legal status and with this their former rights to take employment, rent accommodation, drive their cars or have access to medical services. These are draconian provisions affecting not simply those long term overstayers or illegal entrants who have never held such rights, but lawful foreign residents who lose such rights via the vagaries of the application and appeal process.

Given the legal complexity, the array of legislation, rules and policies, the lengthy, detailed and often ambiguous applications forms and the consequences of procedural slip-ups applicants are forced to seek legal advice and assistance in the application and appeals processes. While skilled immigration lawyers are there to advise in many of the points based cases, legal aid strictures have limited the legal advice available to less wealthy or poor clients.

Immigration – the knock-on effect of the cuts

BHT The biggest impact of LASPO on those seeking immigration/asylum advice is the loss of advice for some very vulnerable clients that do not meet the new criteria. These clients will have to fund their advice themselves which is not possible for many. This means that they have to represent themselves which is difficult in an extremely complex area of law that is constantly changing or they stay in the country without regularising their status. This in turn slows down the judicial process. For those that do not address their immigration status some will be assisted by Local Authorities where they have children or are very vulnerable, for instance those with mental health issues which is a cost to the Local Authority. There is the human cost where no advice is available the very vulnerable can be open to exploitation or remain separated from other family members even where some will be British citizens.

LCN The removal of legal aid from most of non-asylum immigration cases, coupled with ineffective regulation, have seen a veritable free-for-all of rogue immigration advisers (despite the best efforts of

regulator the Office of the Immigration Services Commissioner) providing shoddy services or part-services or defrauding people, putting their very status in the UK at risk. Law Centres are seeing more such victims who come to us for help: in one case, an EU national had gone through four immigration advisers over three years, simply trying to settle his permanent residence, only finally succeeding in doing so when he came to one of our London Law Centres.

Immigration – impact of cuts on separated migrant children

TCS Impact of cuts to immigration advice and representation for separated children

One of the areas of concern for The Children's Society has been the significant impact of these cuts on separated migrant children, who now no longer have legal aid for advice or representation in their non-asylum immigration claims including for example in citizenship applications and applications for leave to remain on the basis of Article 8 ECHR (right to private or family life grounds). Our report '*Cut Off from Justice*' in 2015 conducted by the University of Bedfordshire⁸⁷ found that without legal aid children's claims are being avoided, or 'sat on', and remain unresolved. This often leads to a transitional crisis for the child as they turn 18 and their immigration status comes to bear more heavily on their access to services, such as housing, education and employment. Where children try to resolve their immigration issues on their own, for example as they approach adulthood or where they are not in local authority care, children are forced to become 'mini solicitors' struggling to prepare witness statements and gather evidence about their past. This is leaving them stressed, fearful and unable to participate properly in their education. Most worryingly, some young people told us they have had to raise thousands of pounds to pay for legal advice themselves. We heard how children are being exploited or put at risk of serious harm including being sexually exploited and groomed by criminal networks because they are desperate to resolve their immigration issues.

Undocumented children and young people

While many lone children with immigration claims will already have a right to remain already and will need legal advice or representation to help them with indefinite leave and citizenship applications, other children – namely those who are undocumented – will need legal advice to regularise their status. There are an estimated 120,000 undocumented migrant children living in the UK, the majority of whom – 65,000 - were born here.⁸⁸ Our own research published in April 2016 estimates that there are approximately 144,000 undocumented children living in England and Wales, with the most children being located in London and the West Midlands.⁸⁹ Many of the others will have grown up here and spent their formative years in the UK. However, their uncertain status means that they have not yet established a legal right to remain in the country, even though they may have legitimate reasons for needing to remain and their

⁸⁷ The Children's Society. Connolly, H. (2015) *Cut Off from Justice* See fn 60 above.

⁸⁸ Sigona, N. and Hughes, V. (2012) '*No way out, no way in. Irregular migrant children and families in the UK*' COMPAS Oxford University: Accessed September 2017: http://www.compas.ox.ac.uk/2012/pr-2012-undocumented_migrant_children/

⁸⁹ The Children's Society (2016) *Making Life Impossible: How the needs of destitute migrant children are going unmet*. Accessed September 2017: <http://www.childrenssociety.org.uk/sites/default/files/making-life-impossible.pdf>

long term future may be in the UK. As the Government's agenda to create a 'hostile environment' for irregular or undocumented migrants by limiting access to services such as private rented accommodation, bank accounts and public funds, on the basis of status, the immediate welfare needs as well as the life chances of undocumented children increasingly depend on their ability to regularise their status quickly. Without status, they are increasingly left at risk of destitution, exploitation and social exclusion.

Case study of Florence – from 'Cut Off from Justice'

Florence arrived in the UK as a very young child with her mother who left her in the care of a 'friend', living as an undocumented child for many years.

The woman she had been left with was disabled and Florence was responsible for her physical care and the housework. She was neglected, often went without food and at times was locked out of the house with nowhere else to go. An 'uncle' would regularly visit the house. He was a known criminal with a volatile personality and Florence would often witness physical arguments between the man and woman leaving her very ill as a result.

Florence sometimes went to school and her teachers, upon noticing her underweight and careworn appearance, made a referral to social services. Social services sat on the referral for a number of years, only occasionally visiting Florence and not doing anything about her undocumented status. The woman that Florence lived with was also undocumented and arranged with friends who did have status to pretend they were Florence's carers. Florence had to go to their house whenever social services visited and was forced to call them 'mum' and 'dad'. When Florence was 16, she was made homeless, but with the support of a voluntary organisation, she was taken into care. During this time, Florence had assumed that her stay in the UK was not a problem. She did not know that she was undocumented.

Without legal aid she has been unable to regularise her status because she cannot afford to pay for legal help. So far the local authority is unwilling to pay. If she cannot resolve her immigration issues before turning 18 she may be detained by immigration authorities. She could be made destitute or be forced to return to her country of origin which is a foreign place to her and somewhere where she has no support network or family.

Impact for those who are still eligible for legal aid in immigration claims

Through a series of Freedom of Information requests as part of the 'Cut Off from Justice' report⁹⁰ we found that since the legal aid cuts came into effect in 2013, there has been at least a 30% reduction in regulated immigration advice services⁹¹ across the country and an almost 50% decrease in the number of non-fee charging services regulated to deal with appeals and representation in court.⁹²

The FOIs also highlighted the huge discrepancies between the numbers of regulated advice providers across the different UK regions with the highest numbers in London, Scotland and the South East. The

⁹⁰ The Children's Society, *Cut Off from Justice: The impact of excluding separated migrant children from legal aid*, 2015. See fn 60 above.

⁹¹ Services regulated by the Office of the Immigration Services Commissioner (OISC).

⁹² Level 3 OISC providers – Further information on the OISC levels can be found online.

distribution of providers also showed some areas where there were very limited services available: for example, in the East of England there were no OISC regulated non-fee charging service providers regulated to deal with appeals and representation (Level 3 OISC). There was only one provider each in the East Midlands, North East and Northern Ireland. There were however fee-charging providers in these areas and the full lists can be seen in our report.⁹³ These figures indicate that even those who remain eligible for legal aid following LASPO – such as children seeking refugee protection and recognised victims of human trafficking – face difficulties accessing regulated service providers in their area or may experience delays in obtaining advice and representation due to oversubscribed providers.

Immigration – the effect of restricted appeal rights

Restricted Appeal Rights

GCIT Under the Immigration Act 2014 immigration appeal rights have been removed or rendered as ineffective internal reviews or off-shore appeals. Under the Act the only decisions against which a merits appeal may be brought will be EEA decisions and decisions by the Secretary of State to refuse a protection claim (for asylum or humanitarian protection), to revoke protection status or to refuse a human rights claim. The appeal rights lost include rights of appeal against refusal of entry clearance, leave to enter or remain and decisions to remove or deport. Principles of justice and fairness have been significantly eroded in this practice area. As immigration decision-making is shown to be of variable quality and Home Office decisions under a fair and accessible application and appeal system were frequently overturned (more than 40% of all immigration appeals to the First Tier Tribunal are allowed (Tribunal Statistics 2014)) – it is clear that the present and proposed system removes an important accessible and effective remedy against injustice and perpetuates injustice causing serious wrongs.

Welfare law

Respondents’ biggest concerns about the state of access to justice:

AUK Our three biggest concerns:

1. The lack of commitment on the part of key decision and policy makers to ensure equal access to justice and the failure to connect civil justice to other areas of people’s lives such as health, education and employment.
2. The fact that equal access to justice is a cornerstone of civil society and the role that the justice system can play not only in resolving injustice, but in preventing injustices in the first place and the removal not just of access to support in the first place but the removal of a key part of the administration of justice in terms of redress such as judicial review.
3. The combined effect of a number of measures have reduced the accountability of government and powerful private interests such as employers or landlords through, for example, the

⁹³ Accessed September 2017. See page 53 for the full tables:
https://www.childrenssociety.org.uk/sites/default/files/LegalAid_Full_0.pdf

introduction of arbitrary processes such as benefit sanctions, the introduction of mandatory reconsideration of benefits decisions, and the financial implications of the introduction of prohibitive charges to use employment tribunals and the withdrawal of Legal Aid from most Social Welfare Law matters, which has led to a significant increase in the imbalance between the state and the individual to the detriment of the individual.

BHT Our three biggest concerns:

1. Nationally an emergence of advice deserts.
2. Locally becoming the only provider for specialist housing in Brighton has meant there is no choice for clients and nowhere to refer clients locally when our service does not have capacity, or where there is a conflict of interest.
3. Where the scope of legal advice has been reduced in housing and immigration matters we have to rely on non-specialist services to provide advice, thereby early intervention can be hampered where there is no specialist advice available.

GIPSIL Social Welfare Law has been effectively taken out of scope of civil legal aid and, as such, decisions in respect of benefits impacting upon those most disadvantaged, including disabled people and low income families, are increasingly difficult to challenge.

LLS Our three biggest concerns:

1. Our major concerns are that those in need of advice on Housing, Welfare Benefits and Employment Law have nowhere to go and therefore are directly deprived of expert advice which would ensure access to justice. As long ago as November 2014 the National Audit Office made clear that the cuts were not achieving their stated purpose⁹⁴ and yet no proper review was undertaken by Government.
2. The way in which the current Legal Aid regulations are drawn make it difficult for the most vulnerable to obtain publicly funded representation. Nowhere is that clearer than in Domestic Violence cases where the evidence required to obtain funding is extraordinarily restrictive.
3. The rise in court fees and the introduction of tribunal fees means that only the wealthy are able to access the justice system.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

⁹⁴ See fn 5 above.

BHT For those seeking advice in relation to welfare benefits and debt advice post LASPO they are reliant on these advice services being funded by alternative funders and these services are not universally available across the country, especially in relation to welfare benefit advice.

HSSL The impact of LASPO restricted financial eligibility for civil legal aid to just 20% of the population. This has led to a rise in litigants in person. In most social welfare cases an individual is litigating against an institution with means (such as a corporate landlord) or a public institution. In our experience, those institutions invariably employ lawyers, often at public expense.

Second, we believe that all the restrictions on scope of legal aid implemented in LASPO should be repealed. The areas of housing law, education, family law, non-asylum immigration, debt, and social security are all specialist and complex areas of law. Problems in these areas – such as living in a damp property, or needing assistance in education tribunals – have a real impact on people's lives. Society should be assisting people to resolve these problems. In addition, we believe that early access to publicly funded legal advice and representation can reduce litigation and its attendant costs.

Third, the most egregious cut was the removal of advice on welfare benefit issues from scope. By definition, those seeking such advice cannot afford to pay for it. In addition, they are seeking advice on challenges to decisions made by a public authority – the DWP or local authorities – who should be expected to make a legally correct decision. The means of ensuring that public authorities make correct decisions is to make free legal advice available, at an early stage, so that decisions can be challenged and reviewed. The austerity programme pursued by this government, and the previous Coalition government, has caused great poverty and devastation. Where the DWP or other public decision-makers have made wrong decisions, then the claimant should be funded to challenge that decision early on.

LCN In welfare benefits, comprehensive welfare reforms and a punitive approach from DWP have led to a sharp rise in sanctions and numerous questionable benefits decisions. However, Law Centres must find other resources to keep up much needed help to clients in challenging sanctions and appealing decisions, and some have turned to dedicated pro bono projects to meet that need, and their great success reflects the remaining need for help.⁹⁵

LLS There are now huge areas of law post LASPO where Legal Aid is not available e.g. Welfare Benefits. This at a time where the government has introduced swinging and dramatic changes e.g. Universal Credit, Personal Independence Payments, Benefit Cap.

The increasingly complex welfare benefits system is then creating more and more appeals to the Tribunal. The Tribunal is not properly resourced and therefore appeals are now being increasingly delayed.

MAT The Trust has never provided advice services under a Legal Aid contract so we have limited comments to make on how legal aid could be reformed. However, the Trust recognises the impact on the

⁹⁵ Avon and Bristol Law Centre has done just that, and very successfully. Still, they admit that they are an exception that proves a rule: the service is only available locally, where they are resourced to provide it, whereas it should be equally available across the country and based on right.

wider advice sector and those seeking advice of changes to Legal Aid and we saw a great increase in referrals to National Debtline from the Civil Legal Advice helpline⁹⁶ following legal aid changes.

At National Debtline and Business Debtline we have had to adapt our services over the years to attempt to provide “work round” for the lack of specialist case work services. For example, we have partnership arrangements with Shelter NHAS for housing possession cases. We have a referral arrangement with the Bar Pro-Bono Unit’s Personal Insolvency Litigation Advice and Representation Scheme for our business clients threatened with bankruptcy.

However, there are many cases where complex consumer-credit contract litigation might be required, a defence is needed to a court claim or a client has a complex dispute over fees for enforcement in the High Court which we find is not easy to refer on. We are concerned that some cases with genuine merit might fall by the wayside due to the lack of access to specialist advice, and the lack of legal aid.

Demand for debt advice has increased and the Money Advice Trust Changing Household Budgets research⁹⁷ conducted by the Money Advice Trust reveals more people are falling into debt because they can’t afford basic household bills such as energy bills, water bills, telephone bills, and council tax. The report highlights this important change in the debt landscape, despite the recovery of the UK economy, and the challenges this brings. National Debtline has seen a radical shift in the types of debt problems it helps people resolve. We have experienced an increase in callers to National Debtline since 2010 with government or state-collected debts including council tax, housing benefit overpayments, social fund loans, TV licences and magistrates’ courts fines.

This is against a backdrop of a decline in the number and proportion of callers with credit related debts and an increase in the numbers contacting us with ‘priority’ debts (debts that may result in the person facing fines, losing their home, an essential service or imprisonment). These largely relate to household bills and everyday living costs.

The Trust is concerned that even if the capacity of the free-to-client sector was to remain constant in the coming years, the sector is likely to struggle to meet the additional numbers of clients predicted to be in need of debt advice over the coming years.

The current scale of consumer need for free debt advice is significant, likely to increase and unmet by current supply. Money Advice Service (MAS) research⁹⁸ shows that 8.2 million people are over-indebted, but only 17 per cent seek debt advice.

Demand is widely predicted to increase in the future due to a confluence of both economic and social factors. These include the continued impact of welfare reform, a significant expansion of consumer credit,

⁹⁶ Accessed September 2017: <https://www.gov.uk/civil-legal-advice>

⁹⁷ Accessed September 2017:

http://www.moneyadvicetrust.org/SiteCollectionDocuments/Research%20and%20reports/changing_household_budgets_report_final.pdf budgets_report_final.pdf

⁹⁸ Money Advice Service. (December 2015) *Indebted Lives update*. Accessed September 2017:

<https://mascdn.azureedge.net/cms/indebted-lives-the-complexities-of-life-in-debt-november-2013-v3.pdf>

higher interest rates, increased housing costs, and long-term demographic trends, including migration. Reliance on provision by the free-to-client sector is likely to increase due to the exit of fee-charging debt management companies from the market due to the FCA authorisation process. However, existing provision in the free-to-client sector is at capacity, and insufficient to meet existing need.

The review of MAS and pensions guidance looks likely to lead to a smaller budget for the new financial guidance body in the future. This budget needs to be looked at again in the light of the increasing demand for debt advice predicted for the future as it is crucial to build capacity in the sector to deal with demand.

MWLC Welfare benefits are no longer in scope for legal aid even where someone is at risk of losing their home. Providers either give advice for free (i.e. knowing they will not be paid for it and risking the viability of their organisation) or they have to send people away to one of the very limited number of organisations that are still funded to provide this sort of advice. We have funding to offer welfare benefits advice from the local council. This means that the only people who are able to access our services are those who live, work or study in the London Borough of Camden. If we see a client on a housing matter who is facing eviction and needs urgent advice about their benefits, we are forced to send them elsewhere to try to get that advice if they live outside of the geographical scope of our funding and the advice available is too limited to properly resolve the issues.

Debt advice is now provided almost entirely through one-off telephone advice. Previously someone with a debt problem could receive proper casework to get to the bottom of their complex financial situation. Now they just get a one-off phone call and are left to try to sort out the problem on their own.

SBS *Social services*

Cuts to adult and children's services budgets have had a devastating impact on social services' response to the women that we see. There is now an acute shortage in resources (including experienced social work staff) available to safeguard vulnerable adults and children. This creates immense limitations on the meaningful support and protection measures for adults and children that is necessary to avoid serious risk of harm and care proceedings for children from becoming necessary.⁹⁹

In this context, we are seeing more and more cases where social services are refusing to assist women with children in a range of circumstances, including where they face immigration difficulties and therefore have no recourse to public funds. Their response often contravenes their legal obligations, for example, their duties under s17 of the Children Act 1989. We are experiencing numerous instances where social service departments are attempting to pass the responsibility they have to assist vulnerable adults and children, to the voluntary sector or simply turning women and children away. We are also disturbed by a growing trend within social services that involves social workers advising women with immigration problems to make asylum applications, irrespective of the women's circumstances, and even though they are not qualified or accredited to give immigration advice. Their objective is to divert women to NASS

⁹⁹ Accessed September 2017: See <http://www.independent.co.uk/news/uk/home-news/social-work-budget-cuts-are-puttingchildren-at-risk-says-nspcc-9224796.html>

support instead of social services support, even when this is not appropriate. We have known instances where social workers have, without carrying out a needs or risk assessment, placed women and children in taxis and directed them to Lunar House in Croydon to make asylum applications, irrespective of the appropriateness of such a step.

Not surprisingly, we have at times had to threaten local authorities with legal action in order to compel them to comply with their statutory duties.

We view these failings in local authority and police responses as serious and potentially discriminatory to women from BME backgrounds in particular. Failure to adhere to their statutory legal duties to protect; failure to implement appropriate policies and procedures; and their general failure to discharge their statutory duties in a fair and transparent manner, often leaves SBS with no choice but to advise our users to contemplate legal action by way of judicial reviews or complaints. For this to happen, legal aid is vital. Without it, vulnerable BME women and children cannot challenge unfairness and discrimination when accessing services, or assert their rights in criminal or civil proceedings.

S & O Participants also identified the lack of funding available to help clients to obtain medical evidence to support their applications or appeals for welfare benefits as compounding the problems of accessing specialist advice. Under legal aid, this advice could be paid for, although this encouraged general practitioners (GPs) to charge for reports, sometimes £50 or £100. However, now GPs are charging less, but many have stopped providing medical reports at all, because they have been inundated with requests. As one manager explained:

Tribunals love medical evidence to back decisions up, unless the client's condition is very obvious. The burden is now on clients to fund this evidence, and many clients do not have the resources. They may not have received any support for weeks or months while on mandatory reconsideration of ESA'. (Interview 2)

This lack of disbursements for medical evidence is felt very keenly in the region due to the high level of disability deprivation in the Liverpool CR. 46 per cent of Liverpool CR's lower layer super output areas (LSOAs) are in the most deprived 10 per cent in England in the domain of health and disability deprivation.¹⁰⁰

Alternative funding has been particularly difficult to find for welfare benefits advice, which one agency head described as being like a 'dirty word' for funders (Interview 5). This is particularly problematic as the fundamental changes to the welfare benefits regime, including those of the Welfare Reform Act 2012, have meant that clients are presenting with more complex cases requiring specialist advice. The Local Government Association commissioned report on the impact of the welfare reforms found that although the cuts were broadly the same across all areas of the country, there was a disparate impact in areas of

¹⁰⁰ Department for Communities and Local Government. (2015) *The English Indices of Deprivation 2015: Statistical Release*. Accessed September 2017: <https://www.gov.uk/government/statistics/english-indices-of-deprivation-2015>

greater deprivation.¹⁰¹ There has been no targeting of the transition response towards more deprived areas. A large part of the responsibility for transitioning the welfare reform programme and for mitigating its impact on the most vulnerable in society is being passed to the third sector without adequate funding, and there is no sign of a let-up in the programme of reforms, with the continued roll out of universal credit and the cuts to tax credits.

Crime

Please use the box below to outline in more detail the way in which your/your organisation's work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

CLSA

Absence of over-arching strategy

Legal aid was introduced in the dark days of post war austerity with public support. The Rushcliffe Committee was published as the precursor to the Legal Aid and Advice Act 1949 and it made clear that advocates who were funded to represent defendants via legal aid should receive adequate remuneration because the "adversarial system of trial depends entirely on both sides being adequately equipped to present their cases". Our version of austerity has been mild in comparison and yet across party boundaries political support for legal aid has been lacking. That is why we have welcomed recent comments by the Labour party leadership as to the essential part legal aid plays in the health of our democracy and why we welcome the commitment of present Lord Chancellor to engage with the profession (and very much welcome the opportunity to address this Commission and thank you for the opportunity to do so.)

Recently 84% of people say legal aid and a fair trial are a British fundamental right and 89% of people say legal aid is important. (See the 'YouGov' poll on 'public attitudes to legal aid', Fieldwork Time: 1st - 2nd April 2015). There has been a conflation of legal aid with welfare. Legal aid is not a welfare benefit. It is a legal right. If Parliament and society enact ever more complex laws and Government fund prosecutions, it is part of the social compact that a balance be struck to enable people to negotiate those complexities by obtaining specialist legal representation.

Legal aid and access to justice for all is part of the health of our democracy. The right to a fair trial is part of the health of our society and pre-dates universal suffrage. We have international treaty obligations as a nation to provide a fair trial. If those in power introduce ever more complex laws it cannot be right that only the Crown and the wealthy to have access to quality legal advice.

The provision of legal aid and the issues surrounding access to justice affect victims as well as defendants.

The cost of Legal Aid

¹⁰¹ Local Government Association and Centre for Economic and Social Inclusion. (2013) *The local impacts of welfare reforms*. Accessed September 2017: (2013). <http://www.learningandwork.org.uk/wp-content/uploads/2017/01/The-local-impacts-of-welfare-reform-version-7.pdf>

Criminal legal aid cuts have been accompanied by dishonourable attempts to portray criminal legal aid as out of control when it has fallen which must now have been recognised by Mr Gove when abandoning Mr Grayling's contracting proposals. One of the most disturbing features of this political disinformation has been the constant bogus comparisons with international jurisdictions, when this is merely average in its overall cost when comparing like for like (Continental expenditure upon civil servants and judges rather than defence lawyers are ignored).¹⁰²

Comparisons with Commonwealth countries fail to deal with respective scope and complexity (City frauds for example) but UK legal aid lawyers are not paid more than Commonwealth lawyers in terms of equivalent rates.

Waiting for a crisis

The cuts to criminal legal aid are entirely contrary to the spirit of Lord Justice Leveson's Review which made clear that 'part of the solution to improving the efficiency of the whole system is to acknowledge the critical role that the defence can play'. That refers to early engagement by mainly legal aid lawyers. Solicitors in particular are 'the' early responders.

The impact of the cuts on law firms

The CLSA is second to none in their praise of the Bar who provide such a fine service but sometimes it seems overlooked by politicians that 90% of advocacy is provided by solicitors at all levels and that percentage will increase with the re-allocation shortly of many serious cases to the Magistrates court. In addition, we provide 24-hour cover at police stations.

It is now over 20 years since solicitors had a rise in legal aid rates and yet we continue to battle against further cuts. This is unprecedented neglect and a tribute to the commitment of solicitors that they have survived. But increasingly firms are failing and solicitors (and barristers) are deserting legal aid. After years of study and training they conclude that you cannot pay a mortgage and raise a family on a sense of vocation.

Given the relatively small expenditure involved in the provision of legal aid it is astonishing how over regulated the criminal legal aid sector is for solicitors. This is completely unnecessary for the firms and the tax payer. What is more it is often ineffective tick box regulation that is collectively expensive to operate for firms and the Government and provides little benefit for the public. Let me list some of these:

- a) The SRA (Solicitors Regulatory Authority). - Enforcement of disciplinary code)
- b) The LAA (Legal Aid Authority) – Financial audits
- c) SQM/Lexel etc. - file quality audits

¹⁰² See National Audit Office Briefing for the House of Commons Justice Committee (2012) *Ministry of Justice 'Comparing International Criminal Justice Systems'*. Accessed September 2017 https://www.nao.org.uk/wp-content/uploads/2012/03/NAO_Briefing_Comparing_International_Criminal_Justice.pdf

- d) Peer review to ensure files are following top down specified criteria in file content.
- e) Internal prescribed supervision file reviews.
- f) Prescribed solicitors account audits by independent accountants.

The above may seem absurd. There must be a form of regulation. It is public money but it should be relatively simple especially when we are paid mainly fixed fees. How much regulation does a fixed fee case really need?

Criminal representation is a highly skilled task needed to be performed by qualified and trained professionals. Often these days it is vital that early competent legal advice is available at the police station and at the first hearing at the magistrate's court. What happens at these early stages can affect the outcome of the trial. Vulnerable clients can be horribly prejudiced by low skilled advice.

We appreciate this will inevitably sound self-serving from a practising lawyer but as the country accepts the need for legal advice (See the 'YouGov' poll referred to above) the country's political representatives should surely ignore the cheap shots of trashy media and do their duty and provide an adequately funded legal aid service. Ministers need to stand up to the Treasury. The alternative as is now beginning is that the best of us will leave this sector of work. If that happens you had better hope that neither you, your constituents, friends and or colleagues will face a criminal prosecution especially if innocent or vulnerable.

The Legal Aid Agency

The majority of defence solicitors embrace any initiative that brings about efficiencies within the system. The difficulty in the past (and present) is the fact that many of these so-called efficiencies have often generated additional problems. One recent example of this is problems with the on-line portal which is used for submission of legal aid and/or billing. The LAA have recently been experiencing problems with the portal which has meant that Solicitors have been unable to access the portal to submit legal aid. This problem has in some case continued for days on end and has seen solicitors and their staff spending a vast number of hours (in some cases days) unpaid trying to submit applications.

Case Management

The rules in relation to case management and early engagement must be applied fairly and across the board. The Crown Prosecution Service, in many cases, appear to have approached Better Case Management as a reason not to serve their full case. We are regularly seeing defendants charged with serious and life changing offences being asked to plead on the basis of an inaccurate case summary prepared by the police. This is not justice nor is it the purpose of Better Case Management.

Litigants in person

The recent assaults upon civil legal aid following the cuts introduced by the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) are proving increasingly counter-productive and costly with unrepresented litigants clogging up the courts to the publicly expressed concern of the judiciary.

Unrepresented defendants in the Criminal Justice System present a vast array of problems not least in cases involving vulnerable witnesses. Any hope of achieving efficiencies within the system is negated when a defendant appears without the benefit of representation which is one of the reasons why it is essential for any government to ensure that legal aid is made available within the criminal justice system. The charity Transform Justice published a paper in April 2016¹⁰³ dealing with the concerns surrounding unrepresented defendants. It is worthy of note that unrepresented defendants cause delay and do not allow for justice to be dispensed in the same way. In the current climate unrepresented defendants are prejudiced because of the new digital era.

Prisons

Prisons present huge challenges to creating efficiencies within the system. Numbers of prison staff have dropped. Many prisons are struggling to cope with basic routine meaning prisoners can be locked up for twenty-three hours due to shortages. The knock-on effects of this are immense. Prisoners are either produced late or not produced at all to Court. The number of visits and time are being restricted not to mention the countless problems created when you try to take digital evidence in to a prison. The effect of problems within the prison system upon efficiencies within the wider criminal justice system must not be overlooked. Many defendants are held on remand and so any problems sustained by prisons directly effects the justice system and court process.

JGJ Judges (particularly Magistrates) are also often not prepared to listen to evidence being put forward to them by members of the Gypsy Traveller community, the assumption seems to be that all Gypsies and Travellers are trouble makers and there seems to be a negative presumption against us as a community.

Therefore anything said (allegations made against members of the Gypsy traveller community) by a local authority employee is correct, and they don't seem to be required to provide evidence their word is enough, and so there is no defence.

Evidence that we provide is usually given little or no weight.

I had helped represent two people who were being charged with an offence in Aylesbury Vale, the Police produced statements which were given to the two defendants on the morning of the hearing. I read those statements to the two persons concerned who said that they were not their comments, but they wanted to plead guilty anyway because they didn't think there was any other option.

I recommended a plea not guilty.

¹⁰³ *Justice denied? The experience of unrepresented defendants in the criminal courts.* Accessed September 2017: www.transformjustice.org.uk/wp-content/uploads/2016/04/TJ-APRIL_Singles.pdf

In court I requested a copy of a transcript and recording of the interview from which the statement was supposed have been taken (when a full and frank confession was said to have been made) we knew the police submission was not correct. No surprise, after two further hearing the charges were dropped.

JH My three biggest concerns:

1. Ludicrously low fees and technical or absurd reasons for rejecting claim forms for fees;
2. Poorly paid advocates having to do a “rush job”;
3. Many inadequate duty solicitors giving poor advice.

SLLCG

Litigants in Person

Unrepresented defendants and litigants are an unacknowledged cost that surfaces in the budget of the courts service as judges waste hours in trying to be both advocate and tribunal, causing other cases to be endlessly delayed only for such cases to surface again on appeal, post-conviction, because self-represented defendants either were, or felt that they were, disadvantaged in trying to represent themselves.

Increasingly defendants are coming into the system unrepresented, having been advised they may have to pay defence cost contributions and fearful of the same because of the sums involved. Those that do pay those contributions are often financially crippled by the scale of the contributions, to the point that it operates as a ‘second sentence’, a financial punishment in addition to any other sentence that may have been imposed.

Absence of over-arching strategy

The more serious issue is the lack of continuity and a joined up approach as practitioners with no easy mechanism for joint working represent piecemeal clients enmeshed in a variety of proceedings e.g. mental health, criminal, housing and immigration issues, all of which regularly combine in the same life story. This regularly denies access to justice. The criminal lawyer not properly briefed as to the immigration, housing or child access issue is not best equipped to secure a sentencing outcome that best meets the needs of the client. In any event, dealing with ‘criminality’ in isolation is bursting the bubble in one place, only to see it resurface as an issue at another time, in another place, at ever increasing cost to society, and the individual concerned.

To continue as we are denies too many people their basic human right, of achieving their full potential as a flourishing individual and all that contributes to a healthy society. This should be the purpose of a welfare state, to facilitate wherever possible, each and every individual to be the best that they can be, and criminal justice is an integral aspect of that.

Lawyers are by nature problem solvers and given the opportunity we have a contribution to make to improving lives, improving societies.

The impact of the cuts on lawyers

Further, the demise of the role of the criminal solicitor in recent years is a matter of regret. The criminal justice system only works effectively and indeed efficiently, when what amounts to a two-person job, is indeed undertaken by two people. Cases cannot be effectively litigated by advocates who are, predominantly, in the court room during working hours, any more than advocacy is effectively undertaken by those who do not wish to do it. There is a place for higher rights advocates in the future of the CJS and for advocates who wish to conduct direct access work, but the vast majority of criminal litigation is most effectively and efficiently conducted, on both the prosecution and defence side, by two people undertaking discrete tasks.

We continue to pay lip service to diversity for as long as those working at the junior end on both sides of the profession are not properly remunerated. Newly qualified barristers continue to attend in the magistrates' courts for a fee of £150 for trials which could take hours of work in preparation. Other fees for magistrates' court advocacy work are significantly less. These fees are gross of chambers expenses, travel expenses and incidental professional costs, including the cost of loans taken out to enter the profession.

Women who have managed to establish a trial practice in the Crown Court with a commensurate increase in earnings face the following problems when they have children:

- a) towards the end of pregnancy - unable to commit to trials in the coming weeks/ warned lists/ trials running towards due date, not to mention undertaking an at times punishing workload during the latter stages of pregnancy being less than conducive to good health of mother/ child
- b) breastfeeding through to weaning (about 6 months minimum) before returning to anything approaching full time practice, which then takes another 6 months or so to re-build (PTPH to trial often taking many, many months)
- c) the cost of childcare in the early years (approx. £13.5k per year for f/t nursery care and more in London)

This combination makes practice at the criminal bar financially unsustainable for most working mothers. This is the economic reality and it is why we continue to recruit marginally more women than men into the profession and continue to see an exodus of the late 20's / early 30's female with few women continuing on into the highest levels, taking silk, or entering the criminal judiciary.

We do not accept that the lack of BME representation at the highest levels of the profession can be solely explained by a class based/ economic analysis of entry point and retention issues within the profession. A form of institutionalised racism, yet to be fully acknowledged by the profession, continues to hold back excellent candidates at every level and within the judiciary.

The volume of work required to make a reasonable living mitigates against high standards, which in turn costs the state more money. There are a number of recent examples of appeals in criminal law that are for no reason other than less than effective representation.

Having removed the payment for solicitors to attend at court and, to all intents and purposes, any investigative work on a case by a solicitor to prepare the defence for trial, whilst maintaining an economically viable practice, there is fast approaching a limit to what any of us can do when forced to work solo and with caseloads that are unmanageable much of the time.

Junior solicitors cannot learn their trade when they never see any Crown Court hearings, let alone trials. An advocate trying to be their own note taker, second pair of eyes, witness liaison at court, whether prosecuting or defending is not possible if all tasks are to be done to highest standard. It is a two-person job.

Training and payment of newly qualified solicitors and barristers

We are particularly concerned at the growing problem of recruitment and retention of those wanting to practise in the field of criminal legal aid. Although, as barristers practising from 'top tier' sets and solicitors at some of the leading firms in the country, we continue to recruit high calibre and committed practitioners, we increasingly find that prospective pupils and trainees choose alternative areas of practice because junior criminal practice is financially unsustainable. There is a real danger that we are in the process of returning to the days when only those with a private income could afford to undertake this type of work.

We also observe that criminal solicitor firms are increasingly forced to rely on very junior paralegals instead of solicitors and paralegals of suitable experience, again, because of economic factors.

Many new barristers have taken on substantial debt not only to qualify but to survive financially for the first few years. This debt is often in the form of unsecured personal loans or credit cards. The profession is concentrated in large urban centres, where the cost of housing has rocketed. The financial burden is a heavy one and for too many is now proving unsustainable, to the detriment of the future health of the profession.

Newly qualified barristers and pupil barristers spend the majority of their time in the magistrates' court for the first two years or so of practice where they are paid £75 for a half day trial, £150 for a full day trial and £50 for all other hearings. Most summary trials are listed and paid for half a day, but will absorb a whole day of the barrister's time because of travel, delays at court and preparation time. After the payment of chambers rent (around 20%) and tax, barristers are often working for less than the living wage, the London living wage and the minimum wage.

The fees of the most junior have not been properly reviewed for many decades or index linked to inflation. This is a real time pay cut. Solicitors are paid a single fee for a magistrates' court case and often struggle to cover their own costs. The 'old system', that the difficult first few years would eventually be compensated for, following a move into the Crown Court, no longer holds true. Increasing numbers of talented young barristers are pushed out of the profession for financial reasons long before there is any prospect of building a practice.

The pay is not only low, but slow. It can take months, sometimes years, to be paid for Magistrates' court appearances and for travel to be refunded. Meanwhile the debts and interest accumulate. The timing of payment is unpredictable.

The financial pressures are so great that many new barristers undertake long secondments in large organisations (most commonly the SFO and FCA) in order to earn enough money to pay off their debts. This stop / start practice development usually operates as a revolving door because it is inimical to the uninterrupted availability for work and development of advocacy skills that is required in the early years to get a practice underway. Much is said about the scourge of secondments for the junior criminal bar, however they are the inevitable result of a remuneration system that traps new barristers into a cycle of debt.

Consequently, those who are not financially independent are leaving the criminal bar in droves. We face the bleak prospect of the 'bad old days': a criminal bar and solicitors' profession populated by those with independent incomes, working for private fees.

On the prosecution side, far too many cases are being prepared for trial by paralegals with next to no court experience, leading to serious disclosure issues amongst other difficulties, which are surfacing in the appeal courts as miscarriages of justice.

For barristers, the training function of the two counsel certificate has been almost entirely removed. Two counsel certificates are increasingly hard to obtain. Silks regularly prosecute and defend in the most serious cases with no assistance. Setting aside the obvious issues regarding the burden this places on senior counsel, there is a subsidiary issue about training. Junior barristers have fewer and fewer opportunities for supervised learning. No other profession sends its less experienced members into working scenarios of increasing complexity without a system of peer review and training on the job (e.g. doctors, nurses, teachers).

Advocacy standards

We welcome higher rights advocates, who have a crucially important role to play. HCA's are an excellent example of how continuity in a case can be secured. However, we doubt that such an approach is suited to the majority of cases simply because workloads on both sides of the profession do not allow one person to attend to both case preparation and back to back trials.

Similarly, using junior advocates of insufficient calibre in order to keep fees in house is a practice created by poor remuneration. It is a practice that must end.

No one on either side of the profession should be tolerated if not up to the job, and we apply that mantra to the Bar.

Financial Eligibility

The Proceeds of Crime Act 2002 prohibits a defendant in criminal proceedings from using their restrained assets to contribute towards the costs of their legal advice and representation. As a consequence, many defendants who would ordinarily have been ineligible for legal aid are forced to rely on it.

The Crown Prosecution Service

Regrettably, it is our collective experience that the CPS is chronically under-resourced.

Neglect, cuts and a lack of investment, not just in funding levels but specifically in the retention of trained lawyers, has left those still working within the CPS demoralised and over worked. This has inevitable consequences for the viability and quality of prosecutions. For example, the London RASSO (Rape and Serious Sexual Offence) units assigns workloads to its staff which are inimical to the adequate preparation of cases.

The use of technology in the criminal justice system.

We welcome DCS/BCM and the move to electronic working. However, the failure of the prison system to accept the need for electronic access to case papers impedes the effectiveness of the reforms. There is no purpose in moving to a digital system when the one person who needs to see the evidence more than anyone, the defendant, is not allowed access to a computer. It also generates hidden costs. The state having dispensed with any responsibility for getting cases papers to the defendant, pushes those costs, once again, onto the profession.

The 'Access to Justice Computers' for use by defendants are, in practice, very difficult to access and not even close to widely available.

Courts, court fees and court closures

Our collective experience is that a considerable amount of court time is consumed because courts and tribunals do not have sufficient resources to proactively monitor and manage the procedural orders made. Court clerks and lists officers do not have the power to assume responsibility for dealing with procedural issues without the need to list hearings. Those hearings require the attendance of numerous parties; judges, counsel, litigators and sometimes witnesses. These hearings are often not even effective (the issue remains unresolved, further orders are made) but they absorb valuable court time and resources at the expense of the legal aid budget.

One of the most unsettling aspects of case management as it is presently conducted for defendants is lack of consistency of representation. When the instructed advocate is in another trial, or otherwise professionally engaged, briefs move around in endless succession, clients, professional and lay, concerned that on each occasion they are having to explain the case to the new advocate, who in turn is required to prepare the night before for an issue in a case with which they are not familiar, in which they are not instructed and forever diminishing fees (paid to them by the instructed advocate who through no fault of their own is thereby penalised for being unable to attend).

We endorse all that has so ably been said about the detrimental impact of warned lists for access to justice by the CBA. In recent times even rape cases have entered into this hopelessly disruptive system. Last minute notification of trials leads to chaotic working practices, lack of continuity for defendants, needless stress and disruption in the lives of witnesses (both prosecution and defence) and a 'last minute' culture in relation to preparation.

Since the change in procurement mechanisms, there have been continuing problems with interpreters not coming to court, poor standards and lack of consistency. Where courts are responsible for securing interpreters the limitations that are placed on the time for which the interpreter can be remunerated place client conferences under undue pressure.

In an increasingly diverse community, specifically in London, the quality of interpretation in court, and translation of case papers, is the most important factor in securing a defendant's right to a fair trial. The accused must understand the charge that they face and the evidence against them.

Treatment of lay witnesses is often very poor within the criminal courts. This is not purposefully so, but because we rely on a voluntary system, the witness service, which is not properly set up to equip witnesses for the experience they will face in court. It is particularly true of rape victims.

Defence witnesses also report uncomfortable experiences, because there is no liaison with the defence representatives at court. This is because we are denied the assistance of solicitors.

Similarly, many professional witnesses are deterred from continuing to act as expert witness after unpleasant experiences early in their career having been inadequately prepared for the adversarial process that takes place in court.

There are many recent examples of cases, up to and including murder cases, where retention of a medical expert has proved extremely difficult both because of the problem of finding experts of suitable calibre willing to work for legal aid rates (meaning that those that do are exceptionally busy and therefore difficult to instruct) and because of disputes with the LAA, once such an expert is identified, over the funding.

Good probation officers can change lives. Again, fee cuts have left the system understaffed, blighted by delays and with officers of insufficient experience / training being tasked with unmanageable caseloads.

Overworked officers required to deal with too many cases cannot be expected to produce reports of the highest quality, not least because they do not have time to spend with the defendant, teasing out the issues that have led to the offending and properly identifying mechanisms to deal with it.

The difficulty of accessing suitable mental health and drug treatment facilities is a particular issue. This is, under the present system, a time consuming and complicated process, which officers are often reluctant to engage in because funding issues will all too often render such an option practically inaccessible.

Appeal work remains an underfunded and neglected area of criminal defence work.

Pivotal to that work, is the role of the CCRC.

The CCRC is presently chronically underfunded for the work required of it and consequently unable to handle its workload. The delays can be inordinate. The system is under unprecedented strain.

No blame attaches to the CCRC.

A perfect storm of defendants who want to appeal the quality of their representation because the system at crown court level is under unsustainable strain for all of the reasons we have identified, combined with systemic lack of funding has created a crisis in criminal appeals.

The dock is an obstacle to the smooth running of the justice system in all but the most serious of cases or where bail may be in issue.

Youth Courts

It is not acceptable that the youth courts are used as a training ground for young lawyers and that we continue to prosecute children for anything other than the most serious of crimes.

So much of what passes for 'crime' in the youth courts would previously have been within the remit of schools, parents, communities and the local constabulary to address through disciplinary action, not criminalisation. We have criminalised delinquent behaviour instead of addressing it. This is not progress. It is a return to a Victorian attitude that should have been consigned to the history books.

Youth courts make little sense to most of the children who pass through them. It simply acclimatises them to the world of criminal justice and acts as a stepping stone into the magistrates and crown court in due course.

The quality of representation and prosecution in youth courts is unacceptable, specifically, the delays between the 'crime' and the punishment but often because the system itself does not allow representatives to meet the needs of the child and their family, in the way that they would wish to. All too often youth offending is indicative of family or social problems which, if addressed promptly to meet the needs of the child, can be remedied. Punishment meted out up to a year later for young teenagers, putting them into an environment with others acting in a similarly anti-social way, is a route to criminalisation of youths, not their rehabilitation.

TJ Transform Justice has published three reports, based on original research about access to justice in the criminal courts and we will focus in this submission on criminal justice. All references in this submission are in the relevant reports.

- 1) Innocent but broke – rough justice? on the situation faced by those forced to use private lawyers who are then acquitted.
- 2) Justice denied? on the experience of unrepresented defendants in the criminal courts.
- 3) By mistakes we learn on the barriers to appealing criminal sentences.

Our biggest concerns about the state of access to justice:

1. Many people who are not particularly wealthy are excluded from criminal legal aid and are thus faced either with representing themselves or paying privately for a lawyer.
2. Those who represent themselves in criminal courts are at a significant disadvantage and this leads to their receiving tougher sentences, and to minor and major miscarriages of justice.
3. There are multiple barriers to individuals appealing their sentence or conviction, and thus the accountability of the system is weak.

Duty solicitors

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

JH In the magistrates' courts in particular I have also observed more and more ropery duty solicitors clearly doing one or two days a month as a pension filler or some sort of pin money hobby. A small but dangerous minority cannot frankly be bothered to do anything other than this rush job usually due to the demands on their time and it is interesting to see in the last few years more and more clients tell me they don't "trust" or "want" the duty solicitor. I have dealt with clients given disastrous advice at police stations who then come and see me privately when it is often too late – the worst examples being the number of clients who have been told by a police rep (who has passed a few simple exams and is then able to advise vulnerable individuals in police stations which is terrifying) to accept cautions as it will then just "be over and done with" without thinking of the other consequences of a criminal conviction and when in the circumstances it is patently not right to accept the caution.¹⁰⁴ Access to justice means access to a motivated, qualified professional and competent lawyer not some unqualified non-solicitor rep cadging around £80 a hit (after the firm has taken their fee) for police station work. I should say that I don't blame the rep or firm at all but the increasing lack of quality control and the terrible fees that mean this sort of incompetence / "get 'em in; get 'em out" attitude becoming more frequent. It stems from a systemic lack of funding in the system.

LCSA *The duty solicitor scheme*

¹⁰⁴ My favourite example is a minicab driver I represented whose licence was revoked by TFL. He lost his living after seventeen years as an honest, decent cabbie. He had been accused of taxi touting and had a strong defence (surprisingly) but the duty rep at the police station told him to take the caution for taxi touting to get him in and out. It meant that he automatically lost his cab licence due to the TFL zero tolerance policy and one cannot go behind the caution. I tried my best with the magistrates on his TFL licence appeal but it was all hopeless. Cheap is dear as my father says – very dear, indeed.

¹⁰⁴ £18,000 I think at City University which is the same as Dulwich College and roughly equivalent to the UK average annual wage.

¹⁰⁴ It remains one of my joys that Nigel Evans MP was so aghast after his trial at not getting back the money he spent after voting for the iniquitous changes.

¹⁰⁴ The lay beaks at Wimbledon Magistrates are a particularly good exemplar of this case management mania.

Review of the Duty Solicitor Scheme in each area. In many Courts duty schemes have not been reviewed in line with court sitting patterns or demand. In some Courts two or three Duty Solicitors may be on per session to deal with the various different individual court rooms which is often wholly unnecessary.

What is very annoying for the profession is that for all the over regulation there has been institutional failure to deal with bogus duty solicitors ('ghosts') and those who flout the professional disciplinary code such as 'touts' who are likely to be providing poor service to clients as that unethical approach is a symptom of their lack of quality. These are few but cause significant damage. Complaints are made and not acted upon, proof if ever that the current over-regulation achieves nothing.

Employment law issues

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

Increased fees for tribunals

AUK For our members that advise people on employment issues, court fees to go to employment tribunal have impacted on people with low incomes, particularly when seeking financial redress on relatively small amounts.

EDF *Tribunal fees* – EDF strongly opposes fees being charged for access to the Employment Tribunals (ETs) and the Employment Appeal Tribunal (EAT). These tribunals were set up to prevent industrial unrest and provide an easily accessible method for resolving industrial disputes so as to prevent employees resorting to direct action or taking matters into their own hands. If a fee is to be charged that is not inappropriate we believe that it would have to be set at a purely nominal level, and in that case the cost of collection would barely justify its imposition.

EDF considers that there can be no question but that the introduction of ET fees has radically reduced the number of cases being brought in the ETs (and also consequently in the EAT). This cannot be adequately explained by suggesting that this represents the exclusion of vexatious and trivial cases. Those who have just lost or are losing their jobs are less likely to be able to afford to pay such fees. EDF considers that far too little consideration has been given to the consequences that will flow if employees cannot access legal redress reasonably easily.

The trend in single claims had been gradually declining for the last five years, but the rate of decline increased in October to December 2013. The fall in receipts for Employment Tribunals seen from October to December 2013 coincides with the introduction of Employment Tribunal fees in July 2013.¹⁰⁵

¹⁰⁵ Ministry of Justice (2015) *Tribunals and Gender Recognition Certificate statistics quarterly: January to March 2015*. Accessed September 2017: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-january-to-march-2015>

In relation to discrimination cases specifically, claimants have to pay the higher level of fees to access the ETs – £1,200 in total. It is clear that the number of discrimination cases has declined following the introduction of fees. For example, by April to June 2014, age discrimination cases were down by 26%, disability discrimination cases by 47%, race discrimination cases by 60%, religion or belief cases by 63%, sex discrimination by 91% and sexual orientation by 60%.¹⁰⁶

We consider that account needs to be taken of the EC Directives¹⁰⁷ which require Member States to put in place provisions to ensure that ‘judicial procedures for the enforcement of obligations under this directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them...’ The imposition of ET/EAT fees means that this provision is not complied with.

Additionally, these same European Directives provide for accessibility of judicial procedures and the need for Member States to make provision for an ‘effective, proportionate and dissuasive’ sanction. Sanctions that are dependent on payment of fees at these levels are unlikely to be considered ‘effective’.

Charging a higher fee – or the highest fee – to those who believe they have been discriminated against adds another administrative rule to further marginalise those people who have a protected characteristic and deterring them from using a service. We consider that there can be no justification for imposing higher charges for such cases, particularly given that these cases are often brought by people who have suffered significant harm in the workplace, for example, harassment or sexual abuse. We think that discrimination cases should be exempt from the payment of fees.

There are no provisions in place for refunds of ET fees although costs orders can be made which can include refunds of fees; however, we consider that there is good evidence that even if such orders are made there is no guarantee that the claimant will receive payment.¹⁰⁸

We do not consider that the remission system provides justification for adverse impact of the imposition of fees on the various ‘equality groups’ identified in the Equality Act 2010. Many claimants, especially those with on-going discrimination claims and who are still employed, will not be entitled to any form of remission. Those who have been dismissed or whose employment is at an end may also find it difficult to

¹⁰⁶ See *Equal Opportunities Review*, issue no 251, September 2014.

¹⁰⁷ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

¹⁰⁸ Research into enforcement of Employment Tribunal awards in England and Wales, Ministry of Justice, May 2009 showed that 39% of awards were not paid. Also BIS study. (2013) *Payment of Tribunal Awards - 2013 Study* - IFF Research. Accessed September 2017:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253558/bis-13-1270-enforcement-of-tribunal-awards.pdf ; and Citizens Advice.(2013) *Cost of a hollow victory*. Accessed September 2017:

http://www.citizensadvice.org.uk/index/policy/policy_publications/er_employment/the_cost_of_a_hollow_victory.htm

satisfy the conditions for having fees remitted. Time limits for presenting claims are very short; in most cases three months from the time of the incident or discrimination in question. Many claimants will not have the means to pay the initial fees whilst they are, for example, waiting to see if they are entitled to state benefits. Other claimants will not be entitled to benefits for some months and therefore will not satisfy the rules on remission of fees before the three-month time limits expire. This will prevent many worthwhile cases being brought in the ET.

LAPG *How have court and tribunal fees affected the capacity to enforce legal rights of you, your organisation, your clients or the people you represent?*

We leave others to answer this but would refer to the huge decrease in the number of employment cases.

LCN One area of law in which the compound effect of legal aid cuts with other policies has been apparent is employment, where tribunal fees, increased significantly shortly after the LASPO cuts, are in effect a significant hurdle to our clients' ability to uphold their rights. With no legal aid remaining for challenging wrongful dismissal and other workplace problems, and with steep new fees, the Employment Tribunal has seen a precipitous drop in new cases.¹⁰⁹ Law Centres are seeing employers increasingly refusing to engage with their clients until they have 'proven their seriousness' by paying the new fees. The latest report from the Senior President of Tribunals also suggests that, despite the drop in new cases, persistent litigants without merit are not discouraged by the new fees, suggesting an adverse outcome for tribunals and for access to justice.¹¹⁰

LLS The introduction of Employment Tribunal fees of up to £1,200.00 per case has unsurprisingly resulted in a massive reduction in the number of issued applications to the ET

PCS *Employment tribunal fees denying workers' rights*

Since the introduction of employment tribunal fees in July 2013 the number of claims have dramatically reduced.

According to a House of Commons Library briefing paper:

"The introduction of employment tribunal fees at the end of July 2013 coincided with a steep number of cases received. In the year to June 2013, employment tribunals received on average just under 13,500 single cases (brought by one person) per quarter. Following the introduction of fees, the number of single cases averaged around 4,500 per quarter between October 2013 and June

¹⁰⁹ See TUC report: Accessed September 2017:

https://www.tuc.org.uk/sites/default/files/TUC_Report_At_what_price_justice.pdf; See comment from expert Richard Dunstan. Accessed September 2017:
<https://labourpainsblog.com/2016/03/10/etstats/>.

¹¹⁰ We have reported this in our evidence to the Justice Committee. Mr Justice Langstaff, the departing EAT president, suggested that fees had not deterred vexatious litigants. Accessed September 2017:
<https://www.judiciary.gov.uk/wp-content/uploads/2016/02/The-Senior-President-of-TribunalsAnnual-Report-2016-final-1.pdf>, pp. 90-94.

2015 – a decrease of 67%. The average number of multiple cases (brought by two or more people) received per quarter fell from just under 1,500 to fewer than 500, a 69% decrease.”

As early as July 2014 the TUC was reporting that the introduction of fees was having a worryingly detrimental impact on women and low paid workers, pointing to an 80% fall in sex discrimination cases and 85% drop in unpaid wage cases. It is disappointing then that it took the government until June 2015 to announce that it would be launching its own review into their introduction.

According to the TUC report just 1,222 women took out claims between January and March 2014, compared to 6,017 over the same period in 2013. It also found that the number of women pursuing pregnancy discrimination claims also down by over a quarter (26%). Not only are women being disproportionately disadvantaged because of legal aid, but the dramatic drop in sex discrimination shows that women are losing out on access to justice because of employment tribunal fees as well.

A comparison of the Ministry of Justice’s own statistics shows that since the introduction of fees the number of single ET claims has fallen by 69% and the number of discrimination claims by over 80% (as compared to pre- fees figures).

This fall has been attributed by some to the fact that weak or vexatious claims are no longer being brought. However, the evidence suggests that this is not true. The success rate at ET has not varied as you would expect had fees been such a discouragement to weak or vexatious claims.

PCS remains opposed to the existence of the fees and we are concerned that they have been set at too high a level. Level 1 cases, for example unlawful deductions and non-payment of wages, have an issue fee of £160 and a hearing fee of £230. Claims are often for amounts below the fees set so this is leaving many people having to concede valid claims. This can be a particular issue concerning unpaid wage and holiday pay claims as many of these fall short of the fees charged. There was an 85% drop in such claims in the year after the fees were introduced.

Combined fees of £1,200 for higher value claims, such as unfair dismissal and discrimination cases, are also significant sums when compared to the potential awards. In 2014/15 the median award for an unfair dismissal case was £6,995 and for a race case it was £8,025. People seeking to bring these types of cases are often out of work so are unlikely to be able to afford the fees.

Thompsons The introduction of Tribunal fees and the massive rises in court fees have severely limited access to justice. Being charged to take your case to a Tribunal is a large barrier to most people on average incomes, unless they know that they are likely to win. As most people do not have the luxury of certainty, or, at a time of financial uncertainty after termination of their employment, do not have the money to cover the fees if they lose, the number of cases being taken to Tribunal has fallen dramatically. Even where a union member is loaned fees, there is hesitation about bringing a claim and case numbers have fallen.

A House of Commons Library note (January 2015) showed that between October 2013 and September 2014 over 32,000 fewer single claim cases went to Tribunal compared to the previous year (a decrease of 64%) and there were more than 3,500 fewer multiple claim cases (a drop of 67%). An Acas report (July

2015) showed that 26% of claimants who could not settle their case with their employer through Early Conciliation were then put off lodging a claim in the Tribunal due to the fee.

UKAJI It is timely to recall the consequences of the imposition of fees for accessing Employment Tribunals. Following the introduction of fees in July 2013 the number of cases decreased very significantly. During the two years following the reform the number of single cases brought fell by approximately 67% and the number of multiple cases brought fell by some 69%. It is likely that the scale of this fall exceeded the MoJ's estimates. This factor once again highlights the need, recognised by the NAO, for government departments to 'develop measures to evaluate more fully the impact' of reforms.

Employment advice out of scope

DLA We have a particular concern about the removal of Employment from scope of any form of legal assistance. Whilst litigation was rarely covered by Legal Aid or its successors, the provisions of initial advice enabled many claims to be explored with an expert, and resolved without the need for litigation. The Commission will be aware of the evidence submitted to government consultations regarding the cost benefit of legal help for employment and discrimination claims.

LLS Employment advice is now out of scope of Legal Aid. If someone cannot access advice about their rights, then the chances are that they may be made worse off or lose a job and then become a burden on the state.

The effect of the Trade Union Bill

PCS We believe it is important to point out that the vast majority of problems that our workplace representatives deal with are resolved without them having to go near the law. We believe that this demonstrates the importance of the role that unions play, and have always played, in acting as mediators and ensuring that tribunals are not overrun with claims. However, the attacks on facility time (paid time off to carry out union duties) for our representatives are putting a massive strain on their ability to fulfil this work and, along with the introduction of employment tribunal fees, means that workers are now more exposed to unfair employment practices without the means of redress.

Measures contained within the Trade Union Bill to restrict the amount of time reps can spend accompanying individuals in grievance and disciplinary hearings pose a further threat to this work.

Discrimination cases

Respondents' biggest concerns about the state of access to justice:

DDPO Our biggest concerns about the state of access to justice for disabled people relate specifically to

1. the arrangements for legal aid for discrimination cases; and

2. the fact that qualified one-way cost shifting does not apply to disability discrimination claims.

The Network is also concerned about disabled people's access to justice in relation to good quality community care advice (including advice on judicial review claims for breaches of the Care Act and the Human Rights Act) but we assume that the Commission will receive extensive evidence from other experts in those fields and we note the inclusion of Nicola Mackintosh QC as a member of the Commission.

We therefore wish to focus our submissions on private law discrimination claims, an area suffering from serious neglect and having a significant impact on very large numbers of disabled people in terms of access to justice as identified by our Network members.

DLA The DLA welcomes the opportunity to provide an initial brief written submission on this issue. We have previously responded to consultations regarding the removal of Legal Aid for JR claims and attach this to our response. We consider that the availability of funding for challenges to unfair and discriminatory policies and practices of the state remains of fundamental importance.

The DLA underlines that the right to legal representation, paid for by the state where necessary, to protect and secure legal rights, without discrimination, is now recognised as fundamental to a fair, just and humane democratic society. Among the international instruments requiring such rights to be made available to all persons are the following:

- UN International Covenant on Civil and Political Rights - Articles 3, 14 and 26
- European Convention on Human Rights (ECHR) - Articles 13, 6 and 14
- EU Charter of Fundamental Rights - Articles 47 and 21

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

DLA The DLA is concerned with the way that claimants who are victims of discrimination are treated by the justice system. We represent members working with claimants in discrimination matters, including have voluntary organisations; trade unionists; private solicitors and barristers; academics and individuals.

We are deeply concerned that the impact of cuts in advice service funding; cuts to the legal aid budget and austerity measure more widely have made it almost impossible for many victims of discrimination to gain access to justice or redress for their treatment at all. There has been an effective removal or denial of the access to justice for a significant proportion of victims.

Victims of discrimination find it increasingly difficult to gain expert face to face advice; have very little hope of any funding to pursue legal issues without the need for litigation, and face upfront costs in the form of fees which will not necessarily be recoverable if the claim cannot be resolved and court action or an Employment Tribunal claim is needed.

The recent joint report of the EHRC and Department for Business, Innovation and Skills, suggested that in the context of maternity and pregnancy alone, as many as 390,000 women a year could be suffering from discrimination in the work place. The research suggested that a significant proportion of them took no action. Our experience and anecdotal evidence is that this is replicated across the protected characteristics in the Equality Act 2010.

The fact that poor treatment is because of discrimination is often difficult to identify and a discriminatory motive is not something that most people will admit to. It is very hard to prove and yet the impact on people's lives and livelihoods can be devastating because of damage to health; careers and earnings. The legal measures protecting people from discrimination are complex and difficult to enforce and the responsibility for addressing discrimination rests wholly on the individual who is affected. There needs to be a reassessment of the approach to discrimination as a solely private legal matter, and recognition of it within the legal system as a social ill and one which society takes some responsibility for addressing.

The way that publicly funded legal advice is provided to individuals and the operation of the legal system needs to take far greater notice of the particular circumstances of those who are disabled, pregnant or victims of racial or discrimination or discrimination on grounds of sexuality for example. People who are already marginalised because of race or disability for example often find the legal process of dealing with their treatment humiliating, distressing and injurious to health as well as complex; time-consuming; expensive and potentially unaffordable.

The failure of the courts and tribunals to adequately enforce awards made in successful cases is well documented. This must be addressed. Access to justice is as much about ensuring that there is an effective remedy, which is actually enforced.

We are concerned that those who seek to bring claims of discrimination face additional difficulties because of the complex nature of the issues and the complexity of the applicable legal provisions.

LCN Lack of leadership on the implementation of the Equality Act 2010, especially as applied to people with disabilities, has been among factors driving need for legal advice on matters of discrimination.¹¹¹ To meet it there is an assisted information helpline in Equality Advisory and Support Service (EASS), funded by the Cabinet Office; and legally-aided specialist advice, only available through the telephone gateway, Community Legal Advice (CLA). The number of new legal aid discrimination cases has declined sharply, due in part to telephone's limitations as a delivery channel and the complexity of this developing area of law.¹¹²

¹¹¹ See the recent critical report from the House of Lords Select Committee on the Equality Act 2010 and Disability. Accessed September 2017: <http://www.publications.parliament.uk/pa/ld201516/ldselect/ldseqact/117/117.pdf>.

¹¹² The Public Law Project has expanded on the concerning shortcomings of the CLA telephone gateway in its report 'Keys to the Gateway': see fn 23 above. The report assessed the Ministry of Justice's own review: Accessed September 2017: <https://www.gov.uk/government/publications/civil-legaladvice-mandatory-gateway-research-findings>.

UKAJI In March 2016 the House of Lords Select Committee on the Equality Act 2010 and Disability reported on its inquiry into the effectiveness of the Equality Act.¹¹³ Among the issues examined in the inquiry was that of access to justice for enforcement of rights under the Act. The Committee heard evidence of the impact of tribunal fees and changes to funding for discrimination claims. LASPO removed legal help from employment cases completely but retained it for discrimination claims under the Act. However, problems with accessing legal aid via the mandatory gateway are noted in the report and reflect the findings of the Public Law Project research described above:

'391. Discrimination law in non-employment cases remains within the scope of legal aid. However, following the implementation of the LASPO reforms, most discrimination claimants are required to use the Community Legal Advice (CLA) Telephone Gateway service, operated by the Legal Aid Agency, as the first point of access for advice. Cases that pass the initial screening stage may be referred to one of three contracted specialist providers who can provide up to two hours' remote advice. Claimants can only obtain face-to-face advice if the specialist provider considers that they cannot be advised over the telephone or by email. The EHRC commented on the potential barriers presented by the gateway, particularly for disabled clients, including those with poorer mental health, or cognitive or learning impairments. Mind referred to low levels of awareness of the gateway and issues with accessibility. Issues with accessibility were also raised by the National Deaf Children's Society and Sheffield Citizens' Advice Law Centre. Other witnesses were also very critical of the telephone gateway as a means for disabled people to obtain advice.'

There is also a discussion of the impact of changes to the way costs are recovered, which has been an obstacle to taking discrimination claims, and a discussion of whether qualified one-way costs shifting (QOCS) applies in discrimination claims, and if it should. The report recommends that the Civil Procedure Rules should be amended to apply Qualified One-Way Costs shifting to discrimination claims under the Equality Act.

Personal injury claims and claims against the police

Respondents' biggest concerns about the state of access to justice:

APIL Our greatest concerns about access to justice can be summarised as follows:

1. Too many people who have valid claims find it difficult, or impossible, to advance those claims due to lack of funding.
2. New rules about proportionality and fixed costs are causing delays and can prevent meritorious cases from being brought in the first place
3. The current funding system has the potential to create unnecessary conflict.

PALG PALG's biggest concerns about the state of access to justice are:

¹¹³ See fn 111 above.

1. The collapse of the availability of insurance to bring claims against the police and public authorities on behalf of those who are financially ineligible for legal aid. This, taken together with the more stringent financial eligibility criteria imposed by LASPO, results in people who have been victims of State abuses of power being unable to bring claims to vindicate their rights and expose culpable conduct.
2. Following the decision of the Court of Appeal in *R (Sisangia) v Director of Legal Aid Casework* [2016] EWCA Civ 24, legal aid is no longer available in false imprisonment cases where it cannot be shown that the illegality was a result of dishonesty, rather than recklessness or honest mistake. This is a major incursion into access to justice in cases concerning the liberty of the individual, and will prevent meritorious claims for unlawful deprivations of liberty being litigated so as to vindicate individual rights and learn lessons for the future.
3. The chilling effect caused by the Civil Legal Aid (Remuneration) (Amendment) Regulations 2015 that drastically restrict funding for judicial review claims, and particularly test cases that raise novel and important points of law.

Thompsons Our three biggest concerns are:

1. Numerous, sweeping, unpiloted changes to the justice system in the last 6 years have left the most vulnerable in our society with limited access to justice. Extraordinary rises in Tribunal fees and court fees, significant changes to the availability and scope of Legal Aid, and the introduction of fixed costs in the majority of personal injury (PI) claims, have meant that legal advice and support is not readily available to those who need it most.
2. The changes to the justice system have further entrenched the imbalance in power between the claimant side and the defendant in PI. Two significant changes in particular have weighed the system against those who have been injured.
3. Whereas the previous funding system in PI relied upon a conditional fee agreement for claimant-side lawyers with a success fee and insurance premium payable by the polluter, we now face a fixed costs regime and deductions from the claimant's damages. The previous ability of claimant solicitors to build up funds for 'risky' cases, cases that were investigated but eventually turned down and cases that were taken and lost, has gone. In PI the individual claimant has all to prove and the corporate defendant has only to deny, and this 'David vs. Goliath' inequality is now even more skewed in favour of the insurers. The result is more claimant law firms in financial difficulties, with a lack of security and a hugely reduced income, and increasingly merging in an effort to remain sustainable.

We fear that the lack of access to justice is having a significant impact on health and safety in the workplace. A union presence and the threat of legal redress have been two aspects which have enormously improved the standards of health and safety in workplaces across the UK over the last century. But, while access to high quality legal advice is still available for those with union membership, for those without the backing of a union, access to free legal advice and representation is becoming

increasingly limited. If this continues, many bosses, especially in poorly or non-unionised workplaces, may decide that they do not need to maintain a focus on health and safety as the chances of redress for their actions will be substantially reduced. At its most extreme, with fixed costs and a massively cut back HSE, employers may calculate the cost of non-compliance with health and safety and deem it worthwhile financially.

It is worth noting that the work of claimant lawyers has been made far more difficult and time-consuming by the Enterprise and Regulatory Reform Act which removed civil liability for health and safety breaches and thereby required claimant lawyers to prove employers' negligence in each individual case.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

APIL Under the current system it can be very difficult to obtain funding to pursue valid claims, and funding can be disproportionately high, especially in cases which attract relatively low levels of damages.

People suffering from work-related asbestos related disease, for example, are often only able to claim a proportion of their damages because they are unable to trace all the defendants who exposed them to the asbestos. So they are already at a practical disadvantage.

Despite this, many who are suffering from low level, benign asbestos related disease, desperately want to secure provisional damages, which provide them with the option to return to the court to seek a further sum of compensation if they develop asbestos-related cancers in the future. The damages they can recover for asbestos-related disease in the first instance is often only around £10,000.

Proportionality and fixed costs

One of the most significant problems generated by the LASPO Act is the new approach to the principle of "proportionality". Before the Act, a judge would need to consider if costs overall were disproportionate and, if there was a possibility that they were, it would have to be shown that each item of spend was reasonable. Following the Act, new rules were introduced, which included Civil Procedure Rule 44.3(2)(a) which says the court will:

"only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred"

This is a fundamental shift of philosophy from a focus on what is reasonable to what a case costs. The result is that often, particularly in lower value multi-track cases (i.e. cases where damages are valued at above £25,000) the claimant is under pressure and has to settle for lower damages so as not to fall foul of the proportionality rule. In a case where damages are valued at £50,000, for example, the issues to be decided can be very complex. The costs of investigating can therefore be substantial. The case may have

merit and a good chance of success but the proportionality rule can mean that the claimant is forced to consider settling for less than the case is worth. Sometimes the case will be abandoned altogether.

An example of this is where a child dies through negligent treatment while in the care of the NHS. Assuming the child did not suffer needlessly before death, all a parent would be entitled to receive is the statutory bereavement award (£12,980 in England and Wales) and a contribution to funeral expenses. The actual costs of pursuing a case, however, either through legal representation at an inquest or through a civil claim for compensation, are likely to be substantially higher than this. There is a clear interest, both from the private and the public perspective, in full and public exploration of the facts in such cases, but the proportionality rule would effectively prohibit the parents from taking legal action.

We recommend, therefore, that the rule on proportionality should be repealed or, at the very least, reviewed.

“Low value” claims

There is a common misunderstanding of what “low value” means in personal injury cases which can have serious consequences. For example, in August last year, the Department of Health issued a pre-consultation letter outlining proposals to introduce fixed costs in “lower value” clinical negligence claims. “Lower value” was defined as cases in which the compensation would be up to £250,000. While it is certainly true that in commercial cases £250,000 is probably considered a lower value case, personal injury cases are very different. Around 70 per cent of personal injury cases are valued at £5,000 or less.

The reason why this matters is that cases which attract damages of £250,000 will include compensation for life-changing injuries. These cases are extremely complex, requiring a lot of work from the most experienced and well qualified lawyers. The belief that they are lower value (and therefore less complex) is leading policy-makers to suggest inappropriate cost-cutting measures (such as fixing the amount the injured person can spend on a lawyer and an expert) which effectively restricts the service the lawyer can provide in the types of case where the most comprehensive service is necessary.

In general terms of what might be regarded as “low value”, this ought to be looked at in light of national average earnings of £26,500 a year, and the new national living wage of £7.20 an hour.

The funding system and conflict

The current conditional fee arrangements create conflicts. Arguments with ATE insurers about the merits of taking on cases are not, for example, unusual, particularly if a case is initially unsuccessful and may have to be taken to appeal, at which point many insurers would rather “cut their losses”. The solicitor may have a meritorious case but the prospects of success may be finely balanced. While the solicitor will wish to take the case forward because of its merits, the ATE insurers won’t underwrite the expenditure on disbursements or cover adverse costs because, in a commercial context, it is not worth it for them. It might, however, mean everything to a client.

PALG PALG members act for claimants in civil litigation against public bodies, particularly the police, the Home Office, hospitals, care homes and prisons. Due to a variety of factors, including limitation periods

and lack of engagement from defendants, proceedings often need to be issued at court before they are settled. A claimant is in a disproportionately disadvantaged position if they are not receiving assistance from someone who is legally qualified. Claimants in this context, without legal representation, would have to understand a vast amount of procedural rules and are inevitably, and seriously, disadvantaged when facing a represented public authority who can use the rules to their tactical advantage such that meritorious claims may be thwarted. Members of our organisation, who act solely for claimants, advise their clients through the court process. For example, the rules governing part 36 claims, which have potentially serious consequences, are often complicated for a lay client to understand.

A difficulty our members and clients face in many cases is seeking to ensure defendants comply with their disclosure obligations which can reveal case critical information. For example, there is often a need for our members to make specific disclosure applications to request police officers' previous substantiated and unsubstantiated complaints. These can show a pattern of behaviour on the part of a police officer and therefore will very likely be supportive of a claimant's case but are rarely disclosed during standard disclosure.

As indicated above, there are also serious concerns among our members about the delays in both private and public law cases. This has the effect of putting individuals through months or years of the stress of litigation.

In the pre-Jackson era Conditional Fee Agreements (CFAs) were a source of funding offered to those clients who were financially ineligible for legal aid. Some insurers were willing to provide After the Event ('ATE') insurance that could then be recovered from defendants. LASPO made the financial eligibility requirements for legal aid even more restrictive than they were previously, meaning that many people are ineligible for public funding despite living in poverty and being plainly unable to afford court fees, let alone legal fees, or the risk of adverse costs.

As a result of reforms which made ATE premiums irrecoverable from defendants, for most of those clients there is currently no viable funding model. PALG firms are unable to assist many potential clients whose meritorious cases could have previously been run on a CFA.

Our clients' cases are rarely aimed at securing financial compensation alone, and damages are usually low when compared with commercial cases. An average claim arising from an unlawful arrest and prosecution, a death in custody, or discrimination, might be worth between £10,000 and £20,000. A judicial review would commonly include no financial claim. Clients seek non-financial remedies such as a declaration of a violation of their rights, an apology or a change in policy. Their cases have wider significance to the public and serve to improve standards and practices within police forces and other public authorities. Without these cases many improper, discriminatory and unlawful practices would never be brought to light, culpable conduct would not be exposed and lessons would not be learned for the future.

In contrast litigation costs are relatively high – for both claimants and defendants. Despite their low value, cases are litigated robustly by defendants due to the wider implications of an admission of wrongdoing or an adverse judgment. Actions against the police and other public authorities are risky. They usually involve various causes of action, some of which provide the right to an unpredictable jury trial, and many of the

remedies sought are granted at the court's discretion (including aggravated and exemplary damages). Most cases hinge on the credibility and performance of witnesses at trial. These are just some of the factors that make outcomes difficult to predict.

Due to the litigation risk involved, ATE premiums are high (up to £40,000 under the old CFA regime), and routinely outweigh compensation, even with the 10% uplift applied to general damages post-Jackson. This means that CFAs, and the new Damages Based Agreements (DBAs), are unworkable in the vast majority of claims in this field, leaving many clients of modest means unable to pursue their claims due to the significant financial risks involved.

Thompsons *LASPO*

After the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), claimant solicitors can still claim a success fee but it is now a fixed percentage of up to 25% of the damages (for personal injury and past losses) and is taken from the injured person's compensation, not from the guilty party. We have little doubt that this has acted as a deterrent for many solicitors to take on low value or high risk cases. It means there is effectively a constraint on what cases lawyers will run and winning now comes at a price for the injured.

The issue is magnified where the victim is a child or lacks mental capacity with success fees and after the event insurance premiums also expected to be paid out of the compensation. The absence of a workable procedure for the court to approve damages and solicitors' success fee deductions for such cases, has caused unnecessary delays and inconvenience for the families of those victims. Despite a late amendment to the rules to include a procedure in cases up to £25,000, it is our view that there are still serious shortcomings and there is still no procedure in place for cases where the damages are greater than £25,000.

The prospect that up to a quarter of a claimant's compensation might be taken out of their pocket has meant that some will not bother taking action in the first place and others will proceed without the expertise of a lawyer. Yet, in every case that we have taken over from an unrepresented claimant, we have seen insurers offering lower damages to the claimant than we have secured for them.

Following the introduction of LASPO, the reach of the previously established road traffic accident (RTA) Portal - a system purely used until then for RTA claims worth less than £10,000 – was expanded both horizontally and vertically to include employers' and public liability as well as claims worth up to £25,000. This change meant that recoverable costs were fixed at an extremely low level and, it is now proposed, will also see limitations placed on the medical experts that solicitors can use – see MedCo below.

Fixed Costs

Fixed costs now apply in every case with a value of less than £25,000 and it has recently been proposed by Lord Justice Jackson that they should be massively extended across all PI.

If one accepts that an individual pitched against an insurer is a vastly unequal battle, then to restrict what work a lawyer will be paid for whilst representing those individuals impairs them even further.

Fixed costs mean Defendants (both insurers and employers):

- i. Can calculate the maximum cost of negligence and choose to take risks accordingly, meaning the deterrent effect of litigation is reduced or eradicated and;
- ii. Have no incentive to 'behave' in litigation so as to achieve a speedy and equitable outcome.

Fixed costs also mean lawyers are incentivised to keep their costs in a case below the fixed costs limit – if the costs in a case can be kept below the fixed limit the difference is a bonus for the lawyers.

For lawyers, fixed costs leads to:

- i. The levelling down of cost, and therefore quality, of case handling staff;
- ii. An incentive to take on easier cases and avoid the difficult (to maintain volume);
- iii. Less time being spent investigating prospects of success in cases (if on its face there are not reasonable prospects the matter will be dropped);
- iv. The removal of any incentive to spend the time required to maximise damages;
- v. Cases settling earlier (to maximise turnover);
- vi. A move to ever bigger firms which allows them to develop volume and leverage efficiency.

MedCo Portal

The MedCo Portal was introduced in October 2014, purportedly to tackle unhealthy business practices in how medical experts are secured and instructed. The impact of the additional regulation has been to prevent claimant representatives from selecting those medical experts and agencies they are confident can provide high quality reports in an appropriate timeframe, and who are able to provide an appointment in a location which is reasonably close to the claimant's home. Now, claimant representatives have to go through an expert selection lottery, frequently being compelled to select agencies or experts of which they have little or no knowledge and with which they have no agreed business terms.

Rather than address problems with identified experts or agencies known to have behaved inappropriately or understood to have terms of business that are in some way anti-competitive (that is to adopt a surgical approach to a targeted concern), the government chose instead to introduce wide-ranging and over-prescriptive regulation. Unfortunately, the random way MedCo operates means solicitors no longer have true freedom of choice, thus undermining an important aspect of the value we add to our clients: if the selection of an expert is random, our ability to exercise our own expertise in finding an appropriate expert for any given client is reduced. This plays into the hands of the insurer-backed defendant and further decreases competition in the market. This move appears to be in stark contrast to the majority of government rhetoric that 'the free market works'.

Small Claims Limit

Further threats to the ability to access justice in future include a proposed increase in the Small Claims Limit. Over five months after the Autumn Statement, there is still no independent verification of government and insurance industry assertions that the reason for increasing the small claims limit from £1,000 to £5,000 is to tackle a 'fraud culture'. While we wait for the promised consultation and accompanying impact assessment from the MoJ, the only evidence base is provided almost exclusively by the insurance industry and its representatives. Trust in their transparency must be open to question as they stand to gain substantially from any increase. With access to justice for claimants being reduced from all sides, this shows, yet again, that the government is in thrall to the insurance industry and claimants are being put to the back of the queue.

QOCS and the need for ATE insurance

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

APIL The problem is that these people and, indeed, all potential claimants in personal injury actions, may be advised to take out insurance to cover the cost of their "disbursements" (i.e. expenses, such as expert witness reports). Since the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act, these "after the event" (ATE) insurance premiums cannot be recovered from the defendant if the claimant should win his case.

These premiums can be very high, to the extent that people risk having to use most of their damages to pay them. In the end, some people with asbestos related diseases decide it simply isn't worth going through the stress of making a claim, when there is so little return. In some instances, law firms may be able to provide finance for these expenses, but that is not always the case and, regardless, it is unacceptable that the justice system should rely on solicitors to fund cases.

By way of example, one of our members acted for a client who needed to claim compensation for asbestosis. The full amount to which he would have been entitled was estimated to be around £40,000 but, because he couldn't identify all the employers who exposed him to asbestos, he would have been able only to claim a proportion of his damages from those employers he was able to trace. This would have reduced his estimated award to just £6,956. He had already received a payment of benefit (under the Pneumoconiosis Workers Compensation Act) for £4,203 which meant he would receive compensation of £2,753. His ATE insurance premium would have been just over £3,000. The client had a sound case but, for obvious reasons, it was decided not to proceed.

This problem has arisen because it was envisaged that the LASPO Act would largely negate the need for ATE insurance as a result of the introduction of "qualified one-way costs-shifting" (or "QOCS"). In essence, QOCS means that losing defendants have to pay the costs of successful claimants (subject to certain exceptions) but do not recover their own costs if they defend the case successfully. It is important to note, however, that QOCS protection does not extend to the payment of the claimant's disbursements, which is why ATE insurance may be advised in many cases.

DDPO Secondly, prior to the Jackson costs reforms, if someone was not eligible for legal aid, they could (in theory if the expertise were available) secure representation under a conditional fee agreement using after the event insurance to cover the risk of being liable for the other side's costs if the claim failed. When changes to the costs rules scrapped the recovery of CFA success fees and ATE insurance premiums, it became impossible for a disabled person to bring a claim without facing the risk of a costs order against them if they lost. The introduction of qualified one-way cost shifting in personal injury cases was meant to enable individuals to continue to be able to bring such claims without facing the risk of massive cost liability should they lose. However, it appears that the qualified one-way cost shifting regime is not available in discrimination cases.

LLS One of the most chilling impacts of LASPO was the removal of recoverability of After the Event Insurance Premiums. This reform has had a massive impact.

By way of example someone who seeks to bring a claim against the police for wrongful arrest may not qualify for Legal Aid. A CFA could be available but the client cannot secure ATE funding to protect themselves from an adverse costs order. This is because the ATE premium has to be paid by the client even in the event of the Police being held liable. The ATE premium charged by the insurer is probably unaffordable for the client who is of limited means. As a consequence, the ATE market has collapsed and so the ATE is now not available. The client cannot afford to run the risk and therefore the perpetrated injustice goes unchallenged. This inability of the public to challenge the actions of the State results in a huge power imbalance which could in turn have serious adverse consequences for the public.

The consequence of this across the justice system is that access for all but the most wealthy is now massively restricted. The "normal" person cannot afford the risk of an adverse costs order being made and has little or no prospect of protecting against such a disaster.

UKAJI In March 2016 the House of Lords Select Committee on the Equality Act 2010 and Disability reported.

There is a discussion of whether qualified one-way costs shifting (QOCS) applies in discrimination claims, and if it should. The report recommends that the Civil Procedure Rules should be amended to apply Qualified One-Way Costs shifting to discrimination claims under the Equality Act.

Prisoners and prison law

Respondents' biggest concerns about the state of access to justice:

APL Prisoners are in a uniquely vulnerable position due to their incarceration and the prison population has a far higher incidence than the general population of people with vulnerabilities and protected characteristics. The effective removal of the ability for prisoners to access to legal advice about the majority of the problems and issues they encounter in prison has removed any semblance of access to justice for this group. The problems are particularly acute for juveniles and women prisoners.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

APL LASPO has restricted the scope of prison law to just three areas:

- (1) Parole Board reviews where the Parole Board has the power to direct release
- (2) Prison disciplinary hearings that engage Article 6
- (3) Matters relating to the calculation of sentences

This has left all other areas on which prisoners may need advice concerning their treatment in prison and the conditions of imprisonment out of the scope of public funding including:

- All other proceedings before the Parole Board
- Segregation
- Governors' disciplinary hearings
- Sentence planning
- Categorisation including category A reviews

The particular difficulty that faces all prisoners is that access to justice requires positive intervention by the state. This problem is unique to those in detention and places a special burden on the state. The balance that was struck prior to the current restrictions on the availability of legal aid allowed prisoners unfettered access to solicitors who in turn had access to publicly funding (where the merits and financial means tests were satisfied). The removal of legal aid has destroyed that balance. Prisoners no longer have any services that they can access to provide legal advice on matters outside of the three narrow areas where funding remains.

The need for legal advice about rights and remedies in prison is heightened by two factors. First, the consequences of imprisonment are that every aspect of a prisoner's day to day life is governed by a policy or rule that must have a legal basis. Therefore, even the most mundane matters, such as accessing books, are mediated by the state. Second, prisoners will encounter a range of decisions that have a direct impact on the liberty of the subject, whether it is in relation to disciplinary decisions or accessing sentence planning and courses which will affect when the prisoner can be released. It must be remembered that all of these matters also have a direct bearing on rehabilitation and successful reintegration back into the community.

The material needed to access even the most basic information about prison service policies and procedures is unavailable to the majority of prisoners as they do not have access to the internet. All prison service policy documents are published online and although hard copies are meant to be kept in prison libraries, a combination of impoverished regimes, a lack of access to libraries, materials not being updated and literacy issues mean that these are not accessible. Therefore, without recourse to legal advice and

information, prisoners are often unable to discover whether decisions made about them are in accordance with the law.

These concerns have been heightened by the general degradation of prison regimes that is occurring due to prison closures, overcrowding and understaffing. Research conducted by the Howard League in 2014 found that the number of prison officers fell by 40% between 2010 and 2014 and that during that time violence in prison and serious incidents had increased dramatically. During that time the certified normal accommodation level for prisons has fallen by nearly 3,000 places to 74,000 despite the prison population remaining at levels between 83,000-85,000.

The human impact has been devastating with the Prisons and Probation Ombudsman (“PPO”) reporting that: *“The number of self-inflicted deaths in custody remains unacceptably high and, in 2014–15 there were still 38% more than in 2012–13”*.¹¹⁴ Indeed, the Ministry of Justice’s most recent figures paint a shocking picture of the decrease in safety in prisons:¹¹⁵

	2012/2013	2015/2016
Self-inflicted deaths	52	100
Homicide	2	6
Self-harm – male prisoners	16,567	24, 979
Self-harm – female prisoners	6,014	7,334
Assaults – male prisoners	14,145	19,760
Assaults – female prisoners	519	758

The only method for resolving complaints in the absence of legal aid is the internal prison complaints system. This was noted with concern by the Justice Select Committee who also heard evidence to link these concerns directly to the removal of legal aid:¹¹⁶

“151. We heard that prisoners have little faith in the internal complaints system to provide a fair response; they often saw replies as unresponsive, untimely and of poor quality. Adallah, a former prisoner, said that prisoners had the feeling that complaints were not heard, applications were ignored, and the systems were not well understood. Nigel Newcomen [the Prisons Ombudsman] told us that often complaints were made to him about the poor quality of the complaints procedure itself. Some, including Mr Newcomen himself, thought that the recent rise in the number of complaints could be linked to the increased complexity of complaints after the removal

¹¹⁴ Accessed September 2017:

http://www.ppo.gov.uk/wp-content/uploads/2015/09/PPO_Annual-Report-2014-15_Web-Final.pdf

¹¹⁵ Accessed September 2017:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519425/safety-in-custody-march-2016.pdf

¹¹⁶ *Prisons: planning and policies*. Accessed September 2017:

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/309/30907.htm#a52> Accessed September 2017:

of areas of prison law other than those related to deprivation of liberty, i.e. parole decisions and sentence calculation, from the scope of legal aid in December 2013.”

It is also important to note that prisoners do not have a statutory body they can complain to. In the absence of legal advice and assistance, the Government has indicated that the PPO provides an independent route for resolving complaints. However, the PPO has never been placed on a statutory footing despite repeated assurances by successive governments that this was an appropriate and necessary step to take. The PPO himself has also expressed concern at:

- Poor complaint handling by prisons;¹¹⁷
- Continued interference with legally privileged correspondence;¹¹⁸
- A disproportionately low take up of his service by women prisoners and young people under the age of 18.¹¹⁹

Finally, it is important to note that prisoners cannot access alternative sources of pro bono legal advice (CABx, Law Centres etc....) as members of the general public can. They cannot make use of general research facilities such as the internet and they cannot even make telephone calls to advice agencies without prior planning as all telephone numbers have to be pre-approved. They cannot access the courts other than by writing and they will rarely have access to computers or type writers to prepare documents for court proceedings. Therefore, without positive state action to fill the void left by the removal of legal aid for the majority of prison law issues, there is not even a basic safety net available to prisoners. The Woolf Report into the Strangeways riots identified the lack of an effective complaints procedure as one of the root causes of prison disturbances and Lord Woolf emphasised the importance of accountability and justice as tools to promote safe regimes and rehabilitation. In 2015 when asked to comment on the removal of legal aid for prisoners he replied:

“That was wrong, absolutely wrong. We’re in the year of the Magna Carta. One of the fundamental requirements of the Magna Carta was that everybody should have access to justice. You can’t get access to justice if you can’t get the right assistance. Our justice system depends on people being appropriately represented.”¹²⁰

JR *Prison law*

In December 2013, under the Legal Aid Transformation programme, changes were made to the scope of legal aid available for prison law. These changes removed almost all areas of prison law that affect children from the scope of legal aid. The Howard League for Penal Reform, which operates a specialist advice line for children and young people in prison, have seen an increase in calls to their helpline of over 45 per cent since the cuts came into force. In January 2016, a Panorama programme exposed appalling abuse in

¹¹⁷ *ibid*, p 43.

¹¹⁸ *ibid*, p 50.

¹¹⁹ *ibid*, p 58: Women prisoners make only 2% of complaints despite comprising 5% of the prison Population.

¹²⁰ Accessed September 2017:

<http://www.theguardian.com/society/2015/apr/01/lord-woolf-strangeways-prisons-still-crisis>

privately-run secure training centres for children.¹²¹ Speaking in Parliament in response to the programme, the Secretary of State for Justice, Michael Gove stated: “There should be no limits on our capacity to investigate wrongdoing, wherever we find it.”¹²² Yet, most children in prison have very limited access to independent legal advice and representation to enforce their positive rights to prevent abuse.

Children and young people in prison also tend to have a range of civil law needs that often go unmet.

Legal Aid for inquests

Respondents’ biggest concerns about the state of access to justice:

INQUEST We would urge upon the Commission the need for non means tested public funding for legal representation for families at inquests into deaths in custody or state detention, or deaths that engage Article 2 of the European Convention on Human Rights.

The way in which Respondents’ work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

INQUEST *Written Evidence on non-Means tested Legal Aid for Inquests*

The importance of public funding for families at inquests

1. INQUEST is the only independent organisation in England and Wales that provides a specialist, comprehensive advice service on contentious deaths, their investigation and the inquest process to bereaved people, lawyers, other advice and support agencies, the media, parliamentarians and the wider public. It has a proven track record in delivering a free, in-depth specialist casework service on deaths in state detention or involving state agents. It works on other cases that also engage Article 2, the right to life, of the European Convention on Human Rights and/or raise wider issues of state and corporate accountability. It monitors public interest inquests and inquiries into contentious deaths to ensure the issues arising inform our strategic policy and legal work.

2. INQUEST co-ordinates the INQUEST Lawyers Group (“ILG”) which is a national network of over two hundred and fifty lawyers who are willing and able to provide preparation and legal representation for bereaved families. Membership is open to all lawyers who represent bereaved families. The ILG also promotes and develops knowledge and expertise in the law and practice of inquests by providing training and acting as a forum for the exchange of ideas and experience. INQUEST publishes Inquest Law, the

¹²¹Accessed September 2017:

<https://www.opendemocracy.net/uk/shinealight/rob-preece/bullying-kids-g4s-abuse-of-child-prisoners-exposed>

¹²² House of Commons. *Hansard*, 11 Jan 2016: Column 577. Accessed September 2017:

<http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160111/debtext/160111-0001.htm> :

journal of the ILG, which is widely read by those engaged in the inquest process including lawyers, coroners and academics.

3. The central role of families in death in custody inquests has been recognised by successive governments, as has their need for legal representation to engage in the increasingly legally complex and lengthy hearings. The families we work with have experienced a traumatic bereavement in the care or custody of the police/prison service or mental health setting or in other circumstances involving the state or corporate bodies. The suggestion that families can either represent themselves and ask questions about the death of their relative or ask others to answer their questions is a myth. Currently an unrepresented family are presented with a bank of lawyers representing each and every person in any given case whose conduct may be open to criticism. An inquisitorial process is in fact highly adversarial and requires specialist knowledge of organisational policies and procedures and the law. This imbalance in representation reduces the chances of an independent fair and balanced investigation into the death. Without representation families are isolated and alienated from the investigation and inquest process and do not have the opportunity to effectively participate.

4. The recent conclusion of the Hillsborough inquests has highlighted the importance of public funding of families' specialist legal representation at inquests involving the state and corporate bodies. For nearly three decades, the bereaved families and survivors of Hillsborough have been failed repeatedly at multiple levels by investigative and judicial processes. These were concerned more with an instinct to evade blame and responsibility than the need to deliver truth and accountability. The grief and suffering of generations of family members and survivors has thereby been exacerbated.

5. The Hillsborough inquest, the longest in modern history, was a response to those investigative and judicial failures, and its outcome amounts to redress for a long standing historical wrong. This was only possible because the bereaved families were able to play an effective part in the process, and that in turn was possible only because they had access to special funding from the Home Office – without reference to means – to instruct specialist lawyers able to recalibrate the inherent imbalance ordinary members of the public face when dealing with powerful state and corporate bodies. As a result, what we have seen is a powerful expose of state and corporate failings on the part of those responsible for the safety of those in the stadium, in particular the 96 who died.

6. Properly conducted inquests where families have been represented by specialist legal aid lawyers have been instrumental in exposing systemic and practice problems that have contributed to custodial deaths and deaths in detention or other circumstances involving state or corporate accountability. Many of the changes to training and guidance, changes to the law, increased information about custodial deaths have been a direct consequence of the active participation of deceased families via their legal representatives in the investigation and inquest process. This has played an important role in alerting the authorities to action necessary to prevent further deaths. Family lawyers have assisted the coroner in their role by highlighting shortcomings in the evidence or in raising important areas of concern. Family representation is now routinely welcomed and supported by coroners (indeed in recent years we have noted the increasing practice of coroners writing to support bereaved families' applications for public funding).

7. Family representation has also developed the investigation process into custodial deaths and deaths engaging Article 2 of the ECHR and inquest law and practice. It has positively impacted on changes in practice at the Prisons and Probation Ombudsman and the Independent Police Complaints Commission and to reform of the inquest system via the Coroners and Justice Act 2009.

8. At inquests involving public authorities the family will often be the key interested person working towards the crucial public interest of ascertaining the full circumstances of the death and scrutinising what takes place within custodial institutions or of the acts or omissions of state agents. They have a vital role to play in ensuring that inquests do not merely sanction the official version of events. Without specialist legal representation for families the issues uncovered at many of these inquests would remain unchallenged and hidden from public view and problems with the investigation process would not have been identified and changed. Anything less would not only impact negatively on the bereaved families involved but would have worrying implications for society as a whole, including increasing the likelihood of similar deaths happening in the future.

9. The core concerns of bereaved families at inquests into deaths in custody are to:

- a. Find out the truth about how their relative died;
- b. Be able to effectively participate in the investigation and inquest process;
- c. Ensure the legal process enables the full facts surrounding the circumstances of their relative's death are known, and;
- d. Prevent similar deaths occurring in the future.

10. As reflected in his judgment in *Amin* as quoted above, Lord Bingham recognised that the prevention of similar deaths was one of the main purposes of the inquest and thereby humanely connected the needs of the bereaved with the duties of the state to investigate adequately.

Means assessment

11. The current funding scheme that exists for families is having a damaging and distressing effect on families and undermining their confidence in the justice system. At a time when families are recently bereaved, often in traumatic circumstances they are having to consider this intrusive funding issue which is also damaging to their relationship with specialist lawyers at a time when they are trying to develop a relationship of trust. This is further frustrating the investigation inquest process by adding an additional layer of complexity and delay and is thwarting the process of scrutiny and the potential for learning. It also threatens to undermine some of the positive changes being made to the process following implementation of the Coroners and Justice Act 2009 in July 2013.

12. Means assessment of exceptional funding for inquests has become increasingly onerous for families over recent years. Since April 2013 there has been a marked increase in the intrusive nature of means investigation, for example individual payments in and out on bank statements are scrutinised and questions asked by the LAA, even in relation to small sums. Unlike the ordinary public funding means

assessment process for all other forms of public funding, which requires the applicant's means to be assessed within the context of his or her 'household', the means assessment for public funding for inquests often requires a large number of family members to have their means assessed, regardless of whether they are part of the applicant's household, which can include parents/grandparents/siblings and/or adult children of the deceased.

13. Family relationships are strained by requests for financial information from:

- a. Family members with whom other family members have no contact;
- b. Those in broken relationships, including situations where there are allegations of domestic violence;
- c. Family members who refuse to provide information; and
- d. Family members abroad.

14. LAA statistics for inquest exceptional funding for the last year for which figures are available (year ending Sept 2015) are that 108 applications were granted, 53 refused, 19 rejected (i.e. likely to be re-submitted) and nil refused on the basis of financial ineligibility.¹²³

15. Given the discretion in relation to the waiver of financial eligibility and the fact that the overwhelming majority of families of those who have died in custody are of modest means, means assessment is a demanding and time consuming process for little purpose.

16. We note that there is no means assessment for public funding for public law care and supervision proceedings in relation to children (i.e. when children are to be removed from their parents) and for child abduction cases. This no doubt reflects the importance of the issues to those families and the public interest in funding legal representation in such cases. There is also no means assessment for certain cases under the Mental Health Act and Mental Capacity Act, which no doubt reflects the fact that such applicants cannot represent themselves and in the majority of cases have little means.¹²⁴ Many of these considerations apply to death in custody inquests.

17. INQUEST's experience is that families' find means assessment to be a highly intrusive difficult, demanding and protracted process at a time when they are trying to come to terms with a traumatic death and prepare themselves for the inquest hearing. It is the only public hearing where the family can find out how the death was caused and whether any public authority was in any way responsible. It also adds distress and mistrust in the justice system for families to know that those representing the state are funded from the public purse and not subject to the same kind of financial scrutiny. Some families have dropped out of the inquest process altogether, unable to cope with the additional pressure and strain. Furthermore, the opaque way in which the discretion to waive financial eligibility requirements operates

¹²³ Grants, refusals and rejections figures from LAA statistics bulletins, refusals on basis of financial eligibility from LAA FOI reply to INQUEST dated 15 February 2016.

¹²⁴ *Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013* reg. 5(1). Accessed September 2017: <http://www.legislation.gov.uk/uksi/2013/480/made>

means that non-specialist lawyers do not understand the system and families are sometimes wrongly advised when they approach local solicitors who have no prior experience of inquests.

18. By definition, the vast majority of families working with INQUEST obtain legal representation as we link families with members of the Inquest Lawyers Group as part of our casework service. However, INQUEST is sometimes contacted by families post-inquest who were unrepresented at the inquest hearing, or support families unable to engage with the funding process. No doubt there are other families around the country who have been unable to secure representation or to make contact with INQUEST. The following illustrate the difficulties faced by families who are unrepresented through the inquest process:

- a. The family of Leonard McCourt, who died in 2010 in a police van in County Durham whilst being transported to the police station, approached a local solicitor and were incorrectly informed that they would not receive legal aid because they had savings of £8,000. The sister-in-law of the deceased represented the family at a three-week inquest where multiple barristers represented the police force and individual officers. She questioned witnesses to the best of her ability, which she has described as “the most terrifying thing I’ve ever done in my life”. The experience put a severe strain on her marriage (to the brother of the deceased) and created difficult family conflicts as she sought to address the different perspectives of family members. The inquest took place two and a half years after the death so that the family had to live with the stresses arising from the legal process for a long time. Five months before the inquest the sister-in-law received four lever arch files of statements, documents and policies. She has related to INQUEST how she spent seven nights a week, after coming home from work, going through these materials. She did not understand much of the content and was having to research on google. She has described feeling out of her depth and very ill-equipped to deal with her role.
- b. The family of Ethaniel Butler decided not to engage with the legal aid assessment process as they found it so intrusive. They have told INQUEST about the stresses they faced whilst unrepresented during the pre-inquest phase. They have related how difficult they found it to understand the post mortem report and letters they were sent about investigation findings such as toxicology. They also found it highly distressing to suddenly receive a post-mortem report through the post. They started out with faith in the IPCC, which was lost during the process as they kept raising questions which were left unanswered in successive meetings and were highly dissatisfied with the IPCC report. Ethaniel’s mother found the process so difficult she told the IPCC that she didn’t want an inquest but was told that she had no choice in the matter. The family felt unable to access the disclosure process as they didn’t know what they should be receiving. Some misconduct action was taken by the force but the family did not understand what happened. A legal representative would mediate between official bodies and the family so as to prepare them for information they may find traumatising, put technical information into lay terms and support them through legal processes.

19. Historically the importance of families' legal representation at inquests has been recognised by parliamentary bodies, independent reviews and government sponsored advisory boards, as listed below. Indeed, both the Corston and Harris reviews recommended non-means tested public funding:

- a. Stephen Lawrence Inquiry 1999;
- b. Luce Review of the coroners' service;
- c. Joint Committee on Human Rights itself recommending in 2004 that "participation of the next-of-kin in the investigation into a death in custody is an essential ingredient of Article 2 compliance. ...[I]n all cases of deaths in custody, funding of legal assistance should be provided to the next-of-kin.";
- d. Corston Report on women in the criminal justice system recommending in 2007: "Public funding must be provided for bereaved families for proper legal representation at inquests relating to deaths in state custody that engage the state's obligations under Article 2 of the European Convention on Human Rights. Funding should not be means tested and any financial eligibility test should be removed whenever Article 2 is engaged. Funding should also cover reasonable travel, accommodation and subsistence costs of families' attendance at inquests."
- e. The Chief Coroner has said "...it must be remembered that this is a public service, first and foremost for bereaved families who must be placed at the heart of the process, and secondly for the wider public good, learning lessons for the health and welfare of others"
- f. Harris review 'Changing Prisons, Saving Lives' Report of the Independent review into Self Inflicted Deaths in Custody of 18-24 year olds (July 2015)¹²⁵ recommended that "Families of the deceased should have a right to non-means tested public funding for legal representation at an inquest."

Inequality of arms in public funding

20. INQUEST is not aware of a single inquest into a death in custody or detention where the state has not had lawyers in attendance, at taxpayers' expense. Legal representation for public authorities appears not to be restricted or constrained (as is the situation for bereaved families) and does not appear to be assessed and/or have its merits examined. Frequently there are a number of legal teams representing different state bodies and also private companies carrying out custodial functions. With increasing privatisation and new commissioning arrangements with NHS England we fear that this situation will get even more unequal as public and private funds will be available for even more barristers representing the various authorities.

21. It feels to families - and our monitoring of the inquest process supports this -that the key focus of lawyers for state bodies is to avoid potential criticism, damage limitation and defence of policies and

¹²⁵ Accessed September 2017:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/439859/moj-harris-review-web-accessible.pdf

practices rather than contribute to the prevention of future fatalities. Therefore, generally only the family's legal representative is actively promoting a broad remit, rigorous examination of the facts and a search for the truth at the inquest.

22. Frequently there will be multiple legal representatives for the police with some representing the force and a range of other barristers representing individual officers who are said to have a conflict between them, instructed by the Police Federation. Often as the inquest progresses the perceived conflict fails to materialise and lawyers for the police support each other in promoting a particular agenda before the Coroner, whilst the family's representative remains a solitary voice pushing in the opposite direction. In high profile deaths police forces and officers are routinely represented by very experienced QCs with junior barristers to support them. In contrast families are often refused funding for a leading and junior barrister (required when there is a high volume of materials to analyse) and are refused funding for separate representation by the LAA where there is a family split due to conflicting approaches adopted by different family members. For example, at the inquest into the death of Dean Joseph, shot dead by the police in September 2014, two conflicted family members applied for exceptional funding. The LAA did not make a final decision refusing funding to one family member until the first day of the month-long inquest. This was challenged by judicial review during the course of the inquest when, although dismissing the application, the Administrative Court criticised the LAA's approach as failing to recognise the separate rights of close relatives.¹²⁶ The LAA's guidance has not currently been amended to reflect this guidance from the Court nine months ago.

23. Likewise, for deaths in prison it is not uncommon to have lawyers representing the Prison Service, individual prison officers, the Health Trust responsible for medical treatment and care and other agencies who may be involved, such as those providing mental health care, substance misuse services etc.

24. In deaths involving the NHS and deaths of mental health and learning disability patients there is also an imbalance in representation where the NHS Trust appoints senior lawyers, and individual professional or Trade Unions provide lawyers for their members. The role of the family's lawyer is particularly important given the lack of an independent mechanism for the investigation pre-inquest of these deaths and the need for far reaching scrutiny at the inquest.

25. INQUEST is working with the family of Connor Sparrowhawk, an 18-year-old boy with learning disabilities and epilepsy who died after drowned in a bath in an NHS specialist facility. The NHS Trust Southern health responsible for his care appointed a barrister experienced in representing the police and medical defence organisations who argued for the narrowing of the inquest into his death and that there should be no jury and it should not be an Article 2 inquest. Connor's family were in contact with INQUEST and we appointed them specialist inquest lawyers who successfully argued that this was indeed an Article 2 inquest and the jury subsequently found that his death was preventable and that neglect had contributed. Before the inquest Sara Ryan wrote a letter to the Ministry of Justice, reproduced in the appendix to this submission.

¹²⁶ *R(Joseph) v Director of Legal Aid Casework* [2015] EWHC 2749 (Admin), para 54.

Conclusion

26. We acknowledge that there have been improvements and that limited public funding for families at inquests now exists. However, the current system is not fit for purpose and is not cost effective for the Ministry of Justice. It distresses and alienates families and undermines confidence in the justice system when public bodies are funded from the public purse. Any justice system must ensure equal access to justice. If bereaved families are to participate effectively in inquests following deaths that occur in custody or analogous circumstances where the state exercises control, families require access to non means tested publicly funded specialist legal representation. They must also have a route to access the civil courts where an inquest fails to deliver state accountability. Without this, deaths involving the state and corporate bodies are in danger of receiving insufficient scrutiny thus frustrating the opportunity for learning and any acts or omissions which contributed to the death could happen again. In the context of the increasing number of custodial deaths this is deeply concerning.

A letter to the Ministry of Justice from Sara Ryan

re Connor Sparrowhawk, deceased

Dear Ministry of Justice,

I'm writing because I'm pretty concerned about this statement you issued to BBC Radio Oxford when asked why there was no legal aid for families to cover representation at inquests:

"An inquest is aimed at helping families find out the circumstances behind the death of their loved one. Lawyers are not usually required as the hearings are specifically designed so people without legal knowledge can easily participate and understand what is happening. The coroner is there to investigate the death and can put questions on behalf of the family during proceedings."

This has a touch of In the Night Garden about it. Naive, meaningless fluff. You present a version of the inquest coated with Parma violets, butterscotch and cream soda. Devoid of context. You suggest that families put their trust in the coroner. Yes. Maybe. But they should also be aware that other interested parties (such as the NHS, the prison service, police, local authority) may well turn up mob handed with barristers and the like. Determined to close down questions and limit the investigatory process.

And it isn't just about what happens at 'the inquest'. The inquest is a process not an event that happens within a set space at a particular time, as I'm sure you know. It's a process that involves evidence gathering and submissions. Without legal representation, how can families be sure that the questions they want answered are going to be asked? I'm not being funny, but coroners are only human and can't go through the mountains of paperwork associated with a particular death in the level of detail necessary. And a family who are experiencing the gut wrenching and devastating despair associated with bereavement aren't best placed to (and shouldn't have to) trawl through records and documents.

If, as you also suggest, the inquest is inquisitorial and not adversarial, why did Southern Health [the NHS Trust responsible for Connor's care] argue for the narrowing of our son's inquest to one with no jury and no Article 2 engagement? In your sunshine version surely Southern Health would be there in the sidelines cheering for an inquest best placed to answer questions? With openness, candour and transparency. Not fighting the toss on these points with spurious, insensitive and offensive arguments that include death by drowning is neither unnatural or non-violent.

Their choice of barrister also speaks to a fairly weighty adversarial inclination. A barrister "in huge demand by the police and medical defence organisations to appear at Article 2 inquests". In huge demand? How does this fit with your bland statement that families need no legal representation? It makes no sense at all. You must be completely distanced from the reality of the process, or worse.

I don't know how to convey to you how we felt on the morning of LB's first pre-inquest review meeting. Back in November 2014. When, three hours before the meeting, we found out he was representing the Trust. Such a blatant sign of their determination to fight. To fight about the circumstances of the death of our son they'd previously accepted was preventable. I really don't understand how an NHS Trust can possibly defend the death of a patient with epilepsy in the bath but that's clearly not stopping them. I'm just relieved we have a legal team that shine a fierce light on human rights issues. A team drenched in integrity. And no whiff of Parma violet pong.

Advising families they don't need legal representation at inquests is simply wrong. Each situation is different. And clearly in some contexts legal representation is a necessity. I can't imagine what it's like to end up with an unsatisfactory inquest outcome. Other than making the worst thing you could ever imagine so much worse. This is unforgivable. And who funds this representation needs examination and reform. It isn't fair that families have to pay.

It strikes me it might be helpful to send a few of your bods out to attend some inquests involving deaths in NHS Trusts. To get an idea of how it works in practice. Our next pre-inquest review meeting is on September 9th in Oxford if that's any help.

Yours,

Sara¹²⁷

Women – the effects of current policies

RoW WMAN We held a meeting of members of our Women's Migration and Asylum Network on Monday, attended by about 30 professionals working with vulnerable migrant women affected by violence including representatives from Greater Manchester Immigration Aid Unit and Migrant Help. A

¹²⁷ You can follow Sara's blog here <https://mydaftlife.wordpress.com>

number of issues were raised in relation to access to specialist legal advice and representation and suggestions made for improving provision.

Organisations working with women with an insecure immigration status identified a real gap in women's understanding of the need to seek urgent legal advice and real barriers to them following up on information about legal advice providers even when signposted to them. This highlighted a need to increase the availability of specialist advice by facilitating access to lawyers in the places that women go for support for example via drop-in clinics.

The Commission may be interested to learn more about our current Athena Project pilot Migrant Women's Advice Project. We are currently funded by Trust for London and Comic Relief to deliver a project building the capacity of community and voluntary organisations supporting migrant women affected by violence. We are currently working with 8 organisations and 33 members of their staff to enable them to become OISC regulated immigration law advisers. An evaluation of this project is currently being undertaken and we hope to be able to roll it out in other areas after the pilot.

Support organisations also raised concern about the poor quality, out of date information about immigration law providers and the need for a directory which reflects the locations and specialisms of providers to enable them to accurately and confidently signpost women to legal advisers.

They also raised concern that many of the women they support have other legal issues which could not always be addressed by the same firm. Women with community care and family issues often find themselves having to instruct a number of different specialist with all the practical challenges that brings. Members of our Network suggested that consideration should be given in the awarding of legal aid contracts to those who can provide a holistic range of specialist advice services.

Professionals working with asylum seeking women described problems with the dispersal policy. They raised that asylum seeking women faced having to change solicitors and transfer legal aid when dispersed to a new area causing delay and confusion. They reported that in some dispersal areas there are no legal aid contract holders and identified a need for legal aid contracts again to be reviewed and expanded into new geographic areas where migrant and asylum seeking populations are living. They identified a need for a more dynamic and responsive system that would focus the right expertise in the right areas.

WA Women's Aid works with survivors of domestic abuse throughout England, our National Domestic Violence helpline (run in partnership with Refuge) receives over 100,000 calls a year and our member services support many thousands of women and children.

Many of these women will have sought help from the police or advice from solicitors when in the relationship or after the relationship has ended. Access to justice is a key feature in many women's experiences of rebuilding theirs' and their children's lives after domestic abuse.

For the police, courts and other related criminal justice agencies domestic abuse related crimes make up a significant proportion of their day to day work. However, the response that many women tell us they receive indicates that domestic abuse is still not taken as seriously as it should be.

- o On average two women are killed by their partner or ex-partner every week in England and Wales.
- o 81 women were killed by their partner or ex-partner in 2014/15.
- o Domestic abuse related crime is 10% of total crime, an increase of 2% since last year (2014/15).
- o On average the police receive over 100 emergency calls relating to domestic abuse every hour.
- o Domestic abuse cases now account for 14.1% of all court prosecutions, and the volume of prosecutions rose this year to the highest level ever of 92,779. 92.4% of defendants were male and 7.6% were women. 84% of victims were female and 16% were male. Furthermore, 2014/2015 saw the highest ever level of defendants convicted for domestic abuse (68,601), a rise just under 18% from the previous year.

Benefits of current policy:

- The new offences of coercive and controlling behaviour and revenge pornography are a positive step to ensure that survivors of domestic abuse are able to access justice.
- The roll-out of Domestic Violence Protection Orders and Clare's Law in 2015 have provided additional tools for the police to use in cases of domestic abuse.
- The introduction of body worn cameras to police forces have enabled more prosecutions to be evidence-led rather than heavily reliant on testimony from a victim.
- The College of Police training, for which Women's Aid is an associate, on coercive and controlling behaviour gives all front-line officers an in-depth understanding of the power and control dynamics in domestic abuse relationships. This is vital to ensuring the police respond appropriately to domestic abuse cases.
- The HMIC inspections into the police force handling of domestic abuse cases, and subsequent Everyone's Business and Increasingly Everyone's Business reports, highlighted significant police failings relating to the investigation and handling of domestic abuse incidents. These reports have led to a significant body of work carried out by the Home Office, HMIC, College of Policing and NGOs such as Women's Aid to improve police practice. This work is ongoing and has had some success to date.

Challenges with current policy:

- There is strong focus on viewing women survivors of domestic abuse according to a static analysis of their risk, based on a risk assessment form which is completed by a professional from a statutory agency, most usually a police officer.
- The problem with focusing just on risk is that a woman whose every movement has been controlled by her partner, but who has rarely or never been physically attacked, could be classified

as “standard risk”. However, if she decides to leave, evidence shows that the risk could not be higher in that moment.

- The current focus on a ‘risk based’ approach to domestic abuse cases, often leaves women who do not meet the ‘high-risk’ threshold on a checklist with limited or no support. We know from Domestic Homicide Review reports that very often the women who end up being murdered in circumstances relating to domestic abuse have previously been scored as ‘standard’ or ‘medium’ risk according to a checklist.
- The historic approach the police are required to take which focuses on incidents of crime rather than a pattern of on-going coercive and controlling behaviour is open to coercive control being missed and the victim of the ‘individual’ incident being not being identified as high risk.
- Often women feel unable to access justice because an incident of domestic abuse they have reported is not ‘crimed’ by the police or is discontinued because of a lack of understanding or knowledge about domestic abuse, particularly coercive control. If the police don’t take a report of domestic abuse seriously, support the victim and aim to sanction the perpetrator then women really don’t get access to justice.
- It is vital that frontline police officers and all criminal justice system professionals have specialist face to face training on the nature of domestic abuse and the dynamics of power and control inherent in those relationships. Women often explain to Women’s Aid that they do not feel believed or supported by the police when they disclose domestic abuse, this must be addressed through robust training delivered in collaboration with organisations such as Women’s aid and with input from survivors of domestic abuse.
- The reported increased wrongful arrest and charging of women victims as perpetrators of domestic abuse, which we are hearing anecdotally from the National Domestic Violence Helpline, again highlights the failure of the police and criminal justice agencies to understand and identify the impact of coercive control and the ability of the perpetrator to manipulate a situation and the professionals involved. This has massive knock on implications for the victim, from preventing them from accessing legal aid, to their losing custody of their children.
- Any forms of restorative justice practices introduced into a domestic violence case should only be undertaken after criminal justice proceedings have concluded, not as an alternative to criminal justice proceedings, and at the express wish of the survivor of domestic abuse.¹²⁸

¹²⁸ *Women’s Aid* recently provided written and oral evidence to the Justice Select Committee on the topic of domestic abuse and Restorative Justice. You find our submissions here. Accessed September 2017: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justicecommittee/inquiries/parliament-2015/restorative-justice-inquiry-15-16/>

Barriers between BME women and the statutory services

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy undermines access to justice:

SBS Our experience shows that there are two main factors that prevent BME women accessing justice in this wider sense; ... the other is the barriers that are faced when engaging with statutory services; an engagement that is often characterised by mistrust and discrimination.

The vital need to access legal advice and representation becomes apparent when understood in the context of ongoing serious failings in key statutory services to act lawfully and to uphold the rights and freedoms of BME women.

Problems accessing Statutory Services

Police

Our experience shows us that many BME women are often reluctant to report domestic violence or other forms of harm to the police for a number of reasons:

- a. Women do not trust the police because they think that the police will not take them seriously, this is often based on the police downplaying or ignoring their reports;
- b. Women believe the police will be more interested in their immigration status than in trying to protect them;
- c. Women are often 'warned off' the police by perpetrators who inform women that they will be arrested and if they have insecure immigration status, deported instead;
- d. Women believe that the police won't understand their cultural, religious and family dynamics that often justify and legitimise gender related forms of violence;
- e. Women may have had a negative previous experience with the police;
- f. Women have low expectations of the police due to their knowledge and experiences of police corruption and brutality in their countries of origin.

Our casework shows that even when BME women do report to the police, they experience the following failures and challenges which we also highlighted in our submission to a recent HMIC review on the police response to domestic violence:¹²⁹

- a. Failure to treat BME women with respect and sensitivity; indeed, some of our cases revealed explicit racism towards the victims;

¹²⁹ See Her Majesty's Inspectorate of the Constabulary. (2014) *Everyone's business: improving the police response to domestic violence*. Accessed September 2017: <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/2014/04/improving-the-police-response-to-domestic-abuse.pdf>

- b. Failure to identify and record domestic violence accurately;
- c. Readily accepting cross-allegations from the perpetrator/s without proper investigation; the police often take them at face value which results in victims being charged and criminalised instead of the perpetrators;
- d. Failure to adequately supervise interpreters; we have had instances where the interpreters arranged by the police have failed to interpret correctly, have breached confidentiality and given inappropriate advice. On some occasions, they have refused to interpret whilst our advocates are present and the police have failed to challenge this. We have also had instances of interpreters being left to take a statement unsupervised and instead directing clients on the contents of their statement and deciding what to include or leave out of a statement;
- e. Failure to gather and preserve crucial evidence;
- f. Being overly preoccupied with immigration enforcement rather than protection when the victim has, or appears to have, insecure immigration status. We fear that this problem is only going to get worse in light of the provisions of the Immigration Bill 2016, with its emphasis on surveillance by statutory agencies. This will seriously undermine the protection principle within the police and other services charged with the overriding duty to protect vulnerable adults and children;
- g. Failure to understand and recognise the role of domestic violence advocates/ caseworkers and instead perceiving them to be a threat to their work;
- h. Failure to communicate the progress of an investigation to the victim (or those acting on her behalf) including providing reasons for discontinuing an investigation, which is often routine;
- i. Failure to follow proper protocols for referring to the Crown Prosecution Service ('CPS') and failure to provide accurate information;
- j. Failure to take seriously allegations of breaches of bail conditions and civil court protection orders.

We have often witnessed instances where the police have decided to take no further action on matters without any or proper explanation or reasoning. All too often 'lack of evidence' is cited in cases where it is clear that no effort has been made to gather evidence or think creatively on how to gather evidence that might be available. This remains the situation even in the most serious domestic violence cases including rape and sexual violence. The reality is that very few, if any, cases of rape within marriage or a relationship for instance, have been pursued to trial.

Fear of reporting to outside agencies due to the lack of trust in outside agencies

Our casework also shows that many BME women have an inherent distrust and low expectations of the police and other officials in authority which prevents many of them from making reports to such bodies. This reluctance is often compounded by the response of such authorities, who often do not respond adequately when domestic violence has been reported to them. The police, social services and medical

professionals also have real difficulties in recognising and responding to financial and emotional abuse, with the result that some simply turn a blind eye.

Over the years, we have also seen a very worrying number of women who tell us that they are too afraid to confide in their GPs because they fear that their confidentiality will be breached, particularly if the GP is a family GP or perceived to be part of the local community.

The following quote from one of our service users is illustrative of this fear:

“I think when people register at a GP, it needs to be explained to them that the information they give there won’t be passed on to anyone else and that they can talk about any problems they have there, especially girls from foreign countries. It should be made clear that the GP surgery is a confidential service. One of my friends can’t talk to her GP because she is worried that because he is a very good friend of her husband, he will talk to her husband... because she told her GP something and he immediately told her husband, her husband raised his hand to her again and now she can’t go to the GP. She is not allowed to go anywhere anymore.”

In another case that was presented at our local Multi-Agency Risk Assessment Conference (MARAC), a young Punjabi woman of Sikh background refused to speak to her GP or allow MARAC to share information with her family GP because she feared that the GP would disclose information to her family members. She was at risk of honour based violence because her family discovered that she had a boyfriend who was from a different religion. She had been threatened with suffocation and told a knife would be used to “hurt her”.

In common with other women, many BME women are also reluctant to report to social services out of fear that children may be removed from their care. We have witnessed an increasingly punitive response to women who face domestic violence from social workers which only fuels such fears.

We have set out above the reasons why, in our experience, women mistrust the police. As described, we have noted that even where women report domestic violence to the police, it is not recognised or is trivialised or ignored. At best, there is often an inconsistent police approach in terms of adequately identifying, recording and responding to incidents of domestic violence. This means that in some cases, even when domestic violence is reported, the police often do not have any record of such reports.

The following case study demonstrates this failure. Even where women have presented as victims of domestic violence, state agencies all too often simply fail to recognise domestic violence:

Ms P’s in-laws and husband subjected her to ongoing abuse and she eventually developed serious health conditions for which she needed urgent access to medical care. For two years, she was in and out of hospitals. At one stage, her in-laws visited her in the hospital and told her that she would never recover and she was better off dead. As a result, she became suicidal and she was kept on ‘suicide watch’ by a nurse. She was discharged from the hospital and returned to the matrimonial home. There she was kept in a shed in the back of the house which led to a deterioration in her health. She was kept in the shed for one year even though all the professionals involved knew about her home circumstances. Her father eventually contacted SBS and we managed to get her out of the matrimonial home. Ms P cannot apply for

legal aid for divorce and make claims for financial support or relief because none of the professionals involved recognised her situation as a case of domestic violence. For example, the hospital recorded her experiences as ‘family problems’. Without proper recording of domestic violence, Ms P cannot obtain the evidence needed to obtain legal aid and to pursue legal remedies for the abuse she suffered.

Children – the effect of the cuts

Respondents’ biggest concerns about the state of access to justice:

CCLC Removing whole areas of law from the scope of legal aid has meant that children, young people and families, who are unable to pay privately for legal services, are not able to use the justice system to secure their rights or access services to which they are entitled.

Children are some of the most vulnerable in the system and the least likely to be able to access any of the limited alternative provision.

Young people who work in the system and are the future of advice provision are demoralised and poorly paid.

We are also concerned that there will continue to be a loss of skills from the sector.

The legal aid system should be fair, transparent and accessible mechanism for enabling individuals regardless of status to enforce their rights.

JR Meaningful access to justice has been undermined by cuts to legal aid, the decline of the advice sector and increasing court fees, combined with low levels of legal capability. As a result:

1. Young people’s rights are increasingly infringed or ignored with impunity by those in authority.
2. Young people often have little or no understanding of their rights, don’t expect to be listened to and don’t know where to start with getting help – only a tiny proportion manage to access good quality advice.
3. There is a need for coordinated action to secure children and young people’s access to justice, reflecting the fact that this client group has specific legal needs requiring a radically different age-appropriate approach to service provision.

TCS Our four biggest concerns:

1. Legal aid is already only available to those who cannot afford to pay for advice and representation to resolve their legal issues. It provides a vital safety net to make sure that the poorest and most marginalised in our society, including children and young people, are able to challenge decisions, which fundamentally affect their lives such as whether they have access to support and accommodation or whether they are allowed to remain in the UK on the basis of their welfare.

2. Government estimates in 2011 showed that 6,000 cases involving child claimants (under 18s) bringing cases in their own right and 69,000 cases involving young people (between 18-24 years) would no longer receive civil legal aid for advice and representation following the reforms.¹³⁰ These figures remained largely unchanged as the Legal Aid Bill proceeded through Parliament though some small concessions were made.
3. According to the Government's own estimates during the passage of the Bill, ensuring that all child claimants under 18 have access to civil legal aid would cost only £5-6 million¹³¹ (this would not include children affected by their parents' ineligibility for legal aid). However, despite efforts by prominent peers to protect children, no specific exemption was made for children.
4. As a result of the cuts to legal aid, our research and practice has shown that more children involved in legal proceedings, who have no financial resources to pay for legal advice and representation, are being expected to present their own cases in an adult legal system as litigants in person, gathering evidence, preparing statements or are being forced into exploitative and dangerous situations in order to raise thousands of pounds to pay for legal advice. Others who are unable to get help are unable to proceed and their cases are put off or avoided altogether until they hit crisis point.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

CCLC *Difficulties faced by children, young people and families in enforcing their legal rights*

CCLC exists to promote access to justice for children and young people. CCLC has long raised concerns that the changes to legal aid brought in under LASPO are having a profoundly negative impact on access to justice, including for some of the country's most vulnerable people.

Children are the least able to navigate complex legal and procedural rules without a lawyer. However, the impact of LASPO has led to a situation in which families and lone children and young people are required to represent themselves not only in courts and tribunals but also prior to the court process in making applications, completing forms and responding to cases. Limited alternative provision exists and any alternative, free sources of information and advice that do exist are either unable to meet the scale of demand caused by the withdrawal of legal aid, or are unsuitable for individuals who require more intensive one-to-one services.

¹³⁰ Parliamentary Question. Accessed September 2017:

www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110720/text/110720w0005.htm#1107211000025

¹³¹ Revised estimate provided by the Ministry of Justice on 11 April 2012 following the government's concessions in the Lords.

CCLC has provided detailed evidence on this issue to the Justice Select Committee and shares its deep concern that “children were facing particular difficulties in accessing legal advice and representation” and that:

“Children are inevitably at a disadvantage in asserting their legal rights, even in matters which can have serious long-term consequences for them. We are particularly concerned by evidence that trafficked and separated children are struggling to access immigration advice and assistance. We recommend that the Ministry of Justice review the impact on children’s rights of the legal aid changes and consider how to ensure separated and trafficked children in particular are able to access legal assistance.”¹³²

The Justice Select Committee, Joint Committee on Human Rights and Office of the Children’s Commissioner have all criticised the removal of legal aid from children’s cases and called on the government to review this as a matter of urgency.

The provision of high-quality legal aid remains London-focused with scant provision in other areas of the country. In December 2015, the Government reported on not-for-profit organisations and found the majority of legal advice was provided within London. This matched the findings of the Justice Select Committee. This is a particular problem where children and families who seek asylum are dispersed across the country, and has become an increasing difficulty with the use of out-of-borough accommodation for homeless families and those supported under s17 Children Act. Looking forwards, if children are to be transferred to different local authorities under the Immigration Bill 2015, they will face critical difficulties in accessing legal advice to regularise their immigration status, ensure they have access to education provision and that they are adequately provided for.

FLDSM *Child abuse exemption*

The regulations also make provision legal aid for an adult in proceedings relating to a child who is at risk of abuse. “Abuse” is defined as “physical or mental abuse including sexual abuse and abuse in the form of violence, neglect, maltreatment and exploitation” – this can include that the child has been a witness to domestic abuse. However, in our experience the evidence that the Legal Aid Agency will accept in this case is extremely limited making it very hard to successfully obtain funding.

The document checking service proposed above would assist however in our view there is a fundamental lack of understanding about the impact of domestic abuse on children. This means that legal representation is not being granted to a parent or other carer who is trying to take protective steps where funding is needed. Our firm view is that in any cases where child abuse is alleged including that child witnessing the abuse of another there should be a presumption in favour of providing legal aid to the applicant. In our view justice for children should not be restricted by cost considerations.

JR JustRights believes that:

- Children and young people are a uniquely vulnerable client group with advice needs and advice-seeking behaviour that are distinct from those of all other client groups.
- Only carefully tailored - and properly resourced - service delivery approaches will be successful in meeting the specific advice, advocacy and legal representation needs of children and young people.
- Current arrangements do not provide the advice, advocacy and legal representation needed by children and young people if they are to enjoy the rights and protections the law affords them.

JustRights wants to see a system of justice which gives all children and young people ready access to high quality independent advice, advocacy and legal representation whenever they may need it in the course of their lives.

To achieve this, JustRights calls upon Government and relevant public authorities to:

- Recognise the uniquely vulnerable nature of children and young people as an advice client group and their current marginalisation from access to justice.
- Invest in the development of independent, age-appropriate advice, advocacy and legal representation services.
- Develop cross-departmental strategies for children and young people's advice services at national and local levels.
- Develop a national strategy for educating all children and young people about their legal rights and how they can avoid and deal with law-related problems.
- Pay due regard to the United Nations Convention on the Rights of the Child and ensure a thorough age equality impact assessment of all policy reforms affecting advice, advocacy and legal representation for children and young people.
- Enable the meaningful participation of children and young people in the development of legal advice policy and services.

Children and young people's legal needs

Legal needs research tells us that:

- *Many young people experience legal problems*
Young people aged 16-24 experience at least 2.3 million legal problems each year.¹³³
- *Young people experience complex legal problems*

¹³³ Youth Access/Law Centres Federation/JustRights. P. Pleasence. (2011) *Civil legal problems: young people, social exclusion and crime*
<http://www.youthaccess.org.uk/downloads/civillegalproblemsocialexclusionandcrimefinal.pdf>
JustRights. James Kenrick. (2009) *Young people's access to advice – the evidence*: see fn 22 above.

Young people are particularly prone to experiencing multiple and severe problems, which are more likely to require specialist legal intervention to prevent the individual's situation from escalating and spiralling out of control.¹³⁴

- *Young people with legal problems are highly vulnerable*
80% of young people with civil legal problems, as well as being vulnerable on account of their age, fall into one or more additional category of vulnerability, such as being a lone parent or a victim of crime, or having a disability or mental health problem.¹³⁵
- *Legal problems have a greater impact on young people*
Disadvantaged young adults are significantly more likely than the population as a whole to worry about their problems and to report (as a result of their problems) stress-related illness; violence (aimed at them); loss of home; loss of confidence; and physical ill-health.¹³⁶

Inter-related needs

We now have an increasingly sophisticated understanding of the interaction of young people's legal problems with other issues in their lives. Reflecting the complexity of the adolescent transition, young people's social welfare legal problems in particular rarely develop in isolation from inter-connected practical, emotional and personal issues concerning, for example, relationship breakdown, stress, depression, abuse, drugs and alcohol or education.¹³⁷

In particular, any attempt to meet young people's legal needs is doomed to failure without an understanding of the strong associations with mental health¹³⁸ – and the consequent implications for service design.

The impact of current policy on access to justice for children and young people

Summary

Young people's legal needs are substantial, complex – and all too rarely met. Few would dispute the notion that no child or young person should have to navigate our complex legal system alone. Yet, the effect of government austerity policies in the UK, specifically of LASPO, has been to increase the number of children

¹³⁴ See J. Kenrick, above.

¹³⁵ Pleasence (2011) op. cit. See fn 133 above.

¹³⁶ Youth Access.. N.J. Balmer, T. Tam and P. Pleasence. (2007) *Young People and Civil Justice: Findings from the 2004 English and Welsh Civil and Social Justice Survey*. Accessed September 2017: <http://www.lawforlife.org.uk/wp-content/uploads/2013/05/pleas-report-annexe-1-legal-services-research-centre-report-9-249.pdfm>

¹³⁷ See, e.g.: Youth Access. N.J. Balmer and P. Pleasence. (2012) *The Legal Problems and Mental Health Needs of Youth Advice Service Users*. Accessed September 2017: <http://www.youthaccess.org.uk/downloads/youthadviceandmentalhealthreportfinal.pdf> ; and P. Pleasence. (2011) *Civil legal problems*: see fn 133 above.

¹³⁸ Youth Access. M. Sefton. (2010) *With Rights in Mind: Is there a role for social welfare law advice in improving young people's mental health? A review of evidence*; Youth Access/Association for Young People's Health. N. J. Balmer, P. Pleasence and A. Hagell. (2015) *Health Inequality and Access to Justice: Young People, Mental Health and Legal Issues*. Accessed September 2017: <http://www.youthaccess.org.uk/downloads/healthinequality-accesstojustice.pdf> Youth Access. N.J. Balmer and P. Pleasence. (2012), *The Legal Problems and Mental Health Needs of Youth Advice Service Users: The Case for Advice*: see fn 137 above.

and young people abandoned in this very way. This has arguably left the UK Government in breach of international legal obligations, reduced access to justice and, as a consequence, left many vulnerable children and young people at greater risk of homelessness, abuse, exploitation and ill-health.

Impact of LASPO on children and young people's access to justice

The changes introduced through LASPO have already had a major impact on children and young people's access to justice. We are particularly concerned about those children and young people who need legal advice or representation in their own right in order to deal with their own problems independently from the needs or support of their parents or carers.

Few adults, let alone children, are capable of navigating the legal system alone, yet the LASPO Act has left thousands of children and young people without advice or representation.

During the passage of the LASPO Bill in 2011-12, the Government was constantly forced to reassure MPs and Peers that legal aid for children needing it in their own right would be protected.¹³⁹ The Government's own official estimates at the time, however, suggested that the changes to the scope of legal aid would lead to a reduction in volume of 75,000 cases involving children and young people as the recipients of legal aid in their own right. This figure included 6,000 children aged under 18 and 69,000 young people aged 18 to 24.¹⁴⁰

The main protection provided in the LASPO legislation was for child parties in family cases. No safeguards, however, were provided for children and young people in most other types of case. Yet, ministers nevertheless stated, repeatedly, that 95% of children's cases were protected and insisted that "of the remaining cases, many would potentially be eligible for exceptional funding".¹⁴¹

Three years later, data on actual usage of civil legal aid by children and young people before and for the first year after implementation of LASPO were provided by the Ministry of Justice in response to parliamentary questions.¹⁴²

In the very first year of LASPO implementation:

- The number of social welfare law cases involving children and young adults had fallen below even the reduced levels anticipated by the Ministry of Justice's modelling;

¹³⁹ See, e.g.: Lord McNally responding to LASPO Bill Committee Stage debate: House of Lords. *Hansard*, 16 Jan 2012: Column 447.

¹⁴⁰ Data provided by Ministry of Justice on 10 October 2011 in response to Freedom of Information requests made by JustRights and The Children's Society. Accessed September 2017: http://justrights.org.uk/sites/default/files/Data_on_legal_aid_and_CYP%202011.pdf

¹⁴¹ See, e.g.: statement given to BBC on 17 April 2012. Accessed September 2017: www.bbc.co.uk/news/education-17728128 :

¹⁴² Written parliamentary answers by Mike Penning MP on 5 February 2015 in response to Parliamentary Questions 22917 & 22918 asked by Andy Slaughter MP.

- The number of immigration and asylum law cases involving children had fallen to barely half of the Government's anticipated post-LASPO levels;
- By contrast, the number of family law cases involving children, which were protected, rose by 21% in the first year of LASPO to a level that was 57% above Government predictions.

JustRights' full analysis of this data is available in a briefing entitled *Justice for the Young: A Snapshot*.¹⁴³

Further data was disclosed by the MOJ in a letter dated 9 March 2015 in response to a Freedom of Information request submitted by JustRights.

In March 2015 the House of Commons Justice Committee, in its report¹⁴⁴ on the impact of LASPO's civil legal aid changes, expressed deep concern that the legal aid changes "did not distinguish between children and adults" and about evidence that "children were facing particular difficulties in accessing legal advice and representation". The Committee concluded:

"Children are inevitably at a disadvantage in asserting their legal rights, even in matters which can have serious long-term consequences for them. We are particularly concerned by evidence that trafficked and separated children are struggling to access immigration advice and assistance. We recommend that the Ministry of Justice review the impact on children's rights of the legal aid changes and consider how to ensure separated and trafficked children in particular are able to access legal assistance."

Based on evidence of the vulnerability of young people with legal problems,¹⁴⁵ JustRights believes that the following groups are likely to have been disproportionately impacted by the cuts to legal aid brought in by LASPO:

- homeless young people;
- sexually exploited children;
- young people with mental health problems and learning disabilities;
- children affected by care proceedings;
- children in care and care leavers;
- trafficked children and young people; and
- young refugees and asylum-seekers.¹⁴⁶

¹⁴³ JustRights. (2015) *Justice for The Young: A Snapshot*. Accessed September 2017:
<http://justrights.org.uk/sites/default/files/Justice%20for%20young%20a%20snapshot.pdf>

¹⁴⁴ House of Commons Justice Committee, *Impact of changes to civil legal aid* (2015): see fn 4 above.

¹⁴⁵ Pleasence (2011) sets out evidence from the *Civil and Social Justice Panel Survey* of the vulnerability of young people with legal problems. See fn 133 above.

¹⁴⁶ JustRights (2013) *Legal Aid cuts: child protection implications*. Accessed September 2017:
[http://justrights.org.uk/sites/default/files/Legal Aid - Child Protection Implications sept 2013 FINAL.pdf](http://justrights.org.uk/sites/default/files/Legal%20Aid%20-%20Child%20Protection%20Implications%20sept%202013%20FINAL.pdf)

We are particularly concerned about the impact on vulnerable children and young people of the removal of most social welfare, immigration and prison law matters from the scope of legal aid.

What difficulties do you, your organisation, your clients or the people you represent face in navigating bureaucratic legal procedures?

Long-standing structural issues

The Legal Aid Agency and the Ministry of Justice have always struggled to recognise that young people might have legal needs in their own right, independently from their parents. The structure of legal aid funding around subject categories, rather than the needs of clients, has arguably encouraged such narrow thinking on the part of civil servants and has led to a preponderance of all-age/all-client services, which supposedly serve everybody equally, but unfortunately don't cater adequately for some groups who have specific needs. Less than half of one percent of all private practice solicitors' firms specifically target young people.¹⁴⁷

TCS *Experience from our practice*

The Children's Society is particularly concerned about the significant changes to the availability of support for children, young people and families, and the resultant impact on children's welfare, outcomes and life chances. Our practitioners are seeing a very significant impact of these changes on the young people they support in a number of different ways, relating to both young people living independently as well as those in families. For example, we are seeing young people being unable to challenge poor local authority and Home Office decisions or to understand their rights and present their applications in the first place. We are supporting children and parents in family proceedings – for example families struggling to access advice during a separation, including advice and support on child access agreements in family cases.

While the legal aid system prior to LASPO was already devised only to provide free legal support to those who could otherwise not afford it, these reforms have meant that thousands of children, young people and families no longer have access to advice and representation to challenge decisions, including potentially unlawful decisions by public bodies, which affect their basic rights. The result of this is that if a family is not in a position to pay for their representation their options are very limited about any challenge they can make. Our response looks at some of the more specific ways in which children and young people across our services are being affected.

Numbers of children affected by legal aid cuts

According to figures provided by the MoJ to JustRights and The Children's Society in 2011, the Government estimated that out of around 41,100 cases involving child clients under the age of 18 bringing cases in their own right, 5,900 cases (14%) would go out of scope through LASPO. In addition, of the 123,600 cases involving young claimants (18-24 years old), 68,800 cases (56%) would go out of scope.

¹⁴⁷ Analysis of 2006 Legal Advice Workforce Survey data – see Youth Access. (2009) *The Youth Advice Workforce: Now & In The Future* for further details. Accessed September 2017:
<http://asauk.org.uk/wp-content/uploads/2013/08/The-Youth-Advice-Workforce-Now-And-In-The-Future.pdf> :

However, the distribution of the impact was expected to be much higher in some areas. For example, within immigration and asylum cases, specifically those involving child claimants under 18, of the 10,650 cases within scope prior to LASPO, 2,510 cases (24%) were anticipated to go out of scope while all welfare benefits cases – 1,330 cases involving child clients under 18 were expected to go out of scope.

Figures highlighted by JustRights (2015) show that in the first year following the implementation of LASPO in April 2013, the number of cases completed where children and young people (25 and under) received legal aid decreased by 13% in the financial year 2013-14 from the previous year. However, as the JustRights report explains, the overall figures mask the major differences between different categories of law which went out of scope and the circumstances where children were most affected. For example, the number of children and young people's immigration and asylum cases being funded by legal aid fell by 20% between 2012/13 and 2013/14 while social welfare cases completed by children and young people fell by 55% in the same period.¹⁴⁸

Impact of cuts to legal aid on destitute families

The majority of destitute families who approach The Children's Society for support have 'no recourse to public funds' and where they do not yet have permission to remain in the UK from the Home Office, they will also be restricted from the labour market. In such cases families, who are unable to leave the UK for a number of reasons, including that their children may be British or they have spent significant periods of time in the UK, may not have alternative support or may have exhausted support from friends and relatives. Instead they may be forced to rely on support provided by local authorities under Section 17 of the Children Act 1989 which sets a general duty on local authorities to provide services to children found to be 'in need' in their area. Many of these families will have grounds for a human rights claim for leave to remain in the UK usually on the basis of Article 8 – right to family and private life, meaning their long term future may be in the UK.

However, as all non-asylum immigration cases are no longer eligible for legal aid, families will have no other option but to pay large sums of money for a private solicitor if they can somehow raise the funds to pay. In addition, the Home Office application fees for limited or indefinite leave to remain can run into thousands of pounds for families with children. For example, depending on the number of dependents within a family, applications can cost between £1622 and £3244.¹⁴⁹ Given the difficulty faced in obtaining financial support for legal representation and assistance, large numbers of undocumented families will struggle to secure funds for the application process for regularisation. Families are left with little choice but to continue with their undocumented status. According to our recent research 'Making Life Impossible', practitioners supporting destitute families frequently mentioned inefficient or unscrupulous solicitors exploiting the limited funds of destitute families. Furthermore, the length of time taken for applications to be given a final decision means that those families may pay out legal fees over several

¹⁴⁸ JustRights. (2015) *Justice for the young: a snapshot*: see fn 143 above.

¹⁴⁹ Home Office. *Application to extend stay in the UK*: Form FLR(O), Accessed May 2016:

<https://www.gov.uk/government/publications/application-to-extend-stay-in-the-uk-form-flro> [This form has now been replaced]

years. As practitioners interviewed for the research noted: *“A lot of the debt – not always, but a lot of the time – they’re being exploited by solicitors who keep charging them extortionate amounts of money. So they have to borrow money from other people.”* Another practitioner commented: *“One solicitor is holding her [service user] passport and biometric card until she pays him back, so she’s taken a loan from [a high interest lender] – it’s just taking a really long time and she can’t get her documents.”*

In addition to the Home Office application fees, families who want to regularise their status have to pay the new health surcharge introduced in the Immigration Act 2004 which is set at £200 per year per family member.¹⁵⁰ So for a family of four, seeking leave to remain for 2.5 years which is what would normally be granted, they would have to pay an additional £2000, making this option entirely unattainable for many families. We are concerned that as a result, there will be an increasing number of families with legitimate reasons to remain in the UK who will simply be unable to resolve their immigration issues because of prohibitive fees and will be forced to remain undocumented.

Case Study from ‘Making Life Impossible’:

Grace arrived in the UK with leave to remain linked to the fact she is a spouse of her husband. Her two daughters are aged five and seven. She experienced domestic violence in this relation and the couple have separated for this reason. The older daughter witnessed the abuse, and the children see their father only if he calls at the house gate. Grace had made an application for leave to remain, as she no longer has regular status in the UK because she has separated from her husband. She and her daughters have lived in the UK for over seven years, and there is a risk of female genital mutilation for her oldest daughter if they return. Her initial application was refused and she then appealed. Grace had been working as a care worker, but left due to deterioration in her mental health. When she tried to return to work, her previous employer called the Home Office, who informed them she was no longer entitled to work in the UK. Unable to work, she is currently living off her savings – however these are running out: she had recently paid rent but no other bills, accruing debt because of credit card debts and energy bills. She has been referred for psychological support, but is unsure about access this because she is worried about doing so. Her oldest daughter gives a lot of care and support for her mother, missing out on revision classes for GCSEs in the process.

Impact of reforms to human rights and equality issues alongside legal aid cuts

In addition to the cuts to legal aid, other reforms are likely to have a significant impact on how the children, young people and families we work with are able to enforce their legal rights. In particular, the range of welfare reforms currently being implemented, the proposed reforms to the Human Rights Act 1998 and ongoing reforms that are part of the Government’s ‘hostile environment’ agenda to tackle irregular

¹⁵⁰ Government website – *Health Surcharge Fees*. Accessed May 2016: <https://www.gov.uk/healthcare-immigration-application/howmuch-pay> Accessed again September 2017.

migration by limiting access to public and private services based on immigration status. It will be important to monitor how these affect communities in practice and how this combined with cuts to free legal advice and representation, will impact on some of the most disadvantaged young people and families in our communities.

What is the most frustrating thing about the system? Has it become more frustrating since the changes in 2012?

Prior to LASPO changes coming into effect, legal aid was available to a much wider range of families and young people, and meant that many of the poorest and most marginalised in society could access legal support when they needed it.

However, since the removal of a large swathe of support, the most vulnerable members of our society are no longer able to challenge unfair treatment and organisations such as The Children's Society that provide advice struggle to advocate for them effectively. In some respects, we are left powerless as to how we can help them. As advocates we rely on being able to use the legal system as a last resort, as a safety net when children's rights are being breached by referring on to appropriate legal advice where intensive advocacy and negotiation has not worked. With respect to immigration law, we must rely on qualified legal practitioners regulated to give advice and provide representation in immigration cases because the immigration advice services sector is highly regulated and it is a criminal offence to give unregulated advice. So in these cases we have no choice but to refer on to specialists.

Unaccompanied children often face additional difficulties to British children: they are particularly likely to have faced trauma, they may experience language and cultural barriers as well as hostility and racism. These young people also need additional support to access legal advice and representation, particularly without access to legal aid in immigration cases. Care leavers will need their personal advisor or advocate to help identify and even instruct their immigration lawyer and without legal aid, the local authority may need to pay for their representation or evidence. However, the changes to the system since 2012 have made this more challenging, and there is less support available for these young people at a critical point in their transition to adulthood.

Some of the greatest frustrations stem from the fact that it is plainly obvious that lone children and young people without guardians looking out for them cannot effectively engage with legal systems on their own. This is something that even educated adults will find challenging. Yet the Government's rationale is that somehow these complex legal matters, which are so highly regulated, are simple and straightforward enough for a child, who has extremely limited support networks in this country, to manage on their own. This is not a rational argument.

UKAJI In 2014 the Children's Commissioner published a report outlining research, carried out by Just for Kids Law, on the impact on children and young adults of the changes to Legal Aid since April 2013. It concluded that a wide range of rights under the UN Convention on the Rights of the Child are likely to have been negatively impacted by the civil and prison law legal aid changes. One recommendation to mitigate this impact is to ensure that the exceptional funding procedure under Section 10 of LASPO is

funding cases where children and young people's rights may otherwise be infringed and is accessible to children and young people acting without assistance.

The Children's Rights International Network published a country report on access to justice for children in England and Wales in 2015.¹⁵¹ This noted:

'Children with immigration law issues have also been directly affected by the denial of legal aid due to the new rules. Of particular relevance to children, the Government targeted reductions in legal aid to cases involving housing, and social welfare benefits. The cuts to legal aid come in an effort to trim costs, and children's rights advocates at one point estimated that 13% of children would lose access to legal aid under an earlier version of proposed reforms.'

Enforcing children's rights within immigration cases

Due to the nature of our work with young people who are subject to immigration control, this is where we have seen the most detrimental impact on children and young people. As their status is often the key issue which prevents them from accessing other services such as housing, financial support and higher education, it is inevitably the first issue our advocates and support workers need to deal with. When we consulted our services for this Commission, one practitioner told us *"I believe it has become increasingly difficult and that families no longer even see legal representation as a possibility."*

Our answer to question 1 already highlights some of the findings from our practice and research how children, young people and families have been affected by legal aid no longer being available in immigration cases where the main rights engaged are children's rights to family and private life (Article 8) and the obligations to them under Section 55 of the Borders, Citizenship and Immigration Act 2009¹⁵² to safeguard and promote the welfare of children with respect to immigration, asylum and enforcement functions. Importantly Article 8 of the European Convention on Human Rights (ECHR) also engages children's rights as set out under the UNCRC which is not yet fully integrated into domestic legislation. This means that the considerations around which is in a child's best interests can no longer be properly considered without the benefit of legal advice and representation.

The needs of the most vulnerable

Respondents' biggest concerns about the state of access to justice:

BHB Added to this, literally thousands of the most vulnerable people in our society are unable to access legal aid for all of the reasons that we have cited in our various evidence statements and consultation responses, and we cannot claim to comply with the United Nations Human Rights Declaration Article 8 right to a fair trial, particularly where the vulnerable are left with no option but to represent themselves.

¹⁵¹ Accessed September 2017: <https://www.crin.org/en/home/law/access>

¹⁵² *Every Child Matters* Section 55 Guidance. Accessed September 2017:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257876/change-for-children.pdf

CLOCK Denial of safeguarding measures for vulnerable persons, particularly in domestic violence, child arrangements, landlord/tenants, which erodes access to creating legal precedent, embeds societal inequalities and creates long-term economic, health and social costs.

CLSJ The existing financial, social and practical barriers to justice for vulnerable groups such as victims of domestic abuse, those with physical and mental impairments and learning difficulties, and low-income groups, which have been reinforced by current policy and law.

EDF Restrictions on access to justice mean that people who cannot afford to assert their rights will either have to suffer the injustice (and will lose trust in the system), or will have little alternative to taking matters into their own hands, for example, by taking industrial or some other form of direct action.

ILC The needs of the most vulnerable – a toxic combination of the impact of major changes in the social security system (with a lack of resource to manage this by agencies such as the DWP); the removal of some areas of law from the scope of legal aid as a result of LASPO, and the lack of any national funding strategy now that the Big Lottery Advice Services Transition Fund has come to an end, means that the most vulnerable are at risk of receiving no service at all, just when they most need it. The recent findings by the Joseph Rowntree Foundation that around 1.25 million people experienced destitution in the UK last year demonstrate that not having money for a telephone call, not having a secure address for correspondence and not having access to the internet are not “niche” problems, but a major issue for many people at points in their lives when legal advice is most needed.

LCN The most vulnerable people are not being adequately helped to access legal assistance to help them, and the system was so badly cut that it is crumbling from within.

PCS Cuts to legal aid (introduced under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012) have restricted access to justice to some of the most vulnerable people in society, creating a justice system that is increasingly only accessible to those that can afford it.

S & O The most vulnerable in society currently have very severely limited access to free advice and support for legal matters affecting their lives at a fundamental level, such as welfare benefits, housing, employment and family law.

Resource allocation decisions seem to have been made without targeting the cuts to do the least damage in the most deprived areas.

YLAL The extensive denial of access to justice resulting from the removal of areas of law from the scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which has the potential to create increased social problems with greater knock-on costs for the state in the long run.

The way in which Respondents’ work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

ILC There is a cost shifting aspect to the difficulties that people have in accessing legal help when they need it – GP's for example, report a high number of enquiries which are not initially medical in nature, and many of these relate to e.g. poor housing; lack of income; people who are not well enough to work being forced to comply with unrealistic work seeking requirements and the stress and anxiety of unresolved issues such as debt and sanctions. These would be dealt with more cost effectively by the restoration of a system of publicly funded legal help which was easily accessible.

Additionally, other types of agency such as night shelters report huge difficulties in being able to move people on as they are unable to e.g. resolve issues such as access to public funds, right to work in the UK and/or to establish that someone is in priority need for housing. This prevents them being able to help as many people as possible, and also takes up resources as they can spend hours trying to find an appropriate source of help. A local night shelter that we work with estimates that half of their guests are there because they cannot demonstrate their entitlement to other rights/options.

The cost and stress of litigation

ACL The fact that, over the years, the costs of litigation has risen to an unprecedented level. We believe this is, in part, due to satellite litigation arising from a common perception within the profession that litigation is a tactical "game" to be played and won at any cost.

This leads to misconceived applications made in an effort to get ahead of the game and results in increased cost of litigation as well as a clogged up court system.

CFJ There is now a clear recognition that access to justice and civil justice are in crisis. The principal problem is the cost: the prohibitive expense of going to court.

Cost of adversarial process

The high cost of going to court is due to the time intensive, complex and combative nature of the systems used, relying as they do on putting the parties into an adversarial contest, in turn requiring all parties to hire teams of expensive professionals to negotiate an intricate set of procedures over a long-drawn out process and period of time.

The costs figures for even quite simple High Court cases commonly exceed six figures for each party.

Going to court to pursue or defend a claim is, therefore, beyond the means of all but the wealthiest individuals, large corporations and the state. This leaves the majority of the population without any remedy or redress and leaves the rule of law and access to justice in serious jeopardy.

The stress of litigation

Apart from the cost, most people are also put off going to court by the delays, stress, unpredictability and risk, and the damage that going to court causes parties, their finances, and their lives and families, whether they win or lose.

General concerns post-LASPO

BHB It is almost impossible to state what are our biggest concerns because there is so much wrong with the system post-LASPO. Perhaps worst of all is the knowledge that the system post-LASPO has been demonstrated to be much more expensive than that which predated LASPO, it is causing massive and unnecessary suffering and is clearly only something that can be considered properly to be ideological rather than about saving money.

CLOCK The two-tier system of access to justice, for those who can and cannot afford legal representation creates:

1. barriers to initiating proceedings due to lack of initial advice and costs in proceedings;
2. inequality in relation to access to understanding of case law, expert reports, witnesses, and advocacy;

EDF One of or three biggest concerns about access to justice is –

Restrictions on access to justice are likely to increase costs for the State

HLC The three key areas of concern to us are

1. The scale of unmet need;
2. The cost of restricting legal advice;
3. More onerous process of securing legal aid.

HSSL Our three biggest concerns are:

1. The impact of the cuts to social welfare law implemented by LASPO 2012;
2. The impact of cuts to criminal legal aid;
3. The impact of other cuts contained in the Transforming Legal Aid Consultation (April 2013), notably the restriction of legal aid in judicial review cases and the proposed residence test.

We understand concerns at the costs of litigation, and support the recommendations of the Low Commission and others for well-funded advice at an early stage of a problem. We also support alternatives to litigation, such as alternative dispute resolution. However, we believe that if litigation is inevitable, then all parties to the litigation should be properly funded and receive high quality legal representation, regardless of their ability to pay. A justice system that upholds the rule of law, and equality of arms in court, must receive sufficient investment, so as to enable citizens to protect or extend their rights in court, if necessary. We regard this as a basic tenet of a functioning justice system in a modern democratic society.

IM The reductions in scope of legal aid by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

LAPG We would identify two of our three biggest concerns in these terms:

1. Difficulties for the public in
 - understanding what can be funded (see LAG's description of it as a 'secret service')¹⁵³
 - finding an adviser/lawyer to take on their case (NB even before LASPO it could be difficult to obtain advice and representation - access to advice and representation has been rationed for years) and
 - proceeding with those cases where post LASPO only some parts of those cases can be brought under the legal aid scheme
2. Cuts to legal aid, increased court and tribunal fees, court and tribunal closures together with court office restricted opening hours, attempts to curb judicial review and the overly-restrictive approach to funding exceptional cases: these all amount to an erosion of the rule of law. If the discriminatory residence test is ever introduced it will create a further practical barrier to obtaining legal aid for those who are lawfully resident in the UK.

We therefore call for an immediate review, covering not only the impact of LASPO but also a root and branch review of the delivery mechanisms of legal aid and the complexity of the system.

For a summary of LAPG's specific concerns about the legal aid system please see the executive summary in our Manifesto.¹⁵⁴

PW The State needs to lead by example and needs to put its own house in order and Misconduct in Public Office (and disciplinary sanctions) should be more robustly applied and pursued when there is malfeasance.

Resolution Every day, Resolution members and the people we support see the impact of the measures implemented in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). We believe the legal aid reforms have had a severe impact on the ability of vulnerable people to access justice since they came into effect on 1 April 2013.

Our view is that the cuts have limited access to justice for some of those who need legal aid the most. Too much effort has focused on the point of crisis rather than prevention, and the number of people who have no choice but to represent themselves in court has risen sharply.

¹⁵³ Accessed September 2017: <http://www.lag.org.uk/policy-campaigns/legal-aid-secret-service.aspx>

¹⁵⁴ Accessed September 2017: http://lapg.co.uk/wp-content/uploads/2015/03/40163_Manifesto_Final_WEB.pdf

We call on the Bach Commission to recommend urgent reform of LASPO to ensure nobody is denied access to justice based on their ability to pay, and to work towards building a positive consensus around the necessary reforms. The narrative needs to be framed around how to give more people access to justice, as opposed to how to restrict legal aid.

Inability to assert and enforce one's rights

Respondents' biggest concerns about the state of access to justice:

EDF Restrictions on access to justice lead to important legal rights, such as those enshrined in the Equality Act 2010, becoming devalued, ignored and being seen as merely theoretical;

ILC The loss of enforcement in key areas of law leading to an undermining of good practice and an escalation of unlawful activity – in our work with Latin American Women's Rights, for example, a local charity, we see migrant workers who are receiving less than the minimum wage and who are subject to harassment at work. They are unable to enforce their rights not only because they are worried about victimisation, but because they would need to raise the issues formally, with the confidence that they would have backing in the event that the situation was escalated. This is very difficult for people who do not have English as their first language, and who do not have a good understanding of the legal framework in the UK.

Equally, our housing outreach service is now working with 20% of clients who don't have a tenancy of any kind, but are staying in accommodation on an informal or unregulated basis. This is partly as a result of the housing crisis and the impact of policies such as the benefit cap, but also because landlords know that it is increasingly unlikely that there will be a legal challenge to their actions.

JC My biggest concerns about the state of access to justice are that it is not something available to everyone, whether a person can enforce their rights and access justice depends on factors far outside their control, related to their financial eligibility and whether the issue they need assistance with is covered by legal aid. Access to justice is only unimpeded for those comfortably off. Legal aid is only available to the very poor, even then a lot of problems people face are out of scope.

LCN Access to appeal and redress is restricted, meaning that public authorities, landlords and employers can act with impunity while people in poverty are disadvantaged further by lack of access to justice.

MWLC Inequality of arms. Social landlords seem to have a disproportionately easy means of evicting tenants, whereas individual tenants struggle to obtain legal advice and assistance and find the court process intimidating and difficult to navigate.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

APIL Funding difficulties can also prevent important points of law from being established in the courts. We are aware of several examples of this occurring in the past 12 months. One case involved a dispute about the costs available to the claimant in pursuit of his claims. Insurers argued that the claimant was entitled to a fraction of the costs actually awarded and lodged an appeal. The claimant's lawyers could not secure funding to fight the appeal.

AUK Many of AdviceUK's 736 members report a lack of capacity to meet current demand for in-depth legal advice on [challenging decisions that fundamentally affect their lives].

CLSJ A significant impact is therefore also the high numbers of people who will simply take no action now that legal aid is not available. The prospect of going to court without legal representation may discourage people who need legal help from even engaging with the legal system.¹⁵⁵

In summary, we argue that although out-of-court methods of resolution have great potential for cost-savings and streamlining the family and civil justice systems, it remains imperative that individuals in all circumstances have a clear route to court if they require the help and intervention that adjudication can offer. At present, individuals who were previously eligible for legal aid-funded advice and representation are now dispersed across other sources of legal help, and the current scheme of legal aid does not take into consideration the many and varied barriers that exist for individuals who need to access the justice system.

This is something that was foreseeable prior to the implementation of LASPO. During the consultation stages of the reform, the amount of responses from the legal profession, judiciary, interest groups, charities and the voluntary sector which condemned the reform on the basis that it would have the impact detailed here.¹⁵⁶ This impact is – in the early stages of the post-LASPO era – now becoming apparent, and this is reflected in the findings of the Law Society and the Supreme Court, who continue to condemn the way in which this reform has been implemented in the context of family law.¹⁵⁷ We argue that LASPO has had implications not only for the accessibility of justice for many individuals, but also for the public perceptions of law and justice more broadly, and that many vulnerable groups now risk disengaging with the legal system, as an institution which is inappropriate or inaccessible to them. It may also have longer

¹⁵⁵ This problem was remarked upon at a time when access to legal aid was far more generous: see Hazel Genn, *Paths to Justice: What people do and think about going to law* (Bloomsbury 1999). Further discussion about trends of action: Legal Services Commission. Pleasance P, Balmer N and Buck A. (2006) *Causes of Action: Civil Law and Social Justice*. 2nd ed. Accessed September 2017: London:<http://webarchive.nationalarchives.gov.uk/20100210214541/http://lsr.org.uk/publications/Causes%20of%20Action.pdf>

¹⁵⁶ See the extent of this in the table contained in Ministry of Justice (2011) *Reform of Legal Aid in England and Wales: The Government Response*, Cm 8072), Annexe M. Accessed September 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228890/8072.pdf .

¹⁵⁷ See recent judgment in *R (on the application of The Public Law Project) v Lord Chancellor* (2016) UKSC 39: see fn 61 above. Also see the Law Society report on the judgment which condemns the implications that LASPO has had for the safety of DV victims. Accessed September 2017: <http://www.lawsociety.org.uk/news/stories/harsh-evidence-tests-leave-40-per-cent-of-domestic-violence-victims-at-risk/>

term and deep-seated implications in terms of the social costs to vulnerable families in difficult circumstances.

CLP *Evictions of Unauthorised Encampments*

As is well known, a significant proportion of the Gypsy and Traveller population who live in caravans have no alternative but to resort to unauthorised encampments due to the totally inadequate national supply of permanent sites, transit pitches and emergency stopping places. Prior to the bringing into force of LASPO 2012 in April 2013, when a local or other public authority took eviction in the county court, a Gypsy or Traveller facing such action who considered the action was unlawful (e.g. due to a failure to make welfare enquiries in line with government guidance and case law) could defend the action in the county court. LASPO 2012 left matters involving “loss of home” in scope for legal aid but excluded from the definition of “loss of home” ‘trespassers’ such as Gypsies and Travellers on unauthorised encampments (in fact, it might be speculated that this exception was specifically created to target Gypsies and Travellers). As a consequence, Gypsies and Travellers with grounds to challenge such eviction action will have to lodge a judicial review application in the High Court and seek a stay of the county court proceedings. Forcing Gypsies and Travellers to take such a circuitous route in order to challenge unlawful eviction action makes no sense, unless, of course, the Government’s aim was simply to make it more difficult for them to do so. The fact that Gypsies and Travellers might find it very difficult to find a legal aid provider who would take on such a judicial review matter, for the reasons set out above, will only compound those difficulties.

Mobile Homes Act 1983

Following a very long campaign and leading on from the European Court of Human Rights judgment in the case of *Connors - v - UK*,¹⁵⁸ the Government finally amended the law to bring proper security of tenure on to local authority Gypsy and Traveller sites by bringing into force the Mobile Homes Act (MHA) 1983 on those sites. This occurred in 2011 in England and in 2013 in Wales. However, somewhat ironically, when the LASPO Act 2012 came into force it provided that only possession actions and serious disrepair cases under MHA 1983 remained within scope for legal aid. Thus, although Gypsies and Travellers living on local authority sites have won important rights under the MHA 1983, many of them will find themselves unable to enforce those rights due to the fact that most MHA 1983 disputes are now out of scope for legal aid.

DDPO However, it appears that the qualified one-way cost shifting regime is not available in discrimination cases. Combined with the lack of legal aid this means that virtually no cases are being brought in relation to disability discrimination in terms of goods and services, transport and so on. Occasionally a litigant in person brings a claim, or the Equality & Human Rights Commission funds an individual claim at first instance (although this is very rare indeed), but this is wholly inadequate in terms of providing access to justice in this area for the vast majority of disabled people.

We refer you to the recent report by the House of Lords select committee which heard evidence on access to justice for disabled people for breaches of the Equality Act 2010: <http://www.parliament.uk/equality->

¹⁵⁸ (2004) 40 EHRR 189.

act-committee. Not being able to use the transport system or access the vast majority of shops, restaurants and other businesses has a very real impact on disabled people's lives.

JR As a society, we are somewhat ambivalent towards young people's rights. We don't trust young people to use rights responsibly, so are uncomfortable about affording them new rights or even allowing them to exercise their existing rights.

The climate surrounding young people and their rights is, at best, one of ambivalence and, at worst, one of hostility. On too many occasions, this is reflected in the negative experiences young people report of their treatment by public sector bodies.¹⁵⁹ Older adolescents and young adults are more likely to be on the receiving end of poor or limited support and protection and a failure to uphold their rights.

Young people believe that "our inexperience and lack of knowledge of our rights make us especially vulnerable to exploitation and injustice. People in authority often don't take our rights seriously.... It should be illegal for staff in statutory services to put the interests of the system above the rights and protection of young people."¹⁶⁰

LCN Law Centres have seen increasing difficulties in enforcing the legal rights of their clients, caused by civil legal aid changes compounding with other policy changes across government

MWLC Legal aid contributions from income and capital have increased hugely. This means that many people are deterred because they simply cannot afford it. Alternatively, it means that providers may have to undertake work under legal help rather than applying for a certificate which severely limits the assistance they are able to offer.

TCS *Do you work with young people and/or families who are struggling due to being unable to access support with problems to do with welfare, debt, employment, immigration, housing and education?*

Yes. The areas of law which the young people and families our services support are most likely to be affected by are immigration, family, housing, debt and welfare law. The Children's Society's practitioners have raised concerns that both young people independently as well as children living with families have been adversely affected by the restrictions to legal aid. The impact on children within the different areas of law is detailed in our response to question 1 above.

Our practitioners have strongly argued that young people and families who are on a low income, should be eligible for legal aid on the basis of need rather than the area of law. From our research and experience in working directly with children and young people, their problems are generally not confined to one area of law but can span one or two different issues such as welfare, housing, debt, education, employment and in some cases immigration. Therefore, a more holistic approach is needed to better protect the rights of children and young people.

¹⁵⁹ See, e.g., the views of young people expressed in their manifesto, *Make Our Rights Reality*, see below.

¹⁶⁰ JustRights/Youth Access., 2015) *Make Our Rights Reality*, Accessed September 2017:
<http://justrights.org.uk/sites/default/files/Make%20Our%20Rights%20Reality-%20Long%20Version.pdf> :

Has it become easier or more difficult for the people you work with to properly enforce their legal rights?

Children's rights and welfare

Our practitioners have unanimously told us that it has become far harder for the families and young people that we work with to enforce their legal rights. Importantly children's developmental nature and evolving capacities mean that they are fundamentally different to adults and require additional protections. This is recognised in both domestic and international legislation and set out under the UN Convention on the Rights of the Child (UNCRC). This means that government bodies at different levels have obligations to promote and protect children's welfare and best interest, both in the immediate and long term future. As such we believe that all children should have access to free legal help and representation in all areas of law when they need it and when their welfare depends on this to make sure their basic rights as set out under the UNCRC are protected.

Considering children's rights within a family context

It is important to recognise that children and young people are being affected by the cuts to legal aid in multiple ways: thousands of children and young people are affected directly by no longer being able to access legal aid as claimants in their own right in key areas of law like welfare, immigration, education and employment (see question 1 for figures). However, they are also affected by their parents' ineligibility for legal aid in these legal areas as well as for issues relating to housing, debt and family law, among others. Children are often only seen as appendages of their parents rather than individuals with separate rights, needs and concerns. For example, during the LASPO consultation process there were no estimates available for how many children would be affected by their parents' inability to access legal aid so a proper assessment of impact on children was never conducted. As a result, children were particularly overlooked by decision-makers despite being severely disadvantaged by these changes. But in order to properly consider this question it is necessary to recognise their distinct rights and how these have been affected by legal aid cuts both where children are considered independently or within the family unit.

We recommend that the Commission consider the particular position of children both as 'rights holders' and claimants in their own right in legal cases as well as individuals within families with separate rights and needs but who are fundamentally affected by their parents' inability to access legal aid.

YLAL *How current policy enables access to justice*

We believe that current policy enables access to justice in only a very limited sense. Access to justice is severely limited both in terms of the areas of law for which people can obtain publicly-funded legal advice and representation and in relation to the proportion of people who are financially eligible for such legal help. We would reiterate the concerns about the current state of access to justice highlighted at Question 2 above. We strongly believe that the impact of LASPO, the current overly stringent means tests for legal aid and the recent drastic escalation of court and tribunal fees preclude vast swathes of the public from any meaningful access to justice.

How current policy undermines access to justice

Our members have highlighted the following key concerns about how current policy undermines access to justice:

The removal of vast areas of civil law from the scope of legal aid, combined with the stringent means test for civil legal aid, continues to prevent many people from accessing legal representation and consequently from vindicating their rights, with drastic increases in court fees further serving to simply price people out of justice. This is perhaps most stark in the field of social welfare law, where the number of ‘matter starts’ has fallen drastically since 2012.¹⁶¹

Inability to hold the state to account

Respondents’ biggest concerns about the state of access to justice:

GMIAU Gross injustices are taking place hidden from public view and the State is not being held to account.

HJA The restriction of funding to judicial review claims, which often provide the most effective means of challenging a constitutional or policy-induced injustice.

IM The unacceptable costs risks placed on providers by the Civil Legal Aid (Remuneration) (Amendment) Regulations 2015¹⁶² that provide a disincentive to pursue judicial review claims.

The way in which Respondents’ work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

Judicial review reforms

CLP *Judicial Review*

During the consultation process on proposals to amend the situation with regard to legal aid and judicial review, the vast majority of respondents indicated that most judicial review applications were successfully settled prior to permission being considered by the court. Despite this, the Government brought into force provisions which mean that legal aid providers would not be paid on a judicial review application unless either permission was granted or the matter was settled prior to permission without costs being awarded to the claimant and the Legal Aid Agency exercised their discretion in favour of the legal aid provider. Following the successful challenge in the case of *R (Ben Hoare Bell and Others) - v - the Lord Chancellor*,¹⁶³ the regulations were changed to bring in a few exceptions but it remains the case that a

¹⁶¹ Accessed September 2017: <https://fullfact.org/law/far-fewer-social-welfare-cases-get-legal-aid/>

¹⁶² Accessed September 2017: http://www.legislation.gov.uk/uksi/2015/898/pdfs/uksi_20150898_en.pdf

¹⁶³ [2015] EWHC 523 (Admin); see fn 62 above.

legal aid provider will have to begin a case entirely at risk in terms of costs and this is clearly dissuading a number of such providers from taking on these vital cases.

Judicial review is an essential tool for Gypsies and Travellers who are seeking to challenge unlawful actions of local and public authorities.

GCHT Judicial review is the remedy of last resort against public authorities. We have extensive experience of acting for homeless people, people challenging Care Act assessments or other social services' actions. Our clients are often literally homeless – sleeping on the streets or sofa-surfing and dependent on the goodwill of friends or relatives. All too often, we deal with cases where they have approached a local authority and the local authority has either failed altogether to accept an application or assess their needs, or has made an unlawful decision.

In our experience, it is extremely difficult to persuade a local authority to reconsider its refusal to act, or its otherwise unlawful decision. It is only when judicial review proceedings are contemplated – or sometimes actually issued - that a local authority may agree to reconsider. It would, of course, be far cheaper if public authorities had an open mind when challenged on unlawful decisions, but in our experience, this is not the case.

We refer the Commission to the evidence put before the Administrative Court in *R (Ben Hoare Bell Solicitors & others v Lord Chancellor)*,¹⁶⁴ summarised by Lord Justice Beatson LJ at para 39:

“The evidence by and on behalf of the claimants was relied on by Mr Westgate to show that it is particularly hard to predict the outcome of the permission stage of an application for judicial review. Karen Ashton, of Public Law Solicitors, stated that estimating the prospects of success is difficult because of “the imprecision of the test applied by the courts at the permission stage”, and Polly Glynn, of Deighton Pierce Glynn, referred to the fact that there is no “rigid definition of the test for permission”.

But any predictive assessment involves a risk of error. Litigation is notoriously risky. Even if the data relied on by the claimants as to the variation in permission grant rates between different judges is out of date, it is inherent in the nature of judicial decision-making that there will be a variation in how judges apply a test such as “arguability”. Some of this is a reflection of the nature and complexity of the case, some may reflect the experience of the judge, but in general the variation follows a normal distribution. The main focus of the evidence on behalf of the claimants concerns matters such as the marginal profitability of legal aid work, the front-loaded nature of judicial review proceedings, the way in which the amount of work done “at risk” may increase by circumstances out of the control of the provider.

Reliance was also placed on the fact that the reason for refusing permission may not impugn the provider's assessment of the merits at the time of issue as illustrating the difficulty of predicting whether permission will be granted or refused. Some of the evidence, however, indicates an ability to predict decisions on permission with considerable success: see Karen Ashton para 13, Polly Glynn, para 3, and Simon Garlick, of Ben Hoare Bell, para 7 and second statement, para 14.”

¹⁶⁴ Ibid.

We appreciate that Reg 5A was amended after the Administrative Court's decision, but the basic principle that providers will not be paid if permission for judicial review is refused has remained. We remind the Commission that the availability of legal aid for judicial review is subject to the merits criteria.¹⁶⁵ It is our view that legal aid providers take that responsibility seriously and that the merits criteria should be the only criteria (along with financial eligibility) regarding legal aid for judicial review.

We make the point that the impact of Reg 5A cannot be measured solely in relation to judicial review claims that are brought, whether or not they are granted or refused permission. Providers have referred to the "chilling effect" of the Regulation. In other words, that providers will become overly-cautious in their risk assessment, and will prioritise the risk of not being paid over the objective assessment of the merits of the client's case.

GCIT Judicial review is the remedy of last resort against public authorities. We have extensive experience of acting for detained applicants and those at risk (including imminent risk) of removal. All too often, we are forced to initiate judicial review because the Home Office has failed to accept or deal with an application, properly consider relevant evidence, their own policy or has made an unlawful decision. In trafficking cases the litigation concerning the claimant's victim's status not only provides for their protection but also enables proper investigation of the crime which victimised them. As it is generally agreed that modern slavery is heinous and ought to be eradicated, such outcomes serve an important public interest. Many of the claimants we represent are highly vulnerable; the case outcomes affect their families, including young children. We have considerable expertise representing children in different types of litigation. Their interests are often only protected through judicial review.

In our experience, it can be extremely difficult to persuade Home Office to reconsider its refusal to act, or its otherwise revisit an unlawful decision. It is only when judicial review proceedings are contemplated – or sometimes actually issued - that the Home Office may agree to reconsider. It would, of course, be far cheaper if public authorities generally and the Home Office in particular had an open mind when challenged on unlawful decisions, but in our experience, this is not the case. We refer to the comments of Lord Justice Beatson LJ in *R (Ben Hoare Bell Solicitors & others) v Lord Chancellor*, at para 39¹⁶⁶ – summarised in the submission of the Chambers Housing Team.

GMLC Amongst our biggest concerns about the post-LASPO landscape are that:

1. The balance between the state and the individual has been skewed in favour of the state and this imbalance needs to be addressed through strategic public law litigation
2. The concept of access to justice needs to be reinforced through continual public law challenges, which the executive constantly seeks to curtail to under guise of austerity cuts

¹⁶⁵ *Civil Legal Aid (Merits) Criteria Regulations 2013*, SI 2013/104, Regs 39 & 53. Accessed September 2017: <http://www.legislation.gov.uk/uksi/2013/104/contents/made> :

¹⁶⁶ See text and fn 164 above.

The use of increased 'fee structures' is a blatant attempt to deny access to justice and such fee structures will need to be challenged by way of Judicial Review for which legal aid is necessary.

HSSL Judicial review is the remedy of last resort against public authorities. We have extensive experience of acting in housing, immigration, and other cases against public authorities.

In our experience, it is extremely difficult to persuade a local authority to reconsider its refusal to act, or its otherwise unlawful decision. It is only when judicial review proceedings are contemplated – or sometimes actually issued - that a local authority may agree to reconsider. It would, of course, be far cheaper if public authorities had an open mind when challenged on unlawful decisions, but in our experience, this is not the case.

JR Legislative changes have made it more difficult for children, or adults acting on their behalf, to use judicial review to protect children's rights. The High Court found the funding changes, relating to payments to lawyers, to be unlawful and expressed 'great concern' that there had been a 23% decline in applications for legal aid in judicial review claims since the changes came into force.¹⁶⁷ In addition to the funding difficulties faced by individual children in bringing judicial reviews, changes introduced by the Criminal Justice and Courts Act 2015 will restrict and deter charities and other organisations bringing claims on behalf of children generally.

JustRights has published a briefing providing more detail on the implications for children and young people's access to justice of changes to judicial review.¹⁶⁸

MWLC Judicial review is now funded only if the case gets permission from the court (unless the claim is not issued at all). This can act as a deterrent for providers who will not take the risk on issuing what may actually be a perfectly good claim.

PALG PALG members have also felt the serious adverse impact of the change in the funding regulations for judicial review claims. If permission to bring a judicial review claim is refused, the costs of bringing the application will not be paid by the Legal Aid Agency. This is regardless of the merit of the case when it was issued, the actions of the Defendant or any other third party, the public interest in bringing the claim or the reason for permission being refused, such as an unexpected decision of a higher court that rendered the case unarguable. The costs risk at the permission stage has a significant chilling effect. As the claimants in the case of *R (Ben Hoare Bell & Ors) v Lord Chancellor*¹⁶⁹ evidenced, the work done on application for judicial review, particularly in legally or factually complex cases, or cases that raise significant issues of policy and practice, can reach the tens of thousands. The reasons for a refusal of permission can be arbitrary, unpredictable and outside of the control of the lawyer or the claimant. This introduces a heavy costs risk in circumstances where claimant legal aid firms are already working within extremely tight

¹⁶⁷ *R (On the Application of Ben Hoare Bell Solicitors & Ors) v The Lord Chancellor* [2015] EWHC 523 (Admin), para. 69. See fn 62 above.

¹⁶⁸ See JustRights. (2014) *Judicial Review proposals – the impact on children and young people*. Accessed September 2017: http://justrights.org.uk/sites/default/files/Judicial%20Review%20-%20JustRights%20briefing%20Lords%20Oct%20%202014_1.pdf

¹⁶⁹ [2015] 1 WLR 4175. See fn 62 above.

margins and where no matter how conscientious and professional the lawyer is, something may happen beyond their control that means they do not get paid for the work they have done even though it was reasonable of them to have done that work.

Furthermore, in cases where the claim is withdrawn before the permission stage is reached, the claimant lawyer will only be paid if the LAA decides to exercise its discretion, save for in very restricted circumstances. This introduces an unjustified uncertainty into the process that means that lawyers who act reasonably in bringing a meritorious claim which, for a reason outside their control, is compromised before the permission stage, stand to lose thousands of pounds.

The effect of the Regulations (which were passed without any Parliamentary scrutiny despite their implications for access to justice in judicial review cases) has been to restrict access to judicial review generally, and to public interest litigation and test cases in particular because where there is no clear legal precedent the financial risks are too high for practitioner firms.

PALG members are also concerned about the delays in judicial review claims. The latest statistics published by the Ministry of Justice show that for 95% of the judicial review claims lodged in 2014 that are classed as closed cases, mean times from lodging were 75 days to reach the permission stage, 149 days to reach oral renewal and 233 days for a final hearing.

The issues that we have set out within this topic are all fundamentally linked, and the effect must be looked at cumulatively to have a full understanding of the current state of access to justice. The reality is that a large proportion of the public are simply not in a position financially to challenge state authorities, no matter how serious the wrongs they have endured.

As a result of *Sisangia*, PALG firms will have to become even more selective in the cases taken on; a decision shaped by funding restrictions rather than the merit of the case. CFAs are unworkable, ATE insurance is effectively not available, court fees are prohibitively high and judicial review claims are very financially risky.

It is deeply frustrating for members of PALG to deny help to victims of state misconduct. Equally, it is unfair and deeply distressing for individuals to be denied legal advice, and for existing clients to have to withdraw claims, on the basis of funding alone.

Unrepresented individuals pursuing a case against a public authority are extremely unlikely to be provided with the appropriate documentary evidence, be able to quantify the financial value of their claim, or navigate civil procedure effectively. This is in the context of the provision of seemingly limitless funding for legal advice to public defendants, paid from the public purse. The effect is that claimants face insurmountable hurdles at every turn and access to justice is rendered meaningless for many.

TCS *What is the most frustrating thing about the system? Has it become more frustrating since the changes in 2012?*

Prior to LASPO changes coming into effect, legal aid was available to a much wider range of families and young people, and meant that many of the poorest and most marginalised in society could access legal support when they needed it.

However, since the removal of a large swathe of support, the most vulnerable members of our society are no longer able to challenge unfair treatment and organisations such as The Children's Society that provide advice struggle to advocate for them effectively. In some respects, we are left powerless as to how we can help them. As advocates we rely on being able to use the legal system as a last resort, as a safety net when children's rights are being breached by referring on to appropriate legal advice where intensive advocacy and negotiation has not worked. With respect to immigration law, we must rely on qualified legal practitioners regulated to give advice and provide representation in immigration cases because the immigration advice services sector is highly regulated and it is a criminal offence to give unregulated advice. So in these cases we have no choice but to refer on to specialists.

Unaccompanied children often face additional difficulties to British children: they are particularly likely to have faced trauma, they may experience language and cultural barriers as well as hostility and racism. These young people also need additional support to access legal advice and representation, particularly without access to legal aid in immigration cases. Care leavers will need their personal advisor or advocate to help identify and even instruct their immigration lawyer and without legal aid, the local authority may need to pay for their representation or evidence. However, the changes to the system since 2012 have made this more challenging, and there is less support available for these young people at a critical point in their transition to adulthood.

Some of the greatest frustrations stem from the fact that it is plainly obvious that lone children and young people without guardians looking out for them cannot effectively engage with legal systems on their own. This is something that even educated adults will find challenging. Yet the Government's rationale is that somehow these complex legal matters, which are so highly regulated, are simple and straightforward enough for a child, who has extremely limited support networks in this country, to manage on their own. This is not a rational argument.

UKAJI There is justified concern that while the administrative justice system handles the vast majority of legal disputes, and far more than the civil or family justice systems, this is often a neglected area. Furthermore, the claims dealt with often involve fundamental rights of citizens, many of them vulnerable or disadvantaged in other ways. In a chapter in the recently published *Access to Justice: Beyond the Policies and Politics of Austerity*, Tom Mullen, a member of UKAJI and Professor of Law at the University of Glasgow, explains the particular effect on administrative justice of 'the turn towards austerity in the policies of the 2010-2015 coalition':

- '(1) the abandonment of a holistic vision of administrative justice,
- (2) the attempt to undermine judicial review,
- (3) the removal of important rights of appeal,

- (4) failure to address those areas in which there were not already adequate remedies and
- (5) the creation of new obstacles to the use of existing remedies, and
- (6) the decline in the availability of advice, assistance and representation for citizens in dispute with the state.¹⁷⁰

Such concerns raise very important issues that warrant further research including into the impacts of reform. There are many recent examples of reforms having consequences which may undermine their stated purposes or indeed create new problems for other aspects of the system, potentially adding costs and reducing the overall quality of justice. The following are some examples.

Withdrawal of legal aid

The withdrawal of legal aid for many court and tribunal users was predicated on an assumption that tribunal procedures are user-friendly, as hearings are conducted in an inquisitorial rather than an adversarial manner, and that the absence of legal advice and representation would therefore not materially inhibit access to justice, nor impose a burden on judges and tribunal resources. The empirical evidence on the experiences of tribunal users, however, demonstrates that tribunals are not inherently user-friendly, and that tribunal users face intellectual, practical and emotional barriers in participating in dispute resolution processes leading up to, and including, tribunal hearings (H. Genn, *Tribunals and Informal Justice*¹⁷¹). The evidence demonstrates that access to early and good advice, as well as access to representation, has an enabling effect so that users can participate meaningfully in tribunal hearings. Without this access, the research shows that users are isolated or excluded from effective participation in the legal process. The Judicial Executive Board¹⁷² (JEB) have identified several key consequences arising from the withdrawal of legal aid for court and tribunal users in various areas of disputation:

'The challenge for the Judiciary arising out of the changes brought about by LASPO is that there has been a significant increase in the numbers of LiPs in the courts since April 2013. In tribunals (where legal aid for representation has always been very limited) it is the reduction in legal advice on the preparation of cases that has had the most marked affect. There is scant quantitative evidence to illustrate the impact that the increase in LiPs has had, or indeed the increase itself, but anecdotal evidence from judicial office holders is plentiful and valuable; in short, the increase in LiPs has put significant pressure on the courts and tribunals.'

The JEB considered that these pressures have adversely affected tribunals and added costs to the process; increased the length of hearings; adversely affected the ability of court to assist LiPs, in turn raising issues regarding their ability to explore evidence; led to an increased risk of an absence of critical expert evidence

¹⁷⁰ Accessed September 2017:

<https://ukaji.org/2016/01/21/access-to-justice-beyond-the-policies-and-politics-of-austerity/>

¹⁷¹ (1993) 56 MLR 393; G. McKeever, "A ladder of legal participation for tribunal users" (2013) *Public Law* 575.

¹⁷² *Written evidence – Justice Committee inquiry: Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (2014). Accessed September 2017:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/impact-of-changes-to-civil-legal-aid-under-laspo/written/9472.pdf> at p2

due to financial constraints; increased the number of cases going to trial due to reluctance of LiPs to negotiate prior to court, and practical and administrative difficulties absorbing considerable court administration resources.

The JEB concluded also that the withdrawal of legal aid for legal advice in tribunals (e.g. in welfare benefits cases) is 'likely to have led to meritorious cases not being brought because the individual lacks the knowledge or confidence to take forward [his/her] case'. It additionally concluded that 'advice led to a proportion of cases being resolved and withdrawn (for example because they were misconceived or because an erroneous decision could be identified and rectified).'¹⁷³

Regarding this latter conclusion, research in the context of judicial review has shown that the vast majority of JR claims conclude without reaching a final hearing, and that most early-resolved cases conclude in favour of claimants. It further shows that the early involvement of expert lawyers on both sides, who are able to identify the issues and respond appropriately is conducive to early and successful settlements.¹⁷⁴ This evidence has been available for many years now, yet was not considered by the Government when implementing reforms designed to restrict access to JR.

The above issues briefly illustrate some of the important matters that cry out for further sustained research in relation to the impacts of reducing legal aid. UKAJI is keen to encourage further work on these are related matters. For example, Grainne McKeever of Ulster University and a member of UKAJI is leading a Nuffield-funded project to better understand the characteristics of the population of LiPs in courts in Northern Ireland and to understand the human rights implications of the problems that arise for LiPs and the courts. Although not specifically related to the impact of LASPO (which did not apply to Northern Ireland), the findings on the needs and characteristics of LiPs will be relevant UK-wide. The research, to be completed in early 2018, will involve a qualitative analysis of LiPs' experience through hearing observations, qualitative interviews with LiPs and professionals, and analysis of case files to understand the paths to justice and support needs of LiPs and investigate how LiPs impact on the courts. It will also seek to measure the impact of a basic form of legal support for LiPs, to establish if this can help improve the LiPs ability to participate in the legal process.

Cost: the effect of charges and fees in immigration cases

GCIT Cost

There are numerous financial barriers to the access to justice. Many applicants and their families cannot afford to pay for the necessary legal advice or the high application, health surcharge and appeal fees – and these cumulative totals serve as a significant barrier to access to justice. Application fees are regularly increased. Under the current fee regulation – an application for entry clearance for family settlement is

¹⁷³ Ibid at p. 8.

¹⁷⁴ Accessed September 2017:

<http://www.publiclawproject.org.uk/data/resources/9/TheDynamicsofJudicialReviewLitigation.pdf>

£1395, for a dependent relative is £2676 and applications for indefinite or limited leave to remain cost £1875 and £811 respectively. When the application includes family members and each of their health surcharge fees, it is our experience that families are required to pay many thousands of pounds simply to make their immigration applications.

The recent consultation paper on immigration tribunal appeal fees also suggests a massive increase in the appeal fees in human rights and immigration appeals. These high fees are also intended to apply when the applicant only has an 'offshore' appeal – and is therefore having to deal with a less than fair appeal process. The government proposes increasing fees in the First-tier Tribunal from £80 to £490 for an application for a decision on the papers and from £140 to £800 for an application for an oral hearing; a new fee of £455 for an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal; a fee of £350 for an application to the Upper Tribunal for permission to appeal, where permission has been refused by the First-tier Tribunal, and a fee of £510 for an appeal hearing where permission is granted. In percentage terms, the increase from £140 to £800 for a First-tier Tribunal oral hearing comes in at 570%. The impact assessment and equality statement published with this consultation assumes a 20% reduction in appeals as a consequence of the new fees and a disproportionate effect on people from Black, Asian and minority ethnic backgrounds but states that this is justifiable. The small saving to the proposal includes an exemption for those who qualify for legal aid or asylum support; those who are appealing against a decision to deprive them of their citizenship; and those children or parents of children bringing appeals to the tribunal who are being supported by a local authority. The Home Office will usually have to repay the appeal fee if the appeal succeeds.

These application and appeal fees (actual and proposed) have the direct effect of pricing many people out of the justice system.

LCN Pending proposals of similar fee increases for immigration appeals raise concerns for additional hurdles before clients with immigration and asylum problems.

UKAJI *Tribunal fees and access to justice*

The government has recently announced that they propose increasing fees in immigration and asylum proceedings in the First-tier Tribunal from £80 to £490 for an application for a decision on the papers and from £140 to £800 for an application for an oral hearing. They also propose introducing a new fee of £455 for an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal.¹⁷⁵ These changes are expected to seriously risk access to justice in immigration and asylum appeals. The equality impact assessment of the proposal states that the increase will have a disproportionate impact on black and ethnic minority appellants, who make up a majority of appellants in these cases:

'Therefore it is more likely that individuals with these protected characteristics could potentially be put at a particular financial disadvantage when applying to the Immigration and Asylum Chambers since they will now have to pay more fees for services than previously.'

¹⁷⁵ Accessed September 2017: <https://www.gov.uk/government/speeches/tribunals>

Concerns have also been expressed about the impact and the possibility that the policy won't achieve its intended aim.¹⁷⁶ In this context it is timely to recall the consequences of the imposition of fees for accessing Employment Tribunals. Following the introduction of fees in July 2013 the number of cases decreased very significantly. During the two years following the reform the number of single cases brought fell by approximately 67% and the number of multiple cases brought fell by some 69%.¹⁷⁷ It is likely that the scale of this fall exceeded the MoJ's estimates. This factor once again highlights the need, recognised by the NAO, for government departments to '*develop measures to evaluate more fully the impact of reforms.*'

Court closures, court fees, and the impact of staff reductions

Respondents' biggest concerns about the state of access to justice:

CJC The impact of rising court fees, court closures and reductions in court staff.

HJA As practitioners, we have noticed the effects of this increasing strain on the Court system: there are ever-increasing administrative delays to cases (in County Courts, for instance, it is not unexpected to wait for 6-9 months for a hearing to be listed for a minor issue) and we assume that the exponential rise in court fees has in part resulted because of this increased strain on the system created by litigants in person.

MAT The rise in court fees for applications in the county court (as well as for other tribunals and in family law cases) give rise to serious concerns about access to justice for people with limited means.

YLAL The extensive denial of access to justice resulting from court and tribunal fees which have been increased drastically in recent years to unaffordable levels, putting access to the courts out of reach for many individuals and organisations.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

BHT Court and Tribunal fees have increased which means that only those whose income is low enough to benefit from a remission of fees or those that are rich enough to pay the fees can access justice. There is a whole swath of people who are working but do not earn enough to pay court/tribunal fees who will not seek access to justice due to the increased costs.

¹⁷⁶ Accessed September 2017: <http://www.newlawjournal.co.uk/nlj/content/500-immigration-fees-hike>

¹⁷⁷ See generally, House of Commons. (2015) *Library Briefing Paper on Employment Tribunals fees*, (No 7081, 15 September 2015). Accessed September 2017: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07081>

CJC The CJC remains concerned about the scale of court fee increases and would support detailed analysis and evaluation of the impact of recent rises ahead of any further measures.

EDF The impact of change to the fee charging systems for the Courts and Tribunals has fallen disproportionately on the vulnerable, the low paid and those from traditionally disadvantaged groups. Access to justice is becoming a right for those with money, and legal rights such as those put in place by the Equality Act 2010 are becoming largely theoretical for many whom they were intended to benefit.

FNFBPMC The majority of our service users will submit an application using the C100 at a cost of £215. We note that the fee waiver form EX160 has been dramatically improved in late 2015 reducing it from a 30-page document to a 4 page one.

We have made representations to the President of the Family Division about the unfairness of requiring those people using a C79 form for enforcement of their Order to have to pay a £215 fee. However, we anticipate that this issue would best be dealt with by proposals to make costs orders in the event that the application for enforcement is successful.

HLPA The increase in court fees has affected both members of HLPAs and their clients. In respect of pursuing money claims, such as disrepair claims, the fees are now 5% of the claim for any claim worth over £10,000. Many providers, including in the not-for-profit sector simply cannot afford to cover the cost of such high disbursements, particularly when the case is being funded by way of a Conditional Fee Agreement and the provider may have to wait months, if not years, to recover the costs.

In respect of possession claims, court fees are often added to a tenant's arrears, leaving vulnerable people with financial difficulties not only having to try and afford their rent but having to pay substantial court fees as well.

ILC Legal Action Group and a wide range of other bodies have produced extensive evidence of the adverse impact of Tribunal and Court fees. There was no evidence that those on the lowest incomes had a higher rate of cases being brought with a poor prospect of success (in fact, the sufficient benefit test for legal aid would have prevented this in any event) and we can only say that our experience is that these have been a major issue. We would also say that it is hard to cover the costs of fees in grant applications, and that they are a real barrier to pro bono activity (as are other disbursements which were previously covered by legal aid).

ILPA Court and tribunal fees as well as Home Office fees, are among the elements of a case which cannot be funded. These can be very significant. The Ministry of Justice is consulting on raising fees for an appeal before the First-Tier Tribunal from £140 to £800, with a further £455 to be paid to appeal against the decision of the First-tier Tribunal to the Upper Tribunal.¹⁷⁸ Home Office fees cost, for example, between £1,195 and £2,676 for a settlement (indefinite leave to remain application). Applications can be made for fee waivers, but these require considerable work by legal representatives. It is very difficult for an

¹⁷⁸ Accessed September 2017: https://consult.justice.gov.uk/digital-communications/first-tier-tribunal-and-upper-tribunal-fees/supporting_documents/consultation%20document.pdf

unrepresented person successfully to apply for a fee waiver and the Commission could usefully inquire into how many such applications are made and how many are successful.

JC Court and tribunal fees mean that even fewer people have the resources to access justice, especially in small claims matters and employment tribunals. Fee remissions are again limited and dependent on financial eligibility and present a further barrier to people enforcing their rights. The fee remission forms and guidance are not straightforward and frequently require an adviser's assistance.

LLS How can anyone afford the court fees?

Even where a system is supposed to be easily accessible without lawyers it is bureaucratic. e.g. the Tribunal system is legalistic.

MAT We are concerned that the on-going programme of increases in court fees will have a detrimental effect on people in debt who are often in extremely difficult financial circumstances.

We are particularly concerned that the government is now increasing fees in a way that purposely goes beyond full cost recovery and is expressly intended to subsidise the running of the court system. Whilst we appreciate the need for the Judiciary to cover costs and to provide value for money to taxpayers, the fee increases undermine access to justice and there is a tangible risk of placing basic legal rights out of the reach of thousands of people in debt.

The majority of National Debtline clients will come across the requirement to pay a court fee when either looking to apply to vary a judgment, suspend enforcement or to prevent the repossession of their home and possible eviction. Occasionally our clients may enquire about the possibility of having a judgment set aside. In each of these cases, our clients are almost certainly going to be suffering from significant financial hardship.

For our clients who are in debt and attempting to deal with their creditors, they will have no available income to pay for court applications. Many of our clients may have an income that exceeds the level that means they will qualify for fee remission, but because of their level of debts, their income will be used to pay back priority debt arrears such as rent and mortgage, fuel and council tax, and to pay back their creditors. As you will be aware, if people in debt are already making payments on their court judgments, they risk getting further into difficulties if they have to miss payments in order to find a court fee.

We would suggest that access for justice for the most vulnerable people who are in debt could be seriously compromised by these measures.

MWLC Lack of funding for the courts is causing them to close which means people have to travel further for court hearings. It also means that court fees have significantly increased and continue to increase.

PALG PALG firms operate under tight budgeting and cash flow constraints and very narrow profit margins, as has been repeatedly recognised by the courts. Claims routinely take around five years to conclude, and many take double this time. It is not financially viable for firms to fund disbursements (i.e. court fees) on behalf of clients. Those few clients who are able to access a CFA or a DBA are usually

expected to fund their own disbursements, and court fees constitute a significant proportion of these. Increases in court fees add to the costs risks faced by privately paying clients, and make litigation even less affordable for those using such funding arrangements, regardless of the strength of the claim or the public interest in it being brought.

The impact of the recent increases to court fees has not yet fully crystallised, but PALG's legally aided clients are also likely to be impacted. The Legal Aid Agency does take into account both incurred costs and likely costs when deciding whether to grant legal aid to our clients. Costs limitations are imposed incrementally throughout a case and extensions may be refused when overall costs reach a certain level. Any increase to court fees therefore affects the ability of our clients to secure legal aid and maintain funding to the end of a case.

Resolution Court fees are rising.

It is only two years since the divorce fee was increased from £340 to £410. The Government has now increased the fee to £550 (without consultation, impact assessment or notice) which is an increase of over 60% since 2013.

The new fee of £550 is already well above the estimated actual cost of these proceedings of £270 (as at January 2015) but which we anticipate will decrease if the new divorce centres and/or digital developments deliver intended efficiencies. The case for setting court fees purely on the basis of the cost of the service provided by the courts has not been made in relation to family proceedings. There is no justification for charging the public more than the actual cost of using a service to pursue a legal remedy which is their right under statute.

As a result of the steep increase, many people currently in the process of separating will have received incorrect information as to the charge for lodging a divorce petition and in reality won't have had time to get their petition in before the fee increase took effect. As an example, a Resolution member has reported to us:

"We submitted a petition to the West Midlands Divorce Unit on 18 March 2016 without knowledge of when the Court fee was increasing. On 22 March 2016 we received confirmation from the West Midlands Divorce Unit that the fee had increased as from 21 March 2016. On 30 March 2016 we received a telephone call from the West Midlands Divorce Unit stating that the increased Court fee would apply!"

Shelter Court fees present a significant, and unjustifiable, barrier to justice, even with the possibility of fee remission in some cases. The civil justice system should operate as efficiently as possible, but ultimately it must be a public service. Current fee levels are an overwhelming hurdle in disrepair cases for people not eligible for Legal Aid and effectively mean that people renting homes that may affect their health or safety are unable to challenge their landlord's unlawful practice.

SBS *Inability to afford court fees and other agency fees to obtain reports*

Rising court and other professional fees are also making it increasingly unaffordable for our clients to contemplate legal proceedings because many are often on very low incomes. They often cannot pay for reports confirming domestic violence from professionals and agencies such as their GP or they cannot afford court fees for making various applications. Although there is no fee payable to obtain an injunction including a forced marriage protection order, fees for other applications range from £50 to £550. Civil fees vary enormously from £35 to over £1000 for a claim allocated to the multi-track system. The following is an example of how some women cannot afford to pay for evidence needed to prove domestic violence.

Ms A fled her abusive husband, 20 years her senior, who she was forced into marrying. She was assisted to leave with her daughter by sympathetic friends. Fortunately, her husband made no attempts to contact her or her daughter. There were no police reports as the police only assisted her in leaving the matrimonial home but did not keep proper records of her report of violence. There were no protection orders against her husband as he had not made any attempt to contact her. She had not been referred to a refuge as refuge accommodation was not deemed suitable. The only other 'professional' agency that was aware of the domestic violence that she experienced was her GP. Ms A also had insecure immigration status and therefore had no recourse to public funds. Her husband in the meantime obtained a 'divorce' in accordance with so-called 'Sharia Law'. The 'divorce' document stated that the dowry that he was expected to return to her had been 'settled'. In the meantime, Ms A was herself unable to pursue a civil divorce or claim any financial relief in respect of maintenance for herself and her daughter because of the lack of evidence of domestic violence. She faced two particular problems in obtaining legal aid: firstly, she could not afford the fees to obtain a medical report from her GP who wanted to charge her £50 for the report and secondly, her lack of access to the formal legal system gave scope for her abusive husband to use alternative religious resolution forums which regularly produce highly discriminatory and unfavourable outcomes for vulnerable women.

Although applications can be made for remission or help with court fees, this involves the applicant having ready access to documents that can evidence her income. Many of our users often do not have such evidence because they have never received money in their own name or had control over their finances. Others have fled their homes with no documents.

In one case, a user was so distressed by the hefty cost of applying for the enforcement of a child arrangement order that she stated she would "just have to give up".

Against this backdrop, we are appalled by the government's proposals to further increase court costs including the cost for immigration appeals against Home Office decisions by up to 500 per cent.¹⁷⁹

TCS *Have court and tribunal fees had an impact on you or the people The Children's Society represents?*

¹⁷⁹Accessed September 2017: <http://www.independent.co.uk/news/uk/politics/government-plan-for500-increase-in-immigration-and-asylum-fee-sparks-anger-a6995501.html>.

Whilst this has had an impact on the families and young people that we work with, this is not the only financial burden that has been borne since the changes announced in 2012. Our practitioners have reported that the impact comes before this as those most in need of legal aid that are excluded from it are unable to afford the legal costs. This is then compounded by having to contribute to court and tribunal fees.

Our practitioners see families being asked to pay towards these fees, which can be difficult when they are on a low income or have no recourse to public funds. We have previously worked with a family who were asked to pay court costs for submitting a first appeal of an immigration claim, at a time when they were unable to raise the funds to do so. This is a situation that is further compounded by families receiving poor and inadequate advice from private solicitors who do not have substantial experience of legal aid cases, the experience of which has left them unable to pursue their case any further through legal aid.

Thompsons Thompsons is concerned that recent increases in court fees are indicative of a worrying general direction of travel in the government's approach to the civil justice system. We oppose the increases as we oppose those that were forced on the injured in personal injury claims, and on those with employment disputes by the coalition government.

When the government consulted on 'enhanced court fees' (a six-week consultation ending 27 February 2015), the majority of consultees disagreed with the proposals, which included fee increases of over 600%. Yet still the government went ahead. This means that, for example, a claimant seriously injured in an accident caused entirely by the fault of another and whose case is worth in excess of £200,000 because of her subsequent loss of earnings and care needs, must now find £10,000 for the initial court fee in order to bring her damages claim.

Even where a claim is successful, whether through litigation or not, complacent reluctance to pay damages or comply with orders by some defendants, employers and insurers creates an additional hurdle of enforcement when payment of further court fees becomes necessary.

We are concerned that the government's cost-cutting and revenue-raising zeal is blinding them to the range and number of expert voices expressing concern with its fees regime in the courts and the Tribunal.

Increases in court fees have a negative impact on access to justice. While the government points to fee remissions as the solution, in reality they are little more than a fig leaf. For each separate fee incurred a separate application for remissions, with detailed evidence of income, must be provided. The guidance booklet itself is 31 pages long and the preparation of applications can take up to 30 minutes each, increasing the costs of the case every time a court fee is incurred. Such work also has an impact on the time of court staff, represents unnecessary bureaucracy and a backwards step to the government's stated march towards efficiency and cost-cutting.

Courts – the effect of court closures

MAT The programme of court closures is of great concern as there are no adequate substitutes for the most vulnerable clients who cannot access court services and court forms online. They may not be able to interact with a virtual court system, even if one was in place. The Lord Justice Briggs review¹⁸⁰ has highlighted the technological shortcomings of the court system and the pressing need for reform to create an “online court”.

PCS The planned closure of 86 courts and tribunal centres and further job cuts in the Ministry of Justice of between 5,000 and 6,000 will only worsen restrictions to access to local justice.

Court closures will only add to access to justice problems

On 11 February 2016 the government announced its decision to close 86 more courts and tribunal centres in England and Wales. This announcement follows the closure of 140 magistrates' and county courts after the consultation launched in 2010 which transformed the court system and moved away from the principle of local justice.

PCS believes that this latest decision represents a serious threat to people's right to access to local justice. The government's rationale does not stack up. Its consultation on the latest closures was flawed, misrepresenting court usage and journey times.

The government has used low court utilisation rates as one of the main reasons for closing courts. This conveniently ignores the fact that this government is responsible for making it harder for people to access our courts. Policies like cuts to legal aid and increased court fees are removing people's right to local access to justice. In his latest annual report the Lord Chief Justice warned that: “Our system of justice has become unaffordable to most.”

High utilisation rates can only be achieved by listing several lengthy contested matters in the same court on the basis that they will not all be effective. If all the hearings are effective and one or more cases have to be delayed it adds distress and inconvenience for the parties and witnesses involved.

The government claim that most people will still be able to access their nearest court in less than one hour by car. However, many of the estimated journey times in the government's consultation seem to have no basis in reality. They also ignore the fact that many people using courts rely on public transport at the busiest times of the day to get to their court. In many cases the closure of a local court will mean an extra hour or two of travel time. This fact applies to all areas including London, where people will be expected to travel across London at peak times often when they have little or no additional money.

¹⁸⁰ [Accessed September 2017:](https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-interim-reportpublished/press-summary-of-the-ccsr-interim-report-from-lord-justice-briggs/)

<https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-interim-reportpublished/press-summary-of-the-ccsr-interim-report-from-lord-justice-briggs/>

One of the consequences for victims and witnesses having to travel further to court is that they are more likely to encounter perpetrators or people related to them on public transport and suffer further distress or intimidation as a result.

There is also the increased risk of victims having to share waiting room facilities with their abusers. Many courts that have already closed had separate waiting facilities.

Many people will find it a struggle to get to court by public transport at a time when local bus services are under threat, particularly in rural areas.

Court staff will also find it difficult to relocate. We are particularly concerned about the impact closures will have staff who have caring responsibilities and disabled staff with many asserting that the proposals may make continued employment untenable. It is disappointing that HMCTS was largely silent on the impact on staff throughout the consultation process.

The Government case for the closures is not proven and is underpinned by untested digital processes. The national roll out of a number of digital products and processes were put back or in one case abandoned last year because they have not been fit for purpose. Current technology is not robust enough to meet the demands made of it.

During the last twelve months the Criminal Justice Service Efficiency Programme has installed Wi-Fi and equipment for playing evidence from a computer into court rooms, including courts which are used for both family and criminal hearings, some of which are now proposed for closure.

PCS is very concerned about the loss of our members' jobs in the court service as a consequence of the digitalisation of the criminal courts leading to the loss of vast experience. The rationales provided for the loss of jobs do not add up. The transfer of work from the courts identified for closure to other larger courts will result in further delays.

Anyone remanded in custody has few opportunities to attend court in person. With the reduction in publicly funded representation inarticulate individuals are trying to deal with their future liberty or family issues over a video link. We are concerned by the impact of technology failures which are certainly not an irregular occurrence.

There are proposals for those in rural communities to attend by video link from public buildings. This may put them at a disadvantage or even in danger in buildings that are not designed for this purpose.

We are concerned about the risk to public security that using other civic buildings as alternatives to courthouses may represent.

Ministers claim that technology will create better and more efficient access to justice, but we have serious concerns with members experiencing regular problems with video links and Wi-Fi. Wi-Fi has been rolled out across the court estate, and the department claims this will save court time as legal advisers and professional court users will receive papers while court is in progress and be able to read them. We remain

sceptical about these assumptions as there is no evidence to demonstrate to us that this has been robustly tested.

We also remain concerned that the distraction this and other digital processes will lead to miscarriages of justice. It is not without irony that the department began equipping courtrooms and court houses with expensive technology which they are now proposing to close.

Shelter The programme of court closures announced by the Ministry of Justice (MoJ) in 2015 will, we believe, compound the impact of LASPO in housing and homelessness cases – leading to more households being at risk of losing their homes or unable to tackle poor housing conditions. The extent of the planned court closures, and strain on existing facilities, is likely to have a detrimental impact on service levels because courts are already overstretched.¹⁸¹ For people on low incomes, with pre-school children or mobility problems, travelling to another town or city can be financially, or practically, difficult.

Courts – the effect of staffing problems

ACL The fact that the Court Service does not operate effectively, with telephones which remain unanswered and counters which have been closed, or are unmanned.

LLS There are real concerns about the court system. The austerity measures imposed by the Conservative Government on the Ministry of Justice have meant that the court lacks the resources to properly administer itself.

There are massive delays in dealing with correspondence. There is a lack of qualified or trained staff to deal with queries on even the most basic issues.

MWLC Lack of staff at the courts mean that phones are not answered so queries cannot be raised and it can take months to get a case before a judge. The counter system has now disappeared at all of our local courts which means that the only way to see someone face to face is by making an appointment by telephone. Appointments are only permitted in certain, very limited, situations.

PCS Lack of available court time for listing cases, often due to a shortage of staff, causes cases to be adjourned for long periods. Many courts already struggle to list family multi-day cases due to both lack of court rooms and lack of staff. This often means cancelling trial courts. A reduction in the available court rooms will lead to further delay.

Court rooms may be being underused but that's often down to a shortage of staff and Judges rather than hearings. Since 2010 the Courts and Tribunals Service has been cut by 5,000 staff and is set to lose a further 5,000 to 6,000 by 2020.

¹⁸¹ Shelter (2015) *Response to Ministry of Justice consultation on court closures*.

Litigants in person

Respondents' biggest concerns about the state of access to justice:

CJC The CJC has long been concerned with access to justice issues, and in anticipation of the major reforms in the LASSPO Act published a report in 2011 on access to justice for litigants in person (LiPs).¹⁸²

CLSJ The increase in self-represented litigants in family and civil cases and the impact that this is having on the ability of courts to administer justice in individual cases as well as on the perceptions of family and civil justice more broadly.

HJA The considerable number of people who no longer have access to a solicitor (due to a lack of funding available) and are therefore forced either to bring or defend their own case (a gruelling and often very troublesome task), or make the decision not to challenge the injustice they have faced. The reasons why there has been a significant increase to the number of people without recourse to a lawyer, and as such undermining their access to justice are multifarious and are outlined in detail in our response to question 3 below.

As a result of the issue outlined above, there has been a significant surge in litigants in person (particularly in the family law arena). This is a particularly challenging task for the individual involved and can often take over their life. It also puts considerable pressure on the court system and the judges themselves.

PCS Savings made through cuts to legal aid are insignificant compared to the chaos and delays being experienced in our courts as more and more people, with no access to free legal advice, attempt to represent themselves in court.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

CLSJ As such, there has been a massive increase in self-represented litigants (SRLs) appearing in court since the reforms.¹⁸³ While self-representation is not a new phenomenon in family or civil law generally, appearing unrepresented was often (but not always) characterised as a money-saving choice made by the individual.¹⁸⁴ In contrast, the SRLs who are appearing in court after LASPO are an entirely new class of individuals with incredibly varied levels of skills and needs.¹⁸⁵ SRLs often have difficulty navigating the

¹⁸² Accessed September 2017: <https://www.judiciary.gov.uk/wp-content/uploads/2014/05/report-on-access-to-justice-for-litigants-in-person-nov2011.pdf>

¹⁸³ In the Family Court: Ministry of Justice. (2015) *Family Court Statistics Quarterly (January - March 2015)*, London: The Stationery Office.

¹⁸⁴ For instance, in the 2005 study by Moorhead and Sefton used as the evidence base for pre-LASPO policy consultation and response: Richard Moorhead and Mark Sefton. (2005) *Litigants in Person: Unrepresented Litigants in First Instance Proceedings* (DCA Research Series 2/05).

¹⁸⁵ Discussed in Trinder et al's study conducted just before LASPO came into force: Trinder et al, *Litigants in Person in Private Family Law Cases* (Ministry of Justice Analytical Series 2014). Accessed September 2017: <https://www.gov.uk/government/publications/litigants-in-person-in-private-family-law-cases>

formality and legality of court without a lawyer to guide them through the process. The law that can apply to an individual's case is frequently intricate, legal discourse is highly specialised, and court processes are often complex. The resulting difficulties for the SRL are compounded where, which is frequently the case, they have very limited experience of law. While there are now resources to assist SRLs (for instance online),¹⁸⁶ their usefulness is specific to the awareness of their availability, access to computer technology and the capacity of the individual. For instance, in addition to those domestic abuse victims who fall outside of scope for legal aid funded-representation, recent case law has evidenced the danger of denying representation to those with mental health issues, learning difficulties and disabilities.¹⁸⁷ These cases demonstrate that SRLs have a broad range of needs that often cannot be met through written resources, and which – especially in family law – can be compounded by the emotional stress of taking these issues to court without help.

DLA The increase in fees to the ETs and the lack of availability of public funding and advice and support has led to a well recognised increase in litigants in person before the courts. We are concerned that those who seek to bring claims of discrimination face additional difficulties because of the complex nature of the issues and the complexity of the applicable legal provisions.

FNFBPMC We acknowledge that some effort has been made to provide help and assistance to Litigants in person primarily through the MoJ funded LIP strategy through the coalition of organisations headed by the Access to Justice foundation, and including helpful (if somewhat overlong) guides from Law for Life (AdviceNow). Litigants in Person now make up the majority of litigants in the family court and there is clearly a case for a wholesale review of the system from a service user perspective. Producing such briefings and support materials – however well intended – are missing the point that we now have a new reality which the system itself needs to respond to rather than bemoaning the fact that ‘Litigants in Person don’t know what they’re doing and cause delays’. This sounds rather like hospital consultants blaming patients for not being ill during office hours.

HSSL [The restriction on financial eligibility] has led to a rise in litigants in person. In most social welfare cases an individual is litigating against an institution with means (such as a corporate landlord) or a public institution. In our experience, those institutions invariably employ lawyers, often at public expense.

JGJ As a McKenzie Friend I do assist people at court and have often found the courts quite unhelpful, particularly the clerks who often seem to run the magistrates’ courts and they don’t always give the magistrates good advice as to the roles and standing of a McKenzie Friend. That can lead to a situation where a defendant has asked me to attend court with them as they either couldn’t find or couldn’t afford a solicitor, and they themselves unable to read or write. Then when attending the court I have had a clerk

¹⁸⁶ A few examples include the Bar Council, *Guide to Representing Yourself in Court* (Bar Council 2013); Lucy Reed, *Family Courts without a Lawyer: A Handbook for Litigants in Person* (Bath Publishing 2011/3); Courts and Tribunals Judiciary: *A Handbook for Litigants in Person* (2013); as well as various online videos and leaflets from AdviceNow (<http://www.advicenow.org.uk>).

¹⁸⁷ Both accessed in September 2017:

In the Matter of D (A Child) [2015] EWFC 2; <http://www.bailii.org/ew/cases/EWFC/HCI/2015/2.html> *Re H* [2014] EWFC B127. <http://www.bailii.org/ew/cases/EWFC/OJ/2014/B127.html> .

tell the Magistrate that as a McKenzie Friend I have no right to address the court (which is correct) and then not allow me or anyone else to point out that the Magistrate has discretion in the matter.

The a few weeks ago, I attended the High Court in the Strand with someone and the Judge granted me (what seemed like) the full right to address the court so I could plead mitigation in a breach of an injunction hearing.

I have even represented a party at the Supreme Court when the barrister couldn't attend (the courts refused to move the date) and there was no one (or no money) to replace said barrister, and been given leave to address the court.

So as a McKenzie Friend, my impression is that the Magistrates Court are a problem because of the attitude of the clerks towards McKenzie Friends. The clerks often seem to have a schedule of cases that they are determined to get through as quickly as possible, and a McKenzie Friend may slow down the schedule.

Legal aid work done by solicitors have been cut back for the most needy section of society, and the only other option for people who can't read (that I know of) is a McKenzie Friend and we are often treated like criminals ourselves just because we want to help. That is sometimes the way I am made to feel by the courts.

MAT There is a corresponding rise in court cases with unrepresented litigants in person are taking up court time and whose cases may not prosper because they do not understand the system.

PCS *Impact of LASPO*

People without a lawyer, known as litigants in person in civil courts, have increased considerably since civil legal aid cuts came into force in April 2013.

Research carried out by NAPO showed, by the end of 2013, 42% of cases in family courts started with neither party being represented by a solicitor. The Ministry of Justice's own figures show that in the first three months of 2014, the number of private law cases where both parties were represented had halved compared to the same period in 2013. Before the cuts this figure was 18%. We can only guess at how many potential litigants in person simply feel unable to try and access justice alone.

Court staff are noticing that proceedings are taking substantially longer and that litigants in person are less child focused in their approach. Aggression towards court staff is rising as parties struggle to engage with a system that they don't understand.

It also means higher workloads for already hard-pressed court staff. The Child Arrangements Programme introduced complex orders which must be completed by a Legal Adviser or District Judge in each case where there is no lawyer. This takes further court time in addition to identifying the issues and trying to 'broker' agreements.

The number of private law family cases listed for their first hearing has been reduced by a third in some courts because of the additional time taken by cases involving litigants in person. Courts used to be able to block-list two or three private law applications at the same time, safe in the knowledge that in most cases, negotiations between the parties' lawyers would result in an agreement, freeing up court time. This can no longer happen.

Court delays not only cost the taxpayer money but more importantly, are not in the best interests of children, children whose welfare the courts should be safeguarding.

SBS Our experience echoes the findings of various research studies carried out on the impact of legal aid on vulnerable groups. For example, research from Citizens Advice¹⁸⁸ that focused on the experience of users in the family courts provides a damning indictment of the post-LASPO world. It found that:

- a. The system is not set up to deal with litigants in person;
- b. There has been a 30% rise in cases where neither party has access to legal help and a 22% rise in such cases involving children;
- c. Poorer people and those with children are more heavily represented amongst those litigating in person than any other group;
- d. Seven in 10 people report not going to the courts at all, leaving their issues unresolved;
- e. Of those who chose to be litigants in person, 90% reported a negative impact on their everyday lives.

An open letter from legal professionals and voluntary sector organisations to The Guardian just weeks ago was equally frank about the inability of vulnerable people to access justice in the aftermath of LASPO.¹⁸⁹ Concerns about legal aid have also been expressed by the judiciary including the President of the Family Division, Lord Justice Munby. In one particular case, parents with learning disabilities, assessed to be ineligible for legal aid, found themselves facing the prospect of not having representation in court. They were opposing the adoption of their child but were struggling to navigate the complexity of the law and procedure in relation to adoption. In exasperation, the President stated that they could be “forgiven for thinking that they are trapped in a system that is neither compassionate nor even humane”.¹⁹⁰

In our consultation response to Transforming Legal Aid in 2012, we sounded a warning of the unequal impact of the legal aid proposals on vulnerable groups:

¹⁸⁸ *‘Legal aid cuts add to strain on divorcees - Nine out of 10 people forced to represent themselves in family court reported a negative impact, says Citizens Advice’*, Tracy McVeigh, The Guardian (Saturday 26 March 2016).

¹⁸⁹ Accessed September 2017:

<http://www.theguardian.com/law/2016/mar/31/legal-aid-act-has-denied-justice-to-the-most-vulnerable-it-must-be-reviewed>

¹⁹⁰ *Re D (A Child) (No 2)* [2015] EWFC 2: see fn 187 above.

“The current legal aid proposals, if instituted, will represent a highly regressive move for many vulnerable groups since they will be faced with a legal system that is the exact opposite of a ‘fair, open justice system’. The proposals will result in a less transparent, discriminatory and elitist justice system. Only the rich will be able to access justice and there will be no or limited public accountability of institutions that engage in arbitrary decision making or abuse their powers.... (the reforms) will undermine fundamental rights enshrined in domestic and international law, such as the right to life, the right not to be subject to torture and inhuman and degrading treatment, the right to private and family life, the right not to be discriminated and the right to a fair trial. Above all, the proposals will undermine the very principles of equality before the law and the rule of law - the cornerstones of a democracy that the UK is ironically seeking to promote in other parts of the world.”

Difficulties in navigating the court process

We are extremely concerned about vulnerable women acting as litigants in person. All too often, they find court proceedings very traumatising and stressful. Indeed, it is our view that for many abused and vulnerable people, the entire experience is so alienating and disempowering that forcing them to appear before the courts without legal advice and representation, amounts to secondary abuse. Such women are almost always unfamiliar with the process of going to court and do not know what to expect and are therefore unable to make informed decisions. Many do not speak English as a first language or at all. At the very least, it should be recognised that they are vulnerable people in need of support, especially when faced with the task of cross examining their abusers and other witnesses.

In one case, one of our advocates had to accompany a client to court because her application for legal aid on her family matter was still pending. The solicitor dealing with the application had advised us to support his client to make an application for an adjournment in order to allow the legal aid to be granted. However, on arrival it became clear that there was no guarantee that the judge would adjourn the matter. The client and our advocate found themselves having to deal with the solicitor representing the other side who accused the client of not doing enough to secure legal aid in a timely fashion. The client became extremely confused and frightened of the court process and grew increasingly anxious. She was unsure as to how to handle her matter, who to hand documents to and what she was expected to say in court. Our advocate tried to support her but it was clear that the lack of proper legal advice and representation caused considerable anxiety and uncertainty for the client and her advocate.

Even where our users are able to obtain legal representation, we remain concerned about the implications of unrepresented perpetrators of abuse cross-examining their victims in civil and family cases, especially where there are allegations of sexual harm and rape. It is worrying that this is deemed acceptable in family and civil courts when it would not be permitted in the criminal courts.

The following case demonstrates the challenges that face our users in appearing as litigants in person:

Ms S was a British national who was subjected to considerable violence and abuse for many years by her husband and in-laws. In February 2015, her husband and brother-in-law removed her 5-year-old son from her care; she believes in order to punish her. Her husband then obtained a prohibited steps order without notice from the court preventing Ms S from removing or seeing her son. The matter was listed for a return date.

Although Ms S had been physically and emotionally abused by her husband and his family, she had never disclosed this to her GP, the police or to any other outside agency, mainly because she was unaware of the assistance and help that they could give her. She had never sought the assistance of a refuge, again because she was unaware of the existence of women's aid. Therefore, despite presenting at our organisation as a victim of domestic violence, she was ineligible for legal aid as she could not provide the requisite evidence required under the 'gateway' criteria'.

SBS assisted Ms S by referring her to a family law solicitor who advised that Ms S' only option was to pay privately or represent herself. The former was not an option as Ms S was in receipt of benefits. The latter was not a realistic option as Ms S was traumatised, anxious and spoke little English.

However, an SBS advocate attended the court with Ms S and acted as a 'McKenzie friend'. She assisted Ms S to negotiate with her husband's solicitor but this was not straightforward as the solicitor used legal jargon, raised new allegations against Ms S and proposed that Ms S only see her son for one hour a week in a supervised contact centre – the cost of which was to be covered by Ms S.

Fortunately, the case came before a sympathetic district judge who allowed the SBS' advocate to speak on Ms S's behalf. However, it was a very stressful hearing for Ms S because it descended into chaos with her husband's representative making a series of unfounded allegations against her. However, the SBS advocate was able to draw the judge's attention to an initial safeguarding report from a CAFCASS officer which highlighted Ms S' husband's abusive behaviour and to other matters that helped Ms S in obtaining a better outcome in respect of contact with her child. It is clear that without the help of our advocate, Ms S would have not been able to represent herself and obtain a more favourable outcome in court despite the presence of a sympathetic judge.

We remain concerned about the plight of the many women like Ms S who do not have the benefit of assistance from organisations like ours when engaging with legal proceedings. Whilst SBS is committed to supporting vulnerable women through the court process, it is clear that we cannot meet the growing demand as more and more of them are forced to become litigants in person. Nor can we hope to become substitutes for experienced lawyers. We find that our scarce resources are increasingly being used to conduct pre and post litigation work - assisting in drafting statements, gathering evidence and documents for unrepresented clients and attending court with them to provide moral support and/or act as McKenzie friends. But for every one woman that we help, there are countless others that we cannot reach. We believe that there needs to be an urgent and serious review of the ethical and practical implications of a vastly under-resourced and inexperienced voluntary sector having to mop up the serious and dangerous mess that has been created by the introduction of LASPO.

YLAL Many vulnerable individuals are being forced to represent themselves in court. This creates an unjustifiable imbalance between the individual and the state. Many people are simply unable to realise their rights when pitted in court against legally-represented opponents, causing frequent and grave injustices. We are particularly concerned that many such injustices inevitably go unseen, unheard and unresolved due to the difficulty of monitoring people who are unable to obtain legal aid. We believe that marginalised individuals are quietly experiencing an erosion of their right of access to justice.

The need to simplify language and procedure in courts and tribunals

Respondents' biggest concerns about the state of access to justice:

ACL The fact that the courts are not easily accessible to the ordinary man on the street. For example, Courts and the court system are viewed with fear and awe by litigants which deters them from using the court; the language of law is exclusive, not inclusive and that also deters a huge number of individuals who would benefit from access to the court system.

CFJ For ethnic minorities, the disadvantaged, and those at the margins of society, the formality and institutional nature of our justice system are alien and intimidating: this leaves them unwilling and unlikely to engage and does not win their trust or confidence.

PW The Civil Procedure Rules are too complex, are not written in plain English and there are no tools or simple guides for litigants in person and the Court is often unsympathetic to the difficulties that litigants in person have and there is sometimes too much focus on procedure or rules rather than the overriding objective of justice.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

AUK In accessing courts and tribunals the biggest frustrations are the use of inaccessible language, unnecessary bureaucracy, protocols and procedures that work for lawyers but not the people affected by the decisions of the courts.

CCLC Children are the least able to navigate complex legal and procedural rules without a lawyer. However, the impact of LASPO has led to a situation in which families and lone children and young people are required to represent themselves not only in courts and tribunals but also prior to the court process in making applications, completing forms and responding to cases.

FNFBPMC One small example of the way in which the system fails to recognise the needs of its service users can be illustrated by the response to a suggestion our charity made to HMCTS in Wales. Service users attending our meetings report that they don't really know who the individuals in court are – for example assuming that the Legal Adviser in a FHDRA without a bench of magistrates is in fact a judge, and that contributes to their anxiety at a moment of severe stress. We proposed that rather than ask everyone to introduce themselves all officials – including judiciary (lay and professional) and Court staff should display a name plate with job / role title clearly. This proposal was rejected out of hand.

JR Few would dispute the notion that no child or young person should have to navigate our complex legal system alone. Yet, the effect of government austerity policies in the UK, specifically of LASPO, has been to increase the number of children and young people abandoned in this very way. This has arguably left the UK Government in breach of international legal obligations.

LLS The court rules were not written with Litigants in Person in mind. By way of example Part 36 of the Civil Procedure Rules which is designed to facilitate early settlement of claims has been repeatedly

rewritten and has been the subject of a number of court cases going to the Court of Appeal. If the lawyers don't agree what the rules mean what chance for an unrepresented litigant?

SBS We are disappointed and dismayed by the impact of the legal aid cuts on our users. We highlight below some of the specific difficulties they face:

Women have difficulties in navigating the court process.

ACCESS TO JUSTICE – THIRD THEME

Public legal education

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

ILC The huge scarcity of casework resources and the lack of any proper funding framework for public legal education mean that it is increasingly difficult for people to identify that they have a problem for which there is a legal remedy. Word of mouth is a powerful tool in a lot of communities and the loss of a plurality of agencies promoting justice and dealing with initial enquiries has led to a loss of confidence that anything can be done.

JR Children and young people have the lowest levels of legal capability – including knowledge of basic rights; awareness of services and legal remedies; and understanding of 'the system' – and they often lack the communication skills and attitudes required to resolve problems independently, as well as the ability to manage the emotional effects of legal problems.¹⁹¹

Lack of awareness that a problem is within scope of legal aid
Respondents' biggest concerns about the state of access to justice:

CJC Ensuring that those who are still eligible for public funding know that they can seek it.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

LAPG There is a general public misconception that there is no legal aid scheme at all! It begs the question: how many people don't even try to seek advice because they think there is no one to turn to?

It is difficult for people to work out if their problem is covered by the legal aid scheme.

MAT LASPO brought the removal of a wide range of debt related issues (including insolvency, loans, credit card debts, overdrafts, utility bills, court fines and hire purchase debts) from the scope of the legal

¹⁹¹ Youth Access & JustRights. James Kenrick. (2009) *Young people's access to advice – the evidence* See fn 22 above.

aid scheme. There seems to be a lack of knowledge of the residual availability of legal aid in debt cases which has been highlighted with the Ministry of Justice by the Justice Committee report.

Resolution Public and professional awareness of legal aid provision

Our members are aware of a lack of awareness about what help is available among non-legal professionals coming into contact with vulnerable women, including the police. A Resolution member recently became aware that one of their respected local organisations simply believed that legal aid was no more – in fact at least 15 vulnerable people they support currently need and are eligible for legal aid. Lack of public awareness, combined with no awareness campaign, means almost a resignation that there is no legal aid.

ACCESS TO JUSTICE: FOURTH THEME

Legal Aid law firms: the effect of LASPO

Respondents' biggest concerns about the state of access to justice:

AT *Flexibility*

The third concern is scope and remuneration. LASPO 12 has moved away from general concepts of legal aid to very specific inflexible issues. There were limited signs of abuse pre-LASPO in terms of scope for legal aid, as lawyers are always bound by their code of conduct in any event as well as by the contract. The number of large firms, such as Blavo and Co (second largest civil firm (2015)), or Blakemores (largest civil firm outside London (2014)) who have collapsed post LASPO, is significant. Whilst one collapsed because of alleged fraud, the question is, was the fraud induced to keep it running? The failure to increase remuneration since the 90's and the cut in 2010, followed by the implementation of LASPO 12, makes it a clear issue that only the most efficient firms will be able to remain lawful, and will only then be making a small profit, which will never encourage external investment.

Without external investment, and significant investment when there is a down turn, the firms will simply fall over, and cease to be effective. Currently larger firms pick up this work, but it is expensive not just in pure cash terms, but also in the real human costs to someone, often a vulnerable person, having to go to a new lawyer and start effectively building trust in that lawyer again.

The Legal Aid Agency should rely more upon peer review, i.e. judges' decisions, actual peer view by other lawyers, and client feedback, to decide whether a firm is behaving in a correct manner. The current tick box assessments simply provide an opportunity to process a matter without ever actually understanding it.

BHB Advice deserts are springing up as evidenced by the recent Law Society Gazette article dated 18 April 2016.¹⁹²

¹⁹²Accessed September 2017:

<http://www.lawgazette.co.uk/news/legal-aid-cuts-creating-new-advice-deserts/5054789.fullarticle> :

ILC We used to have strong working relationships with local legal aid firms and so, prior to LASPO, there would have been a number of sources of good quality face to face assistance for people in difficulty.

LAPG Lack of sustainability for practitioners because of LASPO cuts, inflexible fee regimes, too much bureaucracy and in civil legal aid the shortcomings of the CCMS system – all of these need to be tackled and as a minimum, consideration should be given to bringing back a preferred supplier scheme to cut down on bureaucracy;

Difficulties for the public in finding an adviser/lawyer to take on their case (NB even before LASPO it could be difficult to obtain advice and representation - access to advice and representation has been rationed for years).

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice

BHB Ben Hoare Bell is a major regional legal aid provider. We have legal aid contracts in housing, community care, mental health, actions against the police, family law and crime. Our ability to represent and service our client group has been massively diminished. Not only have the funding cuts represented a huge loss to our practice, there are massive hidden costs which involve the individual fee earners undertaking huge volumes of pro bono work in order to put many of the clients in to a position where legal aid can be applied for.

CCLC *Legal Aid remuneration*

Remuneration for legal aid cases does not increase with inflation and therefore it is increasingly difficult for firms who have no, or limited, alternative funding streams to meet rises in other business, overhead and running costs.

Many providers have a difficult and complex working relationship with the LAA, in part as a result of the use of overly bureaucratic schemes which are burdensome and which increase costs, both to providers and the LAA itself.

EDF In theory LASPO permits legal aid to be granted for discrimination cases in the Employment Tribunal. However, the administration of this right has made it excessively difficult to use. The Legal Aid Agency has allowed only a very limited number of such matter starts for each Legal Aid provider.

The imposition of fees for ETs has caused a diminution in opportunities for employment work in solicitors' practices. As a result, finding a solicitor who can do this work is very difficult. Either they are not available locally or a local solicitor with a practice has used up all the available matter starts.

A similar problem has occurred in relation the right under LASPO for assistance in relation to trafficked workers.

GCIT In summary we are seeing more and more unrepresented applicants in immigration and human rights appeals. The legal aid cuts have made it uneconomical for many firms to undertake funded work and even where work is in scope we are finding many applicants unable to find lawyers able and willing to undertake their work. This includes child applicants dispersed around the country who are often unable to find legal assistance and representation for their asylum claims. Our Chambers undertakes numerous pro bono cases and now has a large direct access practice but this is far from meeting the need in such cases or from the very vulnerable clients.

LAPG

1. Fees for civil cases in some areas have not increased since 1994. The fixed fees for care and then private family are a reduction in real terms, so not only no increase in fees but an actual reduction. Cuts in criminal cases have made it difficult for crime practices to survive, far less to have the money to be sustainable in the next decade.
2. Fixed fees were said to be ‘swings and roundabouts’. However there have been many changes e.g. only complex cases are in scope but no changes to the fixed fees followed.

LLS There are fewer private firms available to provide publicly funded legal services. One long established law firm Yaffe Jackson Ostrin who had provided a range of “legally aided” services ceased to trade. Others no longer see providing legal aid as viable and the truth is that all too often it is not.

MAT We feel that the biggest impacts have been in the growth of advice deserts where it is not easy to find anywhere we can refer people who need court representation and help with a particularly complex case.¹⁹³

RoW According to the Ministry of Justice’s statistics, there has been a 20% drop in the number of civil legal aid providers from April-June 2012 to Jan-March 2015.¹⁹⁴ Many firms and organisations have stopped or reduced the legal aid work they take on. One reason for this is that the fixed fees that they receive for the work are so low that legal aid work is not financially viable for them as a business.

The knock on effect of this is that even women who are eligible for legal aid are finding it increasingly difficult to find a solicitor to represent them. 75% of respondents to our survey said it was difficult (40.7%) or very difficult (34.3%) to find a legal aid solicitor in their area. 33% of respondents were having to travel between 5 and 15 miles to find a legal aid solicitor. 23% had to travel more than 15 miles.

SBS There is very limited legal aid advice available for immigration and asylum cases, even though it is a highly complex area for our users to negotiate themselves. Between September 2009 and September 2010, for example, a review of 18 immigration and asylum cases at SBS showed that it took one month or longer in 6 of those cases for a legal aid solicitor to be found. This was before LASPO! Although legal aid was retained for asylum cases, we are now also finding that many legally aid firms are reluctant to take

¹⁹³ Accessed September 2017: <http://www.theguardian.com/law/2013/apr/01/legal-aid-cuts>

¹⁹⁴ Ministry of Justice (2015) *Legal Aid Statistics in England and Wales January to March 2015*. See fn 33 above.

on asylum cases due to lack of capacity but also because of the high probability that their client will be dispersed elsewhere in the country.

A particularly difficult and distressing outcome for our users who claim asylum is the fact that even when their case is taken on by a legal aid solicitor, they find themselves having to seek a new legal aid solicitor when they are dispersed to another area. As we understand it, the LAA will not cover the costs of a solicitor travelling to their client beyond a limited distance. The client is therefore expected to find a solicitor and build trust all over again with a new solicitor in her new location. The reality is that the client not only struggles to find any legal aid solicitors in their new area, but even if she does, she is forced to re-tell her story and in doing so is often re-traumatised. We cannot help but think this state of affairs represents a false economy on the part of the LAA. By making it financially unfeasible for solicitors to ensure continuity of representation; they are transferring and even increasing costs elsewhere - the emotional cost to the client as well as the financial cost - since a new solicitor will have to expend time and costs getting acquainted with the facts and indeed with the client. The following case highlights this problem:

Ms B and her young daughter fled domestic violence from Ms B's husband. They were living in West London. She was an 'overstayer' from India but did not know this as her husband was in control of her immigration matters. Moreover, she was unaware of her husband's own immigration status as he had never been open with her about it. Ms B was advised by her social worker to go to Lunar House and claim asylum and booked her a taxi for this purpose. When challenged by SBS as to what qualifications he had to give such advice, the social worker became defensive and said it had 'worked' for other clients. SBS advised Ms B not to present at Lunar House until she had obtained proper legal advice in respect of her immigration matter. After 2 months of searching for a legal aid solicitor who had capacity to take on Ms B's case, Ms B received an appointment with a legal aid immigration solicitor in the north of London, a journey which regularly took her up to an hour and a half by public transport. Ms B first saw her solicitor in December 2015, and over the next 4 months her solicitor spent a great deal of time working on the case and built a trusting relationship with Ms B. The solicitor was also able to organise the same experienced interpreter for Ms B for each appointment which was very helpful since the interpreter also formed an excellent professional relationship and rapport with her. Ms B went on to make an application for asylum and was granted NASS support whilst her claim was pending. She was however told that she would be dispersed to an unknown location in the country. Ms B was then advised by her solicitor that if she was dispersed out of London, she would be unable to continue to provide legal advice and representation due to the distance and costs involved. The solicitor explained that the LAA would not fund her travel and would instead expect Ms B to access legal advice in her own area. Ms B – an isolated and very vulnerable woman – was left in a state of great anxiety and fear as she did not know if she would find a new solicitor and interpreter that she could trust. She was also worried about being made to relive painful and sensitive aspects of her case at a time when she was struggling to overcome her experiences of violence and abuse.

Another problem is that whilst SBS are careful to only refer women to trusted and reputable solicitors who are specialists in their areas, it is not uncommon for women to come to us having been misled by sometimes unscrupulous solicitors or those who have no expertise; this is especially common in

immigration cases. It is a recurring problem that is getting worse. Often, by the time they reach us, women have handed over significant amounts of money only to receive inappropriate, misleading and even unlawful advice. One woman was told by a 'solicitor' to marry someone to secure her immigration status. The problem is then compounded by the fact that other solicitors are reluctant to take on an ongoing case because it is difficult to get legal aid transferred and taking on a case halfway through a matter is often not financially viable.

The following are particularly appalling examples of how women have been abused by some solicitors prior to coming to SBS:

- a. In one case a woman was unable to pay privately for legal advice for an immigration matter. The 'solicitor' said he would give legal advice in return for sexual favours.
- b. In another case, a woman came to SBS having accessed legal advice elsewhere but was clearly unhappy. SBS arranged for her to see a new solicitor with whom the woman built a trusting relationship. The new solicitor told SBS that his client had disclosed to him that her first solicitor had raped her. Sadly, for reasons to do with fear and shame, she was unwilling to take action against the first solicitor.

We are of the view that the spending cuts (especially legal aid) have contributed to the creation of an environment in which undesirable and indeed criminal behaviour in the legal arena is able to flourish amongst those purporting to offer legal advice.

Shelter The complexity of the Legal Aid system makes it extremely difficult to navigate, resulting in a lack of clarity for those seeking to access it and for providers. It creates perhaps unintended difficulties for those seeking to prove eligibility, particularly at points of crisis, and those who are vulnerable or have complex financial situations. It also places a heavy administrative burden on providers, substantially adding to the cost of Legal Aid and running a Legal Aid practice.

Frequent changes in rules and inconsistent approaches on how the regulations and contracts rules should be applied make it extremely difficult for Legal Aid practices to survive. For example, there are 11 different documents to cross reference in giving advice via Legal Aid and solicitors often find it impossible to find reliable answers to essential questions, with very limited means to seek clarification.

Advice deserts

Despite Government assurances that the supply of Legal Aid would not be affected by the LASPO changes, it is already clear that there are areas of the country where it is almost impossible to get face-to-face advice.

Research commissioned by the MoJ at the end of 2015 found that, overall, the not-for-profit legal advice sector (if counted by the number of centres providing advice) has shrunk by over 50% in the ten years

from 2005 to 2015 and that 54% of those surveyed were forced to make major changes to their service due to the cuts to Legal Aid.¹⁹⁵

The MoJ report did not include a geographical analysis of the locations where advice services are available. However, our analysis of the Legal Aid Agency's own data suggests that the map of Legal Aid providers who provide housing advice in England and Wales looks like this¹⁹⁶ – leaving large areas of the country woefully under-resourced:

TCS We have previously worked with a family who were asked to pay court costs for submitting a first appeal of an immigration claim, at a time when they were unable to raise the funds to do so. This is a situation that is further compounded by families receiving poor and inadequate advice from private solicitors who do not have substantial experience of legal aid cases, the experience of which has left them unable to pursue their case any further through legal aid.

Lawyers: The effect of the cuts

Respondents' biggest concerns about the state of access to justice:

ACL The fact that, over the years, physical access to competent, qualified members of the legal profession has been eroded. This is in part due to the move away from high street practices into an environment where contact is often remote, but is also due to the drive within the profession towards a law firm operating more as a commercial enterprise. The latter has meant that fewer and fewer qualified solicitors are available, having been replaced with paralegals who often have no training before being parachuted into live files. This has a knock on effect of ineffective representation with the associated costs of rectification of the errors.

AT *Change in the background of lawyers*

1. The first concern I personally have is access. Legal Aid has always worked on the basis of committed individuals doing good quality work, and thinking about charging as an afterthought. With the cuts legal aid firms can no longer afford to employ as many of the dedicated lawyers to social justice as they once did, and must rather focus on recovery of costs. I spend a considerable amount of my time checking bills, pursuing claims for Judicial Review against the LAA, and generally not doing the work that I used to enjoy of helping vulnerable individuals.
2. The degrading of the value given in terms of both recognition and remuneration is concerning. The tipping point has gone, such that legal aid firms must employ more and more money-orientated lawyers, rather than those that are attempting to ensure the highest standards for social justice. This is not simply a legal aid issue, but also a political, judicial and general attitude

¹⁹⁵ Ministry of Justice research on advice deserts; see Law Gazette April 2016 article at fn 192 above.

¹⁹⁶ Shelter analysis of Legal Aid Agency data on the prevalence of Legal Aid providers who provide housing advice

towards legal aid lawyers. A firm commitment to stop taking pot shots at lawyers because they represent unpopular groups must be firmly established.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

CCLC *Frustrations with the current system*

We are deeply concerned about the capability of the legal aid sector to continue to encourage good lawyers into the profession and to grow talent, and the impact on young people who want a career in legal aid. The financial pressure on providers means they cannot offer job security or development opportunities to staff, including financing the career progress sought by most young people who will want to transition from paralegal to solicitor or barrister, and this makes for a volatile working environment. Those who are unqualified are working for less than the Living Wage (£8.25 per hour) and the problem is particularly acute in London where rent increases have left many young legal aid lawyers unable to afford their living costs.¹⁹⁷

HSSL Our experience is that for the most junior barristers the level of remuneration in many cases is set at a level lower than minimum wage. The standard fees in London for magistrates' court work are: (i) £50 for first appearances, remands, bail applications, sentences, adjourned trials; (ii) £75 for half day trials, half day contested committals and where a defendant pleads guilty at trial; (iii) £150 for full day trials and full day contested committals.

The references to contested committals demonstrate the length of time for which these fees have not increased since they were abolished in 2013. Some chambers are content to allow the most junior barristers to attend court for even lower sums. The closure of courts, leading to the over-listing of cases in magistrates' courts, results in large numbers of cases scheduled to start at 10am not being called on until late in the afternoon. Where the preparation and follow-up work for a case is added to the time spent at court and travelling from chambers to court, fees regularly fall to the level of £5 per hour or less. No legal system can hope to provide adequate representation in court to a defendant at a level far below the minimum wage, let alone the living wage or London living wage.

We suggest that this system could be remedied by the creation of a simplified AGFS in the magistrates' court, separating out the payment for advocacy services from the LGFS which applies in the magistrates' court. This need not add to the financial burden on the taxpayer.

¹⁹⁷ For further information, please see the Young Legal Aid Lawyers "*Social Mobility & Diversity in the Legal Sector: one step forwards and two steps back*", October 2013, which found 50% of their members were earning £20 000 or under. Accessed September 2017:
<http://www.younglegalaidlawyers.org/sites/default/files/One%20step%20forward%20two%20steps%20back.pdf>

ILC We are deeply concerned about the loss of skills within the sector – for example, Housing Benefit issues are no longer taught to law students, as they are not in scope of legal aid. We welcome the excellent Justice First Fellowship initiative, and other development programmes such as the Leadership programme funded by the Baring Foundation and JP Getty, and the LAPG programme. However, these are relatively small scale and as current social welfare lawyers retire and move out of the sector, it will be increasingly difficult to recruit suitably experienced staff.

Whilst pay isn't the major factor, we are now in a situation where our experienced solicitors who have 20-year and more PQE are earning less than the starting salary of volunteers who are about to take up a training contract at a City firm.

JH *Crime*

The greatest issues in respect of access to justice from my perspective are:

1. The ludicrously low legal aid fees paid supposedly on a swings and roundabout basis but with far more swings, most of which are broken, than roundabouts, most of which are busted, and the effort in collecting it with AF1 forms rejected and having to be resubmitted for technical and absurd reasons – something I see as I clerk myself.
2. Everyone having to do a rush job. The result of the case may not change in reality but I see on a regular basis individuals on both sides completely demoralised and just not really even trying. I doubt, like many, there was a “golden age” of advocates but these days we have demoralised, poorly paid lawyers being harangued by overly powerful hectoring District Judges (or worse lay magistrates) creating a perfect storm. I am sorry I can only give anecdotal evidence but I am sure I will not be the first person to have made this observation. At least they remain polite in the Crown Court rather than ranting and raving about criminal procedure rules.

YLAL The reforms to legal aid have had a detrimental impact on access to the profession. Firms and chambers carrying out publicly-funded work are offering fewer training contracts and pupillages, with no guaranteed minimum salary for trainee solicitors and pupillage awards persisting at a level of £12,000 per annum. As detailed in our 2013 Social Mobility and Diversity Report, ‘One Step Forward, Two Steps Back’,¹⁹⁸ paralegals and junior lawyers are under increasing pressure due to increased caseloads, often with cases concerning complex and/or traumatic issues, at minimal levels of pay. Anecdotally, we are aware that many young practitioners are moving into NGO or third sector roles due to fatigue, job insecurity and low levels of remuneration within the legal aid sector. This has a knock-on effect on social mobility and diversity across the profession, as low rates of pay drive competitive candidates from under-represented groups, such as those from black and minority ethnic backgrounds, those who care for dependent family members and those without independent financial means, away from the legal aid sector and into more financially rewarding commercial and corporate roles.

¹⁹⁸ Ibid.

Religious forums and tribunals

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

SBS *Who or what fills the justice gap?*

We are extremely concerned about the implications of cuts to legal aid for the many BME women that we serve. Legal aid cut-backs result in lack of access to justice and protection. This is a particularly problematic development which could, if not stopped, have a critical bearing on the gains that have been made by BME women and girls in the face of domestic violence, honour related crimes, forced marriage and other forms of harm that has only recently begun to receive state attention.

Our concern, based on our significant years of experience is that women who need to resolve their family disputes will increasingly be left to the mercy of growing 'community' forms of arbitration, that are increasingly religious in character. In recent years, they have been facilitated and indeed encouraged by the state to flourish as a cheap and cultural alternative to utilising the formal legal system. But the slashing of legal aid and the denial of access to the formal legal system, allows increasingly vocal religious right and conservative groups in minority communities to make demands for the right to resolve family disputes in accordance with religious values; values that inherently discriminate against women and other sexual and religious minorities and ultimately prevent rather than encourage access to justice.

We are concerned that religious forms of dispute resolution are increasingly filling the void left by the legal aid cuts.

During the past ten years or so, the UK has seen a rise in the demand for parallel legal systems, especially but not only from some powerful Muslim organisations that have campaigned for the right to be governed by so called 'sharia laws'. This demand mirrors the general rise of religious fundamentalism in all religions and makes use of the opportunity provided by the promotion of faith-based organisations through government policies on localism, preventing violent extremism, cohesion and the 'Big Society.' Under these policies, increasingly regressive religious leaderships and faith based organisations have been empowered to shape and direct public policy and the law on a range of social justice and welfare issues.

At the same time, there is a growing acceptance from parts of the British establishment, that the so-called "personal laws" (religious laws) of minority communities should be accommodated within the legal system. In the current situation both the Jewish Beth Dins and the Muslim Arbitration Tribunals (MAT) are making use of the Arbitration Act 1996 to formally pronounce religious judgements in family, children (particularly residence/contact) and inheritance cases. For instance, the former Archbishop of Canterbury has argued that the application of 'sharia laws' in respect of family matters in Britain seems 'unavoidable' and has likened its incorporation to the current recognition of Jewish laws that operate in Beth Dins. It is also worth noting that the previous Lord Chief Justice, Lord Phillips, claimed that there was 'widespread misunderstanding of 'sharia laws' and that the principles of 'sharia' could play a role in some parts of the English and Welsh legal system especially in cases of family mediation. The previous Minister of Justice, Lord Hunt also supported the idea of accommodating parallel legal systems based on religion. Whilst noting concerns about human rights abuses and issues related to forced marriage, he nevertheless

expressly supported the role of the Muslim Arbitration Tribunals ('MATs') for instance, in tackling forced marriages. This despite the fact that there is considerable evidence of the MAT's discriminatory approach to women and children.

At a time when the civil and criminal legal aid system has been drastically eroded, the role of religious forums and tribunals in delivering justice is gaining importance, especially in minority communities. Their development is facilitated because it enables the state to divert matters away from costly and time consuming litigation to cheap, alternative forms of dispute resolution. Indeed, successive governments have been expressly promoting the use of informal, essentially private, religious courts or other mediation services both as a cost cutting exercise and as an ideological attack on what it wrongly perceives as a litigious culture of rights in the UK.

Our concern is that in a context where the women's voluntary sector is also being depleted by significant funding cuts, the withdrawal of legal aid from a range of civil, family and criminal matters will, in our view, compel more and more minority women to resolve their complaints through religious bodies where they are likely to face additional financial and other human rights abuses. A report by One Law for All (2010) notes that one Islamic Sharia Council is charging £250 for a divorce without reference to women's ability to pay.

We have carried out research on the impact of religious arbitration on vulnerable women and found a number of examples of discriminatory and damaging practices that violate fundamental principles of equality, human rights and indeed the rule of law itself. The following are some examples:

- a. Most women are denied a divorce without their husband's permission or only granted a divorce after considerable delay or if they agree to give up their rights to property, maintenance and children;
- b. One woman was told that she could not be granted a divorce as she was pregnant and Islam does not permit pregnant women the right to divorce;
- c. The vast majority of women are persuaded to mediate or reconcile, despite their experiences of violence and abuse, and in blatant breach of institutional good practice on risk and needs assessment that now exists in relation to domestic violence cases;
- d. One abused woman who approached an Imam who had sanctioned her marriage for advice was told: 'you will receive justice in the after-life, you should be patient';
- e. Sharia Councils and the MAT ignore the existence of civil injunctions and protection orders obtained by women as a consequence of domestic violence perpetrated on them or their children. Instead, they are reconciled back into abusive families, irrespective of the risks involved;
- f. Even where criminal charges have been brought in respect of domestic violence, the MAT uses its influence and power to persuade the CPS to drop the charges. The MAT for instance claims it can assist parties in reaching reconciliation, the outcome of which is passed to the police and CPS with

the aim of persuading it to discontinue the charges. Again, this seems to take place without any reference to the risks involved to the victims of domestic violence.

Existing research also shows that many women who access religious arbitration forums do so out of lack of access to the formal legal system, intimidation and social compulsion, rather than out of 'free will' or 'choice'. Most women do not trust these forums to respect their rights and their dignity.

We have made extensive submissions on this matter to other appropriate inquiries and have produced a briefing note in response to the attempt by Baroness Cox to introduce the Arbitration and Mediation Services (Equality) Bill 2016. We would be willing to provide these to the Commission if needed.

ACCESS TO JUSTICE – FIFTH THEME

Too much weight placed on crisis, not prevention

Respondents' biggest concerns about the state of access to justice:

HSSL We understand concerns at the costs of litigation, and support the recommendations of the Low Commission and others for well-funded advice at an early stage of a problem.

Resolution Too much effort has focused on the point of crisis rather than prevention, and the number of people who have no choice but to represent themselves in court has risen sharply.

S & O The value of preventative services is not recognised, leading to crises management of clients' escalated problems in civil law.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

BHT The biggest impact of LASPO on those seeking housing advice has been the loss of the ability to deal with matters at an early stage and prevent matters heading into the County Court, for instance we can no longer address housing benefit issues under our contract which would have meant that where a client's rent arrears were due to issues with housing benefit we could have addressed this and in many cases prevented landlords, both private and social, serving a notice and applying to court for possession. Clients now have added stress in having to wait for a notice to be served, the arrears continue to increase and the landlord is more likely to apply for possession which in turns creates more cost for the landlord and the client in court costs. This can then impact on the number of homelessness applications to the local housing authority and the client's credit rating.

HSSL We understand concerns at the costs of litigation, and support the recommendations of the Low Commission and others for well-funded advice at an early stage of a problem.

LCN *The biggest impact of LASPO* has been the devastation of local legal and advice ecologies through the removal of funding for their essential services in social welfare law. Particularly hard hit was the early and preventative work used to nip problems in the bud. Since LASPO civil legal aid now backloads legal assistance to later stages when problems have already escalated, causing avoidable suffering for clients and greater expense to the state. As evidence, the only indicator that the Ministry of Justice reports on for civil legal aid in its annual report – average cost per case – has gone up.¹⁹⁹

LLS The current government policy on Legal Aid fails to acknowledge the evidence that for every £1 spent on legal advice money is saved elsewhere in public spending.²⁰⁰ The figures are questioned in other

¹⁹⁹ See the Ministry of Justice's *Annual Report and Accounts for 2014-15*, p.5. Accessed September 2017: available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434016/mojannual-report-and-accounts-2014-15.pdf,

²⁰⁰ Accessed September 2017:

https://www.citizensadvice.org.uk/global/migrated_documents/corporate/saving-justice-2.pdf

research but the reality that if someone is given early and quality advice which saves them from losing their home they will be less of a burden on the state.

Housing law is increasingly out of scope. The present system allows advice to be given but often at a stage where court proceedings are already in progress. Early advice may well prevent such steps ever becoming necessary.

MAT The free debt advice sector works to encourage early intervention in debt problems by seeking advice early and by lenders being proactive to identify those who need advice. It is recognised that early intervention achieves the best results and means that clients get the advice they need when they still have the most options available to them and not at a crisis point such as an eviction hearing or an order for sale. These aims are frustrated by the changes in scope of legal aid which mean that advice can only be accessed at a very late stage of proceedings e.g. when repossession proceedings are underway.

MWLC The removal of funding, particularly in welfare benefits and debt, means that the preventative help which previously people were able to access is now gone. This means that most housing cases which we take on are already extremely urgent by the time someone gets to a point where we are able to take their case on. In the past when someone received a notice warning them that their landlord was going to issue court proceedings we would have been able to give advice and assistance at that stage and help them to organise their debts or their housing benefit claim and work out some sort of manageable repayment plan for them. Now that work is no longer in scope we are increasingly having to turn people away and tell them to come back to us when they've got a court hearing date or an eviction warrant with the result that when we are in a position to assist we only have a matter of days until the hearing/eviction. This significantly weakens our ability to put forwards a strong defence for our clients.

Resolution Too much effort has focused on the point of crisis rather than prevention, and the number of people who have no choice but to represent themselves in court has risen sharply.

S & O The value of preventative services is not recognised, leading to crises management of clients' escalated problems in civil law.

Poor decision-making leads to preventable demand for advice

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

AUK Many of our 736 members also report a lack of interest in people-centred change by organisations and decision makers that generate preventable demand for legal advice. For our members this is most pronounced in the area of challenging poor decision making and administration of welfare benefits, particularly where these have adversely impacted vulnerable people on low incomes, most particularly adults of working age who are unable to work, or who are struggling to find work because of health problems or other disadvantage. This has been exacerbated by the squeeze on judicial reviews, higher

court fees and made to feel worse because in terms of voicing the effects and impact and seeking a dialogue, the government has turned a deaf ear.

The well-publicised problems with the introduction of Personal Independence Payments, Employment and Support Allowance (particularly in the use of Work Capability Assessments) have resulted in many people being without income to meet essential living needs.

The length of time required to navigate bureaucratic legal procedures results in gaps in income, which in turn often leads to problem debt involving rent arrears, council tax arrears, pressure to use inappropriate or high-cost credit and a significant increase in the use of emergency support offered by local charities such as foodbanks.

The introduction of mandatory reconsideration highlights the pernicious effects of the bureaucracy.

For many clients, the vulnerability and disadvantage associated with poor housing, problem debt and no income is compounded by poor physical and mental health, all of which make it much more difficult to understand and navigate legal procedures.

Similarly, the inappropriate use of benefit sanctions has resulted in unnecessary legal action.

It is highly inefficient to deal with hundreds of individual cases where mistakes are predictably arising because of systems that are not fit for purpose, but there is little interest in changing such systems in ways that would both improve the lives of the people that have to navigate them and save money to the public purse.

The lack of willingness on the part of the Department for Work and Pensions to improve its benefits administration and decision-making processes, resulting in unnecessary and preventable requests to reconsider and / or appeal decisions, which in turn cause unnecessary and preventable hardship to those reliant on benefits income, making it more difficult for people and communities to access opportunities to improve their lives.

This is reflected in other areas of social welfare law, particularly areas such as immigration, where political expediencies often result in a focus on demonising people rather than improving access to justice and designing systems that work fairly, effectively and efficiently.

ILC *Bureaucratic procedures*

Many of the biggest issues here relate to statutory bodies such as the DWP and the Home Office. We recently submitted evidence on the workings of the DWP to the Select Committee, and key concerns about both of these agencies are the provision of inaccurate information; lengthy delays; information going missing or being lost internally; poor decision making; inadequate reviews of decisions, leading to a higher than necessary volume of Tribunal hearings and litigation.

Pro bono, advice agencies and other assistance for litigants
Respondents' biggest concerns about the state of access to justice:

CJC In summary, the main concerns and issues are as follows:

1. Providing some form of advice and support for people who do not qualify for public funding and cannot afford conventional legal assistance;
2. Seeking to support and encourage the work of the advice and pro bono sectors...

CLSJ The reliance on already overstretched not-for-profit (NFP) and voluntary organisations to provide practical and legal assistance to those who are ineligible for legal aid and as substitutions for traditional legal advice.

ILC The escalation of problems due to the scale of need and the difficulty in securing help - we have a book ahead time of over 2 months for many of our services, and for people with precarious incomes and few tenancy or employment rights, their situation can deteriorate badly during this time, leading to a need for more extensive work and with an impact on both physical and mental health.

MAT We are extremely concerned about advice agency closures and the reduction in services and capacity across law centres, Citizens Advice and AdviceUK agencies due to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)²⁰¹ and local authority funding reductions.

MWLC Our primary concern is the tremendous amount of unmet need. This has become an increasing problem over recent years and is in part due to the introduction of LASPO and the removal of vast areas of civil legal advice from the scope of legal aid provision. However, this is not the only cause of the high level of unmet need. Firms and individuals are withdrawing from providing services that are funded through legal aid and this is resulting in a huge increase in demand on the remaining organisations, which were already thinly stretched. We find ourselves in the position of having to turn people away even where they have a good case which is still in scope for legal aid simply because we do not have the capacity to help them.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

AUK Much greater difficulty encountered by people who need ongoing help and legal advice to challenge decisions that fundamentally affect their lives:

- having a place to live;
- having enough money to buy food and meeting other essential living needs;

²⁰¹Accessed September 2017: <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted>:

- being able to resolve problem debt;
- being able to assert their rights on issues involving family law, immigration law and employment law.

AdviceUK recognised early on that legal aid provision needed to be reformed and heavily criticised the transactional way in which legal advice was provided. But reform is very different from cutting provision completely. Prior to LASPO about 10% of AdviceUK members had contracts with the LSC but the effects of LASPO have affected a far higher number because of the domino effects of removing funding for specialist provision in given localities

BHT Brighton Housing Trust has contracts with the Legal Aid Agency to provide housing and immigration/asylum advice and has its offices in Brighton, Eastbourne and Hastings. The organisation also has contracts with the Legal Aid Agency to provide the housing possession court duty scheme at the Brighton, Eastbourne, Hastings & Lewes county courts. The organisation has specialist housing and immigration/asylum caseworkers as well as housing and immigration/asylum solicitors who undertake certificated cases.

Alongside the LAA contracts BHT has a number of other advice services funded by Local Housing Authorities, CCGs, Local Authority, British Gas and Macmillan Cancer Support as well as others to provide homelessness prevention advice, welfare rights advice and debt advice. Not all of these services are available across Brighton & Hove and East Sussex being dependent on the funder and area covered.

For BHT we now have different services running out of each office and as such we are not able to offer the same level of service to people living in different Local Housing Authority areas. For instance, in the Eastbourne office if someone is an Eastbourne resident we can offer them a full service with very little restriction because Eastbourne Borough Council fund BHT to provide housing advice but in the same office someone from the Lewes or Wealden area can call in and unless their housing issue is within scope and the caller is financially eligible that person will not receive a service as there is no other specialist level housing advice provider in their area. Prior to LASPO BHT was able to offer the same level of access for housing, debt and welfare benefit advice from each of its offices, although of course there always were certain issues outside of scope and there has always been the financial eligibility criteria.

CLSJ The Centre for Law and Social Justice is a group of academics, researchers and doctoral research students who are working at the forefront of research into the implications of current law and policy for the accessibility of social and legal justice. For this response, we have drawn together findings from various research projects to collate evidence that indicates the ways in which access to justice is undermined by current law and policy. The result of the Legal Aid and Sentencing and Punishment of Offenders Act 2012 (LASPO) has been to confront individuals who require legal advice and assistance with some stark choices: either to seek support from the voluntary sector, which, since it is extremely overstretched may well not be forthcoming, or to self-represent or to take no action at all in relation to their problems. In practice, the outcome of all of these choices is likely to be highly unsatisfactory, effectively either meaning that such people do not gain access to justice at all, or that the access to formal law they do gain, for instance through self-representation, is highly flawed.

CLOCK Following our initial pilot McKenzie Friend scheme, I was invited to attend the President of the Law Society, Lucy Scott Moncrieff's address at the North Staffordshire Regional meeting, on how to meet community legal unmet needs, in the wake of the Legal Aid Sentencing and Punishment of Offenders Act, 2012. Representatives from the North Staffordshire Law Society, Staffordshire North and Stoke on Trent Citizens Advice Bureau, and Keele University Law School, considered the impact on the community being able to access legal services, in relation to their legal awareness, affordability, and the long-term sustainability of High Street Law Firms, traditionally the providers of public services for access to justice, and ultimately the demise of public serving, family and social welfare legal profession, and the discipline of family, civil and social welfare law.

CLOCK was conceived as an intersectional model, which draws upon the expertise and resources-in-kind of public, private and third sector organisations to collaboratively create the role of the Community Legal Companion to signpost and assist litigants access the professional legal and charitable sector support services, or where not affordable/available, assist in the capacity of a McKenzie friend.

The biggest impact of LASPO is the lack of funding for legal representation and advice services, and hence depleting the resources for signposting services, which results in the exacerbation of legal and social welfare needs and costs.

The difficulties are for the public and the wider legal and charitable profession, to access the minimal legal aid available, which is an essential for people to enforce their legal rights.

CLOCK has benefitted from nurturing a community-need based collaborative approach with the Stoke on Trent court that has made all efforts to assist access to justice. The court has contributed to the training of Community Legal Companions to assist the court-users face the difficulties in navigating legal procedures relates to the complexity of the language and accessibility of the court forms, the court fees and the procedures.

The court fees have deterred low income and vulnerable people from pursuing legal claims, or have deterred people from pursuing mediation services, due to prioritising what is perceived as definitive outcomes, i.e. a judgement rather than paying for mediation fees towards a resolution.

The biggest frustration is the lack of resources for the specifically required legal advice and representation which would maximise efficiency savings for the court, and minimise the long-term costs of people being evicted, children going into care, and the exclusion of domestic violence victims from contributing to our wider society, and life-threatening situations.

The wider frustration is that though CLOCK has been initiated from the grass roots, listening and responding directly to 'Voices of Experience' and the community's legal needs, it has not been publicly endorsed by the government, due to our clear mission to critically challenge LASPO, and create alternative pathways to justice.

CLOCK has developed with the expert guidance of the Designated Family and Civil Judges, the Secretary of the North Staffordshire Law Society, and with representatives from the Staffordshire North and Stoke-

on-Trent Citizens Advice Bureau (one of the largest and most in demand Citizen Advice Bureaux) and organisations specialising in Domestic Violence (Arch), Sexual Violence (Savana), Complex Needs (Brighter Futures), Family Relationship Services (North Staffordshire YMCA), Asylum seeking services (Sanctus) and with the public sector support of the Staffordshire Police, the Stoke City Council and the Criminal Prosecution Service.

CLOCK has also received national endorsements from the Rt Hon Lord Justice Ernest Ryder, Prof Richard Susskind, (Tomorrow's Lawyers), the Head of Legal Aid of the Law Society, Richard Miller, the Chair of the Clinical Legal Education Organisation (Prof Richard Grimes) and the Director of Southall Black Sisters, highlighting the importance of CLOCK for access to a secular legal system, and protection of human rights.

CLOCK has also received visits from civil servants within the Ministry of Justice who have commended CLOCK as a working mechanism for access to justice, but have shared in email communication that this cannot be publicly stated due to 'political sensitivities' due to the fact we initiated CLOCK with the endorsement of a Labour MP.

CCLC Through our advice lines we are able to monitor the impact of the lack of legal aid on children, young people and families. One of the very few alternative sources of free advice in out-of-scope child and family law and out-of-scope education law is CCLC's Child Law Advice Service (CLAS). In the year following the introduction of LASPO, calls to CLAS almost doubled.²⁰² In 2014 we undertook an in-depth analysis of calls, looking at a sample of 250 calls, with 299 distinct legal matters. Of the 199 matters logged in which the caller would be financially eligible for legal aid, 76% of the matters (152 of 199 matters) are now outside the scope of legal aid, so the caller no longer has access to legal aid where they would have previously.²⁰³

In November to December 2015, the Migrant Children's Project [MCP] advice line dealt with 268 queries. Not all of these queries were about individual cases, as we also take general enquiries about the law, e.g. from social workers, but many of the calls were about specific cases of children, young people or families. Based on the information available to us, we estimated that at least 197 of the 268 queries involved children/young people/families who would meet the financial eligibility requirements for legal aid, including 98 regarding children supported by or in the care of a local authority. Of those 197 queries, there was a need in 110 of them for legal representation in an out-of-scope area, most commonly in immigration or nationality law (87 of the 110), with needs also evident in the areas of private family law, welfare benefits and housing.

Geographic loss of provision

The provision of high-quality legal aid remains London-focused with scant provision in other areas of the country. In December 2015, the Government reported on not-for-profit organisations and found the

²⁰² Unique callers to the line rose from 23,017 in 2012/13 to 40,192 in 2013/14.

²⁰³ The analysis was carried out by legal matter, rather than caller (as some callers were phoning about more than one matter, some of which were in scope and some of which were not). An estimation of financial eligibility was determined using three indicators based on legal aid eligibility requirements: income, amount of assets (property); and amount of cash assets (money in bank account/s).

majority of legal advice was provided within London.²⁰⁴ This matched the findings of the Justice Select Committee.²⁰⁵ This is a particular problem where children and families who seek asylum are dispersed across the country, and has become an increasing difficulty with the use of out-of-borough accommodation for homeless families and those supported under s17 Children Act. Looking forwards, if children are to be transferred to different local authorities under the Immigration Bill 2015, they will face critical difficulties in accessing legal advice to regularise their immigration status, ensure they have access to education provision and that they are adequately provided for.

Alternatives to Legal Aid

Although the charitable and private sector have adapted to make legal services available outside the provision of legal aid, this is not viable as a long-term solution, free advice provision is often limited to one-off advice, and increasingly is delivered over the telephone or digitally. We provide advice through telephone advice lines, and through the Child Law Advice Service, a digital first provision, but this cannot compensate in the most difficult cases for the provision of face-to-face advice and ongoing casework.

Thousands of people have been simply left without any option but to try somehow to find the money to pay privately, sometimes putting themselves at risk of exploitation. In one stark CCLC case, a destitute young mother was forced to take on illegal work as a cleaner just two weeks after having given birth in order to try and get together the funds to pay for legal advice and representation. With immigration law, pushing more people into the private legal services market has increased the risk of people being exploited by firms providing a poor-quality service. Problems encountered include money being taken without a receipt being given and without a clear understanding of what will be done for the fee, lack of client care, and poor advice on someone's legal position.

EDF Access to legal advice – since 2010 we have seen the reduction in sources of legal advice whether from law centres, Citizens Advice, solicitors or other advice centres as the effects of austerity have been worked out.

HSSL Second, we believe that all the restrictions on scope of legal aid implemented in LASPO should be repealed. The areas of housing law, education, family law, non-asylum immigration, debt, and social security are all specialist and complex areas of law. Problems in these areas – such as living in a damp property, or needing assistance in education tribunals – have a real impact on people's lives. Society should be assisting people to resolve these problems.

²⁰⁴ Ministry of Justice. Ames, Dawes and Hitchcock. (2015) *Survey of Not-for-Profit Legal Advice Providers in England and Wales*. Accessed September 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485636/not-for-profit-la-providers-survey.pdf

²⁰⁵ Justice Select Committee. (2015) *Eighth Report on the Impact of changes to civil legal aid under Part I of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*. See fn 4 above.

JC [The need for advice in filling in financial details re exemptions from court fees] links to the issue of pro bono services and whether they adequately bridge the gap between those who are eligible for legal aid and those who are not.

I saw about four hundred clients as a volunteer adviser, I can say that there is a serious problem with the way the current system works and there are very real limits to the level of support that unqualified advisers can give. I have seen clients who have been referred to or gone to several different charities for legal assistance, often for an issue that really needs a qualified specialist's help. However, if the issue is not covered by legal aid, the specialist would not be able to assist without taking a financial risk on a conditional fee agreement. This is not a decision which healthcare professionals, or teachers, for example, have to make. The systems currently in place regarding legal aid do not seem to have been designed with a client in mind. They are needlessly complicated, time-consuming and intrusive. This has the effect of putting people off, a system which could be straightforward ends up becoming another barrier and something else to cause stress, something which worsens the problem instead of bringing a solution closer. The rising number of people who are not eligible for legal aid leads to more litigants in person and increased delays and costs in the process as the system in place is not particularly well suited to unqualified and unrepresented individuals. I can't comment on the impacts of cuts to legal aid on society as a whole but from my experience I would say that access to justice has been seriously undermined. Out of the number of clients I mentioned above, I can recall two or perhaps three who could clearly have afforded to pay privately, that is a very low number and current legal aid policy would seem to suggest that people can afford to pay for legal advice, this does not reflect my experience.

JR Children and young people are least likely to access appropriate legal support

More than half of 16-24 year olds with legal problems are left to cope alone with their problems and only 7% will manage to access the support of a professional advice agency or lawyer.²⁰⁶ When they do, they often encounter services which are not set up to cater for their specific needs. If turned away or put off by a service at first contact, a vulnerable young person at point of crisis may not come back and this can lead to an entrenched pattern of failing to seek help when future problems occur.

LAPG *What would you or your organisation describe as the biggest impact of LASPO?*

There has been a massive decrease in the number of legal problems where people can access advice under the legal aid scheme (and where other advice agencies do not have the resources to advise). In 2009-2010 there were 933,815 new matter starts. In 2014-2015 there were 171,558. (Statistics were not in for the whole year 2015-2016 but the first three quarters are all down on the previous year.)

What difficulties do you, your organisation, your clients or the people you represent face in enforcing their legal rights?

²⁰⁶ Pleasence (2011) op. cit.; Kenrick, *Access to Advice* (2009) op. cit. See, for both, fn 133 above.

As a membership organisation we know that our members have to turn away many people with serious legal problems because there is no funding to assist them. This is true of private practice and not for profit organisations.

What difficulties do you, your organisation, your clients or the people you represent face in navigating bureaucratic legal procedures?

From feedback from our members re clients: -

Clients bounce around from agency to agency trying to get help and, given the many barriers, often just give up without getting advice. It can be extremely difficult for people to find someone who can take on their case for many reasons.

LLS There are increasing supply problems: -

- There are clear advice deserts emerging across the country. The Vauxhall Law Centre in Liverpool has just lost all its local authority funding. It is not clear whether they will be able to continue.
- The reduced supply of qualified lawyers and advices means that there are increasingly unregulated providers of “legal advice” coming into the market.
- The rise of paid McKenzie friends is a sinister development – they are unregulated and usually uninsured so therefore if something goes wrong a vulnerable client has nowhere to turn.
- There is currently a Ministry of Justice Consultation on this issue.
- University law clinics operate in an educational setting and have limited time, staff and resources. They are not in any position to meet the significant and growing demand for their services. Pro bono work by universities cannot fill the gap left by legal aid cuts.

MAT The Justice Committee 2015 report “Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012”²⁰⁷ documents evidence of the number of advice centres that have closed down following the legal aid reforms.

“We were told of a number of advice centres which had closed down following the reforms including nine law centres (one in six of the Law Centres Network members) and 10 run by Shelter. Centres that closed were the ones whose primary funding stream was legal aid “it was 80% or more of their income. As with for-profit providers, however, the relatively limited number of centres which have closed altogether hides the fact the centres that survive have had to significantly reduce their capacity to assist those seeking advice.”

In addition, the Justice Committee report references The Low Commission²⁰⁸ findings:

²⁰⁷ See fn 4 above.

²⁰⁸ Accessed September 2017: <http://www.lowcommission.org.uk/Documents/Consultation-report>

“that local authority funding cuts were likely to see financial support fall from around £220million in 2010-11 to £180million, or less, by 2015-16.”

The Ministry of Justice Survey of not for profit legal advice providers²⁰⁹ includes a diagram figure D11 which demonstrates the dramatic change in categories of law under legal aid contracts between 2009 and 2015 with a substantial reduction in legal aid contracts overall and welfare benefits, debt and housing contracts diminishing.

We have reproduced some of the conclusions from the survey below.

“Just over half of the responding organisations (51%) reported there were some client or problem types they had been unable to help with in the current financial year. Of these, 62% reported that this was due to a lack of resource, 49% reported that problems fell outside of their remit, and 47% reported not having the appropriate expertise within the organisation.”

“Over half of responding organisations (54%) agreed that the changes to legal aid scope and eligibility had required them to make major changes since 1 April 2013, while just over a quarter (28%) disagreed.”

“Changes to the Nfp landscape have clearly presented challenges to the sector, with over half of responding organisations reporting that they have made major changes since April 2013 and a substantial proportion expecting to make changes going forward to maintain the stability of service provision.”

At National Debtline and Business Debtline we have had to adapt our services over the years to attempt to provide “work round” for the lack of specialist case work services. For example, we have partnership arrangements with Shelter NHAS for housing possession cases. We have a referral arrangement with the Bar Pro-Bono Unit’s Personal Insolvency Litigation Advice and Representation Scheme for our business clients threatened with bankruptcy.

However, there are many cases where complex consumer-credit contract litigation might be required, a defence is needed to a court claim or a client has a complex dispute over fees for enforcement in the High Court which we find is not easy to refer on. We are concerned that some cases with genuine merit might fall by the wayside due to the lack of access to specialist advice, and the lack of legal aid.

Resolution Resolution is always looking for other economically viable ways to provide support for separating families. We provide information for LIPs and support for members working in cases involving LIPs and with self-representing parties. Resolution members of course support people to obtain evidence to access legal aid and undertake other work on an unpaid basis, but pro bono legal advice is not the answer. The reality is that Resolution members are already providing a lot of free advice and local pro bono support, and there is little, if any, capacity for more formal pro bono work.

S & O We are academics working in the area of access to justice, providing evidence from a study we have recently completed of the impact of LASPO and other funding cuts on access to legal advice services

²⁰⁹ See Fn 204 above.

in the Liverpool City Region.²¹⁰ A survey was carried out in May 2013 to evaluate the impact in Liverpool.²¹¹ This survey of advice workers has been repeated in 2015, across the wider geographical area of the Liverpool CR,²¹² to assess the impact, two years on.²¹³ Additionally, eight interviews with agency heads or key employees were carried out.²¹⁴ It is clear from the study that advice agencies have lost large numbers of highly skilled staff and have been forced to remodel their service delivery, and that the greatest impact is in the area of welfare rights advice.

Funding cuts have necessitated dramatic reductions in staff numbers at every agency, sometimes by over half. One agency reported that staff levels had been reduced from 29 to only 9 over a three-year period, and that this is not the end of redundancies, which will be necessary again from April 2016 (Interview 5). Another reported that staff numbers had dropped from 40 to 22 over the past three years (Interview 8). Some agencies have managed to replace some advice provision through other funding sources, but these sources are temporary and under threat, for example the only housing legal aid contract still held in Liverpool is having its matter starts reduced again and is now facing a 20% staff cut (Interview 6), and the NHS-funded APP project, which provides advice services in GP surgeries, is out for re-tender.

Agencies reported increased use of volunteers at both a general and specialist level to try to fill the gaps left by staff cuts. However, there are limits on the numbers of volunteers that can be recruited and supported in an agency, and there are limits on the resources that are available for training volunteers. Volunteers are not a free alternative to paid staff, and significant extra training and supervision is needed to support an increased volunteer workforce, particularly if they are to take up some of the specialist advice work that was previously carried out under legal aid contracts.

In discussing the quality of the services provided, large majorities in both surveys reported that they were providing a worse or somewhat worse service than before the funding cuts (91 per cent in 2013, and 73 per cent in 2015).

²¹⁰ The Liverpool city region includes Merseyside (Liverpool, St Helens, Wirral, Sefton and Knowsley LAs) and the neighbouring borough of Halton.

²¹¹ Jennifer Sigafoos and Debra Morris, *The Impact of Legal Aid Cuts on Advice-Giving Charities in Liverpool: First Results* (2013). Accessed September 2017:

<https://www.liv.ac.uk/media/livacuk/law/cplu/Impact,of,Legal,Aid,Cuts,on,Advice,Charities,in,Liverpool.pdf>

The survey was developed and piloted with the LCAP, the central organisation for the Citizens Advice Bureaux (CABx) in Liverpool. It was distributed online in May 2013, and had a total of 81 responses, estimated to be over half of the target population. The survey included a number of open-ended questions. In addition, researchers attended a meeting of the advice services Welfare Reform Task Group, accessed past minutes and gathered data from agency heads via interviews and emailed questionnaires.

²¹² The Liverpool city region includes Merseyside (Liverpool, St Helens, Wirral, Sefton and Knowsley LAs) and the neighbouring borough of Halton.

²¹³ The 2015 questionnaire was updated and redistributed online in August to October 2015. We collected 51 responses, again this is estimated to be over half of the now-reduced population. The analysis comparing the two surveys was performed using SPSS.

²¹⁴ The data from the interviews, along with open-ended responses to the survey, were coded and analysed for themes. Themes emerged around impact on services, agencies' response, and the barriers thereto.

Scarce funding has meant that third-sector agencies have been forced to deliver services according to the funding that is available, rather than to seek funding that supports their core services and organisational aims. Sudden change and uncertainty in their financial situation has become the norm for Liverpool CR advice agencies. Agency heads emphasised that their responses have been stopgap measures in many cases, and have not created organisational stability. Many agencies are under threat. Increasing competition from the private sector for profitable contracts also puts agencies at risk.

One response to the precariousness faced by organisations has been to look to form bigger ones through merger, in order to increase their financial robustness, to make administrative savings, and to improve their ability to cope with sudden changes in funding. This brings with it uncertainties for staff and clients of these agencies, but might bring savings in terms of operational costs. However, we have seen in this study that larger agencies, which cover a whole LA area, are not immune to the cuts. On its own, without, for example, a change in attitude to the third-sector and preventative services, merger is unlikely to be a solution that provides substantially improved services for clients or stability for agencies.

SBS Our experience shows that there are two main factors that prevent BME women accessing justice in this wider sense; the first is cuts in public spending and the closure of much needed specialist services...

Lack of specialist services

Specialist refuges and women's organisations are closing or threatened with closure at an alarming rate throughout the country, due to funding being withdrawn or funding contracts not being renewed. This move is itself the result of the implementation of commissioning structures that favour larger, more corporatised organisations that provide generic services. The last few years have seen a number of vital, largely specialist BME women's organisations close, for example Roshni in Nottingham (December 2012), Ashiana in Sheffield (2014), Eaves in London (2015) and Apna Haq in Rotherham (2016). More recently we have seen the closure of the only refuge in Dewsbury for South Asian women. BME services have been particularly hard hit by the funding cuts despite calls to the government to halt or reverse this disturbing trend. Indeed, recently, the government rejected the demand to ring-fence funding for BME women's services.²¹⁵

The impact of the closures and cuts to specialist services is devastating for BME women for several reasons. Firstly, specialist organisations are the only point of contact for many women who otherwise fail to report the violence they have suffered to outside agencies due to a lack of trust and knowledge of their rights. Secondly, without such services, women are unable to obtain the support, protection and redress they need when facing life threatening forms of violence. This includes assistance in gaining access to specialist legal aid advice and representation. Thirdly, with every closure of a specialist organisation, the voice of BME women becomes muted, contributing to their overall marginalisation and isolation. Fourthly, closure means that important expertise that can identify and address complex needs and cultural and religious forms of harm is lost. This impacts on how the state and the legal system respond to BME

²¹⁵ Accessed September 2017: <http://www.independent.co.uk/news/uk/homenews/government-to-ignore-pleas-to-ringfence-money-for-black-asian-and-minority-ethnicfemales-who-have-a6900596.html> :

women's needs. Our fear is that once such experience and expertise is lost, it will become difficult if not impossible to replace.

Legal Aid reforms – General Comment

In our view, legal aid reforms should be seen in the context of the swingeing austerity measures and spending cuts which seem punitively geared towards the poor and which also have a disproportionate impact on women,²¹⁶ especially BME women.

Part of the previous government's rationale for introducing LASPO was that the legal aid system had lost credibility with the public. We were, and continue to be, at a loss in understanding why the government believes that the present legal aid system has lost credibility with the 'public' when it has provided no evidence that this is in fact the case. Our users, who represent some of the most vulnerable and powerless sections of the 'public', have nothing but the highest respect and gratitude for the legal aid system. It provides them with a critical safety net and access to justice, in circumstances where they face some of the worst forms of abuse, exploitation and discrimination in our society.

The current legal aid system is problematic because it has removed entire swathes of civil matters in particular, from the scope of legal aid. In addition, we find that even those who are prima facie eligible for legal aid, struggle to produce evidence of eligibility that is necessary to satisfy the Legal Aid Agency ('LAA').

Our experience is that increasingly abused women are giving up on taking legal action or are turning to family or community members or high interest loan companies to obtain funds to pay for legal advice. At times these family and community members can become risk factors when they use the loan to wield further control. In the case of loan companies our users often fall victim to a spiral of debt, which only increases their vulnerability.

We are disappointed and dismayed by the impact of the legal aid cuts on our users. We highlight below some of the specific difficulties they face:

The unavailability of quality and specialist legal advice;

Our users rarely have the means to pay privately for legal advice. Many women have fled domestic violence with few or no belongings or assets and others are destitute because they have been denied financial independence by their partners and in-laws. Most women are often subjected to financial abuse as well as other forms of abuse. This is why free legal advice via legal aid is so significant; it enables our users to obtain vital protection and redress in the face of violence and abuse. We have found that good quality legal advice from specialist lawyers can make all the difference and is quite often lifesaving.

²¹⁶ See for example, The Fawcett Society. (2012) *The Impact of Austerity on Women and Spending cuts hit women worse, says report - Call for changes in tax and welfare policies as coalition is accused of locking women into poverty*, Tracey McVeigh, The Guardian (21 September 2013). Accessed September 2017: <http://www.theguardian.com/society/2013/sep/21/spending-cuts-women-report>

However, the savage legal aid cuts occasioned by LASPO have meant that there are fewer legal aid firms on the ground (many smaller firms having found it financially unviable to have a legal aid practice). The wider spending cuts have also seen many community services and resources cut or closed. This places an enormous burden on our services to meet increasing demands for access to reputable and high quality legal advice and representation; demands which we cannot meet.

We have seen a large number of law centres close as a result of the spending cuts even though they are a valuable source of support for our users. Those that have not closed are now only dealing with specific and limited legal issues.

We are also disappointed by the disingenuous response from the Justice Secretary to the gap created by the legal aid cuts. He has suggested that it can be partly plugged by other “wealthier law firms” undertaking more pro bono work, which in our experience is simply not the reality.²¹⁷ This is not only an inadequate but also a demeaning response that can, as our experience shows, actually be detrimental for our very vulnerable users.

Our experience is that whilst some commercial firms are taking on some pro bono work, it is ‘on the side’, in areas of law that are not often within their area of expertise. In any event, even where specialist pro bono support is available it is not always easy to access due to the limited capacity of those firms offering such support. We have found that the National Bar Pro Bono Unit for example, can only take on a limited amount of cases, leaving many of our users with no choice but to represent themselves in often complex family and immigration proceedings.

The following case conducted by Sulema Jahangir from the firm Dawson Cornwell is an example of the negative consequences that can arise due to the lack of specialist advice:

Mrs. C had suffered a history of abusive behaviour from her husband. She had reported the abuse to Social Services at the time. When she was pregnant in 2011, he abandoned her in Pakistan but she was able to return to the UK. In 2013, Mrs. C and her child were again stranded abroad in Pakistan by her husband but managed to instruct a solicitor in the UK from abroad.

In 2014, wardship proceedings were commenced in the High Court to compel the return of both Ms C and her child, for which legal aid was available.²¹⁸ She was represented by Dawson Cornwell. During the wardship proceedings, the presiding judge made a finding that the father was essentially concealing the passports of the mother and child. In late 2014, a year after being abandoned, Ms C and her child were returned to the UK and the wardship proceedings were discharged and the case transferred from the High Court to the family court. The father then applied for a child arrangements order that the child live with him. Legal aid for Ms C to be

²¹⁷ Accessed September 2017:

<http://www.telegraph.co.uk/news/uknews/law-and-order/11693145/Michael-Gove-Wealthy-lawyersshould-do-more-free-work-for-the-justice-system.html>

²¹⁸ Part 1 schedule 1 paragraph 9 of LASPO preserved legal aid for cases under the inherent jurisdiction of the High Court in relation to children and vulnerable adults.

represented in respect of the child arrangements order application was only available if she could demonstrate that she was a victim of domestic violence.

An application for legal aid was made to the LAA explaining the abusive circumstances and enclosing the High Court order stating that the father had abandoned Ms C and her child in Pakistan. Legal aid was refused as the LAA did not believe that abandonment fell within the definition of domestic violence and so the mother could not meet the domestic violence 'gateway criteria' for legal aid in relation to the application brought by the father. Ms C's report to social services in 2011 could not be submitted as evidence, as the legal aid regulations provided that evidence had to be dated within the last two years of her application. Ms C was forced to represent herself initially but had difficulties explaining her position. Neither the judge nor the CAFCASS officer appreciated the significance of her abandonment in the context of domestic violence. Indeed, the CAFCASS officer believed that Ms C had abducted her child to Pakistan rather than the opposite – that she had been stranded there with her child. Eventually, Dawson Cornwell represented Ms C on a pro bono basis at the next hearing and explained the situation to the judge. The judge specified in an order that the High Court judge's finding amounted to a finding of controlling and coercive behaviour and that this constituted domestic violence. The order also requested the LAA to grant legal aid to Ms C.

Ms C's solicitor had to then apply again to the LAA setting out at length the definition of domestic violence that is accepted across government departments and she had to make considerable representations explaining how and why the abandonment experienced by Ms C and her child constituted domestic violence. Eventually, the LAA agreed to grant legal aid.

Ms C's solicitor is of the strong view that without her firm's resources and her specialist expertise in domestic violence and international family law, another solicitor would not have been able to identify the issue of abandonment as a form of domestic violence, or persuasively argue the point with the LAA.

Conclusion

In this submission, we have sought to demonstrate the dire consequences and profoundly discriminatory outcomes for the BME women that we serve in respect of their lack of access to justice and human rights. We have outlined the consequences of legal aid and spending cuts and the implications of this for access to justice for the most vulnerable in our society. We have also outlined the deeply concerning impact of 'quasi-legal' religious systems of arbitration that seek to fill the vacuum left by the withdrawal of legal aid. These forms of arbitration systems are based on discriminatory and gender-biased religious codes that are antithetical to women's human rights and yet they are encouraged to flourish unchecked.

TCS *Impact of problem debt on children and families*

In recent years, we have focused in particular on the issue of problem debt and its impact on children, through a series of reports looking at the range of ways in which children are affected through the Debt

Trap in 2014²¹⁹ including by council tax debt, energy debt and pay day loan advertising. Although this work did not specifically consider the impact of cuts to legal aid on debt advice, we did examine what support families received. For example, we found that the vast majority of families with problem debts (84%) felt that they would have liked to have received more support, or to have received support at an earlier stage. Those who did seek support often received a substandard service, particularly from creditors and local councils. Of those who have sought help from their council, a third (32%) found this 'not helpful at all', while 28% of those seeking help from a creditor or creditors said the same. Our evidence suggests creditors are not considering how the presence of dependent children can increase a household's vulnerability.

ULAW [Represents over 700 members working in advice and legal advice agencies in the London and Eastern area.]

Experience of members of current situation

We fully support the fuller submission being made nationally by Unite the Union, and simply want to add our local experiences.

We meet monthly, and every meeting hears of the loss of funding for services, the reduction in staffing in agencies, and major issues arising from the pressure that front line staff are under.

It is our view that the impact of LASPO on the sector has since been compounded by ending of the Big Lottery Advices Services Transition Fund, the major cuts to many local authority budgets in London and the enormous competition for funding from Trusts and Foundations.

This means that many staff are only in posts temporarily, and do not build up local expertise. Time is spent starting and stopping projects, rather than on core front line delivery, and members are seeing a much greater number of clients with extensive support needs (particularly mental health issues), and in extreme economic crisis.

Funding for specialist advice posts is decreasing, and there are concerns about the inappropriate reliance on volunteers by some services, with inadequate funding for supervision and support.

Some members report being de-skilled as e.g. funders shift a focus to number of people advised, rather than cases properly resolved.

219 The Children's Society and Step Change. (2014) *The Debt Trap: Exposing the impact of problem debt on children*: see fn 24 above.

Many agencies are in an almost constant state of restructuring, as they have to address funding crisis after funding crisis, and this is demoralising for clients, staff and MC members alike as well as taking a great deal of time and energy which could have been spent on developing front line services.

We are aware that a number of agencies have made actual cuts in pay of thousands of pounds per year, and that others have failed to award cost of living rises for a number of years. This is leading to significant economic pressure on employees, and will eventually lead to a recruitment crisis.

Funding for training and supervision has also affected, and these issues will all impact on the delivery of quality services to clients.

YLAL The limitations to the scope of legal aid mean that the legal needs of many vulnerable clients are being met solely by the altruistic commitment of practitioners, whether by acting pro bono or through working effectively without funding where the legal aid system imposes unrealistic and inflexible fixed fees. Many other people are simply falling through the gaps: ineligible for legal aid and unable to otherwise fund legal advice and representation, and therefore excluded from any meaningful access to justice.

Transfer of responsibility to local authorities

TCS The other example of how the cuts to legal aid have created additional bureaucratic difficulties relates to the transfer of costs and responsibilities for supporting looked after children and care leavers. Again the most prevalent example of this relates specifically to children who are subject to immigration control and for whom local authorities as part of their corporate parental responsibility have an obligation to support them in resolving their immigration issues. Our research highlighted that for those children who are in local authority care, the support they receive to get specialist legal advice is limited and inconsistent, with wide variance between and within local authorities. Our freedom of information request revealed that only one local authority had a specific policy in place to decide on legal support for children's immigration cases. The vast majority have no special arrangements and appeared to be leaving it up to individual social workers to effectively make legal decisions about which child is supported and how. The Government's initial expectation that social workers would help children 'fill out' immigration forms was quickly abandoned due to the concerns raised across sectors. However, no alternative official guidance or resource was put in place to help local authorities cope or to protect children in care or care leavers. Our research highlighted very real concerns that local authorities have effectively been contorted into taking responsibility for an area of children's lives that has never been expressly established in any policy or safeguarding guidance, and that sees them taking on uncertain costs transferred from the Ministry of Justice.

A manifestation of this gap in provision was highlighted recently in a report by the Local Government Ombudsman concerning a former unaccompanied child supported by Greenwich Council²²⁰ who did not get the support she needed leaving her with an unresolved status which prevented her from going to

²²⁰ Accessed September 2017:

<http://www.communitycare.co.uk/2016/02/02/council-pay-looked-child-5000-compensation-immigration-advice-failures/>

university or gaining employment. The report raised concerns about the Council's lack of support to her in resolving her immigration status, confusion over their responsibilities to support her with her legal fees and the detrimental consequences of their actions on her educational and employment outcomes. The LGO recommended the council pay her £5,000 compensation, in excess of its usual guidelines. As this case shows, the result is that vulnerable young people are falling through the gaps in provision, unable to get the help they desperately need.

ACCESS TO JUSTICE – SIXTH THEME

The new online court

Respondents' biggest concerns about the state of access to justice:

CJC Ensuring that new developments with considerable potential – such as a user-friendly Online Court – do not exclude vulnerable people without digital means or skills.

The way in which Respondents' work intersects with the question of access to justice, and the way in which current policy enables and undermines access to justice:

ACL In our opinion a lot of current policy is doing nothing to enable access to justice. It does not necessarily follow that because it isn't enabling then it is undermining access to justice.

However, it is hard to see how, with the demise of Legal Aid, the suggestion of an On-Line Court and the increased reliance on technology, an ordinary man on the street will fare in the brave new world envisaged.

CJC The CJC has actively supported efforts to improve services and resources for litigants in person, either directly (for example through publishing its own guide to making a small claim,²²¹ and holding regional workshops) and indirectly in backing the Support Strategy's efforts to expand pro bono and advice services in England and Wales, the judiciary's work on improving the training of judges, and efforts by the professions to develop 'unbundled' legal services (to help people afford the one thing they really need e.g. initial advice).

Shelter *An increasingly online offer?*

Proposals in the Briggs interim review²²² to create online courts might reduce some of these negative impacts for some people. Briggs does recognise that online courts will not work for all cases – suggesting

²²¹ Accessed September 2017:

<https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/CJC/Publications/Other+papers/Small+Claims+Guide+for+web+FINAL.pdf> :

²²² Accessed September 2017:

<https://www.judiciary.gov.uk/civil-courts-structure-review/civil-courts-structure-review-ccsr-interim-report-published/>

that possession cases would not be suitable for online determination, because people should not be deprived of their homes without the opportunity to be heard in person.

However, there is a risk that a wholesale move in this direction would reduce access to justice for people who would be poorly served by an online process – people who need to speak to an adviser in person (a common preference with distressing cases, such as domestic violence) or who lack the technological know-how, facilities, confidence or financial resources to be able to use online or remote means of access. This is especially a problem for people who are street homeless or in temporary accommodation, as they often have no regular access to computers or the internet and so cannot keep up with an online process.

The need to encourage early resolution by ADR

CFJ In its call for evidence, the Commission states the principal question as being, how, in the context of an ever-greater strain on public finances, the State can guarantee access to justice.

Centre for Justice considers the answer lies in a greater right to use alternatives to court (ADR). The main reason for this view is the high cost of bringing or defending proceedings in court.

Research and Trials

Since 2008 Centre for Justice has been working on solutions to the question of how to provide quick, inexpensive and reliable dispute resolution and access to justice.

CfJ has carried out research into the cost and viability of court process and of the various alternatives available. Modern examples considered have included arbitration, mediation, expert determination, early neutral evaluation, and mini-trial.

The model CfJ has most recently concentrated on, and trialled, is modern arbitration, or ‘moderation’. The reason for focusing on this model is that it seeks to combine what are considered the best of ADR methods, in a way that puts ADR to use most effectively.

These trials have shown ADR can be robust, reliable and capable of delivering just outcomes in less than 10% of the time, and at less than 5% of the cost, of present court process.

What these trials have also demonstrated is that there is an appetite for forms of dispute resolution that do not require parties to commit to a lengthy, expensive, high risk, and damaging adversarial contest with an uncertain outcome.

For increasing numbers there appears to be a preference for ADR methods which incorporate mediation, which provide constructive solutions acceptable to both parties; solutions, which address the real problems underlying the dispute, and which can restructure arrangements to suit all parties, in a way that a court decision, limited to determining the narrow issues pleaded in the court claim, is unable to do.

ADR as a route to justice

It has become CfJ's view, as a result of this work, where parties wish to use ADR, and cannot afford to enforce or defend their rights through the courts, that they should be given the right to use ADR.

There is an argument that an unwilling party should not be forced to use ADR, and so be deprived of the right to go to court. CfJ, however, considers it is wrong, that parties who cannot afford to go to court, and wish to use ADR, should be denied the only means available to them of securing protection or redress. They should not be deprived of this right, and in consequence deprived of all access to justice, by the insistence of a party who can afford to go to court, on their using a court process they cannot afford or access.

ADR is already compulsory in other jurisdictions, and in England and Wales, in some forms of claim.

If this right to ADR is denied, the courts become a barrier to justice.

Is ADR an effective means of providing access to justice?

Most think of ADR as mediation, and the terms are often used interchangeably. ADR does though cover a number of other alternative dispute resolution methods. Those recognised by the Civil Procedure Rules including arbitration and early neutral evaluation.

Mediation can resolve a large number of disputes. When used its success rates with some providers are in excess of 86%. However, its take up overall is still very low.

CfJ has found that a large number of parties simply wish to know their rights and whether they have a claim; and parties are more inclined to settle where a neutral has given a view after considering both parties' positions. In this context, ENE is a very useful tool. It is not though a complete answer in itself.

Arbitration in its adversarial form is not necessarily less costly or speedier than court process. However, investigative, or inquisitorial, arbitration, where the arbitrator deals direct with the parties, without the delays or complex rules of procedure required by the present adversarial court process, and conducted by a competent lawyer specialising in the area of dispute, is proving as reliable and as just as a court trial, and very much quicker and less expensive. It has a number of advantages over present court process. As arbitration provides finality, and an award is as enforceable as a court judgment, it offers an effective alternative for most if not all civil claims.

The model trialled by CfJ combines investigative arbitration with mediation and ENE available at any time, and it is proving highly effective.

If properly managed, ADR provides an alternative means to deliver access to justice, no less robust or reliable than court process.

The use of ADR would also reduce the total amounts required to be spent on the resolution of civil and family disputes. This would enable the present legal aid budget to fund a very much larger number of cases. It would make possible a restoration of the full areas of scope originally intended. It would bring justice within the reach of the majority of people, those presently denied access.

A Right to ADR

In trials it has, unfortunately, been found that in cases where one party wishes to use ADR, the other party agrees to this in only 4% of cases. The reasons for this refusal vary from ignorance of the benefits to the unwillingness of parties who know this is the only way the requesting party can obtain redress, and that by refusing ADR they can deprive the requesting party of remedy. A refusal operates as a denial of redress to the requesting party and a bar to justice.

It is this problem CfJ seeks to solve. It seems entirely wrong, that a party should be forced to use a process they cannot afford, and do not wish to use, and which they see as being slower, riskier and more damaging than their preferred alternative. They see it as particularly wrong when they see the alternative as likely to provide a more constructive solution, more quickly and inexpensively, and in a way that helps improve relationships.

CfJ therefore proposes that any party who wishes to use ADR should be allowed to use this. It has drafted proposed amendments to the CPR and these are currently with the Civil Justice Council.

While CfJ's principal proposal is a change to the CPR to allow a right to external ADR, it has also tabled secondary proposals⁸ for ADR to be incorporated in court process, with parties entitled to call for court based ENE or mediation, followed by judicial arbitration, on the investigative model described above. These latter proposals are being considered by Lord Justice Briggs in his Civil Courts Structure Review.

CfJ does not propose any form of compulsory mediation, or ADR, but it does consider that a party who wishes to use ADR to resolve a dispute they cannot afford to take to court should be allowed to choose to use ADR.

FLDSM Sign posting to other out of court services

The Government has focused its attention on mediation as the only alternative to court. But for some couples, other dispute resolution options such as collaborative law, solicitor negotiation, arbitration, or helping people reach agreements themselves can work better for their circumstances, while keeping families out of court and minimising conflict. There is no such thing as a 'standard' divorce or separation and people need to be aware of all of the options so they can choose what is right for them.

Resolution proposes to change the way Mediation Information and Assessment Meetings (MIAMs) are described and implemented so that information about all non-court options is provided. At Simpson Millar we would say that this information could be provided by a Solicitor, not just a Mediator, and legal aid should be available to all persons on a means tested basis to enable them to obtain that initial information. Further, the availability of legal aid should be extended for all dispute resolution options. People should be able to choose which out of court method will be most suitable for them, with funding available for the use of one chosen method – not just mediation.

HSSL We also support alternatives to litigation, such as alternative dispute resolution.

PCS There is too little emphasis and incentive placed on early resolution and too little effort made to resolve disputes by non-adversarial means and there is too little penalty for dishonesty, abuse of process or failure to resolve disputes.

ACCESS TO JUSTICE: SEVENTH THEME

Stories

CLP *Advice for Gypsies and Travellers on local authority sites - 'Mr A'*

Mr A is a retired Romani Gypsy and occupier of a pitch on a site owned and run by local authority B. As a result of amendments to the MHA 1983 local authorities were obliged to provide written statements which contain all the terms implied by the MHA 1983 and any additional express terms of the agreement. Eventually B handed out written statements. These statements changed certain of the statutory implied terms. It is unlawful to change the implied terms. One of the implied terms that was changed in the agreement was with regard to succession. The term that B placed in the agreement stated that a family member could only succeed to the tenancy if they had lived with the resident for one year (there is no such time limit in the implied term contained in the MHA 1983). Because A could not obtain any advice and assistance under the Legal Aid scheme, he did not challenge the unlawful written statement that was imposed on him and the other residents.

Two years later A fell very ill. With the permission of the local authority, A's son, C, gave up his pitch on another local authority's site and moved onto A's pitch to look after him. Unfortunately, six months after C had moved onto the pitch, A died. C asked the local authority to allow him to succeed to the pitch agreement but they refused based on the unlawful term in the written statement since C had not lived on the pitch for one year. C could not get any advice on this because it was outside of the scope of legal aid (C had been looking after his father full time and was on benefits). C was forced to resort to roadside encampments from which, since then, he has been continually evicted after short periods of time.

Advice for Gypsies and Travellers on local authority sites - 'Ms D'

D is an Irish Traveller woman who lives on a site owned and run by local authority E. She has two children. Both children are doing extremely well at school. The council inform her and the other residents that they have received a grant to refurbish the site. The works are expected to take 18 months and the site warden informs D that she will have to move into a house for that period of time. This is unlawful since the only way a local authority can force a resident to move from their pitch for refurbishment works is by offering an alternative pitch either on the same site or on another site in the area. Since re-siting of the mobile home is outside of scope for legal aid, D cannot obtain any advice or assistance under the Legal Aid scheme (D is in receipt of income support since she is full time carer for her children) and she moves into the house. However, she has a very strong cultural aversion to conventional housing and she cannot put up with living in the house. As a consequence, the family leave the house and, having nowhere else to go, resort to roadside encampments where they face continual eviction. The children are unable to continue their schooling due to the frequent evictions.

Judicial Review for 'trespassers' who are at risk of eviction - 'Mr and Mrs. F'

Mr and Mrs. F are Welsh Gypsy/Travellers. They are forced to resort to roadside encampments because there are inadequate sites and no vacant pitches in the areas they normally resort to. Mr F is a self-employed gardener but, due to frequent evictions, he has been unable to obtain much work recently and his earnings have been so low in recent times that he qualifies for legal aid. They have moved onto a piece

of land that used to be a Gypsy/Traveller site. The Gypsy/Traveller site was closed down some five years before. The land is owned by the local authority, has not been used since then and there are no existing plans for use of the land. However, the local authority, G, have a zero tolerance approach to unauthorised encampments. Without having any regard to the government guidance which states that welfare enquiries should be made before eviction takes place, they take county court possession action. Mr and Mrs. F try and find a solicitor to assist them under the Legal Aid scheme to take a judicial review challenge. However, by the time they find a solicitor willing to take on such a case 'at risk', a possession order has been obtained and there is now a bailiffs' date for eviction. The solicitor makes an urgent application to the Legal Aid Agency to obtain legal aid to take a judicial review action. However, by the time the Legal Aid Agency have dealt with this, the eviction has already taken place.

Judicial Review of unlawful homelessness decision - 'Mr and Mrs. H'

Mr and Mrs. H are New Travellers who have to resort to roadside encampments with their two children due to the lack of authorised sites and the lack of vacant pitches in the areas they normally resort to. They have been desperately trying to get an authorised pitch. The children have been missing a lot of school and Mr and Mrs. H had hoped that, if they could find an authorised pitch, the children would be enabled to go to school and their educational chances would greatly improve. Additionally, Mrs. H has been suffering from severe depression due to frequent evictions and the problems with getting the children to school.

A local support group suggests that they make a homelessness application since they are homeless under the provisions of the Housing Act 1996 as they do not have anywhere where they are entitled or permitted to place their caravans. The local authority they apply to refuses to take an application because it considers that they already have a home i.e. their caravan. This is unlawful. The only way to challenge this action is by way of judicial review. Mr H is a wood carver but, due to frequent evictions, he has not been able to sell many of his carvings recently and he is on such a low income that the family are financially eligible for legal aid. However, they have great difficulty in trying to find a solicitor to take on this matter 'at risk'. By the time Mr and Mrs. H find a solicitor who is willing to attempt to take a judicial review application, it is four months after the local authority refused to take the homelessness application. A judicial review application needs to be brought promptly or within 3 months.

Nevertheless, their solicitor manages to obtain legal aid and lodges a judicial review application asking for permission to proceed with the application out of time. The matter comes before a High Court judge who looks at the matter on the papers and refuses permission for the matter to proceed because of the delay. Though there is then an automatic right to go to an oral hearing, the solicitor indicates to Mr and Mrs. H that he is not willing to take that step because it will be expensive and the barrister who he employs and his firm may not be paid for going to the hearing. Mr and Mrs. H have no alternative but to continue on roadside encampments and the children continue to have problems in attending school as a result.

These examples show the serious injustices that will be and are being caused to Gypsies and Travellers by the legal aid reforms and cuts.

GMIAU Example 1. A is a 35-year-old man who has been in the UK since the age of 2. He is under threat of deportation. He is no longer entitled to legal aid and has no money to pay a private lawyer.

Example 2. B has a British child. The local authority and the Immigration Judge recognise that he provides absolutely essential care and support to his son and saves the State thousands of pounds by keeping his son out of the care and penal system. He is under threat of deportation and is no longer eligible for legal aid.

Example 3. C is a child who has been in the UK for 9 years. She, and her family, are fighting their removal from the UK. She is no longer eligible for legal aid and has no money to pay for private representation.

Example 4. We were asked by a social worker to advise a mother who is the sole carer of her two British children since her husband went into a coma three years ago. The legal aid fixed-fee for this case would have been £234. Social services refuse to pay for legal advice to make the application (at the legal aid rate) even though they know that it is in the best interests of the children, and far cheaper in the longer-term for the children, to be looked after by the mother. The mother is also unlikely to be removed even though she will constantly live with the fear of it and has no means to support herself.

Example 5. Refugee family reunion – the legal aid fixed fee was £234. This was removed from scope. Private solicitors are charging anything from £500 to £1000 per family member. We have set up a project, with the financial support of charitable trusts, to assist refugees to make this application to bring their spouse and children under 18 years to the UK. The project maximises the input of volunteers and separates out the legal work. It's not ideal but it was set up to prevent a lifetime separation of refugees from their families. What price can be put on this? This is a direct impact of the loss of legal aid through LASPO.

Example 6. Court and tribunal fees – Until the imposition of court and tribunal fees families or individuals granted leave to remain outside of the Immigration Rules for a limited period (typically 30 months), including all those granted leave as a way of clearing the notorious backlog of asylum cases from 2011, were advised to contact us for advice on making a further renewal application before their current leave to remain expires. This means that families come to our drop-in typically when they have 1-2 months leave remaining. Under the current fees a mother and her three children will have to pay £5,244. If the mother is in work and on low pay it is impossible for her to find the money. If she doesn't submit the application she will lose her entitlement to leave and will no longer be eligible to work or to have access to public funds. She will lose her income and her accommodation and the only way she will survive will be to once again become the responsibility of the local authority who have responsibilities to the children as 'child in need'. The cost to the local authority to keep a family of 4 for a week is about £400. So the imposition of the £5,244 fees effectively results in a cost to the local authority of at least £20,800 per year. This is an absolute and utter waste of public money.

HLC We now regularly see vulnerable people who have been left without any food or heating. This is often because they have had a benefit sanction or their mental illness meant they could not cope with the very harsh systems introduced for employment support allowance.

We also see vulnerable people who have been evicted unlawfully or have lost their home because they could not sort out their benefits. In the last few weeks we have had 4 families sleeping in cars due to homelessness and several sleeping in the bus station or park. We have had several cases of people saying they have had enough and are going to kill themselves.

We see children with special needs pushed out of the schools considered to be the best in the borough and we see some left without education at all for many months.

A woman who had developed a mental illness was street homeless because she had not kept up her mortgage payments. She was brought to Harrow Law Centre by a community worker. When the Local Authority refused our request to house her we began judicial review proceedings. This led to her being placed in temporary accommodation. We then made an application to the Court for the possession order to be overturned on the basis our client has been unrepresented in those proceedings and did not have the mental capacity to participate meaningfully in those proceedings. The Court agreed and overturned the order. The woman was able to return to her home.

A Romanian man who had worked in the UK in excess of 6 years was presented with a medical bill when his wife gave birth. The hospital trust had wrongly decided that the absence of an EU residence card our client did not have residence and consequently must pay the Trust nearly £3000. Our client had tried to resolve the matter himself but could not and now had the threat of bailiffs. The Law Centre was able to take up the case and a threat of judicial review ensured that the matter reached the Trust's legal department. The Trust agreed that our client should have been treated as a British Citizen and been provided with treatment free of charge.

INQUEST The following illustrate the difficulties faced by families who are unrepresented through the inquest process:

The family of Leonard McCourt, who died in 2010 in a police van in County Durham whilst being transported to the police station, approached a local solicitor and were incorrectly informed that they would not receive legal aid because they had savings of £8,000. The sister-in-law of the deceased represented the family at a three-week inquest where multiple barristers represented the police force and individual officers. She questioned witnesses to the best of her ability, which she has described as "the most terrifying thing I've ever done in my life". The experience put a severe strain on her marriage (to the brother of the deceased) and created difficult family conflicts as she sought to address the different perspectives of family members. The inquest took place two and a half years after the death so that the family had to live with the stresses arising from the legal process for a long time. Five months before the inquest the sister-in-law received four lever arch files of statements, documents and policies. She has related to INQUEST how she spent seven nights a week, after coming home from work, going through these materials. She did not understand much of the content and was having to research on google. She has described feeling out of her depth and very ill-equipped to deal with her role.

The family of Ethaniel Butler decided not to engage with the legal aid assessment process as they found it so intrusive. They have told INQUEST about the stresses they faced whilst unrepresented during the pre-inquest phase. They have related how difficult they found it to understand the post mortem report

and letters they were sent about investigation findings such as toxicology. They also found it highly distressing to suddenly receive a post-mortem report through the post. They started out with faith in the IPCC, which was lost during the process as they kept raising questions which were left unanswered in successive meetings and were highly dissatisfied with the IPCC report. Ethaniel's mother found the process so difficult she told the IPCC that she didn't want an inquest but was told that she had no choice in the matter. The family felt unable to access the disclosure process as they didn't know what they should be receiving. Some misconduct action was taken by the force but the family did not understand what happened. A legal representative would mediate between official bodies and the family so as to prepare them for information they may find traumatising, put technical information into lay terms and support them through legal processes.

PLP We have included below two case studies, taken from PLP's exceptional funding project, which are illustrative of some of the barriers to accessing ECF.

BXA

BXA was 52 years old and had been in the UK for approximately 16 years. She had a history of street homelessness, a diagnosis of paranoid schizophrenia, had been detained under the Mental Health Act 1983 on several occasions, and struggled to give a coherent account of her experiences. BXA required ECF to be represented in her immigration appeal in which she would need to argue that her removal would breach her rights under Article 8 ECHR.

An application for ECF was made for BXA, with our assistance, and marked as urgent. An immigration specialist had assessed the prospects of BXA succeeding in her appeal as good, but the LAA refused the application on the basis that, in their view, the prospects were poor. An application for a review of the refusal was submitted to the LAA, but they upheld the refusal, again on the grounds that the prospects were poor. The LAA's decision letter referred extensively to immigration case-law and asserted that the application had failed to demonstrate why BXA's Article 8 ECHR rights would be breached if she was removed. Following this, PLP instructed experienced counsel to prepare an advice, pro bono, on the merits of BXA's immigration case. Counsel advised that the case was meritorious. We sent this advice, together with a pre-action letter, to the LAA following which (nearly four months after BXA's first application was made) the LAA granted her ECF. We understand that BXA's immigration appeal was successful.

MM

MM is severely disabled, suffering from cerebral palsy, and is dyslexic. He cannot speak and relies upon a basic electronic voicebox to communicate. He required ECF to allow him to be represented in private law family proceedings that would determine the level of contact he would have with his children.

MM approached our exceptional funding project for help after an initial application for ECF had been unsuccessful and he had been unable to navigate the application process to apply again without legal assistance. We obtained a pro bono advice from counsel as to the merits, and complexity, of MM's family case, which confirmed that the case was both meritorious and complex. An application for ECF was submitted for MM, with our assistance. This application was refused on the basis that, in the LAA's view,

MM's family case did not meet the merits or the ECF test (the decision was made before the high test used for ECF was disapproved by the High Court in *Gudanaviciene and ors*). An application for review was submitted to the LAA, again with our assistance, but the LAA maintained their refusal to grant ECF on the basis that the merits criteria were not satisfied. Shortly after this, the judge in MM's family proceedings made an order recording his opinion that MM should be granted legal aid. Notwithstanding these judicial observations, it was necessary for PLP, on behalf of MM, to issue judicial review proceedings against the LAA before they agreed to grant ECF. The grant of ECF was made over a year after MM made his first application.

In refusing to accept that MM's case was meritorious, the LAA argued that it was unclear how he could be granted contact without support provided by the Local Authority, but that the family court was not the appropriate forum for determining such issues, rather he should challenge any refusal to support through judicial review. MM requested such support from the Local Authority, and issued judicial review proceedings when it was refused, but the judicial review claim was certified as 'totally without merit,' on the basis that the correct forum to determine the support issues was the proceedings in the family court.

SBS The following is an example of how some women cannot afford to pay for evidence needed to prove domestic violence.

Ms A fled her abusive husband, 20 years her senior, who she was forced into marrying. She was assisted to leave with her daughter by sympathetic friends. Fortunately, her husband made no attempts to contact her or her daughter. There were no police reports as the police only assisted her in leaving the matrimonial home but did not keep proper records of her report of violence. There were no protection orders against her husband as he had not made any attempt to contact her. She had not been referred to a refuge as refuge accommodation was not deemed suitable. The only other 'professional' agency that was aware of the domestic violence that she experienced was her GP. Ms A also had insecure immigration status and therefore had no recourse to public funds. Her husband in the meantime obtained a 'divorce' in accordance with so-called 'Sharia Law'. The 'divorce' document stated that the dowry that he was expected to return to her had been 'settled'. In the meantime, Ms A was herself unable to pursue a civil divorce or claim any financial relief in respect of maintenance for herself and her daughter because of the lack of evidence of domestic violence. She faced two particular problems in obtaining legal aid: firstly, she could not afford the fees to obtain a medical report from her GP who wanted to charge her £50 for the report and secondly, her lack of access to the formal legal system gave scope for her abusive husband to use alternative religious resolution forums which regularly produce highly discriminatory and unfavourable outcomes for vulnerable women.

Over the years, we have also seen a very worrying number of women who tell us that they are too afraid to confide in their GPs because they fear that their confidentiality will be breached, particularly if the GP is a family GP or perceived to be part of the local community.

The following quote from one of our service users is illustrative of this fear:

"I think when people register at a GP, it needs to be explained to them that the information they give there won't be passed on to anyone else and that they can talk about any problems they have"

there, especially girls from foreign countries. It should be made clear that the GP surgery is a confidential service. One of my friends can't talk to her GP because she is worried that because he is a very good friend of her husband, he will talk to her husband... because she told her GP something and he immediately told her husband, her husband raised his hand to her again and now she can't go to the GP. She is not allowed to go anywhere anymore."

At best, there is often an inconsistent police approach in terms of adequately identifying, recording and responding to incidents of domestic violence. This means that in some cases, even when domestic violence is reported, the police often do not have any record of such reports.

The following case study demonstrates this failure. Even where women have presented as victims of domestic violence, state agencies all too often simply fail to recognise domestic violence:

Ms P's in-laws and husband subjected her to ongoing abuse and she eventually developed serious health conditions for which she needed urgent access to medical care. For two years, she was in and out of hospitals. At one stage, her in-laws visited her in the hospital and told her that she would never recover and she was better off dead. As a result, she became suicidal and she was kept on 'suicide watch' by a nurse. She was discharged from the hospital and returned to the matrimonial home. There she was kept in a shed in the back of the house which led to a deterioration in her health. She was kept in the shed for one year even though all the professionals involved knew about her home circumstances. Her father eventually contacted SBS and we managed to get her out of the matrimonial home. Ms P cannot apply for legal aid for divorce and make claims for financial support or relief because none of the professionals involved recognised her situation as a case of domestic violence. For example, the hospital recorded her experiences as 'family problems'. Without proper recording of domestic violence, Ms P cannot obtain the evidence needed to obtain legal aid and to pursue legal remedies for the abuse she suffered.

A particularly difficult and distressing outcome for our users who claim asylum is the fact that even when their case is taken on by a legal aid solicitor, they find themselves having to seek a new legal aid solicitor when they are dispersed to another area. As we understand it, the LAA will not cover the costs of a solicitor travelling to their client beyond a limited distance. The client is therefore expected to find a solicitor and build trust all over again with a new solicitor in her new location. The reality is that the client not only struggles to find any legal aid solicitors in their new area, but even if she does, she is forced to re-tell her story and in doing so is often re-traumatised. We cannot help but think this state of affairs represents a false economy on the part of the LAA. By making it financially unfeasible for solicitors to ensure continuity of representation; they are transferring and even increasing costs elsewhere - the emotional cost to the client as well as the financial cost - since a new solicitor will have to expend time and costs getting acquainted with the facts and indeed with the client. The following case highlights this problem:

Ms B and her young daughter fled domestic violence from Ms B's husband. They were living in West London. She was an 'overstayer' from India but did not know this as her husband was in control of her immigration matters. Moreover, she was unaware of her husband's own immigration status as he had never been open with her about it. Ms B was advised by her social worker to go to Lunar House and claim asylum and booked her a taxi for this purpose. When challenged by SBS as to what qualifications he had

to give such advice, the social worker became defensive and said it had 'worked' for other clients. SBS advised Ms B not to present at Lunar House until she had obtained proper legal advice in respect of her immigration matter. After 2 months of searching for a legal aid solicitor who had capacity to take on Ms B's case, Ms B received an appointment with a legal aid immigration solicitor in the north of London, a journey which regularly took her up to an hour and a half by public transport. Ms B first saw her solicitor in December 2015, and over the next 4 months her solicitor spent a great deal of time working on the case and built a trusting relationship with Ms B. The solicitor was also able to organise the same experienced interpreter for Ms B for each appointment which was very helpful since the interpreter also formed an excellent professional relationship and rapport with her. Ms B went on to make an application for asylum and was granted NASS support whilst her claim was pending. She was however told that she would be dispersed to an unknown location in the country. Ms B was then advised by her solicitor that if she was dispersed out of London, she would be unable to continue to provide legal advice and representation due to the distance and costs involved. The solicitor explained that the LAA would not fund her travel and would instead expect Ms B to access legal advice in her own area. Ms B – an isolated and very vulnerable woman – was left in a state of great anxiety and fear as she did not know if she would find a new solicitor and interpreter that she could trust. She was also worried about being made to relive painful and sensitive aspects of her case at a time when she was struggling to overcome her experiences of violence and abuse.

The following case demonstrates the challenges that face our users in appearing as litigants in person:

Ms S was a British national who was subjected to considerable violence and abuse for many years by her husband and in-laws. In February 2015, her husband and brother-in-law removed her 5-year-old son from her care; she believes in order to punish her. Her husband then obtained a prohibited steps order without notice from the court preventing Ms S from removing or seeing her son. The matter was listed for a return date.

Although Ms S had been physically and emotionally abused by her husband and his family, she had never disclosed this to her GP, the police or to any other outside agency, mainly because she was unaware of the assistance and help that they could give her. She had never sought the assistance of a refuge, again because she was unaware of the existence of women's aid. Therefore, despite presenting at our organisation as a victim of domestic violence, she was ineligible for legal aid as she could not provide the requisite evidence required under the 'gateway' criteria'.

SBS assisted Ms S by referring her to a family law solicitor who advised that Ms S' only option was to pay privately or represent herself. The former was not an option as Ms S was in receipt of benefits. The latter was not a realistic option as Ms S was traumatised, anxious and spoke little English.

However, an SBS advocate attended the court with Ms S and acted as a 'McKenzie friend'. She assisted Ms S to negotiate with her husband's solicitor but this was not straightforward as the solicitor used legal jargon, raised new allegations against Ms S and proposed that Ms S only see her son for one hour a week in a supervised contact centre – the cost of which was to be covered by Ms S.

Fortunately, the case came before a sympathetic district judge who allowed the SBS' advocate to speak on Ms S's behalf. However, it was a very stressful hearing for Ms S because it descended into chaos with her husband's representative making a series of unfounded allegations against her. However, the SBS advocate was able to draw the judge's attention to an initial safeguarding report from a CAFCASS officer which highlighted Ms S' husband's abusive behaviour and to other matters that helped Ms S in obtaining a better outcome in respect of contact with her child. It is clear that without the help of our advocate, Ms S would have not been able to represent herself and obtain a more favourable outcome in court despite the presence of a sympathetic judge.

The following case conducted by Sulema Jahangir from the firm Dawson Cornwell is an example of the negative consequences that can arise due to the lack of specialist advice:

Mrs. C had suffered a history of abusive behaviour from her husband. She had reported the abuse to Social Services at the time. When she was pregnant in 2011, he abandoned her in Pakistan but she was able to return to the UK. In 2013, Mrs. C and her child were again stranded abroad in Pakistan by her husband but managed to instruct a solicitor in the UK from abroad.

In 2014, wardship proceedings were commenced in the High Court to compel the return of both Ms C and her child, for which legal aid was available. She was represented by Dawson Cornwell. During the wardship proceedings, the presiding judge made a finding that the father was essentially concealing the passports of the mother and child. In late 2014, a year after being abandoned, Ms C and her child were returned to the UK and the wardship proceedings were discharged and the case transferred from the High Court to the family court. The father then applied for a child arrangements order that the child live with him. Legal aid for Ms C to be represented in respect of the child arrangements order application was only available if she could demonstrate that she was a victim of domestic violence.

An application for legal aid was made to the LAA explaining the abusive circumstances and enclosing the High Court order stating that the father had abandoned Ms C and her child in Pakistan. Legal aid was refused as the LAA did not believe that abandonment fell within the definition of domestic violence and so the mother could not meet the domestic violence 'gateway criteria' for legal aid in relation to the application brought by the father. Ms C's report to social services in 2011 could not be submitted as evidence, as the legal aid regulations provided that evidence had to be dated within the last two years of her application. Ms C was forced to represent herself initially but had difficulties explaining her position. Neither the judge nor the CAFCASS officer appreciated the significance of her abandonment in the context of domestic violence. Indeed, the CAFCASS officer believed that Ms C had abducted her child to Pakistan rather than the opposite – that she had been stranded there with her child. Eventually, Dawson Cornwell represented Ms C on a pro bono basis at the next hearing and explained the situation to the judge. The judge specified in an order that the High Court judge's finding amounted to a finding of controlling and coercive behaviour and that this constituted domestic violence. The order also requested the LAA to grant legal aid to Ms C.

Ms C's solicitor had to then apply again to the LAA setting out at length the definition of domestic violence that is accepted across government departments and she had to make considerable representations

explaining how and why the abandonment experienced by Ms C and her child constituted domestic violence. Eventually, the LAA agreed to grant legal aid.

Ms C's solicitor is of the strong view that without her firm's resources and her specialist expertise in domestic violence and international family law, another solicitor would not have been able to identify the issue of abandonment as a form of domestic violence, or persuasively argue the point with the LAA.

INDEX OF CONTRIBUTORS

ACL	Association of Costs Lawyers	The ACL is the representative body for Costs Lawyers - regulated legal professionals who specialise in the law relating to legal costs
APIL	Association of Personal Injury Lawyers	The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers to represent the interests of people injured through no fault of their own
APL	Association of Prison Lawyers	The APL was formed by a group of specialist prison lawyers in 2008 to represent the interests and views of practitioners in prison law
AT	Adam Tear (1)	The personal response of Adam Tear, a director with Duncan Lewis Solicitors
AUK	AdviceUK	AdviceUK is the UK's largest support network for free, independent advice centres.
BHB	Ben Hoare Bell	Ben Hoare Bell is a large regional North Eastern office providing a wide range of legal aid services. Cris McCurley is the Partner and Head of the International Family Law Team at BHB. She is a member of Resolution Domestic Violence National Committee as well as a member of a small working group with the Ministry of Justice, The Law Society and Resolution in relation to expanding legal aid for victims of domestic violence following the case of The Queen v Secretary of State for the Justice Department 2016
BHT	Brighton Housing Trust	Brighton Housing Trust has contracts with the Legal Aid Agency to provide housing and immigration/asylum advice and has its offices in Brighton, Eastbourne and Hastings. The organisation also has contracts with the Legal Aid Agency to provide the housing possession court duty scheme at the Brighton, Eastbourne, Hastings & Lewes county courts
CCLC	Coram Children's Legal Centre	Coram Children's Legal Centre (CCLC), part of the Coram group of charities, is an independent charity working in the United Kingdom and around the world to protect and promote the rights of children
CEW	Consortium of Expert Witnesses	Dr Judith Freedman writes on behalf of expert clinicians from the Consortium of Expert Witnesses to the Family Courts, who provide assessments of vulnerable children and parents for the Family Courts in private and public law child care proceedings
CFJ	Centre for Justice v2	Since 2008 Centre for Justice has been working on solutions to the question of how to provide quick, inexpensive and reliable dispute resolution and access to justice. CfJ has carried out research into the cost and viability of court process and of the various alternatives available. Modern examples considered have included arbitration, mediation, expert determination, early neutral evaluation, and mini-trial
CJC	Civil Justice Council	The CJC is an arms-length advisory body with a statutory duty to take an overview of the civil justice system and make

Appendix 2: Written Evidence on the Current State
of Access to Justice

		recommendations to the Government and judiciary on ways in which it could be made more accessible, fair and efficient
CLOCK	Community Legal Outreach Collaboration, Keele	Dr Jane Krishnadas. Organisation: CLOCK National (Community Legal Outreach Collaboration, Keele) for Keele, Sussex, Brighton, Canterbury, Essex, Wolverhampton, Salford, Birmingham City and Liverpool John Moores University Law Schools in collaboration with the court, legal profession and charitable sector. Role: CLOCK Conceptor and Convenor, Senior Lecturer, School of Law, Keele University
CLP	Community Law Partnership	The Travellers Advice Team (TAT) at Community Law Partnership (CLP) advise and represent Gypsies and Travellers throughout England and Wales and the Team has just celebrated its 20 th anniversary
CLSA	Criminal Law Solicitors Association	Presented by Zoe Gascoyne Chair of the Criminal Law Solicitors' Association which is the only national association entirely committed to professionals working in the field of criminal law. The CLSA represents criminal practitioners throughout England and Wales.
CLSJ	Centre for Law & Social Justice	Ms Jess Mant, Doctoral researcher; Prof Hilary Sommerlad, Professor of Law and Social Justice; Dr Julie Wallbank, Senior Lecturer; on behalf of the University of Leeds Centre for Law and Social Justice
CS	Colin Stutt	He has worked on access to justice issues almost for his whole career, particularly in his role as Head of Funding at the Legal Aid Board / Legal Services Commission where he was responsible for the rules under which civil cases were granted legal aid
CS Add 1	Colin Stutt - Executive summary of his Report	His report was to the Department of Justice, Northern Ireland, advising on changes to their legal aid system, as part of their Access to Justice Review
DDPO	Deaf & Disabled People's Organisation	Louise Whitfield is a founding member of the DDPOs' Legal Network, established and run by Inclusion London
DLA	Discrimination Law Association	The Discrimination Law Association ('DLA'), a registered charity, is a membership organisation established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice
EDF	Equality & Diversity Forum	The Equality and Diversity Forum (EDF) is a network of national organisations committed to equal opportunities, social justice, good community relations, respect for human rights and an end to discrimination based on age, disability, gender and gender identity, race, religion or belief, and sexual orientation
FLDSM	Family Law Department at Simpson Millar	Simpson Millar LLP is a national law firm with over 150 years of successfully supporting the rights of individuals and their families in the UK. It has long standing associations with organisations, particularly membership organisations such as trade unions

Appendix 2: Written Evidence on the Current State
of Access to Justice

FNFBPMC	Families Need Fathers – Both Parents Matter - Cymru	This charity campaigns to remove barriers to the positive inclusion of both parents and the wider family in the upbringing of children in Wales
GCHT	Garden Court Housing Team	The Housing Team at Garden Court Chambers is one of the largest specialist housing law teams in the country (26 barristers) and has a reputation for excellence in this area.
GCIT	Garden Court Immigration Team	The Immigration Team at Garden Court Chambers is one of the largest specialist immigration law teams in the country, and has a reputation as the 'leading set for immigration work, asylum and human rights work' instructed for high-profile, highly vulnerable clients and in personally and politically sensitive matters across the spectrum of immigration, nationality, EEA free movement, SIAC and refugee law.
GIPSIL	GIPSIL, Leeds	GIPSIL is registered as a Cooperative & Community Benefit Society with Charitable Status. It is an organisation based in Gipton and Harehills, Leeds, providing support and housing to young people and young parents aged 16 to 25 years across east & north east Leeds and providing specialist support to care leavers citywide
GMIAU	Greater Manchester Immigration Aid Unit	Greater Manchester Immigration Aid Unit provides specialist immigration legal advice, representation, and support to people who are subject to immigration control in the North West of England
GMLC	Greater Manchester Law Centre	Greater Manchester Law Centre Steering Group (GMLC) is a nascent community law centre set up by people who believe Greater Manchester needs a campaigning law centre offering free legal services
HJA	Hodge Jones & Allen	This response has been prepared on behalf of Hodge Jones & Allen LLP, with input from members of the Civil Liberties Department predominantly, as well as the senior partner, Patrick Allen
HLC	Harrow Law Centre	Harrow Law Centre is a charity which provides free legal advice, support and representation to the local community. The law centre was established in April 2010 by local people who saw the need for the most disadvantaged and vulnerable groups in Harrow to have access to high quality and free legal advice
HLPAs	Housing Law Practitioners' Association	The HLPAs is an organisation of solicitors, barristers, advice workers, independent environmental health officers and others who work in the field of housing law
HSSL	Haldane Society of Socialist Lawyers	Since its foundation in 1930, the Haldane Society of Socialist Lawyers (the "Haldane Society") has provided a forum for the discussion and analysis of both national and international law and legal systems from a socialist perspective. The Society is independent of any political party but has trade union and labour affiliates

Appendix 2: Written Evidence on the Current State
of Access to Justice

ILC	Islington Law Centre	Islington Law Centre is a busy, inner London charity, providing a range of social welfare law services. They currently hold contracts for the delivery of legal aid in housing/debt, immigration/asylum and public law, and are agents for the delivery of discrimination law and welfare benefits Upper Tribunal work. They also hold a contract for the delivery of the housing Duty Desk scheme at Clerkenwell and Shoreditch County Court.
ILPA	Immigration Law Practitioners' Association	The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association with around 1000 members (individuals and organizations)
IM	Irwin Mitchell	Irwin Mitchell LLP is a national law firm that employs more than 2,200 staff and has 188 partners. This evidence is provided by the national Public Law Department, headed by Yogi Amin, and currently employs over 60 staff, including 3 partners and 4 associates, based in 7 offices in England. The firm holds legal aid agency contracts for community care, clinical negligence, public law, and actions against the police
INQUEST	INQUEST	INQUEST provides a specialist casework and advice service on inquests to bereaved families following deaths in custody or state detention or involving state agents and multi-agency failings and other cases that engage Article 2 of the EHRC
JC	Jack Crown	He is currently employed by TV Edwards Solicitors as a paralegal in the social welfare department. Previously he volunteered as an adviser for Toynbee Hall. He also worked as a volunteer caseworker for a legal aid Family law firm in East London. He volunteered for a Citizens Advice Bureau in East London for 16 months as a gateway assessor and as an adviser
JGJ	Joseph G Jones	He has circa 10 years' experience in planning related matters in the public, voluntary and private sector. Most of his work is with the Gypsy-Traveller community assisting with site searches, applications, appeals, local plan representations and occasionally court submissions or as a McKenzie Friend
JH	Julian Hunt	He is a barrister, called in 2005. He is a sole practitioner and specialises in crime and, in particular, road traffic work. He is a former Senior Crown Prosecutor and used to specialise in drafting advices for fatal accidents. Around 50% of his income is now from Direct Access work with the remainder traditional instructions
JR	JustRights	JustRights is a broad coalition of over 30 charities ²²³ campaigning for fair access to advice, advocacy and legal representation for

²²³ JustRights members: Association for Young People's Health; Brightside; Brook; Catch 22; Children England; Children's Rights Alliance for England; Community Links; Confederation of Heads of Young People's Services; Coram Children's Legal Centre; Coram Voice; Family Rights Group; The Howard League for Penal Reform; Independent Academic Research Studies; Just for Kids Law; Law Centres Network; Law for Life; Migrant & Refugee Children's Legal Unit; National Council for Voluntary Youth Services; National Youth Advocacy Service; National Youth Agency; New Horizon Youth Centre; No Recourse to Public Funds Network; Peer Power; Release; Royal

Appendix 2: Written Evidence on the Current State
of Access to Justice

		children and young people. It was founded in 2009 by Children's Rights Alliance for England, Law Centres Network, The Howard League for Penal Reform and Youth Access out of a shared concern that children and young people were marginalised from access to good quality advice, advocacy and legal representation
LAPG	Legal Aid Practitioners Group	LAPG engages directly with the LAA and MOJ to influence policy and improve the practical operation of the legal aid scheme.
LCN	Law Centres Network	Law Centres are a network of 44 not-for-profit legal practices across the UK. They employ salaried lawyers who are experts in social welfare law, including the areas of debt, housing, employment, social security entitlements, immigration and discrimination.
LLS	Liverpool Law Society	The Liverpool Law Society is the only local law society with an Access to Justice Committee. This Committee is made up of lawyers in private practice; advisers from the not for profit sector including CABx, Welfare Rights; staff from the University Law Clinics in Liverpool; Young Legal Aid Lawyers.
MAT	Money Advice Trust	The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money wisely. The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.
MWLC	Mary Ward Legal Centre	The Mary Ward Legal Centre is a not for profit aid organisation providing specialist advice in relation to housing, welfare benefits and debt. It advises and represents a large number of tenants in social housing regarding matters relating to their rents and broader tenancy issues, and also represents clients in court proceedings issued by social landlords in respect of rent arrears
PALG	Police Action Lawyers' Group 5	PALG is comprised of solicitors, barristers and legal executives who represent complainants against the police throughout England and Wales. It was formed in 1991
PCS	Public & Commercial Services Union	PCS is the sixth largest trade union in the UK. It represents civil service and other public sector staff as well as staff in some commercial organisations
PLP	Public Law Project	PLP is an independent national legal charity which aims to improve access to justice and to public law remedies for those whose access is restricted by poverty, discrimination or other similar barriers
PW	Paul Williams (1 and 2)	After a short marriage he has gained considerable experience of the family law system in the UK. He has also, as a result of the knowledge gained, helped several people as a McKenzie friend with private family law cases with free assistance and help

Association for Deaf people; Streetgames; Streetlegal; The Cabin; Young Minds; Young People's Law Service; Young People's Support Foundation; Youth Access; Youth Legal & Resource Centre.

Appendix 2: Written Evidence on the Current State
of Access to Justice

Resolution	Resolution	Resolution is an organisation of 6,500 family lawyers, mediators and family professionals who believe in a constructive, non-confrontational approach to family law matters
RoW	Rights of Women	Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence
RoW WMAN	RoW Women's Migration and Asylum Network	Points made at a meeting of members of our Women's Migration and Asylum Network on Monday, attended by about 30 professionals working with vulnerable migrant women affected by violence
SBS	Southall Black Sisters	For over 35 years, Southall Black Sisters (SBS) has tried to access justice for some of the most vulnerable black and minority women in society
Shelter	Shelter	Shelter Legal Services has 17 offices around the country and provides representation to those in housing need in many homelessness, possession, disrepair and unlawful eviction cases, as well as anti-social behaviour injunctions. They provide duty possession scheme representation in 26 court locations around the country
SLL	Society of Labour Lawyers	The Society is the pre-eminent professional association for lawyers on the left of politics and supports the Labour Party in developing legal policy and advising on legal proposals. It provides a forum for its members to discuss, debate and campaign on current political and legal issues and a meeting point for like-minded lawyers from a wide variety of backgrounds and practice areas
SLLCG	Society of Labour Lawyers Crime Group	The crime group for SLL
S & O	Sigafoos & Organ	Dr Jennifer Sigafoos & Dr James Organ – Lecturers at the University of Liverpool School of Law and Social Justice
TCS	The Children's Society	The Children's Society is a national charity that runs local projects to support children and young people who are at risk of exploitation or harm, and have been let down by the systems meant to protect them. They work with refugee and migrant children, children in the care system, children living in destitution and poverty, those who are homeless, as well as young people who have been or are at risk of being trafficked, exploited or abused
Thompsons	Thompsons	A large firm of solicitors who specialise in acting for claimants in personal injury actions of every kind
TJ	Transform Justice	Transform Justice is a charity campaigning for a fairer, more humane, open and effective justice system
UKAJI	UK Administrative Justice Institute	UKAJI is an independent, UK-wide initiative, based at Essex University, whose primary task is to encourage the expansion of empirical research on administrative justice in the UK

Appendix 2: Written Evidence on the Current State
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ULAW	Unite Legal & Advice Workers	The Branch represents over 700 members, working in advice and legal agencies in the London and Eastern area. These are mostly not for profit agencies, but they have some members who eg work as paralegals in legal aid firms
WA	Women's Aid	Women's Aid is the national charity working to end domestic abuse against women and children. It is a federation of over 220 organisations who provide more than 300 local lifesaving services to women and children across the country
YLAL	Young Legal Aid Lawyers	YLAL is a group of lawyers who are committed to practising in those areas of law, both criminal and civil, that have traditionally been publicly funded. YLAL members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales.