



Citizens Advice Submission to the Justice Select Committee inquiry into the impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

April 2014

1. About Citizens Advice

1.1 The Citizens Advice Service is a network of nearly 400 independent Citizens Advice Bureaux that provide free, impartial advice from more than 3,500 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services. The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

In 2012/13 the Citizens Advice service in England and Wales advised 2.3 million people on 6.6 million problems.

1.2 By helping people to solve problems, we change lives, which in turn represents considerable value for communities, the public purse and society as a whole. Research by Citizens Advice demonstrates that the Citizens Advice service is worth at least £750 million to society¹.

2. Introduction

2.1 Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) removed specific areas of law from the scope of civil legal aid, with a knock on effect of reducing funding for legal services.

2.2 Before changes introduced under LASPO came into effect, around half of Citizens Advice Bureaux held legal aid contracts. In the year before the changes, these bureaux provided specialist advice in approximately 136,000 cases to help people struggling with legal problems relating to debt, welfare benefits, housing, family and relationship breakdown, employment disputes and immigration. Changes introduced under LASPO have withdrawn support for approximately 120,000 of these cases.

2.3 This submission to the Justice Select Committee's inquiry to review the impacts of LASPO one year on presents Citizens Advice's evidence on the effects on access to justice, and the direct experience of Citizens Advice Bureaux in supporting people amid the changes. This submission focuses on three areas of impact:

- Firstly, the continuing demand for, and reduction in, provision of specialist advice services, resulting in unmet need
- Secondly, a decrease in support for people in navigating the complex justice system, limiting access to justice

¹ *Making the case – The value to society of the Citizens Advice service*: Citizens Advice May 2014

- Thirdly, a reduction in support for early intervention to address housing issues, leading to higher likelihood of problems escalating and incurring further costs.

2.4 The submission draws on evidence from Citizens Advice's statistical database, from client case histories, and from a survey of bureaux undertaken in March/April 2014 to inform this response.

3. There has been a reduction in provision of specialist advice services, whilst demand for help to resolve complex problems continues

3.1 People's need to access specialist advice to resolve often complex problems continues to grow. April 2013 did not just mark the date of the LASPO changes coming into effect, but also the beginning of a major overhaul of the welfare state. At precisely the time when people's need for specialist advice increased, to assist them to understand, adjust to, and in many cases challenge decisions affecting their income, housing and work status, cuts to the scope of legal aid have drastically reduced the availability of that advice.

3.2 In a rapidly evolving world, advice can be the method by which people are empowered to tackle their problems and embrace the changes happening around them. A good example of this is our research into people's readiness for transition to universal credit, which showed that nine out of ten people were not ready for the advent of the new system in key areas of capability, for example, budgeting, banking and getting online. However, after receiving advice and support from the Citizens Advice service, over half of clients improved their skills in the key capability areas². Citizens Advice is supportive of the aims of universal credit to simplify the benefits system and make work pay. To achieve those aims however, people affected must be properly supported to successfully migrate to the new system. This requires adequate resources and proper planning.

3.3 Welfare reform is far from the only area in which people face significant challenges. Shortages of affordable homes and changes to housing benefit have pushed many people into difficult financial positions. Last year Citizens Advice saw a 16% rise in social housing rent arrears and a 26% increase in threats of house repossession for social housing tenants. We have also seen people's need for assistance resolving problems in the private rental market increasing rapidly over recent years due to poor regulation and high rents.

3.4 Rising use of zero hour contracts, casual contracts and temporary employment agencies are leaving employees increasingly vulnerable to poor employment practice. Employment tribunal fees – introduced in July 2013 – are an additional barrier to people making a claim, as indicated by a 79 per cent reduction in the number of tribunal claims issued (see Figure 2 below). Accessing advice on the potential merits of a claim and how best to succeed in that claim if going ahead is increasingly important in this context.

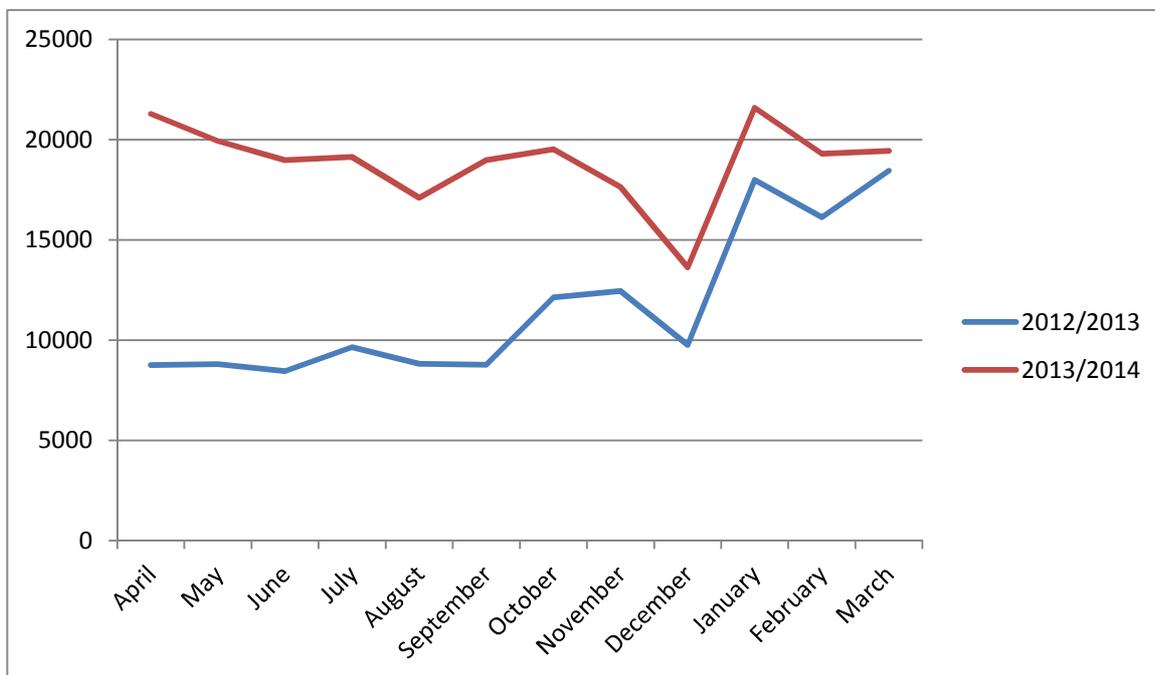
3.5 Yet despite this need, changes to the scope of legal aid have inevitably meant that the availability of affordable, independent specialist advice has reduced. Citizens Advice

² *Universal credit managing migration pilot – Final results: how the Citizens Advice service can support universal credit claimants to successfully manage under the new system: Citizens Advice December 2013*

Bureaux continue to advise, support and obtain positive outcomes for clients who turn to them with problems in all of the areas highlighted above. But reductions in capacity to provide specialist help have meant that fewer people have been able to access support with complex legal cases. Latest statistics for the first three quarters of 2013/14 show an 8% drop in the number of clients helped by Citizens Advice Bureaux (approx. 85,500 people) on the same period last year and a 15% drop in the number of issues dealt with. Whilst changes to the way data is recorded account for some of the differences, these reductions are in large part due to loss of legal aid contracts meaning fewer people seen and more enquiries finishing at an early stage without proceeding to full casework.

3.6 Furthermore, bureaux report clients experiencing long delays to access specialist advice services, or having no access at all to the level of help they need. While some people can make use of self-help tools or online guidance to help them through their problems, many more are struggling in the face of decisions and complex systems or prohibitive costs to access routes of redress. An analysis of the pages relating to help with legal costs on our online support website AdviceGuide provides an indication of demand for support. It shows an increase of 62% in the number of page visits from April 2013 to March 2014 on the same period the previous year (Figure 1).

Figure 1 – Page visits to ‘Help with Legal Costs’ on AdviceGuide 2012/13 and 2013/14



4. Access to justice is made more difficult because people can't get the support they need to navigate complex justice systems

Welfare benefits

4.1 As a consequence of LASPO changes, many people have struggled to get support preparing reviews and taking forward appeals of social security decisions. Of Citizens Advice Bureaux who previously held legal aid contracts for specialist welfare benefits advice, 85 per cent have reported a reduction in capacity to provide specialist services.

4.2. One area where need for support has substantially increased is in Employment Support Allowance (ESA), the biggest single issue brought to bureaux. Citizens Advice is seeing increasing examples of claimants being left without money during mandatory reconsiderations, serious concerns about the effectiveness of work capability assessments, and clients facing prohibitive costs to access the medical evidence they need to demonstrate their eligibility. Without access to specialist advice, clients are struggling to prepare appropriate challenges to first instance decisions or to take forward effective appeals.

'Last year we were able to provide expert assistance with 350 appeals. Almost all of this capacity has been lost. We have developed self-help materials and give advice on rights to appeal but we are finding that many people are not able to deal with the process and so are not continuing to appeal stage.' CAB in the West Midlands

'There have been problems with referring clients to specialist advice to challenge decisions on benefit entitlement and overpayment issues, including assembling specialist medical evidence to support ESA and DLA/PIP claims and preparing cases for appeal. Benefits appeals are failing as clients are unable to pay for supportive medical evidence and/or are attending on their own without submissions.' CAB in the North West

4.3 The following case studies illustrate some of the challenges experienced by clients:

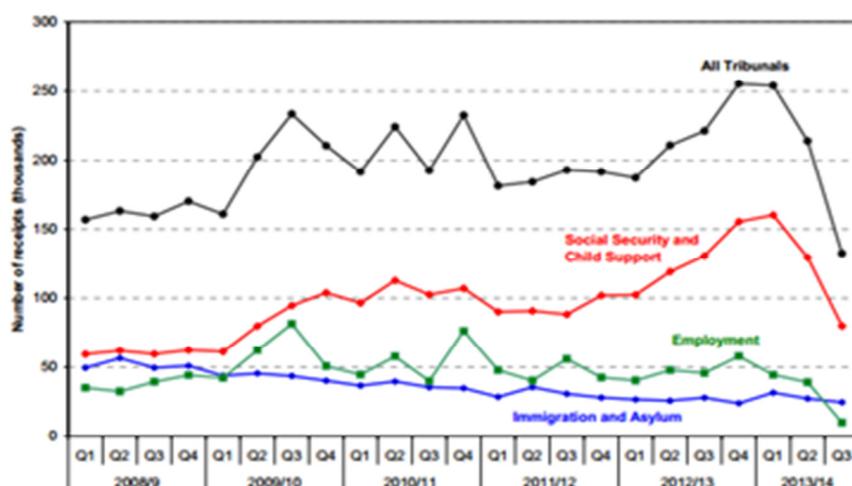
Harry, in his 50s and in receipt of ESA, was called for a medical assessment but was too ill to attend. He had a sick note from his doctor as proof of this, but his benefit was stopped anyway. The bureau commented that prior to 1 April 2013, he would have been able to access a specialist caseworker to assist but this option was no longer available. Harry was left without any means of financial support and has had to turn to charity to survive.

Marian is 60 years old and suffering from TB and pneumonia. She has one lung and a slipped disc. Marian was put into the work group for ESA following a medical assessment. She came to the bureau looking for help to complete her ESA appeal form. She had approached a solicitor who had said it would cost £250 to help her. She has no other source of help as her family is a long distance away and she cannot use the internet. Her ESA was stopped because of the delay in her submitting her appeal. It will be backdated once her appeal is submitted, but in the absence of legal aid, she has no one to assist her to prepare her case for tribunal.

Jim had an industrial accident 11 years ago, has a long term health condition, and is currently in receipt of ESA. When he was transferred from incapacity benefit to ESA some years ago, he was originally refused the new benefit, but with legal assistance he was successful in appealing the decision. Jim's ESA has now been reviewed and withdrawn. Again he appealed the decision, but this time was not able to access any assistance because legal aid is no longer available. He lost his appeal.

4.4 Ministry of Justice statistics support bureau experience that people are being deterred from pursuing cases to tribunal on their own (Figure 2). The chart below shows a 39% reduction in the total number of social security appeals made during Oct-Dec 2013 on the same quarter the previous year³. Given the reasonably high success rate of appeals to this jurisdiction of 40%, the fall is worrying as it suggests that a significant number of people are not obtaining their entitlements.

Figure 2: Tribunal receipts by jurisdiction, 2008/09 to 2013/14



Source: Ministry of Justice, Tribunal Statistics (13 March 2014)

4.5 Citizens Advice is supportive of attempts to reduce the number of unnecessary appeals taken to tribunal, but this must be achieved by tackling the quality of decisions taken at first instance and review, rather than through barriers to accessing appeal routes. Concern about our evidence on the ESA decision making process has led to a flagship Citizens Advice campaign for 2014 called Fit for work, which calls on the government to ensure that:

- the DWP listens to evidence from the health and social care professionals who know the clients best
- required medical evidence is provided free of charge

³ HMCTS: Tribunals Quarterly and Annual reconciled returns – March 2014. Mandatory reconsiderations were introduced at the end of October 2013, but statistics are yet to be released so it is too early to say what impact these have had on tribunal figures.

- the companies running the work capability assessments are held accountable for poor assessments
- the DWP pays the assessment rate of ESA during the mandatory reconsideration period.

4.6 In addition to the above, we recommend that the Government commission independent research into the reasons behind declining social security tribunal claims and any significant variations in success rates since legal help was withdrawn for welfare benefits advice.

Other areas of social welfare law

4.7 In addition to a reduction in specialist welfare benefits advice, 87% of bureaux who had previously held legal aid contracts for specialist debt advice reported a reduction in capacity. 92% of all respondents are having difficulty referring clients to specialist legal advice across all areas.

'We did have access to CLS funded specialist debt advisers and they were able to help clients to apply for debt relief orders, bankruptcy and offer specialist advice in this area. We were able to triage clients and make best use of this resource combined with our own resources in the bureau. The loss of this service has meant that more clients have had to be referred down self-help routes...and some of these clients have struggled to cope. Our own resources are under pressure and we have to prioritise vulnerable clients for intensive help in the bureau.' CAB in the South East

'Clients can obtain generalist employment advice but are often unable to take things further. Claims against employers often result in the employer being legally represented and the employee left on their own. The complexity of preparing a case is off putting and many clients cannot cope and give up.' CAB in the North West

Mark has an application before the Employment Tribunal for unfair dismissal. He has received a date along with a large bundle of court documents and a list of directions from the Tribunal Service. He cannot afford legal representation but came into the bureau because he did not know what he was expected to do next. The employer has solicitors and the means to conduct a robust defence. The bureau expressed concern that without specialist help, Mark would not know how to prepare his case for tribunal which could result in it being struck out.

4.8 Accessing affordable specialist help for family cases is a particularly acute problem. Legal aid remains available for mediation, but this is not always appropriate where there are imbalances of power, or where one party – who may be able to afford a solicitor – refuses to mediate. Many people are struggling to negotiate complex processes relating to their home, children and finances:

'When a relationship breaks down, if one partner works and has access to funds to see a solicitor but the other doesn't, that partner will be without proper representation and may suffer significant financial loss as a result. Our bureau has seen clients suffer where there are children involved and the client can't afford to see a solicitor to advise on court processes for gaining access to children.' CAB in South Wales

Rebecca was at risk of losing her and her children's home following an application by her husband for tenancy. She was advised by the judge in her case to get legal advice, but due to high demand, could not access the free advice in her area.

We have had clients with family court forms and papers which they need help to complete...It used to be possible to refer to solicitors who could advise. This is no longer the case and some clients unable to represent themselves are unable to enforce legal rights that they might have. CAB in the South

4.9 Without legal advice, bureaux report many clients deciding not to challenge custody or contact decisions given the difficulty of navigating the complex court process. Another effect of the removal of most family cases from the scope of legal aid has been more people electing to represent themselves. A report from the Family Courts Unions Parliamentary Group⁴ sets out figures from Cafcass showing that in 42% of cases coming before the courts, neither party is represented compared with 18% before the cuts. The report highlights the experience of staff working in the family court system who find themselves spending much longer on 'clarifying expectations, identifying baselines or explaining the court process.'

5. Reduced support to prevent crisis in housing problems, leading to escalating costs

5.1 Specialist advice helps to identify problems and early action to prevent crisis in many areas of law⁵. This submission focuses on the impacts of the reduction in scope to legal help to housing on support for early intervention.

5.2 Legal aid for housing has only been retained for cases where people are at imminent risk of eviction, where they are already homeless, or where their rented home is in extreme disrepair with a serious risk to life or health. Limiting the provision of specialist advice to these extreme situations ignores the value of early intervention in avoiding crisis. Crisis situations are expensive not just in terms of the personal cost to the family or individual but also in their impact on other areas of public spending – for example to local authorities responding to homelessness situations and on health services dealing with the impact of sub-standard living conditions.

5.3 After years of decline all forms of homelessness are increasing and are likely to increase still further.⁶ Government statistics show that 56,930 households were in temporary accommodation on 31 December 2013, 7% higher than at the same date in 2012⁷. Citizens Advice bureaux who still retain housing legal aid contracts estimate that, on average 50% of the cases they see involve a problem with a housing benefit application or decision. This can often be the cause of rent arrears in the first place, but work to address these problems cannot be undertaken under legal aid. Restoring legal aid to

⁴ *The impact of legal cuts on family justice* – Family Court Unions Parliamentary Group April 2014

⁵ *Out of scope, out of mind – Who really loses from legal aid reform?* – Citizens Advice February 2012

⁶ Homelessness briefing – Crisis 2013

⁷ Statutory Homelessness: October to December Quarter 2013 - DCLG

enable providers to undertake this work would be a beneficial step towards preventing problems escalating to the threat of eviction. We estimate this would cost in the region of £7.4million⁸.

5.4 At the same time as increased homelessness, we are also seeing increased numbers of families and vulnerable groups relying on the private rented sector as a long term housing solution⁹. Yet 33% of privately rented homes fail to meet the government's Decent Homes Standard. 10% of renters said their health had been affected in the last year because their landlord had not dealt with repairs and poor conditions in their property. 9% of private renting parents said their children's health had been affected. Almost one in six councils in England said private landlords' neglect of property had required health services to intervene¹⁰.

5.5 Bureaux responding to our survey on the impact of the legal aid changes frequently cited housing disrepair as an area where clients were struggling to access specialist advice, with one North West bureau commenting that clients '*either have to take action themselves or don't bother because getting help is so difficult, therefore living in unacceptable housing which impacts on health of everyone in the household*'. Legal aid is available where there is a serious threat to health or life, but it is not always clear which cases can proceed under legal aid and which are not eligible.

Louisa is living with her daughter in a flat in an extreme state of disrepair. A year ago water came through the ceiling from the flat above, large cracks appeared and the ceiling appeared unstable. There were leaks, damp and mould which affected the furniture and made the flat all but uninhabitable. After getting the Environmental health department to intervene, Louisa managed to get some temporary repairs done – temporary boards put up and new coats of paint. But despite repeated promises the necessary permanent repairs have not been undertaken. Louisa was able to see a solicitor in early 2013 to assist with the problem at that point, but since the changes now has no access to legal aid. She is very frustrated and feels her and her child's health is at risk.

Ruth needs legal advice and possible representation to get her landlord to take action over housing disrepair. She cannot afford a solicitor and her children's health is suffering from the damp in the property. She is financially eligible for legal aid, but has been told by her local legal aid provider that it is not a case they can take on. The provider has told the bureau that they are themselves having problems with determining which issues are eligible for housing legal aid.

5.6 We recommend that the Government expand the scope of public funding in cases of housing disrepair to ensure that all cases where there is a risk to the health of the occupants are covered. We further recommend that the Government expand the scope of public funding to ensure that providers can undertake work to resolve problems with housing benefit claims.

⁸ Based on 50% of the approx. 98,000 housing legal help cases tendered for by the Legal Aid Agency in 2013 at welfare benefit fixed fee rates under previous contract terms.

⁹ *Can't complain: why poor conditions prevail in the rented sector* – Shelter February 2014

¹⁰ *Ibid*

6. Government should support a new strategic approach to advice for the future

6.1 The changes introduced under LAPSO have changed the shape of the landscape of advice services. Citizens Advice Bureaux have seen a reduction of £19 million to advice provision, compounded by cuts to local authority budgets.

6.2 The Advice Services Transition Fund was introduced in 2013 to support local services over a two year period to develop new models of service delivery such as partnership working, referral networks, new training and apprenticeship schemes and improving digital and telephone services. Citizens Advice Bureaux have led the way in responding to these opportunities, leading 75 per cent of the 226 partnerships set up under the fund. Bureaux have also sought out other funding sources in order to continue to develop their services.

Following funding from the Big Lottery in 2009, Cambridge CAB developed a network of self-help touchscreen kiosks to help people find solutions to a range of social welfare problems. Recent funding obtained from their city council has enabled them to install a further kiosk in a homelessness charity enabling free advice to clients and staff 24 hours a day. Last year, 72,500 people made use of the kiosks which are proving particularly popular with the harder to reach under-25 age group.

6.3 In a rapidly changing world, where people's expectations of services are rising, accessing the right advice at the right time will be critical to help people solve problems and understand what policies mean for them. The vision of Citizens Advice is to provide quality advice for everyone when they need it, in the way they want it – whether that's face to face, online or on the phone. Citizens Advice is developing its digital, phone and face to face offer across the network to ensure it is relevant, accessible and fit for the future, but it will take significant investment to deliver on these ambitions.

6.4 Our evidence shows however that investment pays. Good advice achieves financial outcomes for clients; it saves money for central and local Government; and it benefits society. Our advice has a positive impact on the health and well-being of our clients, reducing stress and anxiety, preventing relationship breakdown, promoting employment and empowering people to make changes to their life¹¹.

6.4 Government should commit to a forward looking, long term strategy to fund free, confidential and relevant advice that is accessible to people across phone, digital and face to face services. This strategy should take into account the benefit to overall public spending from early, preventative action and the benefits of coordinated, planned and easily accessible provision. Access to advice is a vital public service that helps people to solve problems and move forward in life, preventing crisis and pressure on other areas. Without it, issues such as an explosion in use of foodbanks, rising homelessness and indebtedness, and the consequent pressure on already stretched public services, will only increase.

¹¹ *Making the case – The value to society of the Citizens Advice service*: Citizens Advice May 2014

For further information, please contact:

Alison Green | Policy Researcher
alison.green@citizensadvice.org.uk
T: 03000 231287

Laura van der Hoeven | Campaigns Manager
laura.vanderHoeven@citizensadvice.org.uk
T: 03000 231246