

Saving justice

Where next for legal aid?

Views from the responses to the
Ministry of Justice Green Paper consultation
Reform of Legal Aid in England and Wales



Early advice is legal advice.....page 1

- Without advice problems become more serious, complex and costly
- Everyday social welfare and family problems are legal, serious and complex

The most vulnerable will not get the help they need.....page 3

- People need advice across different areas of legal scope to solve their problems sustainably
- No legal aid will mean no advice for many

Legal aid saves the public purse money.....page 4

Many people will be unable to ‘afford’ legal aid advice.....page 5

A telephone gateway must not be the only gateway.....page 7

Reducing legal aid will make courts and tribunals less fair and more costly..... page 7

The administration of legal aid is inefficient and too costly.....page 8

Frontline advice services will be lost.....page 9

- Charities will be hit hardest

The negative impact of cuts to legal aid has not been adequately thought through.....page 10

A considered, cross-government approach is needed to save money while protecting free legal advice..... page 11

- Adopting a polluter pays model
- Addressing poor Government decisions and inefficiencies which mean people need advice

Introduction

Justice for All is the simple notion that everyone should be treated fairly under the law, no matter who you are, how much money you have or where you live. Our coalition of organisations and individuals have come together because we value free legal advice – we believe free, independent advice and representation on legal matters is essential to achieve justice for all.¹ But access to free legal advice and help – including representation – is becoming increasingly restricted, and the funding for free advice and legal services to those who cannot afford it is increasingly under threat from several directions, especially from the Ministry of Justice’s proposals for legal aid.²

The Ministry of Justice received over 5,000 responses to their consultation on legal aid reform. What follows is an analysis of some of those stakeholders’ responses. A common worry from respondents was that the proposals were lacking in evidence, misunderstood the extent and range of legal advice needs, underestimated the potential impact on the poorest and most vulnerable, and risked inflicting collateral damage on the legal advice sector (especially voluntary sector agencies) and the justice system. Respondents were extremely concerned that well over half a million clients would miss out on free advice under the proposals.³

The principal flaw is the reliance on thematic categories of law as proxies for determining who is in need. These categories only have a loose association with real lives and real problems. **Judge Robert Martin, President of the Social Entitlement Chamber**

The legal aid scheme has expanded according to need. This need has been driven by increasing complexity of law, welfare, education, employment and immigration administration over the years, coupled with easier credit access and consequent growth of indebtedness. **AdviceUK**

If implemented, the proposals will lead to considerable hardship and stress for people who face legal problems. The proposals will also significantly reduce people’s faith in the fairness of the law and public administration. **Advice Services Alliance**

In excluding large areas of the law from the scope of legal aid, Liberty believes that the proposed reforms will create alarming gaps in protection, denying justice to many but hitting the most vulnerable the hardest. **Liberty**

Early advice is legal advice

The Green Paper proposes to restrict the scope of civil legal aid to issues which incur seriously harmful legal consequences and proceedings such as homelessness, domestic violence, loss of liberty, discrimination, human rights issues and abuse of power by the state. For other legal problems or rights involving housing, welfare benefits, debt, housing, employment, immigration, education, clinical negligence or family breakdown advice and help will not ordinarily be funded by legal aid.⁴

Without advice problems become more serious, complex and costly

Several respondents questioned that, given the focus of Government policy on early intervention and prevention (for example avoiding ‘unnecessary litigation’), it was counter-productive to take early legal advice and interventions out of the scope of legal aid.

The proposed scope changes, insofar as they are aimed at social welfare law (housing, debt, welfare benefits, education and employment) attack not unnecessary litigation but the very level of service which is used to provide early legal advice and assistance aimed at avoiding litigation and at assisting individuals in dealing with their own problems. **Law Centres Federation**

The Government has set out a test by which it has judged which areas of law should remain in scope, and which should be taken out...it is wrong to judge whole classes of case on this basis, rather than individual cases. **Law Society**

The proposals would separate areas of law that are inextricably intertwined, such as welfare, housing, and debt issues. **Young Legal Aid Lawyers**

The proposals to exclude legal aid from early stages of problem solving (which are not threatening to life or liberty, to family life or to loss of a home) risk the escalation of these problems, especially for vulnerable groups, until threats to health and personal safety, family life or loss of a home become very real, greatly increasing the fear and distress of the people involved and the costs to the legal aid fund and to society generally. **Discrimination Law Association**

If [private family law applications] are removed from the scope of public funding unless there is domestic violence, many potential family and friends care placements will be lost...[people] lack the confidence and/or resources to make the necessary application to court as a litigant in person with the result that more children may end up in care, contrary to Government policy and at huge cost to the public purse. **Kinship Care Alliance**

Everyday social welfare and family problems are legal, serious and complex

Nearly all respondents questioned the premise of the proposed changes that the issues which are identified for removal from scope (debt, welfare benefits, housing, employment, immigration and asylum support) are insufficiently 'serious' or 'complex' to merit funding specialist legal help and advice. For example:

In 2010 alone there were 50 new statutory instruments in social security, housing benefit and tax credits combined. **Child Poverty Action Group**

A debt, by definition, is a breach, or alleged breach of contract, attracting legal consequences, which are defined and/or limited by numerous statutes and regulations (and some case law)...Debts vary considerably in terms of the legal rules that apply to them...Advisers need to correctly advise the client about and deal with priority debts. This requires detailed knowledge of the different kinds of enforcement...They also need to correctly advise clients about and deal with non-priority debts. This may include advising clients on the implications of a County Court Judgment, especially if the client is a home owner at risk of an application for a charging order or an order for sale. **Advice Services Alliance**

The proposals are largely presented as if private family law cases do not raise legal issues. They do. Whilst mediation and other non-court resolution methods are to be applauded and should be encouraged, they are not a universal panacea. Legal issues require legal advice. Mediation works best in partnership with and supported by independent legal advice. There are just too many examples of cases where there are compelling reasons to justify a person receiving legal aid where the Government seeks to remove it and where mediation cannot provide the solution.
Resolution

We do not agree with the Government's contention that much of the work covered by social welfare law is practical rather than legal and therefore should not

be funded by legal aid. The idea that problems only become legal at the point of court proceedings seems fundamentally to misunderstand the nature of specialist legal advice. **Shelter**

Family breakdown and educational underachievement are precisely the kinds of matters that can benefit from early legal intervention. This intervention will no longer be available if the proposed changes are implemented. The logical conclusion of reducing legal aid is that, as the impact assessments of the paper suggest, youth crime will increase and greater economic costs will be incurred further down the line. **Howard League for Penal Reform**

Tax credits disputes are notoriously complex. **Low Incomes Tax Reform Group**

The most vulnerable will not get the help they need

People need advice across different areas of legal scope to solve their problems sustainably

Respondents also observed that the client groups who seek help with these areas are amongst the most vulnerable, usually they have multiple problems or experience 'clusters' of interrelated problems so need a seamless (or 'holistic') service.

The blanket removal of many areas of civil law from legal aid funding will prevent many people with mental health problems from accessing legal support for issues that cannot be neatly delineated into different types and are often central to managing their mental health. **Mind/Rethink joint response**

Members of migrant communities, may be more likely to present particularly complex cases involving a range of different factors, or to find that language and cultural barriers mean that it is more difficult for them to resolve cases without legal aid support. **Migrants Rights Network**

Priority debts, which could lead to the loss of a home, must be balanced with other key debts, such as council tax arrears and energy bill arrears, which also have a profound effect on consumers' lives. Addressing a housing related debt in isolation is impracticable and unlikely to lead to a sustainable financial solution. **Consumer Focus Wales**

As a matter of principle, we think that the Government's list of criteria justifying the retention of legal aid should be supplemented by acknowledging cases where the disparity of resources between the parties is such as to unduly restrict the effective participation of one party in the proceedings for redress. **Justice**

While the attempt to offer legal aid to victims of domestic violence is welcome, it does not cover other vulnerabilities in these cases such as substance misuse, disabilities, and mental health problems. **Coordinated Action Against Domestic Abuse**

To exclude areas of law such as housing and debt from the legal aid scheme denies victims of violence the support they need to live a life free from violence. **National Federation of Women's Institutes**

Agencies also questioned whether the new proposed definitions and criteria for the scope of civil funding could work actually in practice.

The gateways for demonstrating domestic violence are very limited and confined to ongoing proceedings...they do not reflect the pathways victims of domestic violence access to find help and support. **Gingerbread**

It is nonsensical to create a system where the victim would be entitled to legal aid for related family law proceedings if the perpetrator of domestic violence had been convicted of assault occasioning actual bodily harm, but would be denied legal aid and have to represent herself if the perpetrator had been cautioned for the same offence. **Rights of Women**

All the areas which will remain in scope are clearly important, but we believe the definitions and tests proposed would involve greater bureaucracy and problems of legal challenge and interpretation (and) result in many vulnerable people being unable to get the help they need at an early stage if definitions are set too tightly... for example, advising only on debts where a home is at 'immediate risk' is not practical, as most clients have multiple debts which must be addressed for them to achieve a sustainable financial position. **Citizens Advice**

No legal aid will mean no help or advice for many

There was a widespread view from respondents that for the 'out of scope' categories, the Green Paper contained misleading assertions about alternative sources of advice, and the capacity within the pro-bono and voluntary sectors to provide appropriate help. For example, National Debtline do not provide face-to-face debt advice and refer cases requiring specialist legal advice elsewhere.⁵ The ability of clients to use paid for, or conditional fee (CFA) and insurance funded services as an alternative to public funding was also questioned.

The implication that charities like Disability Alliance are available to help people in the advent of legal aid cuts misrepresents the reality that we do not provide such support. **Disability Alliance**

The Green Paper mentions IPSEA, the Advisory Centre for Education (ACE) and Parent Partnership Services (PPS) as alternative sources of support to legal aid in education cases... they do not have the capacity, and in some cases do not have the remit to deliver the level of support parents need in SEN education cases.

Ambitious about Autism

Reducing legal aid in the area of employment law will increase the demand on our free helpline but in the current economic climate it is unlikely that we will be able to meet the additional demand. **Working Families**

One of the major barriers to the greater use of CFAs is disbursement funding and the costs of investigation. These costs are substantial in clinical negligence claims. **Action Against Medical Accidents**

Legal aid saves the public purse money

Many responses pointed to the value of legal aid, both in terms of its social value and its outcomes for clients, but also in terms of the cost savings to the justice system and to other statutory services, and the Government's broader agenda to improve family and relationship support.

Legal aid in administrative justice represents exceptional value for money. For example, welfare benefits legal aid cost £28.3 million in 2009/10, representing less than 0.18 per cent of the £16 billion value of unclaimed benefits. The success rate of legally-aided clients in this and several other administrative jurisdictions is over 90 per cent. **Administrative Justice and Tribunals Council**

There is a strong case for targeting legal aid investment where it can have the greatest impact – this involves taking a broader view than simply looking at issues

of loss of liberty or imminent homelessness, but should involve reconfiguring services to be more client-centred and targeting services better at those client groups for whom getting advice has the greatest beneficial impact. Youth Access

In many of our cases at the CLC, the provision of legal advice and assistance can help resolve problems quickly and prevent matters from escalating. Removing access to legal advice in many civil and family law matters removes the possibility for problems to be resolved early and efficiently without the need for litigation. Childrens' Legal Centre

Proposals to withdraw legal aid when combined with the evidence of the lack of awareness of alternative support services will undermine Government's broader agenda for relationship support...and increases the risk of the divorcing and separating population's personal indebtedness...Couples spend an average of £28,000 when a marriage ends. National Family Mediation

If the legal aid cuts go through and people are denied a lawyer for custody cases, I will lose all chance of ever seeing my children again. Client from Crossroads Women's Centre

Respondents found evidence to back this up such as the Legal Services Research Centre's work on exclusion and legal problems.⁶ The General Council of the Bar for example had commissioned a 'cohort' analysis which compared the outcomes for advice seekers recorded by the LSRC's civil and social justice survey as between those who sought help from informal sources, non-legal service providers, and legal aid providers. This identified a statistically significant better level of outcomes from legal aid services.⁷

The Law Society, LAPG, ILPA, EHRC, LASA, ASA and many others referred to the 'business case' research by Citizens Advice which used LSC outcomes and data from the LSRC's civil and social justice survey to estimate (on 2008-9 figures) the cost-benefit ratio for key civil categories of legal aid advice. This research looked at the 'adverse consequences' of civil problems and found that:

- for every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34
- for every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98
- for every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80
- for every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.⁸

Some respondents referred to work undertaken by the New Economics Foundation for the Law Centres Federation also suggested that the 'social return' for legal help for clients with the most complex problems could be as high £10 to every £1 invested.⁹

Many people will be unable to 'afford' legal aid advice

A common theme across all responses was that given only those on the lowest incomes currently qualify for legal aid, many respondents had concerns about proposals to tighten eligibility criteria. Issues were raised about the abolition of passporting and the application of capital limits.

Individuals who the State has deemed sufficiently poor to receive income support and other means-tested benefits [will] be denied legal aid (or forced to make a contribution) even though their capital is so low that they are still eligible for income support. Citizens Advice

Those on low incomes who are not on means-tested welfare benefits are subjected to a harsher means test than those on benefits intended to be at subsistence levels. In our view, the eligibility rules should be updated, by increasing both the income and capital disregards in line with benefits. **Child Poverty Action Group**

Legal aid should have the same capital limits as other means tested benefits for reasons of simplicity, transparency and fairness. **Action for Advocacy**

The proposals to reform Equity and Capital disregards were questioned on the basis that

It is unrealistic to expect clients on very low incomes in an uncertain housing market to borrow against the equity in their home to pay for legal costs. **Brighton Housing Trust**

A number of people cannot access capital in their homes, and will simply be excluded from the scheme. **Unite**

It is also questionable that putting someone in a position where they are forced to sell their home is proportionate and fair, particularly in the light of the above. Consideration also needs to be given to the fact that the DWP would not, under current regulations, accept that capital released is to be used for legal costs and should therefore be disregarded as income, which could lead to the loss of benefits in whole or in part by the client. **EAGA PLC**

Concerns were expressed about the steep level of contributions that the Green Paper proposes should be paid to the legal aid fund; under the increased contribution system many clients could be left in the ironic position of being unable to afford legal aid. Respondents also felt that the proposed contribution system would be horrendously bureaucratic, difficult and expensive to administer – a burden that would be inappropriate to pass onto providers.

30 per cent of monthly disposable income is far too high a level...The criteria for determining 'disposable' income ignore the realities of impairment and disabled peoples' lives. **Inclusion London**

An increase in the contributions will increase the numbers who cannot afford to accept an offer of legal aid. **The Law Society**

Of all the proposals in the paper, this is one which we find the most objectionable in its clear intention to deter those clients whose cases remain in scope from actually pursuing their cases. **Gloucester Law Centre**

I received partial legal aid when going through a court case regarding domestic violence, and family issues, child contact etc. I paid a substantial contribution towards it, and being a single parent, who had experienced domestic violence, I thought the fact I had to pay disgusting. I was after all, a victim of abuse...I paid more in contributions than my ex partner paid in child support. It was a farce, and put myself and my son in serious financial hardship. **Client quoted in Rights of Women's Response**

A key principle of Nottingham CAB is that our services are free. By making this contribution collectable by the advice agency, this proposal risks damaging this fundamental relationship built with our clients. **Nottingham CAB**

A telephone gateway must not be the only gateway

Most respondents thought there was an important role for telephone advice, but were also concerned that the proposed 'telephone gateway' would restrict access, and that for many client groups a telephone only service would not be able to meet their needs for reasons of vulnerability and comprehension, or complexity of the issues. For example clients with immigration, detention or asylum cases may have linguistic barriers – as ILPA's response notes the Community Legal Advice helpline has never been used to provide immigration and asylum advice for precisely this reason.¹⁰

We consider it unrealistic for the 'single gateway' to be the only gateway to legal aid. **Citizens Advice**

We do not agree that this should be the 'single gateway' or sole method of accessing services. **Shelter**

Clients in deprived areas of the country like east London, with low levels of literacy, disabilities, or who struggle with English, will still require face-to-face advice nearby. We suggest a bolstered telephone advice line remains only one of the gateways to a legal aid system – sufficient and accessible face-to-face advice must remain available for those who need it. **Community Links**

This idea has the potential to be a kind of Legal Aid Direct, similar to the NHS Direct, but it could also go disastrously wrong and become the target of secondary litigation if lowly qualified staff start to make difficult legal judgements on inadequate facts from clients who find it difficult to communicate by telephone. **Justice**

We share the view of several other respondents that the proposed shift to telephone services will impact severely on access to justice for many vulnerable groups and that there is a lack of evidence to support the Green Paper's justification for the shift on financial grounds. **JustRights**

Our concern stems from the increased incidence of mental illness in refugee populations... In the case of refugees/asylum seekers... automatic referral [should be] made to face-to-face services rather than on a case-by-case basis as suggested. **Royal College of Psychiatrists**

We are concerned that those without settled accommodation and asylum seekers will be disadvantaged together with those with learning difficulties. **Hastings Voluntary Action**

There is a significant risk that this proposal will act as a barrier to the vulnerable accessing justice, in particular to those whose capacity is impaired by virtue of illness or disability. **The Official Solicitor**

Reducing legal aid will make courts and tribunals less fair and more costly

Several respondents raised concerns that reducing free advice entitlement would be detrimental to the fair, impartial and efficient administration of the justice system. It was a commonly expressed view that a consequential increase in unassisted litigants would clog up the court and tribunals system, and result in a real imbalance in 'equality of arms'. Other concerns included the potential for increased complaints and regulatory problems, especially in the market for quasi-legal services such as mediation, claims management and fee charging debt management firms. The Green Paper's assertions that many types

of legal processes were sufficiently 'user friendly' to enable users to navigate and progress their own cases without any assistance or representation were roundly criticised.

None of the courts have an investigative function nor do most of the tribunals, including employment tribunals, for which legal aid or assistance is to be withdrawn...the deficiencies of a litigant in person in presenting his or her case cannot be addressed by the judge. **Equality and Diversity Forum**

The withdrawal of Legal Help in the areas of social security, employment and criminal injuries compensation will result in a significant increase in tribunal time, associated costs and costs across Government as a whole. **Free Representation Unit**

Our experience on our helpline shows that many prospective litigants-in-person have significant difficulties in understanding the procedural aspects of the Tribunal system. **Public Concern at Work**

A short intervention explaining a process, or assisting in completing a document, spares the client anguish and the court hours of their time. **Royal Courts of Justice Advice Bureau**

The proposals would lead to a huge increase in the incidence of unrepresented litigants, with serious implications for the quality of justice and for the administration of the justice system in terms of additional costs and delays – at a time when courts are having to cope in any event with closures, budgetary cut-backs and reductions in staff numbers...Even if one focuses on cost alone, there is a real question whether the cost savings arising from the proposed cutbacks in the scope of civil and family legal aid would be offset by the additional costs imposed on the system. **The Judges Council**

In our experience, very few of the parents we advise are able to present their own case at a Tribunal. **The Independent Helpline for Special Educational Needs**

The MoJ has not sufficiently considered the impact of what it acknowledges will be an increase in litigants in person in family proceedings. **Association for Children's Guardians and Family Court Advisers and Social Work Practitioners (NAGALRO)**

The administration of legal aid is inefficient and too costly

Many respondents also felt that the administration of legal aid itself was inefficient and should be improved.

Substantial savings could be made for providers and the Legal Services Commission if the application process was simplified. **Housing Law Practitioners Association**

The whole scheme should be reviewed to see whether the way it is administered is fit for purpose. Overall administrative and procurement costs of the legal aid system have continued to rise in recent years, and are disproportionate to the amount of funding available for delivering frontline legal advice and representation services; in 2008/09 the figure for the LSC's administrative costs was £124.4 million. The system involves too much micro management by the LSC, leading to case by case form-filling and scrutiny and to significant audit activity. **Citizens Advice**

The complexity of the legal aid remuneration and claims system is itself burdensome and costly. We would urgently recommend abandoning a great part of this complexity, micromanagement and micro-audit. **Immigration Advisory Service**

There is significant scope to make efficiency savings within the legal aid and the civil and criminal justice systems that will enable at least £400 million to be saved. **The Law Society**

Frontline advice services will be lost

The cumulative impact on legal aid providers, not only of the proposed scope restrictions, eligibility and delivery changes but also the proposal to cut all civil fees by 10 per cent across the board was a key concern for many of the organisations responding.

For legal aid practitioners, the reduction in fees and the almost constant change to the system's administration has made life incredibly difficult... Whether legal charities or solicitors in private practice, local legal aid service providers are finding it more and more difficult to remain in business... A 10 per cent pay cut for legal aid fees frozen for five years would rapidly increase the speed and scale of solicitors giving up legal aid work or going out of business altogether, and would put further strain on the charity sector. Certain areas of the country would be turned into advice deserts and the entire system would be put at a serious risk of collapse.

Jeremy Corbyn MP

It is not an adequate solution to this problem to say that while public funding certificates still exist the provider base will be maintained and be in a position to offer support to those who need it... to get to the first floor there must be a ground floor, and a stairway. **Ben Hoare, Bell solicitors**

Advice deserts already exist across the country and this will grow with the tight freeze on funding which many organisations experience. **Disabled Charities Consortium**

A 10 per cent reduction is very much more than simply shaving a few pounds off the budget. It is frequently the profit margin on which our members survive. **Mental Health Lawyers Association**

A 10 per cent cut in rates will have a disproportionate impact in areas where it is expensive to deliver services, such as London and the South East. **Unite**

There is serious doubt about whether there will be sufficient viable providers left to provide the face-to-face advice. **Advice Services Alliance**

Charities will be hit hardest

Some respondents were particularly concerned about the disproportionate impact on not for profit providers – a predicted loss of at least 77 per cent loss of legal aid income to this sector, coming at a time when other sources of funding were also reducing or disappearing altogether.

What impact will there be on organisations who care for and advocate on behalf of disadvantaged clients when access to specialists is reduced, especially in rural and small market town areas of which Wales has disproportionately more than England? **Wales Committee for the Community Legal Service**

There is no consideration on the interaction of these proposals together with the reduction in the budget of local authorities and the impact this will have on the supplier base for legal aid. **Joint Council for the Welfare of Immigrants**

Without the opportunity to access legal aid, it is possible that a number of people will be left with no alternative in seeking redress. While in some cases voluntary bodies such as Citizens Advice Bureau or internal advice services to local authorities

(such as Housing Options) will be able to advise, with the spending cuts impacting upon every part of the public sector, there is a risk that spending cuts elsewhere will also negatively impact on the availability of free advice and support services. **Welsh Local Government Association**

The consultation must take into account that the presence of the alternatives to which they refer is under threat. Most of the work of these organisations is funded by grants or contracts from public bodies and current cuts in public spending are going to significantly reduce their availability. At the same time, other reforms such as those to social housing tenure and to housing benefit, seem likely to increase the need for such advice. **SITRA**

The negative impact of cuts to legal aid has not been adequately thought through

The Ministry of Justice published no less than 18 impact assessments, but many respondents questioned their methodology and quality of the evidence and data used. For example, the Law Centres Federation noted that the Impact Assessments projections on reduced case volumes from current levels were based on 2008-9 data and therefore underestimated – the real number of cases taken out of scope would be 720,000.¹¹ This is confirmed by recent research by the Legal Action Group.¹² Most respondents thought the impact assessments left too many gaps, or raised more questions than they answered. Several respondents questioned also whether the Ministry of Justice had applied public sector equality duties consistently and robustly.

Whilst the impact assessments do discuss some impacts they are generally of the very poorest quality. They fail to properly or adequately address the overall cost benefit of the various proposals and indeed make no attempt to consider the costs (especially in terms of administrative burden) of many of the proposals. Further they make no attempt to quantify the costs across the wider justice system or indeed to society more generally. **Legal Aid Practitioners Group**

Proposals to reduce the scope of legal aid would have a disproportionate impact on protected groups...the MoJ has not demonstrated that they can be objectively justified. **Equality and Human Rights Commission**

The impact assessments fail to take account of the compound discrimination that can result from being unable to challenge a wrong decision by a Government department, where particular groups have been disadvantaged in the initial decision-making process. **Immigration Law Practitioners Association**

The assessments do not appear to consider impact upon the justice system, upon other bodies related to the justice system nor upon those whose cases will be excluded from scope. **Council of Her Majesty's Circuit Judges**

There has been inadequate assessment made of the impacts on other (non MoJ) budgets. **General Council of the Bar**

The Ministry of Justice has not paid due regard to its obligations under section 6 of the Human Rights Act...a number of the areas of law that the Ministry of Justice proposes to remove from the scope of legal aid engage Convention rights are so complex that legal aid must be provided in order for the UK to meet its obligations...there is a real danger that the proposed reforms to legal aid will impact disproportionately on people experiencing poverty, marginalisation and disadvantage, who are often those most at risk of human rights abuses. **British Institute of Human Rights**

Finally, several respondents were alarmed that some of the Impact Assessment's findings on adverse social impacts – including more unfair outcomes, reduced social cohesion, adverse impacts on children, increased criminality, reduced business and economic efficiency, increased transfer payments from other departments – had not been considered more carefully by policy-makers before signing off the proposals. The Justice Select Committee has subsequently called on the Government 'to assess more fully the likely impact of its reforms', and has recommended alternative approaches to reducing costs other than restricting scope, noting that the Ministry's proposals could 'inflate costs' in other parts of the legal system.¹³

It is astonishing that the Government should issue a set of proposals in the Green Paper that are presented as apparently rational and logical and yet which are systematically proven by the accompanying Impact and Equality Impact Assessments to be likely to cause serious and disproportionate harm to access to justice. **AdviceUK**

They reveal quite unambiguously a highly disproportionate impact on access to advice for the poor and vulnerable. The vast majority (97 per cent) of community legal aid recipients in 2008/09 were in the bottom two income quintiles. **Citizens Advice**

We would encourage the Department to undertake an impact assessment of the likely cost to other government departments, as well as the budgets within MoJ, that will be impacted by the proposals, such as the courts, tribunals and prisons. **Cumbria Law Centre**

The impact assessment should be widened to include the impact on the spending of other government departments. If civil and family issues are not resolved consumers may need to rely on the state including health, housing, education and other local authority services. A whole system cost benefit analysis is required to accurately quantify the impact of the proposals. **Consumer Focus Wales**

There is no indication of a substantial mitigation strategy. **Caroline Lucas MP**

Many of the comments by respondents on the impact assessments echoed their general comments about the lack of a suitable evidence base underpinning the proposals. Decisions for prioritising the allocation of scarce legal aid funds need to be based on careful and thorough client-driven needs assessments which are sensitive to socio-economic, demographic, geographic and vulnerability factors.

A considered, cross-government approach is needed to save money while protecting free legal advice

Many of the respondents, mindful of the budget cuts required of the Ministry of Justice, challenged policymakers in the MoJ to find fairer, creative, and more effective ways of achieving costs savings other than reducing the availability and coverage of a vital frontline service. Some respondents commented that the limited options for alternative funding, such as a 'Supplementary' legal aid fund (SLAS) and a charge on client accounts' interest (IOLATA), explored in the Green Paper had not been fully thought through and that whilst the ideas have merit they would not bring significant income into the legal aid fund.

LAG has tried to gather evidence on the amount of money which could be raised from an IOLTA...but these estimates have varied hugely. **Legal Action Group**

We do not see a Supplementary Legal Aid Scheme ('SLAS') will make any significant contribution to funding social welfare law cases as few damages claims will remain within scope. **General Council of the Bar**

Adopting a polluter pays model

Respondents felt that a much bolder approach was needed. A key argument was that the 'polluter' should bear some responsibility for meeting legal aid costs – ie the credit industries, public authorities, employers and landlords acting irresponsibly and/or in breach of the law. Suggestions included:

A levy on consumer credit lenders could supplement government funding for debt advice. **Citizens Advice**

The costs to legal aid of successful appeals against government decisions [should be] borne by the relevant first instance decision making body. **Administrative Justice and Tribunals Council**

Amending the Tribunal, Courts and Enforcement Act could allow a Tribunal to make a cost order against an adjudication authority which makes a decision which no reasonable authority would have made. **South Hampshire CAB**

Costs against the Crown on Acquittals. **Criminal Law Solicitors' Association**

Where a case arises from the decision of a public authority, there could be a charge placed upon them in terms of legal aid spending to resolve that case. Financial institutions could also be levied to provide free debt advice through legal help, given their responsibilities towards those people who they provide credit to. **LASA**

Addressing poor government decisions and inefficiencies which mean people need advice

Virtually all respondents suggested that efficiency savings could also be found through tackling wasteful bureaucracy in legal aid and the wider justice system, and that there should be a concerted effort across Government to tackle the 'cost drivers' of legal aid – for example reducing the costs of appeals by raising the quality of first instance decisions by public authorities. The Law Society's response included an annex of alternative proposals for reducing costs by £350 million, including reforming advocacy fees.¹⁴ But most respondents also agreed that this challenge was wider than the justice system and concerned how agents and systems in the public and private sectors interact with their customers in ensuring they can access their rights.

Decision Makers often cannot actually justify their decisions because they have failed to weigh up ALL the evidence properly and are actually resistant to arguments that they should do so. This is confirmed by Professor Harrington's review of the Work Capability Assessment. **Gill Bottomley, Welfare Benefits Caseworker, Bath**

We believe that it's better to address the underlying issues and encourage greater efficiency within the system and penalise poor decision making by public bodies, thus preventing a significant number of legal aid cases arising in the first place. **Eaves, Putting Women first**

We should be looking at how publicly funded legal advice work in all currently funded areas can be freed up in order to proactively tackle system failings. Intelligently funded advice work could save £millions and improve public services. **AdviceUK**

Many legal aid cases are the result of governmental administrative shortcomings and a failure to make accurate and appropriate decisions initially, for example, welfare benefit cases and some immigration cases arise as a direct result of administrative failures. If some of these areas were remedied less legal help would be needed. **National Aids Trust**

*The Government should urgently review other cost drivers...including the administrative costs of the current legal aid system and procedural inefficiencies of the court system. **Mind/Rethink***

*Tackling the behaviour of government departments would result in savings in all cases, not only in those cases that it is proposed to take out of the scope of legal aid. **Immigration Law Practitioners Association***

As a coalition of organisations we are mindful of the budgetary challenges the Ministry of Justice faces, but we urge policymakers to engage with concerns raised by our organisation about the false economies and detrimental consequences that may result from any serious reduction in access to free legal support. There may be serious knock-on costs to public expenditure and public sector budgets from cuts to civil legal aid, the sustainability of services providing free advice, and support services in the community could be irretrievably undermined.

These aspects of the proposals need an urgent and comprehensive review. This review should also scope out law and procedural reforms which could improve efficiency, reduce costs and save frontline services. By engaging more widely with civil society and stakeholders able to reach different client groups, solutions can be found which will fulfil the Ministry's objective to deliver a less costly and bureaucratic system in which legal solutions are used proportionately and people can be empowered to access their rights, resolve their problems and obtain redress through appropriate channels. Our coalition sees ability to use the legal system as essential to its continued fairness and effectiveness, and to the rule of law.

Endnotes

1. www.justice4all.org.uk
2. Ministry of Justice Proposals for Reform of Legal Aid
3. The Impact Assessments suggest 502,000 legal help cases will be taken out of scope, though other estimates suggest it will be much higher
4. Ministry of Justice Proposals for Reform of Legal Aid
5. Citizens Advice Response
6. Civil Law, Social Problems and Mental Health, LSRC 2009
7. Bar Council's Response
8. Towards a Business Case for Legal Aid Citizens Advice 2010
9. The Socio-Economic Value of Law Centres, New Economics Foundation, 2009
10. Immigration Law Practitioners Association Response
11. Law Centres Federation Response
12. The real impact of legal aid advice cuts Legal Action Group, March 2011
13. Government's proposed reform of legal aid, Justice Select Committee, Third Report of Session 2010–11
14. Law Society Response



The Law Society



Low Incomes Tax Reform Group
A voice for the unrepresented



The Law Society



Published by Justice for All

www.justice4all.org.uk

We are a coalition of charities, legal and advice agencies, politicians, trade unions, community groups and members of the public.