

Proposals for the reform of legal aid in England and Wales

Response to the Ministry of Justice consultation by Chesterfield Law Centre

February 2011

Introduction

Chesterfield Law Centre, set up 1989, is a not-for-profit, registered charity that provides free legal advice and representation service in: debt, consumer discrimination, discrimination, employment and housing in Derbyshire. Individuals on low income or benefits are able to seek free legal advice in order to prevent homelessness, improve their living conditions, managing their debts effectively and are paid by what is owed by their employers.

Approximately 65% of our clients are eligible for legal aid. This work is funded by £220,000 from the Legal Services Commission which amounts to 31% of our overall income. A high proportion of this will be affected if the specialist employment and parts of debt and housing advice are withdrawn. The rest is funded by numerous funders for example Local Authorities funding £168,454.80, EHRC at £63,170.55 and Financial Inclusion Fund at £119,322.15. The Ministry of Justice needs to recognise that there are other funding pressures that advice agencies are experiencing, for example, Chesterfield Law Centre is experiencing a potential reduction of local authorities funding and potential withdrawal of funding from the Financial Inclusion Fund. The diversification in funding enables us to meet Legal Services Commission's targets.

We are very concerned on the current proposals to withdraw legal aid. If withdrawn, this will have a detrimental impact on following groups of people we advise and assist:

- A quarter of our clients have a disability or a long term health condition.
- 10% of our clients regard themselves as black or minority ethnic.
- 74.2% of debt clients are women who have applied for bankruptcy, administration or debt relief order. 61.5% of them are single parents, single, divorced or separated.
- 15.5% of our clients are under 25 years old which are the most vulnerable group of people who are least aware of their rights.
- One fifth of our clients are older people.
- At least 75.75% of our clients are on low incomes or benefits.
- 100% of our employment and housing clients and 49% of our debt clients are on low income/benefits and are eligible for legal aid.

For reasons above, we feel that the Government has not properly carried out an Equality Impact Assessment on the affects that the reforms will have on:

- age
- disability,
- gender
- gender reassignment
- maternity and pregnancy
- race or religion
- sexual orientation.

We welcome the opportunity to share our experience in response to the Ministry of Justice consultation on Proposals for the Reform of Legal Aid in England and Wales. We have only answered those questions about which we have relevant experience.

For more information on any aspect of this response, please contact Teresa Waldron 01246 550674.

Scope

Question 1: Do you agree with the proposals to retain the types of case and proceedings listed in paragraphs 4.37 to 4.144 of the consultation document within the scope of the civil and family legal aid scheme? Please give reasons

We agree that it is essential at a minimum to retain legal aid for these types of cases, given the seriousness of the issues and the vulnerability of the people who need it.

However, we are concerned that the Government is considering limiting advice to crisis point situations.

With assistance from the Legal Services Commission, Chesterfield Law Centre advises tenants before serious amount of rent arrears accrue. Three councils refer clients to the Law Centre early on which enabled us to resolve matters before it reaches court and prevent homelessness.

Housing and Debt case study

Mrs B attended our outreach session at Bolsover in July 2010. She had a number of priority and non priority debts. The constant battle with creditors and feeling of helplessness about her situation was affecting her health and she had been signed off work.

Her problems had begun a year earlier when she had separated from her husband. They had not been able to maintain mortgage payments on their property and this was subsequently repossessed. When the property was sold there was a shortfall of £65,000 that neither Mrs B nor her estranged husband could pay. On top of this she had loans and credit card debts which totalled a further £22,000.

Mrs B's attempts to pay some of her debts had meant that she had fallen behind with the rent on her current property.

Dan Staniland (Debt Adviser) analysed Mrs B's financial position at their first meeting and advised her that as she had no assets and was in receipt of a low income she should make an application for Bankruptcy as this would clear the massive non priority debts and leave her in a position to concentrate on her rent and other priority payments. DS advised her in detail about the bankruptcy process, the implications for the client and the costs and timescales.

Dan Staniland had a further appointment with Mrs B in September to assist her in completing her bankruptcy application and to contact Sheffield County Court to make an appointment on her behalf.

In the meantime Mrs B has cleared her rent arrears and has managed to go back to work as she is no longer feeling the burden of the massive debt she had.

Mrs B is to be made bankrupt on 8 October 2010. Dan Staniland feels that the order will be made and there will be no restrictions placed on Mrs K that will have a negative affect on her day to day living.

Employment case study

The effects of the credit crunch have affected many of our clients. In particular we have seen a marked increase in the number of redundancies and lay offs. In some cases there has been no prior consultation, warning or notice, and redundancy pay has been withheld. For example, we were able to take a claim on behalf of Mr A, a young construction worker, for unfair dismissal, notice pay, accrued holidays and redundancy pay when he was dismissed for alleged redundancy without any formal procedure, notice or pay. Unfortunately, an increasingly familiar picture, the firm went into administration shortly before the Tribunal hearing. Things were delayed for Mr A when we had to obtain permission from the administrators to continue with the Tribunal proceedings. We then assisted Mr A in making a claim to the Redundancy Payments Office (RPO). This is a government department which can make certain payments to redundant employees with a national insurance contributions record, when an employer has gone into liquidation. Eventually he received payment from the RPO for his redundancy pay, notice pay, and holiday pay. He decided it was not worth continuing with his claim in the Employment Tribunal for the alleged unfair dismissal. He decided to cut his losses and withdraw his claim, since he had received most of the payments that were due to him. He had got another job and wanted to put matters behind him.

We are also concerned that the definitions of proposed criteria such as "immediate risk", "serious disrepair" and "domestic violence" are too narrowly or unclearly defined, and therefore jeopardises the protection of vulnerable people.

Debt

Legal aid will only fund debt advice when a person's home is at 'immediate risk'. Early advice is cheaper and more effective. This proposal would mean people cannot get help until they are at crisis point.

Housing and homelessness

Legal aid will only fund advice on homelessness or serious disrepair threatening health. Advice on all other housing issues will no longer be funded

through legal aid, including issues like protection for tenants against harassment by their landlord.

Question 3: Do you agree with the proposals to exclude the types of case and proceedings listed in paragraphs 4.148 to 4.245 from the scope of the civil and family legal aid scheme? Please give reasons.

No.

Housing and Debt

Not providing advice and assistance on managing debts will eventually lead to immense pressures placed on tenants who feel they should start paying for non-priority debts which will put their tenancies at risk. Earlier intervention and advice will save on public purse a lot of time and resources and will reduce the number of possession cases going to court.

Debt case study

Mrs C attended the Law Centre with debts of just under £5,000. She has limited income as she is in receipt of a pension and industrial injuries payments as her only income. She has struggled to make payments to her creditors for a long time, however this has become increasingly difficult for her and one of her creditors took her to court and obtained a County Court Judgment.

We assisted Mrs C in making an application for an Administration Order. This would allow her to make one affordable monthly payment direct to the court to address all of her debts. Whilst she maintains payments she will receive the protection of the court and no further action can be taken against her.

The court has confirmed that an Administration Order will be made and Mrs C will be required to pay £5.00 per month, unless objections are received from creditors. If objections are received then the Law Centre will represent Mrs C at a hearing to argue the case for an Administration Order being made.

Debt case study

Mr. and Mrs D attended at an outreach session in South Normanton requiring advice about non priority debts they had which were in excess of £25k. Mr D was recently operated on for a knee problem and whilst in hospital developed kidney failure which has put his health in an extremely fragile state. Although he is currently on sick leave from work, receiving statutory sick pay it is unlikely he will be able to work again.

Mrs D worked part time in a tanning shop (8 hours per week) however her employment has now terminated due to redundancy. They are being assisted with benefit advice by DUWC but have insufficient funds to make payments to their debts and the stress of the debt situation is exacerbating Mr D's health.

They have tried to sell their property to pay off some of their debts but have been unsuccessful. The property has insufficient equity to clear the debts in any event. I advised the couple about bankruptcy as a way of addressing their debts as the only

asset is their home which is now unsuitable for them due to Mr D's health. They were unable to raise the £720 required to make two bankruptcy petitions, as the debts are in joint names.

We have contacted the Coal Industry Welfare Organisation (CIWO) on their behalf as Mr D is a former miner. The CIWO are to make a decision as to whether the couple is eligible for financial assistance at the Notts branch on Wed 20 January 2010.

If funding is received a further appointment will be arranged to help Mr and Mrs B complete their bankruptcy applications.

Housing and debt case study

Miss E and Mr F attended an outreach session at Creswell were referred to the Law Centre from Action for Children. They were in arrears with their private landlord and owed more than 2 months rent. As a result there was a possession hearing held at Worksop County Court. We attended the hearing and represented the clients with the intention of making a proposal to the landlord. The landlord refused proposals made and as the possession proceedings were under ground 8, a mandatory ground, the court had no discretion to suspend.

As a result a possession order was made. The clients had the implications of this explained to them in detail. As they were both in receipt of JSA the possibility of finding alternative accommodation did not look good, particularly as a homeless application was not likely to be successful as they had taken on this tenancy knowing they couldn't afford it, meaning they were intentionally homeless.

Enquiries were made as to the couple's employment background and the Law Centre established that Mr F may be eligible for assistance from a trade charity, Hospitality Action. The Charity was contacted and eventually they agreed to pay £400 towards a bond on a new property, in the same area the couple were previously living.

The tenancy agreement was signed on 30 July 2010 and the couple are now living in their new property.

Employment

We are concerned at the proposal to fully withdraw legal aid from employment matters. 100% of our clients were eligible for legal aid as they were either on low incomes and/or in receipt of benefits. Most of these clients were not members of trade unions due to not being able to afford to pay for trade unions' subscriptions or having lost their faith in the service they provide. Our clients liked the fact that they were able to get face to face advice from an employment legal adviser.

Employers can pay for lawyers to represent them at employment tribunals but ex-employees would have no free legal advice or representation – leaving them at an unfair disadvantage.

All our employment clients are disadvantaged through being on low income, have poor literacy skills and self esteem – all of which affects their ability to initiate proceedings at the Employment Tribunal. There is no legal aid

available for representation work. We provide assistance to all clients with a view of representing themselves at the tribunal hearings. Without this preparatory service, most clients would not be able to begin to recover wages owing to them.

Employment case study

Mr G was very distressed when he came to the Law Centre having being suspended from his job after years of service in a care home. He had no idea why he was suspended and considered quitting his job because of the stress of not knowing what was going on.

We were able to advise him of his rights, get in touch with his employer, and offer ongoing support and advice. Once Mr G understood the processes involved and why he had been suspended, he felt supported enough to allow matters to take their course, instead of resigning. Eventually, after an investigation, Mr G's suspension was lifted and matters were resolved, enabling him to resume his job. We ensured that he did not lose any pay or other rights during his suspension period, and helped him through a difficult and stressful process.

Our help isn't all about dismissals and redundancy. Sometimes we can help people with problems while still at work. We can advise them about their legal rights and options, and sometimes assist with a grievance or disciplinary process. In one case, a young woman who worked as a sales assistant was distressed about an ongoing dispute with a fellow worker. She felt she had no option but to resign. We advised her that her employer had not strictly breached her employment rights but that we could help her through a grievance process which may help in finding a solution. With the knowledge and understanding of her rights, and our advice and help with the grievance process, she felt much better able to face the problems at work and find a way of resolving them.

We are very concerned that withdrawal of legal aid funding would lead to often highly vulnerable people not receiving the help they need. The Ministry's own impact assessment shows that some of the most vulnerable would be disproportionately affected by the government's proposals and could be discriminated against.

People rarely only experience problems in one area of 'scope.' Vulnerable people have problems on more than one issue, which are connected to or caused by another problem.

Debt and housing case study

Mr and Mrs H attended an appointment at Bolsover were referred to us by Bolsover District Council as they had a large amount of arrears in relation to their mortgage and secured loan. Their mortgage company had taken possession proceedings and there was a hearing scheduled for 13 December 2010.

Dan Staniland saw Mr H initially and discussed the family income situation in great detail. The position was not good. Mr H had just left work to care for his wife full time who suffers from depression and anxiety. The couple had made a claim for Carers Allowance and disability allowance, however the claims had not been processed and

the only income the couple were receiving was Income Support, Child Tax Credits and Child benefit.

Dan Staniland advised Mr H that unless he could pay his current monthly installment and an additional contribution towards the arrears a possession order would be made. Mr H was resigned to the fact that they could not afford to keep the house. Due to the large amount of negative equity in the property the couple were also not eligible for Mortgage rescue.

The client was advised that he should go back to the council and make a homeless application. The situation was made even more difficult by the fact the couple have a disabled child who has autism and any disruption to her routine sets her back. This meant the family could not move too far and have her changing schools etc.

The council showed the couple some properties that the couple felt were unsuitable, however the couple found a private rented property but they could not afford the bond or the first months rent. We advised the couple about the council's paper bond scheme and spoke to the council on the couple's behalf about this. Unfortunately the landlord wouldn't accept a paper bond.

With the family looking like they were to be made homeless we advised them about making a community care grant and a crisis loan application. They got these approved and had enough for the first months rent in advance. We then negotiated with the landlord to allow the couple to pay £50 per month for their bond so that they could move into the property before they were evicted.

We have also made an application to a charity for a grant of £250.00 which is yet to be approved, to assist the couple further.

The couple are now living happily in their new property, receiving full housing benefit and paying their additional £50 contribution. Long-term they are considering bankruptcy to address their debts as a whole and our adviser has provided them with full advice about this.

The Green Paper suggests that legal aid should not fund early intervention and advice as they are not serious legal matters. Without early help, problems become more complex and can cost the public purse more - early advice can save the public purse £10 for every £1 invested¹.

Housing case study

On receiving notice of a possession hearing at Chesterfield County Court Mr. and Mrs J attended the Law Centre to seek advice and options about their position. Mrs J is currently pregnant and the couple are in receipt of a low income. They have high mortgage and secured loan arrears and the couple cannot maintain their contractual payments let alone pay anything towards the arrears.

As Mrs J is classed as vulnerable due to her pregnancy we contacted Bolsover District Council as they appeared to meet the eligibility for the Mortgage Rescue scheme. We have since successfully represented Mr and Mrs J at their possession hearing, getting an adjournment for 2 months, to allow the application to the

¹ The Socio-Economic Value of Law Centres, LCF, October 200

Mortgage Rescue to go through. The Council has made the application for the Mortgage Rescue scheme and are currently awaiting a decision from East Midlands Housing Association as to whether they will purchase the property and rent it back to Mr and Mrs J at a discounted rate.

The suggestion in the Green Paper that alternative sources of advice exist is not true.

Debt advice, casework and representation service

With the ending of Financial Inclusion Fund at 31.3.2011, this will affect 11.5 debt advisers within Derbyshire in losing their jobs and will restrict around 2300 individuals to be able to seek free debt advice in the future. This project has managed £58 million of debt. With the proposed withdrawal of legal aid in debt this will also affect a further five debt advisers in Derbyshire. This will eventually mean there will be no advice and assistance available for Derbyshire's residents.

Employment advice and casework service

Chesterfield Law Centre is the only advice agency in Derbyshire that provides free legal advice in employment.

Housing advice, casework and representation service

The Law Centre is one of two advice agencies in Derbyshire that provide free legal advice, assistance and representation service in housing law. The Law Centre also provides a free legal representation service at Chesterfield County Court. Without this service, at least 650 private and social housing tenants living in Derbyshire will be at risk of losing their rented and mortgaged homes.

The suggestion that people can represent themselves in dealings with public authorities, Courts and Tribunals is misguided and will mean inequality before the law.

Employment case study

Ms K had worked for a social club for a number of years and, whilst off sick with depression, was dismissed by letter, without any procedure having been followed.

Ms K feared attending the Employment Tribunal and facing her employers but with support, advice and assistance from staff at the Law Centre, she attended and won her case, increasing her confidence and knowledge of employment rights.

Community Legal Advice Telephone Helpline

Question 7: Do you agree that the Community Legal Advice helpline should be established as the single gateway to access civil legal aid advice? Please give reasons.

Question 8: Do you agree that specialist advice should be offered through the Community Legal Advice helpline in all categories of law and that, in some categories, the majority of civil Legal Help

clients and cases can be dealt with through this channel? Please give reasons.

Q9: What factors should be taken into account when devising the criteria for determining when face to face advice will be required?

We have combined our answers to the three questions above, as our relevant experience crosses over these issues.

We do not agree that “the single gateway to access civil legal aid advice” should be by telephone for non-emergency cases. Clients need and prefer to be able to approach legal advisers on a face-to-face basis, especially specialists that they have used before, and trust, or which have been recommended to them by people that they trust.

We feel strongly that telephone advice must only be one way of accessing advice, and welcome the recognition in Q9 that face-to-face advice will always be necessary in a number of cases.

Our response assumes that our concerns regarding scope are taken into account.

This service will not be accessible for those with:

- Hearing impairments
- Deaf people whose first language is sign language
- Visual impairments
- Mental Health conditions
- Learning disabilities
- Learning difficulties
- English not being their first language
- Speech impediments

Also:

- Young people under 25 years of age
- Older people
- People on low incomes and/or benefits
- Women who experienced domestic violence.

We would like to ask for reassurance that a proposed telephone gateway (Q7) would not therefore be the only gateway to legal aid advice or the most significant in non-emergency cases.

We are also concerned that a significant telephone service, with in a limited budget, would lead to a reduction in face-to-face advice. We also stress the importance of the ability to return to a trusted adviser, whether by telephone or face-to-face.

Financial eligibility

Q12: Do you agree with the proposal that applicants for legal aid who are in receipt of passporting benefits should be subject to the same capital eligibility rules as other applicants? Please give reasons

No. Legal aid should have the same capital limits as other means tested benefits for reasons of simplicity, transparency and fairness.

In our experience very few, if any, people in receipt of passporting benefits have assets that would require a contribution under the proposals. This would be an extra administration hurdle for vulnerable people to cross, for little or no gain to the legal aid budget. It lacks consistency with the approach taken by other Departments as regards other benefits.

[add any illustrations of the sort of savings/ assets the people you see who are in receipt of passporting benefits have]

Q13: Do you agree with the proposal that clients with £1,000 or more disposable capital should be asked to pay a £100 contribution? Please give reasons.

No, £1000 is a small sum of money. However for most people, this amount is a lot of money for those on low incomes. For example:

- School costs
- Home repairs
- Prescription costs
- High heating costs
- Disability related costs
- Public transport costs
- Child care costs
- Car repairs
- Buffer for emergencies – no wages, sickness, bereavement, etc.

By making this contribution collectable by the advice agency or solicitor, this proposal risks damaging the fundamental principle of providing free advice and undermining the trust people have in these advisers. The administrative costs of collection will also incur greater costs.

Q22: Do you agree with the proposal to raise the levels of income-based contributions up to a maximum of 30% of monthly disposable income? Please give reasons.

No. We strongly oppose the increase in contributions.

Living costs are increasing in many areas, with no increase in income for many people. Increasing contribution rates for legal aid in this context is unfair and may exclude many people on low income from legal aid.

Disposable income is also a misleading term in this context. Essential costs must be met from 'disposable income' (as defined for legal aid purposes), for example household bills and debt repayments.

Part Benefits are being reduced for those who are unemployed, carers, disabled and older people and carers. Lone parents would not be able to afford to contribute towards legal costs.

To raise the levels of income based contributions will plunge people on low incomes into further poverty and have little redress to resolve their problems.

Impact Assessments

Q49: Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.

We are pleased that such the impact assessments have been published along with the Green Paper's proposals for significant reform. However, we believe that the analysis of the cost to the most vulnerable is incomplete.

We are very concerned on the current proposals to withdraw legal aid. If withdrawn, this will have a detrimental impact on following groups of people we advise and assist:

- A quarter of our clients have a disability or a long term health condition.
- 10% of our clients regard themselves as black or minority ethnic.
- 74.2% of debt clients are women, 61.5% of them are single parents, single, divorced or separated.
- 15.5% of our clients are under 25 years old which are the most vulnerable group of people who are least aware of their rights.
- One fifth of our clients are older people.
- At least 75.75% of our clients are on low incomes or benefits.
- 100% of our employment and housing clients and 49% of our debt clients are on low income/benefits and are eligible for legal aid.

For reasons above, we feel that the Government has not properly carried out an Equality Impact Assessment on the affects that the reforms will have on:

- age
- disability,
- gender
- gender reassignment
- maternity and pregnancy
- race or religion
- sexual orientation.

The Impact Assessments confirm our view that the proposals will impact disproportionately on people from low income and vulnerable groups.

The impact assessments also confirm that the proposals would have a devastating impact on many charities who provide advice. They reveal the scope changes will involve a 77% drop in not-for-profit sector's legal aid income. This would severely damage the Government's Big Society agenda, as the infrastructure for volunteering services would be seriously reduced.

We would encourage the Department to undertake an impact assessment of the likely cost to other Government departments, and indeed budgets within MoJ, of the proposals. Advice has been shown to bring significant savings to the public purse, as we outlined in our response to Q3. We consider it would be short-sighted for Government to implement these reforms with out attempting a whole system cost-benefit analysis. The additional administrative costs are omitted as well as analysis of the impact on access to justice as a whole.