



Proposals for the reform of Legal Aid in England and Wales: Consultation Response

Introduction

Coventry Law Centre has been in operation since 1976. We work in close partnership with other advice agencies and community groups in the city. This enables us to reach clients who are most vulnerable and to provide specialist legal advice that complements the generalist advice services offered by our partners.

Last year we worked on nearly 2000 new cases, of which nearly 1400 involved an application to court or tribunal.

- We have Legal Services Commission contracts that cover the broad spectrum of social welfare law advice:

Welfare Benefits
Debt and money matters
Housing
Community Care
Employment
Immigration
Asylum
Public Law

We operate the duty solicitor scheme at the county court on housing possession days. Our asylum and immigration team participates in the ELAP.

- Our services are targeted at those in the city who are most vulnerable and we work to make them accessible to these groups of people.

People for whom our services are prioritised are those from the city's most deprived neighbourhoods, along with those who are

Homeless
Suffering an illness that stops them managing on a day-to-day basis
Unable to read English
Unable to speak English
Addicted to drugs or alcohol
A victim of domestic violence
Suffering mental ill-health
Learning disabled
An Older person with support needs
A Young person with support needs
Suffering from a physical or sensory impairment
A teenage parent with support needs
A refugee or unaccompanied young asylum seeker
Have suffered breaches to their human rights in the UK
Are at risk of having their human rights breached should they be removed from the UK
Those who have come to the UK as spouses and have suffered domestic violence

We have limited our responses to those areas in which we can be most helpful.

For more information on any aspect of this response, please contact Sue Bent (sue.bent@covlaw.org.uk) or Elayne Hill (elayne.hill@covlaw.org.uk)

Scope

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.

Our clients are already the most excluded and vulnerable members of society. Many have social, language, learning, mental health or other issues and they will not be able to present their own cases or access help and assistance elsewhere.

These proposals, if implemented, will lead to vulnerable people not receiving the help they need. The Ministry's own impact assessment acknowledges that the poorest and most vulnerable will be disproportionately affected by these proposals and could be discriminated against.

The vast majority of the proposed cuts within the social welfare areas of law target Legal Help, which is a low cost and highly effective level of advice and assistance designed to affect early dispute resolution and to avoid matters escalating to costly litigation. £1 spent at this level of legal aid saves an average of £10.

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

The suggestion that people can represent themselves in dealings with public authorities, Courts and Tribunals is misguided and will mean inequality before the law. It is misguided in that it assumes that those at present benefiting from our services can actually achieve the same outcomes themselves without the advantage of our expertise. This notion fails to appreciate the complexity of the issues which our clients face, the complexity and overlapping nature of the law which governs those issues and the characteristics of our client group.

For example, a decision by a local authority to reduce a person's housing benefit may be flawed in benefits law, public law and human rights law. Ensuring that such a person receives the correct advice and representation will therefore require a detailed knowledge of each of these areas and an appreciation of their overlap. The Law Centre is effective precisely because it employs experts in these fields who can provide a holistic legal approach to such problems.

Those that we assist cannot be expected to adequately represent themselves in such circumstances as the client group we serve are often those who lack the education, resources or confidence to tackle such problems unassisted. To expect the local authority to see all of the issues themselves in the above example is to fail to recognise that it is often they who have made the mistake in the first place. The suggestion that the judiciary of the courts and tribunals may ensure equality of arms by affording such an individual to put his or her case is to fail to appreciate that such a shallow notion of equality is rendered redundant as the person will often not understand the legal nuances of the case. It also misunderstands the role that advocates play in court proceedings whereby trained experts present each side of the case in an effort to assist the judge in coming to a fair and just determination.

Once a determination has been reached by the court or tribunal the client will again need expert legal advice on whether it is capable of further appeal as such recourse is often only on the basis of errors of law in the judgement.

Pro Bono cannot replace these services. Pro Bono relies on fully resourced organisations to provide professional indemnity insurance, premises to host the service, administer it, make the appointments, receive the clients, and most importantly, to train the volunteer lawyers in the areas of law that are relevant to the clients problems. Most Law Firms do little, if any, work in the areas of poverty law. They rely on our expertise to support and supervise their activity.

Specifically, we are concerned about the following

Debt

The Green Paper states that there is no legal basis in debt advice. This makes the presumption that the client is liable for the debt that is being pursued.

Many of our clients are in the position of being chased for debts for which they are not liable: without legal advice they would be forced to repay a debt they are not legally liable to repay.

For example, We have dealt with a case where a person was made bankrupt by a creditor on a statute barred debt. The client told the court this but the judge dismissed his statements. With our involvement the bankruptcy was annulled. We have also been involved in cases of undue influence, normally a wife taking on debt for her husband.

Early intervention in debt stops costly court hearings. For example, early intervention in council tax debts stops expensive committal hearings. To

only fund debt advice when a person's home is at risk will not reduce costs as intervention will be at a later stage and the cost to the tax payer will be higher. Early intervention in rent arrears cases can stop possession proceedings. Another example is a case where we were able to obtain backdated JSA and housing benefit for a person who had learning difficulties.

How will a Charging Order be viewed? It is not threatening a person's home but at a later stage it may do. Will the threat of disconnection be in scope or the forced fitting of a prepayment meter?

The Green Paper makes reference to the role of the voluntary sector in providing this type of advice and that other funding is available. This is true to some extent but the removal of legal aid funding along with the proposed removal of FIF funding will decimate the voluntary sector. Volunteers cannot deal with complex debt cases and in any case they need to be supported by specialists who train and supervise them.

Has any assessment been made of the impact of these proposals on the number of authorised intermediaries able to manage Debt Relief Orders?

Welfare Benefits

Coventry Law Centre welfare benefits team deals only with appeals. We represent about half of the people who appeal benefits decisions in Coventry and we use funding from Coventry City Council to cover the representation costs and to assist those who do not qualify for legal aid funding.

We do not believe that our clients would be able to successfully prepare for and represent themselves at hearings. Access to benefits advice is often the only way vulnerable people avoid destitution, debt and severe hardship. Poor decision making by the DWP and complex social security law create a minefield for someone without an adviser. Applicants are ill prepared to challenge the wrongful decisions of the state alone, particularly the elderly, long term sick and disabled. Early advice is vital for them to access what they are entitled to straight away, or prepare themselves to cope with a Tribunal. They are unlikely to find alternative sources of advice as the not for profit sector will be badly hit by cuts. This area of need will only increase as more people lose their jobs.

We have seen waiting times for hearings extend dramatically in the last year – partly because of lack of rooms following the move of the tribunal service into the courts, and partly because of the high number of Employment Support Allowance appeals. We currently have about

800 clients who are waiting for appeal dates and we understand there is a backlog of about 4,000 appeals in the city.

The minutes of the Work and Pensions Select Committee in February of this year <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmworkpen/313/31307.htm> are also relevant in this context.

The over riding point being made here is that more needs to be done to improve the effectiveness of original decision making.

This, was the same issue in respect of asylum cases in the Immigration Early Advice Pilot.

The benefits of this approach have been significant: the relationship between the legal representative and the home office interviewing staff has become much less adversarial- which is less stressful for the client and decisions are made more quickly.

Negative decisions still produce a high number of appeals in asylum cases. However, we believe that asylum seekers and welfare benefits claimants have different levels of motivation. Asylum seekers face deportation and the more immediate problem of the loss of their home and support. These are powerful incentives to lodge an appeal.

We feel, therefore, that a similar approach could be adopted for welfare benefits. This would enable the welfare reforms to go through more smoothly; it would hopefully lead to better decisions; it would provide more certainty for the clients; it would potentially tackle the impact on the tribunals service; and it might mean that vulnerable people are less likely to be affected by a bad decision. Overall, we believe it would save money.

The Job Centre Plus manager for Coventry and Warwickshire has expressed some concern about the impact of the changes on vulnerable people – particularly those who have mental ill health – who may be classified as able to work on the day of the assessment, but who may not be able to sustain their well being. She reported at a recent meeting two examples of people who had been placed in this category and then self harmed immediately afterwards. She said she had been meeting local MPs who also expressed concern about vulnerable people.

Our motivation in making this suggestion is primarily to maintain access to justice and to make the process work well for benefits claimants.

However, we do think there is potential for money to be saved (albeit not directly from the Legal Aid budget).

Housing

Excluding Housing Benefit work at the advice and assistance stage will be counterproductive and more expensive in the long term, for similar reasons to the withdrawal of debt and welfare benefits advice. Pre-emptive advice and assistance can reduce rent arrears and prevent possession claims being issued, thus saving obvious expense further down the line.

Legal advice on re-housing options also deals with complex information supported by medical and other documentary evidence. Accessibility to legal advice is essential to ensure that re-housing issues are dealt with properly and fairly. Withdrawal of funding for advice on transfers of social tenants to other more suitable housing is short sighted in cases where social landlords are found not to be properly applying their own criteria. While we acknowledge that in the vast majority of cases social tenants seeking a transfer the criteria may have been properly applied and in effect the tenant will have to wait until a suitable property has become available, the reality is that Legal Aid providers avoid such cases. Funding should be properly available where due to vulnerability of the client and complex factual or medical issues there are real issues about the suitability of existing accommodation and how the priority should be regarded. Withdrawing this advice will leave Judicial Review as the only available alternative, leading to more expense in resolving these rarer cases (particularly if one takes into account that the outcome of most successful Judicial Reviews is simply a reconsideration by the authority which may come to an identical conclusion by another route and further Judicial Reviews).

Of particular concern is the removal of legal aid for actions for breach of quiet enjoyment, and civil actions in relation to harassment and unlawful evictions. It is our experience that landlords in the private sector frequently ignore their legal obligations towards tenants and if tenants are unable to challenge this behaviour effectively the protections given in law to tenants become meaningless. It is perverse that under the current proposals, a tenant will be able to get legal aid if their landlord tries to evict them through the courts but will be unable to get legal aid if the landlord evicts them unlawfully. In straightened economic times we find that Local Authorities, who are tasked with prosecuting illegal evictions rarely do so.

Early legal advice to private sector tenants often saves public money. The potential costs to other public authorities of allowing landlords to ride roughshod over tenants' rights should be taken into account. We

are frequently approached by private tenants who have been unlawfully evicted by a landlord who has simply changed the locks without due process of law. Using Legal Help funding we can contact the landlord and persuade them to readmit the tenant by the threat of legal action. Again this saves costly legal proceedings in the County Courts.

Without specialist intervention by solicitors who can back up threats of action with the issue of proceedings the landlord's actions would remain unchallenged. Tenants who have been unlawfully evicted may then require help and assistance from various public authorities, e.g. housing as homeless, social services for assessments, admission to hospitals at very significant cost to the public purse. Such actions are not purely actions for damages but are about protecting tenants and restoring their rights to their tenancies. If any damages are awarded they tend to be low and are often a redress for damaged or missing belongings. They are a deterrent against landlords behaving unlawfully.

Such cases are not suitable for CFAs as there is no insurance available. The removal of legal aid for such actions will facilitate unlawful evictions.

There are significant reforms to social housing being proposed by the Government including the introduction of new short-term tenancies. Such changes make it even more important that tenants should be able to receive legal advice. With proposals to end secure tenancies for life, and for Local authorities to discharge (their) homeless duties by securing private sector tenancies, it is likely that this sector will be providing increased level of housing for vulnerable people and families who need to be protected.

The right to housing and to take action to defend that right or to enforce obligations of others in respect of that right is a basic human right in a civilised society and citizens should not be deprived of that right merely because of lack of means.

The "alternative sources of advice" quoted in the Green Paper are largely illusory.

Local authority in-house services, even where available, have never provided a full casework service and in any event there is frequently a conflict of interest. Coventry City Council is reducing its budget for housing services by £400,000 over the next two years. This will mean that its services shrink. Shelter's casework services are provided mainly through legal aid funding and will disappear to a large extent if the proposals are enacted. There is no Shelter Housing Aid service in

Coventry. The Local Government Ombudsman deals only with a narrow range of cases and has limited powers and capacity.

Immigration

Immigration law is a complex and ever changing area. It also caters to some of the most vulnerable individuals who live in our society such as those who have only a basic understanding of the English language and legal system, or who are disempowered within the family home. This was recognised in 2003 when the then Lord Chancellor's department and the Legal Services Commission proposed mandatory accreditation for all of those carrying out publically funded asylum and immigration work. This was implemented in August 2005 as the Immigration and Asylum Accreditation Scheme (IAAS). As presently constituted, this scheme is administered by the Solicitors Regulation Authority and ensures, through a hierarchy of compulsory examinations, that all of those dealing with such work have a suitably broad and detailed knowledge of immigration law.

Given the fact that there is in place such a scheme, involving the LSC, the SRA and the Office of the Immigration Services Commissioner, to differentiate *even within the legal profession* between those who are and are not deemed competent to undertake such work it seems irrational to suggest that an unrepresented individual could be expected to achieve comparable results. The existence of the IAAS also undermines the suggestion that the voluntary sector could be expected to adequately fill the role currently performed by specialist publicly funded representatives as its staff would probably be unable to meet the time and expense of training to such a level.

Although founded in UK statute and subordinate legislation, much of the day to day work of immigration law is located in an ever burgeoning amount of reported caselaw from the First and Upper Tier Tribunals, the Court of Appeal, the Supreme Court, the High Court and the European Court of Human Rights and the European Court of Justice. Much of the legislation governing the field is also to be found in international treaties and European directives and subordinate legislation. The importance of keeping abreast of such a changing legal landscape is recognised in the LSC and SRA requirements for a set number of hours training each year for representatives and solicitors, as well as in the fact that the IAAS reaccreditation exams must be retaken every three years. In practical terms, keeping up to date requires access to specialist legal journals, books and websites supplemented with regular specialist training sessions. This would simply be beyond the reach of most voluntary sector organisations and highlights the unrealistic expectation that an unrepresented appellant

for whom English may not be her first language could adequately represent herself on a complex point of law.

Although it is proposed to retain asylum work within the scope of publicly funded work, the suggestion of removing immigration work, other than for those in detention or defending SIAC proceedings, would adversely impact many people who are unable to represent themselves and who face breaches of their human rights or legal entitlements. It would also open the UK up to breaches of its obligations in both European law and under international instruments such as the Convention on the Rights of the Child.

No legal aid would, for example, be available for those people who come to the UK as spouses of persons settled here and who, during the first two years of their marriage suffer domestic violence. Such people have no recourse to public funds during the time of their initial two year visa and are hence often rendered destitute when they take the step of leaving an abusive family home. Often they are traumatised and have little understanding of where to turn for assistance. There are frequently children involved who the mother will take with her rather than leave in the home she is fleeing.

Although domestic violence agencies may provide short term material support the overriding concern for such victims is to regularise their immigration status. There is a right in such cases to apply for settlement in the UK where a marriage has broken down in its probationary period due to domestic violence. For such applications to succeed, however, they require the provision of detailed evidence of domestic violence from numerous sources such as the police, doctors, social services and domestic violence agencies as well as detailed statements provided by the victim. It would be unreasonable to expect such a victim to collate such evidence themselves. A successful application will also often entail representations underlining of the intersection between the right to settlement under the Immigration Rules, the victims right to a family life in human rights law and the UK's obligations following the full ratification of the Convention on the Rights of the Child. A set of representations pulling these strands together necessitates legal expertise and would be beyond the scope of domestic violence agencies or other voluntary sector organisations.

Legal aid would also be denied to those persons seeking to regularise their immigration status having been trafficked to the UK for sexual or other purposes. Such people, together with those subject to domestic violence mentioned above, illustrate the fallacy contained in paragraph 4.202 of the Green Paper which states that individuals in these immigration cases are unlikely to be particularly vulnerable and

will not face the same potential traumatising issues as those seeking asylum.

In paragraphs 4.19 and 4.201 of the Green Paper it is stated that where an issue arises from a litigant's own decisions in their personal life, for example, immigration cases resulting from decisions about living, studying or working in the United Kingdom, the MoJ is less likely to consider such issues of the highest importance. To adopt such a position is, however, to fail to appreciate the interconnected nature of an individual's relationships within the UK and how such cases touch on the rights of British citizens and persons settled here as well as the litigant.

For example, cases concerning applications from non-resident parents to remain in the UK to exercise rights to a family life with British children will be taken out of scope under the new proposals. Such cases however involve issues of the highest importance in that they engage the rights of British children which will be protected by the Human Rights Act and Section 55 of the Borders, Citizenship and Immigration Act 2009. The latter places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK and hence seeks to address the UK's responsibilities under the Convention on the Rights of the Child. Section 55 is a relatively new development and the subject of a growing number of judicial determinations exploring its nature and scope. Coventry Law Centre is currently involved in several cases in which section 55 and the rights of British children are the central issue in an immigration case. It is important to realize that such British children, as well as their non-British parents, will lose out if all immigration cases are taken out of scope. The importance of such matters is also underlined by the recent Supreme Court determination in the case of *ZH (Tanzania)* which touches on these issues.

Coventry Law Centre has, in a recent case, represented Miss A, the mother of a British child whose ex-partner refused at the time of the child's birth to provide the evidence of his immigration status necessary to establish the latter's nationality. As such her child stood to be removed from the UK with Miss A. On an application for appeal, Coventry Law Centre argued that it was incumbent on the Secretary of State to use the information at his disposal to establish the child's nationality even though Miss A could not. To fail to do so would breach domestic legislation in the form of section 55, human rights law, in the form of article 8 of the European Convention of the Human Rights and public law principles to prevent the ultra vires act of removing a British citizen. The representative for the Secretary of State conceded the case before the hearing and Coventry Law Centre has since used the

same argument to benefit others in the same situation. Such assistance would have been out of scope under the Green Paper proposals, leading to the illegal removal of British children from the UK.

The proposed changes to scope will also deprive refugees of important legal advice and representation once they have been granted asylum in the UK. This is particularly worrying given the importance of the right to family reunion recognized in international and European refugee law as well as domestic legislation. Coventry Law Centre is, for example, currently assisting a 16 year old girl from Eritrea, Miss H, who came to the UK unaccompanied and was granted asylum. Miss H faced persecution in Eritrea resulting from her religion and had fled the country following the arrest of her entire family. She left her home confused and afraid and with the assistance of other church members alone and made her way to the UK on her own. She did not think she would ever see her family again. She has found however that her mother has now also escaped Eritrea and is living destitute in Sudan. Mother and daughter have no news of the fate of the rest of their family which includes a father and other minor siblings. The Law Centre is assisting Miss H in an application to bring her mother to the UK. Such applications are not catered for in domestic legislation and we have provided detailed representations on the basis of the Convention on the Rights of the Child, international and European refugee law and human rights law.

Paragraph 4.202 of the Green Paper states that immigration cases do not generally involve complex legal issues. This is unfortunately not the case as can be seen from the extensive number of reported cases from the Immigration and Asylum Chamber of the First-tier and Upper Tribunals as well as from the higher courts. As stated above immigration cases often involve the intersection of domestic and international legislation and caselaw and the correct result will usually require a nuanced balancing act between these different strands. As such the requirement that *each party* has expert legal representation is essential in assisting judges in coming to a sustainable decision, particularly as the Secretary of State has a specialist unit for representation of the UKBA's position at Tribunal hearings and the benefit of Treasury Solicitors in the higher courts.

One particularly cogent example of such cases is persons exercising their rights of free movement under European law and their families. As well as representing a class of case wherein the UK's obligations under European and domestic law intersect, often with a human rights element when family members are involved, failure to properly deal with such cases can potentially lead to the expulsion of workers from the UK who are contributing to the UK economy. Coventry Law Centre

provides vital representation in many complex cases involving European law both on initial application and appeal.

In one case last year Coventry Law Centre assisted Mr G, the Syrian partner of a Polish national, Miss K, to secure a residence card recognizing his familial rights in the UK under EEA law. This was a particularly complex case as Miss K was both a worker under the Workers Registration Scheme for accession state nationals and a person in the UK exercising standard European free movement rights as a student. Neither of these categories recognizes the right or residence of an unmarried partner. The Law Centre, however, made representations submitting that failure to recognise such rights contravenes article 14 of the European Convention on Human Rights in that it discriminates against unmarried partners in curtailing the exercise of their article 8 rights. The existence of Immigration Rule 259D illustrates that the Secretary of State recognises the importance of such unmarried relationships and their affinity in practice to that of a married couple. There are also unmarried partner provisions under the 2006 Regulations, and paragraph 319A allows for applications of unmarried partners of persons with leave to remain under Tiers 1, 2, 4 and 5. It follows, therefore, that such recognition should be extended to the unmarried partners of workers under the Workers Registration Scheme. Mr G was granted a residence card on initial application whereas without the representations we provided he would most likely have been refused and would have found himself unable to put such an argument on his own behalf at an appeal hearing.

The cost of appeal hearing in this case was also rendered unnecessary by the provision of expert legal advice on initial application. The fact that the provision of such representation provides cost benefits across the legal system as a whole through the ensuring of more sustainable initial decisions, and hence a reduction in appeals, is one of the factors underlying the Early Legal Advice Pilot for asylum seekers with which Coventry Law Centre has been intimately involved. In this case, two people in employment were also retained in the UK to contribute to the public purse through their national insurance contributions.

Another example of the economic impact of the proposed changes to scope will be students who contribute significantly to UK universities through the fees they pay. This is particularly important given the cuts to the government funding provided to universities. Coventry Law Centre routinely provides representation at the First-tier Tribunal (Immigration and Asylum Chamber) in appeals concerning students. The vast majority of these appeals are successful, leading to the retention of vital revenue for UK Universities as well as ensuring the UK retains its position as a world leader in higher education with an ability to attract high caliber foreign students.

Organisations such as Coventry Law Centre therefore provide a valuable and irreplaceable service to those foreign nationals in the UK who seek to use the benefit of legal aid when they encounter problems with their immigration status. The breadth and generality of the proposed changes in the Green Paper fails to take account the complexity of immigration law, as evidenced by the existence of the Immigration and Asylum Accreditation Scheme, the fact that this area touches the rights of settled and British people (particularly children) as well as foreign nationals, the vulnerability of some classes of immigrants who are not asylum seekers and the wider economic impact of poor decision making leading to a loss of foreign national students and workers. The cases of Miss A, Miss H and Mr G raised novel points of law not dealt with in current reported determinations. They are therefore prime examples of those who would lose out if the proposals in the Green Paper were implemented.

Employment

Coventry Law Centre's Employment Team deals with all aspects of employment law including discrimination.

We are currently making 20 appointments per week for clients with employment problems. We have seen an increase in demand over the past 12 months. Clients come to us at an extremely difficult period in their lives. The impact of losing a job is enormous not only on the individual client but also on their families. The effect of unemployment can also have dramatic effects on the wider community and an impact of the local economy. Good quality employment advice can provide not only monetary compensation which will enable families stay out of debt and off welfare benefits but also can assist people in regaining confidence to return to the jobs market.

By the time a client comes to see us they have often tried to resolve matters with their employer and in many cases they have telephoned advice agencies such as ACAS but have still not been able to resolve their difficulties. Many clients face multiple problems in respect of their basic employment rights, such as failure to pay wages and or holiday pay, failure to provide a written statement of main terms and conditions; failure to provide wage slips; failure to allow rest breaks; failure to pay the national minimum wage. Often people are not aware of their rights until they have received specialist advice.

The majority of our clients are employed by small or medium sized employers and are in low paid employment. Many clients are from vulnerable groups who have difficulty managing their own affairs.

A typical case is that of a young man who was employed as an apprentice with a local small company. After two years of working with the same employer he asked his employer for a pay rise in line with the National Minimum Wage Regulations. This request was refused and less than a week later the employer started disciplinary action against the client due to alleged poor performance. Within a matter of weeks this had escalated to a disciplinary meeting where he was told that unless he resigned he would get a bad reference and be unable to find new employment. This young man felt bullied into resigning and sought advice from us. This client had little experience in the workplace and struggled with communication. He felt extremely distressed about the way he had been treated and started experiencing involuntary spasms as a result of the stress caused. We advised and assisted him in making a claim to the employment tribunal and represented him at the hearing where he was successful in his claims and was awarded over £8,000 compensation.

Another example is that of a 61 year old woman who was employed as a cleaner with a company who provided contract cleaners to a number of companies in the area. She had worked all her life in low paid cleaning jobs and was unable to read or write other than at a very basic level. The employer also provided security services to their customers and, without warning, informed her that she would have to combine her cleaning role with providing security services and that she would be required to sit a examination for a SIA licence (a requirement for security work) She failed the test and was dismissed without any of her statutory entitlements. She knew she had been unfairly dismissed but did not understand her rights or how she could enforce them. We assisted her in making a claim and represented her at a full hearing where she was successful and was awarded over £3,000. The employer still refused to pay and we assisted her in enforcing the award.

It is noted that the Green Paper likens employment disputes to civil disputes. We do not agree. Employment cases are in the main about a person seeking to enforce their statutory rights. Whilst it is accepted that the tribunal may see on occasions people who have no legal remedy and who pursue unmeritous claims, the majority of people who go to the employment tribunal do so because their employer has failed to comply with their basic statutory employment rights which often includes unfairly dismissing them. Without access to specialist employment advice and assistance many more people will be deprived of their statutory rights.

It is also argued in the Green Paper that the Employment Tribunal system is 'user friendly' and unrepresented litigants will be able to

access justice without the assistance of legal advice. We do not agree.

Employment Law is extremely complex. While much of the law is statute based a large amount of law is based on case law from the Employment Appeal Tribunal, the Court of Appeal, The Supreme Court and European courts. The tribunal procedure itself is based on civil procedure rules and, whilst it is accepted that unrepresented litigants are given some assistance by the tribunal, (although clearly not legal advice) it is still a difficult process to navigate without legal assistance. The Employment Tribunal procedure is more akin to fast or multi track cases in the County Court.

This is evidenced by the fact that the majority of employers themselves rely upon legal advice and representation - often instructing solicitors and barristers, because employers are unable to deal with the complexity of employment law. The average case will involve, drafting a claim, preparing a bundle of documents; exchanging witness statements; agreeing chronologies and statements of agreed facts; preparing a schedule of loss. In more complex cases litigants are required to provide further and better particulars; attend Case Management Discussions or Preliminary Hearings on legal or jurisdictional points; prepare skeleton arguments. Without legal advice and assistance there are many people who would not be able to access justice because they would 'give up'.

We often present complex legal arguments which result in the employee being able to pursue a claim which otherwise would fail. For example we recently acted for a man who had worked for a company for a number of years. The company changed names a number of times over the years and the employee transferred under the TUPE regulations. However, the managers always remained the same. On the last occasion the claimant was told that he would have to go self-employed. The claimant was near to retirement and did not want to do this. It was also unlawful.

He did not receive any notice pay or redundancy pay. Shortly after the 'new' company ceased trading and, although claims had been lodged for unfair dismissal and redundancy. because the company 'no longer existed' there was no legal remedy.

The only remedy was against the original employer but only if it could be argued that the claimant had not transferred to the new company. We argued regulation 4(9) of the TUPE regulations and were able to show that he remained an employee of the 'old' company. Without our advice and assistance this claimant would not have received any redundancy or notice pay. These payments were his basic rights as an

employee and the only way he could enforce them was through the tribunal system with the assistance of specialist advice.

We also consider that timely advice and assistance at an early stage of the proceedings can prevent unmeritorious claims proceeding. If Employment law is removed from scope the majority of advice centres who currently provide specialist employment advice will lose their specialist workers because of lack of funding. This will result in potential claimants receiving only first tier advice, which is unlikely to be able to determine the merits of many potential claims. We note that the Green Paper suggests that people can get advice and assistance from other sources such as unions; advice centres; insurance policies. However, the majority of clients who qualify under the legal help scheme are in low paid employment and do not belong to unions and do not have insurance. Advice centres are a valuable resource to the local community and if the proposals to remove much of social welfare law from scope goes ahead many of these centres will close or suffer severe cuts which will dramatically reduce capacity.

We believe that Tribunals themselves value the work provided under the legal help scheme and advice centres who also provide pro bono representation. Our local tribunal often suggests to claimants that they seek advice from us. They themselves realise the value legal advice provides to both claimants and to the tribunal service because cases proceed more quickly and efficiently once a client has obtained legal advice. This is also the case when trying to agree settlements. ACAS often refer clients in order to broker sensible settlements and to ensure clients receive legal advice in relation to preparing a realistic schedule of losses.

Coventry Law Centre settles approximately 85% of Employment cases. It is often possible to negotiate references as part of settlement agreement, which enables clients to return to the job market more quickly. Another consequence in assisting in settlements is that Tribunal time and expense is saved by avoiding unnecessary hearings. It is however worth noting that those cases that do proceed to a hearing are undoubtedly assisted if the parties are represented and many Law Centres are able to offer this service free of charge. In addition where claimant's are successful at a hearing the recoupment provisions usually apply to any compensation awarded and, as such, claimants will repay the state their unemployment benefits.

As previously stated the majority of employers seek legal advice and instruct legal representatives. If employment is taken out of scope many vulnerable clients will find themselves in the position of trying to deal with solicitors or other legal representatives and not with employers. The Employment Team at Coventry Law Centre has seen

an increase in costs warning letters to claimants in cases where the risk of costs is in fact unlikely and indeed in cases where the client is at no risk at all. It would appear that a 'standard' cost warning is sent to claimants in an attempt to 'scare them off'. We have had clients too frightened to continue with cases where they are likely to win. We consider this is likely to occur more if more clients are denied access to legal advice.

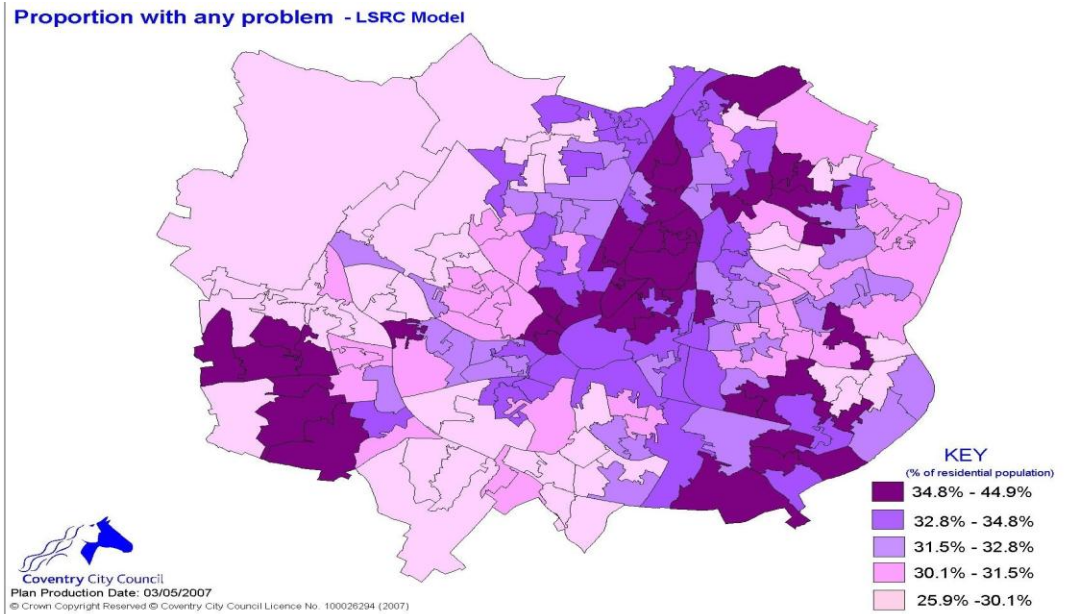
Finally the majority of our clients do not want to go to Tribunal – they want what is rightfully theirs. In the majority of cases it is employers who 'cause' the problems by failing to comply with the law not the employee. It seems unreasonable that a society provides employment rights with the one hand and yet would restrict access to enforce them with the other.

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.*

No we do not agree.

In Coventry, to target our services effectively, we use maps of where those people with the highest need for advice are clustered. These have been compiled using the methodology that the Legal Services Commission uses to measure need and that has been developed by the Legal Services Research Centre. The map of the city showing all needs is reproduced below.



Coventry City Council has undertaken a review of its customer services and they have used a study commissioned by Experian, called Mosaic, to profile people living in the city. One aspect of this study covers the preferred approach to service delivery by means of: (1) the Internet; (2) telephone; (3) Mobile phone; (4) post; and, (5) branch – face to face contact. The approach was to rank the various means of service delivery by social type preferences. There were five preferences:

- Strong
- Neutral but positive
- Neutral
- Neutral but negative
- Weak

With each service channel preference analysed by the 69 household sub groups it is possible to identify the probability that people would switch between them. For example people could have strong preferences for more than one channel and that would suggest that they are able to switch between them.

It is possible to identify four types of user;

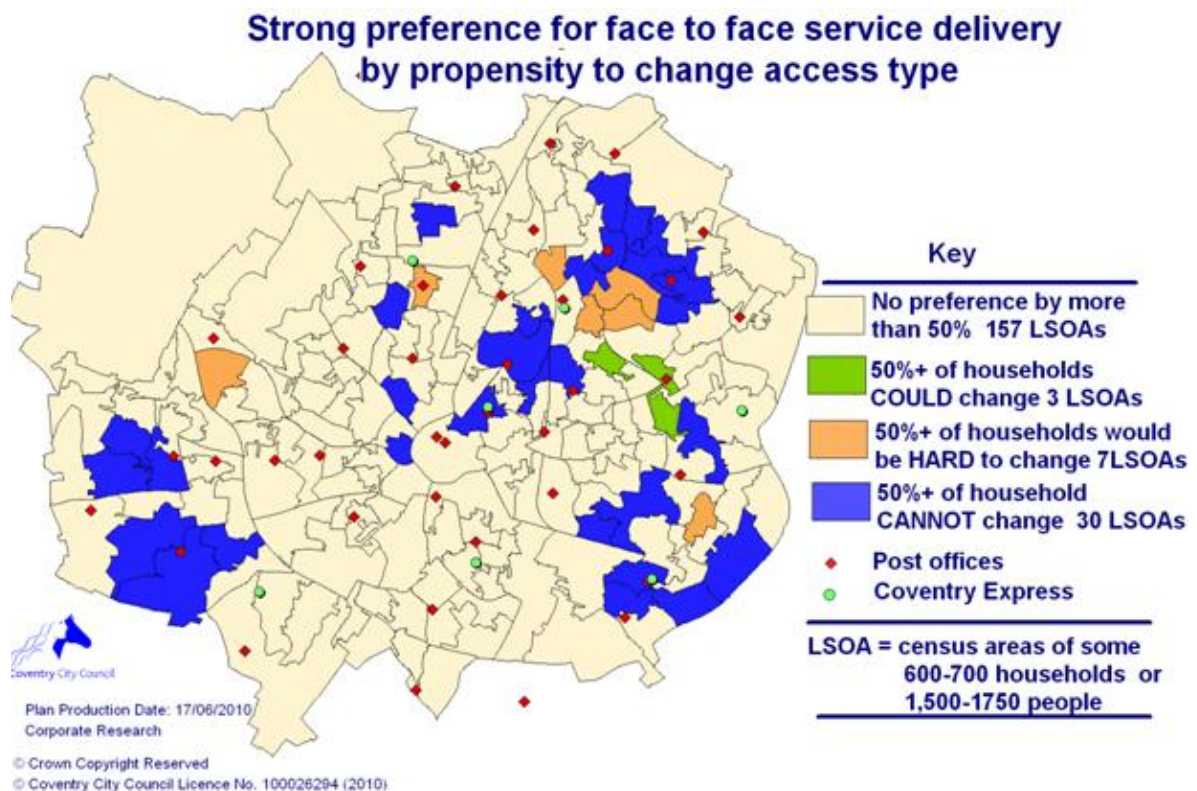
- Those who **can** switch - having a strong / neutral positive preference in another service channel
- Those who **could** switch - having a neutral preference in another service channel
- Those who would find it **hard** to switch – having at best neutral negative only in the other service channels
- Those who **cannot** switch – having weak in the other service channels

The map below shows this break down as a proportion of all households in the city. Social groups exhibiting a strong or neutral

positive preference for face to face service delivery accounted for 18% of households (24,504) in Coventry.

Those who can (1%) and could (2.4%) change account for just 3% of households in the city.

Those households that would find it hard to change account for 6.3% of households (8,577), and those who cannot change for 8.8% of households (11,980)



The blue areas depict the areas where the majority of households prefer face to face contact and would not want to change their service channel. You will see the correlation between these and the areas that the LSRC model show as having the greatest need for advice. It is these areas that our services target. It seems clear that people living in these areas, which have a high proportion of the vulnerable people in the list above, need advice services to be delivered face to face. The telephone gateway will present a barrier for them.

It is early intervention by advice services for such clients that ultimately saves costs on other departmental budgets. Whilst a telephone service

will no doubt save money, it is unlikely to really penetrate these areas and so the benefits that come from advice services in terms of savings elsewhere will be threatened.

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.*

Whilst we believe that the provision of advice by telephone is a valuable and, for some people, suitable method of delivery, we are firmly of the view that for others it will prove an insurmountable barrier to accessing the legal advice and assistance that they so desperately need.

For those people who do make contact via the helpline it may be possible for a significant number of them to be adequately assisted, this misses the point that those who call are unlikely to be those who are most vulnerable and most in need – for all the reasons set out above.

In addition we would draw your attention to the findings of a paper produced by the Council on Social Action, called 'Time Well Spent'. This is a report on the importance of the one-one relationship between civil legal aid advisors and their clients working across areas of law including debt, housing, welfare benefits, employment and immigration and asylum. Access to legal help is seen as an essential element of strategies to tackle disadvantage and discrimination. The process of seeking and giving advice and the human bond established between advisor and client nourishes confidence, trust and self belief. Provided at the earliest opportunity, it can generate savings for other areas of public services. This report takes the learning from front line practitioners and original research to make recommendations for wider public services delivery.

The value of face to face advice seems to be being ignored in these proposals, along the fact that those most in need are unlikely to be able to access advice via a telephone service at all.

Question 9: *What factors should be taken into account when devising the criteria for determining when face to face advice will be required?*

It is our view that face to face advice is more effective for the clients we serve. In addition to the complexity of the case, we would argue very strongly that face to face advice should be available to those who are most vulnerable. We have used Vanguard Systems Thinking methodology within the advice partnership in Coventry to remove any duplication or activity that, from the client's perspective, is waste. The

requirement to call a helpline in order to access specialist face to face advice will, in our view, introduce 'waste' back into a process that we have very carefully designed to be efficient, cost effective and to provide certainty of quality and a clear pathway for our clients.

We believe that the evidence presented for the compulsory use of a single telephone-based gateway is flawed, the savings are over-estimated, and that the service will cost. The MoJ has acknowledged that they will need to find substantial funds in order to set up the triage service and to expand the present CLA if this proposal is implemented.

We ask Government to listen to those of us already working with the most excluded members of society, who have been using telephone based services for 40 years and have daily experience of how to provide an effective and cost efficient service to poor and vulnerable communities.

This proposal will deny access to justice; will destroy local advice networks; and will ultimately cost the Government more than maintaining a proper network of face-to-face services.

Financial eligibility

Question 12: *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.

Question 13: *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 modest sum of money, especially for the poorest members of society who, unable to access credit or to find additional funds, may need to keep such modest amounts in case of family emergencies. Our work provides daily examples of households who have gone into debt to deal with an emergency (like needing a new fridge or washing machine) and who are paying extortionate interest rates. Those people who have a small amount of

savings should not be asked to make a contribution to an action that will enable them to uphold their basic legal entitlements.

The Government's impact assessment of this proposal acknowledges that around 2/3 of the saving (which are likely to be less than £1m in any event) will be achieved by people otherwise entitled to legal aid not taking the service on offer as they will be unwilling or unable to pay the £100 contribution. The proposal appears purposely designed to disincentivise take-up of legal aid at the same time as the proposal to make legal aid available only for the most serious of matters. That is, the legal problem is acknowledged as of the highest importance that requires assistance and yet this proposal is designed to discourage those with the highest level of need from accessing it at all.

This proposal risks undermining the very heart of the relationship between agencies like ours and our clients. We are trusted because clients know that we are not after their money. If this proposal goes ahead it will place a barrier between us and our client.

We also note that the Government has failed to undertake any administrative burden calculation for this proposal or indeed for many of the others. The reality is much if not all of the £100 will be swallowed up in the costs of collecting, banking and accounting for it.

We are also extremely concerned that, as the cost of this will fall on the provider, our administrative costs will increase. We also believe it extremely unlikely that where a client needs us to act urgently to protect their position, they will have £100 readily available. This will place providers in the position of having to accept the risk that this money will not be recovered. This is a burden that we argue is unacceptable to place on NfP providers where cash flow is already a matter of concern.

10% Fee Reduction

Question 32: *Do you agree with the proposal to reduce all fees paid in civil and family matters by 10%, rather than undertake a more radical restructuring of civil and family legal aid fees?*

No.

There is not a 10% margin in the current fees for Law Centres. Independent research undertaken and submitted to the MoJ's Legal Advice at a Local Level Study in 2009 on the Impact of the Introduction of the Fixed Fee on Law Centres found that Law Centres have subsidised the current fixed fee with their Reserves. The reserves are

charitable funds accrued for charitable purposes and are now spent. A further 10% reduction is not sustainable. It will put significant pressure on our finances. This reduction, combined with potential reductions in other sources of funding that we use for other work, will put the organisation in a position where our long term future is at risk.

The Government will be aware of the need for the full cost recovery model to be applied across all of our areas of service delivery in order for us to operate on a sound financial basis. There is an implication in the Green Paper that funding for advice services is muddled and that this leads to double funding. This is certainly not the case at Coventry Law Centre. Our other funding is used to undertake non legal aid work. Our legal aid funding is reserved for complex legal work that will frequently involve proceedings being issued.

The current fee structure does not allow for full cost recovery of legal aid work and a 10% cut in fees will make this position worse.

Impact Assessments

Question 49: *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 believe that the impact assessments are deeply flawed. They fail to attempt to quantify the likely costs of these proposals across Government expenditure and they fail to identify the additional administrative costs involved in the proposals being made.

They make assumptions, based on little or no data, about the effect of the proposals on the current service user, and are based on a mythical client with resources and abilities rarely seen at the Law Centre.

They paint a picture of legal aid that we cannot recognise. Our clients are frequently living in persistent poverty, have low levels of educational attainment, have poor literacy and numeracy skills, have higher rates of disability than the general population, have higher rates of mental health issues (often times brought on by the legal problem itself), and many lead chaotic lives. The difficulties faced by our clients in their daily lives are significant and have not been fully considered.

These proposals, based around a simple funding cut, will fundamentally alter the nature of our civil justice system and by doing so will irreparably damage one of the central facets of our fair and just society. We suggest that such massive change requires proper and

detailed impact assessment that seeks to identify all costs to society. These impact assessments do no such thing – indeed they do not even demonstrate that these proposals have cost benefit across Government.

The cumulative impact assessment acknowledges that the proposals may cause:

- Reduced social cohesion;
- Increased criminality;
- Reduced business and economic efficiency; Increased resource costs for other Departments; and
- Increased transfer payments from other Departments.

However it does not evaluate the likelihood of these outcomes or the costs, financial or otherwise, that they will bring.

The Impact Assessments do confirm our view that the proposals will impact disproportionately on people from low income and vulnerable groups. They also acknowledge that the scope changes will mean a 77% drop in not-for-profit sector's legal aid income. This will 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, as well as the budgets within MoJ, that will be impacted by the proposals, such as the courts, tribunals and prisons.

Law Centres services have been shown to bring significant savings to the public purse, as we outlined in our response to Question 3. The savings created have not been considered.

We note that MoJ has stated that it will conduct a full impact assessment on the proposals to be taken forward. We recommend that in addition to this an independent cost-benefit analysis be undertaken, that all the additional administrative costs be included and an analysis of the impact on access to justice as a whole be undertaken.