

PI

11 February 2011

legalaidreformmoj@justice.gsi.gov.uk

Dear Madam / Sir,

Legal Aid Reform: Consultation Response

Cumbria Law Centre

Introduction

Cumbria Law Centre provides free legal services to people who live and work across the county of Cumbria. We have local authority funding from Carlisle Allerdale and Copeland councils, and other sources, but some 60% of our income is derived from the Legal Services Commission. We deal with 4000 queries per year, leading to approximately 1,800 in-depth casefiles annually. We are very concerned that the proposed changes will have a devastating impact on our clients here in Cumbria.

We have limited our responses to those areas in which we can be most helpful. In respect of all other questions we endorse the response provided by the Law Centres Federation.

For more information on any aspect of this response, please contact Paul im Thurn, Senior Solicitor: 01228 515129 / paulimthurn@comlaw.co.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.

Welfare Benefits: We deal with detailed matters on the interpretation of the legislation and regulations governing the benefit system, normally at the appeal stage. It appears to be argued by government politicians that these matters are “not necessarily of a legal nature”. This is simply untrue. We do not handle general information inquiries, “better –off calculations”, form-filling or other basic ‘acts of assistance’ normally conducted by general advice agencies. When a client is referred to the law centre it is to handle a dispute with the council or DWP that requires a sound knowledge of the legal framework as well as general legal skills of assertiveness, adversarial courage, and the ability to deal with counter-challenges. The legal framework underlying the benefits system is highly complex, and as intellectually challenging as the statutory framework underlying the tax system. Legal expertise in this area is a vital requirement of a sound system of civil legal aid.

Debt: Clients accessing our Debt casework service receive detailed tactical advice on how to approach each creditor. Being a solicitors’ practice, we are ready and capable when the need arises to challenge the validity or enforceability of an alleged debt, and we can readily handle bankruptcy, council tax bailiffs and other areas which have substantial legal content. Above all, however, we bring assertive negotiation skills, and tactical judgement that arise from our practice as litigators. These skills are necessary to successful debt casework.

Employment: The bulk of our employment practice is concerned with the consequences of the termination of employment. By enforcing employment protection law, and making it clear to local employers that this regularly occurs, we play a significant role in promoting good employment practice in local industry and commerce. It is said that trade unions or insurance could cover the cost of the service we provide. We disagree: the vast majority of our clients, in the catering, security, industrial, agricultural and retail sectors are not unionised. Most are low paid and often do not have household insurance because they cannot afford it. It is also said that the Employment Tribunal is less formal than the courts and open to litigants in person. This overlooks two vital things: first that the tribunal has been heavily “lawyerised” during the three decades since its informal inception and is now every bit as formal and procedural as the conventional courts; and secondly that employers almost always deploy lawyers to represent them and a litigant in person is thus at an immediate disadvantage. Legal aid does not cover representation in the tribunal as it is; but we are able to prepare cases competently (screening out those which are misconceived or which have poor prospects) and help clients press for early resolution. It is simply not true that our service leads to frivolous or speculative cases; rather the opposite. Nor is it true that the Tribunal members can offer assistance or ‘lean’ in favour of an unrepresented party. Of course they will have to take pains to ensure that such a person understands what is happening and so on, but they cannot assist by cross-examination, or in the presentation of their evidence or argument. Depriving employees of free legal advice on employment matters deprives them of equality of arms before the tribunal, and in a real sense amounts to a denial of access to justice. This measure seriously undermines confidence in the tribunal system and the rule of law.

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 law 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.

We are the only legally qualified providers in the county of Cumbria who practise in the field of social welfare law. Citizens Advice work with us in partnership, but pass on to us everything of a legal or complex nature. Shelter operate in the south of the county, and are entirely reliant on legal aid (more so even than ourselves) and will thus not survive the implementation of these proposed changes.

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

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.

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.*

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

This single answer deals with questions 7 to 9.

Removing locally based and embedded face-to-face services in favour of a national helpline will be a disaster. 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.

However not only will proposal, if implemented, deny hundreds of thousands of people access to advice services, it will also destroy locally based and run not-for-profit advice centres like ours. This will undermine and likely destroy localised networks of advice agencies, community groups and charities which reach out to the most vulnerable in our society and which seek to ensure that they have access to the services they need.

For many of our clients accessing a telephone based service just isn't a real option. Many have language or other social difficulties that will make it impossible for them to properly use such a service – and perhaps more importantly, they will be put off from even trying. Many (around 44%) just don't have access to a phone or, if they do, it is an expensive pay as you go mobile phone as they cannot access the cheaper pay monthly tariffs). For many of our clients, even though without language difficulties, they just wouldn't be able to properly explain their problems over the phone.

Often we have to spend time reading through the bag of papers and un-opened envelopes that they bring with them to the office, even just to determine whether there is a justiciable issue capable of receiving advice under the legal aid scheme. This is often paid for from alternative sources and is never charged against the legal aid fund.

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 implore 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.

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.

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. This proposal alone has the potential to force the insolvency of many legal aid practices.

Law Centre lawyers work in Law Centres to do good, to make a difference. They are not motivated by personal gain or by high salaries. Our concern with this proposal is the impact it will have on our ability to serve our communities. Without legal aid practitioners, the public cannot be served. The expertise lost, the closure of charitable organisations, will directly impact on the on the lives of 120,000 people that Law Centres alone assist each year.

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 our Law Centre.

They paint a picture of legal aid that we cannot recognise. Law Centre clients are poor, have low levels of educational attainment, low 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 on 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.

Yours faithfully,

Paul im Thurn
Senior Solicitor
Cumbria Law Centre