



## **Legal Aid Reform: Consultation Response**

### **Nottingham Law Centre**

#### **Introduction**

Nottingham Law Centre has been delivering legal advice and representation in areas of social welfare law since 1982. Areas of Law currently covered include Debt, Housing, Employment and Welfare Benefits. We also deliver the Housing Court Duty Scheme, advising any individual facing repossession proceedings at Nottingham County Court.

Specialist & Generalist Service  
1 April 2009 – 31 March 2010

No of clients seen	3755
Debt	430
Employment	126
Housing	885
Welfare Benefits	939
Court Duty Scheme	1375

The proposals appear to be based on the fact that the services being taken out of scope can be delivered by existing advice services. The existing services cannot meet existing demand and a significant proportion of these services, especially those at specialist level, are funded by contracts with the Legal Services Commission. It must also be stressed that existing services are being squeezed or cut completely due to cuts in funding from local authorities and the withdrawal of other sources of funding due to the recession and government cuts. Some of the other sources of advice mentioned in the proposal are inaccurate e.g. National Debtline is the telephone advice service provided by the Money Advice Trust.

The advice provided on social welfare law issues is legal advice on areas of law governed by complex legislation. Even very articulate and able clients struggle to navigate the complex procedural hurdles and understand complex legislation. Added to this, we get numerous referrals from other professionals e.g. social workers, probation officers, health professionals who also struggle to assist their clients with social welfare law matters.

Telephone advice should complement face to face advice and is not appropriate for all individuals. Telephone advice is also reliant on the caller having the correct paperwork in front of them and being able to understand it

and be able to communicate the content accurately. Although telephone advice may suit some clients it will not meet the needs of the most vulnerable who have language issues, chaotic lifestyles, capability issues due to learning disabilities, mental health problems or alcohol/substance misuse. It is also difficult for people who only have a mobile phone as the telephone numbers used are premium calls to mobile phone users and people in debt often have no credit. The value of face to face advice delivered by experienced advisers cannot be underestimated as they can pick up body language that shows whether the client can understand the advice they are giving. It should also be noted that telephone advice services have not scored well at Peer Review. Research also shows that face to face advice is important to clients (Time Well Spent).

These proposals will be detrimental to vulnerable people and those with additional needs e.g. interpreters and will increase costs to the Health Service. Research published in 2006 found that adverse physical and mental health consequences follow over a third of civil justice problems and that 27% of civil justice problems led to stress-related illness. Nearly a quarter of the people affected by stress sought medical treatment, with an average of 9 visits each to a GP. "(Causes of action: Civil Law and Social Justice (2<sup>nd</sup> edition) Pleasance P, 2006, p.60 TSO). There will. Inevitably, be a knock on effect to other services – education, health, social service, the local economy with research showing that every £1 invested in good legal advice saves £10 to the public purse.

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 Cheryl Weston on 0115 978 7813 ext 207

## **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.

## **Debt**

Not dealing with debts at an early stage could lead to serious consequences. It is not, therefore cost effective to limit the scope to the extent outlined in the proposals. Loss of a home is usually part of a series of events which needs earlier intervention.

There needs to be a clearer definition of what will count as 'immediate risk'. If this is when it has reached a stage where proceedings have been issued the overall costs will be increased due to the court time. All housing debt should be covered.

There will be an increase in repossessions as by the time it reaches a stage that assistance can be given it is less likely that any mortgage debt can be repaid back within a time period that the court can accept and those facing repossession on mandatory grounds will be automatically evicted as the court has no discretionary powers in these cases. This will also mean that clients with Introductory Tenancies will be adversely affected.

As there will be no funded welfare benefits advisers, will debt advisers be expected to deal with HB and SMI? There will inevitably be a loss of overall expertise as specialist debt advisers will only be dealing with one aspect of debt.

If individuals do not receive advice about their other debts, including other priority debts, they often pay off the wrong debts, leaving the housing debt until it gets to a critical stage. Individuals rarely approach their debts as priority and non priority debts.

The proposal says that individuals should take responsibility for their financial affairs but does not acknowledge that by seeking expert advice at an early stage an individual is taking responsibility.

Debt advisers deal with complex matters including the Consumer Credit Act, contract law and insurance. Even articulate clients find themselves misold PPI etc.

The proposal does not make it clear whether Council Tax is covered. An individual's liberty is at risk if their Council Tax debt is not dealt with. From the proposals, it appears that this may only be covered at the committal stage.

Debt can have an impact on an individual's health and mental health which, if unresolved, will inevitably increase costs to the Health Service.

## **Housing**

Section 204 of the Housing Act is mentioned but there is no mention of review prior to the appeal. A lot of cases are won on review so it is not cost effective to take this out of scope.

Unlawful eviction and breach of Quiet Enjoyment should be covered; these are low cost cases. Other government proposals will mean more people having to move to private tenancies; the lack of free legal redress will leave these individuals with no protection and give private landlords carte blanche.

The proposed welfare and housing reforms will increase the need for advice.

In terms of disrepair, unless the disrepair is minor there will, inevitably, be an impact on health.

There needs to be clarification about what stage is meant by threat of repossession.

In relation to rehousing being removed from scope, this is part of challenging LA decisions and where would individuals go to get advice. The Ombudsman won't deal with it where there is a legal; remedy and advice agencies without a housing specialist won't have the expertise to deal with this. Additionally, challenges to allocations are part of the lead to to JR.

### **Welfare Benefits**

Early intervention will prevent problems escalating. The benefits system is complex and is governed by a great deal of legislation. This has been acknowledged by the current government who are currently working on simplification of the current system. Some of the appeals dealt with by advisers are on very complex legal points and require knowledge of case law and precedents. Preparation of comprehensive submissions often leads to the original decision being changed, thereby cutting the need for a tribunal with its attached costs.

Much of the benefits work undertaken is caused by errors made by Housing Benefits, Job Centre Plus and HMRC (Radically Re-Thinking Advice Services in Nottingham).. The fact that a high proportion of ESA appeals are successful is an indication of this. Research shows that there is more chance of success if it an oral hearing and not a paper hearing. The likelihood of success increases further if the individual is represented at appeal. In addition, some appeal outcomes have a direct impact on a Magistrates or Crown Court fraud case that is waiting to be heard.

The proposal takes assisting individual access to assistance to access basic subsistence level of income. Money to live on and pay for your home is a basic human right; individuals who are not getting any income are vulnerable and at risk. Failure to access benefits leads to debt and the threat of repossession. Individuals trying to claim benefits do not understand the criteria and scoring systems. Other government proposals contain sanctions against individuals; who will assist them to challenge these?

Judicial Review remains within scope but who will identify and assist with these cases if there are no benefit specialists doing the casework.

### **Employment**

There will be little incentive for employers to treat their staff fairly if legal advice is taken out of scope.

There is an assumption that employees are able to represent themselves. The other side is often represented and Employment Tribunals operate as a court. However much the tribunal tries to be 'user friendly' it is very intimidating for appellants.

Tribunal procedure is complex and there is a need to know case law and precedents in order to achieve the best outcome.

### **Education**

This area of law covers very complex issues that most parents cannot understand. Removal from scope will result in a system where an individual can only challenge effectively if they have money.

### **Clinical Negligence**

Individuals will have no redress.

There is a need for funding to pay for a medical expert to assess the merits.

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. Nottingham Law Centre is part of a consortium of advice agencies providing advice across Nottingham. Two other agencies also advise under LSC contracts and all are subject to cuts of local authority and FIF funding as well. The advice sector already struggles to cope with existing demand which outstrips supply. The proposals will mean that individuals will go without advice or access to justice.

The suggestion that people can represent themselves in dealings with public authorities, Courts and Tribunals is misguided and will mean inequality before the law. The cases that we represent on are complex legal matters and the tribunal chairs regularly sign a pro forma to certify that representation was necessary.

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.

We liaise with Nottingham Trent University who operate a pro bono service in the City. This service depends on students who have time off between

semesters, need time to prepare for exams and are only there for a limited time. This means that there is a need for regular training and shadowing of experience specialist advisers.

### **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.*

Telephone advice should complement face to face advice and not replace it. Evaluation of existing telephone advice is misleading as it is a very different client group that chooses to use a telephone service.

**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.*

As expressed earlier, telephone advice should complement face to face advice and not replace it. Telephone advice is also reliant on the caller having the correct paperwork in front of them and being able to understand it and be able to communicate the content accurately. Although telephone advice may suit some clients it will not meet the needs of the most vulnerable who have language issues, chaotic lifestyles, capability issues due to learning disabilities, mental health problems or alcohol/substance misuse. It is also difficult for people who only have a mobile phone as the telephone numbers used are premium calls to mobile phone users and people in debt often have no credit. The value of face to face advice delivered by experienced advisers cannot be underestimated as they can pick up body language that shows whether the client can understand the advice they are giving. It should also be noted that telephone advice services have not scored well at Peer Review. Research also shows that face to face advice is important to clients (Time Well Spent).

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

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 unopened 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.

Although telephone advice may suit some clients it will not meet the needs of the most vulnerable who have language issues, chaotic lifestyles, capability issues due to learning disabilities, mental health problems or alcohol/substance misuse. It is also difficult for people who only have a mobile phone as the telephone numbers used are premium calls to mobile phone users and people in debt often have no credit.

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, the contracts do not pay enough for work currently undertaken by Nottingham Law Centre. A reduction in fixed fees will only mean that more fees are paid at exceptional level. 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 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 the 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 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.