

Legal Aid Reform
FAO Annette Cowell
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Date: 14th February 2011

legalaidreformmoj@justice.gsi.gov.uk

Dear Madam,

Consultation response - Legal aid Reform

Please find enclosed a response to the Legal Aid Reform consultation on behalf of Sheffield Law Centre.

Yours faithfully,

Keith Baker
Vice-Chair of the Management Committee
Sheffield Law Centre

Legal Aid Reform: Consultation Response

Sheffield Law Centre

Introduction

1. Sheffield Law Centre was established in 1984 and has recently celebrated 25 years of providing legal advice, assistance and representation to the community.
2. The Law Centre exists to:
 - provide an accessible legal service to people who live or work within Sheffield and who are oppressed, disadvantaged or living in poverty
 - challenge injustice through legal representation, education and training
3. The main areas of law we undertake are:
 - Housing
 - Employment
 - Immigration and asylum
 - Discrimination in all fields
4. We currently have contracts with the Legal Services Commission in employment, housing, asylum, immigration, disability discrimination and public law. Along with our partner advice centres, we provide advice in welfare benefits and debt. In addition, we receive funding from the Equality and Human Rights Commission, to provide further advice in discrimination and human rights, as well as some support from the local authority, which allows us to provide a holistic service that our clients need.
5. All our advice is confidential, impartial and free at the point of delivery. Last year, we provided a full casework service to 1356 people and advised a further 2639 callers, mainly with telephone advice. As well as this – and this complements our service as well as reflecting or links in the community – we provided second-tier advice to 43 different organisations.
6. Our service is appreciated by our clients: of our feedback forms, 92% said their life had improved because of our help.
- 7.
8. Cutting legal aid would not only mean a loss of direct assistance to those currently helped by legal-aid funded caseworkers but would also threaten our ability to provide the service currently funded by other funders.
9. We fully endorse the response submitted by the Law Centres Federation. However, we felt it appropriate to submit a few comments of our own.
10. For more information on any aspect of this response, please contact Douglas Johnson at Douglas.johnson@slc.org.uk or on 0114 273 1501.

Scope

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

11. We agree with the proposal to retain the type of case listed – that does not mean to say we agree with any of the exclusions. To do less would be a clear breach of an individual's right to a fair hearing in many cases.
12. However, we have concerns that many issues are still of critical importance such that adequate legal advice is essential to ensure rights to a fair hearing.
13. For instance, refugee family reunion is a fundamental aspect of the asylum claim of many refugees. The Government's proposals do not make clear that Legal Aid is to remain for refugee family reunion as it is to remain for asylum generally.
14. The Government's proposals recognise, in relation to family law, the importance of situations involving domestic violence. Some immigration cases concern domestic violence and, where they do, it is often the person's immigration problem that leaves them unable to escape domestic violence. A similar situation can arise in some domestic worker cases. The Government should make clear that Legal Aid will remain for such cases in order to avoid allowing abuse to continue unaddressed.

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.*

15. We do not believe that the proposed exclusions are right in any way. We also believe they are short-sighted and cuts to preventative work in these areas will lead to greater costs and social problems in the long run. The proposal will therefore not deliver the savings sought.
16. We believe it is wrong to exclude entire categories of law from the scope of legal aid without consideration of the merits of the cases or the impact on the clients concerned. Whilst we agree that public money should be used for the most important cases and for the greatest impact, this will not be achieved by excluding whole areas of law.
17. Our clients are already the most excluded and vulnerable members of society. Many have disabilities, social problems, language difficulties, learning disabilities, disrupted education, a history of exclusion or chaotic lifestyles, mental health or other issues. The vast majority have low expectations of their rights and lack understanding of the systems they are required to work within. Many are quite unable to present their own cases or access help and assistance elsewhere.

18. For instance, many immigration cases are often complex. Last year, a Court of Appeal judge said:

“I am left perplexed and concerned how any individual whom the Rules affect ... can discover what the policy of the Secretary of State actually is at any particular time... It seems that it is only with expensive legal assistance, funded by the taxpayer, that justice can be done.”

19. The Government’s proposals are wrong to treat immigration cases as cases that people can deal with themselves and Legal Aid should remain for immigration work.

20. The need for legal advice - and assistance - is far greater when people face disadvantage. Of course, when people do not get advice at the early stages, the costs to society are far greater later on.

21. 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.

Case Study

Sheffield Law Centre advised three British Overseas Citizens (BOCs) of Malaysian origin who, through no fault of their own, were deprived of their Malaysian citizenship by the Malaysian authorities on becoming BOCs. The consequence of this was that they were no longer able to reside in Malaysia and, because BOC status does not entitle the holder to reside in the UK, they were virtually stateless. This was an issue of fundamental importance which could not have been resolved without legal aid.

22. 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.

23. Although our advice consists of legal advice in relation to the matters enquired about, many of our clients benefit directly from an education about how the legal systems work or the framework for administrative decision-making.

24. Again, information taken from our feedback forms indicates that 72% of respondents felt that they now knew more about their situation as a result of our work and, most importantly, knew more about how to handle it in the future.

25. We are particularly concerned at the suggestion in the Green Paper that other sources of advice could meet the need for advice if legal aid were cut. This is simply not the case. The Green Paper gives examples of CABx and Shelter

as advice providers. In Sheffield, CAB and shelter both rely on legal aid as a significant part of their income. Like us, Removal of legal aid would actually mean a cut in their services. Furthermore, the core funding provided by legal aid is what helps secure other types of funding and makes the running of small organisations like ours viable.

26. The suggestion that people can represent themselves in dealings with public authorities, Courts and Tribunals is misguided and will mean inequality before the law. For instance, we regularly represent in the county court. It is relatively common for judges to send litigants in person out of a hearing specifically to get advice. Although this is for the individual's benefit and is really necessary for the court to ensure their right to a fair trial, we note it is also of benefit to the smooth running of the court. The efficiency of justice would be impaired without ready sources of advice.
27. Immigration cases involving people's family and private life (Article 8, European Convention on Human Rights) raise complicated matters of law and fact. The courts have established a five-stage test to be carried out in these cases, and the Supreme Court has this year reiterated the point that:

“The search for a hard-edged or bright-line rule to be applied in the generality of cases is incompatible with the difficult evaluative exercise which article 8 requires.”
28. The Government's proposals treat these cases as being relatively straightforward. This is obviously wrong and Legal Aid should remain for these cases.
29. Legal Aid is to ensure equality of arms in legal proceedings. In immigration cases, the Home Office is represented and has specialist legal advice. Legal Aid should remain for claimants and appellants who cannot afford legal assistance. Moreover, the criminal law restricts who is permitted to advise and assist with an immigration case, so options that may be available in other legal areas (however limited they may be) are not open at all for those needing help with this type of case.
30. The Government's proposals treat immigration cases as if these are simply about choices that people decide to make. However, many immigration cases – particularly those involving families – are about people who are not making or able to make choices. For example, children born or brought to the UK have not made choices. Someone who has lived here all, or nearly all, their life, facing deportation is not involved in a choice. The Government's assumptions are wrong, and Legal Aid should remain for these cases.

Case Study

Another immigration case concerned a child who had been sent to the UK from his country of origin in 1999 when he was seven. His mother sent him to stay with his father. The child travelled on a visit visa which expired after six months meaning that the child no longer had any leave to remain in the UK. The child's father subsequently spent most of his time in prison leaving the child to stay with his father's former partners and their relatives, of which at least one was abusive. This chaotic upbringing led to the child getting into some trouble with the police.

Despite this, he did well at school and wanted to be a pilot. When he was due to leave school, his lack of immigration status meant that he was not entitled to work, claim benefits or to register for local authority housing. Immigration legal aid enabled the Law Centre to make an application to the UK Border Agency for the child to remain in the UK and to start building a stable life so that he could work and support himself.

31. A sizeable proportion of immigration casework (and cost) arises because the UK Border Agency fails to understand the law and its own procedures and apply them properly. Furthermore, the complexities of immigration law mean that many officials in public authorities like Sheffield City Council or the Jobcentre often do not understand someone's immigration status and wrongly deny them benefits or housing assistance. Legal aid for the cluster of areas around immigration, welfare benefits and housing means that mistakes made by the authorities can be rectified.
32. The Government's proposals for family law give some recognition to the particular and important interests of children, and circumstances which may lead to separation of children from a parent. However, many immigration cases involve this same question, and in circumstances where the chances will be that any separation will be permanent. Legal Aid should remain for these cases.
33. The Government proposes that Legal Aid remains for immigration detention cases. However, it will be vital to deal with the reasons for detention – including the person's immigration case. It makes no sense to permit assistance while someone is in detention, but to refuse assistance beforehand or afterwards. This will simply lead to people being detained because it seems they have no good immigration case, being released because it seems they do have a good case but being detained all over again because they have been unable to properly put their case forward. Clearly, once granted, legal aid needs to remain in place to give the proper advice needed to bring an issue to a resolution. But as situations like this demonstrate, legal aid should remain for immigration work generally.

34. There are many reasons why asylum-seekers become homeless. One reason is that they do not receive the support to which they are entitled. The Government's proposals concerning debt and housing recognise the importance of situations where someone may immediately become homeless. If asylum support is not provided, asylum-seekers face homelessness. Legal Aid for asylum support should remain, and be extended to asylum support appeals. In any case, we would assume that since people needing advice when faced with loss of their home will still be able to receive it, that there would be no saving from cutting this area from scope.
35. Our experience is that a holistic advice service is needed. The proposals would make it patchy.
36. We are also concerned to hear the suggestion that pro bono advice is a real alternative to legal aid. As noted by LCF, pro bono work is fine but cannot replace proper casework 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.
37. In fact in Sheffield, we receive many applications to do voluntary work with us. Unfortunately, the skills offered are often not what we need, however knowledgeable people may be about law in other fields.

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.*

38. The idea that members of the public should be required to present themselves to a state-sponsored gatekeeper in order to get advice from their local community organisations is anathema to us and quite astonishing.
39. It would be hopelessly inefficient to have to administer such a system where we would have to redirect clients from our doors so that they could get authorisation to return for the advice they need.
40. We would have serious concerns about the reliance on a single gateway organisation to spot all the necessary issues a person may have – what scope would there be for a second opinion? - or for an accurate assessment of eligibility.
41. In practice, we know it is often very difficult or impossible to get any clear idea of whether a client has a case before seeing the documents in their

possession. The clear risk is that people do not get assistance to which they are entitled because the operator does not recognise their entitlement.

42. We would be concerned that those most disadvantaged would be most likely to become devoid of access to timely advice, not because they were ineligible for assistance but because they did not have the ability to prove their means. As with so many other aspects of the proposals, we feel it is most likely that the most disadvantaged would be people with mental health problems or learning disabilities.
43. There are additional problems faced by people with a range of communication or sensory difficulties - for instance people with hearing impairments or those who stammer, who again are disproportionately likely to have a need for legal advice. Whilst some people's impairments might prefer a telephone service (to include a range of services like text relay, etc.), others would prefer – and indeed require – contact in a face-to-face setting. Many people with sensory or communications impairments do not have well-established support and are additionally excluded because their impairment is often hidden. People with profound communication limitations (e.g. profoundly deaf people for whom BSL is their first language) may simply not feel confident in approaching an impersonal advice line. Once again, the key thing is to have a range of choices so that individuals own assessment of their needs is respected.

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?*

44. Removing locally-based 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.
45. We find it surprising that the proposal is to require either one form of contact or another. Because we at Sheffield Law Centre are used to making the most of our precious resources to meet our overall aims above, we are well aware of the most efficient ways of dealing with clients. The most efficient way is a mixture of contact methods – including telephone advice and face-to-face advice. One of the inefficient aspects of the legal aid scheme presently is the requirement for a traditional face-to-face appointment when we could meet with the advice needs more efficiently by a single phone call with an offer of follow-up advice when needed.
46. Government may want to bear in mind that the NFP sector is fundamentally driven by the desire to provide a service to our client group, as opposed to the profit motive, however benign, of commercial private solicitors firms.

Government may therefore wish to retain the equivalent amount of funding to the NFP sector as is currently provided to those NFP organisations with legal aid contracts.

47. The proposals, if implemented, would deny thousands of people access to advice services. They would also destroy locally based not-for-profit advice centres, run by volunteer management committees, like Sheffield Law Centre. This will undermine 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.

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*

48. No. Legal aid should have the same capital limits as other means tested benefits for reasons of simplicity, transparency and fairness.
49. In practice, the vast majority of our clients have no savings and very many are on passporting benefits. This does not mean the proposal would make no difference to us: on the contrary, the work of yet another administrative check would be an unnecessary burden on organisations

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.*

50. 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.
51. In social security law, there has been a copious amount of case law about the distinction between income and capital and this is simply what would arise here: for families still in work, £1000 is commensurate with a monthly wage.
52. There is another important reason why this proposal would work against the aims of preventative advice: when our clients contact us for advice, they are often in a state of transition. For example, they might have recently lost their job and be in the throes of claiming benefits for the first time. Or they might face losing a home and be trying to find another.
53. In these cases, removing a relatively small amount of any capital they have could have magnified consequences. In the examples above, a small amount of capital might be needed to tide someone over when waiting for benefits to be processed. Or it may help with the cost of a bond on a new home or the cost of moving: this is just the sort of thing that may resolve a person's

situation and therefore reduce the need for further, more costly advice or other state services.

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.

54. Sheffield Law Centre is a charity and a not-for-profit organisation. There isn't 10% to cut.
55. 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.
56. In terms of private practice solicitors, we worry that the 10% reduction will mean even more firms cease to provide legal aid. This is wrong when we note that fees have not been increased at all since 2000. Many people cannot now find a legal aid lawyer in some areas – for instance one of our clients in the Doncaster area told us he had tried about 17 or 18 solicitors firms, none of which had agreed to take his case. In fact he had a good case of unlawful discrimination which settled for a payment of £5000. This of course also shows why conditional fee agreements fail to supply an adequate service. The proposal to cut fees further below commercial rates is likely to make that problem even 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.*

57. 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.
58. They make assumptions, based on little or no data, about the effect of the proposals on the current service users and are based on a mythical client with resources and abilities rarely seen at the Law Centre.
59. They paint a picture of legal aid that we cannot recognise. Law Centre clients are generally poor, have low levels of educational attainment, have poor

literacy and numeracy skills, have far 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.

60. We very strongly doubt many of the underlying assumptions in the paper. For instance, we were surprised to see one of the factors supporting the proposed removal of welfare benefits is that “these issues are of lower objective importance because they are essentially about financial entitlement”. It suggests there is a huge, uncrossable gulf between the writers of the paper and our clients.
61. Financial entitlement of perhaps £60 a week might be low for some people. But for our clients, this is 100% of their income. This cannot be described as a dispute over low levels of finances for the clients involved.
62. 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.
63. 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.
64. However it does not evaluate the likelihood of these outcomes or the costs, financial or otherwise, that they will bring.
65. 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.
66. 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.

67. 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.

68. 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.

Conclusion

69. The consultation document states that 'access to justice is a hallmark of a civilised society.' The proposals to reduce the scope of legal aid funding will, in our view, severely restrict access to justice for the most vulnerable in our society. We therefore urge you to reconsider your proposal to exclude key areas of civil law from Legal Aid.

70. We are also deeply concerned that there is no indication of what alternative funding, if any, will be available should legal aid funding be withdrawn in 2013, nor how the independent advice sector will be sustained in the future at a time when other funding streams are being withdrawn. Once Law Centres close their doors, communities will suffer and the expertise and knowledge that we and others have built up over many years will be lost.

71. We hope the MoJ will take our views into consideration