



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

### **South West London Law Centres (SWLLC)**

#### **Introduction**

SWLLC provides information, advice and representation to over 25,000 people each year, living, working or studying in Croydon, Kingston, Merton, Richmond, Sutton and Wandsworth. We are contracted by the LSC to supply services in Housing, Welfare Benefits, Debt, Immigration and Employment either alone or in partnership with local CABx, advice agencies and private practices from five office locations in South West London, including delivery of two Housing Possession Duty Schemes. Our casework success rates are in excess of 90% - not because we take the easy cases, but because we keep pursuing the arguments until we win.

In addition to our professional services we provide opportunities for over 500 volunteers each year to improve their skills and increase their employability, enabling us to advise and assist almost 6,000 vulnerable people who we would otherwise not be able to help. Of the £1.8m income we generate each year, a little over half comes from the LSC, so Legal Aid forms the core of our services. This core enables us to leverage almost £300,000 of Lottery funding, over £120,000 of corporate donations, and over £350,000 of other income from local and national government and charitable trusts. This funding will be lost to legal advice services if the current proposals are implemented.

If the current proposals are implemented SWLLC will close. Current clients will need to be transferred to other providers (there will be many fewer of these if the proposals are implemented) at a significant cost to tax-payers, causing significant costs to the relevant courts and tribunals as cases are delayed and re-scheduled, and causing loss and distress to thousands of clients. Thousands of people who would otherwise have received advice from our services, whether via Legal Aid or otherwise, will not get a service. Even if some of these cases are taken on by the remaining providers, overall capacity will be much lower: hundreds of thousands of pounds of services every year will not be provided to the total capacity of legal advice and representation in England and Wales because a key part of the infrastructure of delivery – SWLLC – will have been removed. Our contributions to joined-up services (we lead a consortium of CABx, Law Centres, advice agencies and private practices in South West London who are investing Lottery money in improvements to accessible, high quality advice services and also in public legal education) and prevention work will also be lost.

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. We also endorse the more detailed responses to

proposed changes to Housing provided to you by HLPAs and Immigration provided to you by ILPA.

For more information on any aspect of this response, please contact **Michael Ashe** – [Michael.Ashe@swllc.org](mailto:Michael.Ashe@swllc.org) and **07923 479325**

## 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.

Work should only be taken out of scope where reliable research shows:

- there is no longer a substantial need for the work to be done
- there is a cheaper or higher quality alternative to Legal Aid for resolving the type of matter
- there is a proven method of linking the costs of providing advice and representation to a person in need to the agency responsible for causing the need for the advice (implementing the “polluter pays” principle)

Taking work out of scope for other reasons is an attack on the basic rights of the most vulnerable sections of a society that research shows is already the most economically inequitable in Europe. It is not acceptable to remove types of case and proceedings from scope as a way of managing budgetary pressure.

No substantive progress seems to have been made in working with other departments of state to ensure that they contribute to the costs to the Legal Aid budget of their policies and their administration of those policies. If a small fraction of the amount that departments generate in failure demand could be passed on to the Legal Aid budget as a pollution levy it would eclipse the amount being proposed as savings in the Green Paper.

## Housing

In one or two cases the proposals do make outline suggestions for ways of funding cases that would be taken out of scope. Some of these are so unconsidered as to undermine confidence in the whole Green Paper – for example, the suggestion that agencies such as Shelter, whose casework is more heavily dependent on Legal Aid funding than our own, will absorb demand that is no longer funded by Legal Aid. Even a basic understanding of Shelter, or of the non-Legal Aid funding streams that it has which are already being cut, would have avoided the use of this example. Specific types of matter to be taken out of scope show a similar lack of basic analysis. A few examples follow:

- **Illegal Evictions and Legal Aid**

Illegal evictions (as opposed to legal evictions) will be removed from scope, providing a perverse incentive to landlords to ignore the law. No justification for this appears in the Green Paper, so it may be an oversight. The remedy for illegal eviction is – in legal terms – relatively straightforward (an injunction) and prevents homelessness and the consequential burden on the local authority and many other public services.

- **Homeless Reviews and Appeals**

Homelessness reviews (the first stage challenge) are removed from scope, whilst appeals to the court remain in scope. This appears to contradict one of the key principles of the Green Paper: the need to avoid litigation. “Front loading” a homeless case through a well prepared review can do just that; if there are no well-prepared reviews then appeals will increase. These cost significantly more and also impose a burden on the overstretched courts when the matter could be settled much earlier and much cheaper.

### Immigration

Taking Immigration out of scope for all but those who are detained has a range of undesirable consequences that have clearly not been thought through by the authors.

People who now depend on Legal Aid for the advice they receive on Immigration are already often pushed to act illegally in order to obtain legitimate immigration status. The fees for applications are already so high that some people who are not allowed to work do so without paying tax and national insurance, often in conditions dangerous to their health, in order to pay the costs. The consequences of removing free legal advice provided by experts are obvious – even more illegal working, some of it controlled by organised criminals; more people remaining in the UK illegally, but without any route to applying successfully to regularise their status; more advice provided either by well-meaning non-experts, unregulated and therefore acting criminally, or by rogue providers only interested in exploiting those who cross their path.

The cost to the public purse of a client who is helped to obtain settled status for a fee of £260 is insignificant when compared to the amount gained by the average payment of tax and national insurance once they are allowed to work. This is a particularly stark example when one appreciates the rate of successful appeals of Home Office decisions on Immigration status when one is represented by a Legal Aid practice. The Green Paper should include some substantial proposals on re-funding of Legal Aid for Immigration by the Home Office, based on the rate of successful appeals (which demonstrates the poor quality of their initial decision-making) - in all successful appeals at Tribunal level, the UKBA should have to pay rather than the LSC. This would have the additional benefit of ensuring that the Home Office doesn't indiscriminately refuse applications as they do presently, leading to even greater savings in the system.

Proposed alternatives to the current model should also be set out to substantially reduce demand (the most obvious being the rolling-out of the Solihull model, massively improving initial decision-making by ensuring that applicants who are eligible get early advice and make their very best case at the first stage).

Removing the ability of expert advisers to consider all the merits of a case by taking non-asylum Human Rights matters out of scope while leaving asylum in may be unlawful, but it is certainly inefficient. Again, the Ministry's own research shows that the best way to maximise efficiency is to promote a system that gets decisions right at the earliest stage, avoiding litigation where at all possible, by examining all the arguments and their merits.

The suggestion that applicants left unrepresented by changes to the scope of Legal Aid will be able to navigate the relevant legislation and case-law and put forward their case in a way that avoids massive prejudice to their chances of a fair hearing is absurd on its face. It can also be shown by reviewing the difference in outcome provided by expert assistance under the current scheme, and doing a basic review of existing research on the number of applicants who appeal initial decisions where they are unrepresented. This is particularly so in the area of Immigration law, where the applicant is disproportionately likely to speak and write English without fluency, the people losing access to advice and representation under the proposals are disproportionately those without means and with limited understanding of the principles of UK law, and where the volume and pace of changes to legislation, rules, policies and case-law make even expert caseworkers struggle to keep up.

#### Welfare Benefits

Removing Welfare Benefits from scope at a time when the Government plans the biggest changes to the Social Security system since it was created is either wilfully negligent or a deliberate plan to prevent claimants being able to challenge the impact of those changes. In either case, Welfare Benefits should either be preserved in scope or it should be properly funded under a new, but effective regime from the DWP budget which reduces bureaucratic overheads to a minimum and works with expert advisers to improve first time decision-making. Means-tested benefits are the limited safety net that prevents millions of Britons, including children, feeling the worst effects of poverty – poor physical and mental health, poor housing, barriers to education and employment. Preventing these people from access to Legal Aid will often mean removing their ability to challenge poor decisions, so cutting a huge hole in the limited safety net. This must not be allowed to happen.

#### Employment

We are one of very few providers left of Legal Aid Employment advice is South West London. With eligibility limits so low and Tribunal representation not in scope, along with the fixed fee being out of step with the average case length within Law Centres (matters involving discrimination tend to take a long time to assess the merits of), Employment law is a loss-making area for SWLLC. That is the clearest statement of the reasons why it should not be

removed from scope: we continue to deliver these services because the difference we can make is huge, and because there is no alternative for many clients. The impact of someone losing their job is multi-faceted: their income falls and may stay very low for an extended period (especially in the current climate), placing their housing at risk and meaning they struggle to meet any other debts they have. This in turn impacts on their relationships and their health. Their mental health is also likely to suffer as a direct result of dismissal or being forced to resign in the face of discrimination. As with all other areas of Social Welfare Law, the amount of money an individual case costs the taxpayer is tiny when compared to the benefits gained by a successful outcome, even in the small number of cases where the best outcome is an apology and a good reference.

The proposals suggest that insurance or CFAs are suitable alternatives to Legal Aid. Eligibility limits mean that the vast majority of our clients are in low paid employment, some doing more than one job to make ends meet – these are not people who can afford insurance, nor to have their limited awards reduced by 25-35% in a CFA.

#### Debt

We acknowledge that for matters which do not involve contesting debts or contracts and which do not involve property there is an argument to be made for funding Debt advice in a less bureaucratic way than is the case with Legal Aid. We think this says more about the approach to case-by-case review and authorisation of Legal Aid than it does about Debt, and suggests that some form of block contracting would be more cost-effective than current contracts. That said, until you look at someone's debts it is impossible for an adviser to take a view on extent of liability, and it is foolish to create a system where some of a client's debts can be considered by the adviser (property) while others that will have bearing on any plan of action are excluded.

Our clients are already the most excluded and vulnerable members of society. Most 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 deliver early dispute resolution and to avoid matters escalating to costly litigation. £1 spent at this level of Legal Aid saves an average of £10.

Clear examples include the client who, by getting assistance under Legal Help at an early stage to ensure their Housing Benefit and JSA are right is able to pay their rent and so avoid expensive court proceedings and, in due course,

avoid the £34,000 cost to the state of becoming homeless, not to mention the other damage to their life that losing a home entails.

Another example is the client who has their debts re-structured using Legal Help when their income falls, rather than waiting until they have received their first County Court Judgement. They avoid months of stress to themselves and those closest to them, the escalating debt they take on as they try unsuccessfully to manage payments to those they already owe, interest payments at high rates on credit cards and unsecured loans and, eventually, threats to their home when their creditors try to enforce judgement – all things which are avoidable with cheap, early advice.

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

Five out of the six boroughs in which we work do not fund us – Merton is the exception. Croydon Council has recently cut our funding by 100% and even the local CABx has had funding cut by 40%. In this environment, with higher demand than in more prosperous economic conditions, capacity is falling and expert providers are the first to feel the pinch when funding is tight, with generalists like CABx being preserved for as long as possible. There is no “alternative” source. It would be like making huge cuts to hospitals and GPs and then telling the hospitals that the remaining GP services will pick up the pieces.

Most of our cases come to us by referral from other advice agencies, by word of mouth through specific communities of interest, or through local councillors and MPs after clients attend their surgeries having tried many other avenues to try to solve a problem. When the infrastructure of local advice services starts to disappear the services left, often CABx on reduced budgets, have no where to refer many of their clients, and so the client is not able to progress despite having sought advice and found someone who wants to assist them. This is particularly so in Immigration, where local MPs do not refer clients to any for-profit providers for miles around because of serious concerns over quality. If SWLLC cannot take these referrals and other Law Centres also close the nearest providers who are of good quality will be in central London, and they will be swamped.

The suggestion that people can represent themselves in dealings with public authorities, Courts and Tribunals is misguided and will mean inequality before the law, as set out above. If it were realistic to expect our Social Welfare Law clients to do so, with their much higher than average incidence of limited fluency in English, disability, mental health needs and limited income and education, then why would people with much better life chances and means spend much more than Legal Aid fees on hiring advisers and representatives when their home or employment is at risk. Issues as relatively simple as complying with deadlines, disclosure and complying with directions are beyond many organisations involved in proceedings, let alone the most vulnerable members of our society. These are clients who even when

represented find it difficult to manage their chaotic lives sufficiently to attend appointments and hearings.

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 City firms do little, if any, work in the areas of poverty law. They rely on our expertise to support and supervise their activity.

SWLLC runs 14 pro bono surgeries from 6 locations each week staffed by local and City firms. We employ two full time staff and 4 sessional staff funded by the Big Lottery in order to help almost 6,000 clients each year, with contributions from other staff towards training, supervision on specific topics, and dealing with enquiries outside surgery hours. In return our clients benefit from thousands of hours of advice, and from the huge variety of in kind support SWLLC receives, along with significant help in cash. All of this will disappear if the current proposals are implemented.

### **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, using a telephone based service just isn't a real option. Many have language or 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 to determine whether there is a justiciable issue capable of receiving advice under the Legal Aid scheme. This is not charged against the Legal Aid fund, but it is an essential part of the work we have to do to provide access to justice for our clients.

### Examples

We have a client who has an obsessive/compulsive disorder. Focusing on his legal problems happens during a complex series of checks that require many repetitions – has he locked his house, has he switched off the lights, the gas, the radio, the TV, is this the right day for his appointment, the right place, the right person, has he brought the right documents, do his socks match. Building a relationship with his solicitor is crucial because stress contributes to the depth of the behaviour he exhibits, and because anyone who doesn't spend time getting to know his condition finds it rude that he is 90 minutes late for his appointment because he was checking all the windows in the house are locked, or that he gets up and leaves in the middle of a witness statement. A telephone service will not work for him.

We have a client who is in middle age and suffering from a degenerative disease of the nervous system. She is at the margins of competence to instruct us. The local council has removed her from her council flat, withdrawn her Housing Benefit claim, and placed her in a geriatric care home against her will, where her disease is progressing more quickly than ever before. She is not allowed to use the telephone...

We have many clients who have suffered awful treatment, perhaps at the hands of a partner, or at the hands of the state or a para-military group in their country of origin. It can take several meetings before these clients are prepared to be honest about their treatment and the circumstances in which it occurred. This is not something they are willing to share in person until they have trust in the person working for them – it is not something that will be able to deal with on the telephone, especially in English in many cases.

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.

Where clients do have any savings once they are on a passporting benefit these are invariably needed whenever a significant one-off cost occurs. For example, when their fridge or washing machine breaks down, or they have to travel a significant distance to care for a member of their family who becomes unwell. Without some modest savings such emergencies can quickly lead to a spiral of debt which cannot be repaid because all the client's income is taken up with basic essentials like food and fuel.

**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.

In South West London we have many clients whose next of kin are elderly parents or siblings who live thousands of miles from the UK, or who are themselves becoming infirm and whose family are far away. In such circumstances a short visit for critical support will eat up much of the savings of someone on a passporting benefit with £1,000 saved.

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 will force the insolvency of many Legal Aid practices, including SWLLC. Given the freezing of fee rates for the last decade, it is incredible to suggest that any practice delivering Legal Aid without substantial income from other sources could take a further cut in rates without it having a major impact on their financial integrity.

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, often 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.

We have set out above a series of examples of clients who are already marginalised by their economic and social conditions. They are typical of the people who come to us for help. We work with the people who do not know they're entitled to help, so when they seek it they do so late. We work with the people who expect to be let down by their dealings with the state. We work with people who are already destitute, already suffering from poor mental health and are least able to help themselves. We seek these clients because other sources of help either won't or can't deal with them. These are the people that the proposals seek to write out of our society.

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.

We urge the Ministry to consider alternative ways of saving scarce resources, increasing income for advice and representation in Social Welfare Law and driving down the costs of Legal Aid:

1. Focus proposed changes on the areas of Legal Aid that are actually driving costs. This would include, in particular, Counsel's fees in high-cost Criminal cases.
2. Move away from case-by-case assessment to block contracting for a minimum number of cases. This will much reduce LSC costs.
3. Work with membership bodies and regulators to make peer review deliverable at sufficiently low cost, with primary responsibility for quality assessment moving to these bodies. This will increase value for money.
4. Consolidate audits and focus on over-claiming and fraud. Move away from auditing everyone slightly to responding to specific problems with swift action. Where there is evidence of systematic over-claiming or fraud, terminate contracts immediately. This will much reduce over-payment.
5. Work with providers to make progress on "polluter pays" – where other Departments are responsible for legislation which is complex and hard to enforce, and where their administration is poor, they should pay the costs to the Legal Aid budget.
6. Work with providers and others to address equality of arms – many, many fewer people would need assistance if the institution opposing them knew that they had the same budget as our clients to bring proceedings.