

SPRINGFIELD ADVICE AND LAW CENTRE LIMITED

ADMISSIONS BUILDING
SPRINGFIELD UNIVERSITY HOSPITAL
61 GLENBURNIE ROAD
LONDON SW17 7DJ

TEL: 020 8767 6884
DIRECT LINE: 020 8682 6115
MOB: 07528 272 208
FAX: 020 8767 6996
EMAIL: PHIL@SPRINGFIELDLAWCENTRE.ORG.UK

10 February 2011

Dear Sir or Madam,

Legal Aid Reform: Consultation Response

Introduction

We are a Law Centre providing specialist legal advice and representation in the fields of housing, debt, welfare benefits and mental health law. We assist approximately 1000 clients per year through our network of outreach and office based services across the estate of South West London and St George's Mental Health Trust. The overwhelming majority of these clients are vulnerable mental health service users of whom approximately 50% are BAME.

In broad terms we thoroughly endorse the detailed response provided by the Law Centres Federation. Rather than attempt to answer 53 questions, we have tried to see how the proposed reforms will impact on our clients, and give practical case studies to illustrate the kind of work we will no longer be able to do if the reforms go through as proposed.

For more information on any aspect of this response, please contact Philip McLeish at the address above.

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.*

1. General observations on the criteria proposed for rationing funding

While in theory the fourfold test of importance, ability to self-represent, availability of other funding and other resolution routes sounds impressive; the government:

- a) Fails to safeguard areas even when they pass this test – (for instance legal action on homelessness short of a s.184 appeal);
- b) Makes unrealistic factual assumptions in applying these criteria in practice (particularly in relation to the availability of other resolution routes – for instance the idea that Shelter will be able to step in to fill the gap through an alms-funded legal advice service - whereas its legal advice is as dependent on LSC funding as any other providers; the idea that local authorities will provide impartial housing advice etc.)
- c) Fails to propose any other mechanisms to rebalance the scales of justice that will now be tilted further in favour of those able to properly pay for access to the courts (for instance by putting in measures to prevent others paying for legal representation where the government’s measures will now exclude the poor from doing so – for instance by prohibiting legal representation for employers in employment cases).

2. Specific areas

1. *Homelessness*

The government gives a list at para 4.194 of examples of ‘other housing matters’ that it proposes to exclude from scope. The general logic of the green paper generally treats homelessness as a matter of importance, both in relation to housing and also eg. debt. However, it appears to assume that the only homelessness law needing funding involves County Court s.184 appeals.

The overwhelming bulk of the work that we do for homeless clients involves (mostly successfully) interceding on their behalf long before the case ends up as a County Court Appeal, avoiding wasteful and unnecessary litigation and ensuring homeless people are housed.

For instance, a vulnerable 20 year old client who was sofa surfing since he was thrown out of his home at the age of 15, who was briefly in local authority care and who self-harms, had made countless visits to a local housing office. Because of the way that gate-keeping now operates, in many boroughs it is often hard to persuade a local authority to even ‘accept’ a homelessness application without sending it in the form of a judicial review pre-action protocol letter.

In his case he had been told amongst other things during these various visits: that he should go and live with his mother; that he should apply to a different borough; that he ‘wasn’t a priority’; that he could not be helped as he had no birth certificate; (and then when he had one) that he should come back in a week’s time. In none of these cases was he given a s.184 letter that might have led to a homelessness review, let alone a s.184 appeal. In fact, from the point of view of the Borough in question, he hadn’t even been to the homeless person’s unit, or made a homelessness application at all, he was simply asking for, and receiving, “housing options and advice” (ironically precisely the kind of “local authority in-house services” that the government conceives as an adequate alternative to legal aid).

His former care worker, who referred him to us, had found him sleeping in a dustbin shelter on a council estate in November. He had been living there since last summer. The care worker sent photographs of his 'home' to the housing department, but they refused to help as the client didn't have a birth certificate. When the care worker helped him to obtain a birth certificate they said they would see him in a week's time and refused to provide interim accommodation.

This case is not unusual in that extensive work and preparation are required all prior to s184 appeal stage. Legal assistance is required to:

1. Force the local authority to acknowledge that this is a homelessness application requiring determination rather than an open ended chat about the problems of being homeless and 'the options available' (which often seem to boil down to the client 'going away').
2. Force the local authority to provide interim accommodation.
3. Force the local authority to give adequate consideration to the client's explanation that he be treated as priority need, (although he can properly be regarded as a care leaver this is legally complex and is extremely unlikely that this would be accepted automatically without clear reasoning. Indeed it is likely that he has been brushed off so many times in the past because staff have anticipated he is unlikely to meet priority need criteria, and hence consider there is no need to properly investigate his situation).

It may be that the government considers that these are the kind of fora in which clients can self-represent. In this case, self-representation had led to our client living in dustbin shed in a rat-infested part of a council estate. In countless similar cases, without legal assistance, our clients would have had no chance of having their requests for housing assistance even *considered* as homelessness applications, let alone considered adequately or lawfully.

We do not believe that the retention of funding for public law will represent a solution to this problem, as the threat of judicial review in these cases is understood by both sides to be nothing more than a polite request that the local authority follow the rules, and a demonstration that the solicitor understands the rules. There are virtually never any serious public law issues involved – usually all the substantive content concerns the housing matter and the public law dimension is restricted to: "these are your legal duties under part VII of the Housing Act 1996 – please do not breach them."

We urge you to ensure that legal aid will continue to be available for all homelessness work currently carried out under this heading.

2. Debt matters where the client's home is not at immediate risk

From our point of view – as providers of debt advice based in a psychiatric hospital - this is a disastrous proposal. Extensive research demonstrates the close connection – in both causal directions - between mental health problems and debt. See for instance the recent report "[In the Red](#)" by MIND, or the extensive work conducted by the [Royal College of Psychiatrists](#).

Many of our clients would be in no position to access many of the alternative sources of advice mentioned – all of whom essentially provide advice and recommendations for self-help, but do not conduct direct negotiation and representation with creditors.

Many of our clients would fall at the first hurdle in trying to achieve this. For instance many of our clients –

- Lack the self confidence or self organisation to take on planning their way out of debt on their own.
- Lack the mental resolve to even open the envelopes that they bring us.
- Have no credit on their phones so cannot afford to make phone calls to contact the creditors.
- Have no access to, or competence with IT to enable them to complete an online debt management form.
- Cannot write letters or maintain correspondence files to enable them to track different responses from different bodies.
- Will be unable to know how to describe their situation in a way that makes it likely their debt will be written off.

A large number of clients that we deal with have substantial amounts of debt written off as a result of our intervention, whether because the creditor takes a realistic view about the prospects for recovering the debt, or because there are contractual problems with the debt in the first place.

Sometimes one – amongst several arguments - in these cases is that there has been a breach of the DDA, but this issue is rarely separable from the other ones, or could sensibly amount to a case in its own right, and so your proposal to retain DDA provision is really no solution to this problem.

While the alternative sources of support to which you refer to may well be very useful to many people (including those who currently benefit from them) they are a completely different service to the one we provide. They are targeted at much more competent and savvy clients and will be no use to many of our clients who are particularly vulnerable. If you withdraw this service, the clinical staff at this hospital (and indirectly the NHS and social services budgets) will have to deal with the consequences, which are likely to include increased hospitalisation, mental distress and difficulties with recovery and re-establishing normal living.

Nor do we see any logic in requiring clients to wait until their debt problems are so catastrophic that they risk losing their home before acting. This is the opposite advice we give our clients and by waiting until that stage the problems are likely to be harder to resolve successfully and more expensive to do so. And in any case, does not your abolition of the capital disregard mean that this category of cases will shrink to non-existent?

3. Education

We strongly disagree with the proposal to take this entirely out of scope.

The suggestion that – “some of the cases may arise from personal choices, such as the conduct of children at school” - presumably intended to apply particularly to school exclusion cases – we find unhelpfully moralistic – albeit a moralism that chimes with contemporary punitive attitudes towards children. It appears to prejudge the issue – since it assumes that the conduct of children is at issue, rather than – say - the school's failure to make provision for children with particular difficulties or needs.

We particularly disagree with the proposal to remove legal aid for special educational needs tribunals. This undermines equality of arms between parent and local authority and tilts the playing field against the poor. We do not accept that because parent's task is principally to present facts rather than law that legal representation is unnecessary. If this were the case, then wealthy parents and local authorities would not spend large amounts of money on lawyers and experts at these tribunals. This money is spent for very good reason – because it buys results.

By preventing the poor from using lawyers at these tribunals, while continuing to permit the rich to do so, the government will simply be strengthening and deepening the inequitable distribution of government spending on special educational needs – which is already a very significant problem in this area, as less articulate or confident parents are put at a substantial disadvantage by a system which requires them to litigate for their children's education.

By similarly continuing to permit local authorities to instruct solicitors and barristers to argue against self-representing parents, the government's measures will undermine equality of arms between the two sides and subvert the tribunal's ability to reach a properly balanced decision.

Community Legal Advice Telephone Helpline

Question 7: *Do you agree that the Community Legal Advice helpline should be established as the single gateway to access civil legal aid advice? Please give reasons.*

NO we do not.

For some people, the existing CLA helpline is a great resource. And some of our clients do access our services as a result of referral from the CLA. But to make it a mandatory route to obtaining legal advice is a very bad idea.

Many of our clients are particularly cautious, frightened, suspicious, inarticulate, confused, speak poor English, or are mentally disabled. They find it hard to explain things even when they have their face and the rest of their bodies at their disposal, and are able to develop a rapport with staff.

They bring piles of letters which they cannot properly read or understand – even if you introduce a ring back in other languages, how will you overcome that problem?

They develop a trusted relationship with their legal advisor, a relationship which can often prove transformative in changing their situation – see the report [Time well Spent](#) by the Council for Social Action.

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.*

We are concerned that the drafters of this green paper may have been confused by the term “legal advice” in coming up with this proposal.

Very little of the work that we do under legal help amounts to ‘providing legal advice.’ Where all that is needed is ‘legal advice’ we tend to provide it under other funding streams.

And sending out a letter of instruction is only the very first stage of a case, and largely the least important one. If we simply wrote to our clients, telling them what they needed to do to resolve their problems, we would generally be completely useless to them, as they rarely need high level technical legal advice.

What they need is for someone (who has “credit on their phone”) to phone up bureaucrats in local authorities, piecing together some administrative malfunction, getting medical reports, drafting submissions, obtain sympathy, chasing up actions promised... etc. etc.

In our experience ‘legal help’ work is overwhelmingly specialist casework, and it is very hard to see any advantage in having this conducted from a call centre rather than a locally accessible office.

Obviously also, if this proposal is nevertheless implemented, it will strip yet further funding from the locally based providers currently serving poor communities, like ourselves.

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 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.

Yours sincerely

Philip McLeish