



Legal Aid Reform: Consultation Response

Wiltshire Law Centre

Please return this response to the Ministry of Justice by emailing it to legalaidreformmoj@justice.gsi.gov.uk by no later than 11am on Monday 14th February 2011

Introduction

The Wiltshire Law Centre is a registered charity based in Swindon that provides free advice in debt, housing law, welfare benefits and employment law. We open in excess of 1500 client files every year. As all of our funding comes from the Legal Services Commission, if the proposed cuts to legal aid go through unchallenged we will be forced to close our doors to the public by March 2013, thus denying the most socially disadvantaged and vulnerable people in our communities the access to justice that they should be entitled to.

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 **Neil Baker, Business & Finance Manager** - Tel: **01793 486926** e: neil.baker@wiltslawcentre.co.uk

Scope

Question 3: *Do you agree with the proposals to exclude the types of case and proceedings listed in paragraphs 4.148 to 4.245 from the scope of the civil and family legal aid scheme? Please give reasons.*

No. All of the areas of law that we give advice in currently are excluded from scope in the current proposals. This would have a devastating impact on the Wiltshire Law Centre and its clients, forcing it close its doors by March 2013.

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.

At the Wiltshire Law Centre we can give many examples of clients who present with one specific social welfare problem such as debt and/or housing, yet through the interview process with the caseworker other issues are identified such as an entitlement to benefit that has not previously been dealt with, and this in turn could alleviate the presenting debt and/or housing problem.

The suggestion in the Green Paper that alternative sources of advice exist is not true. The local Citizens Advice Bureau does not receive legal aid funding and has also just lost its financial inclusion funding. The other LSC funded agency in the town lost its franchise following the recent social welfare law tender.

The suggestion that people can represent themselves in dealings with public authorities, Courts and Tribunals is misguided and will mean inequality before the law. At the Wiltshire Law Centre our welfare benefits caseworkers represent the majority of their clients at tribunal. The main reason we do this is because the client is severely disadvantaged if we do not. The result of our assistance at tribunal is that most clients win their cases.

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.

At the Wiltshire Law Centre we have 2 Debt Relief Order Intermediaries and have successfully processed over 100 DRO applications for people in Wiltshire since the inception of the DRO in April 2009. Losing debt under Legal aid funding would lose two Intermediaries for the Insolvency Service locally and would severely restrict the opportunity for those on a low income to find out about and apply for the DRO. Simply offering a telephone help line nationally is short sighted. Many of our clients in debt only have a pay as you go mobile telephone and cannot afford to make many calls and do not have the confidence that hanging on the telephone using their very limited credit will actually help to alleviate their debts at all!

The DRO has become a real affordable solution for those in debt which will quickly become limited to only those people in our society confident and capable of dealing with their debts via the telephone. Those for whom the DRO was designed for e.g. vulnerable clients on benefit income and suffering from illness will no longer have access to the DRO easily as they seek face to face advice as do those without easy access to affordable telephone advice.

Community Legal Advice Telephone Helpline

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

Question 8: *Do you agree that specialist advice should be offered through the Community Legal Advice helpline in all categories of law and that, in some categories, the majority of civil Legal Help clients and cases can be dealt with through this channel? Please give reasons.*

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

This single answer deals with questions 7 to 9.

Removing locally based and embedded face-to-face services in favour of a national helpline will be a disaster. Whilst we believe that the provision of advice by telephone is a valuable and, for some people, suitable method of delivery, we are firmly of the view that for others it will prove an insurmountable barrier to accessing the legal advice and assistance that they so desperately need.

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

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

Often we have to spend time reading through the bag of papers and unopened envelopes that they bring with them to the office, even just to

determine whether there is a justifiable 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.

At the Wiltshire Law Centre we have clients who would find it almost impossible to access help over the telephone, because they are vulnerable i.e. they have language or sensory problems or learning difficulties, mental health problems or other reason. Or their case is very sensitive or very complex, or because they have limited access to a phone. Many of our clients rely on mobile telephones and of course these can be expensive to use difficult to find private places to call from.

We believe that the evidence presented for the compulsory use of a single telephone-based gateway is flawed, the savings are over-estimated, and that the service will cost. The MoJ has acknowledged that they will need to find substantial funds in order to set up the triage service and to expand the present CLA if this proposal is implemented.

We implore Government to listen to those of us already working with the most excluded members of society, who have been using telephone based services for 40 years and have daily experience of how to provide an effective and cost efficient service to poor and vulnerable communities.

This proposal will deny access to justice; will destroy local advice networks; and will ultimately cost the Government more than maintaining a proper network of face-to-face services.

Financial eligibility

Question 12: *Do you agree with the proposal that applicants for legal aid who are in receipt of passporting benefits should be subject to the same capital eligibility rules as other applicants? Please give reasons*

No. Legal aid should have the same capital limits as other means tested benefits for reasons of simplicity, transparency and fairness.

In our experience very few, if any, people in receipt of passporting benefits have assets that would require a contribution under the proposals. This would be an extra administration hurdle for vulnerable people to cross, for little or no gain to the legal aid budget. It lacks consistency with the approach taken by other Departments as regards other benefits.

Question 13: *Do you agree with the proposal that clients with £1,000 or more disposable capital should be asked to pay a £100 contribution? Please give reasons.*

No, £1000 is a modest sum of money, especially for the poorest members of society who, unable to access credit or to find additional funds, may need to keep such modest amounts in case of family emergencies.

The Government's impact assessment of this proposal acknowledges that around 2/3 of the saving (which are likely to be less than £1m in any event) will be achieved by people otherwise entitled to legal aid not taking the service on offer as they will be unwilling or unable to pay the £100 contribution. The proposal appears purposely designed to disincentivise take-up of legal aid at the same time as the proposal to make legal aid available only for the most serious of matters. That is, the legal problem is acknowledged as of the highest importance that requires assistance and yet this proposal is designed to discourage those with the highest level of need from accessing it at all.

This proposal risks undermining the very heart of the relationship between agencies like ours and our clients. We are trusted because clients know that we are not after their money. If this proposal goes ahead it will place a barrier between us and our client.

We also note that the Government has failed to undertake any administrative burden calculation for this proposal or indeed for many of the others. The reality is much if not all of the £100 will be swallowed up in the costs of collecting, banking and accounting for it.

10% Fee Reduction

Question 32: *Do you agree with the proposal to reduce all fees paid in civil and family matters by 10%, rather than undertake a more radical restructuring of civil and family legal aid fees?*

No.

There is not a 10% margin in the current fees for Law Centres. Independent research undertaken and submitted to the MoJ's Legal Advice at a Local Level Study in 2009 on the Impact of the Introduction of the Fixed Fee on Law Centres found that Law Centres have subsidised the current fixed fee with their Reserves. The reserves are charitable funds accrued for charitable purposes and are now spent. A further 10% reduction is not sustainable. This proposal alone has the potential to force the insolvency of many legal aid practices.

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