



Briefing for Opposition Debate on the future of Legal Aid, November 1st, 2018.

Introduction: About LawWorks

1. LawWorks is the operating name of the Solicitors Pro Bono Group, an independent charity which provides a range of consultancy and brokerage services to bring together lawyers and law students who are prepared to give their time without charge, and individuals and community groups in need of legal advice and support. Co-located with other charities at the National Pro Bono Centre our work includes: supporting a network of over 230 independent legal advice clinics hosted through law schools, advice agencies and other non-profit partnerships across England and Wales; brokering pro bono legal advice for small not-for-profit organisations; running 'secondary specialisation' bespoke pro bono casework and representation projects; and working collaboratively to support the capacity of pro bono, for example as a partner with the Litigants in Person Support Strategy.ⁱ

Impact of LASPO

2. The most significant impact of LASPO has been in the area of access to early legal advice, especially in social welfare law, tribunal procedures and family breakdown matters. Legal aid supply has reduced significantly, with “advice deserts” in some areas where there are almost no suppliers, leaving many vulnerable people with nowhere to turn. Mitigating measures such as the “exceptional funding” mechanism, and the effort to redirect into mediation have not worked as intended. The impacts are well documented, including by the recent Equality and Human Rights Commission research.ⁱⁱ
3. A key issue for LawWorks is about the role and interest of pro bono in this area of policy. We restate and emphasise the position, supported by successive Law Officers, Justice Ministers and leaders of the legal professional bodies, that pro bono *cannot* replace a properly functioning legal aid system or fill the vacuum in response to unmet need left by the retrenchment of public funding. Firstly, it is important to emphasise that only a proportion of pro bono is devoted to (out of scope) social welfare law. More importantly, pro bono does not operate in a vacuum and needs an infrastructure provided through a strong network of community legal advice agencies. The closure or retrenchment of law centres and community advice centres not only reduces the legal services delivered by those organisations themselves but also the contribution and impact of pro bono. We are clear that while pro bono has a role as a contributor to enabling access to justice, it should be by adding value to and complementing existing services and legally aided provision to address unmet needs.
4. The evidence bears this out, firstly on the scale of unmet need and secondly on the capacity of pro bono.
 - a) **Legal needs.** There is empirically well grounded data on unmet need established through a decade of research and survey work undertaken through the Civil and Social Justice Survey (CSJS); baseline figures have established that approximately one-third of the population experience ‘justiciable’ civil legal



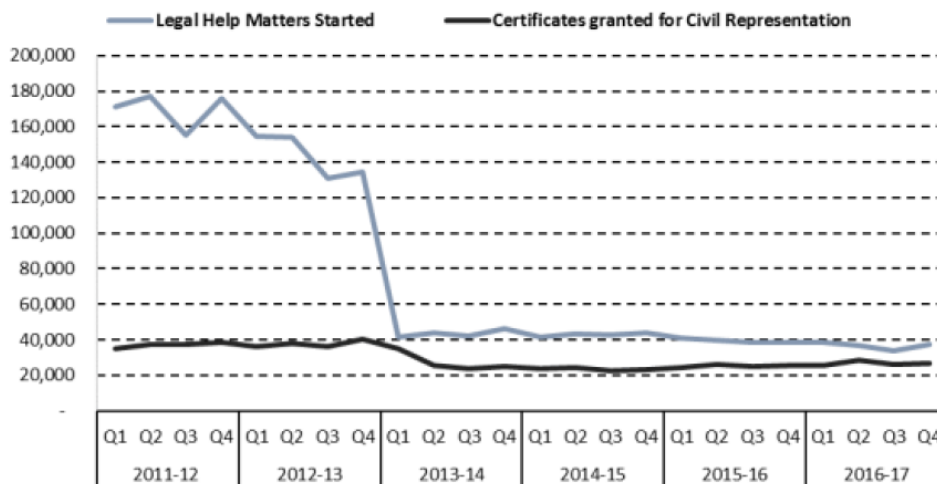
problems. The CSJS data further shows that around 10 per cent of people with a legal problem 'lump it' and take no action at all, and around 46 per cent handle such problems alone without accessing any formal or informal support or legal help.ⁱⁱⁱ More recent research commissioned by the Legal Services Board (LSB), but undertaken by the same research team responsible for the CSJS, suggests that the baseline figure may be closer to one in two people, with 18 per cent doing nothing and 46 per cent of issues handled alone or with the help of friends or family. The most commonly cited reason in the LSB commissioned survey for not seeking formal legal advice is cost and affordability.^{iv} Analysis of the last set of CSJS panel data from 2012 showed 32% of respondents having reported experiencing one or more legal problems in the previous 18 months, rising to 43% in the previous 36 months, or over 27 million civil legal problems arising over 3 years. The most common problems concerned anti-social neighbours, consumer issues, employment and money.

b) Demand on pro bono:

- The LawWorks Clinic network's annual clinics reports have demonstrated a year on year increase in clinic activity and the number of enquiries handled by clinics. Between April 2014 and March 2015, there were 43,000 individual enquiries at clinics in the period, a 55% on the previous year. Between April 2015 and March 2016, there were 53,000 individual enquiries, a 24% increase, and between April 2016 and March 2017 58,000 enquiries at clinics in the period, a 10% increase on the previous year.
- The Bar Pro Bono Unit (BPBU) have seen similar levels of increased demand. In 2017, the BPBU received 2274 applications for help, over 1000 more than the number of applications received yearly pre LASPO. The average number of applications for help received yearly since LASPO has been 65% higher than the average number of applications in the pre-LASPO years; with the highest rises in immigration and family law.
- Both LawWorks and the Bar Pro Bono Unit participate in the Litigants in Person Support Strategy, and our partner agencies have also reported increased in demands for their services. The Personal Support Unit (PSU) for example have reached a cumulative milestone of 300,000 contacts through their expanding services, 80% of which took place post LASPO. In 2014, PSU provided practical and emotional support to people facing court alone an average of 2,543 times per month, by the end 2016 this had risen to 438 and by the monthly average reached over 4500. This is an increase of 77% and PSU volunteers now support over 50,000 vulnerable people each year, from 20 locations across England and Wales.

5. In looking at these and other support services it is important to interpret the above trends for pro bono in context; the data reflects in part the growth of Clinics and PSUs (ie a measure of 'supply' and recorded activity) whilst also providing indicators of rising and/or displaced demand (ie demand and issues displaced from the legal aid system). However, the figures are also dwarfed by the number of cases removed from the scope of civil legal aid - at least 650,000 annually, which supports our assertion that pro bono does not have the capacity to 'pick up the slack'.

Figure 6: Civil legal aid workload summary, legal help and civil representation 2011–12 to 2016–17



Source: Legal Aid Statistics, January to March 2017

The LASPO review and future policy

6. We have welcomed the LASPO post implementation review (PIR) and been involved in the PIR consultative groups and in providing briefings for the Justice Select Committee.^v We also worked with other organisations to deliver a stakeholders conference involving the Ministry’s review team and a wide range of practitioners and advice organisations. From this Conference there were some agreed key conclusions about how legal aid needs to develop in the future.
7. Firstly, a wide range of stakeholders believe there is a strong case for investing in more preventative strategies focussed on early advice, information and public legal education in a manner that complements reforms to the way that our justice system works (including new digital systems), from tribunals to the family courts.
8. Secondly, delivery systems should be designed with the needs and capabilities of users in mind, recognising that vulnerability is a key issue, and that providers need to be flexible in how they respond to client needs and able to deliver at a localised level. This means working to achieve an operationally simpler and less bureaucratic system which both users and providers can navigate more easily, taking into account some groups’ additional support needs, and an emphasis on intervening earlier with ‘wrap around’ support. Issues which need addressing to achieve this include: the procurement system, the functionality of online operating channels, the gateway telephone service, evidential and eligibility criteria, and the exceptional funding mechanism, as well as simplifying the general regulatory and administrative complexity that surrounds the scope and operation of the civil legal aid scheme.
9. Consistent with putting needs and users at the heart of the system, policy-makers should adopt a coherent and rational approach to questions of scope, and enable ‘problem clusters’ to be solved, rather than working on a narrow issue-by-issue basis. The concept of getting help to “those who need it the most” – a stated objective of LASPO - bears little relation in practice to the hierarchy of legal issues that remain within scope, and within some of the excluded areas there are high levels of need amongst vulnerable population cohorts. Within the existing scope

rules there are also contradictions and complexities (eg, for migrants, minors, threatened homelessness related to benefits, and public versus private family law), which some relatively minor adjustments could resolve. It is also notable that a research report from the Dutch Ministry of Justice concluded that England “exclude far more areas (of law) from legal aid than other countries.”^{vi}

10. Decisions around policy and operational matters concerning legal aid should be underpinned by a robust evidence base, supported by an empirical and practical understanding of ‘what works’ and what approaches deliver the best outcomes for those in need of legal support (whether advice or representation), or for those with unresolved legal problems who may lack either the financial or legal capability to achieve a resolution. A common findings from reports by the Justice Select Committee,^{vii} the National Audit Office^{viii} and the Public Accounts Select Committee,^{ix} is that no work was undertaken to collate, assess or evaluate an evidence base to inform or support the changes introduced by LASPO, and that in some areas costs may have been transferred to other departments. Other independent reports such as those of the Low Commission have identified more systemic issues (eg. systems failures that can drive demand and need for legal advice), and have pointed to the need for policy-makers to adopt a more strategic and joined-up approach to advice and legal services drawing in wider public (including the DWP, local government, etc) and private sector partners and funders, and including public legal education as part of a broader access to justice strategy.
11. It would be a missed opportunity if the review only assesses LASPO against its own narrow and flawed policy objectives of reducing publicly funded litigation. The review should look again at some of the underpinning principles, the starting point being the inextricable link between the rule of law and access to justice. The access to justice system must enable legal problems to be settled or resolved on their intrinsic legal merit, rather than by a disparity of resources between parties. Impartiality in our justice system underpins the reputational value of UK law as a global brand, and is core to both supporting business and achieving a just and cohesive society. As the Government says “The legal system must uphold fairness in society: both in business and for individuals.”^x Maintaining these principles requires that the legal system is accessible for citizens and that it upholds the fundamental rights of a democracy, such as the capacity of citizens to challenge actions by public bodies and private corporations.
12. We have developed these arguments in greater detail in our submission to the post implementation review, a copy of which accompanies this briefing.

ⁱ <http://www.lipnetwork.org.uk/lipss>

ⁱⁱ <https://www.equalityhumanrights.com/en/publication-download/impact-laspo-routes-justice>

ⁱⁱⁱ See Pleasence et al, English and Welsh civil and social justice panel survey: wave 1, LSC, 2011.

http://doc.ukdataservice.ac.uk/doc/7643/mrdoc/pdf/7643_csjps_wave_one_report.pdf

^{iv} See Research summary May 2016: individual consumer legal needs, LSB. <https://research.legalservicesboard.org.uk/wp-content/media/Online-survey-of-inviduals-legal-issues-REPORT.pdf>

^v <https://www.lawworks.org.uk/about-us/news/new-justice-select-committee>

^{vi} http://www.advocatie.nl/sites/default/files/blg-331649_1.pdf

^{vii} <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/laspo/?type=Oral>

^{viii} *Implementing reforms to civil legal aid* NAO (2014)

<https://www.nao.org.uk/report/implementing-reforms-to-civil-legal-aid/>

^{ix} <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/inquiries/parliament-2010/implementing-reforms-to-civil-legal-aid/>

^x <https://www.gov.uk/government/topics/law-and-the-justice-system>