



Response of the Young Legal Aid Lawyers to the Justice Select Committee's inquiry into the impact of the changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

1. This is the submission of the Young Legal Aid Lawyers (YLAL) to the Justice Select Committee's call for evidence on the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). YLAL formed in 2005. We are a group of lawyers committed to practising in areas of law traditionally funded by legal aid. We have around 2,000 members nationwide including students, paralegals, trainee solicitors and barristers, and qualified junior lawyers. Our members share a belief in the importance of legal aid in upholding the rule of law.
2. This submission is based on our collective experiences working on a wide range of civil, family and immigration cases funded by legal aid. The response is based primarily on case studies submitted by our members illustrating the impact of LASPO on a variety of litigants. Each of the case studies involves a client who would have been eligible for legal aid pre-LASPO.
3. In summary:
 - In housing law the lack of legal aid to assist with welfare benefits issues is placing clients at risk of homelessness. In some instances this shifts costs on to social services departments. It also has cost implications for the court system in instances where proceedings are delayed unnecessarily.
 - In housing law the restriction of legal aid in disrepair cases means that one must wait until a client's problems have escalated to a harmful level before intervention is justified.
 - In immigration and family law cases of objective importance raising complex issues no longer attracts funding.
 - We are aware of firms closing and practitioners leaving the profession as a result of continuing cuts to legal aid of which LASPO marked the start. In addition as a group of junior lawyers we are finding it more difficult to provide new members and aspiring lawyers with reasons to enter the sector, or any confidence that legal aid provides a viable career option.
 - Post-LASPO the burden on the court system caused by litigants in person appears to be increasing.
 - A number of members have submitted case studies expressing concern about the operation of the domestic violence evidence criteria in family cases.
 - The experience of our members, supported by the Ministry of Justice statistics, is that the exceptional funding scheme is not operating effectively.
4. Turning to the specific questions posed by the Committee.
 - (1) What have been the overall effects of the LASPO changes on access to justice? Are there any particular areas of law or categories of potential litigants which have seen particularly pronounced effects?**
 - (2) What are the identifiable trends in overall numbers of legally-aided civil law cases being brought since April 2013 in comparison with previous periods, and what are the reasons for those trends?**
 - (3) Have the LASPO changes led to the predicted reductions in the legal aid budget? Has any evidence come to light of cost-shifting or cost escalation as a result of the changes?**
5. We will endeavour to deal with questions one-three together since, as the case studies below illustrate, there is a degree of overlap between these questions. In terms of overall trends, the majority of the

submissions which we have received related to the areas of housing, family law and immigration and the case studies are grouped accordingly.

Housing:

6. In the context of housing law the key complaint related to the removal of legal aid to deal with welfare benefits issues, even where the home is at stake. In possession proceedings, for example, where a tenant is being evicted on the basis of rent arrears, a housing benefit problem will often be a significant factor behind the arrears and the lack of funding to provide basic advice and assistance with these issues may leave the tenant at risk of homelessness, as the following case studies illustrate.

Client was single parent to 10 year-old son. She had received a bailiff's notice with an eviction date within 10 days when she approached our firm for help. Her local authority landlord was seeking to evict her for rent arrears of over £4,000. Half of these arrears had accrued over the last 6 months (post-1 April 2013) following a Housing Benefit (HB) decision to apply a maximum Non-Dependant Deduction for another adult living in her home. The client had also received a negative decision from Child Tax Credits (CTC) who had stopped her tax credits on the basis that they believed she was in a relationship when, in fact, she was not. Without CTC the client received a minimal income of Employment and Support Allowance (ESA) and Child Benefit to pay for her and her 10 year-old son's living costs. This made it impossible for her to pay anything towards her rent – she had no spare money at all. I was able to advise and assist the client in making an application to suspend her eviction and the court agreed to adjourn the application to allow the client time to resolve the benefit problems. But there was no legal aid available for me to help her do so. I ended up making written representations, pro bono, to assist the client with her benefit problems anyway. In the meantime the client sought assistance from the CAB but their opening hours were very limited. Whilst she did this I opened a new file to refer her case to social services for a request for help with housing costs under s17 Children Act 1989. Social services agreed to provide food bank vouchers to the client to help her manage her limited income. This will mean that the client will be able to pay the shortfall between HB and her rent for the next four-six weeks at least, but if her CTC appeal is not resolved shortly then she will be back struggling to afford her rent and, when the matter comes back before the court, at great risk of being evicted from her home with her (now) 11 year-old son. If my firm had been able to open a CTC appeal file and HB file for the client right at the beginning of the case (as I would have been able to do before 1 April 2013) I believe that the CTC appeal could have been resolved by now and she would at least be receiving a new claim for CTC and she would be at less risk of eviction because she would be able to afford to pay her rent and something towards her arrears.

7. As well as exposing the tenant to an unnecessary risk of homelessness, the inability to provide welfare benefits advice in this case has also caused an element of cost shifting. First, since it has been necessary to seek the assistance of social services to assist the tenant in meeting her rent liability. Second, in the event that the tenant's benefit problems are not resolved by the time the matter returns to court, the unproductive delay will have had cost implications for HMCTS. The case also illustrates the difficulty in relying on overstretched third sector providers such as CAB to fill the gap left by the cuts to legal aid. This can also be seen in the following case study.

Client was single parent to two young children who were in the middle of care proceedings with the local authority. She suffered with depression and was very bad at managing her daily life, including following-up benefits issues, maintaining contact with advisers, attending appointments about her children's welfare and so on. She was referred to me having received a bailiff's notice with a date of eviction within 5 days. Her housing association landlord had obtained an outright possession order against her in her absence for rent arrears. She had not gone to court because she had not realised there was a hearing as she had not been opening her post due to her mental ill health. The rent arrears had accrued on her account because her HB had stopped after her Income Support (IS) had been suspended when her children were taken into care under an Interim Care Order. I was able to represent the client in an application to set aside the possession order and suspend the eviction. The most urgent issue was her HB claim. There was no time before the eviction to refer the client to the CAB or another advice agency – the client would have had to wait for an appointment to come up (usually around 3-4 weeks at least at the moment) and would have had to attend the drop-

in sessions initially. Knowing the client's mental health needs and inability to manage her affairs I was not confident that she would be able to remember to attend the CAB either on time to be seen at the drop-in sessions or at all. I decided to help the client with her HB issues on a pro bono basis. This involved writing a request for a review with detailed submissions as to why the client had failed to provide information to support her claim, and also to request they re-instate her claim and backdate it to the end of her last claim. The client was also affected by the bedroom tax and so in addition, still acting pro bono, I wrote representations to support the client's application for Discretionary Housing Payments (DHP) to cover the shortfall between HB and her rent until either her children were returned to her or she could find a smaller more affordable home. Following my representations the council agreed to backdate the client's HB in full and pay her the DHP both backdated and on an on-going basis. This reduced her arrears from around £4,000 to around £500. Following this decision the landlord agreed in principle to set aside the possession order and stop the client's eviction. Unfortunately a few weeks after this decision the client's HB stopped again because her JSA had stopped. At this stage I was unable to justify doing more any more pro bono work for the client and have had to rely on her trying to resolve her HB issues herself. So far this had not happened and so she remains at very high risk of being evicted. HB is still not in payment and her rent arrears have gone back up to around £3,000.

8. The human impact of the lack of legal aid for welfare benefits is self-evident in this case. If homeless it is likely that the client's contact with her children would be placed in jeopardy. Alternatively, in the event that her children are returned and then the client is evicted subsequently, it is likely that social services will have to provide accommodation for the family, at significant cost.
9. In the instances set out above, the tenant has been assisted by a dedicated lawyer who has been willing to act pro bono. Clearly this will not always be possible. One of our housing solicitors reported that her firm had turned away 31 new housing clients in the space of three working weeks, where they were unable to provide assistance as a result of LASPO. These cases do not solely relate to benefits issues; disrepair is another area which cited by our members as being problematic, as the following submission relating to an inquiry from an individual who was turned away illustrates.

Tenant living in squalid conditions as a result of damp which landlord refused to rectify. No legal aid since the problem has not escalated to the stage where the damp poses a serious risk of harm. Client enquiry advised that if the dampness becomes so bad that it affects their health (eg through worsening asthma or depression due to unsuitable living conditions) they should obtain a doctor's letter and come back to us, as this would bring them back within scope.

10. As with welfare benefits, the inability of housing advisors to intervene at an early stage in these cases creates a risk that the problems will escalate. Perversely in the case of disrepair, it is only by waiting for this to occur that assistance may be provided.

Immigration:

11. In the area of immigration, the trend that emerged from the case studies submitted to us was simply of important cases, often involving vulnerable people, with a great deal at stake for those involved, where it is no longer possible to provide assistance.

SO is an 18 year old Nigerian national who arrived in the UK with his mother in December 2006, shortly after his 11th birthday. He has lived here ever since. In May 2012 SO's mother was arrested and detained and then removed to Nigeria. The Secretary of State for the Home Department was unaware that she had a child still living in the UK. After his mother's removal SO was taken into the care of social services. Despite the major upheavals in his life, SO formed strong bonds with his foster family and has been a model student, achieving multiple qualifications. He is now studying at college. SO has not had any contact with his mother or other relatives since shortly after being taken into care. Social services attempted to trace his family in Nigeria but were unsuccessful. They therefore decided that SO would remain in their care, and receive support as a former relevant child under their leaving care duties once he turned 18. SO made an application for leave to remain in the United Kingdom when he was 17 under Article 8 ECHR. The SSHD granted SO leave outside of the rules based on the "particular circumstances of his case" until his 18th birthday, noting that "it

is expected that once you are 18 years old and therefore an adult, you will return to Nigeria as you will have no legal right to remain in the United Kingdom.' This decision was made just over a month before SO's 18th birthday. SO received legal aid to challenge the decision by way of JR and the SSHD has now consented and agreed to provide SO with a right of appeal to the tribunal. However, since this case is being run on Article 8 grounds only it is out of scope under LASPO and his solicitor and barrister are now representing the client pro bono for his tribunal appeal.

12. Clearly the issues in this case are of significant importance: a vulnerable young person, settled in the UK, who has been in the care system, faces removal to a country with which he has little real connection. Equally clearly it would be unrealistic to expect a young person such as SO to present his own case, given the complexity of the issues involved. This is the same problem faced by the client in the following case study:

Last week, whilst attending the detainee legal advice surgery at IRC Morton Hall, I met a detainee who wanted assistance with appealing a decision to remove him from the UK even though he has a British wife with a baby on the way. The problem with this was that as an immigration detainee whose partner did not work, they had no funding for representation with the appeal. The client was released from detention and is now back living with his wife and her parents. None of them are wealthy. The appeal will be listed for a hearing sometime toward the end of next month. They have no money to pay us. They will struggle to explain to the court why the pregnant British wife cannot go to reside in the client's country of origin. There is a real chance that if unrepresented, their case will not be successful. The child in question stands a real chance of being separated from their father.

At the time LASPO was enacted the Government assured stakeholders that legal aid was not needed in Article 8 cases such as this since the issues were straightforward and did not require lawyers. This contrasts starkly with the following message taken from a standard UKBA decision letter (one of a number of similar letters received) issued earlier this year.

Your application raises issues relating to the European Convention on Human Rights which are complex in nature. As such it falls outside our normal service standards for deciding leave to remain applications. Please be assured we will make a decision on your case as soon as possible.

13. This resonates far more closely with our own experiences. Such cases are difficult, important, and, in our view, deserving of funding.

Family:

14. In the area of family law the trend was similar to that noted in the context of immigration. Objectively important cases where the absence of legal aid has significant ramifications.

Today I met a 21 year old father of a three year old boy. The mother of his child has decided to move 200 miles away with her new boyfriend taking his child to live with her and effectively preventing him from having a relationship with his child. As a result of the LASPO cuts, I couldn't apply to court on his behalf for an order to stop her moving, or asking the court to formalise the contact arrangements. I advised him how to apply to court himself but he didn't feel he had the confidence to represent himself. I have no idea if he still sees his son.

(4) What effects have the LASPO changes had on (a) legal practitioners and (b) not-for-profit providers of legal advice and assistance?

15. We are aware that a number of specialist legal aid practitioners have either closed or moved away from legal aid work as a result of the cuts. We note that the well regarded Toaks Chambers, which carried out a significant amount of legal aid work, dissolved in 2013 citing the legal aid cuts as the cause. Similarly we understand that Fisher Meredith, a highly regarded solicitors firm, has made the decision not to continue providing legally aided advice in the areas of housing and community care. Anecdotally, on an individual level, we are aware of a number of practitioners who have taken the decision to leave the sector as a result

of the Government's ongoing cuts to legal aid. Cumulatively this has led some of our members to complain of advice deserts.

Today I met a mental health advocate for a psychiatric patient. She was trying unsuccessfully to find a housing lawyer to prevent her house being repossessed by the mortgage company. Unfortunately we are in a legal aid advice desert. Whilst legal aid may be available for repossession in theory there are no legal aid housing lawyers left in Suffolk. The client may well lose her home. Her health has deteriorated as a result and the health costs will probably outstrip the cost of a lawyer.

16. Our research also indicates that the LASPO cuts have had a knock-on impact of the caseload of MPs. In a survey of MPs (of whom 29 responded) which we carried out in order to assist the Low Commission on the Future of Advice and Legal Support, 86% of respondent MPs indicated an increase in demand for advice since 1 April 2013 corresponding with the areas of law affected by LASPO¹.
17. In addition, as an organization consisting of junior lawyers dedicated to working in legal aid we are very conscious that it is becoming more difficult to provide new members and aspiring lawyers with reasons to enter the sector, or any confidence that legal aid provides a viable career option.

(5) What effects have the LASPO changes had on the number of cases involving litigants-in-person, and therefore on the operation of the courts? What steps have been taken by the judiciary, the legal profession, courts administration and others to mitigate any adverse effects and how effective have those steps been?

18. Our members have reported an increase in litigants in person in the family courts. This appears to have had a detrimental effect on the operation of the court causing delay within the system and distress to other litigants, as the following cases illustrate.

My client, a victim of Domestic Violence, is facing several unmerited applications from her ex-partner (including one for contact and one to discharge the Non-Molestation Order against him). He is unrepresented because he is no longer entitled to legal advice under LASPO. The Judge has to give him more leeway because of this, which is greatly extending the proceedings, and means that we are having to deal with large amounts of irrelevant evidence, unnecessary extra hearings, and attempts by the litigant in person to involve other people in the proceedings.

Another client, also a victim of Domestic Violence, made an application for a Non-Molestation Order and Prohibited Steps Order, and her ex-husband cross-applied for contact. He was not entitled to legal representation due to LASPO. Findings of serious violence perpetrated by the ex-husband against the client were made. The ex-husband responded in a vexatious manner within the court proceedings: sending statements, letters and even a purported claim for £95,000 which had no legal basis. These documents attacked my client, her witness, me [her solicitor] and the Cafcass Officer, suggesting that I was being influenced by the Devil and that I had conspired with the Cafcass Officer to manufacture a case against him. Equally concerning, my client also had to be cross-examined by her ex-husband at the Final Hearing, which was a cause of significant distress. The case finished, with the ex-husband awarded minimal contact due to the violence involved and the child's clear wishes to have no contact with his father. Three months later, the ex-husband issued a further cross-application, and my client and her son now have to relive the entire experience. If the ex-husband had had access to appropriate legal advice and representation, the experience would have been less harrowing for all parties, and I doubt we would now be going through a second set of proceedings.

19. Members appearing in the County Court in non-family proceedings also report an increase in litigants in person, though it is difficult to attribute this exclusively to LASPO. It may be as a result of other external factors. However, what is clear is that the increased burden on the court system is putting greater pressure on judges who have less time to deal with individual cases. In some instances this can create

¹ See *Nowhere else to turn: one year on*, Young Legal Aid Lawyers, August 2013 <http://www.younglegalaidlawyers.org/Nowhere-else-to-turn-part2>

additional delay, meaning additional cost, since there is an increased tendency to adjourn cases exhibiting any complexity owing to lack of court time.

20. In addition we note that the Bar Council has produced guidance for litigants in person to assist them in person in preparing for court². While this may go some way toward making the court system more user-friendly for a litigant in person, it cannot deal with the fundamental inequality of arms between a legally trained advocate and a self-representing litigant with no legal experience.

Questions (6) & (7)

21. We are not in a position to comment on questions 6 and 7.

(8) To what extent are victims of domestic violence able to satisfy the eligibility and evidential requirements for a successful legal aid application?

22. A number of members have submitted case studies expressing concern about the operation of the domestic violence criteria.

My client was recently divorced from her husband with whom she had four children. The client sought advice after the father had refused to return the children to their mother following weekend contact. Although the client had been a victim of domestic violence, it was unreported. She had no remedy to seek the return of her children as she had no money to fund an application to Court.

A had been a relationship for a number of years where she had suffered domestic abuse. There had been no physical violence, but she had suffered from extreme emotional and financial abuse and as a result become severely depressed and suffered with anxiety. She had never reported the matter to any professional as she was too scared and during the relationship was rarely allowed to go anywhere alone, including the doctors. On separation from her partner he took their daughter and refused A any contact. Without proof of her being a victim of domestic abuse she was not able to get legal aid for making an application for contact, meaning she faced either not having contact with her daughter or representing herself against the person who had controlled every aspect of her life for so long.

B had been a victim of an assault from her ex-partner and he was convicted for this. In order to get legal aid for B's family matter, B needed proof of the unspent criminal conviction, but unfortunately B did not have record of this. She contacted the police, the witness care unit, the CPS and the Court for evidence of this so that she could present this to a solicitor to get legal advice on the family matter. None of the organisations gave her the evidence she required, passing her from one organisation to another, or simply saying they cannot locate the offence on the system, despite B having the details. After a lot of persistence and B paying the Court for a copy of the order she was able to get the proof she needed. However, this took many weeks and was an extremely distressing process for B who had already suffered a serious assault and was fearful she would have to represent herself in the family court.

(9) Is the exceptional cases funding operating effectively?

23. Similarly, those members who have experience of the exceptional funding system have expressed concern that the scheme is not working effectively.

This week I had a call from a client who recently became a refugee. She had been imprisoned, beaten and raped. She is still affected by these experiences. She is now on benefits because she only just got her status and is still learning English. I cannot help reunite her with her two small children in her country because you can't get legal aid for this anymore. She has no money to pay me but no

² *A guide to representing yourself in court*, the Bar Council, April 2013
http://www.barcouncil.org.uk/media/203109/srl_guide_final_for_online_use.pdf

idea how to do it herself. She doesn't want to put in an application for legal aid on an "exceptional" basis even though I offered this because I told her how long the process can take.

24. In this instance the nature of the procedure itself has inhibited the client from making an application. This is born out more widely in the Ministry of Justice statistics which evidence a concerning low rate of applications. When LASPO was debated in Parliament the exceptional funding scheme was presented as a safety net to ensure that access to justice was protected.³ The MOJ estimated that around 6,000 applications for exceptional funding would be received in the first year of LASPO.⁴ In April 2014 the MOJ released figures showing the number of applications received from 1 April 2013 to 31 March 2014.⁵ Rather than the estimated 6,000 applications, the LAA received a total of 1,519. Funding was granted in only 57 cases (4%). The majority of those, 42, were inquests. Family and immigration were the most frequent categories for applications. Of the 821 family applications, eight were granted, while only four of the 235 immigration applications were granted. These figures suggest that the exceptional funding scheme simply is not serving to protect access to justice as was promised.

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³ *Legal Aid, Sentencing and Punishment of Offenders Bill, Tenth Sitting*, Jonathan Djanogly 8 September 2011, "It is right to have an exceptional funding scheme to provide an essential safeguard for the protection of an individual's fundamental right to access to justice, and clause 9 achieves that important end"

<http://www.publications.parliament.uk/pa/cm201011/cmpublic/legalaid/110908/pm/110908s01.pdf>.

⁴ *Briefing for the 27 June 2013 House of Commons backbench debate*, Public Law Project 27 June 2013

<http://www.publiclawproject.org.uk/resources/13/legal-aid-briefing>; *Exceptional Funding: a fig leaf – not a safeguard*, Public Law Project 8 July 2013 <http://www.publiclawproject.org.uk/resources/10/exceptional-funding-a-fig-leaf-not-a-safeguard>

⁵ *Exceptional Case Funding Statistics April 2013 - March 2014*, MoJ April 2014

<https://www.gov.uk/government/publications/exceptional-case-funding-statistics-april-2013-march-2014>