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February Bulletin from the APPG on Legal Aid

Dear Parliamentarian,

Welcome to February's bulletin from the APPG on Legal Aid and a month that has seen the anniversary of Russia's war with Ukraine, an earthquake, potential new post-Brexit trading arrangements for Northern Ireland, and headlines that continue to be dominated by the cost-of-living crisis. Reminders, if any of us needed them, of the incredible vulnerability of the human condition. All of these issues are interconnected, but with a general election on the horizon, it is the last of them that remains most likely to shape the domestic agenda at home.



This week, the UK's leading poverty charities have called for a change in the law to fix the UK's "failing" welfare system after research revealed that basic benefits given to low-income households fall at least £140 a month below the real cost of food, energy and everyday basics. **The Joseph Rowntree Foundation and the food bank network, the Trussell Trust** have said that inadequate benefits were the main driver of the spreading destitution and food bank use in recent months, and urged the government to formally bring universal credit rates into line with minimum living costs. This research also goes further and asks what a realistic bare minimum should be. What should society's safety net look like? A safety net that isn't determined by the amount that is available, but rather, by what is needed.

Paul Kissack, Chief Executive of the Joseph Rowntree Foundation added: "It is time to build a system that is needs-tested – where the support people get is linked to the actual costs of essentials. A system where every family has enough money to get by, and as a nation we confine to history the scourge of people having to skip meals or switch off essential appliances just to get by."

We sought to do something similar in our work with the Westminster Commission on the Sustainability of Legal Aid: to look at what is needed by society in order for individuals to adequately understand, interpret and exercise their rights. We discuss legal aid here on these pages, but in reality it is a means to an end – a fund designed to provide advice and representation to "those who need it most." However, while there are ways of measuring need in terms of food and transport costs, energy bills and everyday essentials – it is much more difficult to gauge legal need in a society. We have numbers for those who access advice agencies and law firms. For those who open matters under legal aid contracts. However those who are turned away from advice services are harder to count. Those who don't understand that their problem is legal in nature even more so. We hoped that this idea of measuring need and designing a system to meet that would be something within the scope of the recently announced Review of Civil Legal Aid ("RoCLA"), but as yet there are no plans to do so.

In 2012/13 legal aid enabled 599,928 "legal help" cases to be completed. Something

about calling a problem legal dehumanises what is essentially help finding the right educational setting for a child with special needs, a family going cold in the winter because their landlord will not fix their boiler, a family in the process of divorce trying to do the best that they can for their children, or an elderly relative who requires care because they can no longer care for themselves. Significant, human problems, which can feel like the most important problems in the world to those that they affect. Many of these cases were removed from legal aid, and in the nine years since LASPO 3,897,476 fewer cases have been run under legal help contracts as a result. Nearly four million people. Those problems won't have gone away. Some of those individuals will have been helped by charities, others by their local MP. Some by religious organisations or family members. Still, many others will have received no help or assistance at all. And those are just the legal help cases. We aren't even looking at the more complex matters which fall under certificated legal aid.

So, to echo Paul Kissack, it is our hope that the political parties use this opportunity to look at a justice system that is needs-tested. Where the support that individuals receive is enough to meet the need that is out there. Perhaps to even create a system whereby the support available is linked to the actual cost of providing that support.

Civil Legal Aid News

Housing law

Fixed Recoverable Costs: It's been a mixed bag of news for housing practitioners this month. This part of the sector has been particularly vulnerable for years, but suffered a huge amount over COVID with the moratorium on possession proceedings. The good news has been that *"the Government has delayed the introduction of fixed recoverable costs (FRC) in housing cases. The reforms are to be aligned with wider reforms in the housing sector which is why a decision has been taken to delay for a period of two years."* For those of you who are new to the bulletin, please see here for more information on FRC [from our September bulletin](#).

HLPAS: Economic fragility amongst housing law providers was highlighted this month when the Legal Aid Agency (LAA) failed to attract bids for the new housing loss prevention advice service contract (HLPAS) in 12 procurement areas. This caused the President of The Law Society, Lubna Shuja to declare the work unviable, **stating her concern** that this could "lead to less support being available for families at risk of losing their home at a time when we are in the middle of a cost-of-living crisis." The President renewed her call for an immediate injection of funding in the form of rates increases before RoCLA concludes in 2024.



The HLPAS contracts begin in August 2023, so the LAA have 5 months to find suitable providers willing to undertake the work, which the Ministry of Justice describes as “ensur[ing] that anyone facing eviction or repossession has earlier access to free advice.” Time may be of the essence, as HPLA (yes, it is a little confusing) co-chair and solicitor Simon Mullings **stressed the importance of speed** in re-inserting this area of law due to the cost-of-living crisis.

Early Legal Advice Pilot

The first question to ask, is what we mean by early legal advice? Frustratingly (for this ex-derivatives lawyer at least), there isn’t an agreed definition that we use in policy work, but for the purposes of the Government’s pilot scheme and brainchild of the 2019 LASPO Post-Implementation Review **Legal Support Action Plan** it is assisting individuals to resolve their legal problems at an earlier stage. The example that is often given is that it is far better for both the individual and the state to resolve a debt and rent arrears problem, than to respond to a homelessness application. To that end, the Early Legal Advice Pilot (ELAP) is a £5 million HMT Shared Outcomes Fund (SOF) project to test the expansion of legal aid. It seeks to evaluate the possible benefits of holistic, legally aided advice in encouraging early resolution for individuals, and to quantify downstream benefits to central and local government.

What does this mean in practice? As part of the pilot, participants will receive up to 3 hours of non-means and non-merits tested legal advice for housing, debt, and welfare benefit matters. The pilot is being delivered in Greater Manchester and Middlesbrough and independently evaluated. It commenced on 1 October 2022 and is set to run until 31 March 2023. Officials initially hoped to assist up to 1600 individuals and evaluate the benefits of providing advice.

So far, so good, but there are a number of concerns around the pilot and MoJ officials confirmed that they have had to change the pilot project. One of the biggest concerns that practitioners have expressed has been the artificial limitation of providing a complex service in just 3 hours. After that, advisers have been asked to stop delivering a service, whether the issue has been resolved or not. As any MP or caseworker will know, individuals who come to surgeries requesting help with housing issues may present a complicated array of debt and welfare issues together with their housing problems. It can take several hours to interview them, formulate a plan and begin to resolve the underlying issues. So what is being measured is a distorted service which may not provide the quality of data that the MoJ is seeking.

There are positives about the scheme, particularly in the expansion of scope for the purposes of the pilot to reintroduce the welfare benefits and debt issues removed by LASPO. The pilot was a chance for providers to deliver joined-up housing, welfare benefits and debt advice, at an early stage in the development of a client’s legal problem, in an effort to resolve issues before they escalate. To that end, we hope that adjustments made to the pilot by the MOJ in January result in some useful data being generated during what they have described as this early ‘first phase’ of the pilot. However as we understand it the MOJ has no dedicated funding for the next phase(s) so we await the outcome of an independent evaluation report expected in Summer 2023.

Education

SEN: funding rules change affecting SEND Tribunal appeals

Good news in Education law, with the announcement this month that foster parents and approved prospective adoptive parents can apply for means-free funding from 10 February for special educational needs appeals.

Immigration

Response to a response: what practitioners think of the government's plans for immigration legal aid fees

A recent YouGov poll tells us that immigration is a top-3 issue for **one in three Britons**, and **a petition** entitled "Stop legal aid for court appeals for people entering the UK illegally" gained enough signatures last month to warrant a government response. Legislating the "detain and deport" model is now a government priority, with the **Sun** and the **Telegraph** reporting that the Stop the Boats Bill, as the former calls it, or the **Illegal Immigration (Offences) Bill** for the latter, is in the works.

The Government's **response** to the **consultation** on immigration legal aid fees received mixed reviews, with a **13-page long joint statement** from The Public Law Project (PLP) and Immigration Law Practitioners Association (ILPA), released on 30th January 2023, praising some commitments (lowering escape fee thresholds and increasing) but expressing concern that the government's proposals will negatively impact the sustainability of the immigration legal aid sector. This language echoes the government's goal of "improving sustainability" in its recently-announced **review of the civil legal aid market**. The statement makes the link between the two explicit: "Whilst the subject of this consultation is remuneration for specific proposals, the Government acknowledges the concerns raised regarding capacity of providers, the overall fee schemes and lack of data, and assure respondents that these issues are being considered as part of wider work on the sustainability of the civil legal aid market."

The **Law Society had previously expressed similar ambivalence**: simultaneously pleased some of its recommendations had been taken on, yet questioning the sector's "capacity to take up these new workstreams, given the wider sustainability issues resulting, in the main, from fees which have not increased since the 1990s".

Criminal Legal Aid News

Prosecutors get fee-parity

In a speech to the Bar Council, which **can be read in full here**, Director of Public Prosecutions Max Hill KC announced his Department has secured additional funding from the Treasury to "press ahead with increases to restore parity with defence fees" (**government press release available here**). He referred to the commitment he made before the **Justice Committee in November** to ensure prosecutors are paid the same as defence counsel, after reports that cases **weren't going ahead due to lack of prosecutors**, with some saying they were "**receiving 20% less than the person who's defending**."

Mr Hill added that a potential reason for the problem arising was that last year's Spending Review settlement for the CPS came before the publication of (the then) Sir Christopher **Bellamy's Criminal Legal Aid Review (CLAR)** recommendations, and thus did not include fee increases.



The Criminal Bar Association's **announcement of the news** gave further details: the increase is 15% and will apply to the backlog of cases (**over 60,000 cases** at Crown Court level, averaging a year's wait), and will come into operation towards the end of March.

Now that prosecutors have parity with their defence brethren, it remains to be seen what will happen with **solicitors calling for parity on the 15% fee increase offered to barristers** after months of strikes.

Legal Aid bitesize:

Attorney and Solicitor General give evidence to the Justice Select Committee



In a Justice Committee oral evidence session entitled "Work of the Attorney General and the Solicitor General," Victoria Prentis KC MP and Michael Tomlinson KC MP gave us a whistlestop tour of the issues facing the profession. Highlights included the nature of their roles, the implications of Brexit on the Northern Ireland Protocol, the resourcing of the Serious Fraud Office, the number of vacancies in the CPS, fees for criminal solicitors and prosecutors, disclosure at police station level, and recruitment and retention of government lawyers. You can watch the meeting [here](#).

LAPG opens nominations for its Legal Aid Lawyers of the Year awards (LALY)



It is always a huge pleasure to announce the launch of this year's Legal Aid Lawyer of the Year Awards, a celebration of the best, the kindest and the most inspiring work that the profession undertakes. Last year's celebration was the LALY's 20th anniversary and saw the biggest ever gathering of the social justice community. Please do put 12 July into your calendars and join us for this year's ceremony. And if there is a special legal aid lawyer in your life, get in touch with rohini.teather@lapg.co.uk to find out how you can nominate them for a LALY.

The Legal Education Foundations launches the Justice Lab

Philanthropy fund and all-round good guys The Legal Education Foundation TLEF formally launched Justice Lab at a **parliamentary event** this week. This important initiative, headed up by Dr Natalie Byrom, has been established to secure an evidence-based justice system that's fair, open, and efficient for everyone that needs it.

Justice Lab has four primary areas of interest – data, research, influence, and community – all of which are set out in detail on their website here. Read Joshua Rozenberg's take on the new Lab at [his substack here](#).

Parliamentary Debates & Justice Questions

Afzal Khan (Labour, Manchester, Gorton) asked the Secretary of State for Justice **four** questions:

- how many solicitors were on the Legal Aid Agency's January 2023 criminal duty rota who had not been present on the Legal Aid Agency's criminal duty rotas in the previous 12 months. ([answer here](#))
- what steps he is taking to help increase recruitment of underrepresented groups into the legal profession. ([answer here](#))
- what assessment he has made of potential regional disparities in legal aid provision across England and Wales. ([answer here](#))
- whether his Department has made an assessment of the adequacy of the scope of legal aid on covering legal representation for individuals and families impacted by domestic abuse in relation to family law cases, including arrangements for children and finances. ([answer here](#))

Mr Tanmanjeet Singh Dhesi (Labour, Slough) asked the Secretary of State for Justice

three questions:

- what steps his Department is taking to ensure that people have prompt access to justice. ([answer here](#))
- whether he has made any recent assessment of whether people have unhindered access to the courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities. ([answer here](#))
- what steps his Department takes to ensure that people on low incomes are not denied access to the courts for financial reasons. ([answer here](#))

Kate Osborne (Labour, Jarrow) asked the Secretary of State for the Home Department **three** questions:

- how many legal visits took place under the Detained Duty Advice Scheme at Derwentside immigration removal centre between (a) 1 July 2022 and 30 September 2022, (b) 1 October 2022 and 31 December 2022 and (c) 1 January 2023 and 31 January 2023; and how many of those visits took place (i) in person, (ii) by Skype and (iii) by telephone for each of those periods. ([answer here](#))
- how many non-Detained Duty Advice Scheme legal visits took place at Derwentside immigration removal centre between (a) 1 July 2022 and 30 September 2022, (b) 1 October 2022 and 31 December 2022 and (c) 1 January 2023 and 31 January 2023; and how many of those visits took place (i) in person, (ii) by Skype and (iii) by telephone for each of these periods. ([answer here](#))
- pursuant to the answers of 14 July 2022, 26 September 2022 and 9 February 2023 to Questions 32512, 53359 and 138399 on Derwentside Immigration Removal Centre (IRC): Legal Profession, what assessment she has made of the reason for the increase in the number of in-person legal visits at Derwentside IRC between 22 and 30 September 2022 compared with the number between 1 July and 21 September 2022. ([answer here](#))

Paul Blomfield, (Labour, Sheffield Central) asked the Secretary of State for Justice **three** questions:

- how many requests for legal assistance were made by asylum applicants during the first instance procedure in 2022. ([answer here](#))
- how many requests were made for legal assistance by asylum applicants for their initial asylum application in 2022. ([answer here](#))
- how many requests for legal assistance made by asylum applicants during the first instance procedure in 2022 resulted in a grant of legal assistance. ([answer here](#))

Steve Reed (Labour, Croydon North) asked the Secretary of State for Justice **two** questions:

- what estimate he has made of the number of domestic abuse survivors who have (a) received legal aid and (b) not received legal aid in each of the last five years. ([answer here](#))

- what estimate he has made of the cost to the public purse of legal aid for domestic abuse survivors. ([answer here](#))

Emily Thornberry (Labour, Islington South and Finsbury) asked the Secretary of State for Justice **one** question:

- with reference to the section on employment tribunals on page 206 of his Department's Annual Report and Accounts for the 2021-22 financial year, how many outstanding tribunal cases his Department was defending as of 1 February 2023; if he will make an estimate of the potential liability arising from those cases; and what contingency funds have been set aside for handling those cases in the (a) 2022-23 and (b) 2023-24 financial years. ([answer here](#))

Apsana Begum (Labour, Poplar and Limehouse) asked the Secretary of State for Justice **one** question:

- what steps he is taking to reduce backlogs in the family courts; and whether he has assessed the potential impact of reinstating legal aid contracts and restoring early legal advice for family law cases on reducing the backlogs. ([answer here](#))

Rohini Teather
Head of Parliamentary Affairs
28 February 2023

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The APPG on Legal Aid is co-sponsored by the Legal Aid Practitioners Group



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About the APPG on Legal Aid

The All-Party Parliamentary Group on Legal Aid aims to promote parliamentary and public understanding of the importance of the role of publicly funded legal services. It is chaired by Karen Buck MP. Secretariat support is provided jointly by the Legal Aid Practitioners Group (LAPG) together with Young Legal Aid Lawyers (YLAL) with funding from The Legal Education Foundation.

For more information contact:

About the APPG Plus Project

LAPG and the APPG on Legal Aid have been funded by The Legal Education Foundation to engage with MPs and councillors and their caseworkers to ensure that there is a good understanding of what is left in legal aid in the wake of LASPO, and to offer constructive advice, resources and training on how busy MPs and their caseworkers can engage better with lawyers and advice charities in the legal aid sector. In doing so, we aim to assess current access to justice issues facing the public and to help inform future decision making at a policy level.

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