



Justice Committee

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The Right Hon David Lidington MP
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Post-Legislative Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

On behalf of the Justice Committee, I would like to thank you for submitting to us your Department's post-legislative Memorandum on the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 on 30 October 2017. We found the Memorandum to be commendably detailed for the most part – except for the unexplained omission of a detailed assessment of Part 3, to which I will return later in this letter. We also welcome the frankness evident in the Memorandum's preliminary assessment of the Act, particularly of Part 1.

We note the Government's intention to take forward a post-legislative review of the legal aid changes under the LASPO Act, fulfilling the pledge made to Parliament by former Justice Minister Sir Oliver Heald MP earlier this year. We welcome your personal commitment to carrying out the review, and your indication that the most frequently voiced concerns about the legal aid reforms will be considered as part of it. As you will appreciate, this announcement has pre-empted any decision the Committee might have taken to conduct its own post-legislative inquiry at the present time.

In these circumstances, we consider that our most constructive contribution to the review is to suggest how it might be accomplished successfully, including our expectations of the review methodology. This will allow us to add value while avoiding duplication of effort – recognising that the Ministry of Justice will benefit from having access to extensive internal data and expert resources. Our suggestions are as follows:



1. An independent steering group

We believe that confidence in the review, and its effectiveness, would be enhanced by the appointment of a steering group drawn from a wide range of external stakeholders. This group should be tasked with overseeing the review process and providing a measure of independence – including with regard to any conclusions and recommendations that the review might make. A useful model for this approach is the independent review of legal aid, established by the Scottish Government in February 2017, which is led by an expert review group drawn from justice organisations and those who have benefited from the legal aid system.

2. Access to justice and the rule of law

We accept that it would be appropriate to assess the impact of the reforms under Part 1 of LASPO against the original policy objectives of the legislation. Mindful of the late Lord Bingham’s eight principles of the rule of law, we would urge you to also consider the impact of the reforms on access to justice as a constitutional right and on the rule of law more generally. You will, of course, be aware of the decision of the Supreme Court in the case of *R (UNISON) v Lord Chancellor* [2017] UKSC 51; here the Court emphasised that the right of access to justice has long been deeply embedded in our constitutional law, and that the constitutional right of access to the courts is inherent in the rule of law. The Supreme Court also highlighted that, to remain lawful, a financial impediment to the right of access to justice (in that particular instance, the imposition of Employment Tribunal fees) must be reasonably affordable to households on low to middle incomes; this consideration may well be relevant to the assessment of the LASPO reforms to means-testing for civil legal aid, for example.

3. A robust cost benefit analysis

We appreciate the challenges that may be involved in conducting a robust cost benefit analysis to establish whether the LASPO Part 1 reforms have delivered “value for money”. As the Memorandum points out, there are several levels at which value for money might be assessed: at the level of expenditure on legal aid and on the wider justice system, through to the impact on the business of other government Departments and at the level of individuals with a justice problem, civil society organisations and on society as a whole. However, we would argue strongly against allowing any perceived challenges to deter the



Government from attempting this task. You may be aware that Appendix 7 to the report of the Bach Commission on access to justice offers an analysis of the cost implications and potential savings of the Commission's own proposals. While acknowledging that hard statistical data on the economic case for legal aid is elusive, the Appendix identifies "a stream of studies primarily from the UK advice sector which point toward the conclusion that an investment in legal aid, and particularly early legal help, results in significant savings in other areas."

4. The report of the previous Justice Committee

The Memorandum acknowledges the report of our predecessor Committee, published in March 2015: *Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Eighth Report of Session 2014-15*. For ease of reference, some of the main concerns identified by the Report are summarised here:

- The adverse impact of the reforms on the sufficiency and sustainability of the legal aid market, particularly in certain local authority areas where 'advice deserts' were evident
- The failure by the Ministry of Justice to quantify the costs savings of resolving civil law disputes before they reach court, making it hard to assess whether the reforms delivered savings overall.
- An underspend in the civil legal aid budget, alongside a widespread public impression that legal aid has been abolished and underuse of the Civil Legal Advice telephone gateway – a mandatory point of access for legal aid in some areas of law, including debt.
- The failure of the exceptional cases funding scheme to protect access to justice for the most vulnerable in society, with evidence of wrongful refusal of applications.
- Concerns that many victims of domestic violence could not produce the prescribed forms of evidence to qualify for legal aid in private law family matters.
- The growing number of unrepresented litigants, especially in the Family Court, with incidents of complainants being cross-examined



- in person by their alleged abusers; linked to this, a fall in uptake of mediation
- Examples of the Legal Aid Agency failing to give sufficient weight to its vital role in ensuring access to justice.

We note that the Government's Response to the previous Committee's report made no significant concessions on any of these issues. While we warmly welcome the recent announcement of the removal of the current five-year time limit on evidence of domestic abuse and the relaxation of the rules on permitted sources of evidence, it is clear to us that most of the concerns identified by the previous Committee have yet to be addressed in any meaningful way. Indeed, anecdotal evidence suggests that some of the problems have deteriorated further. We would ask you to ensure that the review gives particular attention to these issues.

5. An initial literature review

The Memorandum highlights some of the reviews or assessments of the LASPO reforms by statutory and Parliamentary bodies and by other interested parties. However, the summary does not do full justice to the wealth of published material that has emerged since the commencement of the reforms – including research that is of high quality. For example, we are surprised that no mention was made of the Ministry of Justice's extensive Legal Problem and Resolution Survey, based on over 10,000 telephone interviews conducted between November 2014 and March 2015; its findings indicate, for example, that those living with a disability, as lone parents or on less than £15,000 a year are more likely to experience multiple legal problems than others, and that at least 40% of adults with a legal problem experienced at least one 'adverse consequence' – most commonly, mental health problems, physical ill health, loss of confidence, and/or loss of income or financial strain.

Taking all this into account, we think it would make sense and be more resource-efficient for the first stage of the LASPO review to take the form of a literature review of the large body of formal research and other evidence already published on the impact of the reforms, on the consequences of having access – or not having access – to early legal advice and on advice-seeking behaviour.



6. The public sector equality duty

We are aware that several studies have indicated adverse impacts of the LASPO reforms on particular groups, especially disabled people, women, and people from Black and Minority Ethnic groups. We would urge your Department, when conducting its review, to fulfil its legal obligations under the public sector equality duty to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between groups (under section 149 of the Equality Act 2010). In this context, it would be important to bear in mind that any indirectly discriminatory impact of the reforms on people with protected characteristics cannot be objectively justified on the grounds of cost savings alone.

I would like to raise two final points in relation to Parts 2 and 3 of LASPO, respectively. We are aware that you are considering how to carry out a post-legislative review of the civil litigation and costs reforms in Part 2 of the Act and that you hope to conclude it to the same timetable as the review of Part 1; the Committee would like to be kept informed of your decision in this regard. We have a particular interest in the proposed section 44 review on mesothelioma claims which, as you are aware, was the subject of a report by our predecessor (Third Report of Session 2014–15).

Finally, we note that the post-legislative assessment of Part 3 of LASPO on sentencing and punishment of offenders is lacking in detail and arguably falls short of the expectations in Cabinet Office guidelines for post-legislative scrutiny. Further, there is no mention of any post-legislative review being carried out on this Part of the Act. Please would you clarify whether you intend to conduct such a review? If so, please would you inform us of the expected timetable and, if not, please would you explain why you do not consider it worthwhile?

A handwritten signature in blue ink, appearing to read 'Bob Neill'.

Bob Neill MP
Chairman
Justice Committee