



Joint Committee on Human Rights Inquiry: 'Human Rights: Attitudes to Enforcement'

Supplementary Evidence from the Law Centres Network

1. Following our oral evidence to the Committee on 28 February 2018, we hereby submit additional material for its consideration, to bear out points made orally. These focus on the inadequacy of the current English and Welsh civil legal aid system for meaningful enforcement of human rights.

Legal aid, access to justice and human rights

2. As a public provision, civil legal aid as currently delivered is almost aimless. The Legal Aid Agency, operating it on behalf of the Ministry of Justice, is primarily concerned with **controlling spending**, and there seem to be no meaningful performance indicators relating to access to justice and how legal aid should facilitate it. The Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012 has removed legal aid's statement of purpose from the legislation; thus, it can be difficult to understand what it is for, especially as no **basic standard of provision** is specified – something that both the Low Commission (2014) and the Bach Commission (2017) sought to address. Under the previous legal aid system, the Legal Services Commission was required by law to gauge legal need to commission legal aid to meet it. Since 2012 there have been no new legal needs surveys, so there is no definitive idea of whether legal aid is currently **meeting need**. The current civil legal aid system is one that one would have designed; it is the product of a thousand cuts and an approach in which access to justice is secondary.
3. Apart from making a public provision such as legal aid available, there is an ongoing need to make the public aware of it and **how to access it**. Legal aid's contracted providers are forbidden from advertising the service, so the main platform on which it is publicised is the gov.uk website. We believe that this lack of active public engagement **erodes trust** in legal aid as a means of upholding rights: simply posting information online does not discharge government's duty to educate and inform the public about this vital provision. Therefore, legal aid's disappointing performance continues to decline, short-changing the public and raising sustainability concerns.
4. As predicted in LASPO's equality impact assessments, it is adversely and disproportionately affecting disadvantaged groups and groups with protected characteristics. The direct and indirect effects of this are not sufficiently understood. People may be deterred from seeking help now, but their problems do not go away and are likely to escalate if not resolved. We believe that the problem is particularly acute with human rights. By **distinguishing between 'normal' scope and 'exceptional' cases**, or between presumption to provide and presumption to deny, legal aid does not sufficiently protect human rights in practice.

The human impact: rights without remedies

5. Legal aid cuts have had a devastating effect on the ability to enforce people's rights, resulting in 848,000 fewer cases helped. The decline in legal aid uptake is not down to a decline in need. Proxy indicators bear this out: soaring figures for homelessness acceptances, possession proceedings, insolvencies, benefits appeals and immigration appeals. That legal aid uptake

should decline as need for it grows is proof of how broken the current system is. Where Law Centres and other agencies are otherwise resourced, **some help is still available, no longer by right but contingent on charity**. But where do people go for legal assistance whom Law Centres and others are unable to help? There is hardly any research on this, but every frontline agency has been seeing more people being turned away from more agencies. The real question here is at what point the public bodies responsible cannot help but notice.

6. Our largest Law Centre illustrates the impact of legal aid cuts on the availability of legal assistance and on unmet need. Last year, the Law Centre received 80,000 telephone enquiries, over 200 a day. Full casework services are the ones where capacity is most limited, largely by funding: last year, of 1,100 referrals the Law Centre received, it could take up only 300, or just under one in four cases. Like other Law Centres, it augmented its reduced in-house capacity through pro bono services, which can provide one-off advice and allow the Law Centre to triage cases for a full casework service in house. Last year, it assisted 4,200 cases through pro bono clinics alone, at a cost to the Law Centre of approximately £10,000.
7. Law Centres are keen to maintain competencies that are vital for their mission regardless of the remaining scope of legal aid. For example, legal aid no longer covers employment law problems, except discrimination cases. Last year, one Law Centre that has preserved employment law competency received just under 1200 related enquiries, of which it assisted 870 with legal advice. However, unlike with legal aid, funding for this service is not guaranteed beyond next year.

Equality, discrimination and the legal aid telephone gateway

8. In our primary evidence, we argued that cuts to early legal advice were driving underuse of the Equality Act to challenge discrimination, and that this was compounded by legal aid's channel of delivery, the telephone gateway, which helps too few people, and too few get face-to-face help if need it. The following examples from Law Centres' recent experience illustrate the challenges of accessing legal help to uphold the right to protection from discrimination. At least one Law Centre reports that it has not successfully signposted people to the gateway at all in nearly five years of the gateway's operation.
9. 'Paul' (all client names below are changed) is a military veteran who suffers with Post-Traumatic Stress Disorder and is on medication for depression and anxiety. He is also a victim of domestic violence and has residence of his young daughter. He was facing eviction by his mortgage lender within less than a week. The Law Centre solicitor called the gateway while with him in order to ask for the entitlement number to be able to provide face-to-face advice, so she could make an application to prevent his eviction and represent him at court. This reasonable adjustment was repeatedly declined and only enabled by escalating the matter to the Legal Aid Agency contract manager. This enabled her to prevent Paul's eviction despite the bank's opposition, and help him apply for a relief grant to clear his debt arrears. A less experienced lawyer, or one less familiar with legal aid guidance, would have given up and Paul and his daughter would have been evicted.
10. 'Gavin' had suffered employment-related disability discrimination. He found it hard to talk on the phone due to anxiety issues, so it was his mother who first approached the Law Centre, when in a face-to-face meeting the solicitor assessed his problem and gave initial advice. Gavin's mental health problems were manifest to the solicitor, who tried to get the telephone gateway to refer him to face-to-face advice. This was refused twice, by the initial operator and again by the helpline specialist. They wanted to assess the client's needs themselves on the phone, by email or face-to-face, which would have required Gavin to travel to another city to be seen. The Law Centre solicitor had to tell Gavin that, despite already being in touch with a local provider, he would not be able to access legal aid through it, instead needing to email helpline providers with his details.

11. 'Shane' had a discrimination claim against his employer, but had to chase the legal aid telephone gateway providers as they would not return his calls, took a long time to confirm his eligibility, and then more time to assess the merits of his claim. A Law Centre assisted where possible, for example, in helping him draft key documents such as a schedule of loss. Eventually, several days before the final hearing, the gateway provider told Shane that his claim did not have sufficient benefit for them to help him. The Law Centre stepped in to advise him ahead of the hearing, where he was successful. Justice was served and Shane had a good outcome, but the Legal Aid Agency did not pay the Law Centre for doing the right thing.
12. Some clients have also reported that, when speaking to the helpline, they had been offered advice on the discrimination aspect of a claim only and told to seek advice on related problems elsewhere. 'Omar' had a discrimination claim against his former employer, as well as an unfair dismissal and unpaid wages claims. He had initial help from a Law Centre and was accepted onto the gateway and referred to a provider – only to return two months later, saying they could only assist with the discrimination part of his claim. Such arrangements undermine the efficacy of legal aid and poorly serve people whose rights have been breached.

Exceptional Case Funding: no 'safety net'

13. As suggested above, a key element in the inadequacy of the Exceptional Case Funding (ECF) scheme as a 'safety net' for human rights cases is precisely its exceptional nature. Without clear and transparent threshold criteria to satisfy, every application to the scheme is uncertain. Add to this the burden of arguing and evidencing an exceptional case with reference to breach of human rights, and once can see how laypeople and lawyers alike think twice before applying, resulting in disappointingly few grants.
14. It takes expertise and persistence to prevail over the Legal Aid Agency and be granted Exceptional Case Funding. 'Sue' had a complex welfare benefits Upper Tribunal case, which already had permission to appeal – meaning the judge had already acknowledged important points of law in the case – and was listed for a hearing. A Law Centre advised her, took on her case and applied for ECF last September. A barrister agreed to cover the hearing and undertake preliminary work. At first, the Legal Aid Agency declined, claiming that Sue's case was within scope of normal legal aid. The Law Centre solicitor had to remind them of their own rules, whereby normal legal aid funding at this level was not applicable when representation is needed. The Agency then questioned the appeal's merits again and made several requests for document copies from Sue's file. After an 18 week wait, legal aid was finally granted in January, just a fortnight before hearing.
15. 'Linda' is disabled. She was unlawfully evicted almost a year ago and has lost all of her possessions. A Law Centre solicitor was told that a damages-only claim was out of normal legal aid scope, so applied for ECF last July. This started a seven-month long correspondence with the Legal Aid Agency, in which the Agency requested more information only to decline the application, the Law Centre appealed the decision and was declined again. In February, the Law Centre lodged a complaint as the ECF application was declined for allegedly not providing information that in fact had already been provided. It took the Agency a week simply to acknowledge receipt of the complaint. A person in outstanding need of legal assistance would have given up very early on.
16. 'Claudine' is a French national who has been living in the UK since 1996. After working for 18 months, she fell severely ill and has been supported by welfare benefits since. Recently she moved to an area where Universal Credit is fully rolled out and was told that she does not have the right to reside, so fails the habitual residence test and cannot claim for assistance with her housing costs. Her rent arrears have triggered possession proceedings. The Law Centre appealed this decision but DWP have asked the tribunal to strike out the appeal, wrongly claiming that a post code mistake voided Claudine's claim. The only benefit Claudine

can claim is Universal Credit and without it she is destitute. The Law Centre wants to help her but, as first-tier benefits appeals are out of legal aid scope, the only way to fund the case would be through ECF. Given their frustrating experience with ECF, they are reluctant to invest the significant efforts in applying.

Judicial Review: no good deed goes unpunished?

17. Judicial Review is a useful tool for challenging the decisions of public authorities. Often it is effective as a deterrent, too, prompting reconsideration merely by *threatening* to bring a Judicial Review. For Law Centres and other legal aid providers, half the deterrent effect lies in a public authority knowing that a Law Centre *can indeed* challenge it. However, since 2013, the Legal Aid Agency has operated a 'no permission, no payment' rule, whereby a legal aid provider would not get paid for their work until the High Court grants permission for the Judicial Review. As pre-permission work can be considerable and the risk of not being paid for it is real, this had a chilling effect on legal aid providers. The problem here is twofold. Sometimes, cases do not get permission on the papers alone, but do so in a subsequent oral hearing, increasing the risk to legal aid providers. Oftentimes, cases with merit do not get to permission stage at all, because the public authority realises its error and withdraws its decision, or settles the case, before a hearing. In such cases, a client may enjoy a favourable outcome, but their legal adviser is left in the lurch.
18. 'Amina' and 'Femi' and their six children, including an infant, became destitute but the council declined their application for support under s. 17 of the Children Act 1989 (entitling destitute migrant families with children to local authority support). Then, late last September, they were evicted from their private rented home and spent that night sheltering the A&E waiting area at King's Hospital in south London. Their Law Centre solicitor applied for urgent legal aid, and by the time of its approval has already instructed counsel, who applied for out-of-hours interim relief, so the court ordered the council to put the family in temporary accommodation pending a new assessment of their s.17 application. With permission for legal aid declined on the papers, a fresh application was made for permission at an oral hearing, but the day before the hearing the council saw sense and settled the matter. The family got their support and withdrew their application for Judicial Review. However, legal aid will not pay the Law Centre and Counsel, who have done so much work in urgency. As a system, or provision, this is not sustainable.
19. 'Diego's family is vulnerable: a migrant family in which his father has been violent toward his mother. He is working and supports his sister (as primary carer) and mother, and all still live with his father. The Home Office granted him limited leave instead of Indefinite Leave to Remain, so the Law Centre challenged this by Judicial Review. The Legal Aid Agency repeatedly asked for more means evidence, much of which was already uploaded onto CCMS (its notorious online case management system) and receipt confirmed. Claiming they cannot see the evidence, the Agency revoked and reinstated Diego's legal aid certificate twice, seemingly unable to take an overall view of means in unusual circumstances. This case is sensitive, with a risk of further domestic violence against the mother, but the family and their Law Centre are still being sent hither and yon.

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