



**International
Legal Aid Group**

*'Resolution Chair Slams Failing New Legal Aid Digital System'
– Family Law Week*

Issue #35

March & April 2015

SUNNY PERIODS IN CANADA, GALES IN ENGLAND AND WALES

Legal aid is under severe stress in England and Wales. The position is likely to get worse as further cuts are made. Two pieces in the newsletter deal with the consequences. The Bingham Centre for the Rule of Law is raising issues about the purposes of access to justice policy. Various official bodies responsible to the UK Parliament responsible for financial monitoring are also, in a totally different context, asking much the same question. Meanwhile, a legal clinic in Ontario has developed a demonstration project around a legal health check up that plays to the strength of its community links. Over in Hungary, the struggle continues to wrest the appointment of defence lawyers away from the hands of the police.

ILAG's conference will be held in Edinburgh next month. The next edition of the newsletter, which will proceed on a six monthly basis, will be circulated by the end of the year and will contain coverage of the discussion. Anyone who would like to write an article for inclusion should write to me at rsmith@rogersmith.info.

If you are following developments in the use of digital technology for low-income clients then you might be interested in the quarterly update produced for the Legal Education Foundation. This is to be found at: <http://thelef.org/wp-content/uploads/2015/05/Digital-Technology-Spring-2015.pdf>.

This includes:

- (a) Articles by Sherry MacLennan of the Legal Services Society of British Columbia on the revamping of MyLawBC and Roger Smith on the online Conflict Resolution Tribunal that the province is developing;
- (b) Articles by Beatrice Karol Burks of Citizens Advice on the revamping of its website and Roger on web-based employment provision in England and Wales and a recent report advocating an online dispute resolution pilot;
- (c) A review of research on the Dutch *Rechtwijzer*, a comment from one of its authors, Marian van Dijk and an update on progress by Corry van Zeeland.

LEGAL HEALTH CHECKUP: A POSTCARD FROM SOUTHERN ONTARIO

Roger Smith

Halton Community Legal Service is a tiny law centre ('community legal clinic') based in southwestern Ontario: it has a core staff of only five. But, director Colleen Sym and the clinic team have come up with a brilliant idea and seen through excellent execution, which has resulted in an

initiative, which would surely be adaptable elsewhere. The project is a Legal Health Check Up. The basic notion is simple: you ask people a series of questions designed to identify if they have legal problems and then set about helping them solve them. The concept is not original. Various organisations around the world have tried - are trying - this approach. Three things, however, make the Halton check up remarkable. First, it is integrated within an approach that involves key community intermediaries (of which there are seven ranging from an Anglican church and the Society of St Vincent de Paul to Voices for Change, Halton) and is the product of collaboration between these participating organisations. Second, digital is being incorporated into the check up - it is loaded onto iPads given to people in the organisations and is available on the net from its own website (<https://legalhealthcheckup.ca>). Third, the project team was shrewd enough to hire a first class researcher in the legal services field (Ab Currie once of the Canada's Department of Justice and currently Senior Research Fellow at the Canadian Forum on Civil Justice) to evaluate the project; to link its results with the broader picture; and to produce a report which illustrates the value of community-based law centres at a time when policy makers around the world are going cool on the idea (<https://legalhealthcheckup.ca/pdf/legal-health-check-up-pilot-evaluation.pdf>).

The check up is a straightforward set of around 50 questions organised in five different sections. These are the eight questions on income, which give a flavour of how - and what level - the process works:

Do you ever have trouble making ends meet?
Do you rely on food banks and community dinners?
Do you need help getting or keeping any of [this list of] benefits?
Do you need help when you do your taxes?
Can you afford to buy prescription medicine if you need it?
Is anyone contacting you to pay outstanding bills?
Is there anything else you'd like to tell us about income issues?

The project was run as a pilot. It had a predictable effect on the workload of the clinic: cases went up by a third. However, it clearly involved the partnership organisations to a large extent as well. The intermediaries seemed generally keen and what they liked was the 'trigger' effect of helping with the check up: 'often it was the conversation around the [check up] rather than directly responding to the questions that uncovered the problem' reported the Halton Hills Family Health Team, '... it often takes a long time [to fill in the form] because the person will typically not answer yes or no, they will want to tell their story'. This role of the checklist was reported also by St Vincent de Paul: 'people internalise their problems and put them aside. The process of filling out the ... form helps getting things out.'

One sobering finding (for legal aid activists) reported by some of the partner organisations was the hostility among a significant number of users to the notion of anything 'legal'. An Anglican rector reported that 'legal is a red flag ... the people I am talking to are so diminished by the system and legal aid is perceived as part of the structure'. As a worrying assessment on legal aid, Ab Currie reported: 'the legal world is seen as part of the wider - and hostile - world of bureaucratic control over [users] lives.' The process seemed to be sufficiently demystifying: between 65 and 90 per cent of the completed forms resulted in a referral to the legal clinic as users overcame their initial prejudice.

Mr Currie's compares the findings of the pilot with other work. He is in a good position to consider the general incidence of legal problems in Canada precisely because he is the guy who has done the research, *The Legal Problems of Everyday Life: the nature, extent and consequences of every day justifiable problems experienced by Canadians* (http://www.justice.gc.ca/eng/rp-pr/csj-sjc/isp-sjp/rr07_la1-rr07_a1/rr07_la1.pdf). The users of the check up manifest significantly higher proportions of multiple problems than the overall population (60 per cent as against a national 15 per cent). In order of magnitude, problems related to income, housing, family social and health, employment and education. For jurisdictions like England and Wales where legal aid for these areas has been cut, this sort of data from a domestic experiment of a similar kind would produce some

useful empirical information on the effect of legal aid cuts and, if replicating the partnerships of the Halton experience, might help to keep in place some of the coalition against them. The evaluation has a further contribution to make in terms of people's experience of poverty and stress:

'Early intervention is frequently proposed as an approach to detect problems early, avoid problems becoming critical and making resolutions easier before the problems become increasingly complicated and difficult to resolve. The qualitative data ... suggest that crisis is normal in the lives of highly disadvantaged people.'

Mr Currie backs the 'potential value of an expansion of the ... project to a more web-based guided information and supported self-help approach ... a web-based expansion might present an opportunity to provide service to that layer of need represented by people living precarious lives of low income, unstable employment and housing who are just outside the current client basis and eligibility guidelines for legal aid'. The health check is now available and anyone can complete it. The potential is exciting. One could imagine this as part of the front end of a *Rechtwijzer* type of service where guided pathways lead off from answers on a general check up to give specific assistance. One could even imagine some form of the legal check up being taken up by for profit enterprises. But, what looks crucial in this pilot is the engagement of a small number of local organisations clustered around a local agency focused on using the methodology to address the hardest to reach in their community. That would be the 'bog standard' justification for community legal provision. As the screws come down even tighter on funding, we need more empirical evidence that they work - and how they work - as a delivery model. Let's hear it Halton and its commitment to communication. May it inspire more organisations both to undertake pilots like this and to make their results public? Law centres and clinics may be defeated by politics but they should never lose out on the evidence of their effectiveness.

HUNGARIAN HELSINKI COMMITTEE'S APPLICATIONS PENDING BEFORE EUROPEAN COURT OF HUMAN RIGHTS

András Kristóf Kádár, Co-Chair, Hungarian Helsinki Committee

The case *Magyar Helsinki Bizottság v. Hungary* (No. 2), Application no. 62676/11 (<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-152532>) concerns the refusal of two of the HHC's FOI requests which were aimed at revealing disproportionate appointment practices by the police in criminal legal aid cases. The HHC requested police departments to provide the names of defence counsels appointed by the police in a given year (i.e. legal aid lawyers) and the number of their appointments per person. While most police units did provide the data, some refused the request, and the highest judicial forum in Hungary upheld the refusal, claiming that although these lawyers are funded from public money, their names and the number of appointments they get in a year do not qualify as public interest data. The HHC claims in the case the violation of its right of access to public interest data as guaranteed by Article 10 of the Convention.

The above case is important for the HHC from two aspects: (i) Firstly, ensuring that data such as the requested ones are available to the public as a main rule is vital in revealing deficiencies with regard to the appointment system currently endangering the right to effective criminal legal aid, and, thus, for advocating for a reform of the system. (ii) Secondly, the case concerns the role and function of NGOs as "social watchdogs", and a positive decision could strengthen the level of protection provided by the Convention to NGOs with regard to their right of access to public interest data.

The importance of the case is enhanced by the fact that we were notified in March 2015 that in another application concerning the same issue (*Magyar Helsinki Bizottság v. Hungary*, Application no. 18030/11, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115547>) the respective

Chamber intends to relinquish jurisdiction in favour of the Grand Chamber under Article 30 of the Convention.

The case was communicated on 29 January 2015, thus, under Rule 44 of the Rules of Court, the deadline for submitting requests for leave for third party interventions will have formally expired on 23 April 2015 (twelve weeks after notice of the application has been given to the respondent Contracting Party). We have been seeking to find out whether certain organisations – NGO's and academia – would be interested in submitting third party interventions to the ECHR in support of the HHC's view (we asked Amnesty International, Fair Trials International, the International Bar Association's Human Rights Institute, and the Open Society Justice Initiative to consider such a submission).

MEASURING POLICY ON ACCESS TO JUSTICE AND TAXATION IN THE UNITED KINGDOM - J. BEQIRAJ, J STEFANELLI, N PATEL - BINGHAM CENTRE REPORT 2015/1 (MARCH 2015)

Roger Smith

The Bingham Centre for the Rule of Law (<http://binghamcentre.biicl.org>) is a part of the British Institute of International and Comparative Law, an independent research institute based in London. It is named in honour of the famous judge, Lord Bingham and, since 2010 until his recent resignation, headed by prestigious academic Sir Jeffrey Jowell. This report is confirmation of its interest in the field of access to justice and legal aid - albeit within the context of linking its consideration with that of taxation and with particular reference to sustainable development goals deployed in the field of international development. Of particular relevance to those in the field of legal aid is its concern with the crucial issue of how access to justice can be measured. The report is, therefore, dealing with much the same issue as the National Audit Office and the Public Accounts Committee: how can we show that we are getting value for money in spending in the field of legal aid and access to justice.

The report dips its feet into the debate on basic definition. 'Access to justice' is pretty much like motherhood and apple pie: it is very hard to find a single person - from politician to citizen - who would say that they objected to access to justice as a fundamental principle of society. Even as Secretary of State announcing the largest ever cuts to legal aid in their history in England and Wales, Ken Clarke could say: "I genuinely believe access to justice is the hallmark of a civilised society".¹ The problem, of course, is whether 'access' qualifies or expands 'justice'. What - if anything - does it add to argue for access to justice for all in society rather than justice? The answer may well be that the attractiveness of the phrase - and hence its universality of use - lies in its elusive meaning and its somewhat less political flavour. But, in the modern world of outcome measurements, this is not good enough. We need to nail down this oft-quoted policy objective.

The report illustrates the difficulty. If the end purpose is not defined distinctly enough then measurement tends to focus on process not purpose:

Taking a definition of access to justice, which includes access to courts, access to legal advice and access to legal aid, the key UK Government policy objectives in this area are effectiveness, cost-efficiency and transparency.

The difficulty, explored in another paper in this newsletter, is that, under pressure of deficit reduction, these objectives tend to reduce to the cost of measures, which are, in any event, only proxies for access to justice. Has the cost be reduced to the minimum given the minimum

¹ *Guardian* 6 October 2011

obligations on the government - in this case, largely as defined by the European Convention on Human Rights (ECHR). The legal aid cuts were specifically designed to save legal aid protected by specific ECHR provisions e.g. Articles 6 (fair trial), 5 (liberty) etc.

The report's authors criticise the nature of the figures selected for evaluation:

The UK primarily uses quantitative indicators to measure court activities and performance. These, however, only provide the institutional perspective on the effectiveness of the system and tell a limited story about individuals' experience of the justice system, or indeed, the rationale behind any changes in the institutional picture.

We need also, say the authors, data on users' experience of the system.

More fundamentally, we need a clearer definition of the purpose and nature of access to justice. As to the former, the researchers say:

Ensuring access to justice serves two complementary overarching purposes. First, access to justice is an indispensable means of addressing injustices where they occur. For this to hold true, the system should be equally accessible to all and should lead to results that are individually and socially just. Secondly, guaranteeing access to justice for all groups of society, can serve the purpose of preventing injustices from arising in the first place.

This must be right as a general proposition but the wording is logically infelicitous: access to justice is being defined by the prevention of an opposite - injustice. Where does that take us? But, to be fair, the researchers have a more coherent approach in mind:

We adopt a comprehensive concept of access to justice that covers different stages of the process of obtaining a solution to civil, criminal or administrative justice problems.

This concept begins with free access to information about the existence of rights enshrined in laws, which are ideally simple and understandable to the public.

It then continues on to reflect the availability of, and access to, legal advice and representation, and access to complaints and dispute resolution mechanisms.

Finally, the notion of effective access to justice extends to include the ability of such mechanisms to provide fair, impartial and enforceable solutions to legal problems.

This tiered approach (emphasised in the setting of the above quote) is attractive and useful. My own view of the fundamental purpose of access to justice policy is that a government, as a constitutional requirement, should ensure that those for whom it has responsibility are dealt with, and deal with others, according to the law of the land and in a manner which overall just and fair - regardless of their financial or other resources. This requires that the duty on a government is to ensure, so far as it can, that:

- (1) All members of society are aware of law, which is relevant to their lives and activities;
- (2) Any dispute as to a person's position under the law is resolvable at affordable and cost and minimum effort;
- (3) Anyone, regardless of their resources, can, if required, obtain enforcement of a legal duty or right.

This tiered approach is differently worded but very similar to the approach taken in a practical context by the Susskind committee on online dispute resolution. It argued for an online provision - concentrating on courts and tribunals - which had the following attributes:

2.2 Tier One of HMOC [Her Majesty's Online Court] should provide Online Evaluation. This facility will help users with a grievance to classify and categorise their problem, to be aware of their rights and obligations, and to understand the options and remedies available to them.

2.3 Tier Two of HMOC should provide Online Facilitation. To bring a dispute to a speedy, fair conclusion without the involvement of judges, this service will provide online facilitators. Communicating via the Internet, these individuals will review papers and statements and help parties through mediation and negotiation. They will be supported where necessary, by telephone conferencing facilities. Additionally, there will be some automated negotiation, which are systems that help parties resolve their differences without the intervention of human experts.

2.4 Tier Three of HMOC should provide Online Judges – full-time and part-time members of the Judiciary who will decide suitable cases or parts of cases on an online basis, largely on the basis of papers submitted to them electronically as part of a structured process of online pleading. This process will again be supported, where necessary, by telephone conferencing facilities.²

Thus quote is useful to indicate the value of the tiered approach of the kind advanced by the Bingham Centre but it is intentionally focused on the role of the courts. The threefold definition above it is designed to state the desired outcome of government policy without prejudice to how it might be delivered. The question of delivery comes afterwards: if we agree these as the desired outcome of policy then how do we meet them. It is there that issues around legal aid or, indeed, the courts come centre stage. The scope, cost and effectiveness of legal aid is relevant to how the desired policy outcome of access to justice is carried out but is not definitive of whether the desired policy outcome has been attained - however suggestive it may be of such performance.

The Bingham centre makes the following conclusions:

First, the UK primarily uses quantitative indicators to measure court activities and performance ...

Secondly, our analysis of the UK system confirms that statistical data relating to the criminal justice system are better developed and more easily accessible. .

Thirdly, analysis also shows that the indicators currently used tell little about the causes of changes in trends. In this regard, more qualitative data would be valuable in enabling the Government to go behind the functioning of the institutions to take into account concrete individual experiences of the justice system. Research in the UK context has shown that there is an increasing awareness of the need to combine objective indicators with more subjective experience and perception measurements ... An assessment of the delivery of the outcomes in relation to improvement on access to justice is only possible by triangulating the indicators from different perspectives (Government, legal services providers and the public) and by analysing trends and relationships between sectors of reform. However, analysis shows that additional effort needs to be made to collect quantitative data in the UK. Presently, there is no regular commissioning of surveys ...

Fourthly, research shows that an important part of the debate on access to justice in the UK relates to access to legal representation and legal aid. As has been underlined extensively in human rights instruments, these are certainly important indicators of access to justice. However, their concrete relevance in ensuring access to justice may depend on other specific features of the legal and judicial system ...

Finally, the research carried out highlights that in trying to identify indicators for access to justice, an overlooked aspect is that litigation in courts represents a comparatively small volume of cases. This does not mean that justice is not a problem. A society may suffer acute problems of social injustice

² Online Dispute Resolution Advisory Group *Online Dispute Resolution for Low Value Claims* Civil Justice Council, 2015

or access to resources that are not justiciable as such ... Accordingly, the availability of public interest law mechanisms, such as complaints commissions or Ombudsmen, is an important indicator and promoter of access to justice, including social justice.

Moving from the argument above, it might be possible to take the conclusions further. First, the Bingham Centre accepts, rightly, that the UK is, by comparison with other states, quite good on the provision of statistics and that is important. That must be right. Second, it must be right in arguing that more is required to know whether legal aid, for example, is worth funding other than its cost and the number of cases that are funded. Just as the criminal statistics obtained from police, prosecutions and courts are supplemented by the British Crime Survey (BCS), which polls the population on their experience of crime so we need the same in justice. And, we can say something about the form of the BCS equivalent. We now have a well-explored methodology deriving from the work of Professor Hazel Genn and developed by the Legal Services Research Centre prior to its abolition on how to poll people on the number of 'justiciable' events that they incur and the result. We already have a baseline from which we can measure the population's response to issues with a legal context from which we can build comparison of improvement. We ought also to be using sources like law centres which are funded outside of legal aid as testing grounds for what justiciable issues are arising in practice and which are otherwise going unsolved. Between the two, we can begin the process of measuring outcome in relation to legal awareness. We can be specific about this as well as general. What is happening to all the women who have been excluded from legal aid in divorce cases? They were the biggest single group of losers in the latest round of cuts. We know from the statistics that they are not going into mediation in the numbers expected. We need specific research on what is happening that we can fold into an assessment of access to justice in the UK at the current time.

Above all, what the Bingham report shows, as does those of the NAO and the PAC, is the value of a debate about the fundamental purpose of legal aid and justice policy; the outcomes which we hope to obtain; and assessment of the means by which we seek to obtain them. Just saying that we have reduced the budget by 35 per cent is not enough to show much of a level of success other than in the crudest deficit reduction terms. Work on a post-cuts policy structure is now overdue. Both ministers and the legal profession may not like the debate to move beyond celebrating or lamenting cuts. But so it has to do. To the extent that the Bingham report takes us in that direction, it is greatly to be welcomed.

THE UK COALITION GOVERNMENT'S CUTS TO LEGAL AID: COUNTING THE COST?

Roger Smith

The Italian poet Dante, in the middle of his life, famously found himself lost in a dark and overgrown wood in which he lost the direct path. In the end, things turned out well enough and he created one of the great works of world literature. His experience is not that dissimilar to anyone seeking to work through the economic, social and political consequences of what are often called the 'LASPO' (Legal Aid, Sentencing and Punishment of Offenders Act 2012) cuts. They are, however, unlikely to turn misfortune to such good effect. There is - indeed, without more work, could not be - any really authoritative examination of the consequences. We have some indication from authoritative sources such as the National Audit Office. But, those who argue how extreme is the impact of the cuts need to develop better ways of demonstrating.

This is not to say that the legal aid forest isle is not full of noise. Echoing through it are the screams of bruised providers whose funding has been cut and ire raised: they proffer a clear assertion - though often little proof - of the consequences in terms of human misery, the cost to the economy

and other government departments.³ But hanging in the air is also the deep boom of official statements, all basically making variations of: ‘We don’t know and we don’t care’. As it was put to the House of Commons Public Accounts Committee: ‘The Ministry told us that it was not possible to know what the impact of the reforms might be outside of the Ministry. We heard from the Treasury Officer of Accounts that impact assessments often do not quantify costs of politic changes to the wider public sector ... the Ministry told us that the failure to monetise potential knock-on costs of reforms is “representative of a common pattern seen across government”’.⁴

There is no shortage of voices trilling the need for more research - from the National Audit Office to various academics. Thus, the former: ‘The Ministry of Justice is on track to make significant and quick reductions in it’s spending on civil legal aid. However, it has been slower to think through how and why people access civil legal aid; the scale of the additional costs to the Ministry likely to be generated by people choosing to represent themselves; and the impact on the ability and willingness of providers to provide legal services for the fees paid. Without this understanding, the Ministry’s implementation of the reforms to civil legal aid cannot be said to have delivered better overall value for money for the taxpayer.’⁵ And, as an example of the latter: ‘There was universal agreement in the literature that advice results in positive outcomes for clients and their households. However, almost all of the evidence originated from the ‘grey literature’, i.e. work from non-official sources, where the quality of the evidence was generally poor. For instance, only a handful of reports were able to provide detailed information on the data, a clear and robust methodology, and sound analysis from which they draw their conclusions. A clear problem throughout the literature, reported one set of researchers, was the lack of a consistent or universally adopted measure of outcome or quality.’⁶

A debate on the consequences of the LASPO cuts segues into a wider discussion of the economic costs and benefits of legal aid more generally. The legal services program in the United States was launched as part of an explicit anti-poverty objective. And there has been consistent interest in how you might measure effectiveness ever since - both in the US and elsewhere.⁷ The jury remains out, however, and the need for further research acknowledged even by those in the thick of advancing the economic benefits of legal aid.⁸

So, the consequences of the LASPO cuts raise difficult issues of a political, theoretical and practical nature encountered both in this jurisdiction and abroad. We need to begin with some definitions and limitations: This paper is concerned primarily with the effect of the “LASPO” cuts, that is to say the following ways in which the government intended to make savings from the legal aid budget - all of which can on stream around or about early 2013: the removal of most civil legal aid and advice save for cases of (tightly defined) cases of domestic violence and some other matters (largely those protected by the European Convention on Human Rights and the Human Rights Act)⁹; the introduction of a ‘mandatory’ telephone ‘gateway’ for some residual areas of advice; raising the merits test; reduction in financial eligibility; tightening of the conditions for judicial review applications; reductions in remuneration.¹⁰ Thus, other issues such as wider restrictions to judicial review (where battles continue), costs reform (the aftermath of the ‘Jackson’ report) or even local

³ See e.g. Review of Evidence to the LASPO Act Enquiry *Legal Action* June 2014

⁴ Para 22, *Implementing Reforms of Civil Legal Aid* House of Commons Committee of Public Accounts, HC 808, 2015

⁵ Amyas Morse, head of the National Audit Office, 20 November 2014 <http://www.nao.org.uk/report/implementing-reforms-to-civil-legal-aid/>

⁶ Low Commission Professor Graham Cookson and Dr Freda Mold *The business case for social welfare advice services: An evidence review – lay summary* July/August 2014

⁷ See A Houseman and E Minhoff *The Anti-Poverty Effects of Civil Legal Aid* Prepared for the Public Welfare Foundation., October 2014

⁸ See above

⁹ The remaining issues in scope contained specified matters in relation to actions against the police, clinical negligence (only neurological damage to infants); community care, debt, discrimination, education, family (very limited), housing (also very limited), immigration and asylum (again very limited), mental health, various miscellaneous matters, public law, and welfare benefits (very limited).

¹⁰ See, for a good summary, House of Commons Library *Civil legal aid: changes since 1 April 2013*

authority funding cuts are not considered - even though obviously linked. However, the catastrophic fall in the number of tribunal applications is referred to below since it may, at least in part, be related to the reduction of legal aid availability and was abruptly manifest in the first quarter of 2013.

Within the LASPO cuts, the paper is concerned with the consequences for those who would formerly have received legal aid and advice. The cuts removed around £300m from the public funding of providers. This has had a massive effect in terms of those providers who concentrated on civil legal aid both in private practice and in law centres or other NGOs. Many in the latter category were simply wiped out or had, at the very least, to cut back completely on their legal aid work. Charting the wider effect of that slashing of provision is being left for another day.

Preference has deliberately been given to 'official' or (allegedly) 'neutral' sources of information - such as the reports of the House of Commons Public Accounts Committee or the Audit Office - over the assertions of providers or former providers. These need separate assessment. But, from whatever sources, objective hard statistics are hard to find. It should, however, be noted that a stream of studies emanating largely from the advice sector in this country and the legal sector more internationally assert methodologies sufficiently good to allow reasonable calculation. Citizens Advice, for example, calculated the return per pound spent on legal aid on housing advice as £2.34.¹¹

As to the consequences of the LASPO cuts, let us borrow wholesale from the report of the National Audit Office for a definitive official statement of their consequences in terms of various numbers:

- (a) £300m: NAO estimate of spending reduction in 2013-4 from the LASPO reforms.
- (b) £268m: NAO estimate of expected annual reduction in spending as a result of LASPO reforms.
- (c) 685,459: civil legal aid matters the Legal Aid Agency (the Agency) would have been expected to approve in 2013-14 without the reforms.
- (d) 361,551: civil legal aid matters the Agency expected to approve in 2013-14 as a result of the reforms.
- (e) 300,496: civil legal aid matters actually approved in 2013-14 (17% fewer than expected) 18,519 or 30 per cent.
- (f) 9,000: increase in the number of cases starting in the family courts in which neither party had representation
- (g) 'The Agency approved significantly fewer mediation cases and mediation assessments than it expected in 2013-14. It expected to approve 39,668 assessments and actually approved 13,423. It expected to approve 23,609 mediation cases, and in fact approved 8,432. As a result, the Agency spent £20 million less on mediation than it forecast.'¹²

The picture, overall, is, therefore of cuts even more severe than were initially expected. The savings were over £30m (around 10 per cent) more than expected. The fall in the number of cases was greater by 17 per cent than expected. Family mediation fell by more than a half when it was expected to grow. Thus, the cuts themselves had a wider 'chilling' effect on provision, which meant that even those theoretically, still within scope failed to claim.

¹¹ . Towards a business case for legal aid. Paper to the Legal Services Research Centre's eighth international research conference, Citizens Advice, 2010, available at: www.citizensadvice.org.uk/towards_a_business_case_for_legal_aid.pdf. quoted in P Cookson and F Mold 'The Business Case for Social Services Welfare Advice Services *Legal Action Low Commission Evidence Review* July/August 2014.

¹² NAO report, para 1.15

The effect of the cuts (linked with related issues such as rises in tribunal fees and small claims court costs) can be seen in related statistics:

All tribunal appeals (except those relating to immigration) fell off a cliff in the second quarter of 2013. The Ministry of Justice reported:

HMCTS Tribunals recorded 74,401 receipts in the period April to June 2014. This is down 16% on the previous quarter, and 71% when compared with the same period of 2013.¹³

To some extent, this fall is due to procedural diversion from appeals through mandatory review in the case of social security or referral to ACAS in employment. However, the Ministry was forced to acknowledge a likely explanation for the latter:

Fees for Employment Tribunals and the Employment Appeals Tribunal were introduced for claims received on or after 29th July 2013, alongside wider reform of procedural rules (following the Underhill Review of Employment Tribunal Rules).¹⁴

As to the consequences of mandatory social security review, the Ministry, alas, reported:

Robust data is not yet available to assess the impact of these changes on tribunal receipts.¹⁵

There is, furthermore, evidence of displacement. An advice structure underfunded and under pressure, still exists to take some degree of overflow from the cuts to legal aid. Behold, the National Audit Office.

Some individuals who are no longer eligible for civil legal aid may choose to pay for legal advice themselves. However, many who would have received legal aid are unlikely to be able to afford full legal advice or representation for their case. The Ministry acknowledged it was likely that more individuals would seek free advice from third-sector providers because of the reforms. It did not try to forecast the extra demand for these services.

Our consultation with providers indicates that third-sector providers may not be able to meet the extra demand generated by the reforms. Among legal firms/advocate respondents, 49% told us they were referring more clients to third-sector organisations since April 2013 and 70% of third-sector respondents told us they could meet half or less of the demand from clients who were not eligible for civil legal aid.

This finding is consistent with other recent research. For example, Citizens Advice reports that there has been a 62% increase in people seeking advice online about help with legal costs since the reforms, while 92% of Citizens Advice Bureaux are finding it difficult to refer people to specialist legal advice since the reforms were implemented.¹³ Similarly, the Bar Pro Bono Unit reports that requests for assistance have increased by almost 50% since April 2013.¹⁶

Finally, we have evidence that increasing numbers of people are representing themselves - presumably from the beginning of a case - where we would have no data - through to litigation. This was recognised by both the Public Accounts Committee and the National Audit Office: this from the former:

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352914/tribunal-statistics-quarterly-april-june-2014.pdf, P8

¹⁴ AS AVBOVE

¹⁵ as above

¹⁶ <http://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>

16. In the year following the reforms, there was an increase of 18,519 cases (30%) in which both parties were representing themselves (known as litigants in person or LIPs) in family courts. Within this, there were 8,110 more cases involving contact with children in which both parties were LIPs in 2013–14, an increase of 89% from the previous year. Judges have estimated that cases involving LIPs can take 50% longer and many legal professionals have said that they place additional demands upon court staff. The NAO also identified an increase in the number of contested family cases reaching the courts, with the figure rising from 64% in 2012–13 to 89% in 2013–14. We heard evidence from the Magistrates' Association that magistrates feel that the significant rise in the number of LIPs in family courts has had a negative impact on the administration of justice.¹⁷ The NAO was willing to put a figure on the cost of this growth in self-representation though its methodology is probably somewhat rough and ready:

Based on the increase in self-representation, we estimate the additional cost to HM Courts & Tribunals Service at £3 million per year, plus direct costs to the Ministry of approximately £400,000 ... There may also be costs to the wider public sector if people whose problems could have been resolved by legal aid-funded advice suffer adverse consequences to their health and wellbeing as a result of no longer having access to legal aid'.¹⁸

Fourth, some people may just lose out. The Public Accounts Committee reported:

We heard from the Magistrates' Association that some people have difficulties with the court forms and processes involved in family law matters. For example, the application form for a case involving contact with children is 24 pages long, and the guidance document for that form is 32 pages long. The Magistrates' Association told us that this complexity might prevent people from accessing support to maintain a relationship with their children.¹⁹

The cuts have clearly had an influence beyond themselves. Solicitors evidently played a major role in encouraging mediation in family cases. Even though funding remains, the number of cases going to mediation has slumped:

The Ministry continues to fund mediation through civil legal aid and expected 9,000 more mediation assessments and 10,000 more mediations to start in 2013–14. However, mediation assessments fell by more than 17,000 and there were more than 5,000 fewer mediations starting in 2013–14 than there were in 2012–13.²⁰

Both the National Audit Office and the Public Accounts Committee criticised the Ministry of Justice's lack of wider perspective than simply delivering the cuts to its legal aid budget. The NAO recommended that:

a The Ministry should develop measures to evaluate the impact of the reforms more fully, including estimating any wider costs to the courts system. For example, it should improve its data on court case duration, potentially as part of its criminal justice system efficiency programme.

b The Ministry should consider what further steps it could take to meet its objective of reducing the number of cases going to courts in the areas of law removed from the scope of civil legal aid. This includes continuing to monitor the use of mediation, and considering what further action it should take if take-up does not increase in line with expectations.

¹⁷ [http://www.parliament.uk/documents/commons-committees/public-accounts/HC%20808%20civil%20aid%20final%20\(web%20version\)%20v2.pdf](http://www.parliament.uk/documents/commons-committees/public-accounts/HC%20808%20civil%20aid%20final%20(web%20version)%20v2.pdf), p13

¹⁸ as above

¹⁹ [http://www.parliament.uk/documents/commons-committees/public-accounts/HC%20808%20civil%20aid%20final%20\(web%20version\)%20v2.pdf](http://www.parliament.uk/documents/commons-committees/public-accounts/HC%20808%20civil%20aid%20final%20(web%20version)%20v2.pdf)

²⁰ <http://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>, para 10

c The Ministry should establish the extent to which those who are eligible for civil legal aid are able to access it and what obstacles, if any, exist.

d The Ministry should develop its understanding of the challenges facing civil legal aid providers and the provision of support across the country. It should use this improved understanding to ensure sustainability in the market and coverage across the country.²¹

In calling for more research on impact measures, the NAO joins just about every interested institution or researcher in the field. Thus, we have Professor Cookson and Dr Mold on evidence to the Low Commission (independent but established by the Legal Action Group):

Primarily, there is a need for further evaluation of advice services, to determine their effectiveness and value for money. Currently there is an absence of good-quality research on the economic value of legal aid, focusing on costs of services and return of investment, especially research based in the UK. More quantitative, longitudinal studies are warranted in this area.²²

The US study referred to above is demanding about the methodology of what needs to be done: Many of the economic benefit and Social Return on Investment studies make inadequately supported assumptions in the course of describing the cost savings resulting from legal services. A classic example of an inadequately supported assertion is the assertion that a certain percentage of people who legal services attorneys saved from eviction or from having their mortgage foreclosed would have had to go into emergency housing had it not been for the legal services intervention. Because little research has been done on the number of people who resort to emergency housing in the absence of a legal services intervention, the economic benefits studies rely on a single, small, outdated study from New York State to suggest that somewhere in the neighborhood of 20 percent of homeless people resort to emergency housing. An updated study, tracking people evicted from rental housing or mortgage foreclosure, would offer us a much more realistic picture of what actually would have happened to people evicted or whose mortgages were foreclosed. A corollary study could examine what happened to people who were not evicted.²³

Any comprehensive study of the impact of the LASPO cuts would require at least three elements.

First, an analysis of the economic consequences undertaken with the rigour suggested above. We just don't really have the data to go beyond assertion at the present time. And the truth is that we may never be able to get absolutely reliable figures but we should certainly try. Approaches do not have to be drily mathematical. It may be possible to find areas in the country where the effects have been mitigated - through the provision of pro bono services or with funding from local authorities or foundations - which can be compared with those where the cuts bit as intended. If these cuts are ever to be ameliorated we need more than assertion to back up argument - even if we are addressing ourselves to a more sympathetic government than the present.

Second, we need to chart, if we can, the consequences of the cuts in terms of social exclusion and community (in) cohesion. What is the experience of women excluded from legal aid during divorce? What are the consequences for their children? Third, we need to identify the decline in public accountability that arises from the reduction of appeal, review and challenge rights. At stake here are some of the great gains of the 'welfare rights' movement which shifted the discourse from discretionary donation to legally backed entitlement. Can this be done? Well, undoubtedly not perfectly. But, it will help us in the struggle to preserve services and to regain them to do our best.

And, finally, the ultimate test of a legal aid scheme for the poor is how well 'justiciable problems' might be resolved at all levels of society. We need something like the British Crime Survey, which

²¹ para 17 as above

²² as above

²³ Houseman and Minoff as above.

nationally charts whether people are finding it easier or harder to resolve their legal problems. Here, we do have a methodology - developed by Professor Hazel Genn²⁴, used by the Legal Services Research Centre before it was abolished as part of the LASPO cuts and followed around the world. Somebody needs to fund surveys that allow comparison of access to justice over time.

But don't hold your breath. Who will take up the role of the Dante of the justice system? The role is vacant: the need pressing.

NEWS

The news items shown below are largely compiled from articles on the internet, found on the basis of a simple search for terms such as 'legal aid', 'access to justice' and 'pro bono'. Therefore, readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will obviously fail after a period of time.

The news is collated by Paul Ferrie - ILAG's Researcher and Online Editor. Paul, a graduate of the University of Strathclyde Law School, is also a Trainee Solicitor, undertaking mainly civil litigation work.

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Australia

[Aboriginal Legal Services Warn Clients Will Face Court Unrepresented If Funding Cuts Go Ahead](#) – ABC News

[ACT Joins Chorus Of Government Protest Against Legal Aid Cuts](#) – Canberra Times

[Backlog Of Court Cases Targeted As SA Government Seeks To Speed Up Stalling Legal System](#) - ABC News

[Govt Committed To Legal Aid Funding](#) – News.com Australia

[Legal Aid Call For Additional \\$200 Million In Federal Budget To Help Address Growing Justice Gap](#) - ABC News

[Legal Aid Groups Welcome Funding Flip](#) – NT News

[Legal Aid NSW Takes Action On Bullying](#) – The Australian Business Review

[Legal Services For Vulnerable Groups Spared Cuts Amid Growing Pressure](#) - The Guardian

[Pressure To Reverse Australian Legal Aid Cuts](#) – Radio New Zealand

[Reversing Legal Aid Cuts Isn't Enough To Ensure Access To Justice](#) – The Conversation

[State And Territory Attorney Generals Ask George Brandis To Better Fund Legal Aid](#) – The Guardian

²⁴ H Genn *Paths to Justice: What people do and think about going to law* Hart, 19990

Canada

[Against All Odds, Legal Aid Ontario Is Getting Better](#) – The Toronto Star

[B.C. Introduces New Legal Centre For Parents In Child Protection System](#) – CTV News Vancouver

[Can't Afford A Lawyer? How Courtroom Innovations Help Self-Represented Litigants](#) – Our Windsor

[Legal Aid Vows To 'Weed Out' Bad Refugee Lawyers](#) – The Toronto Star

[Ontario Boosts Eligibility Thresholds For Legal Aid](#) – Legal Feeds

[Ontario's Legal Aid System Gets Some Well-Targeted Help](#) – The Toronto Star

[Ontario Legal Aid Toughens Rules After Lawyers Failed Roma Clients](#) – CBC News

[Peel Legal Clinics Get Almost \\$400K In Additional Funding](#) – The Mississauga News

[Stratospheric Law-School Fees Raise Bar For Access To Justice](#) – The Chronicle Herald

England & Wales

[620,000 Deprived Of Justice Because Of Legal Aid Cuts](#) – Morning Star

[A Third Of Domestic Abuse Victims 'Cannot Get Legal Aid'](#) – BBC News

[Access To Justice A Greater Concern Than Free Healthcare](#) – The Guardian

[Justice Committee Report Finds Legal Aid Reforms Harm Access To Justice](#) – Family Law

[Legal Aid Agency Sets Itself Digital Deadline](#) – Law Society Gazette

[Legal Aid Cuts Have Worsened The Plight Of The Vulnerable](#) – The Guardian

[Legal Aid Reforms 'Risk Serious Miscarriages Of Justice'](#) – BBC News

[Resolution Chair Slams Failing New Legal Aid Digital System](#) – Family Law Week

[Solicitors Fail To Stop Cuts In Legal Aid Defence Contracts](#) – The Guardian

[We Didn't Want To Cut Legal Aid, Says Justice Secretary](#) – Express & Star

India

[Bombay HC Wants Legal Aid Policy For Old, Poor Prisoners](#) – Times of India

[Delhi University Opens Legal Aid Clinics To All](#) – The Hindu

[MSU Students Offer Legal Aid To Prisoners](#) – Times of India

[Shoestring Legal Aid Group Helps Poor in Rural India](#) – New York Times

South Africa

[New Legal Aid Legislation Welcomed](#) – News 24

Scotland

[Criminal Justice Reforms Deliver ‘Disunited Kingdom’ Says New Report](#) – Centre for Crime and Justice Studies

[Judicial Revolution As Courts Backs Pre-Recorded Video Evidence](#) - Herald Scotland

[Kenny Macaskill: Corroboration Denies Justice To The Many Victims Who Suffer Behind Closed Doors](#) – The National

[New Centre Aims To Improve Access To Justice For Women In Scotland](#) – Scottish Legal News

[Scottish Government Drops Plans To Abolish Corroboration](#) – Scottish Legal News

[SLAB Chief Executive Lindsay Montgomery To Retire This Year](#) – Scottish Legal News

For more information about the work of the *International Legal Aid Group*, please visit our website which can be found at <http://www.internationallegalaidgroup.org>.