

## **Annex D**

### **LASPO Part 1 Post-Implementation Review**

The Government published its Post Implementation Review of Part 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) in February 2019.

LASPO made changes to the scope of, eligibility for, and fees paid under, legal aid. The review assesses the extent to which LASPO achieved its objective of delivering significant savings by focusing legal aid on the highest priority cases.

A Post Implementation Review of Part 2 of LASPO, which implemented reforms to civil litigation funding following the Jackson Review, was published at the same time. However, aside from the ban on referral fees in personal injury cases, this has few regulatory implications.

### **PART A – ASSESSMENT OF IMPACT OF LASPO REFORMS**

#### ***Civil***

With the availability of legal aid limited in various areas of law, volumes of publicly funded cases dropped and expenditure has fallen, albeit by less than forecast in the LASPO Impact Assessment. However, in social welfare law volumes have declined more than anticipated.

While significant savings have been made, stakeholder engagement raised a number of points regarding the wider impact of the scope changes. This includes: the paramount importance of early intervention; clustering of problems cutting across the scope of legal aid and a desire to explore location based legal services; the system not yet being capable of serving litigants in person; and the emergence of advice deserts as providers abandon legal aid work in certain categories of law.

LASPO did not make significant changes to the overall means testing approach or assessment, but the changes have resulted in legal aid being targeted at a smaller cohort of people. Stakeholders claimed that the threshold is set at a level that requires many people on low incomes to pay a contribution which they cannot afford while maintaining a socially acceptance standard of living.

Changes to fees paid to lawyers saved an estimated £110m in 2017-18. The number of providers doing legally aided civil work has fallen by 32% overall, although this varies between areas of law. Total income has reduced by 25% since 2012-13 but the average income per civil legal aid provider has increased by 11%. It is unclear whether this is due to changes in case mix or because the market is restructuring itself. Overall the distribution of work across different sized firms is stable, but those previously doing smaller amounts of legal aid work are more likely to have exited the market. The government also considers that geographical coverage is sufficient, aside from areas where there has long been an issue. Legal Aid Agency peer review statistics suggest that the quality of provision is broadly the same. Overall, the review concludes that the market is sustainable at present, but data is poor and there are areas where government needs to look at remuneration further.

The advice and third sector reported an increase in demand since LASPO. Legal Aid Agency data shows the total value of work for not-for-profit (NFP) providers halved. NFP providers mostly work on social welfare and immigration law where scope changes have occurred. Although the number of NFP providers has fallen by 45% the average income per provider is similar to pre-LASPO levels.

### ***Criminal***

This is covered in the board briefing document. Of particular note, the review challenges claims that the criminal legal aid market is not sustainable by echoing the finding of the Jeffrey Review that the market is 'oversupplied' in the context of falling numbers of cases over time. The legal support vision document (see below) re-announces a government commitment to complete a comprehensive review of the criminal legal aid fee schemes and structures by summer 2020.

### **PART B – VISION FOR THE FUTURE OF LEGAL SUPPORT (aka LEGAL SUPPORT ACTION PLAN)**

Alongside its assessment of the impact of LASPO the government has published a new vision for legal support. Legal support refers to the totality of support available to people from information, guidance and signposting at one end of the spectrum to legal advice and representation at the other.

The vision is based on the following three overarching themes:

- Entitlement to legal aid for the most vulnerable
  - A review into the thresholds for legal aid entitlement
  - A public campaign to raise awareness of entitlement to legal support
  - Increase the scope of legal aid for separated migrant children and reinstate immediate access to face-to-face advice in discrimination, debt and special educational needs cases
  - Simplify the Exceptional Case Funding scheme
  - Changes to legal aid for inquests
- Ensuring people can access the right legal support at the right time
  - Work collaboratively with providers to develop web based products which bring a range of legal support tools together in one place
  - Improve signposting advice and support from the telephone service
  - Use funding to encourage the delivery of legal support through technology
  - Evaluate the impact of legal support hubs, e.g. in GP surgeries
  - Test the impact of early legal advice in promoting early resolution through a pilot in a specific area of social welfare law
  - Enhance support to litigants in person, including through additional funding
  - Research on the interventions above to identify the best solutions
- Ensuring the government puts in place better systems, processes and decisions

- Improve the quality of decision making on legal rights by departments to remove demand at the outset, e.g. social security and immigration decisions
- Continue with the court modernisation programme
- Use nudge techniques to divert people away from court processes
- Law reform to remove avoidable demand for legal support, e.g. on divorce

While acknowledging the important role of professional legal advice and representation, the vision marks a shift in focus to other ways of supporting people at early stages. Echoing the recent review of legal aid in Scotland, there will now be an active public policy to promote a ‘channel shift’ for signposting from current face-to-face methods to online.

The vision also includes a chapter on the role of government in fostering a culture of innovation. It notes that radical transformation which characterises other services and sectors has not yet been replicated for legal support. A £5m fund has been created to explore: new ways in which legal support and advice can be delivered remotely through digital means; ways in which questions about a legal problem, and legal support itself, can be broken down; and, ways in which legal support can be delivered to litigants in person before, during and after their time at a court or tribunal.

A Legal Support Advisory Network will be set up to bring together organisations from the tech and legal sectors with other experts “to generate more productive conversations and break down the barriers”. The vision signals a more proactive role for government of strategic coordination of legal support work and innovation across the sector, going hand in hand with its LawTech work.