

# Post-implementation review of LASPO

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Written submission on behalf of the Legal Services Board

August 2018

## Executive summary

- The Legal Services Board (LSB) is the independent body created by the Legal Services Act 2007 (the Act) to oversee the regulation of legal services in England and Wales.
- The Act sets out eight regulatory objectives. We believe that it is appropriate for us to assess and comment on the impact of public policy on the regulatory objectives. The most relevant regulatory objectives in the context of legal aid are: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; and increasing public understanding of the citizen's legal rights and duties. Changes in the level of legal aid may either enhance, or conversely, be detrimental to the achievement of these objectives.
- We have evidence that is of particular relevance to assessing the impact of the LASPO reforms against one of the objectives of making these reforms, namely that of targeting legal aid at those who need it most. As part of that assessment, we believe that the MoJ should consider:
  - what has happened to consumers who are no longer able to access legal aid following the reforms, in particular what has the impact been on vulnerable people
  - whether any groups (including those from BAME backgrounds and lower social grades) have been disproportionately affected by the reforms
  - what knock-on effects the reforms have had elsewhere in the justice system and also more broadly in other areas of public spending such as health.
- Our research shows that, in recent years, a growing proportion of individuals are handling their legal problems alone and a declining proportion are seeking advice. Actual or perceived costs are a key factor in determining what action people take when faced with a legal problem. Individuals whose finances are stretched, but not severely enough to qualify for legal aid, are the least likely to use a lawyer. Reductions in legal aid carry the risk of increasing the number of these 'stretched consumers'.
- In this context, we are concerned by, and ask the MoJ to have regard to, the evidence that:
  - following the LASPO reforms, there were falls in the proportion of family private law proceedings and domestic violence cases where both parties were represented and falls in the volume of mediation assessments
  - there are misunderstandings amongst consumers about the type of legal issue for which legal aid is available

- in a recent survey, the Pakistani, Black African and Mixed ethnic groups were proportionately the highest users of legal aid
  - consumers coming from lower social grades (C2DE) tend to use legal aid around twice as much in percentage terms as consumers coming from higher social grades (ABC1)
  - affordability of legal services is a key concern for people with mental health problems and their carers and consumers with learning disabilities. Changes in legal aid could therefore have a particular impact for such vulnerable consumers.
  - there is a statistical link between getting early legal advice and resolving problems sooner. At any stage in dealing with a legal issue, people who did not receive early advice were 20 per cent less likely than average to have their issue resolved.
- We recognise that our evidence alone cannot be definitive but will need to be considered alongside evidence from other stakeholders. Research evidence cited in this submission could suggest that changes in legal aid introduced by LASPO may have, amongst other things, adversely affected particular groups and this could make it more difficult to secure the delivery of the objectives set out in the Legal Services Act.
  - We would welcome the opportunity to discuss our research and analysis in more detail with the review team.

# Submission

## Context

1. The Ministry of Justice (MoJ) is undertaking a post-implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The MoJ's terms of reference for the review<sup>1</sup> note that "Part 1 of LASPO ... made major changes to the scope of legal aid, the eligibility requirements for individuals applying for legal aid and the level of remuneration payable to individuals undertaking legally aided work." LASPO also made significant changes to the funding of civil litigation in England and Wales with a ban on referral fees between introducers and solicitors for personal injury work, and introducing fixed fees and changing recoverability of costs from the losing party. The LASPO reforms took effect from 1 April 2013.
2. The MoJ's terms of reference for the review state that the aim of the review is to assess the impact of the LASPO reforms against their objectives, namely:
  - to discourage unnecessary and adversarial litigation at public expense;
  - to target legal aid at those who need it most;
  - to make significant savings to the cost of the scheme; and
  - to deliver better overall value for money for the taxpayer.

## The Legal Services Board and the regulatory objectives

3. The Legal Services Board (LSB) is the independent body created by the Legal Services Act 2007 (the Act) to oversee the regulation of legal services in England and Wales. We hold to account regulators for the different branches of the legal profession.
4. The Act sets out eight regulatory objectives<sup>2</sup>. Under the Act<sup>3</sup>, the LSB "must, so far as is as reasonably practical, act in a way – which is compatible with the regulatory objectives" and "most appropriate for meeting those objectives".
5. We believe that it is appropriate for us to assess and comment on the impact of public policy on the regulatory objectives<sup>4</sup>.

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/686576/pir-laspo-terms-of-reference.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686576/pir-laspo-terms-of-reference.pdf)

<sup>2</sup> The Act, section 1.

<sup>3</sup> The Act, section 3. The regulatory objectives also apply to the frontline legal services regulators and the Office of Legal Complaints.

<sup>4</sup> We have limited evidence on the impact of the changes to the funding of civil litigation introduced by LASPO as we do not directly regulate legal services providers. The frontline legal services regulators are likely to be in a better position to provide relevant data. However, we did commission research on the impact of regulatory and legislative changes between 1999 and 2013 (ie prior to the LASPO reforms) on personal injury legal services which may provide some context for the LASPO reforms – see *Access to Justice: Learning from long term experiences in the personal injury legal services market* London Economics for the Legal Services Board, 2014 <https://research.legalservicesboard.org.uk/wp-content/media/Access-to-Justice-Learning-from-PI.pdf>

6. In our view, the most relevant regulatory objectives in the context of legal aid are:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers; and
  - increasing public understanding of the citizen's legal rights and duties.
7. While the regulatory objectives are not defined within the Act, in June 2017 we updated and published a paper which set out view of what each objective means for us and how we will interpret them when exercising our functions<sup>5</sup>.
8. There is considerable interplay amongst the five regulatory objectives listed in paragraph 6 when considering the role played by legal aid in the legal services sector. As we have explained in our June 2017 paper, access to justice means being able to exercise your legal rights. Consumers' ability to meet their legal needs depends, amongst other things, on their circumstances, their awareness of their legal rights and the affordability of legal services. Vulnerable consumers in particular may face greater challenges in achieving access to justice. Legal aid can play an important part in access to justice for those otherwise unable to meet their legal needs but, in turn, the use of legal aid will depend on public awareness of its availability and of how to obtain it. Access to justice allows everyone to participate fully in society and is itself reliant on the rule of law, which provides the necessary framework to allow access to justice to be achieved.
9. Legal services are valuable both to those using legal services and to society as a whole. Users of legal services – particularly those using legal aid - may be among the most vulnerable in society and find themselves in need of legal services at times of great distress. But the public more broadly also benefits from effective legal services, whether or not they use them. Legal services support the rule of law and the efficient administration of justice which underpin civil society, for example through clarification and enforcement of existing laws.
10. Bearing in mind the regulatory objectives, we believe that some of the key questions that the MoJ might address in assessing the impact of the LASPO reforms are:
  - What has happened to consumers who are no longer able to access legal aid following the reforms?
  - Are some consumers not accessing legal aid despite being entitled to do so as a result of lack of awareness of legal aid availability?
  - What are the characteristics of consumers who are no longer able to access legal aid? Are certain groups disproportionately affected by the changes?
  - What knock-on effects have the reforms had in other areas of the justice system and more broadly in areas such as health?
  - Does the case for the making these reforms take into account the wider societal value of ensuring that those who need legal services have access to them?

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<sup>5</sup> [http://www.legalservicesboard.org.uk/about\\_us/Regulatory\\_Objectives.pdf](http://www.legalservicesboard.org.uk/about_us/Regulatory_Objectives.pdf)

## Our evidence

11. Our evidence is of particular relevance to assessing the impact of the LASPO reforms against their second objective as noted in paragraph 2 above – the objective of targeting legal aid at those who need it most. We have carried out research and/or analysis of:

- how individual consumers handle their legal problems, including how many people seek advice and how many handle their legal problems alone, and how this has changed over time;
- the role that cost and perceptions of cost play in how people respond to their legal problems, including for consumers in vulnerable circumstances;
- changes over time in the proportion of court hearings where participants represent themselves rather than using legal services, and the volume of legally aided mediation assessments;
- awareness of legal aid amongst consumers; and
- changes over time in the supply of legal services by barristers and solicitors.

12. In addition, for the last eight years the Legal Services Consumer Panel (LSCP) has commissioned an annual survey of consumers to explore their use of legal services – the LSCP Tracker Survey. We note key legal aid-related findings from this survey below.

### *How legal problems are handled*

13. In July 2016, the LSB published its analysis of market outcomes associated with the delivery of the regulatory objectives of the Act<sup>6</sup>. In this report, we sought to use a wide range of our own and other organisations' data to assess how the legal services market had changed in the period between 2006/7 and 2014-15.

14. In our report, we noted that data from legal needs surveys showed that, between 2012 and 2015, a growing proportion of individuals handled their legal problems alone (up from 46% in 2012 to 54% in 2015) and that a declining proportion sought advice (down from 39% in 2012 to 32% in 2015)<sup>7</sup>. If individuals without any legal knowledge handle their own cases, rather than relying upon legal advisors, this may adversely affect the outcome. It will also have an impact upon, for example, the Courts if the individual represents themselves rather than using a qualified advocate. The judicial consultation on 'Reforming the courts' approach to McKenzie Friends<sup>8</sup> showed some of the issues faced by courts in dealing with litigants without representation.

15. When analysed by market segment, the data also suggested that taking no action at all was highest in the civil liberties market segment (34%) and that over the

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<sup>6</sup> Legal Services Board (2006) *Evaluation: Changes in the legal services market 2006/7-2014/15. An analysis of market outcomes associated with the delivery of the regulatory objectives* <https://research.legalservicesboard.org.uk/wp-content/media/2015-2016-FINAL-Market-Evaluation-Main-report1.pdf>

<sup>7</sup> Ibid paragraph B.1.17

<sup>8</sup> <https://www.judiciary.uk/wp-content/uploads/2016/02/mf-consultation-paper-feb2016-1.pdf>

past four years the proportion of people seeking advice had grown only in the residential conveyancing segment and had fallen in all other segments<sup>9</sup>. The data also showed that there had been a significant increase in the proportion of people making an active choice to handle their problem alone – up from 55% in 2012 to 64% in 2015<sup>10</sup>.

16. According to the LSCP Tracker Survey, following the LASPO reforms the proportion of consumers using legal aid to pay for their legal services increased from 5% in 2012 to 8% in 2014. However, from 2015 to 2017, the percentage of consumers using legal aid returned to 2012 levels (5%) and in 2018 the percentage of consumers using legal aid was 2%<sup>11</sup>. These changes may be driven by underlying changes in the problem type encountered by the survey sample (because the availability of legal aid depends on the problem type).

#### *The role of cost*

17. Our report then went on to consider what other research suggested about the reasons that people responded in the way that they did to their legal issues.
18. The LSB-commissioned research looking at how people respond to legal problems suggests a strong relationship between income, legal aid eligibility, and lawyer use in most types of problems<sup>12</sup>. This research found that those eligible for legal aid were more likely to use a lawyer than those earning up to £25k a year and not eligible for legal aid. The latter group – individuals whose finances are stretched but not severely enough to qualify for legal aid - represented around 50% of UK taxpayers in 2012, highlighting in our view the need for market reforms to ensure better access to legal services for all consumers, not just the most vulnerable.
19. Initiatives such as changes to regulation to remove unnecessary costs for legal services providers, and to allow them to compete with each other to deliver services in more innovative and cost-effective ways while maintaining consumer protection, should help make it easier for these ‘stretched consumers’ to access legal services<sup>13</sup>. The impact on access to justice of arrangements that can result in legal matters – particularly in the court – divided up among different legal professionals (with the associated risk of duplication of effort and increased costs) needs to be better understood. Improved consumer information and public legal education should also help people to be more aware of their legal rights and responsibilities and the options available to them when they encounter legal problems. We have reflected the need for changes like this in the second of our

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<sup>9</sup> Ibid paragraph B.1.19

<sup>10</sup> Ibid paragraph B.1.17

<sup>11</sup>

[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/2018/How%20consumers%20are%20using%202018%20Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2018/How%20consumers%20are%20using%202018%20Final.pdf)

<sup>12</sup> Op cit paragraph 2.18 referring to Figure 1.2, *How People Resolve Legal Problems*, Pleasence and Balmer, 2014, <https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>

<sup>13</sup> Joint research on innovation for the LSB and the Solicitors Regulation Authority in 2015 found that Alternative Business Structures (ABS) were 13-15% more likely to introduce innovative legal services than traditional law firms <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>. Research on unbundled legal services for the LSB and the Legal Services Consumer Panel in 2015 found that, for some consumers, unbundling meant that they could access legal advice when otherwise they would have been unable to. (Unbundling means that a legal service is separated into tasks, and the provider and consumer agree between them which tasks each will undertake).

three strategic objectives for 2018-2021<sup>14</sup>, which is ‘making it easier for all consumers to access the services they need and get redress’. It is also a key aim of the recommendations for greater transparency of information for consumers made by the Competition and Markets Authority following its legal services market study. But it remains the case that, all else equal, reductions in legal aid carry the risk of increasing the number of ‘stretched consumers’ who are the least likely to use a lawyer. As referred to above, this could adversely affect both the ability of the consumer to handle their case effectively (and therefore the fairness of the outcome) and also the efficient and effective running of the Court system.

20. The LSB research cited in paragraph 18 included an analysis of the Civil and Social Justice Panel Survey (CSJPS) data<sup>15</sup> which confirmed that the three dominant factors in the type of action taken in response to a legal problem were:
- Problem characterisation – if a problem is perceived to have a legal element – as opposed to bad luck - individuals are more likely to seek legal advice. However characterising problems as legal was rare;
  - Problem type – linked to how problems are characterised, formal advice is more likely to be sought for divorce, relationship breakdown, and owned housing, and less likely to be sought for consumer, education, and benefits problems. This isn’t solely related to the existing supply of legal services, but more about individuals pre-existing beliefs about lawyers and the justice system.
  - Costs – This analysis found that 57% of participants who used a not-for-profit organisation rather than a lawyer did so because of the perceived or actual costs of a lawyer. As a consequence of perceptions around costs, the analysis found that individual consumers on lower incomes were less likely to take action or seek legal advice.
21. Our report found that perceptions of cost and lack of transparency of costs are a key barrier to the use of lawyers<sup>16</sup>. Perceptions of high costs were cited as key reasons why people self-represented or chose to use unbundled legal services<sup>17</sup>.

#### *Characteristics of consumers using legal aid*

22. In the LSCP Tracker survey data for 2018<sup>18</sup>, the Pakistani, Black African and Mixed ethnic groups are proportionately the highest users of legal aid. White British consumers tend to use legal aid less in percentage terms than people from these ethnic groups. Additionally, the Tracker Survey shows that, both before and after the introduction of the LASPO reforms, consumers coming from

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<sup>14</sup> LSB strategic plan 2018021 [www.legalservicesboard.org.uk](http://www.legalservicesboard.org.uk)

<sup>15</sup> Op cit paragraph B.1. 28 referring to *How People Resolve Legal Problems*, Pleasence and Balmer, 2014, <https://research.legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf>

<sup>16</sup> Ibid paragraphs B.1.35 and B.1.36, referring to *Consumer use of legal services – understanding consumers who don’t use, choose or don’t trust legal services providers*, Optimisa, LSB, 2013 <https://research.legalservicesboard.org.uk/wp-content/media/Understanding-Consumers-Final-Report.pdf> and *Online survey of individuals’ handling of legal issues in England and Wales*, Ipsos Mori, Law Society and LSB, 2016 <https://research.legalservicesboard.org.uk/wp-content/media/Online-survey-of-individuals-legal-issues-REPORT.pdf>

<sup>17</sup> Ibid paragraph B.1.35 referring to *Qualitative research exploring experiences and perceptions of unbundled legal services*, Ipsos MORI Social Research Institute, [https://research.legalservicesboard.org.uk/wp-content/media/14-086345-01-Unbundling-Report-FINAL\\_060815.pdf](https://research.legalservicesboard.org.uk/wp-content/media/14-086345-01-Unbundling-Report-FINAL_060815.pdf)

<sup>18</sup> [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/index.html](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html)



lower social grades (C2DE) tend to use legal aid around twice as much in percentage terms as consumers coming from higher social grades (ABC1).

23. Changes in legal aid levels may therefore disproportionately affect certain groups in society. The LSCP Tracker survey data suggests that to be the case in relation to those from certain BAME backgrounds and those from lower social grades. If reductions in the level of legal aid have made it harder for those groups to obtain legal advice or to be represented well then this could have adversely affected the ability of those particular groups to have access to justice.

#### *Consumers in vulnerable circumstances*

24. The LSB commissioned qualitative research into the experiences of consumers with mental health problems and their carers with different legal services providers<sup>19</sup>. The feature of the legal services market that was particularly relevant for this sample was free services, either from advice-based third sector organisations or free elements of service from regulated providers e.g. a ‘free first half hour’ with a solicitor. There were several reasons why free advice was sought: not feeling able to afford legal fees, seeking initial advice on ‘options’ rather than ‘action’, and poor perceived previous experience of solicitors.

25. The LSB, the LSCP and Mencap jointly commissioned research to explore the experiences of people with learning disabilities when seeking legal assistance<sup>20</sup>. The major barriers to getting a legal service were said to be lack of clear pathways to getting the right support, especially for specialist legal services that may not be available locally. Anxiety about the process, fear of consequences arising from taking legal action and the potential costs involved in doing so, especially following changes to legal aid that were in the process of being made at the time the research was undertaken, were all cited as barriers. The lack of accessible advice and information was also an inhibiting factor for people with learning disabilities.

#### *Trends in self representation*

26. Our market evaluation report considered the way in which individuals use legal services. It examined the proportion of court hearings where participants represent themselves rather than use legal services, as this is a highly visible indicator of changes in the use of legal services<sup>21</sup>. The trends in family court representation where both parties are represented are shown in Figure 1 below. The data shows a very large fall in the proportion of cases in family private law proceedings where both parties are represented – 22% in Q2 2015 compared to 50% in Q1 2011 – with larger falls occurring post the implementation of the LASPO reforms<sup>22</sup> and associated with increases in neither party being

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<sup>19</sup> *Experiences of consumers in vulnerable circumstances with different legal services providers: consumers with mental health problems and carers of consumers with mental health problems* Research Works for LSB ,2017

<https://research.legalservicesboard.org.uk/wp-content/media/Mental-Health-report-FINAL.pdf>

<sup>20</sup> *What happens when people with learning disabilities need advice about the law?*

July 2013 Norah Fry Research Centre University of Bristol for LSB, LSCP and Mencap, 2013

<https://research.legalservicesboard.org.uk/wp-content/media/Final-Report-for-publication.pdf>

<sup>21</sup> Op cit paragraph B.1.40

<sup>22</sup> The reforms introduced by LASPO removed legal aid funding for private family law cases, and incentivised the use of family mediation.

represented. The data also shows a fall in the proportion of domestic violence cases where both parties are represented<sup>23</sup>.

27. There may be a number of reasons for the rise in self-representation. To the extent that such a rise has been caused by either a reduction in legal aid or a lack of understanding that legal aid is available then this is a cause for concern. Not only may self-representation affect the ability of a party to have their case argued effectively, but it also has an impact on the Court system and can make cases more challenging for the judiciary as highlighted the judicial consultation on paid for McKenzie friends (see paragraph 14) and by the Judicial College (see paragraph 37).

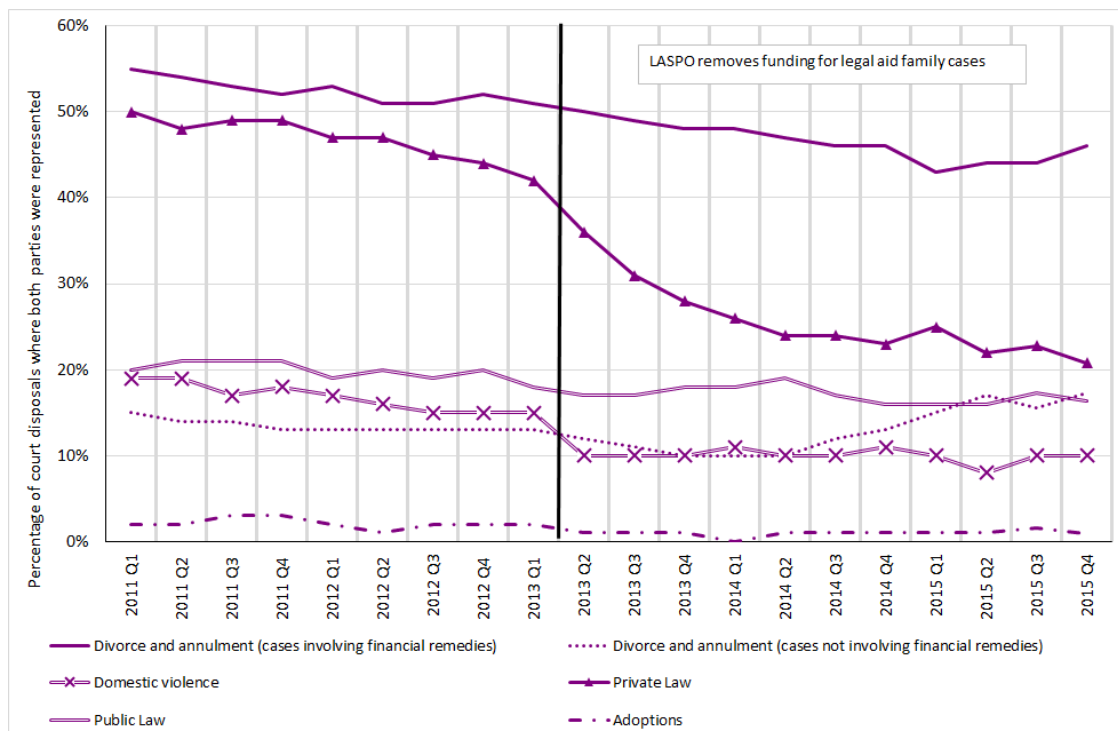


Figure 1: Trends in family court representation where both parties are represented<sup>24</sup>

28. On the other hand, for civil court cases the trend in the proportion of disposals where both parties were represented has remained broadly constant over the 2013-2015 period and for mortgage and landlord possession claims there has been little change in the proportion over time<sup>25</sup>.

### Legally aided mediation assessments

29. Mediation is an alternative approach to resolving a dispute without recourse to courts. The volume of mediation assessments has fallen sharply following the introduction of the LASPO reforms. The number of legally aided assessments rose by 38% between 2006/07 and 2011/12, but was down by over 50% in

<sup>23</sup> However, note that because of the way in which this data is collected, some of these trends will be driven by changes in the proportion of cases that are contested.

<sup>24</sup> Ibid figure 60, using MoJ data - <https://www.gov.uk/government/collections/court-statistics-quarterly>

<sup>25</sup> Ibid paragraphs B.1.45 and B.1.46

2014/15 compared to 2011/12<sup>26</sup>. If it is the case that mediation is beneficial then such a severe reduction is another area which could be a cause for concern.

### *Awareness of legal aid*

30. In our joint research with the Law Society into the legal needs of individual consumers, published in 2016, respondents were asked for which of a range of issue types they thought funding from legal aid could be accessed<sup>27</sup>. For each of the issues listed around half of respondents said that they did not know whether funding could be claimed. Domestic violence and clinical negligence were the most frequently identified issues where respondents thought funding could be provided. While legal aid is available for domestic violence it is not generally available for clinical negligence. The least recognised area for legal aid eligibility was mediation for issues following relationship breakdowns (14%).

### *Changes in the supply of legal services*

31. In our report, we analysed turnover of SRA-regulated entities from 2010/11 to 2014/15. Turnover has fallen in some areas – most notably in the crime, employment, other business affairs, and welfare and benefits segments, all of which (with the exception of other business affairs) are areas where legal aid and court reforms are likely to have had the most prominent impacts. For example, the proportion of total turnover accounted for by crime work fell from 4.3% to 3.5% (a reduction in real terms of £107m) over this period<sup>28</sup>.

32. Our market evaluation report also analysed two published surveys of self-employed barristers' main areas of work from 2011 and 2013<sup>29</sup>. While there appeared to have been little change in the main areas of work, there were falls in crime work and increases in commercial work that were both statistically significant. This may indicate the same barristers switching from crime to commercial areas of practice, although whether this is in response to legal aid changes or reductions in criminal work being referred to self-employed barristers is unclear. It could also be explained by the churn of new barristers entering the profession and others leaving.

33. There are some indications from our joint research with the Bar Standards Board into the public access scheme for barristers<sup>30</sup> that one of the reasons that public access work is taking place more commonly (amongst other areas) in family law is because of cuts to legal aid for family law matters. For clients that must now self-fund their cases, instructing a barrister directly is a more cost effective route than doing so via the traditional route of appointing a solicitor first.

34. As well as solicitors and barristers, there is evidence that other parts of the justice system have also been affected by the LASPO reforms. For example, in its

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<sup>26</sup> Ibid paragraph B.1.65

<sup>27</sup> Section 4.6, *Online survey of individuals' handling of legal issues in England and Wales*, Ipsos Mori, Law Society and LSB, 2016 <https://research.legalservicesboard.org.uk/wp-content/media/Online-survey-of-individuals-legal-issues-REPORT.pdf>

<sup>28</sup> Ibid paragraph A.1.13 and Figure 14, based on LSB analysis of anonymised data from the Solicitors Regulation Authority.

<sup>29</sup> Ibid paragraph A.1.35, referring to *Barristers working lives 2011 and 2013*, Employment Research Ltd and Institute for Employment Studies <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/>

<sup>30</sup> *Research into the public access scheme* Pye Tait Consulting for the LSB and BSB, 2016 <https://research.legalservicesboard.org.uk/wp-content/media/PAB-Research-Final-Report2.pdf>

recent publication *Equal Treatment Bench Book*<sup>31</sup>, the Judicial College stated that “[t]he number of litigants in person has risen significantly in recent years, and is likely to continue doing so as a result of financial constraints and the consequences of the Legal Aid reforms.” The *Bench Book* goes on to highlight the need for judges to respond to the challenges this generates and states that “[a]ll too often, litigants in person are regarded as the problem. On the contrary, they are not in themselves ‘a problem’; the problem lies with a system which has not developed with a focus on unrepresented litigants.”

## Evidence of the impact of early legal advice

35. There has been considerable research undertaken into the benefits of early legal advice in terms of resolving legal problems sooner and preventing legal problems escalating and having knock-on effects in other areas of life. For example, in 2017 the Law Society published a research report<sup>32</sup>, using data from The Law Society/Legal Services Board Legal Needs Survey 2015/16, that found that:

- on average, one in four people who receive early professional legal advice had resolved their problem within three to four months. For those who did not receive early legal advice, it was not until nine months after the issue had first occurred that one in four had resolved their issue
- at any stage in the issue, people who did not receive early advice were 20 per cent less likely than average to have had their issue resolved.

## Concluding remarks

36. Our research shows that a growing proportion of individuals are handling their legal problems alone and a declining proportion are seeking advice. Actual or perceived costs are a key factor in determining what action people take when faced with a legal problem. Individuals whose finances are stretched, but not severely enough to qualify for legal aid, are the least likely to use a lawyer.

37. Better information for consumers, better public legal education and changes to regulation to allow more innovative and cost-effective ways to deliver services while maintaining consumer protection should increase access to legal services. But, all else equal, reductions in legal aid carry the risk of increasing the number of ‘stretched consumers’ who are the least likely to use a lawyer.

38. In this context, we are concerned by, and ask the MoJ to have regard to, the evidence that:

- following the LASPO reforms, there were falls in the proportion of family private law proceedings and domestic violence cases where both parties were represented and falls in the volume of mediation assessments
- there are misunderstandings amongst consumers about the type of legal issue for which legal aid is available

<sup>31</sup> <https://www.judiciary.gov.uk/wp-content/uploads/2018/02/equal-treatment-bench-book-february2018-v5-02mar18.pdf>

<sup>32</sup> Ipsos MORI research on behalf of the Law Society *Analysis of the potential effects of early legal advice/intervention* November 2017 <http://www.lawsociety.org.uk/support-services/research-trends/research-on-the-benefits-of-early-professional-legal-advice/>

- the Pakistani, Black African and Mixed ethnic groups are proportionately the the highest users of legal aid
- consumers coming from lower social grades (C2DE) tend to use legal aid around twice as much in percentage terms as consumers coming from higher social grades (ABC1)
- affordability of legal services is a key concern for people with mental health problems and their carers, and consumers with learning disabilities
- there is a statistical link between getting early legal advice and resolving problems sooner. At any stage in dealing with a legal issue, people who did not receive early advice were 20 per cent less likely than average to have their issue resolved.

39. We recognise that our evidence alone cannot be definitive but will need to be considered alongside evidence from other stakeholders. Nonetheless, we hope that our evidence makes a helpful contribution to the MoJ's review.

40. Should it be considered useful to the review, we would welcome the opportunity to discuss our research and analysis in more detail with the review team.