



The Legal Services Board's submission to the Justice Committee Inquiry on the Future of Legal Aid

19 October 2020

Executive Summary

1. Civil society is underpinned by the ability of citizens to access legal services when they need to. When someone experiences a life event, such as the death of a relative or the breakdown of a relationship, they may need to access legal services. Legal aid ensures that a citizen's financial means does not unduly limit their access legal services. A well-funded legal aid system signals the importance that society places on the ability of those without means to access justice.
2. Our research highlights a growing decline in the number of people using legal aid, and a lack of public understanding around eligibility and scope. It also points to opportunities for better use of technology and the risks that digital exclusion poses to vulnerable users. Although legal aid continues to garner public support, there is a perception that the law works better for those with resources and skills.
3. In any legal aid system, there will always be limits on eligibility, scope, and remuneration. The balancing act that public policy officials must strike is difficult - guaranteeing access to justice with finite public resources. This challenge is not new. This inquiry offers an opportunity for the Committee to assess if the existing legal aid system is equipped to meet this challenge and what changes are needed to guarantee access to justice for those in need. We believe that the long-standing challenges facing the legal aid system demonstrate a need for change in how legal services are funded. Changes to legal aid, along with wider change within the legal services sector, can help to guarantee and protect access to justice for those in need.

About the LSB

4. The Legal Services Board (LSB) oversees the regulation of legal services in England and Wales. We are an independent body created by the Legal Services Act 2007 ('the Act').
5. The Act sets out our eight regulatory objectives. We believe that it is appropriate for us to assess and comment on the impact of public policy on our regulatory objectives. The most relevant regulatory objectives in the context of legal aid are:
 - a. protecting and promoting the public interest
 - b. supporting the constitutional principle of the rule of law
 - c. improving access to justice
 - d. protecting and promoting the interests of consumers, and
 - e. increasing public understanding of the citizen's legal rights and duties.
6. Changes to legal aid may either enhance, or conversely, be detrimental to the achievement of these objectives.
7. Our submission is evidenced by our in-depth research into the legal services market. We have carried out additional analysis to assist the Committee with its inquiry. Our research shows that:
 - There is a decreasing number of people using legal aid. This reflects the scope and financial eligibility requirements for legal aid, and a lack of public understanding on who is eligible for legal aid
 - Satisfaction with legal aid services is high, though there are differences in how fair outcomes are perceived to be
 - While there is public support for legal aid, there is also a perception that law works better for those with resources and skills
 - Legal aid users have not benefited from technological innovation in the same way as other parts of the sector

- Covid-19 can act as a positive driver for change and increase the use of technology to deliver legal aid services. This needs to be balanced against the risk of excluding vulnerable users.
8. A well-funded public legal system is essential in ensuring that affordability does not prevent access to justice. However, the justice gap cannot be remedied by legal aid alone. There are significant access issues for population groups and areas of law that are unlikely ever to be within scope of even the most generously funded legal aid scheme.
 9. Addressing the justice gap is a challenge for the entire legal sector. Changes to legal aid need to be considered in tandem with wider reforms, such as supplementary assistance and financial and non-financial barriers. We are in the process of developing a strategy for the legal services sector. As part of this work, we are reflecting on what has been achieved in the past ten years of legal services regulation, and the challenges that continue to face the sector. The hope is that this strategy will help the sector in addressing the justice gap.

Submission

Context

10. The Justice Committee is conducting an inquiry into the future of legal aid. The Committee has called for evidence on:

- How LASPO has impacted access to justice and for views on the post-implementation review and the criminal legal aid review.
- The role of the Legal Aid Agency.
- Recruitment and retention problems among legal aid professionals.
- The impact of the court reform programme and the increasing use of technology on legal aid services and clients.
- The impact of Covid-19 on legal aid services and clients; and
- What the challenges are for legal aid over the next decade, what reforms are needed and what can be learnt from elsewhere.

11. We believe that our research into the legal services market can offer insight into the impacts of LASPO on access to justice, the impact of the increasing use of technology on consumers and the challenges facing the sector over the next decade.

12. Our submission draws on a range of evidence, including the Individual Legal Needs Survey (2019),¹ research conducted with our Public Panel² and the Covid-19 dashboard that we have developed to help inform regulators and policy makers on demand for legal services and the health of the legal services market.³

¹ Legal Services Board and The Law Society, [Legal needs of Individuals in England and Wales Technical Report 2019/20](#), (2019).

² Legal Services Board Strategy Development, [Public Panel Research report August 2020](#), (2020).

³ This dashboard is intended to be interactive and we continue to iterate it as new and/ or updated information becomes available. [Coronavirus impact dashboard](#).

The impact of LASPO reforms

Context

13. Legal aid is a critical safety net ensuring that the most vulnerable can access legal advice and legal representation. It enables access to justice for those who need it. LASPO, along with its secondary legislation, was introduced following a 'long period of expansion of legal aid' and 'in the context of the economic downturn and consequently constrained budgets across Departments'.⁴ LASPO made changes to three components of legal aid provision – the scope of legal aid, the financial eligibility requirements for individuals and the levels of remuneration for those providing advice and/ or representation.⁵
14. Evidence on the impacts of the LASPO reforms is mixed. The Ministry of Justice has highlighted LASPO's success in reducing the cost of legal aid but recognised a need to better understand those people who try to resolve legal problems without legal aid.⁶

Impact of changes to scope and eligibility requirements

15. LASPO has been described as harming access to justice for some litigants⁷ and affecting the ability of consumers to resolve their legal issues.⁸ Changes to the scope and eligibility requirements mean legal aid is now available to fewer people. In our Individual Legal Needs Survey 2019, 4% of people who did not pay for all the services from their main adviser received legal aid. In the Legal Services Consumer Panel's 2020 Tracker Survey, 3% of consumers received legal aid funding compared to 5% in 2012.⁹

⁴ MoJ, [Post Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#), (2019), para. 2

⁵ MoJ, Post Implementation Review, para. 87

⁶ MoJ, Post Implementation Review, para. 1148

⁷ House of Commons Justice Committee, [Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), (2015), p.3.

⁸ Equality and Human Rights Commission, [The Impact of LASPO on routes to justice](#), (2018), p. 52.

⁹ Legal Services Consumer Panel, [Tracker Survey 2020: How consumers are using legal services](#), (2020), p. 2.

16. Narrowing the scope and financial eligibility for legal aid has resulted in more Litigants in Person (LiP). Figures from the Ministry of Justice¹⁰ suggest that there was a high proportion of LiPs prior to LASPO, and that this has increased since the reforms were introduced. In Q1 and Q2 2013, 40% of defendants in divorce cases were unrepresented. This rose to 45% of defendants in Q1 2020. In civil cases (excluding family law cases), 43% of participants were unrepresented in Q1 2013. This rose to 47% in Q1 2020. In the Individual Legal Needs Survey, for those people that had a contentious issue that resulted in a court or tribunal judgment (8%), 330 had no legal assistance (42%).

Characteristics of legal aid users

17. There are individuals who may be eligible for legal aid but who do not avail of it. In our Individual Legal Needs Survey, 8% of those who had a contentious issue and who did not use legal aid to pay for services thought that they were eligible. This rose to 10% among those with a household income of £32,000 or less. Young people aged 18 to 20 were most likely to have thought they qualified for legal aid. This expectation decreased with age, with just 4% of those aged 65+ having thought they were eligible. The study considered contentious issues (involving a dispute) and non-contentious issues. In general, black respondents had a significantly higher incidence of contentious legal needs. For those with a contentious issue who thought that they were eligible for legal aid, just one third (32%) checked whether this was case. This suggests a need for better public education and information on the eligibility and availability of legal aid.

18. While our sample included a small proportion of BAME legal aid users,¹¹ our research suggests that there is a higher incident of contentious legal needs and higher levels of unmet legal need for BAME groups more generally. 72% of Black respondents had a legal need for a contentious issue compared to 53% for the White respondents. There were higher levels of unmet legal need across all three

¹⁰ MoJ. Table 11. Legal representation status of applicants and respondents in cases with at least one hearing in Family courts in England and Wales, by case type annually 2011 - 2019 and quarterly Q1 2012 - Q1 2020. In [Family Court Statistics Quarterly, January to March 2020](#).

¹¹ 20 of the 220 people that used legal aid identified as BAME.

BAME groupings, with statistically significant differences for Mixed multiple ethnic and Asian groups (66% in both, compared to 58% for the White group).

19. Those with a disability may have a different experience of using legal aid. 49% of legal aid users in our sample had a disability.¹² Our research suggests that those with a disability have a higher incidence of legal need (57% compared to 48%). Our research also suggests that those with a disability are more likely to have low legal confidence¹³ (40% compared to 34% without a disability), low perceptions of accessibility to justice¹⁴ (22% compared to 16%) and low legal self-efficacy¹⁵ (44% compared to 34%). We recommend the Committee explore how legal aid can cater to the different needs of users.

20. Understanding who uses legal aid is important for ensuring information is available in the right way. Our Individual Legal Needs Survey offers insights into who uses legal aid. This shows that legal aid users have lower levels of education, lower levels of legal self-efficacy and are more likely to be of social grade DE.¹⁶ However, it also suggests that legal aid users have similar levels of legal confidence and accessibility of justice to those who paid for services. People with lower levels of education are also more likely to believe that they are eligible for legal aid. People aged between 35 to 54 were the largest proportion of legal aid users.¹⁷ Our research did not find significant regional differences in those accessing legal aid to the wider sample, but this may be due to the small sample size. Potential regional differences should be explored further by the Committee in its inquiry.

¹² 108 out of the 220 people that used legal aid identified as having a disability.

¹³ For the survey, legal confidence was defined as “confidence they could personally achieve a fair and positive outcome in legal scenarios”.

¹⁴ For the survey, accessibility of justice was defined as “the degree to which someone thinks the justice system, excluding criminal justice, is accessible.”

¹⁵ For the survey, legal self-efficacy was defined as “believing they can generally handle difficult situations in a legal context”.

¹⁶ Social grade DE refers to semi-skilled and unskilled manual occupation. 56% of those who used legal aid identified as social grade DE.

¹⁷ 42% of those used legal aid in comparison to 34% of the overall sample

Satisfaction with legal aid

21. Satisfaction with legal aid services is high, though there are differences in how fair outcomes are perceived to be. 85% of respondents who used legal aid indicated that they were very or fairly satisfied with the service delivered. This is comparable with service satisfaction levels for those who got legal services through insurance (86%) and to the overall levels of satisfaction (85%). There is, however, a difference in satisfaction levels on the fairness of outcomes. Those who paid for their legal services or who get their legal services through insurance are more likely to perceive the outcome as fair - 62% of legal aid users said that the outcome was fair to everybody concerned in comparison to 85% of those who got insurance and 88% of the wider sample. Conversely, perceptions that the outcomes were not fair to everybody concerned is higher among legal aid users than those who paid for their services or who got their service through insurance - 38% of legal aid users indicated that the outcome was not fair to everybody concerned in comparison to 15% of those who got insurance and 13% of the wider sample.
22. There are concerns about the quality of legal services that could mean some legal aid users are receiving subpar legal services. Our policy work on ongoing competence¹⁸ suggests that there are concerns about the quality of legal services in some practice areas including immigration and asylum, criminal advocacy, conveyancing, wills and probate, and youth work.¹⁹ Regulators are alert to concerns with these practice areas and are targeting some work accordingly, for example, by commissioning research, developing guidance or updating regulatory requirements.

¹⁸ [The Ongoing Competence project](#) aims to understand if legal regulators have appropriate frameworks in place to ensure legal professionals remain competent throughout their careers. During the call for evidence we received 30 submissions of information and met with 50 stakeholders. A report on key findings will be published later in 2020.

¹⁹ See: Bar Standards Board, '[Immigration Thematic Review](#)' (2016); SRA and Legal Ombudsman, '[Quality of legal services for asylum seekers](#)' (2016); SRA and BSB, '[Judicial Perceptions of the Quality of Criminal Advocacy](#)' (2018); CILEx Regulation and BSB, '[The Youth Proceedings Advocacy Review: Final Report](#)' (2015)

Perceptions of legal aid

23. While there is public support for legal aid, there is also a perception that law works better for those with resources and skills. Nine in ten people agree that law is a game in which the skilful and resourceful are more likely to get what they want.²⁰ Public support for legal aid is strong, with over 90% of respondents to the Individual Legal Needs Survey agreeing that legal aid is a good thing.²¹ As part of our strategy development, we commissioned qualitative research to help us understand the needs and priorities of the public.²² Themes and findings from this research include:

- A need for a greater focus on access to justice for those on low and middle incomes
- Legal services are expensive, with the cost of services preventing some people from accessing legal services
- Issues of cost, competence and comprehension can leave people feeling anxious and vulnerable when they experience a legal issue or need to use legal services.

The sustainability of the profession

24. As part of our strategy development, we heard concerns about the sustainability of the legal profession from a range of stakeholders.²³ We heard about challenges compounding the sustainability of the profession, including:

- Funding of the publicly funded legal system impacting on the viability of certain practice areas.

²⁰ Individual Legal Needs survey (2019).

²¹ 45% of respondents strongly agreed and 47% mainly agreed with the statement “Legal aid is a good thing”.

²² We commissioned Community Research to run a deliberative online forum with 41 members of the public from diverse backgrounds and broadly reflective of the population of England and Wales. The online forum took place over a week in June 2020 and involved a mixture of online discussion and survey-style ranking and allocation exercises.

²³ Our stakeholder engagement included: bilateral meetings with 39 organisations; 4 larger scale, evidence-style sessions covering perspectives from grassroots organisations and national consumer organisations, and with experts on technology and diversity and inclusion; engagement with Law Society specialist committees and groups, including access to justice, disability division, in-house lawyers and the ‘joint 5’ largest regional law societies, and a Senior Summit with over 40 participants.

- Low levels of recruitment into legal aid practice areas and poor retention mean that there may not be a next generation of legal aid lawyers.
- Covid-19 is impacting on the viability of businesses, especially small and medium-sized firms. Not only is Covid-19 causing some professionals to exit the sector, which is leaving some practice areas and regions underserved, it is also increasing demand for some legal services. Legal aid practice areas and professionals were described as particularly vulnerable to the impacts of Covid-19.

25. The reviews of civil legal aid and criminal legal aid by the MoJ offer an opportunity to reflect on the sustainability of the legal aid profession. Our strategy can also help identify the challenges that need to be overcome in ensuring an attractive and sustainable legal aid profession.

The impact of the increasing use of technology on legal aid and clients

26. Over the last ten years, there has been an increase in the use of technology to deliver legal services. This increase has been slow with innovation more prevalent in unregulated businesses than traditional providers of legal services.²⁴ Covid-19 has accelerated the use of technology to deliver legal services and remote justice. This is serving to cement the technological delivery of legal services as the norm.

27. Our research suggests that prior to Covid-19 legal aid users largely received services in the traditional way, i.e., face-to-face. Our Individual Legal Needs Survey shows that those who used legal aid were more likely to have received their service face to face and less likely to have received it via telephone or email compared to the overall sample. 68% of legal aid users received the service face-to-face in comparison to 41% of the overall sample.

²⁴ LSB, [Technology and Innovation in Legal Services](#) (2018), p.18.

28. The opportunities afforded by technological innovation need to be balanced against the risks posed to consumers and the risks of digital exclusion. We know that legal aid users are more likely to have lower levels of education, lower levels of legal self-efficacy and are more likely to be of social grade DE. Any technological advancements in the delivery of work funded by legal aid need to meet the needs of legal aid users and ensure that they are not excluded from accessing and engaging with services.

The impact of Covid-19 on legal aid services and clients

29. Covid-19 is an exceptional driver of change for society and for legal services. It is unprecedented and the full implications for the economy and society, and the specific impacts on legal services, are still being played out. It is essential that the legal services sector can anticipate and react quickly and proportionately to challenges and opportunities.

30. We have compiled a dashboard bringing multiple sources of data together to help increase understanding within the sector of the consequences of the pandemic on consumers and providers. We continue to develop the dashboard as new data becomes available.

31. Our dashboard suggests that the existing backlog in the criminal courts has grown, and more people are seeking help and assistance from the third sector. Legal aid cases are likely to be part of this backlog. Our dashboard shows that:

- Numbers of outstanding Crown court cases has increased by 14% between February and July 2020. There has been an increase of 29% in the number of outstanding cases in July 2020 compared to July 2019.
- Numbers of receipted Crown court cases decreased by 60% between February 2020 and April 2020. This figure has continued to increase since April 2020 with the number of receipted cases in July 2020 more than the number receipted in February 2020 (9,730 compared to 9,234).

- Numbers of outstanding Magistrates court cases has increased by 40% between February and July 2020. There has been an increase of 48% in the number of outstanding cases in July 2020 compared to July 2019.
- Numbers of receipted Magistrates cases has decreased 21% between February and July 2020. There has been a decrease of 29% in receipted cases in July 2020 compared to July 2019.
- Referrals to the National Centre for Domestic Violence increased by 30% between February and August 2020. Referrals have increased by 22% in September 2020 compared to September 2019.
- Employment issues taken to Citizens Advice increased by 93% between February 2020 and April 2020. There has been an increase of 53% in employment issues in July 2020 compared to July 2019.

Challenges facing legal aid over the next decade

32. As part of our strategy development work, we are preparing a State of the Legal Services Sector report. This report aims to offer a frank, evidence-based account of what has been achieved over the last decade of legal services regulation and the key challenges to address. We have identified a series of challenges which we are grouping in three broad and interrelated themes: fairness, confidence, and innovation. We believe that the challenges we have identified are relevant to the Committee's inquiry.

33. On fairness, our data suggests that 3.6 million people have an unmet legal need involving a dispute each year.²⁵ A well-funded public legal system is of fundamental importance to ensuring that affordability is not an obstacle for citizens in accessing justice. While there are significant issues for population groups and areas of law that are unlikely ever to be within the scope of even the most generously funded legal aid scheme, a well-funded public legal system is essential to guaranteeing access to justice. The funding of legal aid needs to be considered in tandem with issues of legal capability and service design.

²⁵ Individual Legal Needs Survey, (2019).

34. On confidence, there is a need to build public confidence on stronger foundations. The criminal justice system and parts of the civil justice system are widely perceived as in a state of crisis, and in urgent need of investment and reform. These problems are not new and have deep roots, but Covid-19 is stretching these systems to breaking point. More widely, there is a worrying trend of diminishing respect for the law in public discourse and a growing perception of domestic and global challenges to the rule of law. The breadth and depth of consensus means that these issues cannot be ignored. Public policy reforms are needed to secure a well-functioning and properly funded justice system that strengthens the rule of law and supports a sustainable provider base, which is able to emerge strongly from the twin shocks of Covid-19 and EU exit.

35. On innovation, there are opportunities and challenges facing the sector. Technology offers the opportunity to disrupt the legal services market and widen access to legal services. Covid-19 has demonstrated the possibilities that technology offers in the delivery of legal services. However, more digital exclusion could result unless the needs of those with no or low levels of digital capability are considered. Affordable initiatives to tackle digital exclusion can help. Culture appears to be the biggest impediment to technological innovation and there are opportunities for legal aid providers to be at the forefront of this cultural change within the sector.

36. Changes to legal aid can impact our regulatory objectives of 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. Any changes to the eligibility, scope, and levels of remuneration in legal aid necessitate careful consideration. Public policy officials must balance finite public resource against access to justice. This inquiry is an opportunity to assess if the existing legal aid system has struck the right balance. We believe that the continuing challenges facing the legal aid system demonstrate a need for change. Reform of legal aid funding, along with wider changes in the legal

services sector, can help to guarantee and protect access to justice for those in need.