

## **APPG Meeting 17.01.17**

### **Joint meeting – All Party Parliamentary Groups on Legal Aid, Pro Bono, Public Legal Education**

**Speaker: Sir Oliver Heald QC, MP, Minister of State, MOJ**

**Committee Room 8, Houses of Parliament. 5pm**

#### **Parliamentarians:**

Sir Oliver Heald

Alex Chalk (Chair Pro Bono)

Sir Henry Bellingham (Co-Chair – Legal Aid)

Stephen Timms

Lord Alex Carlile (non-affiliated)

Lord Low

Other attendees from stakeholder groups, representative bodies and practitioner sectors.

#### **Introductions**

Alex Chalk started with introductions, introducing the event as a round table discussion on access to justice. This was a joint meeting of three APPGs because legal aid, pro bono and PLE all have an important role in access to justice, so there was a shared interest particularly with ensuring the most vulnerable in society have access to the legal system and can enforce their rights. Alex introduced Oliver Heald (OH) as Minister of State at MoJ

OH welcomed the meeting, and spoke positively about “the wonderful legal system” in the England and Wales which is trusted, open, and with lawyers and judges having a good reputation. However he emphasised that it is right to modernise; the system is behind on technology, can be old fashioned and needs to work for everyone. MoJ’s proposed reforms aim to make the process “less stressful and no more combative than it needs to be”. This is not modernising for its own sake but to improve the system for all those who use it. The Lord Chancellor, Lord Chief Justice and President of Tribunals had jointly announced transformation and investment plans in September.

- Reforming and digitalising the courts to reflect the needs and expectations of all users; Government would be spending nearly £1 billion on the reforms.
- Remove unnecessary hearings, redundant paper forms and duplication
- Improving criminal court procedures

#### **Criminal Courts**

In respect of criminal courts procedures this work started last year and will take some time to complete; OH emphasised the need to also support victims and witnesses as well as modernising the system and highlighted pilot reforms in Liverpool. Following this he expected national roll out of the new system to allow evidence to be pre-recorded. Previously in retrials, witnesses and victims would have to go through examination and cross examination again - the reforms would put an end to this. Similarly in the Family courts there is a problem of victims and witness examined by alleged domestic violence perpetrators and MoJ are looking to end this.

The entire CJS is being digitalised, with £270m investment in this. The pilot in Liverpool focuses on the “front end” from Police Station to the court room. This was an important process to get right because of historical difficulties and inefficiencies with Police files not in state that the CPS needs. The new process will eliminate that problem and enable many preliminary hearings will be dealt with digitally. Judges will give preliminary directions online and prosecution and defence can then

comment, though some preliminary proceedings will still be needed. The MoJ also want to introduce an online process summary, non-custodial offences (eg rail ticket, some speeding cases, insurance, fly tipping, fishing) – to allow defendants to plead on line. Defendants can resolve using entirely automated system. This will reduce the number of cases where hearings required and improve efficiency in allocation of criminal cases.

### **Civil Courts**

In civil courts the MoJ are following the Briggs proposals for online courts and very keen to push forward. Again the aim is to minimise combative hearings and resolve with minimum of acrimony. All civil money claims will be digitalised by 2020 and there will be benefits and long term savings from reduced effort from not having to attend court. MoJ also propose to extend powers of the High Court and County courts to enable AOE orders and enforcement. Finally closing dilapidated court building would allow reinvestment in technology and reduce dependency on physical estate. Average court used only 50% of time. Quality of access to justice will therefore be at a higher level.

### **Legal Aid and LASPO**

OH said that publicly funded legal aid always been thought of as fundamental pillar of the state, and Government have tried to make sure it is still available to most vulnerable and for the most important cases. However in 2010 there were difficult decisions to be made in challenging financial times; reflecting on this even the Bach report agrees that we cannot go back. We can all agree though that legal aid provides crucial service – and is especially important in issues where liberty, DV, loss of home are at stake. The 2012-13 legal aid reforms were substantial so Government committed to post-implementation review – by April 2018 at the latest, 5 years after implementation. MoJ now believed that enough time had now passed for reforms to bed in and can begin the review process and Government were now ready to share the timetable. The Review will begin with MoJ submitting a post-legislative memorandum (PLM) on LASPO as a whole to the Justice Select Committee (JSC) before May 2017 – this will cover the whole of the Act and will look at impact of implementation on litigation and various reviews undertaken by NAO and others. This will lead to initial assessment of the extent to which the changes have met their objectives. Once this initial data collected, MoJ will look doing a full post-implementation review and will range wider than the PLM. MoJ intend to work closely with key partners across the sector and will provide more detail when the PLM is presented. Along with the work of the JSC, the review will provide a robust picture of the landscape.

### **Lips, Pro Bono and PLE**

Moving on to Litigants in Person, OH highlighted a variety of work being undertaken to provide help. In 2015 MoJ gave £3.5m of funding to LIPs Strategy, in partnership with advice, voluntary and pro bono sector; this was trying to co-ordinate signposting and support for national and local services – LIPSS, CAB etc and had made some real achievements including more LawWorks clinics and PSU provision, Family Solutions, digital solutions (RCJ CourtNav, AdviceNow etc). There was real momentum behind that work. Finally on PLE it was important to improve and back initiatives on this; the Law Officers were leading on this issue, working as pro bono champions and there was significant work being undertaken with the Citizenship Foundation.

### **Q & A session chaired by Sir Henry Bellingham.**

Carol Storer: Could you give more detail about the review – who carries out and who will be consulted etc?

OH: Replied that had focused on the timetable today. More detail would be provided at time the PLM is presented to the JSC. The intention is that this will be an internal review but it will

collaborate with all the contributors you would expect and will be a substantial piece of work. Henry Bellingham then asked would it be fair to say the groups here will be asked for views? OH replied we are still considering how to do that.

James Sandbach: Are you planning to revisit any regulatory issues within the Legal Services Act within this parliament?

OH: That won't be covered within the LASPO review. But it is something we monitor and discuss with solicitors and barristers regularly.

Alex Carlile: Have you been ambitious enough in closing down small and inefficient magistrates' courts? There are still savings to be made without affecting quality of the justice.

OH: Replied that he could remember small courts in public buildings – it is possible to have a court in other circumstances and settings and it is possible turn buildings into courts on an ad hoc basis. MoJ are looking at alternative provision models – witness vans, video links etc. Courts can be mobile. Henry Bellingham warned though that we must be conscious of security issues and OH agreed. Alex Carlile observed that increasing LIPs etc leads to poor justice and longer proceedings, so will any savings from court closures go back into legal aid to ensure those who should be represented are. OH replied that evidence suggests that time per case is going down despite increase in LIPs.

Alec Chalk: How to you guard against non-trivial offences slipping through when need to be tried properly with the authority and dignity of a court setting?

OH: couldn't agree more. The dignity of the court must be preserved. Much thought put into the way alternative services are designed to ensure this. But we can be proportionate about this.

James Kenrick, Youth Access: Even pre-LASPO, there were widespread concerns about vulnerable children will be left without advice and representation and therefore safeguarding issues. Will review look at this position of YP and children?

OH: Yes it will. However in family law, where these issues often arise, we have a good system of guardian ad litem and good deal of resource is spent on this. The duties of care really do reside with parents, guardians etc and we should also expect Local Authorities to provide decent care – that's not the role of legal aid. James Kenrick replies that he was particularly concerned about young people who need their own representation in non-public family/civil law matters.

Alison Mohammed, Shelter: What plans do you have for altering the content of the LA contracts? A tender will be up for end of next year. DO you have idea on ways that we can make legal aid delivered more flexible to counter advice deserts etc.

OH: There are not unlimited resources, we can make improvements but cannot go back to before 2010. We are already reviewing certain things such as the DV evidence requirements and looking again at fees in many areas. MoJ are trying to adjust the system to improve but there are only limited resources. Specifically he did not agree with the Law Society about housing advice deserts. There are 134 procurement areas for legal aid, and in 35 there is 1 provider. TLS say there should be two. He thought that would undermine the current providers who have taken on those costs; having another provider could make it uneconomic for current provider.

Lord Low: There had been a debate in the House of Lords last night on the impact of charges on LIPs; Lord Low argued that the imposition charges tribunals were moving away from original concept of

tribunals – informal, less cost etc. In recent legislation government had taken powers to impose charges to increase fees to above cost recover to maintain the tribunals.

OH: Yes MoJ can set fees that can charge beyond the cost recovery level i.e. in uncontested divorce fees more than you pay to process but that subsidises the family law system, which is still costing the taxpayer. Where civil law fees are greater than the cost of providing the hearing etc. but this ensures money for good quality elsewhere. However of the £1.8b spent in running courts only £700m is recovered. MoJ have agreed to review ET fees and report will be published shortly. Last MoJ autumn looked at Immigration tribunals and stopped increase and agreed to review the whole system. MoJ are trying to be responsive are trying to be responsive on the issue but are constrained by finances.

Lindsey Poole, ASA: Asked about the role of the advice sector, for example with the interaction between the IT systems and people, mentioning CAB as one example. The MOJ survey in 2015 said 1500 independent agencies had been lost so the advice sector community are hoping that the review recognises their position - 2018 a long way away and many agencies struggling to keep their doors open. Do MoJ have conversations with local govt to consider the role they play?

OH: Agreed it's an important sector at difficult times in people's lives, and that we are lucky in this country to have this sector. Ministers do discuss these matters across govt.

Matthew Smerdon, LEF: during LASPO debate much was discussed about how legal advice saves the state money. Will the review look at costs elsewhere in the system?

OH: The review will mainly be looking at impact on justice system, but will take that into account. Please write to me in more detail.

Alison Harvey, ILPA: MOJ did a review after a year of the impact of taking funding away from Immigration appeals. However was flawed as it treated all cases heard post-LASPO as cases under the Act, which wasn't the case in immigration as some cases take a long time. Care must be taken to study the cohort of cases under the Act otherwise review outcomes will reflect wrong data and assumptions.

OH: Don't know the statistical analysis you refer to. Ken Clarke agreed to keep legal aid for asylum cases because most need help because of fear of persecution. Will look at the point you made.

Maggie Ellis, Occupational Therapist and researcher in cost effectiveness: We seem to be robbing Peter to pay Paul, in between people suffer and mentioned a case coming to attention today where a disabled person faced the threat of street homelessness and was now told benefits will be cut. Was there a problem of one government dept. trying to save money while others are trying to be cost effective; surely the objective should be helping people. How can we help you and your counterparts to be equally cost-effective?

OH: Difficult to draw conclusions from one case. On disability it is important to help those back into work; this is difficult to do that and can create frictions but still the right thing. OH said he won't apologise for the government's intent in trying to change the miserable situation of many disabled people.

Lizzie Iron, PSU: Given the number of digital pilots, do you have information about how you might tender for assisted digital systems and services?

OH: We haven't got to that stage yet but working on it. This was part of consultation on transforming justice. There will be a Bill soon on prison and court reform and it is hoped that some relevant provisions will be part of that.

Sheila Nixon, retired special needs teacher and parent of adult autistic person: Appealed to make special provision for autistic people and had spoken to Sir James Mumby who suggested that autistic people should have LA as of right (0.01% of those who appear in court). There is a real problem that intelligent autistic people can speak well but cannot listen well; this affects court proceedings and when spoken to by the police etc. Sheila said that her son buys and reads expensive transcripts to understand proceedings. There is a list of reasons reason why autistic people need special provision and adjustments that wouldn't require legislation.

OH: Said he would look at this and the issue was partly about how vulnerable people are treated in courts. He was currently supporting Sir James Mumby and Rules Committee to produce a practice direction to help vulnerable people in court, and chairs Family Justice Board and will look at this process.

Richard Doughty, CILEx: Could you expand on how you will involve interested parties in the Review. Will you establish a review panel for example? Would Government support a full enquiry by the JSC?

OH: MoJ are considering how we do work on post-implementation review and will take on board these suggestions. In terms of JSC he would not have the temerity to suggest how an independent committee operates. JSC might wait for end of review and then intervene, that was a matter for them.

Matthew Rogers, Solicitors Journal. Asked about use of intermediaries in family court, used extensively in criminal courts? Could you update on research on preventing witness from being examined by their attackers.

OH: We have banned examination by perpetrators and are looking at proposals on cross examination in family courts but will have to reflect the differences between the courts. Judges in family proceedings have a lot of discretion on how evidence is taken. MoJ is also working on physical protections in family courts – screens, different rooms etc.

Ruth Dwight, Citizenship Foundation: Was there any liaison with Dept. for Education to consider how schools can better prepare school leavers to be a LIP in future?

OH: Young people are now very adept with modern technology. But it would for the Solicitor General, Robert Buckland, who takes a particular interest in this area and for them to liaise with education.

Sam, Amnesty International: Would the review consider family re-unification cases?

OH: The AI report will be considered as part of the PLM for the committee, but please write to me about that.

Steven Timms: It was good that legal aid was still in place for homelessness or risk of homelessness. But there was concern that not enough lawyers to take on these cases. That's not directly about LA cuts because LA still available.

OH: Reiterated that these issues will be looked at post-led memorandum and then more detailed review. On question about advice deserts in housing and sustainability, OH emphasised that we have providers, a telephone service and court duty rotas – provision that MoJ thinks is sufficient, and there was disagreement with the Law Society on this.

Tom Hooksmar: GDL student at UoL, and homelessness adviser: Expressed concern over suggestion that pro bono “can fill the gaps” and that contracts are being given up because not economically viable – i.e. currently no providers in Cambridgeshire apart from within Cambridge itself. Pro bono cannot take up the slack in immigration cases. There were real questions of viability, even CABs can’t do it without subsidised funding - this needs to be addressed in review.

OH: It is important to realise that areas were taken out of scope and accepted that there will be more LIPs in this areas which is why LIPs support and pro bono must be applauded. However it has always been the case that there is unmet need which has necessitated pro bono. OH thought that Ken Clarke had made decisions carefully and focussed resources on the areas of highest need.

Roberta Tish: Is any consideration being given to the fact that practices closing and therefore many good practitioners being lost. What will happen in the future when clients need them?

OH: What tends to happen, is that areas both expand and contract (i.e. public law family expanding and need more practitioners) as there are changes to scope. Always optimistic about the legal profession, and lawyers are very capable of reacting the needs of the public. Lawyers can move between areas – don’t right lawyers off, they are capable of great resilience.

### **Conclusion**

Henry Bellingham asked Carol Storer to say a few words. Carol thanked everyone for attending, LEF who fund the APPGs and James Sandbach for organising. Thank Lords Carlile and Low and parliamentarians for attending. Legal aid was fundamental to access to justice and groups here look forward to participating in the review; we all feel passionately about the subject, there will always be tensions but we will work hard to gather evidence for you.