



The All-Party Parliamentary
Group on Legal Aid

Westminster Commission on Legal Aid Fifth Oral Evidence Session

Sustainability of Access to Justice

25th February 2021 10:00 – 13:00

Panel

Karen Buck MP (Chair)
James Daly MP (Vice-Chair)
Baroness Helena Kennedy QC
Lord Willy Bach
Lord Colin Low
Andy Slaughter MP
Yvonne Fovargue MP
Gareth Bacon MP

LAPG

Chris Minnoch
Rohini Teather

Witnesses

Parliamentary Under-Secretary of State
for Justice, Alex Chalk MP
Shadow Minister for Legal Aid, Karl Turner
MP
'Sally'
Jenny Beck, Beck Fitzgerald
Angela Pownall
Deborah Coles
Pam Coughlan
Nicola Mackintosh QC (Hon), Mackintosh
Law
Stephen Tyler
Rose Arnall, Shelter
Julie Bishop
Marcia Willis Stewart QC (Hon)

INTRODUCTIONS

Karen Buck MP

Welcomed everyone for joining for this session of the APPG Inquiry into the state of legal aid. Today's session focussing on the client's experience, the latest in a series of sessions. Looking at everything from criminal law, civil law and the publicly funded Bar. The APPG have one more session before coming together to draft the report. The inquiry has been particularly focussed on legal aid in the COVID-19 crisis and how we will emerge from that but also the wider context of legal aid a decade on from LASPO. Karen said the APPG was welcoming all contributions through the workforce survey to hear from practitioners.

Karen introduced the panel and then welcomed the Under-Secretary of State for Justice Alex Chalk MP, Karen thanked Alex for his involvement with the inquiry from the start. Hopes the message sent out will be appreciated by others too.

Parliamentary Under-Secretary of State for Justice, Alex Chalk MP

Alex said this is a very important APPG considering very important issues. Access to justice is the cornerstone of a free, fair and ordered society. These evidence-gathering sessions have provided valuable information which he and his officials have been watching closely. In practice and as a minister he has seen first-hand the crucial role legal aid plays supporting the most vulnerable in society. Govt committed to putting users at the heart of the system and ensuring what we do for legal aid works, through gathering evidence about impact.

At the beginning of the pandemic, one of the things Alex is proud of is having been able to put money into the law centres at a time they needed it. He has met with various law centres and appreciates the valuable work they do.

If access to justice is the cornerstone of a free fair society, legal aid is its buttress. Effective legal aid, along with other forms of legal support such as a modern tech involved court and tribunal system, is important in creating access to justice. These are genuine deep-seated priorities for the Minister and he said that we have seen important developments in this already that Government are committed to driving future reform.

Sincerely thanked the APPG for inviting him, for the time and effort running the inquiry and said that he looks forward to hearing the product of the important inquiry.

Shadow Minister for Legal Aid, Karl Turner MP

Started by saying the evidence heard privately from Jenny Becks' client was shocking to hear but it was not uncommon at all. 94% of working single parents do not qualify for legal representation in England and Wales today. That is as a result of LASPO. This savaged access to justice. It was done deliberately. There is no doubt whatsoever about it. Karl was involved in Parliament from 2010 and was involved in those debates, he warned ministers like Ken Clarke what the result of LASPO would be but those fighting it were completely ignored. The Government response was that it would save £350m from the legal aid budget.

The reality is in 2010 the spend on legal aid was £2.6bn and in 2017/18 it was £1.6bn. LASPO has been an unmitigated disaster. We cannot possibly wait until we next get a Labour government to resolve these issues. What we have heard from Sally is what we hear from constituents on a weekly sometimes daily basis, it is utterly deplorable that we have a situation where single working parents are having to try and navigate complex legal and procedural points in order to protect their family.

We cannot wait until 2024. Alex, the minister, has the power to do something now. Labour will expand the scope of legal aid and reform the means test but we need really serious action

now. The capital threshold was last updated 12 years ago in March. We have a review on the Means test due in 2012, what is the Government doing, what is all this dither and delay about; If the lord chancellor and the minister really cared, do something about it now.

Baroness Kennedy

Baroness Kennedy said that she was anxious at this moment while Alex was still with us that we do not become locked into a party political thing. She said that what we do know and agree on is that access to justice is fundamental to the system and to democracy. She hopes that lessons will be learned from Covid, which has driven home the problems that existed previously and accelerated them. It has brought home a lot of things to us, we have for example learned the NHS reforms were a mistake and she said she is glad to see that they are being undone. Baroness Kennedy that she thinks the reforms introduced around Austerity in respect of legal aid were also a mistake but that rather than making Alex responsible for things that happened in the past, this provides a moment to fix those issues. Like in health, this is something fundamental to a united society and we need to deal with it to avoid huge gaps being created between the better off and the disadvantaged. This could be a moment of huge change to bring things back. The APPG would support Alex in pursuing that encouraged him to make the argument to the powers that be that access to justice is completely fundamental to society and again she emphasised now is the opportunity to improve the post LASPO situation.

QUESTIONS TO WITNESSES

The first 30 minutes of testimony were heard in private. This was done in order to protect the privacy of the first witness 'Sally' who gave evidence on family law.

Angela Pownall & Deborah Coles, Executive Director of Inquest (Inquest)

Introduction from Angela Pownall

Adrian Jennings' mother, her first child. She was a single mother and up to Adrian being 8 they were a 'double act'. Unfortunately, Adrian lost his battle with mental health problems. He had a learning difficulty. Always worked and held a job as a security guard. Couldn't have any children and a couple of years before his death, found out his partner was pregnant with another man's child, which started his route into depression.

Adrian became acutely unwell and Angela took him to A&E at his local hospital and he was admitted to their mental health ward for suicidal thoughts. Adrian was discharged against Angela's wishes into the care of the community support team. Angela insisted on an appointment before Adrian left the hospital but he was discharged regardless. Angela works for a public authority and understands the pressures hospital are in to discharge patients in order to free up a bed.

Unfortunately, after 3 visits from the home visit team Adrian was discharged from their care. Angela was not present at that meeting and Adrian rang her frantically as he was distressed at no longer receiving help. The decision to discharge was made on a Friday and Angela rang multiple professionals for help that day as Adrian was distressed and felt things were pointless. Angela went to chat with Adrian that afternoon and said she would see him the next day, Adrian said he wanted a break for a day and that he did not want a visit. The last person Angela spoke to that day said they couldn't help and that she would speak to them on the next Monday morning.

Angela did not get in touch with Adrian on Saturday and on Sunday the police contacted her and said Adrian had died the previous night. Angela needed to know what had happened, had Adrian taken his own life, had Angela done enough as a mother and a professional. Angela said that she had told the last person she spoke to on the Friday, "please do not put us in your in-tray and leave us to the Monday". Angela said that a key thought for her was that if she could not get through the system, which she knew as a professional, how could anyone else get through the system. She said that her inability to get through the system and find the support that should have been available was what led to Adrian's death.

Angels said that the day before Adrian died Greater Manchester Police picked him up in the street, statement said he was clearly chewing tablets and could not string a sentence together, they took him to A&E in a police car. He sat in A&E and apologised to the receptionist for his disruption. After Adrian was checked in to the hospital the Police said he was discharged from their case and left him. Adrian left the hospital himself before the triage nurse had seen him. The nurse did not know Adrian had been brought in by the police suspected of having taken an overdose because the computer system operated by NHS did not have an option for detailing how a patient had come to the hospital.

Questions from Baroness Kennedy

HK: Said it is terrible to hear the story and expressed her sympathy for the horrible experience and tragedy to which another tragedy was added by the complications of the inquest process. Wants to pull out lessons that can be learned from her experience. How easy / difficult was it to find legal advice?

AP: Angela initially thought she could raise her concerns through a complaints process, she said she was naïve in thinking that lessons would be learned and changes would be made. Angela said there were clear obstacles placed in her way from the start. She applied for a subject access request for Adrian's records, initially the hospital refused her application and she asked for written reasons. After she requested the reasons the Departments said she could access the records if she paid £50. Whilst Angela paid this sum she said that she was shocked by this and said that if she had been on benefits or without access to the money she would have reached a brick wall.

Getting access to Adrian's records meant she found lots of additional information, Adrian had tried to hang himself on a ward and that was never recorded. At the pre-inquest, she arrived and thought she was armed with information. When she got to the Coroners inquest she found herself facing 3 barristers for the other side. This shocked her and she said she expected to see the team managers she knew and had interacted with and did not expect to see 3 barristers representing Greater Manchester Police, Penine Care and the Acute Trust. Angela said she did not know she could bring someone with her.

Angela said that she realised at the Inquest that this was another battle, it was not a way of learning the issues. Angela left the pre-inquest and said to her husband they needed help. It was a lonely and very isolating process.

She came home and googled. She was put in touch with someone who could help her write a complaint, that person put her in touch with the Inquest charity. Inquest put her in touch with a solicitor in Leeds who helped them prepare to go to the inquest and got them in contact with a barrister.

HK: Asked Angela to explain what her fears were about costs and taking on the battle.

AP: Angela said that 2 working days before the inquest, which was planned to last over 9 days, she was told by her barrister that Angela's legal aid application had not been processed

and that without this the barrister would not be able to go to the inquest. Angela instructed the barrister to send a message to the Coroner saying that she would not go unless she would be accompanied. The Coroner pushed the Legal Aid Agency to explain why the application wasn't funded.

As a result of this, the LAA granted her application said that it was part-funded. Angela said that because she learned her legal aid application was not fully funded she had to fund her barrister through a loan from a family member. This loan had initially been given to fund the funeral costs for her son.

HK: Asked Angela to detail her experience of the process, how was the hearing?

AP: Angela said that all the barristers did a very good job but that it was clear to her what that job was, to get the story that supported their side told. Angela said the process was very uncomfortable, the fact she knew the witnesses and what had specifically happened the day before Adrian died meant she felt a lot of the questions were leading in a way that didn't expose everything.

HK: Asked Angela what she wanted from the process?

AP: Was the first witness for 1hr 30. Said she was upset that the parties involved were concerned about protecting their reputations rather than dealing with the systems that had failed Adrian. Angela said the inquest was not about individual blame but that it was about a system that was broken and needed changing.

HK: Angela asked if she thought the outcome of the inquest would create the kind of change needed?

AP: Because there was a 'prevention of future death' report commission, specifying the things that needed to change, yes. Had she been there alone without a lawyer, she doubts very much whether the change needed would have occurred.

HK: Asked if Angela could have achieved that outcome without the lawyers?

AP: Absolutely could not have done that herself. She said there were days she didn't shower and her life was thrown into a complete whirlwind. She said if she had done, she would have had to go to court and hear about her child's autopsy and last moments and then to ask the witness giving the report questions, could anyone physically stomach that? Angela said that after the evidence had been heard she would go into a corridor and be supported by her husband to stop her from collapsing. Angela could not have asked questions of those witnesses and without a barrister those questions would not have been answered.

HK: When the barrister said she would not be able to represent you if the legal aid agency were not funding it, that may sound mercenary but of course this was a barrister who survived off legal aid. What was your impression of the lawyer?

AP: The barrister was very good, supportive and Angela fully understood that without the financial support the barrister could not have worked. Having to find all the information for the legal aid form at a time of her life that she was in crisis was difficult and that whilst Angela could manage to do all of it and give evidence to the inquiry, she asked would that be the same for the majority of people?

HK: Asked Deborah Coles from Inquest, of the problems you are seeing around legal aid for people going to coroners court, what are the particular issues you keep seeing?

DC: Angela has spoken so movingly of her own lived experience, sorry to say that her experience is replicated on a daily basis at inquests. The inequality of arms at inquests is an ongoing scandal that undermines the justice and inquests system. Inquest system is what families have been given to find out how and why their loved ones died. The fact that at a time of grieving they have to go through an intrusive, distressing and very protracted process when they know the state agents are funded through the public purse is really traumatising. In Deborah's experience, inquests are assisted by the presence of a lawyer on behalf of the family. No one has a greater interest in uncovering the truth and identifying areas that need to improve, than families do. Too often we see lawyers for the public bodies shutting down areas that need to be uncovered with the aim of damage mitigation. The need for lawyers on both sides is key.

HK: When talking about matters where legal aid is needed, the lawyers for the public bodies are also being paid for out of the public purse and are being paid at a much higher rate. That inequality of arms is never discussed or made public. It is seen in lots of areas, particularly inquests and judicial review where those acting for the public bodies are usually paid 3-4 times more than the legal aid barrister on the other side.

DC: So many of the lawyers that do work for the non-public body side are forced to do work for free in order to properly represent their clients. Deborah said that Helena was quite right in pointing out the difference between them and barristers for the state agents. Angela explained that in her inquest there were three legal teams on the other side paid for out of the public purse. Each legal team supports the other's legal arguments, particularly when narrowing down avenues of inquiry or seeking to oppose the coroner making a 'prevention of future death's report. A full inquiry into a person's death can save lives and it is repugnant to hear legal representatives trying to prevent that vital role from being carried out by the inquiry.

James Daly MP: Thanked Angela for her incredibly powerful evidence. One of the things the APPG talks a lot about is that legal aid should be available as a general concept and the nature of how legal aid would be paid needs to be considered for that. Asked Deborah if she had any more specific views on rates or means tests that should be applied?

DC: A clear recommendation that Inquest has been campaigning around is that there should be automatic non-means tested public funding for families at inquests, not just those dealing with Article 2 issues but for all inquests. You see an acutely uneven playing field and making legal aid for families automatic in inquests would even that playing field and help stop families having to go through the horrendously intrusive process of applying for legal aid and searching through bank statements and documents when they are grieving or going through the stressful process of preparing for the inquiry. We know the tens of millions of pounds that go towards state lawyers in such areas and all Inquest are asking for is a level playing field.

HK: Asked Deborah if she thought it would help if we returned to something that used to exist, a green form scheme. A baseline for ordinary citizens to get a half an hour advice session that would tell you if your legal issue should be pursued? That can be a way of diverting people to the correct area to remedy your issue.

DC: Said that would absolutely be worth considering. Deborah said she was concerned about the fact that this is about people's legal rights to know the truth about how their loved one died. Anything that can make that easier and simplify the inquest process to enable people to participate in a meaningful way, in a process that will help society in general, would be beneficial.

Lord Low: Thanked Angela for her evidence and asked her whether she felt having legal aid and a lawyer meant the process was effective? As well as whether she felt the issues she wanted covered were properly dealt with?

AP: Absolutely. Without having the barrister she would have been unable. At the time Angela would have been unable to open up and probe the issues herself, she was nervous, uncomfortable and felt that it was a David and Goliath situation. Without a barrister she would have failed miserably at getting the answers and responses the coroner needed to come to her judgment. Before the summing up, the barrister asked what it was that Angela wanted, she asked her barrister what the other side did not want and that was a 'prevention of future death' report, so she encouraged her barrister to pursue that.

Lord Low: Asked Angela whether the legal aid and the way it made it possible to get her a lawyer made a real difference?

AP: Absolutely without a doubt.

[Pam Coughlan & Nicola Mackintosh QC \(Hon\), Mackintosh Law \(Community Care\)](#)

Pam Coughlan: Was very seriously injured in a road accident. Took a Judicial Review case over the classification of her care from health care to social care.

She and 11 other disabled residents of a large NHS house were promised a 'home for life' if they moved to a brand new state of the art NHS facility, Mardon House.

Her care was provided by the NHS until, in the 1990s, the North and East Devon Health Authority tried to transfer responsibility for her care to Social Services. By reclassifying her needs as 'social' care rather than 'health' care, meant she and the other residents would be forced to move from Mardon House. The decision also meant that the promise would be broken, and the residents would be means-tested and have to pay for their own long-term nursing care.

She brought a judicial review case in the High Court. She was successful but the Secretary of State intervened and appealed to the Court of Appeal. Pam was eventually successful in arguing that nursing care was health care and not the responsibility of social services, and established the right to 'NHS funded continuing health care' which has benefited thousands of very vulnerable people.

The key questions were whether nursing care for a chronically ill patient can lawfully be provided by the local authority as 'social' care (means-tested) or whether it must be provided by the NHS. The second key legal issue was whether a public body had to abide by the promises it makes, and when public bodies can change their policies and procedures (the doctrine of 'substantive legitimate expectation'). The Court found that breaking the promise to Pam and the other residents would be unlawful.

Nicola Mackintosh QC: Solicitor and founder of Mackintosh Law which specialise in community care and mental capacity casework. Providing a background to Community Care law, in the 1990s it did not exist as a discrete area of law and lawyers did not specialise in that field. Nicola was instrumental in the early days. In the 1990s, the 1993 NHS and Community Care act was the launch of health services assessing people's needs, that was where the term community care law emerged from. We had and still have a huge fight to enable people who have rights to enforce them.

Community care encompasses mental health, mental capacity, housing, public law principles of fairness and equality. When Nicola was asked by Pam to represent the residents of Marden house it was a privilege and an honour. The inequality of arms is a huge issue. There is nothing more telling than representing a hugely brave claimant in court against a heavily funded public body, the upshot was two really important points of law were decided that have benefitted thousands of people.

Questions from Yvonne Fovargue MP: Asked Pam if she could tell the inquiry about her story of moving into Mardon house.

PC: It was not very many years after moving into the purpose built unit that we no longer fit the health standards and had to go. She said they asked where can we go and the unit operators said it was not their problem. The others in the unit could not speak for themselves due to substantial physical disabilities and their relatives did not know what to do. We were desperate. Those in the unit were at the mercy of some authority that did not care.

YF: Asked Pam if they were told their housing would be temporary?

PC: No, they were told this would be it. The building was designed for the needs and purposes of the persons who would be living there.

YF: Asked Pam how she felt when she was told she had to move out?

PC: Absolutely terrified. She said she thought, what would we do, where would we go? How would the poor people who couldn't speak look after themselves? She said that the situation also made her very determined to fight.

YF: Asked how easy it was to find people to help them fight?

PC: Not easy at all. She said that she ad looked through the yellow pages and found some lawyers who had dealt with hospitals and the NHS but not on similar issues. She said that they managed to find a lawyer but that soon had to move to Wales and said they would struggle to find another lawyer in the South West that could help. They then got in touch with a firm in London who sent down two young lawyers to the home. Pam said that it was apparent they found the issue very difficult but that they kept mentioning Nicola Mackintosh so Pam asked if Miss Mackintosh could take on their case and thank God, Pam said, Nicola did.

YF: Asked Pam if she applied for legal aid or was told she could get it?

PC: No, didn't even think about it at first. Pam said she was lucky that she still had some money left from her accident but that it was of course not enough to fight the type of case they were putting forward so then they moved on to applying for legal aid funding.

YF: Said that it was clear her case had led to an incredible decision but asked what it was she wanted to achieve at first?

PC: Pam said that they had brilliant lawyers, what was achieved was dealing with the outrageous situation that they had been forced into.

YF: What difference did legal representation make to your case?

PC: Every difference. It was a hugely complex legal case that required a tremendous amount of forensic legal research that otherwise they would have known nothing about.

YF: Asked Nicola whether, when she took on the case, she was aware of the huge legal implications?

NM: Said that she got into the area of law because she was so incredibly motivated to help the vulnerable and disabled persons that were living in such circumstances. Nicola said that she was motivated when she first saw the letter given by the Health Authority which said to Pam and the other residents that if they moved from their existing block into this new purpose built block they would have a home for life. Nicola said it is rare to see a home for life promise in writing. For all of us a home is a place of safety but for those who are vulnerable it is even more important. To then see the follow up letter from the Health Authority saying the NHS was no longer responsible for Pam and the other's nursing care and they would have to move out of the house they had been promised, she was shocked by this. Nicola said at the beginning she saw embryonic points regarding the huge issue that was whether social care was still covered by the NHS but that she was primarily motivated by the clients.

YF: Asked Pam what difference she thought having legal aid made?

PC: It was vital support. People who cannot fight and speak up for themselves need support from the legal system to speak up and have them noticed. Without someone to help them speak up they are just a tin of beans to be pushed around.

YF: Asked Pam what she thought ought to be done to help people in her situation access community care advice?

PC: There should be a right to a hearing against any public authority because none of the people who work in these authorities have their views involved, it is always the policy of the Government. The authorities are against a brick wall to enact Government views. Where a person is going to be deeply affected by an authority's decision there needs to be a way for the decision to be challenged.

Andy Slaughter MP: Thanked Pam and Nicola for their evidence. Pam described the process of trying to find a lawyer and that it was only by chance they got successful representation. How difficult is it for someone wherever they are in the country to access a specialist lawyer?

NM: It's pretty impossible. Community Care is a relatively new area of law and it is hugely complicated. That means improving the sector is a hugely expensive process because of the complex training. Whilst community care does have some legal aid funding, that funding does not provide the necessary funding to fund the offices to provide advice. The number of community care lawyers dealing with matters like Pam's case could be counted on two hands. If there is a complex area of law that is not paid for properly with few lawyers in it, you will not be able to provide lawyers to provide the public with advice for their legal rights. This is an area of law Nicola feels so strongly about because people don't have a voice and yet this is an area where public authorities are making decisions about their homes, benefits and care, issues that are real life and death and often these decisions leave people without redress. What needs to happen, is we need a swift review of community care legal aid and advice, there needs to be a revisiting of the means test for legal aid and some proper incentives for senior lawyers to train the junior and new of the profession.

Nicola also noted that the case which Pam took was a judicial review, they would not be able to take that case today because the lawyers would not get paid unless they were successful at the permission hearing. That is a complete barrier to lawyers taking cases like Pam's. What a tremendous injustice that is.

[Stephen Tyler & Rose Arnall, Shelter \(Disability Discrimination and Homelessness\)](#)

Stephen Tyler: Stephen is a physically disabled man with three small children who became wheelchair bound in September 2017. The family were evicted from their private rented

accommodation having asked for reasonable adjustments to be made to accommodate Stephen's disability. Despite offers of temporary accommodation by Birmingham City Council, the family found themselves homeless. Stephen's wife and children were able to stay with her family, but because of his wheelchair Stephen was unable to access the property and had to sleep in his car.

The family looked for private accommodation to rent but found themselves rejected again and again on the basis that landlords did not want to accept housing benefits. In March 2018 and with the involvement of Shelter, Stephen brought a case against one of the real estate agents that discriminated against him on account of his benefits.

Rose Arnall, Shelter: Works for Shelter and has worked with Stephen over the past few years.

Questions from Andy Slaughter MP: Asked Stephen to set the scene for us, when he became homeless how did it happen, what accommodation was he in and how did he end up?

ST: Had been in an accident that resulted in him becoming wheelchair bound. Asked the landlord to make some adjustments to the property to make it more wheelchair accessible, the landlord then served a s21 notice to evict Stephen.

AS: When did Rose first come across Stephen's case and how typical or unusual was the case?

RA: Was contacted by the Birmingham office of Shelter in relation to the S21 eviction and Stephen's homelessness application which the council had been unable to discharge by providing temporary accommodation. Stephen and his wife were trying to find private landlords that would take them in but had been refused outright by agents with blanket policies for refusing persons on housing benefit.

AS: Asked Stephen when he was being evicted what did he do and whether he got any assistance from the local authority?

ST: The LA said they would not help until he had gone through the courts and the bailiffs were at the door.

AS: Did the LA not help in any way to encourage the landlord to modify the property?

ST: No, the LA was completely unwilling to help in any way.

AS: Is that a typical action by the LA?

RA: Yes, it's a form of gatekeeping from LAs being unwilling to try and provide any form of housing or deal with homelessness applications until situations completely deteriorate. Stephen and his family were offered some incredibly short term rooms in Travel Lodges far away from their family support. The council only offered to find more suitable accommodation after the threat of legal action.

AS: Asked Stephen how long he was forced to sleep in his car?

ST: Several months until they had managed to find some private accommodation. The LA were completely unable or unwilling to provide support during that time.

AS: What did Shelter do next?

RA: Opened several legal cases. A judicial review case against the LA for failing to assess Stephen's homelessness application, got involved with community care to get funding for

Stephen's care and started a discrimination case against the private rental agent who had refused to consider Stephen due to his disability and benefits.

As: Three complicated cases, could Stephen have handled himself?

ST: No.

RA: Stephen is now in permanent accommodation that is the end result of the homelessness application, community care did provide some financial support.

In terms of the disability discrimination case, the discrimination occurred in September 2018, Rose followed the pre-action protocol and applied for legal aid in February 2019. The application was refused three times by the LAA despite providing tens of pages of evidence that shelter was quite uniquely placed to provide as well as a supportive councils advice provided pro-bono. The claim had to be issued because of the statutory limitation period under the Equality Act. It was only after threatening LAA with JR that the LAA agreed to provide funding but the LAA continued to refuse to backdate the certificate or make any ex-gratia payment towards the five months of work already done. The case was then funded and continued and in September 2020 after a contested one day trial in Birmingham County court there was a declaration of Stephen having been unlawfully discriminated against, £6000 for Stephen and costs on an indemnity basis.

AS: Has there been any consequences for letting agents and LAs in how they behave?

RA: Unfortunately, we continue to see this discriminatory practice continued. Under the Equality Act, unfortunately, it is still on the discriminated against persons to bring their own case. In 13 /15 discrimination cases brought by Shelter, the LAA has refused to fund. The LAA have also used Stephen's success as a reason to refuse future cases, claiming the issue has now been resolved and shown to be discriminatory and therefore there is no legal need for future cases. Rose stated she is now not sure how people in Stephen's case could try to enforce their rights.

AS: Asked Stephen to confirm that he was being turned down by agents just because of his disability and because he was on benefits?

ST: Yes. Stephen said that as soon as you mention housing benefit to an agent or Landlord they don't want to know you at all.

AS: Asked Stephen what accommodation he is now in?

ST: Now in council accommodation after Shelter helped with that as well.

RA: Eventually the council secured accommodation for Stephen. A number of disability cases we pursue are cases where the families were doing well in the private sector until a disability and then they are forced to go to the council for housing where property is scarce. Currently Stephen is trying to get the LA to adapt the council house that has been provided to make it accessible, this has been another year-long battle.

AS: Asked Stephen where he ever thought he would be involved in multiple legal actions?

ST: No, he said that he knew a little about the equality act but did not think it would have this impact.

AS: Asked Rose, having gone through this experience, what changes she would want to see?

RA: Wholeheartedly agree with the EHRC June 2019 report on access to legal aid and the Women and Equality Committee in July 2019. Current barriers are the LAA eligibility

thresholds, culture of refusal in the LAA – knowing you will get a no a few times before an application is properly dealt with - and the current application of the merits test. In Stephen's case there was no debate about Stephen's means but the merits were in question. The current position is that because the damages for discrimination cases are low and do not meet the LAA's wider public interest tests the LAA refuse the applications. Rose said that as long as the burden for enforcing equal treatment is on the victim then the starting point for civil legal aid needs to be a presumption that enabling discrimination cases to be brought is always in the wider public interest because no one else can bring these cases. More broadly, legal aid for disrepair, welfare benefits and debt needs to be back in scope. Ending no-fault evictions and bringing into force S1 of the Equality Act.

Karen Buck: How many other firms are doing this work?

RA: Apart from one lawyer in Scotland, Rose is the only lawyer in England doing this work.

Julie Bishop, Director of Law Centres' Network

JB: Julie Bishop is Director of the UK Law Centres Network (LCN), a post that she has held for 12 years. Prior to LCN, Julie was Director of the National Association of Community Legal Centres in Australia for over 5 years and worked in the legal aid sector in Australia at the community level for almost 20 years. Julie's professional training is in Information Technology and it was as a systems analyst that she commenced working with the legal sector. There are around 40 centres across the UK.

Questions from Lord Bach: Asked Julie to explain what she sees as the nature of a law centre and how it differs from a legal aid firm.

JB: Law centres are not for profit practise that work with disadvantaged people that means they use the areas of legal practice relevant to this which are often not commercially viable. Law centres' mission is to use legal skills to address disadvantage. They have found that when something happens in people's lives such as long-term illness or redundancy then legal problems arise, if those legal problems are not resolved people cannot break free from their situation. On top of this they have found that when people are stressed or worried people are not able to act, they need someone to accompany and support them to sort out their issue. Law Centres don't do this alone, in particular they work with other local safety network organisations such as food banks, shelters etc – connecting people who may not know they have a legal solution to their issue with other support networks.

In providing this wraparound support and bringing in in-kind contributions such as pro-bono, they can extend and add value to a legal aid contract. Importantly, the additional funding added to by legal aid brings flexibility to how they can act and respond to issues that arise. Such as the huge surge in employment problems through the pandemic, one law centre said they had seen a 600% increase had been seen in employment problems that are not covered by legal aid.

Julie mentioned new schemes set up by law centres, for example in Liverpool, Vauxhall law centre has been able to set up a dedicated service for relatives of people who have died and who have problems arising from bereavement, accessing benefits, helping with funeral costs etc.

Julie discussed another case that required law centre support. Just this week an elderly man who was an owner/occupier had been away caring for a family member and returned to find his house sold and his locks changed. Somehow there had been a fraudulent power of attorney given to sell his house and he was left without any support other than law centres as his issue was not covered by legal aid.

Although law centres do have LAA contracts, the other work and services provide means law centres can extend the use factor of LAA.

Lord Bach: what proportion of work for law centres is legal aid funded, what are the type of clients in centres and what areas of law do law centres assist them with?

JB: Only around 30% of law centres' income comes from LAA contracts on average. The type of clients seen are usually people at a moment of crisis in their life. They see a high incidence of people with disability, low educational attainment, more women than men, more BME than their proportion in the population. They specialise in what the UK calls social welfare law, the US call it poverty law. The best description is the areas of law people meet in their daily life if something goes wrong.

The types of client since the pandemic have changed, they see a lot more people who would never have imagined they would need a lawyer. Suddenly with employment problems or loss of private tenancies people find they need the support of law centres. Whilst there has been a housing crisis for many years, the impact of Covid has shone a light on this. The pandemic has severely hit people with chaotic living conditions or uncertain housing, the virus swept through those people.

In terms of legal aid, given legal aid is only about 30% of law centres' income one may wonder why law centres bother with it, especially given what a hassle it is in terms of the bureaucracy. An important thing and the reason law centres continue to do legal aid work is not only that it overlaps with Law Centres' aims but that it provides the kind of work that law centres would do anyhow. Very importantly, legal aid contracts where relevant provide that legal aid indemnity. It means law centres are available where all other avenues have been pursued, to go to Court which may be the only avenue left open. Without that indemnity their clients would be unable to access the courts to access that solution. Even so, they now know from a study published by Professor Donald Hirsh – the "Make Law for All Report" - showed 56% of people in work cannot afford legal support. Law Centres cannot pay lawyers generously. A law centre lawyer costs £75-£100 an hour, the average legal aid funding for a housing lawyer is £63 an hour. The issues with legal aid are huge, the lack of trust from the LAA which assumes that each legal aid provider is dishonest. There is a huge inflexibility of legal aid contracts and this has been made abundantly clear through the pandemic because the LAA are unable to adjust their rules. The loss of legal aid income over the last year has also been great. Law centres were grateful for the 6-month funding grant from Government but now law centres are also facing the cliff edge caused by the pandemic induced loss of funding.

Lord Bach: A lot of work done by law centres is work that was taken out of scope by LASPO. Looking to the future, asked Julie what she would like to see happen for legal aid as it affects law centres as a matter of urgency?

JB: Three things.

1. Scope – the legal aid contracts have to be more flexible and adaptable and able to provide a resolution for the person's issues as a whole. Have heard other witnesses talk about the green form scheme, we have to be able to address all of a person's issues rather than trying to treat their problems as discrete issues that can be separated from the person.
2. Fees – this issue applies to law centres like others.
3. Future – There is an issue with the future of legal aid practitioners. Law centres have a huge struggle recruiting. Law centres used to have 80 or 90 applicants for their work, now in London, law centres will be lucky to get 5 or 10 applicants. Law centres do still take on trainees but the number is falling and there is a huge issue with retention. Legal

aid can be seen as more than just a funding source for legal help, it is also a form of social capital. Legal aid is a local community resource, it brings money to local communities, it provides funding for trainees. Legal aid is always seen as a loss for the government but it, in fact, puts money back in. The law centre had some calculations done a few years ago now that showed Law Centres in a single year add £43m to the economy in keeping people employed, paying taxes etc.

Where there is a political will, money is available. The money for civil legal aid is a small change for Government, it could be doubled, and it would hardly be noticed by the treasury. If the need for this cannot be recognised at a time of the pandemic, then when can Government notice.

In 1949 when legal aid was established it was understood this was key to rebuilding a society. We are at that moment again. It was understood then how important legal assistance was in rebuilding a society that works for everyone. Humans are hardwired for fairness and legal aid is critical for that fairness. We cannot rebuild legal aid so that access to the law is considered a privilege, everyone should have access to legal aid and gain that assistance.

[Marcia Willis Stewart QC \(Hon\)](#)

MWS: Marcia Willis Stewart QC (Hon), is an award-winning civil rights lawyer and a Director of the renowned Birnberg Peirce Ltd law firm. Willis Stewart has championed legal aid and has represented families in challenging and high profile cases against the state. She represented the family of Mark Duggan at his inquest and has continued to act for them in all associated matters over the past 10 years. Marcia was the lead lawyer for the legal team acting on behalf of 77 of the 96 families of the deceased at the Hillsborough Inquests, and helped to secure justice when it was ruled that the 96 victims were unlawfully killed. Marcia currently represents many of the Bereaved, Survivors and Residents in the Grenfell Tower Inquiry and their civil claims.

She has a broad base of work but for the moment is involved in a number of high-profile inquests. When not practicing law she is involved in an academic project with QMUL, Oxford and Manchester looking at the multiple disadvantages faced by ethnic minorities with severe mental health issues.

Questions from James Daly MP: Asked Martha what her general views are about how sustainable legal aid is and what needs to happen in the system to remedy the problems in existence?

MWS: Completely endorsed what was suggested by Julie Bishop. We are going to have to rebuild society on the back of Covid. Legal aid has been lost to many and so many areas are now out of scope. Martha gave two examples of areas that are out of scope which have led to injustices where legal aid was not provided.

First, the Windrush scandal. Marcia is a child of the Windrush era and she cannot tell us the physical and emotional pain faced by the Windrush generation in being unable to access their rights and the years of struggle needed. Finally, when there was a wrong acknowledged by the Home Office, the compensation claims that were made available require an application and the applications process is out of the scope of legal aid and so there is no scope for lawyers to get involved. The view that lawyers are dishonest and out there to earn as much as they can is a fallacy. People cannot access their rights without the assistance of lawyers to help them up against the state. Without lawyers those people are powerless.

Secondly, thinking about historic child abuse cases. Shirley Oakes Survivors association for one example, 10,000 children passed through Shirley Oakes Homes and there was huge

abuse suffered by many of them. There was no legal aid available for any of those children to challenge the historic abuse they suffered. It was only through the work of the Shirley Oakes Survivors Association that Lambeth Council, who ran the homes, were forced into running an inquiry.

JD: In terms of sustainability, it is increased if more areas are in scope. Asked Marcia what her view on how legal aid work is paid at the moment, are fees at a level that enables running a sustainable office?

MWS: No. She said her firm is still standing but is not sure how much longer for. Salaries are low. The legal aid and legal help scheme are often quite unwieldy. Marcia said she is very concerned about the future. There are not enough others coming up into the scheme because they will not be available to afford to live on a legal aid salary.

JD: Is it the case that a legal aid lawyer would be earning around £25,000?

MWS: Yes, those are the figures we are talking about, the figures are low. Marcia said her firm lost two members of staff due to retirement recently and they had only 3 applicants to those roles, down from dozens of years ago.

JD: James said that the Law Society sometimes point out that there are more solicitors on the roll than at any time before. However, he said that many areas of the profession are finding issues of recruitment, the opportunities for young lawyers coming into the profession are being severely limited at all stages. We have thousands of young people coming through university and we have to offer them a future.

MWS: Marcia said she completely agrees. She said that she often speaks to young lawyers coming up, some of her colleagues tell those lawyers that they will have to go to a City firm or else they won't be able to support themselves. Marcia said this is a message she can empathise with but also said that she does highlight to people the important work that you do in legal aid and how that can match up with your values. Whilst there may be a lot of lawyers on the roll at the moment, a lot of those lawyers are going to be retiring soon and that will exacerbate existing advice deserts.

JD: Asked Marcia if she could give an example of the hourly rates received for legal aid work?

MWS: Legal Help is paid at £45 an hour, High Court £79 an hour. They are low fees given the costs incurred in running a firm and especially when so many things not in scope. There used to be the view that pro-bono could support work being carried out but Marcia said that we cannot call it pro-bono work anymore because it isn't a matter of occasionally supporting existing work, the situation is that lawyers are actually being forced to do work for nothing in order to survive on the limited rates.

JD: James said that he completely understood it is impossible to run a sustainable practice on legal aid rates. He further asked Marcia what else she thought the APPG should suggest to the Government?

MWS: Would look at recommendations 19 and 20 of the Bach Commission, reducing the administrative burden for providers. The hoops providers have to go through to access funding and the hoops clients have to go through are hugely difficult. At the moment Marcia said she was dealing with a client, a young man needing assistance for a matter in the European court, he is on benefits and would be entitled to funding but he has to provide 3 months of bank statements – he does not have online banking and can't go to the bank because of Covid – it is impossible for him. Marcia said that she would like to see a reduction in the bureaucracy for accessing funding.

Additionally, Marcia said that what providers want is a funding scheme or process that cuts through and enables our clients to access funding for their rights she echoed Julie's message of making funding available that can deal with all of a person's issues, not the current situation where one issue is in scope and the remaining issues are left to worsen.

JD: Thanked Marcia for the work done by her, Lawyers are people who defend the rights of individuals and they need to be treasured by society. If money is provided by legal aid, in essence the Government gets the money back because in funding legal aid they are supporting economic activity, small business etc. He asked Marcia whether she agreed with the idea that value is added through funding legal aid?

MWS: Marcia said that she thinks she does. She mentioned a similar issue where she had been able to change Government policy by highlighting the economic case. About 10 years ago there was a rise in the number of children being in immigration detention. After succeeding in case after case she said her team thought about how they can improve the situation and push the Government to scrap the policy. She said that they provided a dossier based on all of the cases they had pursued and won in, of what it was actually costing the Government in pursuing this policy detaining children and the policy was scrapped. We need to look at the benefit to society as a whole form of legal aid, which will be hugely important to society to recover as a whole.

JD: £25,000 to live in London is impossible. We have to try and find a way to find a different way of doing this.

Andy Slaughter: Noted that the Grenfell inquiry is an area of work Marcia's firm is involved with. He noted that it is a huge project that quite rightly keeps coming up in Parliament. Andy asked Marcia about her involvement and how best to deal with these massive issues that should be transformative of society over decades to come?

MWS: Marcia said that she acts for a number of the bereaved and their extended families in the inquiry and is looking ahead to assist them in terms of civil claims.

Marcia said that what we are failing to do is really to look at lessons learnt from previous incidents. She noted how she had acted for an individual in the Lakanal house fire inquest, the recommendations that came from that inquest must have been ignored because we then had the Grenfell fire.

As a lawyer in this area, Marcia said that we have to move in a way that empowers individuals and their families to obtain truth but what we seem to be failing to do is really pulling together the learning from those experiences. We can have one inquiry after another but we really have to open that repository of recommendations and lessons and actually do something about it. We cannot keep repeating the same mistakes and not learning from the matters that have gone ahead before us.

Coming back to Grenfell, she noted that the hearings are now going on remotely and that there is a big issue in terms of accessibility for the bereaved and their ability to participate remotely. Whilst on any given day there may be 2-300 persons watching the inquiry on Youtube, there is no online mechanism for enabling the families' lawyers to participate remotely. We need to consider whether inquiries under the 2005 act are actually the right way to explore the truths from incidents like Grenfell and to ensure lessons are learned.

Marcia gave another example, she had acted for the families of five men who died at Camber Sands Beach. Marcia was asked to speak to those families because she had a lawyer who was Sri-Lankan, she tried to assist in a way to find out what had happened. It became clear

that the Coroner in that inquest was happy to simply have a half-a-day inquest brushing over the issue and simply recording their deaths as being from drowning. Marcia said that they were able to conduct a proper inquiry where it became clear what things needed to be done at Camber Sands, and at beaches around the country, to prevent such incidents from occurring in the future. The presence of lawyers meant that the inquiry could be used to ask the right questions in order to learn the lessons that are necessary for safety and to prevent future issues from occurring in the future.

Marcia ended by quoting James Baldwin, “not everything that is faced can be changed but nothing can be changed until it is faced”.

Karen Buck MP: Thanked everyone who helps the panel come together, Chris Minnoch and Rohini Teather particularly, thanked the panellists for their time and most of all thanked the superb witnesses who have been so helpful. Encouraged all to attend for the next and final inquiry session on the 25th March focussing on experiences of junior lawyers in the legal aid sector. Karen concluded and thanked everyone for attending.