

All Party Parliamentary Group on Legal Aid

Note of meeting: 22nd October 2015

Present:

Keir Starmer QC MP (Chair)
Yvonne Fovargue MP
Andy Slaughter MP
Karl Turner MP
Lord Bach
Lord Low

Apologies:

Lord Phillips
Diane Abbot MP
Lord Carlile
Dominic Grieve QC MP

The meeting was also attended by about 30 interested persons from a range of organisations including the Magistrates Association, Ministry of Justice, Bar Council, Law Society, Shelter, Crawley Families Need Fathers, Public Law Project, Young Legal Aid Lawyers and Legal Aid Practitioners Group.

Hot Topics in Legal Aid

As Chair of the APPG, Keir Starmer welcomed people to the meeting and introduced the three speakers.

Jenny Beck, partner at Stephensons Solicitors and Co-chair of LAPG

The Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) 2012 had resulted in the wholesale axing of legal aid for certain types of civil and family cases. What remained was supposed to be targeted at the most vulnerable to ensure that those with critical legal issues, involving basic human rights, could still access justice.

However, we are learning that the cuts to legal aid are causing knock-on costs to the courts, police, hospitals, mental health and other services. Also, there's a human cost when people do not get the help they need.

The legal aid that remains is not targeted at the most vulnerable, indeed they are often less able to access it through a combination of

- poor public information and a lack of funding for signposting and initial advice.
- the administrative hurdles associated with applying for the limited funding available
- a shrinking supplier base caused by these administrative hurdles and consequent low remuneration.

A case study will illustrate the problems. Alia, who has fled the family home as a result of domestic abuse, approaches three solicitors before finding one that offers legal aid. When she does eventually see a solicitor, she doesn't have evidence of her capital with her (it's at

the family home) and doesn't have evidence of the DV in prescribed form. The solicitor must advise her to go away and return when she had evidence of means and DV. Her husband won't give her access to information about their joint savings account and the doctor wants £50 for a report, but she doesn't have this money.

The solicitor will have spent 30 minutes at the initial meeting explaining all this to Alia. If Alia does obtain the necessary evidence, the solicitor will need to spend time opening a file and complying with regulatory steps before giving her, say, an hour's advice. It is likely that, in all, the solicitor will have done 3 hours' work – for a fee of £89. This is less than £30 per hour – less than it costs to employ the solicitor.

The means and merits tests work for people who have access to means (to pay doctor's fees, for example) and an organised lifestyle. Many victims of DV do not have this luxury. For providers, the administrative burdens means that many can no longer afford to provide a service. Also, the squeeze on those at the Legal Aid Agency who are responsible for administering the scheme has led to slow and poor decision making.

The result is that quality and choice is at risk. We need to re-instate Legal Aid for initial basic advice which would enable people to understand their rights and enable them, therefore, to access solutions themselves and prevent unnecessary escalation and poor decision making.

Emma Scott, Director of Rights of Women (ROW)

Emma Scott started by saying that she intended to focus on the criteria relating to evidence of domestic violence. ROW has evidence that, in spite of the recent amendments to the requirements, 40% of women are unable to provide one of the forms of evidence required.

Last year, ROW challenged the lawfulness of regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012 arguing that the evidence requirements were *ultra vires* LASPOA as they substantially narrow the statutory definition of domestic violence in the Act. Specifically, the evidence criteria make it difficult, if not impossible, to evidence forms of non-physical violence included in the definition. Also, the 2 year time limit on evidence takes no account of what we know about the changing dynamics of risk.

In a devastating judgement for survivors of domestic violence, in January 2015, Mrs Justice Lang dismissed ROW's application. The appeal will be heard in late January 2016.

However, problems with the domestic violence criteria are only part of wider systematic problems. At a recent family justice conference, a number of other issues were raised:

- people experiencing increasing difficulties finding legal aid solicitors reflecting ROW's survey findings that 38% of women found it difficult and a further 35% found it very difficult to find a solicitor in their area.
- For single parents, the disposable income calculation is punitive as it includes child tax credit, child benefit and maintenance. Also, the allowances for housing costs do not in any way match average rents nationally. Finally, in areas where house prices have soared, the mortgage disregard is meaningless.
- Many woman can't afford to pay the legal aid contributions

As a result we know that many women are discouraged from accessing remedies to protect them from violence.

Jon Black, partner at BSB Solicitors and Chair of LCCSA (London Criminal Courts Solicitors Association)

In spite of protests and legal challenges, the tendering process for the new duty criminal solicitor scheme went ahead in April 2015 and practitioners were given a five week window to complete a complex process.

The results have just been announced and it is clear that it is a botched and rushed job. Representatives of practitioners pleaded that the process should be delayed until after the election. However, they went ahead and the outcome is a mess.

A whistleblower has revealed that temporary and low-paid workers were given the task of assessing the bids. When the outcome was announced last Thursday, it became clear that there have been a number of errors. A firm in Cambridgeshire have been offered a contract in Chester – a contract they didn't apply for. The term "omnishambles" has been used.

The impact of the tender will be a significant decrease in the number of practices, particularly in some areas. For example, the number of solicitors in Camden will go down from around 15 to 5 or 6. The process is resulting in the loss of the High Street solicitors – in future, individuals will have to find their legal advice in a warehouse on an industrial estate.

It seems likely that several appeals against the decisions will be lodged and the representative and professional bodies are hoping that this will persuade the Ministry of Justice to have a proper dialogue about the way forward.

Finally, Jon Black paid tribute to the work of Robin Murray and Bill Waddington of the Criminal Law Solicitors Association.

Questions

Keir Starmer thanked the speakers and invited comments and questions from the floor. The following issues were raised:

Richard Nixon from Crawley Families Need Fathers gave an account of his own experience of applying for legal aid and the administrative hurdles he faced. He noted that the number of ex-parte non-molestation orders had increased.

Emma Scott agreed with the points made about the difficulties getting legal aid. The MoJ had produced template letters for obtaining evidence from medical professionals, but these were buried deep in the .GOV website.

Jenny Beck agreed that there had been an increase in the number of ex-parte non-molestation orders grants. It was probable that this represented a hidden level of DV – that many victims of DV didn't previously obtain non-molestation orders but now needed to in order to get advice on other matters. There were practice directions that Judges should

always arrange a “return date” so that respondents would have the opportunity to put their case.

Maggie Ellis, an occupational therapist, said that she and colleagues had noticed that the quality of accommodation offered to victims of DV was often very poor. Many victims were placed in hostels where they were at risk of further violence.

Emma Scott said that in addition to legal aid cuts, there was a crisis in the funding of refuges.

Jenny Beck reiterated her case for reinstating the provision of initial advice – to stop situations becoming acute.

Lord Bach – whilst appreciating that the meeting was a forum for members of all political parties, he wanted to mention the Labour party review of legal aid. He would welcome help from any attendees. He would be looking at the defects in LASPOA, potential policy areas for the future and areas where it might be possible to influence the government. He was particularly interested in the area of domestic violence. Lord Bach said that the time frame was draft review by April 2016 and full review by September 2016 – the Labour Party Conference.

Jon Black wanted to make it clear that the professional bodies were not taking action against the Legal Aid Agency. However, he was aware that several unsuccessful bidders were taking action. Some had arranged for their bids to be re-marked and this exercise had revealed a high level of error.

Helen Tobin, family solicitor said that she thought that Jenny Beck’s estimate of 3 hours to give initial advice was an underestimate. In her experience it takes even longer. It made it increasingly difficult to participate in pro-bono work such as the family court duty schemes.

Jenny Beck responded by saying that she knew of firms who no longer use legal aid to give initial advice.

Keir Starmer thanked people for attending. He said that there were plans to invite Michael Gove to speak at the next meeting.