



LASPO Review and LAPG Manifesto

Wednesday, 5th December 2017 17.00-18.00

Minutes

Speakers:

Bob Neill MP (Chair of the Justice Select Committee)

Nicola Mackintosh QC (Hon) (Sole Principal of Mackintosh Law and Co-Chair of LAPG)

Jenny Beck (Partner of Beck Fitzgerald and Co-Chair of LAPG)

Parliamentarians:

Karen Buck MP (Chair)

Lord Jeremy Beecham

Sir Henry Bellingham MP

Alex Chalk MP

Andy Slaughter MP

Christina Rees MP

Paula Sheriff MP

Alan Mak MP

Gill Furniss MP

Lucy Frazer MP

Introduction

Karen Buck welcomed the attendees, introducing the meeting as a discussion of the recently announced review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and the Justice Committee's approach to the Post-Legislative Memorandum that was submitted on 30th October 2017. She was very pleased to welcome Bob Neill MP, Chair of that Committee to speak about that and LAPG's Co-Chairs Nicola Mackintosh and Jenny Beck to discuss the wider implications of the review and the newly published 2nd edition of the LAPG Manifesto.

Bob Neill MP

Mr Neill MP introduced himself and commenced his address by saying that the Justice Committee in this parliament have been anxious to see the review brought forward. He added that, whatever the intentions of LASPO, that as both a constituency MP and a lawyer he is aware that there are clearly issues within the legislation. Some of the work in the last parliament raised concerns about access to Justice issues, particularly in relation to employment tribunal cases. Consequently, the [UNISON](#) decision by the Supreme Court on the 26th July 2017 was lauded by the Justice Committee as making it clear that justice cannot be commodified. The Justice Committee had further concerns about the speed of the implementation of LASPO and the impact that it has had since being brought into force. He added that if you give people rights you also have a duty to give them the ability to enforce those rights. There is a balancing act in how to achieve this in a cost effective way and within budgetary restraints.

Mr Neill went on to say that in March 2015 the Justice Committee submitted a [report](#) about the initial impact of Part 1 LASPO with additional input from the National Audit Office. Concerns were raised in that report about the efficiency and sustainability of the legal aid market, the rise of advice deserts, (even within London itself), the methodology and a failure to justify the cost savings. These concerns probably remain the case to this day. Members of the committee spoke to judges and practitioners and heard of the strain of dealing with the rise of Litigants in Person. Mr Neill added that when LASPO was passed it had been thought that the number of people turning to mediation would increase but it has actually decreased by 70+%.

Mr Neill went on to tell the meeting that the Justice Committee considered that there was inadequate public information about the telephone helpline.

Additionally, the Justice Committee would focus on issues of early advice. Mr Neill expanded on this by saying that it could help the constituents coming to his surgery with a possession order by addressing their issues far sooner.

Mr Neill also mentioned the Committee's concerns about the lack of availability of legal aid funding for inquests, citing in particular the families of victims who find themselves without legal representation at the inquests. He added that the Justice Committee welcome the changes on evidence required for Domestic Violence cases, as well as ruling out cross-examination of victims by alleged abusers in person.

Mr Neill then turned to the issue of the proposed post-implementation review, beginning by saying that its scope is a matter of public record. The review of LASPO to be finalised by the summer recess. This is an ambitious timescale. Mr Neill cited the Minister of State's comments in the recent

[Westminster Hall Debate](#) as evidencing that the Ministry are determined to conduct the review thoroughly and to have a set of expert panels.

Mr Neill explained to the meeting that Justice Committee post-legislative inquiries are distinct from the usual scrutiny. The Justice Committee needs to be aware of the government's focus, so as to avoid duplication. The Justice Committee has already agreed to write to the Secretary of State to say what it believes should be included within the Government's review and that letter will be sent prior to the Christmas recess and be published on the Justice Committee website.

Mr Neill indicated that the following issues may be pursued by the Justice Committee in the coming months:

- 1) the suggestion to appoint a steering group of external stakeholders to oversee the review and provide an independent view;
- 2) the suggestion that the review includes an assessment of any impact on access to justice;
- 3) highlighting the importance of discussing a cost spending analysis, including considering any cost shunting within the justice system and/or to other government departments , for example DWP, health, social cohesion etc;
- 4) drawing attention to the concerns the previous committee raised in 2015 and requesting that an update is provided and these concerns are considered; and
- 5) drawing attention to other research already done; there is quite a body of information out there which should be considered.

Nicola Mackintosh QC (Hon)

Ms Mackintosh introduced herself to the meeting as sole principal of Mackintosh Law and Co-Chair of LAPG and Co-author of the LAPG second edition of Manifesto for Legal Aid (the Manifesto) and thanked Mr Neill for his address. She began by saying that the Manifesto was written to speak from a practitioner's perspective and to tell the stories they hear day after day. That it aimed to set out the kind of society that we might want to live in, a better society, an equal society. She added that the 1st edition of the LAPG Manifesto was produced in 2015 with some of the consequences of LASPO being predicted. In reality however, the damage has been far worse than any prediction. The legislation may be less than five years old, but the detrimental effects in terms of justice for hundreds and thousands of people have been extraordinary, with the costs simply being transferred to other areas of the welfare state.

Ms Mackintosh went on to set out further detail about the Manifesto which gives a detailed analysis of the post LASPO landscape and practical solutions of how the current chaos could be remedied. She went on to set out the following concerns highlighted in the Manifesto:

1. The next generation of legal aid advisers: the creation of a suitable legacy for the next generation of legal aid advisers and ensuring that the sector continues to attract talented and high calibre individuals;
2. A system more accessible to all - ensuring a system that secures advice to those who need it, and doesn't just provide it on an exceptional basis;
3. Housing law – as an area where early advice would transform the landscape. Currently legal aid is available for homelessness but it is not available to provide advice on the main causes of homelessness e.g. the non-payment of housing benefit.

4. The means test: under civil law, you are either eligible for legal aid (which may be free or provided subject to a contribution) or not with only around 20% of the population eligible for financial assistance under an outdated means test. For example, allowable housing costs are limited to £545 per month. Any extra costs arising from disability or care home fees are completely ignored. Vast amounts of the population are caught in the middle of not being eligible and yet having insufficient means to pay for advice.
5. Evidence requirements: there are significant concerns that some people may be eligible but the evidence needed to demonstrate this cannot be produced.
6. The Legal Aid system should be operated by a body independent of government: a decision to grant somebody legal aid is a decision that affects who can bring a case. If the legal challenge is against central or local government, it is surely against the principles of the rule of law that a government controlled department decides whether legal aid should be granted.
7. An overly complex and bureaucratic system: CCMS is a very expensive IT system that has not been properly devised or thought out.
8. Vulnerable Groups: Ms Mackintosh cited some of the impact the changes have had on specific vulnerable groups – to the homeless, disabled, those people in detention, children, and those with mental health needs. She gave the example of a young man with Mental Health needs who has cancer and is self neglecting. The local authority is looking at moving him to another property against his wishes. Under the current regime, he is not entitled to advice as, despite being on a means tested benefit, he has equity in his flat. He receives no legal advice and this is not a situation that a judge can manage alone.

Justice is too important to be subject to party politics. The financial cost to the court system and society have far exceeded what was anticipated and the human costs paid have been too high.

Jenny Beck

Ms Beck thanked the meeting for attending and went on to thank Mr Neill in particular for his full analysis and summary of our current position. She reminded those gathered that LASPO removed huge areas of Legal Aid from scope and set a precedent that Legal Aid would not be available for most areas. Ms Beck added that predictions as to who would be affected were unnervingly accurate. The impacts, however, were far worse than anticipated. Ms Beck added that if we are to have rights, we must have rights for all, or we might as well have no rights.

Drawing from her experience as a family law practitioner, Ms Beck went on to say that LASPO saw the removal of approximately 80% of all areas of private family work. The intention was to save costs, and most practitioners are in favour of moving away from expensive litigation. But this has not transpired. There has been no reduction in people going to court, Ms Beck reported an increase in costs and time. Without adequate legal advice, Judicial time is spent on case management and not decision making. Referencing Mr Neill's point about mediation, Ms Beck went on to say that this option has not been taken up in the numbers anticipated, largely because it was legal aid lawyers that were signposting people to mediation in the first place.

Ms Beck went on to highlight a number of case examples to illustrate her point. She cited a mother who is anxious about granting her ex-partner access to the children over fears that he would not return them. Without access to legal advice she has just decided to prevent any contact. The father is also not eligible for Legal Aid. He has a number of choices. If he were to go and confront her about

re-instating his contact with the children there could be concerns about his family's safety. If he went to court he would receive no advice prior to issuing proceedings and would have to run the case without any assistance. And, if he walked away, his children would effectively be losing a parent. A little early advice could make a huge amount of difference in a case like this.

The legislation has failed families like this.

It has failed victims of Domestic Violence.

In short, LASPO has been a disaster.

Ms Beck concluded her address by stating that now there is a real opportunity to fix this. Ms Beck stated that she wanted to highlight two things. The first was that by re-instating early advice, we create a win:win situation of prescribing preventative medicine to any number of ills. In response to Alex Chalk MP's question as to how much it might cost to bring back early legal advice, Ms Beck replied that the cost would always be less than the cost that is passed on to other departments and services.

The second was that the system is very complicated and if simplified it could reduce the costs. Ms Beck exhorted the Parliamentarians present and those at the coalface to work together in bringing about those changes.

Questions and Comments

Alex Chalk MP : Obtaining figures for early advice is critical to the next step. If more detailed costings can be prepared then I believe that the government may be receptive. This could be a great cross-party initiative.

Sir Henry Bellingham: Thanked the speakers for a very good debate. He asked the following questions:

1. In relation to early legal advice, most of the solicitors in his area, Norfolk, are giving an hour of free legal advice and that is making a real impact. Can this be taken further?
2. Is there scope for cases being resolved early by MPs and Councillors? And
3. How do we get new funds into the Legal Aid system from outside the government?

Andy Slaughter MP : Began by saying that all those gathered have a lot of history with these issues. I led the opposition response during the bill status of LASPO and we were right. Mr Slaughter added that Ms Mackintosh, Ms Storer and Ms Beck can all be blamed for getting it right! In order to make the most of the review we must know from the government that all options are open. We need some appreciation of what has gone wrong since 2012 and to sincerely address those issues. We also need the government to be sincere in the way that the review happens and some concrete proposals to think through. Mr Slaughter added that no other organisations can pick the work up. The increase in legal issues that MPs are having to resolve (which may also be the case for councillors) is not the answer.

Bob Neill MP: These are all important points and I will take them away for consideration. As Mr Slaughter asserts, those present today all have history with this issue. There are now question marks over the robustness of the initial research and these will need to be examined going forward.

Nicola Mackintosh QC (Hon) : For some estimates of costs of early advice please refer to the [final report](#) of the Bach Commission.

Some cases can be resolved but some have to be resolved by the enforcement of legal rights. There also remains areas where there is wastage at the moment. If this was reviewed and modified it may bring further funds into a system sorely in need of it.

Jenny Beck: Costings are important. We have had a system that had flaws but worked in the recent past and the time has come to re-examine it. Ms Beck addressed Sir Henry's question about pro bono efforts by stating that there is a real issue about the sustainability of such efforts and that these legal issues are complicated and need expert advice. City firms are not always in a position to provide this. Ms Beck agreed that the review needed to be a cross-party, cross-sector effort to be successful.

Dr. Marie Burton (PhD): Having just completed a doctorate into telephone advice in this area, my [findings](#) highlight a need to target Legal Aid resources more effectively in social justice law. The telephone service is not providing this. Face to Face meetings are better for people who are vulnerable, people with Mental Health issues, with complex problems, and allows for individuals to express themselves more easily. For instance, they can use documents and other resources to help people through what is a complicated process. It is essential for the review to look at the benefits of face to face meetings.

Steve Hynes (LAG): Figures show that some take up of legal aid has dropped by 80% and it is still falling. People aren't being seen. The Justice Committee needs to focus on what is suppressing demand? There is money in the system. There has been savings made.

Richard Doughty (Silex): Mr Neill, in your letter to MoJ will the Justice Committee give any indications as to who they would like to see on the independent panels?

Maggie Ellis (Occupational Therapist): I am seeing an increasing number of cases where because of the inadequacy of legal aid provisions there is a knock-on effect on other services with, costs and misery increasing and people threatened with homelessness. On the digital side, early this year the UK government signed the [EU Tallinn](#) declaration. This has resulted in individuals, for example domestic violence victims having to pay for reports from GPs where these were formerly available without charge.

Nimrod Ben-Cnaan (Law Centres Network): Will the Justice Committee work with the National Audit Office once again in conducting their review?

Thank you

Ms Buck closed the meeting by thanking all of the Speakers and the guests for attending the meeting and for the lively discussion of issues.