

MANIFESTO FOR LEGAL AID



Legal Aid Practitioners Group
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Manifesto for Legal Aid

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Executive summary

We live in extraordinary times, where the justice system is broken and the rule of law is at real risk.

The first edition of LAPG's Manifesto for Legal Aid was published in 2015. This was two years after the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO). LASPO removed whole areas of law from the scope of legal aid and drastically reduced the percentage of the population eligible for legal advice and representation. We warned at the time of the damaging effect that the changes would have on ordinary people. However, the reality has been far worse than we ever could have imagined, even in 2015. Following LASPO, entire areas of England and Wales have been left without a single advice centre. High street legal aid practitioners have been unable to continue to offer legal aid services, and Law Centres have closed their doors. Communities have been left without access to the vital advice and representation that they desperately need. There is nowhere for people to turn.

Where legal aid is still available, it is increasingly difficult to access because of unnecessary and costly bureaucracy, which seems to be designed to prevent the help from being provided. The system is increasingly complicated for people in need and those who wish to help them. Legal aid practitioners are under intense strain amid increasing pressure to do more with less, in an increasingly complicated bureaucratic system. The overly complex system costs the taxpayer more, and does not represent value for money. Legal aid funds are valuable and should be focused on the clients, not administration which brings no benefits.

At the same time, there is increasing evidence that decisions about the grant of legal aid in some cases are being subject to political influence. Justice not only needs to be done, but also needs to be seen to be done. The changes to legal aid for judicial review have reduced the availability of invaluable constitutional mechanisms for challenging Government and holding decision makers to account.

All this comes at a high cost to individuals and to society. Protracted family disputes are argued out in court, without the benefit of proper legal advice. A whole generation of children is growing up knowing only one of their parents, or only one set of

grandparents. People fleeing domestic abuse cannot obtain the protection they need, placing them and their children at risk of serious harm. Unlawful decision making by public bodies goes unchallenged. The legal aid practitioners who provide the advice and the representation are at risk of extinction.

We have now seen what happens when access to justice is removed from people within our democracy: further inequality, marginalisation of the most vulnerable, increased cost to the public purse, and a fundamental impact on our society.

This edition of LAPG's Manifesto for Legal Aid provides pragmatic and clear ideas about how to reform the system to enable those most in need to access justice in a way which is sustainable, efficient, cost effective and fair. We give wholehearted support for the Bach Commission's proposal of a new Right to Justice Act, to enshrine and safeguard everyone's right to reasonable legal assistance.¹ However in the meantime action is urgently required to remedy some of the most damaging impacts of LASPO.

We call for:

- Reinstating early legal advice, subject to a proper means test, which will result in people being equipped to solve their problems at an early stage;
- Changes to the scope of legal aid in family, housing and welfare benefits, employment, inquests, prison and immigration law to rectify some of the worst aspects of the cuts, and to make sure that people have access to the help they need to resolve their legal problems more quickly and cost effectively;
- A practitioner led review of the operation of and sustainability of the criminal justice system, where cost is wasted, and how the quality of the criminal justice system can be improved and made more efficient;
- A review of financial eligibility, to ensure that people who cannot afford to pay for legal advice are able to access legal aid;
- Independent administration of the legal aid system, and an independent review of fees for legal aid, to preserve public faith in the legal aid scheme and ensure sustainable provision;

¹ http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf

- Restoration of funding for judicial review cases, to hold public bodies to account;
- Simplification of the legal aid scheme, to avoid unnecessary cost and improve efficiency;
- A public legal information programme, to make sure people know what legal aid is available.

In our Manifesto, we provide detailed recommendations on each legal area. At the coalface, our members work with the legal aid scheme on a daily basis, and our 2017 Manifesto reflects their insight and expertise across crime, family, housing, community care, mental health, inquests, and many other areas of law.

The justice system is in crisis. Legal aid was created to make sure that justice was available for all, whether rich or poor. The current system is failing to do that. Those who can afford it can buy the right to access justice; the most vulnerable in our society no longer have that right. Urgent action is needed to protect the rights of ordinary people and to ensure that we have a legal aid system, and therefore a justice system, which not only works today, but also for future generations.

Jenny Beck

Nicola Mackintosh QC (Hon)

Co-Chairs of LAPG, October 2017

About LAPG

LAPG is a membership organisation of private practice and not-for-profit organisations, Law Centres, barristers and costs lawyers, throughout England and Wales. We seek to work with the Legal Aid Agency and Ministry of Justice on specific issues, and attend meetings where operational and policy matters are discussed. We respond to consultations on justice issues. We run training courses for practitioners, an annual conference, and the Legal Aid Lawyer of the Year awards to celebrate the coalface work done by legal aid lawyers. We run the All Party Parliamentary Group on Legal Aid, with Young Legal Aid Lawyers.

LAPG believes the legal aid reforms we are proposing would:

- Assist people in need of legal advice and representation and empower individuals to make sensible legal choices at an early stage;
- As a minimum, deliver the legal aid system that the Government committed to deliver, but which is clearly deficient in practice;
- Take a pragmatic and realistic approach as to what is achievable now, while making recommendations for changes in the medium term;
- Ensure the survival of sufficient quality providers to deliver a meaningful legal aid and justice scheme;
- Make good economic sense for joined up Government;
- Take account of the impact of technological advances to effect further savings;
- Ensure that access to justice is real and not theoretical, fostering societal cohesion and equality.

Chapter 1. Overview of the current state of the justice system

In the first edition of our Manifesto for Legal Aid², published in 2015, we raised serious concerns about the state of the justice system, against the background of what were then relatively new cuts to legal aid scope and eligibility brought in by LASPO. While we foresaw that the impact on those in need of legal advice and representation would be drastic, the reality has been even worse than anticipated.

The purpose of legal aid is to ensure that people can access justice when they cannot afford to do so from their own means. It is intended to secure equality of arms between the rich and the poor.

The combination of cuts in legal aid and austerity in local government has meant that access to early advice in the community has been all but wiped out, with vast numbers of advice outlets closing their doors. High street practitioners and Law Centres offering legal aid services have withdrawn, amid cuts in payment rates and ever increasing bureaucracy.

The impact on the justice system is all too clear.

The cuts made under LASPO were unsophisticated, with entire areas of legal problems removed from scope overnight. The Government's stated aim was to focus what remained on the most vulnerable. Paradoxically, the cuts have had a disproportionate impact on huge numbers of vulnerable people, who are now unable to obtain even the most basic legal advice about their rights, let alone to enforce those rights when other ways of resolving problems have failed.

The result is societal inequality at an unprecedented level, with groups such as children and disabled people being more marginalised than ever. The savings which were intended to be made through cuts to legal aid are being outweighed by the knock-on cost to society, the benefits system and the NHS. As the National Audit Office report³ confirms, these additional costs to society and the public purse have not been properly considered or understood.

2 http://www.lapg.co.uk/wp-content/uploads/2015/03/40163_Manifesto_Final_WEB.pdf

3 NAO report <https://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>

We can now see what happens when such crude cuts are made without a proper evidence base. Those without a voice, the vulnerable and dispossessed, are left without assistance and the justice system is broken.

The Grenfell tragedy and its aftermath reminds us daily of the devastating impact on people of lack of early advice to help them understand and navigate the best way of securing their rights. Even after that terrible event, the survivors have desperately needed advice about their rights across areas of housing law, inquest law, welfare benefits, employment, etc. Yet many of these legal problems are now out of the scope of legal aid or, if within scope, are difficult to access.

The delay of the long awaited government review of the impact of LASPO is indicative of a reluctance to face up to the damaging effect of the cuts, and the need for urgent reform. Government must take its responsibilities seriously and undertake a proper review as a priority to identify how to tackle the widespread problems created by the reforms.

We can learn sensible lessons for the future by looking at the previous legal aid and justice system. Many aspects of the legal aid scheme worked well. In particular, the availability of early legal advice, delivered by many outlets (legal aid firms, Law Centres and advice centres), meant that people could obtain advice easily, across a range of problems, at very little cost. This early advice resulted in cases not coming to court, where this was not necessary, and in disputes being resolved in many cases, without further financial and human cost. By providing a quick piece of advice, individuals could be steered to digital and self help, or to mediation and other forms of dispute resolution. Removing this was a false economy.

The effect of LASPO has been that vast numbers of people have either been unable to resolve their legal problems, with consequential impact on the welfare state (benefits, NHS, social services, etc), or they have been forced to make their own way through the justice system.

The removal of legal aid and introduction of other additional barriers to challenging decisions and omissions of central and local Government by way of judicial review, are a direct attack on our democracy and are unconstitutional.

These difficulties have been compounded by recent court closures and increases in court fees which, together, have resulted in a complete bar to access to justice in many cases.

The quality and accessibility of the justice system also depend on a skilled judiciary which is properly supported and operationally effective, as well as being of the highest calibre and representative of the community. In recent years, the administrative support for the judiciary and the physical environments in which they hear cases have declined markedly, at a time when there are more unrepresented litigants before the courts and greater pressures on the system.

We believe that our proposals, which build on the lessons of the past, are practical and effective. They will make a real difference to the operation of the legal aid and justice system for the future.

This publication is intended to be a basis for the next stage of dialogue about the lessons which have been learnt from the cuts, and to provide a helpful list of areas which could be the subject of swift amendment, without vast expenditure from the public purse. Indeed, it is our view, based on our practical experience in delivering legal services, that in many cases considerable savings will follow. At the same time societal equality will be improved, with the result that there will be enhanced social justice for groups such as children, disabled people, and those least able to represent themselves.

Chapter 2. **The need for early advice**

The widespread removal of early legal advice has had exactly the reverse impact that any progressive Government would wish to achieve.

Instead of enabling people to understand their rights and options, so they can make informed decisions, those who cannot afford to buy legal advice are forced to make irreversible life changing decisions, without professional guidance. The result of those early, ill informed decisions, costs them as individuals, costs the taxpayer further down the line, and costs society as a whole.

The benefits of early legal advice are well documented⁴. With such advice, individuals will not only understand their legal rights and responsibilities, but also the range of options open to them, both legal and otherwise, to address their problems at an early stage. Those options might include:

- Guidance for self representation
- Signposting to alternative self help options
- Identification of suitable online support, information and assistance
- Identification and signposting to dispute resolution (including mediation) to obviate the need for litigation
- Legal aid for representation to secure the justice they need

Self help options, including the fast developing digital solutions, will not work for everyone, but they will work for some, and early dispute resolution, which is appropriate for the individual and their problem, is essential.

Mediation is not a panacea in private law disputes between individuals, but it can be very effective for many, as long as there is proper support. Use of mediation has dramatically declined since LASPO, directly as a consequence of the removal of early advice.

⁴ See for example <http://baringfoundation.org.uk/wp-content/uploads/2013/09/STVSEA9.pdf> .

Reference: J Randall, *Social welfare legal advice and early action*, Baring Foundation, January 2013

Without understanding their rights and options, many cost-effective solutions are out of reach for those who might be able to access them, while many of the most vulnerable are unable to obtain the early advice they need to prevent major legal issues spiralling out of control.

Deprivation of early legal advice costs financially, economically and socially on a national scale.

A worried mother is anxious about granting her ex-partner contact with their children, in case he keeps them. She doesn't know what steps she would take to get them back, if he did. Without access to legal advice and without the means to pay, she decides it's safer not to let him see them.

He cannot afford early legal advice, either, and has tried to negotiate, so his choices are:

- to go round, confront his ex and demand to see the children
- to bring an application to court unassisted and without any understanding of relevant law or practice rules
- to walk away from involvement with his children.

Depending on which he chooses the worried mother faces:

- a dangerous situation for her and the children, which could lead to the potential involvement of the state if there are concerns over the family's safety
- litigating directly with no or limited guidance, so prolonging the court process and costing the state the extra court time
- children who will effectively lose a parent.

With early legal advice, mediation might have been possible: the importance of co-parenting would have been stressed, and court would probably have been avoided. The costs to society are obvious.

Many people who are unable to obtain early advice simply give up and do not seek a solution to their legal problem. This results in inequality and injustice, with serious

consequences. Those who decide to pursue a remedy do so without advice and support. The courts are now seeing a significant increase in litigants in person⁵.

As a result of growing numbers of unrepresented litigants, cases are taking longer to resolve and increasing judicial time is being spent on case management. This has a direct effect on the length of time people have to wait for a hearing, and places additional pressure on the judicial system and administration of the courts. The removal of areas of law from the scope of legal aid is in part to blame, but the absence of early advice is also a significant contributory factor.

Early legal advice needs to be reinstated. Early advice should be accessible and available in whichever way best suits the client. People need to be made aware that they can obtain early advice, so they can make sensible, informed choices, to prevent legal problems escalating. We support the recommendations of the Bach Commission that reintroducing access to early legal advice is urgently needed.

This need not be an expensive scheme and, indeed, was not previously. Those who can realistically afford to pay for their advice should continue to do so. Those eligible should be entitled to have up to two hours' early advice, with further follow up work, in an administratively simple scheme, which is not burdensome for the supplier or the client. In complex cases, more time may be required, but many cases could be resolved relatively swiftly, and clients signposted where appropriate.

We have had such a scheme in the past. It could be finessed to reduce bureaucracy and generate further savings by cutting administrative cost. The financial and social benefits would outweigh the costs of such a scheme many times over.

We would endorse the proposal in the Low Commission report⁶ that it is necessary to keep the civil legal aid system under constant review and work for its improvement. The commission, too, called on the Government to consider including early specialist advice within the civil legal aid scheme, where, using as an example housing issues, 'there is evidence that this would divert, prevent, or mitigate the progression of court actions.'

5 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07113>

6 Low Commission Reports <https://www.lowcommission.org.uk>

Chapter 3. Restricting scope – a cut too far

The removal of entire areas of law from the scope of civil legal aid under LASPO was intended to provide a financial ‘quick win’. Overnight, legal aid was restricted to limited types of case, whereas previously it was available for most areas of law.

However, without effective targeting or a workable safety net alongside this unsophisticated amputation, the result has been a dramatic reduction in access to justice, leaving the most vulnerable, including children and people with learning disabilities, without essential advice and support.

The year before LASPO came into force, legal aid was granted in 925,000 cases. The year after, we saw this fall to 497,000, a staggering drop of 46 per cent⁷. The cuts have gone too far and are too crude, with no proper thought or evidence as to the knock-on effects on other areas of the welfare state or client need.

LAPG warned Government that the result would be additional cost to the state, with the court system having to manage large numbers of litigants in person. This is quite apart from the huge numbers of people who have been denied the justice to which they are entitled, with serious consequences for society and its stability.

Impact on vulnerable groups

The cuts made no exceptions for particularly vulnerable groups including children, disabled people, and those subjected to abuse or persecution. By way of example the following groups have suffered a disproportionate impact:

■ **Children** (including parents, who are also children)

Children are at increased risk of physical and emotional harm. Access to available protection for them has been eroded and a whole generation risks growing up without the right to see one of their parents or grandparents. Child applicants in immigration cases are expected to represent themselves. Children who are themselves parents run an increased risk of being unable to keep their family together.

⁷ <https://www.gov.uk/government/collections/legal-aid-statistics>

The next generation will grow up in a two-tier justice system, with those who can afford to pay receiving justice; and those who cannot, being denied it, with catastrophic consequences.

■ **Disabled children and adults**

Different disabilities result in different barriers to access to justice, requiring different solutions (for example, older people, people with learning disabilities, those in mental distress, people with physical disabilities, or who have serious and chronic illnesses). All have had their access to basic legal advice restricted, so that many simply cannot access any legal help at all. This results in even further marginalisation in a client group already disadvantaged by their disabilities.

■ **Carers**

Carers, including extended family members, have lost rights to be represented or even access basic legal advice to protect their loved ones across a range of legal problems. The stresses of caring for a relative, coupled with the inability to access early legal help, is creating an additional unnecessary burden for a whole group of people who are already disadvantaged.

■ **People with impaired mental capacity**

The majority of people who lack capacity are unable to access legal help without outside proactive assistance. There is a dearth of suppliers specialising in mental capacity law but even when help is sought the system presents additional administrative requirements which are often a barrier to justice. The removal of whole areas from scope adversely impacts on this group precisely because they are less able to understand the legal issues they face and seek advice. Many are left without any protection of even basic rights.

■ **Victims of sexual exploitation, trafficking or slavery**

Victims are isolated, frightened and made to feel that they are worthless. They are therefore even less likely to seek help. They are in need of proactive assistance and protection. They often have no financial resources and limited English, and are at risk of harm. Their ability to access legal advice and representation is being obstructed, and sometimes prevented, by the immensely difficult funding process with its overly bureaucratic requirements.

■ **Victims of domestic abuse**

Over 40 per cent of victims of domestic abuse were unable to access the support which is ring-fenced for them to secure representation.⁸ Increasing numbers are now subjected to further abuse within the court system, because of the rise in litigants in person, and having to face their ex-partner without legal representation.

■ **People who are homeless or living in disrepair**

With the removal of legal aid for many areas of housing law only a small proportion of those with housing issues are eligible. Whilst limited homelessness cases are within scope the causes of homelessness are not, with for example welfare benefits being excluded. Advice is only available for the most serious cases of disrepair. As housing issues go hand in hand with many other issues people are doubly disadvantaged at a time when they and their families are often in desperate need.

■ **People in detention**

People who are detained in institutions, such as prisons, immigration detention centres, hospitals or in care homes, are isolated from society and further disadvantaged when it comes to seeking and obtaining legal advice about their problems. Restrictions on contact with the outside world and special rules which apply in institutions all serve to create additional hurdles for this group in accessing advice.

■ **People fleeing persecution**

Those fleeing persecution have been hardest hit by cuts to legal aid arising from the current climate of austerity. This directly impacts on asylum seekers' access to justice. The complex regulations imposed on those providers with contracts have led to a massive loss of advisers, making it even more difficult alongside mounting pressure on support agencies, for those who are seeking safety, to access the appropriate advice they need to secure their protection.

The removal of legal aid for family reunion creates additional obstacles for the ability of those able to secure refuge in the UK who face ever growing isolation and anxiety as to the situation of loved ones overseas who may themselves be at risk. Removal of funding for what can be an increasingly complex process for

⁸ Evidence submitted in *The Queen (On The Application Of Rights Of Women) v The Lord Chancellor And Secretary Of State For Justice* [2016] EWCA Civ 91

those whom the UK accepts have established a genuine entitlement to international protection seems unduly harsh and draconian.

Discrimination

Flaws in the criminal and civil justice system are revealed when people with additional needs are not well served. Particular attention, therefore, needs to be paid to how the system works (or does not work) for client groups with additional disadvantages. Society has an obligation to ameliorate and compensate for these additional hurdles, and to facilitate justice for all its members, without discrimination. The current legislation lets these vulnerable groups down.

In September 2014 the Office of the Children's Commissioner released evidence-based research demonstrating the adverse impact of the cuts to legal aid since April 2013 on children and young people.⁹ Children, together with other vulnerable groups, are those who are least able to represent themselves and most likely to need advice. Without a voice, they will remain invisible and unable to enforce their rights.

Exceptional Case Funding Scheme – a safety net?

The Government's stated intention was to rectify any injustice in an individual case caught by the scope cuts via the Exceptional Case Funding (ECF) Scheme. However, systematic and inherent failings in the ECF scheme have denied even the most vulnerable the promised safety net. The overly restrictive way that the scheme had been operated has already been declared unlawful by the courts¹⁰. It is not the safeguard which Parliament promised it would be. Proper provision to protect those in need must be readdressed urgently, so that, far from being exceptional, the legal aid scheme as a whole operates to ensure those in need of advice and representation are able to access it.

Impact on supply of services

The effect of the cuts on organisations delivering legal aid services has been catastrophic, with fewer providers and increased advice deserts¹¹. The withdrawal of many high street solicitors from legal aid delivery, the closure of many local advice services, Law Centres, and, in many cases, the reduction in staff numbers, is a further

9 <https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/Legal-aid-children-young-people-report.pdf>

10 (*Gudanaviciene v Director of Legal Aid Casework and Others* [2014] All ER (D) 123)

11 <http://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts> and <http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on>

manifestation making the situation even more bleak for those needing help. The result is inequality at an unacceptable level, with groups such as children and disabled people being even more marginalised than previously.

The cost which was intended to be saved through cuts to legal aid is being outweighed by the knock-on cost to society, the courts, the police the benefits system and the NHS. As the NAO report¹² confirms these additional costs had not been properly considered or understood. Page 8 of the report:

“16 The Ministry is on track to meet its main objective of significantly reducing spending on civil legal aid in a short timeframe. The extent to which it has met its wider objectives is, however, less clear. Although the Agency now funds fewer cases, litigation has only just started to decrease in the areas of family law removed from civil legal aid. In addition, the increase in people representing themselves is likely to create extra costs for the Ministry.

17 In implementing the reforms, the Ministry did not think through the impact of the changes on the wider system early enough. It is only now taking steps to understand how and why people who are eligible access civil legal aid. The Ministry needs to improve its understanding of the impact of the reforms on the ability of providers to meet demand for services. Without this, implementation of the reforms to civil legal aid cannot be said to have delivered better overall value for money for the taxpayer.”

Public information

For areas of law which remain within scope, there has been inadequate action taken by Government to ensure that people who are still entitled to legal aid actually know it is available. This is a democratic shortfall because it denies the public the information about accessing justice which is necessary for even initial steps to be taken by them or on their behalf. The publicity around the cuts has resulted in much of the public believing that all legal aid has been removed.

¹²NAO report <https://www.nao.org.uk/report/implementing-reforms-to-civil-legal-aid>

We call for:

- Reinstatement of initial advice (subject to a means test), for all areas that used to be in scope. The substantive benefit test would still apply and the additional spend would be easily offset against savings as self help, non-litigious solutions, and resolution without resorting to court would result;
- An immediate review of the areas removed from scope, with particular reference to the impact on society of removing access to legal aid for groups such as children and disabled people;
- Reinstatement of areas of law within the scope of legal aid, giving priority to vulnerable client groups (suggestions are given in the specific category sections, below);
- An information awareness campaign, so that the public is provided with knowledge about the availability of legal aid and how they can access services.

Chapter 4. Financial eligibility – fairness and simplification

In addition to the dramatic changes to the scope of legal aid generally, LASPO introduced significant changes in respect of means testing for legal aid. These have created further barriers to justice, with large numbers of people who would have previously been eligible for legal aid now being unable to obtain help. These people cannot afford to pay privately for legal advice. The system is also overcomplicated, with unnecessary bureaucracy, resulting in additional cost to the taxpayer.

The changes have disproportionately affected disabled and other disadvantaged client groups and further discriminates against them.

The proportion of the population eligible for legal aid had fallen from 80 per cent in 1980 to around 29 per cent in 2008, according to Steve Hynes and Jon Robins' 2009 book *The Justice Gap*.¹³ The Haldane Society of Socialist Lawyers estimates that the figure is now 20 per cent. This reduction in eligibility is partly because of removal from scope of many areas of law, but is also due to changes to eligibility in the means test. The threshold for eligibility for income is unreasonably low, failing to take into account the real cost of living for many people, and now also taking into account capital which in reality is not available to pay for legal advice and representation.

One example, is that the value of a person's home is now taken into account in the capital calculation for legal aid. This has resulted in people being ineligible for legal aid, despite having no real access to funds to pay for legal advice. In the vast majority of cases, people cannot raise funds on the equity in their main home, yet are treated as having 'disposable' capital.

Even people who are in receipt of means tested welfare benefits such as Universal Credit, are now also means tested on their capital for legal aid. These are people who have already been means tested by one department of the state, and have been assessed as needing assistance, yet another government department applies a different test, that they are not entitled to help. This is unfair and illogical.

¹³The Justice Gap, Steve Hynes and Jon Robins, 2009, p21.

Changes to the law on mental incapacity have also resulted in massive inequality with people either being forced to pay for legal advice about their own detention in care homes, or being denied legal advice altogether.

The rules add a layer of unnecessary bureaucracy which causes delay, is costly to administer, and appears designed to wear down those most in need of help and deter them from obtaining advice. This additional means test results in significant extra cost to practitioners and the Legal Aid Agency, and people who are in need of advice are being prevented from being able to access that advice.

Investment in better processing of legal aid applications would enable cross departmental checks (for example to check for a benefits claim) for applicants, meaning that the whole process would be simplified. Yet the potential advantage of this joined-up approach is lost in practice, because of the introduction of the complicated new eligibility rules around capital, applying in all cases, even when a person has been assessed by the state as being eligible for means tested benefits. This additional means test renders only a very small number of applicants as being ineligible, but the administrative burden is extremely high. This is extra cost for the taxpayer which is unnecessary - the benefit is far outweighed by the cost.

The Legal Aid Agency has been working with practitioners on whether there could be any relaxation of the additional capital test for those on passported benefits in certain circumstances. The result would be an administrative saving on all sides, with no great upsurge in expenditure.

While legal aid for victims of abuse seeking protection orders has been preserved, the high levels of financial contributions which are applied often results in their being simply unable to afford to protect themselves and their children from harm. The consequence has been that increasing numbers of vulnerable victims and their families have been left without protection, because the contributions they are asked to pay towards their legal aid, even on a low wage, are unaffordable.

The allowances for daily living costs which form part of the means calculation for legal aid do not reflect the true cost of living. This results in people being assessed as having 'disposable' income, when the reality is that these funds are needed to cover housing and other essential costs, such as food, clothing, travel, and costs of disability.

Since LASPO was implemented, a number of anomalies have been exposed regarding access to legal aid for cases involving end-of-life decision making, and liberty of the person. These emphasise the need for review, so that the legal aid scheme is consistent and fair.

We recommend the following:

- Removal of the capital test for people in receipt of means tested benefits;
- Restoration of the equity disregard for a client's home, so it is not taken into account;
- Revisiting the rules to ensure that the subject matter of a dispute does not count towards capital, as no funds can be raised against it;
- Removal of the current cap on housing costs which can be disregarded (currently £545 per month maximum) and replacement of this with the person's actual housing costs (subject to evidence requirements);
- Reviewing the allowances for dependants so that they reflect the real cost of living;
- Removing children's savings from the calculation of capital (where the children are not the applicant);
- Removing student loans from the means calculation;
- Disregarding additional expenditure, such as payment for private legal fees, costs arising from disability, care costs, etc. in the means calculation;
- Revisiting the levels of contribution from income and capital in domestic abuse cases to ensure that any contributions are affordable;
- Improving the means process, so that there is flexibility as far as evidence of means is concerned for disabled or vulnerable persons, including those who are homeless, mentally incapacitated, in refuges, and in other compelling circumstances;
- Ensuring consistency in the availability of non-means tested legal aid for the small category of cases where the liberty or protection of the person is involved, for example deprivation of liberty of incapacitated persons;
- Making non-means tested legal aid available for end-of-life cases, including cases concerning withdrawal of life-sustaining treatment and nutrition/hydration of children and mentally incapacitated adults;
- Reintroduction of the limited discretion to disregard income or capital, or both, if reasonable to do so (as contained in the previous Community Legal Service (Financial) Regulations 2000) – for example, where there is a conflict of interest, or where a mentally-incapacitated person cannot access their own funds, because someone else controls their finances;
- Simplification of the means evidence and operational processing issues generally to save costs for both the Legal Aid Agency and practitioners, and, therefore, the taxpayer.

Chapter 5. **Independence and transparency of decision making**

In 2013, the Legal Services Commission was replaced by the Legal Aid Agency, an organisation which is effectively part of central Government. Unlike previously, the current statutory framework does not require the operator of the legal aid system to take positive steps to secure provision of legal aid for those people who are legally entitled, or to ensure that individuals have access to services that effectively meet their needs, or to have regard to a variety of factors, including the need to help resolve disputes at an early stage. The only driver appears to be cost.

The Legal Aid Agency budget for 2016-2017 is over £95m¹⁴ for administration alone, despite this being a period of austerity. Yet despite this, significant cuts have been made to frontline administrative staff with an inevitable impact on those services, leading to an unacceptable level of delay and poor decision making. The experience of legal aid practitioners is that the complexity of the administrative requirements has increased beyond recognition, the burden of the bureaucracy has fallen on their shoulders and this is all at additional cost and time which could be better spent on advising clients. Practitioners have raised concerns over how and where the LAA's very substantial administration budget is being spent and how much of the LAA's resources are being directed at quasi-political management rather than front-line administration services.

Decisions about the grant or refusal of legal aid are effectively decisions about who has access to the courts and, therefore, justice. Independence and transparency of decision making is crucial, as is the quality of that process.

It is of concern that the experience of legal aid practitioners is that the quality of decision making by the Legal Aid Agency is deteriorating. Many practitioners perceive that the drivers seem to be focused more on refusing legal aid, and disallowing claims for costs for work done under the legal aid scheme, rather than with ensuring that those who are legally entitled to legal aid are able to access it, and making sure that the legal aid practitioners who provide the services to clients are properly paid. This trend is deeply damaging to the relationship between the Legal Aid Agency and practitioners, causes unnecessary extra time and work and cost to the taxpayer.

¹⁴And was £112m for 2015-2016.

In addition to these concerns, there are increasing examples of cases where there is the perception, if not reality, of possible political interference or influence in the decision making process, both regarding applications for legal aid, and also in respect of the appeals process operated by the Legal Aid Agency.

The concern about lack of transparency and independence has intensified given the removal of guaranteed legal aid payment for judicial review permission applications challenging the acts and omissions of public bodies (including challenges to central Government). The constitutional implications of obstructing the right of challenge to the state by removing payment for cases are serious and contrary to principles of fairness and access to the Courts. We address this further below in Chapter 8.

While LASPO created a new role for the Director of Legal Casework in an attempt to separate the decision making responsibility between the Legal Aid Agency and central Government, concerns have been expressed about the introduction of a new policy,¹⁵ not previously published or consulted upon, which sets out a special procedure for dealing with cases which may be politically sensitive or which may cause media attention to be focused on the Legal Aid Agency. This process also includes a stage of provision of legal advice, by, it appears, the same legal team which also advises central Government.

While these concerns may be explained or mitigated by internal processes separating decision making, it is at least the perception of lack of independence which risks eroding and undermining the reputation of our independent legal system and decision making about access to justice.

Moreover, practitioners have reported to us that the process of appeals against decisions of the Legal Aid Agency requires a comprehensive review. We have received reports of the Legal Aid Agency omitting to send crucial documents to adjudicators, resulting in inherent unfairness in the appeals process. Adjudicators are not selected for appeals based on their expertise for the case and the allocation system is opaque. Furthermore, an appeal system does not exist in respect of many decisions by the Legal Aid Agency, leaving unfair decisions without any route of challenge.

Given the potential for damage to the reputation of the justice system by an organisation which is not independent from central Government influence, we agree

¹⁵Standard operating procedure for Notification and Referral of High Profile Cases in ECCT and Civil Case Management

with the Bach Commission¹⁶ that the legal aid system needs to be operated and administered by an organisation which is wholly independent. This independent body should also have statutory obligations similar to those under the Access to Justice Act 1999, to ensure that the legal aid system is structured so that:

- Individuals have access to services that effectively meet their needs
- General information about the law, legal system and legal services is available to the public
- Early legal advice is reintroduced (see Chapter 3 on scope) with a view to preventing, settling or otherwise resolving disputes about legal rights and duties, before they escalate
- Where necessary, legal representation is made available
- There is proper payment for work done under the legal aid scheme
- There is a system of independent appeals in respect of decisions about legal aid
- The legal aid system is administered proportionately, and simplified, reducing unnecessary bureaucratic costs wherever possible.

In addition to the need for legal aid to be administered independently, we also support research into the viability of the system at current rates of remuneration. There is no proper evidence base available about the viability of organisations delivering legal aid, and yet it is known that in most areas of legal aid there has been no increase (even in line with inflation) of rates. In many categories of civil law, there was a 10 per cent cut in rates in 2011 rates, themselves set in 1994, over 23 years ago. In criminal legal aid, on top of years of fee freezes, there has been an 8.75 per cent cut in rates, making the system increasingly unviable. It is not going to be possible to train and retain quality practitioners without a review of payment structures and rates for cases.

More needs to be done to provide a proper evidence base of the real experience of those organisations delivering legal aid services, and their sustainability. This is best undertaken by an independent organisation. In the meantime we call for fees to be restored to 2011 levels, and to rise in line with inflation, and no further fee cuts or adverse fee restructuring in any area of legal aid.

¹⁶http://www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission_Right-to-Justice-Report-WEB.pdf

We call for:

- An independent legal aid commission;
- Reinstatement of rates at 2011 levels, with no further cuts to rates. The independent commission to set fees based on proper evidence as to the costs of running a quality service;
- Payment rates linked to inflation.

Chapter 6. **Simplification of the legal aid scheme and the move to digital working**

Generally, the administration of the legal aid system needs to be simplified. This is urgent, as every day the operation of the legal aid system is costing the taxpayer unnecessary expenditure and placing additional burdens on suppliers of legal aid services.

Legal aid is an unnecessarily complex system to operate, for the public, providers and the Legal Aid Agency. The system needs to work efficiently. There needs to be certainty for service providers and clarity for the public who need to access legal services. Such a system requires an approach of joint working between providers and the Legal Aid Agency for the benefit of clients. Where there is uncertainty or discretion, if the provider has acted in good faith in applying the rules, then any discretion should be exercised in the client's favour. All too often we are seeing the rules being applied in an overly rigid way, which only serves to foster reluctance by providers to take any risks in acting for clients. Ultimately, it is the clients who suffer. Providers have seen their work remunerated at lower and lower rates following the cuts, and there are very real risks to the viability of the already reduced provider base. There is no place for any further cuts but there is an urgent need to review the guidance on claims to ensure that providers have certainty that they will be fairly paid for the work they do, and will not be paid less now than in 2011.

We wholeheartedly support the use of digital technology where this works for clients, providers and for the Legal Aid Agency. However, the Agency's digital Client and Cost Management System (CCMS) has been beset with problems and has arguably pushed the supplier base to an operational precipice. Their profitability has been reduced and it is a poor example of digitalisation efficiency.

LAPG's survey of suppliers' experience of CCMS found that in the vast majority of cases the system was not working as it should:

- Many providers find the system slow, cumbersome and susceptible to technical errors – the vast majority of respondents had experienced multiple technical errors;

- Processes within CCMS often take more time than their paper-based predecessors and providers are penalised as current cost assessment guidance does not accurately reflect the time it takes to use CCMS (this guidance is under review);
- A minority of survey respondents found the system worked adequately for some types of cases (often cases where a means assessment was not required), and welcomed the link with the Department for Work & Pensions (DWP) system, allowing an instant check of welfare benefit entitlement;
- Billing processes are beset with technical and design issues that render these processes inefficient and frustrating, at best;
- Legal Aid Agency caseworkers do not appear to have been trained adequately, decision-making is slow and inconsistent, and delays in decision-making are having a real and adverse impact on the ability of providers to run their cases and meet obligations to their clients;
- Many providers have created 'workarounds' (or even agreed workarounds with the Legal Aid Agency) to mitigate or ameliorate some of the limitations and design problems in CCMS.

In addition to the need for CCMS (or any similar application and billing system) to work efficiently for suppliers of services and the Legal Aid Agency alike, there are numerous other areas of legal aid operation where changes need to be explored to save money and make the process more efficient for all.

Examples include the following:

- Removal of unnecessary costs and scope limits on legal aid certificates, resulting in fewer legal aid applications needing to be made;
- Simplification of the means test for legal aid, linking it to means tested benefits (see Chapter 4 on eligibility);
- Devising a simple early legal advice scheme with reduced evidence requirements;
- Dropping unnecessary reporting of data by suppliers, such as complex outcome codes and categorising of cases, where such data is neither collected nor used by the Legal Aid Agency;
- Reinstating delegated functions for emergency cases, so that clients can access the help they need without barriers being placed in their way;
- Exploring whether the different levels of legal aid are administratively necessary;
- Ensuring consistency in means testing for different types of cases where possible and appropriate;

- Simplifying audit processes into one composite audit, which focuses on risk to the fund, rather than minor non-compliances which are not relevant to quality or protection of public funds (see also section below in Chapter 7).

We also call for:

- An urgent review into the operation of legal aid with the aim of simplifying the system, removing unnecessary and costly hurdles to clients accessing legal aid services and suppliers providing services.

Chapter 7. Delivery of legal aid services – efficient operation of the system now and in the future

In this section we look at other different aspects of the of the legal aid scheme which require attention and reform, and look to the future stability of the system:

- Public awareness of the legal aid scheme
- Advice deserts
- Contracts and tenders
- Audits and key performance indicators (KPI)
- The mandatory telephone gateway
- The next generation of legal aid practitioners

Public awareness of the legal aid scheme

There is an urgent need for an awareness-raising programme, targeted at informing the public where legal aid is still available.

Central Government has a clear responsibility to ensure that people are provided with the information they need to know when they are eligible for advice. It is vital that where legal aid remains within scope and is available for types of cases, people know that they can access it and how to do so. Otherwise they are further disadvantaged.

We are concerned that no organisation, whether it is the Ministry of Justice or the Legal Aid Agency, sees it as part of its role and responsibility to inform the public about their potential eligibility for legal aid or where to go for advice or representation. We strongly support a national information campaign which corrects the misleading impression that legal aid has been abolished and informs and reminds the public that it is still available. This is particularly important for victims of domestic and other abuse, where legal advice and representation can often save lives.

It is also important that the public are aware that legal aid is still available for a range of cases and that there is an open and accessible information system which helps the public find out whether they are eligible, and if so, where they can get help. The current tools on websites are often too complex, sometimes misleading, and do not

recognise that clients will often not diagnose their own legal problem accurately, so will find it difficult to obtain information.

However valuable internet advice may be, many people in need of advice are unable to use computers. Information about the availability of legal aid and other resources needs to be provided to the public in different forms. The information must be accessible to people who find digital communication difficult, or even impossible. Limiting information only to that in digital form will exclude many people who would be entitled to legal aid.

Publicising availability of services and routes to access them is clearly critical and the role of responsible government.

Advice deserts

There is no doubt that LASPO has had a devastating impact on legal aid provision to the public.

In its report “LASPO: Four Years On’ (which incorporates its earlier Legal Aid Deserts Parliamentary Brief¹⁷, The Law Society highlighted the complete absence of legal aid providers in housing law over many areas of England and Wales. This problem persists not only in relation to housing but also across many other areas of law. In community care, for example, there is a dearth of providers across many areas of the UK.

There is no clear map of legal aid providers able to take on cases. There is a false impression about supply, given that legal aid deserts are now a problem across multiple areas of law. It is no answer to state that suppliers from another area can plug contractual gaps, when there is no evidence that they can do so, or those suppliers may be unable or unwilling to do so. Moreover, client choice in how they access their legal services must be preserved with face to face, telephone, digital and online services all playing a part. Clients must be allowed to access services in the way most convenient to them.

It is our view that the reintroduction of early advice and expansion of scope in the ways we have described, together with many of our other suggestions, would start the process of undoing some of the damage caused by LASPO, and provide a real answer to the absence of legal aid providers in many areas of England and Wales.

¹⁷ <https://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/end-legal-aid-deserts/> and the later report <http://www.lawsociety.org.uk/support-services/research-trends/laspo-4-years-on/>

Contracts and tenders

At the same time as there are advice deserts, the system of legal aid contracting has become increasingly complex, with longer and more detailed contractual requirements. These have become disproportionate given the reduction in supply of legal aid services and are illogical in several respects.

Tenders for contracts based on geographical areas may be justified to ensure sufficient coverage. However, in these times when the focus is increasingly on digital access to services for those who are able to do so, there is no rationale for restrictions on client locations. Limiting providers to taking a certain number of clients from the local area is illogical, particularly given the problems with advice deserts nationally. Restrictions on travelling to see clients do not take account of the dearth of suppliers. The contract also needs to take account of the needs of clients and when it may be difficult or impossible for them to attend an office in person. These kinds of controls do not serve a proper purpose and present yet more areas where providers need to comply and the Agency needs to audit, without proper justification.

Generally, it is important that the contract and tender processes reflect the changes in delivery of services to the public, the need for flexibility to meet client need, and are simplified overall.

While the latest tender process for civil legal aid has been reduced essentially to a one-stage process, the content of the contract still reveals unnecessary restrictions. As with other areas of the legal aid scheme, we call for a simplification of the contract to render it proportionate and fit for purpose.

In line with our proposal for the reintroduction of early legal advice, we recommend that consideration should be given to the granting of licences to legal aid organisations meeting the required quality standard. The licence would permit them to offer a service to any client wishing to use their services, and the organisation would be audited on quality and processes to ensure consistency.

The legal aid contract system must be sufficiently flexible to allow new entrants into the market between contract terms, and to take account of the developing legal landscape. At the same time, contracts for legal aid services should provide certainty for legal aid suppliers, not in terms of volume of work, but in terms of payment for the work properly done.

It is a core theme of any business strategy that stability and certainty is key. A system which does not provide certainty undermines business stability and confidence. A legal aid system which second-guesses whether payment will be made in cases once the work has been done risks destabilising the supplier base still further.

We therefore call for:

- Longer term contracts to provide business stability and certainty, while ensuring flexibility for new entrants, providing quality standards are met;
- Simplification of the contracting scheme, focusing requirements on those which are necessary to support quality and protect the fund, and dropping unnecessary bureaucracy;
- Granting of licences to offer legal aid services, subject to quality standards;
- Business certainty over payments for work undertaken through the legal aid system.

Audits and KPIs

Each organisation contracted to provide specialist legal aid services must meet a quality standard which is audited annually, either by meeting the Specialist Quality Mark or by the Lexcel standard operated by the Law Society. In addition, the Legal Aid Agency operates a peer review system in specific categories of law, directed to quality of casework. However, there is also a range of other audits, and the system is increasingly complex, with audits taking more and more time away from advising clients.

Our members report that there has been a marked increase in audit activity by the Legal Aid Agency, often with the same firm being repeatedly audited for several purposes, with no apparent communication between different parts of the Agency. The result is duplication of work, with precious time being spent on meeting onerous requirements for multiple audits which could be better spent on advising clients. The cost to the Legal Aid Agency is also likely to be high in implementing such a multiplicity of audits.

We wholeheartedly support audits and other mechanisms for ensuring that the legal aid fund is properly protected from abuse and fraud, and is of sufficient quality. However, our concern is that the current audit system is not focused on rooting out abuse, or on organisations about which there are real concerns over quality of advice. Instead, we receive regular reports of organisations providing excellent quality advice receiving contract notices (sanctions which may lead to termination of the legal aid contract) for minor administrative non-compliances. This is disproportionate, unfair, and reflects poorly on the Legal Aid Agency's decision making.

As we have pointed out in Chapter 5, legal aid rates of pay have not increased for years, and yet organisations are being expected to meet increasingly high standards at their own cost, or to face contract sanctions for what others would see as being minor administrative issues which do not affect the quality of the work they do.

We have received reports of the Legal Aid Agency issuing contract notices (three of which may result in termination of a contract) on a routine basis. Practitioners perceive that the detailed contract terms seem to be interpreted overly rigidly, with minor non-compliances resulting in contract notices, when these do not go to the heart of contract performance. At the same time practitioners are concerned about aspects of the Agency's performance and quality of decision making. There is a real imbalance which needs to be addressed.

By way of example, one of the Agency's KPIs is that claims for civil work must be submitted correctly with very detailed lists of supporting paperwork required. If more than 5 per cent of claims are rejected the Agency may issue a contract notice. At the same time, the Agency has changed the way it requires legal aid providers to submit claims online, placing additional responsibilities, complexity and costs on providers. While prompt payment of claims is, of course, a common aim, to issue contract notices on the basis of what could be very low numbers of claims and minor non-compliances is disproportionate.

It is our view that audits and contract notices should be refocused on organisations whose performance is below that which is required. Sanctions should be reserved for more serious breaches, not minor errors which do not impact on the services being offered or the protection of the legal aid fund. A review is required as to when contract sanctions should apply, and when warnings or other feedback is sufficient, and we would be pleased to work with the Agency on developing a new approach for the benefit of practitioners and the Agency.

We support:

- The refocusing of audits on organisations where there are serious concerns;
- A composite audit, replacing the plethora of individual audits which organisations currently face;
- A review of the circumstances in which contract notices are appropriate, to refocus on organisations performing below that expected.

The Mandatory Telephone Gateway

The Civil Legal Aid (Procedure) Regulations 2012 introduced the Mandatory Telephone Gateway for three areas of law – education (but in effect largely special education needs), certain debt cases and a new cluster of cases called ‘discrimination’. For the three areas of law within the gateway, the rule is that subject to limited exemptions, clients are not permitted to approach an adviser directly in person, by post or by telephone. They can only access legal aid through a specified mandatory telephone call centre, which triages their legal problem over the phone, despite the operator not being legally qualified to give advice. The default position is that the person’s entire case will be dealt with solely by telephone, unless exceptional circumstances apply. They cannot choose their legal adviser and cannot choose to meet with their adviser face to face.

The gateway directly disadvantages all people who wish to choose their legal adviser, who prefer to meet face to face with the person advising them, and client groups such as those with mental health needs, fleeing persecution, with learning disabilities. This is not a definitive list. Many people find it difficult to use the telephone to explain their legal problem, and such people are directly disadvantaged, even prevented from accessing advice because of the restrictions inherent in the scheme.

Clients who need legal aid services are often the most disadvantaged in society. It is necessary to have flexibility to accommodate the different ways that they try to access services. One size does not fit all. A telephone advice service will work for some people; however this must be developed alongside other means of clients accessing services, in accordance with their preferences and individual needs, and the exemptions which apply do not work in practice.

The development of the mandatory gateway has also resulted in a significant drop in the number of provider organisations, because the contracts for the legal aid work are artificially limited. This has a direct impact on the quality of the service for clients, and accessibility. For example, in special education needs (SEN), the number of contracts let to providers dropped from 27 to three overnight when the gateway was introduced and there were at one stage when we asked, only two providers left. Many skilled and longstanding providers were lost and clients who need face to face help are not able to access local services.

In December 2014, the Government published a review of the CLA Gateway.¹⁸ The findings of the user interviews suggest that many people struggled to access the

gateway. Concerns were also expressed about the system not “diverting users to face-to-face advice even though this is the most suitable service for them”.¹⁹

Importantly, the research did not look at the experiences of those who failed to access the gateway or the group of ‘invisible’ people who are denied access to justice through being unable to access the scheme in the first place.

An independent review of the telephone gateway was completed by the Public Law Project in March 2015.²⁰ It found that the policy intentions behind the creation of the gateway are not being met and in some areas are being undermined. From a customer perspective, there were problems with low take-up and awareness, low volumes of advice being given, significant numbers of matters resulting in ‘outcome not known or client ceased to give instructions’, and very low levels of referrals to face to face advice being made. Concerns were also raised about whether the gateway was value for money when compared to other services.

The gateway is inherently discriminatory to people who cannot easily use the telephone, who will not even reach the operator in the first place.

We recommend that the Mandatory Telephone Gateway is scrapped in favour of a scheme which allows clients both the flexibility of telephone access and face to face access, and develops innovative methods of delivery with monitoring of effectiveness, with proper independent evidence gathering for decision making in future. Clients should be able to choose how they access legal services, and the system should respond accordingly.

The next generation of legal aid practitioners – a sustainable future for legal aid

The impact of LASPO on the supplier base has been drastic, with many firms ceasing to offer legal aid services and Law Centres and advice centres closing their doors. Our proposals for reform in our Manifesto will all help to repair some of the damage, however, the importance of training and supporting the next generation of professionals working in legal aid cannot be underestimated.

¹⁸ <https://www.gov.uk/government/publications/civil-legal-advice-mandatory-gateway-review>

¹⁹ P.31 ibid

²⁰ <http://www.publiclawproject.org.uk/news/48/press-release-plp-research-indicates-insufficient-evidence-that-legal-aid-mandatory-telephone-gatewa>

Ensuring that talented entrants, from all backgrounds, are able to work in the legal aid sector is imperative for the long-term sustainability of the profession and maintenance of quality standards for clients. This applies whether legal aid services are provided by private practice, Law Centres or the advice sector.

People should be able to access and remain in the profession irrespective of their background or means. And those who do enter the profession should be provided with the training and supervision that they need to do the best quality job for clients. To an extent these are issues for which the legal profession should take responsibility. But the Ministry of Justice and Legal Aid Agency also have a part to play.

It is vital that the Ministry of Justice and Legal Aid Agency work with organisations to ensure that those continuing to offer a legal aid service are supported to train the next generation of legal aid lawyers. We have made suggestions about how to provide greater certainty and stability for legal aid providers in the operation of the legal aid scheme. However the erosion of trust between the Agency and legal aid organisations is damaging, and requires urgent attention.

The Ministry and Agency should ensure that organisations which are able to demonstrate a commitment to promoting these goals are given credit for this during the tendering process for legal aid contracts. Consideration should also be given to the reinstatement of training contract grants, sponsored by the Legal Aid Agency, to fund a set number of training contracts each year in the legal aid sector. A similar programme was previously maintained by the former Legal Services Commission. The Legal Education Foundation has developed and is running the Justice First Fellowship scheme which is very welcome, but is training in far fewer numbers than the previous training scheme.

If there is to be a quality civil and criminal justice system in future years, it is the next generation who will provide this, supported by the organisations with the expertise and skills to train them. Both elements are necessary for the justice system to survive for the next generation and beyond.

Chapter 8. Specific problems by category of law

Actions against the state (formerly, actions against the police, etc)

We believe that the decision to remove legal aid in relation to negligent acts by the police and other state agents should be reviewed. These cases can often lead to very damaging consequences, including loss of liberty. Similarly, the removal of legal aid in cases involving trespass to goods by state agencies can lead to financial and other difficulties. It is vital that where there is evidence of the state acting unlawfully, a proper means of redress through the legal system including early advice, must be provided.

Clinical negligence

Legal aid is now only available for clinical negligence cases involving catastrophic birth injuries and is subject to strict conditions. Even in these cases, funding is problematic due to limitations placed on rates paid for experts, limitations which the state is not subject to when defending these claims. In addition, legal aid applications are often rejected on the basis that other funding may be available, or the strict criteria are not met.

Changes to legal aid funding risk an inequality of arms; vulnerable people with complex but potentially low value claims are often left unable to access 'no win no fee' funding arrangements.

The previous system enabled other complex medical negligence cases to be underwritten by legal aid so that victims of negligence could obtain a remedy. Legal aid acted like a loan in such cases and enabled victims to seek redress.

An urgent and full assessment of the impact of these reforms on access to justice is needed.

It is unclear whether there are meritorious cases where victims have been unable to bring a claim because of the lack of legal aid, and whether the gap has been filled by other types of funding. Research is needed to look at the costs of withdrawal of legal aid for clinical negligence cases, and whether it is more cost effective and equitable to reintroduce a form of legal aid for specific types of cases and priority client groups.

Community care

Legal advice and representation for disabled people and their carers about access to essential services is desperately needed.

Without ring fencing of community care budgets within local authorities, austerity has led to a disproportionate number of already vulnerable disabled people and their carers being without the essential services they need, and with existing packages of care and support being cut. Pressure on local authorities has been intense and disputes between local authorities and NHS agencies over budgetary matters are all too common, leaving the person in need in the middle. Those vulnerable people directly affected by these cuts are the least able to speak up and challenge decisions about their entitlement to services in such a complex legal landscape.

The Care Act 2014 was implemented in 2015, theoretically bringing extra rights for disabled people and carers of people in need. However, there remains a dearth of community care providers offering specialist legal advice to disabled clients and their carers, with only a handful of advisers across the whole of England. The number of advisers who can offer a service to disabled people in Wales under the Social Services Wellbeing (Wales) Act 2014 is even fewer, despite the urgent need.

Without sufficient availability of advice, great injustices will go unchallenged. There is an immediate and pressing need to review the pattern of supply of community care advice and representation services so that existing advice deserts are addressed and legal services can be developed at both the general and specialist level to meet the needs of disabled people and their carers now and in the longer term. Otherwise, disabled and ill people will continue to face discrimination and disadvantage and lack even the most basic services.

Crime

The criminal justice system is in crisis, with firms facing impossible uncertainty as to whether they will survive, and many organisations with established records leaving. The Ministry of Justice has attempted to control the market through tender processes which have been highly controversial and ultimately unsuccessful. These have left firms and practitioners feeling very angry and disillusioned.

Individual criminal practitioners are enthusiastic when they start training, and yet our members report to us that the biggest problem is retention, given the very poor rates of

pay and the unsocial hours, particularly for police station work. Yet the loss of experienced practitioners damages the whole system: without expertise, the next generation cannot be trained and supported. A criminal justice system without expertise runs the risk of significant miscarriages of justice and damage to the reputation of our justice system overall. There is clearly an urgent need for action to secure a viable and stable criminal justice system now and in the future.

Firms have already sustained a devastating 8.75 per cent cut to income, on top of years of cuts in real terms. This latest cut must be reversed and no further cuts in rates implemented. We further oppose the artificial limiting of the market by arbitrary setting of maximum contract numbers and the use of price competitive tendering in any form. Should the Ministry of Justice continue to attempt to control the market we are concerned about the very real possibility of widespread advice deserts and the inability of many to access justice.

Criminal practitioners have shown that they are willing to engage with developments in technology and practice. We share their concerns that the implementation of technology is inconsistent across the criminal justice areas, that they are often the last to be consulted on the implementation of changes and that they are expected to shoulder the burden of increased costs.

We call for an independent review into the operation of the criminal justice system generally, taking into account all costs and costs drivers in the system, including the police, the Crown Prosecution Service, defence costs, and the court service, as well as associated costs of prisons and the probation service. Practitioners know that there are savings to be made in the system, while not compromising on quality, yet their voice is not being heard. Even in meetings designed for this purpose, there is a lack of trust as a consequence of the way that practitioners have been treated, and this does not allow for open discussions. Costs saving proposals have not led to any improvements for defence practitioners.

There is an urgent need to address the problems in training and retaining criminal practitioners within the system, to ensure that the next generation of practitioners is in place. Without this, the criminal justice system cannot operate and will fail as there will be insufficient expertise.

This is an opportunity to develop a criminal justice system for future years which retains the respect of the international community and secures a safer and more just society for all.

Debt

Debt is one of the most significant contributing factors to ill health, stress and mental distress. Proper independent advice at an early stage will benefit many thousands of families in need and prevent additional costs to the welfare state as was clearly set out in the Low Commission report²¹. In today's economic climate, with the complicated benefits system we have, and a real lack of understanding of Universal Credit, many are struggling to understand their entitlement.

It must also be noted that, until recently, it was recognised by Government that social welfare law issues rarely existed in isolation. Indeed much of the commissioning strategy was built on the premise of 'clusters' of interconnected legal problems, such as unmanageable debt and unresolved benefit issues causing mental health issues and stress, and triggering rent arrears and possession claims. The almost complete removal of debt and benefits advice from scope has undermined the stated intention of retaining housing advice to prevent homelessness.

We call for a review of the impact of the scope changes to debt and social welfare law. In particular, we recommend a review of the ability of providers adequately to cater for matters remaining in scope (possession and eviction cases), in the absence of funding to resolve underlying issues such as debt and benefit problems.

Education (including special educational needs)

We ask for the removal of the education category (which covers special education needs, which was left in scope by LASPO) from the Mandatory Telephone Gateway. Legal help advice and assistance can only be accessed from two providers nationally and while they are specialist firms they are not properly remunerated for their work and are required to accept new work, regardless of capacity. Moreover, requiring access to be made by telephone only presents an additional barrier for those people who are unable or less able to use the telephone.

There is also a serious lack of clarity regarding the arrangements where a client needs to access face to face advice and how that is provided and paid for.

These problems are made worse by the fact that the legal aid funding arrangements have not been updated to reflect the fundamental changes to SEN provision introduced under the Children and Families Act 2014. The changes mean that many

²¹ Low Commission Reports <https://www.lowcommission.org.uk>

more disabled young people aged 16 to 25 will be bringing SEN tribunal appeals in their own name, and it is plainly not appropriate for them to use a telephone gateway.

The government is yet to provide an adequate answer to how young people are to access legal aid in these cases.

Employment

It is vital that early legal advice is available in the complex area of employment law, to ensure that the employed understand their rights and employers their responsibilities. This important service might mean the difference between a person being reliant on state benefits or continuing to be employed and supporting themselves and their family.

We support:

- The reintroduction of initial legal aid for cases subject to the usual means and merits test;
- A review of the fee remission scheme and/or a reduction in fees to remove this very real barrier to access to justice via the tribunal especially in the light of the decision in *R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51²²;
- A review of the possibility of extending legal aid to fund legal advocacy at the tribunal in selected cases as we believe that this will encourage the earlier settlement of many cases and provide savings across the tribunal system.

Family (including domestic abuse)

The largest number of people adversely affected by LASPO has been in family law. Save where domestic abuse is evidenced, legal aid has completely been removed for thousands of people seeking to establish contact with their children, or looking for help to enable that contact to work safely.

This has had a devastating impact upon children: many more are now growing up knowing only one parent. This has huge implications for them and society as a whole. Other children will witness sparring parents who battle their way through the court process unassisted, in proceedings which are already showing themselves to be increasingly protracted and acrimonious.

Legal aid remains available for parents where the state seeks to remove children from their care, recognising the enormity of the impact for the child and the family of what is at stake in these cases. Yet the impact of the removal of even the most basic legal advice where one parent might be lost to a child forever has seemingly been ignored in a crude attempt to cut costs.

As already discussed, the removal of initial advice is a false economy. Family mediation has reduced drastically post LASPO, specifically because there is no longer the opportunity for parents to learn the importance of a non-adversarial solution in cases concerning children, and take up the options available, including mediation and child centred negotiations.

For cases where domestic abuse has occurred, the very high threshold of specific evidence required to prove this abuse, coupled with the practical difficulties of securing that evidence, initially resulted in less than half of the victims of abuse who should have been helped actually obtaining legal aid.

Although the deficiencies in the types of acceptable evidence have been addressed in part, victims of domestic abuse are still disproportionately impacted by LASPO. The majority of those victims are women. Those women, and their children, are left at serious risk of harm.

The changes to financial eligibility have had a disproportionate impact on victims of domestic abuse. Even an application for an order to protect a person from abuse is less accessible, so that many have no access to protection for themselves or their children.

In relation to family finance cases, proper administration of the legal aid fund would and should have led to these being self financing, by proper application of the statutory charge. Legal aid in these cases was a 'loan' rather than a gift. Previously this aspect of the scheme was not properly administered, but with huge advances in digitisation and administration, it could have been, so that financially dependent parties could secure temporary funding to exercise their rights to financial settlements from their ex-partners. This not only enables the poorer party to exercise their rights and forces the richer party to take financial responsibility, but it also saves the state in terms of welfare benefits. It should be entirely cost neutral because the fees would be repaid through the legal aid statutory charge.

In addition, some very vulnerable groups have fallen through the net in public law cases. Grandparents and extended family members are, as a consequence of the cuts to family advice, failing to secure the representation they need to help children remain in the family. This has dire consequences for the children and families. However it also makes no sense financially as the relatively low cost of representation should be weighed against the cost to the state of children needing to be formally accommodated outside the family.

There is an urgent need to review the availability of legal aid for family cases.

We call for the following:

- Provision of funding for early initial advice, which might include a referral to mediation;
- Reinstatement of legal aid in private family children cases, with application of the sufficient benefit test to preserve the fund in children cases;
- Reinstatement of legal aid in private applications for financial orders, with proper administration of the statutory charge to protect the fund;
- Reinstatement of funding for private law applications for extended family members (for example, grandparents) seeking to care for children, where their parents are not able to do so. The criteria to access legal aid for such applications could be a letter of recommendation from children's services;
- A discretion to grant legal aid to a party who is not eligible for legal aid, but where the costs to the justice system overall would be greater if the party was not represented.

Housing

We call for the implementation of the Law Commission's recommendations to reinstate legal aid for all housing cases, including early legal advice in relation to housing benefit and related problems.

Under the previous system, where court action led to repair works being carried out, legal work could continue to ensure that compensation was paid to clients and (importantly for public funds) legal costs were often paid by the landlord. This resulted in many legal aid payments being refunded to the legal aid fund, so legal aid acted like a loan. The current system means that solicitors have to stop working for a client after repair works have been carried out (due to other sources of funding not being

available), but before the question of compensation is decided. This means that legal costs are not being recovered on those cases. There is also more expenditure from the legal aid fund because of the complex arrangements and separation of different issues for which legal aid is only available for some parts of a case and not others.

Additionally, at present advisers cannot help clients deal with Housing Benefit issues, often a major cause of threatened homelessness. These problems often include complex appeals, and there is a real lack of alternative advice available to clients because of closures of advice agencies and Law Centres. This means that clients' rent arrears (which could be resolved at an early stage) increase during the court case, making their eviction more likely. Early advice could resolve many cases. Early advice to resolve Housing Benefit issues also often resolves a rent arrears issue before the landlord issues court proceedings. This early intervention reduces costs for landlords (many of whom are public bodies) and also reduces demand on the courts, thereby making another saving to the public purse.

If all housing cases are not reinstated in scope, we support the following as an absolute minimum:

- Restoring advice about Housing Benefit within the scope of legal aid where the client is at risk of being evicted from their home (ie amend Schedule 1 of LASPO to include Housing Benefit work under paragraph 33);
- Ensuring that allocation cases under the Housing Act 1996 are brought within scope – this particularly affects children and people with disabilities;
- Covering a wider range of disrepair cases and allowing funding to continue where there is a linked damages claim even when the client moves out of the property;
- Clients with mortgage possession cases being able to access advice through any method, including face to face advice, and not just via the Mandatory Telephone Gateway;
- Ensuring that quiet enjoyment cases are within scope, even if the harassment does not necessarily constitute a breach of the Protection from Harassment Act 1977 (which is too narrow and too high a threshold to cover many forms of harassment);
- Availability of early advice on landlord and tenant disputes generally, including claims in relation to tenancy deposits and status of occupiers.

Immigration and asylum

We support the following:

- Ensuring access to legal advice for those detained who are challenging their detention or the underlying decisions giving rise to detention;
- Prioritising those who are additionally vulnerable, whether by reason of age or health to ensure that they can access advice across the range of legal problems in the field;
- Reintroduction of funding for refugee family reunion cases, including such cases falling outside the immigration rules;
- Reintroduction of legal aid for potential victims of trafficking, including EEA nationals;
- Reintroduction of legal aid for all domestic violence cases;
- Reintroduction of legal aid for cases involving deportation where the individual's family life includes a British citizen child or partner.

In priority terms these are the most vulnerable groups who are least represented and have the greatest need.

Inquests

Families of loved ones who have died under state control are often unable to grapple with the complexities of evidence, law and procedure at a time when they are grieving for their relatives. Legal aid for representation at inquests is discretionary and many families are unable to obtain the legal support they need because of the way that the criteria are devised and discretion is exercised (see above, regarding Exceptional Funding more generally).

The recent judgment in the Joanna Letts case where the criteria for legal aid were criticised confirms that the criteria need to be reviewed urgently to ensure that families are consistently able to obtain the representation they need.²³

We call for:

- Revision of the Lord Chancellor's Guidance on Exceptional Funding for inquests so that it properly reflects the law and facilitates fair and just decision making;
- A review of the means test for legal aid for family representation at inquests, to give

²³https://www.bindmans.com/uploads/files/documents/Joanna_Letts_APPROVED_JUDGMENT_20022015.pdf

priority to cases where the Article 2 obligation (right to life) to investigate may arise or where there is wider public interest, and removing the means test in appropriate cases;

- Improvement in the system of administration of funding in this area, including for urgent cases, and simplification of the forms;
- In damages claims for breach of Article 2, review of the costs benefit ratio for granting legal aid in inquest cases, and a change so that the compensation that families receive can be retained by them in full.

Judicial review (public law)

Judicial review proceedings are the means by which a citizen can challenge a decision or omission of the state, having exhausted other appropriate remedies. It is a constitutional right and of significant importance in holding public bodies accountable for their actions.

However, shortly after the implementation of LASPO, the then government decided to introduce new regulations which prevented the funding for legal advice and representation under legal aid for bringing a judicial review, until such time as the court reviewed the case and granted permission for the case to proceed. Most of the work in preparing a judicial review case has to be done in advance of bringing a case to court. The removal of legal aid for the early stages of a case has had a ‘chilling effect’ on the ability of people to challenge decisions and omissions of central and local government, and has resulted in a significant reduction in cases.

A legal challenge to the new regulations²⁴ resulted in minor changes, however it remains the case that legal aid, even in the clearest of cases, is not assured and is dependent on the case being successful at the permission stage. This unnecessary barrier discourages the challenge to unlawful decision making by public bodies, including central and local government and is not constitutional.

We consider that the right to challenge public bodies is of such importance that the regulations which remove payment for legal aid at the early stages of a challenge should be removed, restoring the position to that before 2013.

It is also of profound concern that a combination of changes to legal aid have made it difficult, if not practically impossible for individuals to challenge decisions of

²⁴ http://www.publiclawproject.org.uk/data/files/Ben_Hoare_Bell_APPROVED_030315.pdf

public bodies. Not only have changes been made to the way such cases are funded, but also delegated functions to grant emergency legal aid for a case have all but been removed²⁵ and essentially all applications for legal aid to bring a judicial review claim now have to be made to the Legal Aid Agency. Our members report extensive delays in the Legal Aid Agency reaching a decision and poor quality decision making, resulting in appeals, all of which take time. This presents a particular difficulty in judicial review cases where urgent action is often required to bring a case otherwise it is out of time. Many members report that the combination of these factors have led to people being effectively prevented from exercising their rights even where cases are within scope of legal aid, because of these additional hurdles.

As referred to in Chapter 5, we are also deeply concerned about the policy of the Legal Aid Agency²⁶ to refer certain sensitive or political cases through a special process where legal advice appears to be given by the Government Legal Service about the grant or refusal of legal aid, and the merits of the case. The risk of interference in decision making about access to the courts is obvious, and lends further support to our view that the legal aid system should be administered by an independent body without political interference.

We call for:

- Repeal of the funding regulations restricting legal aid to cases only once permission has been granted;
- Restoration of delegated functions to enable skilled practitioners to grant limited legal aid so cases can be prepared promptly;
- A review of the operation of the policy regarding sensitive cases and which cases have been prevented under the policy;
- Transfer of decision making to a body independent of Government.

Mental capacity

The Mental Capacity Act 2005 and the deprivation of liberty safeguards for people in care homes and hospitals continues to be the subject of considerable debate. The safeguards for mentally incapacitated adults have been introduced but as this is a novel

²⁵The list of delegated functions (devolved powers) used to be in the Contract but as these are now given pursuant to section 6, for the purposes of section 5(2) and section 5(4), of LASPO they have been moved online to: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448948/civil-procedure.pdf

²⁶Standard operating procedure for Notification and Referral of High Profile Cases in ECCT and Civil Case Management

and developing area of law there are significant inequalities and injustices which need to be remedied.

The proposed ALR (Accredited Legal Representative) scheme will only free up the backlog of cases of vulnerable people detained in care homes and in supported living, if legal aid is available and the practical changes are made on the ground to enable the people for whom the system has been devised to have representation.

Some cases concerning deprivation of liberty of a person attract non-means tested legal aid and others which still concern precisely the same issues are means tested. Legal aid is available for some types of proceedings to protect vulnerable adults who are being abused or neglected, but not for the whole range of issues. This needs to be remedied urgently. It is inequitable to expect a mentally incapacitated person to fund their own legal advice and representation about their detention in cases where the state is depriving them of their liberty.

The Charlie Gard and Briggs cases²⁷ are illustrations of another anomaly whereby non-means tested legal aid is not available for cases involving decisions about withdrawal or giving of serious medical treatment, even where the decision may result in the death of that person. Cases concerning withdrawal of nutrition and hydration, sterilisation or contraception of people who may lack mental capacity are all means tested for legal aid purposes. This often results in family members not being advised or represented in decisions about the life and death of a family member.

We call for:

- A system which ensures that all cases which involve deprivation of liberty of a mentally incapacitated person (wherever they live) are non-means tested, whether or not the court considers the case on the papers or at an oral hearing. This will ensure consistency as between mental capacity and mental health cases (people who are subject to compulsory detention under the Mental Health Act as opposed to the Mental Capacity Act);
- Extension of legal aid to cover psychological and emotional abuse or neglect of a mentally incapacitated person, and respect for their home under Article 8 ECHR (this is excluded at present);

²⁷ <https://www.supremecourt.uk/cases/docs/charlie-gard-190617.pdf> <https://www.judiciary.gov.uk/wp-content/uploads/2016/12/l-briggs-v-p-briggs-others.pdf>

- A quick access scheme to enable people deprived of their liberty in care homes and supported living to access legal representation, via the proposed ALR scheme without additional hurdles;
- Non-means tested legal aid (including for family members) for cases concerning serious medical treatment of a mentally incapacitated adult;
- Introduction of a system of discretionary funding to grant legal aid for representation to a party who is not eligible for legal aid where the Legal Aid Agency considers that, taking into account all the features of the case, it would cost less to public funds overall for that party to be represented than to be a litigant in person. Already we have seen cases where, if a family member had been legally represented via legal aid, it would have cost the taxpayer less overall and resulted in more effective and swift justice for all concerned.

Mental health

Mental health work including representation at Mental Health Tribunals remains one of the most stressful and demanding areas of legal practice. Yet the remuneration structure does not recognise the actual work required or the difficulties in practice of travelling to different hospitals and the inherent difficulties in representing this client group.

We call for a review of the fee structure as there is concern that setting an escape fee at three times the fixed fee is not appropriate for this work, because the majority of cases (particular detention under s.3 Mental Health Act 1983) will fall between the fixed fee but below the escape threshold. This means that it is uneconomic to perform the work. Given the vulnerability of the client group this needs to be reviewed to reduce the threshold for an escape fee.

We also call for the inclusion of non-means tested legal assistance at managers' hearings as a matter of routine. Managers have the power to discharge a patient, however without legal representation the patient has no proper opportunity to put their case. This results in patients being detained for longer periods at additional expense to the taxpayer when it is in everyone's interests for those who meet the criteria for discharge to leave hospital with a suitable care package sooner rather than later.

Given the importance of early advice, and the difficulties of obtaining evidence as to means for patients, we consider that there is a case for reviewing whether limited non-means tested early advice should be made available to this client group. Providing

assistance at an early stage is likely to assist patients in their recovery and reintroduction to society on discharge.

Prison law

We support the reintroduction of legal aid for advice and, where necessary, representation for prisoners, including treatment cases. As prison is a closed institution, it is vital that, in appropriate cases, legal advice is available. This is especially important where the client is disabled, a child or an older person with particular needs for support and access to health and care services, not readily available in a prison setting.

Legal advice should be available for problems with progression, resettlement and treatment. The current position of only allowing legal aid in cases directly affecting liberty is short sighted and unlawful following the Court of Appeal ruling in April 2017²⁸. The Court of Appeal recognised that the cuts created systemic unfairness. We consider that in the uniquely coercive and currently unsafe environment of prison, where the aim should be for prisoners to work towards law abiding lives, the rule of law is particularly important. Without legal aid, prisoners are deprived of the ability to achieve fairness or strive for liberty, which is often dependent on early legal advice on offending behaviour courses and appropriate resettlement packages. The provision of the possibility of exceptional funding (without any adaptations to the civil scheme) for some of the areas previously cut from scope is insufficient to restore meaningful access for most prisoners.

Welfare benefits

Welfare benefits enable people to sustain themselves in time of need, and can have a huge impact on people's lives, particularly those who are vulnerable such as disabled people and children. Early advice from a skilled adviser where an application for benefits is refused and an issue of law arises can make the difference between a person or an entire family being able to sustain themselves during a crisis, or being unable to cope. Welfare benefits law is extremely complex and people cannot be expected to mount their own appeal without help, in many cases.

We support the implementation of the Low Commission proposals on welfare benefit advice, and in particular the restoration of Housing Benefit cases.

28 R (Howard League for Penal Reform and the Prisoners' Advice Service) v The Lord Chancellor (2017)EWCA Civ 244
www.bailii.org/ew/cases/EWCA/Civ/2017/244.html

We also call for the restoration of legal aid in welfare benefits cases to cover the application for permission to appeal made to the First Tier (as opposed to the application directly to the Upper Tribunal).

This was promised during the passage of LASPO, but when the House of Lords passed a fatal motion on the draft Regulations because the definition was too narrow, the Minister simply withdrew the Regulations without further amendment. This has left a gap which was not intended by Parliament, whereby the appellant has to identify the error of law and make the initial application themselves without legal advice or representation and it is only once that is refused that they can seek legal help. This is obviously circular and we consider that Parliament's intention in passing a fatal motion against the Regulations should be given effect so this small category of cases is brought back within scope of legal aid.

Increasing the scope of welfare benefits advice will also increase the effectiveness of other areas of legal aid, such as housing, because a large number of possession and homelessness cases are triggered or exacerbated by welfare benefits issues. We are also concerned that the current scope of legal aid does not reflect that large number of legal issues that are currently arising because of the roll-out of Universal Credit. The introduction of any large scale change to the benefits system inevitably causes administrative and legal issues for claimants. Early advice to resolve difficulties with Universal Credit is likely to reduce the need for more costly legal solutions.

‘We sell to no man, we
will not deny or defer
to any man either
justice or right’

Magna Carta, 1215

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