

# Frozen out? Civil legal aid

The review of LASPO should be used as an opportunity to develop a vision for early advice services, says **Steve Hynes**

Over recent months there have been calls from politicians and campaigners for the government to look at restoring early advice for civil legal problems. The Law Society in November published research which demonstrated the link between early advice and resolving a problem sooner. The Solicitor General, Robert Buckland QC, is among the politicians who are now calling for a re-think on early advice. Legal Action Group (LAG) welcomes the increased pressure on the government regarding this issue, but we are warning that action needs to be taken urgently, as civil legal aid is becoming a narrow collection of specialisms dominated by child protection, with shrinking provision for the type of early advice services needed by the general public.

## Plummeting numbers

The Legal Aid Sentencing and Punishment of Offenders 2012 Act (LASPO) is the main culprit behind the current crisis. From April 2013 the axe fell on 'legal help', the system of legal aid for early advice. The latest quarterly figures on legal aid expenditure from the Ministry of Justice (MoJ), published 14 December 2017, confirm that expenditure on legal help has fallen 'to less than one-third of pre-LASPO levels'. The figures also confirm a continuing downward trend in legal help cases with a 4% decline compared to the same period in 2016.

After the implementation of LASPO large areas of civil legal advice were no longer covered by legal aid. For example, the number of welfare benefits cases reduced from 83,000 in 2012/13 to 440 in 2016/17. Overall legal help cases fell from 575,000 in 2012/13 to 145,000 in 2016/17. For those areas of work which remained in scope there has been a continuing fall in the number of new cases. The latest MoJ report points out

that over 80% of work in housing law is legal help, but the number of cases has been declining over the last three years. Reductions for completed immigration and mental health cases are also reported.

Legal help in family cases is following the downward trend—reducing by 12% compared to the same quarter in 2016. There has also been a reduction in the number family mediation meetings funded by legal aid, down by 5%. LAG, along with many campaigners, argues that the lack of availability of early advice in family cases is causing the reduction in take-up of mediation and feeding the rise of the numbers of litigants in person before the family courts.

## Exceptional case funding

A notable increase in expenditure over the last quarter has been in exceptional case funding (ECF). The MoJ reports the highest number of applications since the scheme was introduced in April 2013. The ECF system was intended to act as a human rights safety net for cases post-LASPO which would not otherwise be covered by legal aid. The 570 new applications reported in the last quarter is still well down on the government's original estimate of up to 10,000 cases per year.

Expenditure on civil representation, in contrast to other areas of civil legal aid work, has increased by 11% (£12m). Against an overall downward trend in housing cases there was a 2% increase in representation cases in the last quarter. The jump in civil representation though, is mainly attributable to a 17% increase in completed public law family cases compared to the same quarter last year. These cases already account for half of the expenditure on civil legal aid and while the number of cases completed was slightly down on the previous quarter the higher levels of spending appears to be a trend which is likely to continue given the wider picture around child protection policy.

## Child protection

According to a report from the NSPCC published last year, *How safe are our children?*, there has been a 39% increase in the number of children subject to a child protection plan or added to the child protection register since 2011. The charity believes that more awareness of the issue of child protection among the public and people who work with children has led to an increase in the interventions from the public authorities with responsibility for keeping children safe. The NSPCC it is not clear on whether or not the levels of abuse against children is increasing, but it seems certain that current historically high numbers of these cases are likely to continue, with knock-on consequences to the civil legal aid and courts system.

LAG believes that the government can find the money to restore some civil legal help services, as the original target of a reduction in expenditure of £350m set by the then-coalition government has been greatly exceeded. In 2010/11 legal aid expenditure was £2.5bn, but in 2016 this was estimated to have fallen by £950m, a 38% reduction. There is also a downward trend in expenditure on criminal legal aid with falling numbers of new cases in the police and magistrates courts (down 4%) and the Crown Court (down 6%).

No-one would disagree that the protection of children should remain a public policy priority, but if the government is to respond to the clamor for early advice services, action needs to be taken to arrest the decline in the availability of legal aid for housing, benefits and other areas of law in which people commonly need assistance. The review of LASPO announced in October last year should be used as an opportunity to develop a vision for early advice services. All that is needed is some political will from ministers to do so.

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