Post implementation review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Memorandum to the Justice Select Committee (JSC).

Detailed Appendices (1-4) of our evidence and analysis

Supported by:

APPENDIX 1: Client focus – Designing the system around users

Almost half of us will use the justice system at some point in our lives, whether as a consequence of crime, or to help solve everyday problems with housing, debt, employment or relationships.[i] And beyond those actually using the legal system there is a high level of need for both legal information and advice in relation to common problems of everyday life.[ii] Every survey undertaken about the prevalence of legal problems, their impact and resolution have presented similar findings, and the MoJ's most recent research published earlier this year again re-affirms what we already know that "around a third of the population experienced legal problems, with certain groups more likely to experience problems than others, particularly those vulnerable to social exclusion (such as individuals on benefits, lone parents, those with a disability, those with low incomes). Around half of problems led to adverse consequences such as stress-related illnesses, physical ill-health, or loss of confidence. Some individuals reported experiencing multiple problems, with certain problem types clustering together, such as those relating to a relationship breakdown, or economic problems."[iii]

Government says that "the goal of the Ministry of Justice, is to deliver excellent service to customers and users of the justice system," - for many legal aid users, their lawyers and those in need of legal help and support, the system falls short of delivering anything like an excellent service and is characterised by bureaucracy, complexity and impenetrable processes and language. Bureaucracy in the Legal Aid Agency is especially time-consuming and costly, not only in the administration of contract procurement and matter start rations, but also the poorly functioning operating channels such as the client and cost management system (CCMS) and the civil legal aid gateway telephone service, as well as the application of complex scope and eligibility rules, and evidential criteria.

The complexity of the legal aid system itself reflects a dysfunction and inaccessibility at the heart of our courts and justice system. As Lord Justice Briggs in his review of the civil courts concluded "the pervasive and indeed shocking weakness of our civil courts is that they fail to provide reasonable access to justice for the ordinary individuals or small businesses."[iv] Similarly the former Justice Secretary Michael Gove has said "Despite our deserved global reputation for legal services, not every element of our justice system is world-beating. While those with money can secure the finest legal provision in the world, the reality in our courts for many of our citizens is that the justice system is failing them badly. There are two nations in our justice system…the wealthy, international class who can choose to settle cases in London with the gold standard of British justice. And then everyone else, who has to put up with a creaking, outdated system to see justice done in their own lives."[v]

The capability challenge

In framing the future policy context for legal aid and support it is important to start from where people are, rather than making assumptions about how people interact with the justice system and their capability in dealing with legal issues. We know from research that only 11% of people identify legal problems accurately, but also that characterising a problem as legal more than doubles the likelihood of an individual seeking legal help, and substantially increases the likelihood of getting some kind of help rather than handling the issue alone. This is corroborated by the Government's own *Varying Paths to Justice* research

"(survey) participants who were not aware of available advice and support services or those who were unable to access relevant information to understand their options struggled to find a resolution to their civil justice problem, and tended to let the matter drop."[vi]

The JSC should question the MoJ's assumptions[vii] that putting all court systems online with direct digital access for the public will remove barriers, reduce the need for expert legal help and improve resolution outcomes. We acknowledge that the transformation programme should have significant efficiency benefits and hopefully will potentially provide much more user friendly channels and processes for users of the justice system. However, there is no evidence that the need for advice and representation will disappear and that self-help will take over. Throughout two decades of courts and justice modernisation projects there has been alarming consistency in the research baseline figures that approximately one-third of the population experience justiciable civil legal problems; around 10% 'lump it' and take no action at all; and around 46% handle such problems alone without accessing any formal or informal support or legal help.[viii] More recent research commissioned by the Legal Services Board (LSB) suggests that the baseline figure may be closer to one in two people, with 18% doing nothing and 46% of issues handled alone or with the help of friends or family. According to this research, the most commonly cited reason for not seeking formal legal advice is the affordability of legal services.[ix]

Even allowing for differences of survey methods, all the data trends point to a growing need for a more effective and responsive civil legal aid system to address the access to justice gap, supported by information about how and where free or low cost help can be accessed.

Early resolution and intervention

All too often, clients present for legal advice with problems that could have been solved at an earlier date. This is amply evidenced in the MoJ *Varying Paths to Justice* Survey, for example in relation to debt "(survey) participants facing debt problems were unable to accept that they faced a justice problem until an external party intervened."[x] We believe that there should be a specific objective within the MoJ's approach to legal aid delivery to ensure that information, advice and representation can be accessed to address problems when they first occur. In this respect under the LASPO regime there is a strong argument that resources have been poorly targeted as legal aid only tends to kick in at crisis point or at the court door, rather than earlier on as problems develop. The Select Committee itself found that because the Ministry of Justice had targeted legal aid at the point after a crisis had developed, such as in housing repossession cases, "there have therefore been a number of knock-on costs, with costs potentially merely being shifted from the legal aid budget to other public services, such as the courts or local authorities".[xi]

An earlier intervention approach is also effective as greater understanding develops about the social costs and consequences of unfolding legal problems (see Appendix 4). For example, problem debt makes a person twice as likely to develop a mental health problem, and insecure renters are 75% more likely to experience serious anxiety and depression than homeowners[xii]. Legal problems in the rented housing sector are a particularly interesting case study; in our current system they take a long time to resolve: analysis of data on rented housing legal problems showed that half lasted more than a year; a quarter were still unresolved after two years.[xiii] The renters most likely to experience housing-related legal problems are the young, single parents, and unmarried couples with children. Tenants are

more likely than those living in other types of accommodation to have higher levels of non-housing-related legal problems – such as with domestic violence, divorce, welfare benefits and personal injury. This data in itself makes a strong case for more upstream interventions to help tenants secure and enforce their rights.

Public Legal Education and Information

A regrettable decision that came out of the LASPO reforms was the cessation of small amounts of funding from the MoJ for public legal education and information (PLE) and Community Legal Service (CLS) grants which supported 'second tier' specialist information and support services, a small number of social welfare law training contracts, and innovation projects. Much of the infrastructure around "community legal services" (the "CLS" which badged community advice services from 1999-2011) has also regrettably been lost as the result of the narrow refocussing of legal aid on crisis litigation on matters of life, liberty and fundamental rights. However the CLS narrative was not so much about badging, as about the wider policy and operating framework. The original intention of the CLS model was to bring together legal aid with wider community resources such as within libraries, GP surgeries, schools, children's centres and charities as designated hubs that could get legal information and knowledge out to the public through drop in sessions, outreaches and working with community groups. The narrower focus of LASPO has meant drop-in advice sessions and community based information and advice gateway points no longer play a central role in legal aid policy and strategy, and have lost funding and capacity as a result.

The Low Commission on the future of advice and legal support has since proposed a strategy to "embed information and advice services in the places – real or virtual – where people already turn for help or services" (ie the library, the surgery etc) and describes legal support as being "a continuum" from Public Legal Education (PLE) through to information, advice and advocacy.[xiv] We therefore ask the Select Committee to encourage the MoJ to look again at the importance of strategies for the frontloading of educational, information and guidance resources within community hubs as part of a more preventative approach. This will be especially important for the *Transforming Justice* programme as the legal system evolves its online platforms for transacting legal disputes and issues, especially given the priority that the Government gives to online information and "assisted digital" services. PLE resources can also help support market solutions, for example the tackling the low use and take up of existing legal expenses insurance cover. The intention would be to layer such provisions: PLE would inform those better able to use it themselves, and improve the signposting for those less able to source advice and legal assistance.

It was encouraging to hear the previous Lord Chancellor, Elizabeth Truss MP, tell the House of Lords Select Committee on the Constitution of the "need to improve legal education and people's understanding of the law" and that more resources in the future may be spent on legal support and public legal education, and that "we can spend the current budget better by making sure that we are providing people with early legal help." [xv] A focussing or increase of resources into PLE will in our view be essential to making the MoJ's court reform and digitisation programme work, including the "online court" process. As Lord Justice Briggs said in his report proposing the online court reforms, *"success in extending access to justice will depend critically upon parallel progress being made with public legal education generally. The tradition in this country has been to think of Legal Aid as performing that*

function, by funding private lawyers to provide the necessary education to those unable to afford it for themselves, with voluntary agencies such as the CAB filling particular gaps. It is not therefore surprising that, now that Legal Aid has largely been withdrawn in relation to civil litigation, we are generally less well advanced in the provision of public legal education than some countries where there has never been Legal Aid at a comparable level."[xvi]

Simpler eligibility criteria

We have already highlighted the problem of bureaucracy in the system. A clear example of complex and unwieldly bureaucracy which could be easily simplified and bypassed is the current process for assessing financial eligibility, based on complex regulations and using up significant resources at the Legal Aid Agency (LAA) to administer. A simpler process would allow for easier passporting for those on benefits, universal credit or other forms of state support and should be able to use existing DWP data, rather than expecting lawyers and the LAA to be checking bank statements and payslips for proof of income to determine whether applicants fall above or below the current thresholds.

However, currently the MoJ is looking to make the system more complicated. We are extremely concerned over the MoJ proposals to introduce a new legal aid eligibility means test for those transferred onto Universal Credit, rather than extending a simpler passporting procedure.[xvii] Too many clients are already excluded under the complexities of current criteria from their legitimate legal aid entitlement because of financial evidential and bureaucratic hurdles – passporting can alleviate this to some degree where basic financial information has already been established by DWP. To effectively abolish passporting by introducing a new "earnings threshold" for those on low pay but receiving some Universal Credit would make the system even more complicated and could potentially exclude many on low pay but working under 'stop-start' irregular arrangements in the 'gig economy' which might take them temporarily above the threshold but only for month or two a year. Even the MoJ's own consultation on the proposals admits that passporting "facilitate(s) quicker funding decisions for those most in need, ..avoids duplication, by improving information sharing across government and helps to reduce the administrative burden on legal aid applicants, providers and the Legal Aid Agency."[xviii]

We would therefore like the review to look again not just at the scope of legal aid, but also the financial eligibility system and how it is administered. The original intention of the means testing was to ensure that those of 'small or moderate means' could have access to advice and if necessary representation. In fact financial eligibility levels for civil legal aid have been reducing for decades from a high watermark of over 70% of the population in the late 1970s , halving between 1998 and 2007 down to 29% [xix] and reducing further over the subsequent decade. A first step towards a simpler eligibility system would be removing the capital test for those on passported benefits. Under the reforms introduced by LASPO all means-tested benefits claimants applying for legal aid have to be additionally means-tested for capital – including equity in the home, whereas previously that was not necessary. The stringent capital tests exclude even those with small amount of equity. So whereas means testing for benefits excludes equity in a home, the legal aid means test only excludes the first £100,000 of equity, and only allows £100,000 of mortgage debt. This means that if you have equity in your home of £110,000, you are treated as having capital of £10,000, which is above the savings/capital limit of £8,000 to qualify for legal aid.

The current system of means testing can also be a blunt instrument for rationing legal aid when it comes to the interests of justice especially in complex proceedings, as there is no exceptionality rule, discretion or flexibility that might allow public funding in the interest of justice where an applicant with an overwhelmingly clear need for legal help but is just above the financial eligibility threshold. This problem was brought to attention in the recent Charlie Gard case, in which the Judge commented that it was "remarkable" (the case was represented on a pro bono basis) that the parents may not have been eligible legal aid (no application was made and it appears likely that the parents – although not working - would have been above the capital/savings limit). We agree with the Justice Select Committee Chairman's reported comments that "to apply an ungenerous means test in effect without any regard to the nature of the case and evidence required isn't fair."

Simplification of the system

We hope that the review will look at how to simplify the administrative steps in applying for legal aid – this would benefit both clients and providers. We cannot overstate the time that is spent by providers reading in the copious documentation produced by the Legal Aid Agency, and the bureaucratic burdens that are imposed. The Client and Cost Management System (CCMS) system which became mandatory last year is for example not fit for purpose; there have been serious problems with the accuracy of the billing system, the 13-page application form takes an inordinate amount of time to complete and submit. The system remains unreliable, especially for matters requiring urgent processing, and continues to be beset by technical failures, and functionality and performance issues.

CCMS is not the only processing failure restricting access to civil legal aid. To obtain face-to-face advice for debt, education and discrimination matters, clients must first pass through the civil legal aid 'telephone gateway' system. There is evidence that service users experience considerable difficulty in navigating and proceeding beyond the operator service. The National Audit Office report for example noted that the LAA had expected 16,466 debt cases to start in 2013/14, while in reality only 2,434 were started; 85% fewer debt cases processed than expected.[xx] Last year (2016-17), only 456 new debt cases were helped by legal aid.

Both providers and beneficiaries of legal aid understandably struggle with its rules. The current civil legal aid system is one that nobody would have designed: a patchwork of exceptions and exclusions, largely hidden from the public by its complexity, limited information or promotion by Government, and as a consequence of some restrictions on the active marketing of legal aid's availability by providers[xxi]. It is far from a generous provision, and the targets governing its delivery focus on administrative process rather than on meeting legal need or improving access to justice.

Reducing administrative spend to increase client focused resources

Reducing the complexity of the system would enable the MoJ to redeploy resources into frontline provision. Whilst the LAA's budget has been cut by 25% since LASPO, administration costs in 2015/16 increased to over £100m,[xxii] dropping back to £95m in 2016-17.[xxiii] This is around a fifth of the amount currently allocated to civil and family legal aid and

more than the LAA's entire expenditure on civil legal help. Every year since the LASPO reforms the bureaucratic and administrative process and hurdles put in place for accessing legal aid, when combined with the complexity of evidential, financial and scope rules and the poor quality of information about what issues remain covered, have reduced the take up of civil legal aid services and the number of providers who wish to keep on running legal aid contracts. The latest legal aid statistics evidence continuing decline, with the latest quarter legal help new matter starts being 3% lower than in the same period of 2016.[xxiv]

The outcome, as the Justice Select Committee has already recognised, has been that the MoJ have accrued a significant under-spend on civil legal aid services against their own financial modelling. Meanwhile the bureaucracy, from which clients receive little direct benefit, has become disproportionate. This dynamic needs to be reversed, and identifiable dysfunctions at the LAA tackled. One approach to re-investing the identified underspend and redirecting the bureaucratic spend would be to follow the Law Society's recommendation of establishing an innovation fund – as part of a comprehensive review of the current system.[xxv]

There are already models of developing and emerging best practice that can be drawn on, and insights from work on user needs undertaken within the HMCTS programme, and learning shared through the Civil Justice Council. The Ministry of Justice have shown a willingness to respond to some areas of unmet need operating through a 'lighter touch' funding and collaborative process, for example the LIPs strategic collaboration project involving Law for Life, LawWorks, Personal Support Unit, RCJ Advice, Bar Pro Bono Unit and the Access to Justice Foundation.[xxvi] However, as we demonstrate in appendix 4, the scale of unmet need across the whole spectrum of legal support (ie information, advice and representation) is growing.

Appendix 2: A coherent and rational approach to the future scope of legal aid

We accept that resources are finite and it is therefore important to prioritise those in need in the civil legal aid system, such as the most vulnerable families, victims of domestic violence and people at risk of abuse and neglect, victims of trafficking, persecution and child exploitation, older people in the care system, homelessness cases and those facing destitution or removal from the country. However the Government needs to consider where key groups such as children, vulnerable and disabled people are disadvantaged by the removal of areas of law from the scope of the legal aid system, and should be willing to make amendments to the Act. The way in which the current civil legal aid scope rules have been drawn has had a particularly serious and disproportionate impact on disadvantaged and marginalised people in the UK, who already experience the most obstacles in accessing justice and effectively claiming their rights. Last year's *Amnesty International UK* report "Cuts that hurt" especially highlighted:-

- **Children and vulnerable young people:** As a group, minors have been particularly affected, including unaccompanied minors and vulnerable young people who have experienced abuse, exploitation, homelessness or mental health problems especially in cases outside scope dealing with the best interests of children, and their citizenship status. Engaging in complex legal processes can have far-reaching and negative implications for children and vulnerable young people whose capacity is restricted, and where parents or carers cannot access legal advice, assistance or representation, it can negatively impact on proper decision-making. It is unacceptable that the system leaves significant numbers of children and young people without advice, assistance or representation.

- **Migrants and refugees:** As a group who already experience a range of distinct problems and inequalities due to their immigration status, the removal of legal aid from immigration and family reunification cases has left many families in a legal limbo.

- **People with additional vulnerabilities, disabilities and/or mental health issues**: Inevitably there are groups for whom accessing, navigating and understanding the legal process is harder (eg those with learning disabilities, poor literacy etc) but need the protection of the legal system. [xxvii]

Both scope and eligibility have been described by Citizens Advice as a "technical minefield" and it is therefore unsurprising that many people who qualify for legal aid are not accessing it often because they lack sufficient information on their eligibility. Within the existing scope rules there are contradictions and complexities. 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, and there are some restrictions on providers in respect of promoting its availability in certain ways.[xxviii] The effect of incoherent scope rules is to depress both supply and take up by increasing the operational complexity of the legal aid scheme. The latest MoJ statistics illustrate the continuing decline in the use and take up of the civil scheme. Already operating at less than a third of pre-LASPO levels, in the last quarter new matter starts were down a further 14% compared to 2015.[xxix]

Practitioners ascribe this to the operational complexity of the scheme which can be ascribed to unclear scope rules, and to inadequate information and publicity about what remains within scope. The scope rules are also out of line with accepted international norms on areas of law covered by legal aid; as a comparative research report from the Dutch Ministry of Security and Justice has concluded "England and Wales are special in that they exclude far more areas from legal aid than other countries, due to recent legislation that came into force on April 1, 2013 (LASPO)."[xxx]

Contradictions

There are significant contradictions that arise from the scope of legal aid as set out in schedule 1 of LASPO, and there is inconsistent application of the MoJ's policy principles in particular for:-

1. **Asylum, immigration and citizenship status**

In the preliminary consultations on the LASPO reforms, the MoJ acted on the principle that asylum, refugee, displaced persons cases and issues involving human rights and international law conventions should stay within scope, whilst more ordinary immigration and migration cases (eg those migrating for economic or personal choice reasons) should be removed from scope. However, the distinction between asylum and immigration law is not a binary one in an area of rights that has become very complex in the UK and changes very rapidly, and we are particularly concerned about the following exclusions:-

- refugee family reunion cases
- statelessness applications
- asylum support appeals
- children's residency rights
- more recently, EEA nationals seeking to secure their status in light of Brexit

Greater consideration in particular needs to be given to the legal aid needs of migrant children. Although some children are protected – namely those fleeing war and persecution and those identified as victims of trafficking – many others are not. According to government data, this change has left at least 2,500 cases each year where children are claimants in immigration cases but are not eligible for legal aid. Unlike family law proceedings, where special provision has been made for children under the age of 18 to obtain legal aid, no explicit or similar safety net has been made for migrant children. A recent report by Coram Children's Legal Centre, *This Is My Home*, estimate that there are at least 120,000 undocumented children in the UK over half of whom were born here, with the majority facing major challenges in regularising their status at least in part through restrictions on access to justice imposed by legal aid scope rules for immigration, high application fees and complex processes for applying for leave to remain.[xxxi]

The absence of legal aid for children's registration as British citizenship and complex confirmation of their citizenship is also barrier to many, especially where extensive effort is required to secure and present evidence to establish a child's uninterrupted residence in the UK over several years; or, in the case of an application for exercise of discretion, to support other grounds for that to be exercised in the child's favour. Other circumstances in which

the absence of legal aid may be particularly significant include where expert evidence is required to establish the child does not have citizenship of another country. We hope that the review can address the issue of children's rights and access to legal aid on immigration law matters as a matter of priority.

The scope rules which apply to immigration issues should then be more widely reviewed and sense-checked to ensure compliance with ECHR Article 8 (including procedural rights in giving effect to the article) even if this means a lowering of evidential hurdles. For example whilst there is legal aid for trafficked persons, eligibility only arises once it has been established that there are reasonable grounds for thinking that a person has been trafficked. The Immigration Law Practitioners Group (ILPA) have given extensive evidence in previous submissions to the Justice Select Committee, backed up by case studies, of circumstances that demonstrate that the current scope rules on immigration law are so restrictive that they don't fulfil even the narrow policy of what range of cases LASPO intended to cover. Ensuring that that access to legal aid in immigration cases is compliant with human rights law should not be left to determinations on exceptional funding, which as can be seen below are problematic. In the final analysis most immigration law issues concern questions of citizenship status, issues of identity and nationality which differ fundamentally from the framework private law rights which Government exclude from legal aid funding.

The restrictions have had an adverse impact on vulnerable immigrants unsure of their status, and has left only patchy provision for specialist advice across England and Wales, with matter starts for immigration work having been reduced from nearly two thirds 52,866 to 22,984 in the immediate year following LASPO. Indeed legal help in immigration is down 6% again in the last quarter compared to same quarter last year, reflecting a long term decline in legally aided immigration cases of 75% since 2010. It is important that the figures are represented accurately; the 2015 study for example undertaken by the MoJ on the early impact of LASPO on asylum appeals was misleading in its representation of the data due to the size of the cohort studied and other methodological issues.[xxxiixxxiii]

2. **Housing and debt**

Whilst housing and homelessness cases have remained within scope, under schedule 1 the housing issues which qualify for legal aid are those where a person's home is at "immediate risk," (such as possession proceedings) or where housing disrepair poses a serious threat to health. It seems to us however inconsistent with the underlying aim of protecting the most essential housing security rights that the following matters are out of scope:-

- Housing benefit disputes
- Tenant compensation
- Transfer to alternative accommodation
- The right to quiet enjoyment
- Tenancy succession issues
- Demotion of tenancies
- Allocations of housing accommodation unless made by applicants classed as homeless within the meaning of s175 Housing Act 1996
- Breaches of the tenancy agreement that could lead to possession proceedings

- Tenancy deposit issues

Some housing related debt advice has also remained within scope, again where the home is at risk of repossession; however this advice does not cover typical debt remedies such as debt relief orders (DROs) or in challenging bailiff actions seeking to enter the home - these are all matters which should be covered in any package of housing and debt advice geared towards the protection of housing security. Since LASPO was passed there has been also subsequent housing and consumer legislation containing provisions with a focus on homelessness prevention and landlord obligations (Consumer Rights Act 2015, the Deregulation Act 2015 [covering retaliatory eviction], Housing & Planning Act 2016 and the Homelessness Reduction Act 2017). It is important that legal aid should be accessible and available for the pro-active enforcement of these rights and duties and that scope rules are updated to keep up to date with the law.

The Grenfell Tower tragedy has brought home just how important it is for tenants – especially social housing tenants - to be able to enforce all of their rights, and to be empowered through legal advice and advocacy to challenge and ensure that landlords and their contractors maintain high standards of compliance with regulatory protections, and that when there are problems the bodies responsible can be held accountable. Community based legal support organisations can play a crucial role here, for example in working with tenant organisations to secure improvements in social housing conditions and to challenge local authority gate-keeping practices.

3. Welfare rights

Schedule 1, Part 2 section 15 of LASPO specifically excluded advice on applications, decision-making and redress procedures for benefit entitlement from the remit of civil legal aid which is now only available for a narrow category of more legally complex welfare benefits cases, such as appeals on a point of law in the Upper Tribunal and the higher courts as well as a handful of judicial reviews. This reduced the funding available for specialist welfare rights advisers' work by some £20 million annually. During the parliamentary passage of the legislation it was accepted that sometimes complex points of law are also raised in the first tier tribunal, and that in these adjudications there was a strong case for users to be able to access free specialist advice through the legal aid scheme. However, a political dispute in the House of Lords about the scope of the proposed statutory instrument to cover this led to the Government backtracking on assurances that they would develop a new legal aid scheme for first tier cases.[xxxiv]

Whilst all legal information and advice should be seen as a continuum, there are some distinctions to be drawn in respect of welfare rights between information, advice and legal casework. We accept that assistance in the initial stages of applying to the JobCentre for means tested benefits via online portals may not always be the best use of the expertise of legal specialists as funded through the legal aid scheme. However, we would also argue that initial support funded through other sources should be routinely available in JobCentre Plus and through its customer contact and information points in public libraries and local government buildings. Indeed, initial advice is important to avoid errors developing.

Moving beyond the initial application stages, welfare rights law and casework is often complicated, and when requesting statutory reconsiderations or appealing decisions (following the outcome of the mandatory reconsideration process) appellants in the Tribunal need the help of knowledgeable advisers. Relevant case law needs to be researched and statements sought from professionals such as health professionals, in addition to the routine assessment reports, and attention to detail to comprehend benefits regulations and to conduct pre-tribunal investigation is necessary. Whilst tribunals themselves can do some of the relevant fact-finding, and we are pleased to see that case officers are being appointed to do this, it needs to be better understood that the tribunals' users are amongst the most vulnerable and least literate users of the justice system. We therefore hope that the JSC might address the question for the review of whether some welfare benefits advice should be reintroduced into mainstream legal aid provision, on its own or in conjunction with related housing or debt matters; or whether an independent tribunal advice scheme could be developed to assist appellants in difficult cases and/or help those with limited capacity to comprehend the process or speak for themselves.

4. **Family law and family breakdown.**

Generally the principle that MoJ policy makers have been working on since reform proposals were published in 2010 has been that public law family cases such as child protection matters should be within scope and private law family cases such as divorce should be outside scope. In practice though this public/private law boundary is neither a clear nor rational categorisation as far as the circumstances of family breakdown and children's wellbeing is concerned. Private law child contact disputes in acrimonious divorces for example can involve contested court hearings and longer delays in resolving cases especially when parties are representing themselves, often putting the psychological wellbeing of children involved at risk. As one judge has said "The Children Act says that the welfare of the child is paramount in these cases, which is a given. But it also says delay is the enemy of a child's best interests, and so anything which means that the resolution of a child's interests takes longer, must be damaging to the child…. The damage that's done is both emotional and probably, in some cases, psychological as well, and the difficulty is that parents don't see this, they're so tied up in their own issues that they forget that the child's welfare is the paramount issue."[xxxv]

In order to promote mediation as an alternative resolution route to family breakdown cases (one of the MoJ's objectives in the design of the LASPO reforms), family mediation was retained within scope of public funding under legal aid. However, cut off from wider family legal advice provision there has been lower than expected take-up of mediation – down nearly 40% on pre LASPO levels. The Legal Aid Agency had in fact planned for an increase of £10 million in spending on publicly funded mediation, whereas it saw a an annual fall of £8 million spending after 2012. The fall in numbers led to a £16.8 million underspend by the MoJ on family mediation in 2013/14. We hope that the review can look at options for how this remaining family legal aid, which is focussed on mediation, could be broadened out to a wider spectrum of early advice and out-of-court dispute resolution options. We would also like the Committee to explore situation of children under 18 acting independently from parents or carers, and consider a principle and process whereby legal aid could be granted automatically in these circumstances.

5. **Domestic Violence**

Despite a policy intention to maintain and prioritise legal aid for domestic violence family cases, between 2011–12 and 2015–16 applications for legal aid relating to domestic violence decreased by 16%, and applications granted fell by 17%. Whilst domestic violence remains in scope, LASPO introduced a range of restrictive evidential requirements for accessing legal aid to establish domestic violence as a factor, such as a report from social services or a doctor's letter, for which many GP surgeries charge a fee. Unlike other agencies dealing with domestic violence though, insufficient credibility is given to the most important evidence of all - the account of the victim. Ultimately it should be for the Court to deal with domestic violence as an issue and provide a remedy, not the Legal Aid Agency to predetermine the issue through complex gatekeeping procedures. Following campaigns and legal challenges, the MoJ has made various amendments to regulations including extending the time limit on evidence, and allowing statements from domestic violence organisations, however the problem remains of insufficient credibility being given to the victims' narrative.

Case study

Sarah was married to Mike. They lived in London and had a son; but sadly, the marriage didn't last and they divorced. Sarah met John, they lived together and had a daughter. That relationship also broke down.

Mike and John both got on well with the children, who would visit them at their respective homes on a regular basis. Mike changed his job, moved to Newcastle and developed a new social circle. He started to criticise the way Sarah was bringing up the children. Eventually, at the end of one visit, Mike told Sarah that he wouldn't be bringing the children back and that John was happy for their daughter to stay with him and her brother in Newcastle.

Sarah was devastated. Both children were doing well at school in London, had a wide circle of friends and were involved in many out of school activities. Their grandparents, aunties and uncles were also in London. She tried to talk to Mike, as did other family members; but he wouldn't change his mind.

Sarah was in low paid, part time employment as a carer, so a friend suggested she might qualify for legal aid. The solicitor told her that she would qualify for legal aid to apply to Court for her daughter to be returned, but not for her son. Mike had 'parental responsibility' for him and there was no Court Order saying their son should live with her. The solicitor said legal aid might be available in relation to him as well, if Sarah could produce very specific evidence that Mike had been abusive towards her; but she couldn't.

The combination of scope, eligibility and evidential tests in accessing legal aid for domestic violence victims and those experiencing difficult family breakdowns are preventing far too many vulnerable people from getting help. As the Government's own *Varying Paths to Justice Research* says "A key implication of the domestic abuse and family justice problem cluster in this study is that further work may need to be done to ensure that legal professionals are providing accurate advice and guidance on legal aid eligibility. The rules around legal aid and family cases need to be made clearer to legal professionals and people who have experienced domestic abuse as there was evidence that they are currently being misinformed, leading to assumptions that they are ineligible for legal aid".[xxxvi]

6. **Victims of injury**

Legal aid policy in England and Wales has been moving away from injury coverage for some decades, first with the Access to Justice Act 1999 removing most personal injury claims from scope, then with LASPO removing criminal injuries and medical negligence claims, leaving only claims arising from abuse of children and vulnerable adults, domestic violence and a limited category of public law claims covered. The policy presumption has been that insurance, compensation schemes and conditional fee arrangements should suffice for legal support cover for most types of injury.

There is one area though where we consider that policy makers may need to reconsider. Over the past few months there have been a number of terrorism incidents which have affected whole groups and communities. A cursory glance at other jurisdictions suggests that it is common policy for victims of terrorism to be able to access some level of publicly supported legal assistance.[xxxvii] In the UK however, as this area of law is not covered by legal aid, it has been left to the pro bono community to respond in organising to ensure that appropriate specialist legal advice services are made available to victims and their families, and the LAA has been worked on referral systems for pro bono assistance.[xxxviii] Whilst terrorism victim compensation schemes do exist, they are poorly publicised and there can be complex legal questions relating to domestic and international definitions of terrorism.

Complexities and clusters

Mixed cases where one part of the case is funded by legal aid and other, related, matters are not, also present particular difficulties for the way that matter starts are allocated and coded. In real life situations though, the majority of legal issues are 'mixed' problems. The recently published MoJ problem resolution survey found "Half of adults (50%) who had experienced at least one legal problem covered by the survey in the last 18 months had experienced more than one problem."[xxxix] These are often related problems that cluster together especially around family breakdown, financial problems and housing/ homelessness. It is important that the scope rules are drawn sufficiently widely to tackle problem clusters rather than problems in isolation, and to enable mixed cases to be dealt with, ensuring that the legal aid system is better equipped to handle problems holistically – for example:-

- A person seeking international protection who also has an article 8 case
- A person facing possession proceedings and possible eviction (housing) due to rent arrears (debt) that are the result of benefits delays, miscalculation, sanctions or adverse fit-for-work assessment (welfare benefits)
- A person facing possession proceedings and possible eviction (housing) due to rent arrears (debt) that are the result of withheld wages or job loss in unlawful circumstances (employment)

Exceptional Case Funding

The LASPO Act created a mechanism whereby scope rules might be disregarded in the interests of justice; section 10 was intended to act as a safety net to guarantee the funding of cases that would ordinarily be out of scope but where either human rights or EU law require the provision of legal aid. During the passage of the LASPO Act through parliament,

the MoJ estimated that there would be 5,000–7,000 applications per year. Yet, in the first three months following the implementation of the LASPO Act, there were only 233 applications compared with an expectation of around 1,500. While the number of exceptional case funding (ECF) applications has gradually been rising since April 2014, with a significant increase over the past quarter, the number of cases being funded remains low, considering the overall reduction of scope in large areas of civil legal aid. In all of 2016-17, only 954 cases nationwide were granted 'safety net' legal aid through ECF.

In light of the very low grant rates, solicitors are routinely refusing to take on this work at risk. In addition, the nature of the application process means that it is in fact proving extremely difficult for an individual to get a definitive response to his or her application unless the form has been completed by a solicitor. LAA guidance initially required lawyers to complete an arduous 14-page application for ECF, describing in detail the legal merits of a case. After two years of critically low application levels, LAA shortened the form to 7 pages, following which application levels have increased. Still, the ECF form can take lawyers three to four hours to complete, not including the hours of instructions and correspondence that they will take from the client themselves to start the application process. These barriers to section 10 funding are particularly harmful in view of the fact that section 10, by its very nature, is intended to protect vulnerable individuals. There is also no effective mechanism to prioritise urgent cases, with the LAA taking up to 20 working days to determine exceptional funding applications and making no commitment to determine applications in advance of the hearing date that the funding is applied for. We consider there needs to be an urgent and fundamental review of how exceptional funding works, and some immediate improvements made to the payment regime.

Appendix 3: The principle of accessibility as foundation for the rule of law

As the Lord Chancellor has said in a recent speech "English law is rightly renowned across the globe, making this country a great place to invest, do business, litigate and seek justice."[xl] The rule of law lays the fundamentals for economic growth and lies at the heart of the UK's system of government and commerce, but it can be easily undermined. Lord Neuberger described the Rule of Law in the JUSTICE 2013 Tom Sargant Memorial Lecture as "the system under which the relationship between the government and citizens, and between citizen and citizen, is governed by laws which are followed and applied" and that under a rule of law system it is "essential that all its citizens have fair and equal access to justice." In this context Lord Neuburger told the BBC that "My worry is the removal of legal aid for people to get advice about law and get representation in court will start to undermine the rule of law because people will feel like the government isn't giving them access to justice in all sorts of cases. And that will either lead to frustration and lack of confidence in the system, or it will lead to people taking the law into their own hands." [xli]

We believe that it is important for the JSC to challenge Government to maintain the link between equal access to justice and the rule of law when reviewing legal aid policy. Lord Bingham who has written eloquently on the rule of law quoted US Lawyer Dr EJ Cohn that "Legal aid is a service which the modern state owes to its citizens as a matter of principle...The state is not responsible for the outbreak of epidemics, for old age or economic crises. But the state is responsible for the law. That law again is made for the protection of all citizens, poor and rich alike. It is therefore the duty of the state to make its machinery work alike for the rich and the poor."[xlii] Grounding the debate about the future of access to justice and legal aid in a rule of law context reminds us of their purpose and helps to establish a clear narrative.

Legal aid now needs a coherent policy objective beyond simple reference to 'access to justice,' which has all too often become an empty phrase. The basic policy goal should be that anyone in society, regardless of means, should be entitled to expect that legal problems can be settled on their intrinsic legal merit, rather than by the disparity of resources of the parties. In other words, equal justice under law. This core principle has been restated in recent Court of Appeal human rights jurisprudence concerning the LAA' decision-making and guidance on exceptional funding in the context of provisions under the European Convention and the Charter of Fundamental Rights. [xliii]

As Lord Bingham emphasised a decade ago, the rule of law is clear and practical, even if the substance of the rule of law is too seldom articulated in public debate. What follows are some key pillars of a rule of law approach.

Judicial review and administrative justice

It is fundamental that there is a right in a democracy to challenge public bodies, their decisions and actions. Judicial review and associated administrative law provide an essential opportunity for people who are harmed by poor public decision-making to take their challenge to an independent and impartial tribunal, with the power to undo or reverse its effects and (as appropriate) to require the decision to be taken again. In a country with no

written constitution to control the relationship between the citizen and the State, this function takes on a particular constitutional significance. As the Constitution Society have said of judicial review "Without it, we are closer to an authoritarian or even totalitarian state. With it, we live under the rule of law."[xliv] As such it was always the intention of the LASPO reforms to maintain legal aid funding for judicial review claims as "the means by which individual citizens can seek to check the exercise of executive power by appeal to the judiciary. These proceedings therefore represent a crucial way of ensuring that state power is exercised responsibly."[xlv] However, subsequent reforms – specifically in parts 3-4 of the Criminal Justice and Courts Act 2015 – may have undermined this intention as additional hurdles and legal aid restrictions have been placed in the way of judicial review claims.

The review should look again at these restrictions and consider the case for removing them. Judicial review is an important last resort and should be looked at in the context of administrative justice. The most effective strategy for managing the public funding costs of judicial review is to resolve problems with public bodies earlier on. There is a spectrum of redress in administrative justice from complaint and internal review procedures, through to Ombudsmen, Tribunals and the administrative court. However there is almost no public funding for legal help advice for most administrative law redress procedures until issues have progressed to the judicial review stage. We would therefore invite the review to consider what early advice interventions could be supported in administrative justice, for example support with tribunal appeals and guidance through other redress channels. This would be consistent with a rule of law approach to legal aid policy, and international benchmarks. As the Organisation for Security and Co-operation in Europe (OSCE) says "The existence of administrative justice is a fundamental requirement of a society based on the rule of law. It signifies a commitment to the principle that the government, and its administration, must act within the scope of legal authority."[xlvi]

Impartial administration

The administration of legal aid itself is part of the framework of administrative justice. A key principle of legal aid dating back to the Rushcliffe Committee is that the legal aid should be administered independently. Originally this function was undertaken by the Law Society, but cumulatively Government has assumed a greater administrative role. This process of Government taking the administration of legal aid 'in house' completed with LASPO which removed the non-departmental public body (NDPB) status of the arms-length Legal Services Commission, replacing it with the Legal Aid Agency headed by the new post Director of Legal Aid Casework within the Ministry of Justice. The review should look at the question of how the independence of decision-making can better protected now that the LAA is fully subsumed into the Ministry of Justice.

Minimum standards

The review should address the underlying question of the minimum standard of access to justice in respect of the rule of law, and what should be the Government's obligation towards upholding a minimum standard. The Fabian Society's Access to Justice Commission in its interim report has called for the design of enforceable "minimum standards for access to justice to be enshrined clearly in law – which could include legal aid for all those who

need it, equality of arms, sufficient and comprehensive legal education, and the availability of accessible technologies of triage."[xlvii] The minimum standards approach has much to commend it and mirrors the role of regulation and inspectorates in other sectors, underpinned by legal obligations to take account of and international benchmarks for access to justice. This could provide a better framing for policy on what circumstances legal aid is appropriate, and a monitoring mechanism for keeping track on how well existing arrangements are working.

Pro bono

The legal profession has a proud tradition of pro bono which is seen as a vital part of being a lawyer. Pro bono should not, in a modern, democratic society which values the rule of law, be a replacement for a properly funded legal aid system. It is also important to note that often in response to the limitations of the publicly funded system, legal aid practitioners and agencies undertake significant additional pro bono work on their clients' behalf for which there should be greater recognition. There is, however, an important place for the provision of legal skills and services on a pro bono basis as a demonstrable exercise of rule of law values. Pro bono work is often an exemplar of good practice across the legal services sector in that it develops professional skills and knowledge, boosts morale and confidence of the legal workforce, enhances recruitment and retention and helps win business from clients who expect their advisers to demonstrate a commitment to corporate citizenship and social responsibility.

Demand for help from the pro bono sector has skyrocketed since LASPO; according to the LawWorks (Solicitors Pro Bono Group) Annual Clinics Survey between 2015 and 2016, there was 24% increase in enquiries on the previous year,[xlviii] on top of a 55% increase in the year before that. Similarly data from the Bar Pro Bono Unit show that there has been 30% increase in applications year on year since LASPO. The Law Society's recent assessments of pro bono activity suggest a growing interest in pro bono work with firms recording a substantial number of pro bono hours,[xlix] but with a limited proportion devoted to social welfare law – the traditional terrain of civil legal aid. Increasingly the pro bono sector has been developing new approaches to pro bono casework to address unmet needs, such as 'secondary specialisation' (i.e., supporting more in-depth pro bono is areas of social welfare law), training and greater use of students in law clinics. For example in 2015 Avon and Bristol Law Centre's 'Legal Advocacy Support Project,' which deployed student volunteers from the University of West England and the University of Law, achieved a success rate in Employment and Support Allowance appeals of 95%, high above the national overturn rate.[l]

Notwithstanding the significant development programmes of LawWorks working regionally with the legal sector and universities, these innovations – and pro bono availability in general – are still geographically variable, often based on the number of willing lawyers and law students locally. This in itself provided a clear argument as to why pro bono cannot replicate or replace a publicly funded and bench-marked system of legal support; even under the current restricted legal aid scheme the Legal Aid Agency must maintain some evenness of availability throughout the country. Where only limited legal aid, free or pro bono legal assistance are available, many turn to their MP's constituency surgery for help. A recent study of London MPs' surgeries undertaken by Hogan Lovells - a global leader in pro bono - has found that 89% of sessions observed have involved problems of a legal nature,

principally housing, immigration and welfare benefits. The dearth of free legal assistance compared to existing legal need, even in a legal hub such as London, means that MPs' surgeries are fast becoming legal A&E departments – a role for which they are ill equipped.[li]

Fundamentally, legal aid and pro bono should be seen as mutually supportive systems, and not as alternative approaches to providing access to justice. Pro bono provision cannot exist in a vacuum. It needs to have a space to operate in, and community partners to collaborate with including an 'infrastructure' to support pro bono volunteering, in order to provide a meaningful service. If funding for advice agencies continue to be cut, then there may be a decline, not growth, of pro bono provision. We hope that the review will therefore accept the fundamental principle that pro bono services should complement rather than substitute for a properly funded legal aid system

Appendix 4: Impact and evidence

The review will rightly look at the impact of the LASPO reforms but it is important that that analysis does not confine itself to the impact on the justice system such as dealing with more litigants in person, but also the impact *beyond* the justice system. The Ministry of Justice has still not made any effort to assess whether the reduction in spending on civil legal aid is outweighed by additional costs in other parts of the public sector – as recommended by the Public Accounts Committee (PAC) in 2015.[lii] The review needs to draw on a range of studies from outside bodies and researchers, including for example those undertaken by Professor Cookson.[liii] We hope that the review will revisit and retest the assumptions used in the MoJ's 2012 pre-legislative impact assessments and look again at disproportionate impacts on women and children, disabled people and those with mental health issues, ethnic minority groups and people on low incomes.

The conclusions of both the National Audit Office (NAO)[liv] and PAC are broadly in line with those of the Justice Select Committee's Eighth Report in finding that whilst the changes may have reduced spending on civil legal aid, they have also increased some costs elsewhere in the legal system, and have increased the difficulties that people may face in obtaining help with legal problems which can have adverse outcomes and consequences for people. What follows is a brief summary of where further evidence can be found, the key implications of the impact evidence to date, and how the evidence base may need to be developed by the review.

Impact on the justice system and its users

The Select Committee will already have significant evidence on this from its previous inquiry.[lv] For example, the Judicial Executive Board said in its submission that cuts are have been leading to increased costs elsewhere in the court system, with extra litigation and longer cases.[lvi] We believe that there is ample evidence to support the judges' claims. The Bureau of Investigative Journalism, in partnership with the Magistrates' Association, surveyed a sample group of 461 magistrates sitting in a variety of courts across the country:

- The majority (97%) of magistrates who saw a party representing themselves believe that self-representation has a negative impact on the court's work.
- 62% of magistrates said that litigants in person have a negative impact on the court's work most or all of the time.
- Magistrates voiced concerns about time delays to hearings, a misbalance in legal battles and the possibility that justice is not being done.

Government has accepted that growing numbers of litigants in person (LIP) can be a particular problem for family courts. Whilst there is no standardised system for recording the overall number of litigants in person appearing in courts, one indicator of an increase in numbers comes from the government's data on the number of unrepresented litigants in private law cases in the family courts. MoJ statistics show a continuing rise in the proportion of litigants without legal representation in these cases; to 55% of applicants and 81% of respondents in the first three quarters of 2016, as shown below.

Legal representation status of applicants and respondents in cases with at least one hearing in family courts in England and Wales. Private law cases, 2013 to 2016 [lvii]

	Cases with at least one hearing	Applicants % without legal representation	Respondents % without legal representation
2013	51,845	40	76
2014	39,776	52	80
2015	41,421	54	79
2016 (Quarters 1,2,3)	34,656	55	81

Going to court without a lawyer has wide ranging negative impacts. One Citizens Advice survey has found that nine in ten people with experience of going through court as a litigant in person say it affected at least one other aspect of their life; including worsening physical and mental health, putting a strain on relationships with employers, negative impact on finances and increased stress on family relationships.[lviii]

Other investigations have highlighted the impact on the whole system and staffing in the court system. For example a survey by the National Association of Probation Officers (NAPO) found that four out of five member respondents working in Early Intervention Teams (EIT) said they spend longer clarifying expectations, identifying legal baselines or explaining the court process, two in three said they spend more time on court duties and in longer first hearings. 92% of respondents of staff within the family justice system indicated increased workloads, with 36% reporting they were spending longer clarifying roles and process, and spending more time on phone calls and interviews and 19% report spending longer or having more interviews with parties.[lix]

Impact beyond the justice system

An important message that we would like the MoJ to take away, it is that the impact of legal aid changes reaches well beyond the justice system. In the MoJ's original impact assessments, it was accepted that there could be wider consequences including "reduced social cohesion… increased criminality… (and) increased resource costs for other departments."[lx] A fundamental objective of the review should be to measure these. As Roger Smith has written "Any comprehensive study of the impact of the LASPO cuts would require at least three elements. First, an analysis of the economic consequences... Second, we need to chart, if we can, the consequences of the cuts in terms of social exclusion and community (in)cohesion... Third, we need to identify the decline in public accountability that arises from the reduction of appeal, review and challenge rights."[lxi]

<u>Economic impact</u>

On the first of these - economic impact - there have been a wide range of studies looking at the economic costs of legal problems, and the economic value of legal advice interventions including from Citizens Advice and various externally commissioned reports using increasingly sophisticated SROI methodologies. As Graham Cookson's work on this issue demonstrates, whilst there has been no methodologically perfect study, there is enough indicative evidence from robust studies to date to cast doubt on MoJ about the value of the savings to Government. "The published Cost Benefits Analysis (CBA) or any Social Return on

Investment data concludes that legal aid not only pays for itself, but it also makes a significant contribution to families/households, to the local area economics, and also contributes to significant public savings."[lxii] Even with a much less provident legal aid system as in the United States, nevertheless its federal government acknowledges its substantial and wide-ranging import across public policy areas.[lxiii]

Social impact

On social impacts, the review will need to scope more widely, to consider the impact of an extra half a million people annually less able to freely access structured legal resolution processes with advice and advocacy throughout to resolve challenging relationship, financial and social welfare problems. These impacts need to be considered within the context and datasets of:-

1. **Family breakdown** - The literature on family breakdown stresses the importance of relationships for children's life chances, and recognises the wider economic cost of family breakdown estimated at £47 billion in 2015 by the Relationships Foundation.[lxiv] Data from the Troubled Families (TF) programme illustrates that social welfare problem clusters intersect with family breakdown and have multiplier effect and spill over into other problems. Of the 1048 families the TF programme had engaged by 2014, they each had on average 9 problems related to employment, education, crime, housing, child protection, parenting or health. In 83% of families, an adult was receiving an out-of-work benefit compared to around 11% of the population nationally, and 70% were living in social housing compared to 18% of the population nationally, with 21% having been at risk of eviction in the previous six months. 82% of families had a problem related to education, such as persistent unauthorised absence, exclusion from school or being out of mainstream education. 29% of troubled families were experiencing domestic violence or abuse on entry to the programme compared to national estimates of 7%.

2. **Mental health** – There is considerable evidence linking social welfare law problems with mental health, especially between problem debt and mental health problems where researchers have found there to be statistically significant link.[lxv] Denvir, Balmer and Buck found that 'those reporting mental health issues were also significantly less likely to know their rights with 70.7 per cent lacking knowledge compared to 61.7 per cent of other respondents.'[lxvi] The *Civil and Social Justice Survey* found that over half (50.3%) of respondents who had experienced a legal problem suffered an adverse consequence, including physical ill health and stress-related illness; over 80% those people suffering from the health-related consequences visited their GP or other health service as a result.[lxvii] Further studies conducted by Pleasence and Balmer found a significant association between rights problems and mental illness, both when experienced in isolation and in combination with physical illness, for example, 3% of surveyed people with a mental or physical illness reported problems with discrimination compared to 1% of other respondents.[lxviii] Research undertaken by the Centre for Mental Health (CMH) has similarly highlighted the links between poor mental health and frequent experience of welfare problems.[lxix] This research, looking at the experience of Sheffield Mental Health CAB (SMHCAB) has found specific evidence that specialist welfare advice can save mental health services money by improving people's health, reducing hospital

admissions and patient in stay lengths, preventing homelessness on discharge and reducing relapse rates. There is further evidence that mental health problems and other vulnerabilities can make navigating and understanding the legal process more difficult – particularly for example when the individual has to be a litigant in person as they are no longer entitled to legal aid.[lxx]

3. **Cycles of criminal re-offending and victimisation:** A study for the Centre for Crime and Justice Studies using CSJS data found 21% of respondents to the 2004 CSJS reported being a victim of one or more offences. Of the 33% of respondents who reported one or more civil justice problems, incidence varied greatly with socially excluded victims being substantially more likely to experience civil problems than non-socially excluded non-victims (60% of the former group reporting problems compared to 28% of the latter group). Overall, 69% of victims of assault, 54% victims of criminal damage, 47% of victims of theft and 42% of victims of burglary reported experiencing one or more civil justice problems.[lxxi] Further analysis of CSJS data found that of respondents who had been in the criminal justice system 63% reported difficult to solve civil law problems compared to an average of 35%, rising to 70% if people had also been a victim of crime, and over 80% for those who had recently been released from prison [lxxii].

4. **Private sector tenants:** New research commissioned by the Legal Education Foundation (LEF) has found that many renters do not realise that their housing problems are legal issues, 47% of respondents characterising them as 'bad luck' and only 15% saw them as legal problems. A key finding from the study is that private renters also had high levels of social welfare law problems which were not directly related to their housing, such as domestic violence, divorce, welfare benefits and personal injury.[lxxiii]

5. **Household indebtedness and financial capability:** According to the Money Advice Service's baseline survey on household finances and financial capability, there are 6.6 million 'over-indebted' households in the UK that perceive debt as a heavy burden or have had arrears of three months or more; of which 2.1 million will actively seek, but 2.2 million *would* benefit from debt advice (latent demand); 1.0 million could benefit from broader money advice, and 1.3 million are unlikely to ever seek debt advice.[lxxiv] The latest MAS financial capability survey included behavioural scoring in across domain questions about managing money and preparing for life events; those lowest scoring groups were 18-24 year-olds and people aged 75+; recipients of benefits, and unemployed people, and tenants in social housing.[lxxv]

<u>Accountability impacts</u>

Moreover, as indicated by Roger Smith above, cuts to legal aid reduce public accountability. There are no specific UK metrics to measure this link, but internationally there is well developed research base of literature and tools linking access to justice, accountability and rule of law issues, for example the *World Justice Project Rule of Law Index* - an annual assessment tool based on general population and expert surveys to providing first-hand information on the experiences and perceptions of people when dealing with the government, interacting with state bureaucracy, or resolving common disputes.[lxxvi]

Equality impacts

The original Equality Impact Assessments published to accompany the consultation (Green Paper) preceding LASPO showed likely disproportionate impact on women, disabled, and people on low incomes.[lxxvii] However, the cumulative equalities impact assessment for the changes to civil legal aid concluded that there would be "no less favourable treatment by reason of relevant protected characteristics" – in other words, by definition spending cuts adversely impact all disadvantaged groups with protected characteristics because legal aid helps those who are disadvantaged, but not disproportionately so for any particular group. However, it is worth questioning these assumptions, and specifically looking at the intersection between different vulnerabilities and equalities issues. For example:-

- **Young people and children.** There is consistent evidence that unresolved social welfare law problems have a large impact on many areas of young people's lives resulting in a range of adverse consequences such as young people becoming ill (stress), losing income or losing confidence.[lxxviii] The Children's' Commissioner concluded that the cumulative effect of the reforms is negatively impacting childrens' rights. [lxxix]
- **Women.** The Government's original Equality Impact Assessments recognised that women would be disproportionately impacted by the reforms, especially given that they comprise the majority using the system in some areas of law. [lxxx] This needs to be reassessed in the context of the gender pay gap combined with low pay, maternity combined with work loss and more reliance on benefits, and bearing the brunt of childcare provision on separation.
- **Disabled people and people with mental health issues.** According to the MoJ's pre legislative impact assessment, disabled people accounted for 58% of those accessing legal aid for welfare rights, and longer entitled to it since LASPO. For the vast majority of disabled people, disability benefits may be the only route out of poverty, but under a changing system but with complicated assessments and rules of entitlement, appeal procedures and medical evidence criteria disability benefits can be difficult to secure without help and advice. We have already evidenced how practical legal problems such as money, debt, housing and employment and immigration are interlinked with mental health - around 50% of people with debts in the general population have a mental health problem, compared with 15% of the general population. Mental health problems are also the largest single cause of disability in the UK, contributing almost 23% of the overall burden of disease (compared for example to about 16% each for cancer and cardiovascular disease).[lxxxi]

Advice sector impact

The original impact assessment undertaken by the MoJ to accompany the LASPO proposals estimated that non-profit legal advice agencies would lose 77% of their legal aid income compared with a 25% reduction for solicitors' firms. This has proven to be broadly accurate and is pushing the non-profit sector into a period of difficult choices, closures, and service reductions.

One survey of the sector undertaken a year after the cuts found a third of advice workers surveyed facing redundancy,[lxxxii] and Citizens Advice reported that the changes had meant withdrawal of specialist advice in the network for approximately 120,000 cases, and that following the changes 92% of Citizens Advice offices were finding difficult to refer people to the specialist legal advice they need since cuts came into effect.[lxxxiii]

As not-for-profit law practices specialising in social welfare law, Law Centres were particularly vulnerable to the LASPO cuts. The Law Centres Network has told the Justice Committee that the cuts have led 11 Law Centres to close in the 18 months after LASPO coming into effect, being one in six of the network's members. This wave of closures has included all Law Centres in the cities of Birmingham and Manchester, which remained without local Law Centres until new ones were established at great effort. However, the institutional memory and expertise and local goodwill embodied in the closed Law Centres were irretrievably lost.

More recent research from an MoJ survey shows that the number of not for profit (NfP) advice providers has declined by over 50% in 10 years, and that 54% of those surveyed were forced to make major changes to their services due to the civil legal aid cuts. Just over half of the responding organisations reported that there were some client or problem types they had been unable to help in the current financial year. Of these, 62% reported that this was due to lack of resources, 49% said problems fell outside their remit, and 47% did not have the appropriate expertise. The latest statistics reveal a 32% decline in the number of providers since the cuts were made.[lxxxiv]

We hope the review looks carefully at this data within the context of cost-benefit analysis of advice and legal assistance interventions. Citizens Advice's impact research analysis, which draws on recorded outcomes data, shows that following advice to CAB clients, there is a cumulative reduction in demand for health service, local authority homelessness services and out-of-work benefits for clients and volunteers amounting indirectly to £360m in fiscal terms, and a £2bn gain for clients.[lxxxv] For every £1 spent on the Citizens Advice service, clients benefit by £10.94, and government and public services by at least £1.51, and a minimum estimate is that Citizens Advice delivers a social and economic return value to society of £8.74. Whilst nearly 3 in 4 Citizens Advice clients had experienced negative impacts as a result of their problem, but 2 in every 3 clients have their problems resolved through the intervention of advice.

In specialist legal assistance, Law Centres present a similarly compelling case in a social impact study conducted by PwC. Accounting for four legal casework areas – debt, employment, housing and welfare benefits – at pre-LASPO fee levels, it calculated at least £212m p.a. in direct cost savings, at least £214m p.a. in indirect cost savings and at least £47m p.a. in net benefits for the Exchequer, all delivered with a high level of additionality.[lxxxvi] This high level of return on public investment was compromised by LASPO cuts, which have also led to the loss of valuable, decades-old specialist community assistance hubs.

Private Practice impact

There has also been a significant impact on small private practice in terms of supply and sustainability. As part of the LASPO reforms, the MoJ reduced the fees paid to legal aid providers by 10%, without carrying out a study of the sustainability of the market on those

reduced fee levels - fees paid which have not been increased in line with inflation since 1998-99 (equating to a 34% real-terms reduction before the 10% fee cut). When combined with restrictions on scope the effect has been to make legal aid practice unviable for many small and medium sized firms. There are of course wider economic and regulatory forces affecting the legal service market, and these have recently been the subject of a review by the Competition and Markets Authority.[lxxxvii] However what is clear from the data on solicitors firms is there has been further consolidation in the marketplace since LASPO. Between 2012 to the end of 2015, the number of law firms in England and Wales has fallen by just over 600,[lxxxviii] with rates of entry into the regulated legal services market also falling over the past 5 years.[lxxxix] Whist it is impossible to prove a direct causative link to cuts in public funding, the extent of market contraction in the traditional high street sector since LASPO cannot be ignored either, as more solicitors move toward working in business to business markets and away from business to consumer markets.[xc]

In a system that is still structured according to "judicare" principles (in a "judicare" model, private lawyers/law firms are paid to handle cases from eligible clients alongside cases from fee-paying clients), restricting legal aid under conditions of market contraction in the high street also means fewer and fewer specialists in the community. In some areas of the country, there is simply not enough advice and support available to maintain a service. The Law Society's modelling from Legal Aid Agency data shows a number of areas of the country have little or no provision of legal aid advice – otherwise known as legal aid deserts.[xci] The research finds that almost a third of the legal aid areas in England and Wales have one or no local legal aid housing advice providers; neither Shropshire nor Suffolk have any housing legal aid advice provider, and other areas, including Kingston upon Hull and Surrey, had no provider for a number of months, until the Legal Aid Agency took remedial action. Over the past 15 months, six areas saw their single provider disappear, resulting in the LAA having to take emergency action to ensure that services were restored.

Declining legal aid supply

The above impacts on both private practice and the non-profit sector are also reflected in the latest statistics from the Legal Aid Agency.[xcii] The following table has been compiled by the Legal Aid Practitioner Groups from past and present LAA statistics and show how the civil legal aid system has fallen into decline.

Year	NMS started	Claims submitted	Housing possession duty scheme starts	Mediation assessments/outcomes	
2009-10	933,815	905,948	31,831	27,137	14,235
2010-11	785,436	823,920	29,635	26,387	14,019
2011-12	679,771	674,061	33,752	31,336	14,622
2012-13	573,744	599,922	44,860	30,665	13,983
2013-14	173,587	316,101	44,890	13,390	9,632
2014-15	171,602	194,443	46,745	15,078	7,824
2015-16	157,992	166,606	38,730	13,347	8,655
2016-17	146,618	162,995	39,028	11,927	7,484

The following table shows the number of providers (firms and not for profit organisations)

Year	All providers across all civil areas	Legal help Law Firms/NFPS		Mediation Law Firms/NFPS		Civil Representation Law Firms/NFPS	
2011-12	3,876	2,784	440	166	18	3,038	114
2012-13	4,173	2,732	440	185	18	3,315	145
2013-14	4,278	2,666	520	214	21	3,277	172
2014-15	3,773	2,323	315	212	20	3,025	168
2015-16	3,262	1,995	240	201	20	2,637	159
2016-17	2,902	1,751	213	175	18	2,350	145

Rising unmet needs

Finally, the review needs to look at the evidence on rising unmet needs. There is no shortage of evidence about this both in reports and surveys already cited in this submission, including the MoJ's Legal problem and resolution survey (2014-2015) and its predecessor work in the *Civil and Social Justice Survey*, the LSB's unmet legal need survey, and surveys from the pro bono networks on rising unmet demand for their services. Other data which is indicative of rising unmet need includes:-

- A report for the Joseph Rowntree Foundation calculates cuts of 45% in local authority 'supporting people' services since 2010/11 and suggests this is leading to greater numbers of people facing legal difficulties, many of whom will be vulnerable and unable to cope without support.[xciii]

- Data from the Money Advice service showing record-breaking demand for specialist debt advice. Up to 14.5 million people who think they would benefit from free advice haven't taken any in the past two years. This free advice gap includes 5.3 million people who have needed free advice in the past two years but haven't taken it, and 735,000 people who have tried to access free advice in the past two years but couldn't due to lack of supply[xciv]

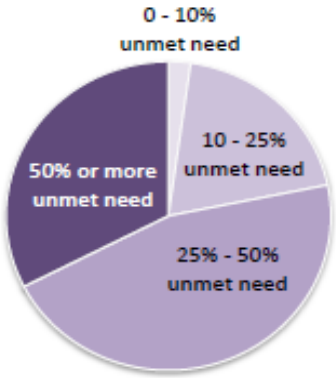
- Data from within the Court Service - In January to March 2017, the highest quarterly number of County Court claims were lodged since 2009; of these 508,700 claims, 392,800 were specified money claims - up 22% on January to March 2016, with unspecified money claims also increasing.[xcv] The volume of judgement and enforcement orders has also increased correspondingly by a third, compared to same quarter in 2016 with early 300,000 debt judgments filed against individuals in the county courts in the first three months of 2017, the highest quarterly figure for more than 10 years, the number of enforcement warrants issued have increased by 67%. This is indicative of the growing evidence that we could be on the cusp of a new debt crisis. Alarmingly, - January to March 2017, 97,600 warrants were issued, more than three quarters (76%) of which "were warrants of execution" (empowering bailiffs to impound goods), also up significantly on the same quarter in 2016

- The most recent governmental homelessness statistics) show that the total number of households in temporary accommodation on 30 September 2016 was 74,630, up 9% on a year earlier, and up 55% on the low of 48,010 on 31 December 2010.25[xcvi]

- Evidence from Age UK indicates growing demand and information and advice amongst older population cohorts especially around financial and care issues.[xcvii]

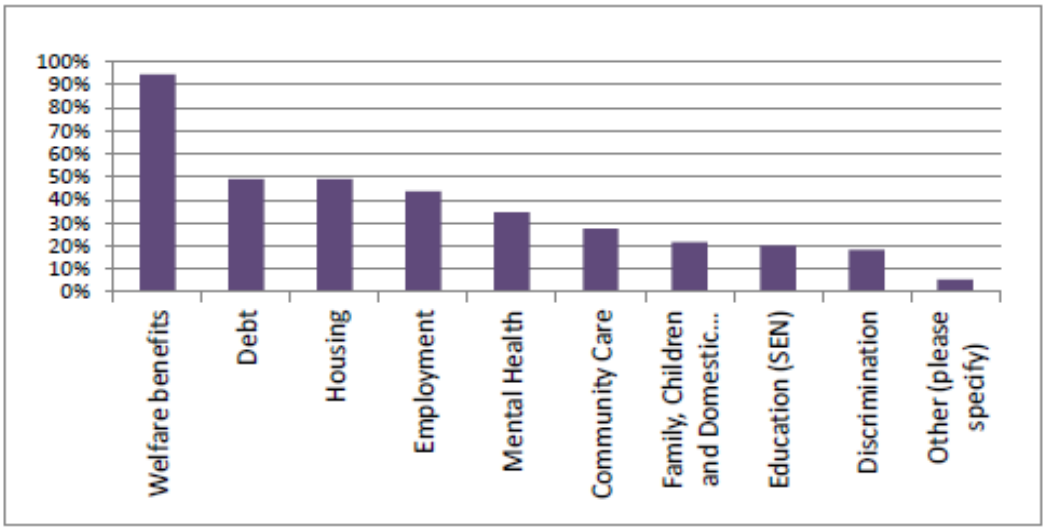
- A study of the advice sector in Liverpool has demonstrated a particularly high level of unmet need for advice in the City[xcviii] (see below).

Figure 2: 'How much of the local need for advice services do you estimate was unmet in the last month?'



The area of advice where the most respondents perceive unmet need is for welfare benefits. 95% of respondents report unmet need in their area for welfare benefits, followed by debt and housing, each identified by 49% of respondents. Figure 3 shows the results.

Figure 3: 'In what areas do people need advice but can't access it?'



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