

Hogan
Lovells



Mind the gap:

an assessment of unmet
legal need in London

A Survey of MPs' Surgeries
Oct-Nov 2016



A photograph of the London skyline at dusk. The Gherkin (30 St Mary Axe) is the central focus, illuminated with blue and yellow lights. To its left is the Leadenhall Building, also illuminated. The Tower Bridge is visible in the foreground, partially obscured by a dark purple overlay. The sky is a deep blue, and the River Thames is at the bottom.

Contents

Foreword	4
Background	6
Executive summary	7
Methodology	9
Quantitative Data	10
Qualitative Information	16
Legal advice availability in London	21
Conclusion	28
Definitions	32



Foreword

Alex Chalk, MP for Cheltenham and
Chair of the All-Party Parliamentary
Group on Pro Bono

I welcome this excellent piece of research from Hogan Lovells on MPs' surgeries and access to justice. It is an important contribution to the ongoing discussion about legal advice needs and how to target help most effectively. Hogan Lovells have undertaken this work as part of their own extensive pro bono programme in London. The work and time that Hogan Lovells and other firms devote to citizenship and pro bono activities contributes significantly to the rule of law, and to our democracy.

This report makes some pointed observations – including as to rising social housing and homelessness casework loads, and the growing evidence of unmet needs regarding immigration and asylum law problems. It also offers constructive ideas on training, information sources and referral protocols, as well as how MPs can engage better with lawyers and advice charities. There is no doubt that MPs' offices need to adjust to the new climate. Whilst neither trained nor resourced to take on a role akin to that of a community lawyer, a good knowledge of the new landscape of legal resources is increasingly indispensable.

As Chair of the APPG on Pro Bono I would like to sincerely thank all lawyers undertaking pro bono work. The efforts being made are truly remarkable, and a tribute to the professionalism and strong public service instinct that exists within the legal community in our country. Such efforts should never be allowed to obscure the fundamental principle, however, that pro bono should be seen as an adjunct to, rather than a substitute for, legal aid.

I am sure that my fellow MPs will find this report as useful as I do.

Alex Chalk

James Sandbach, Director of Policy for LawWorks and Secretariat for the All-Party Parliamentary Group on Pro Bono

Hogan Lovells' report on unmet legal need in MPs' constituency surgeries is an important piece of work for the All-Party Parliamentary Group on Pro Bono. The group exists to promote pro bono work, to connect MPs with pro bono, and to facilitate debate on the policy issues, needs and challenges facing pro bono. This report does all three, and is extremely timely as there appears to be a willingness by the Government to look again at the problem of unmet legal need since the 2013 changes to legal aid came. Whilst this is not the first ever survey undertaking a legal analysis of MPs' casework, it is we believe the first survey exercise to have adopted the method of actually sitting in on surgeries and seeing the presenting issues first hand, rather than requesting or analysing data and casework files retrospectively. The Hogan Lovells pro bono team have worked tirelessly, patiently liaising and developing relationships with constituency offices, and overcoming barriers to deliver this most insightful report.

Key themes that emerge from the report are not just about unmet need and referral fatigue with MPs being "the last resort" especially when legal aid is absent, but also the successes and benefits of collaboration between MPs' offices, local advice agencies and charities, law firms and the pro bono sector. In other words MPs may have something to learn from pro bono and legal specialists— and perhaps there are some more things we can do together for example with the training of MPs' caseworkers, and with how MPs can utilise, promote and support public legal education resources for the benefit of MPs' constituents.

We hope that this report will be a useful and relevant resource for MPs with all of the different hats that they wear, as legislators and policy-makers, as local influencers and representatives, and in the way they approach constituency casework. But perhaps the most important insight from this report is that where there are unmet legal needs, issues of both public policy and public awareness are never far away – this is true whether in housing, immigration, welfare benefits or community care law. We will be working with other APPGs, especially the APPGs on legal aid and public legal education, in addressing these challenges and to take forwards the conclusions and recommendations from this report.

James Sandbach

Background

Hogan Lovells is an international law firm with a leading pro bono practice, delivering over 30,000 hours of pro bono advice, per year, in the UK. We have a commitment to access to justice pro bono work, working closely with the charity sector and the legal aid community, and we are a founding signatory of the Law Society's Pro Bono Charter. Hogan Lovells also has strong Administrative and Public law practice, with detailed knowledge of government relations and policy advocacy.

This report is published in conjunction with the All-Party Parliamentary Group (APPG) on Pro Bono. Specific thanks to Alex Chalk MP, who chairs the APPG on Pro Bono, and James Sandbach, Director of Policy for LawWorks and Secretariat for the APPG. Thank you also to the charity, the Pro Bono Community, for providing training for this project.

Through our pro bono work at Hogan Lovells we are aware it is becoming increasingly difficult to find referral resources for some areas of law, in London. We were also receiving a high volume of direct referrals relating to areas of law we do not currently cover as part of our access to justice programme. The aim of this report was to:

- assess current access to justice issues in London;
- discover the main areas of the law where access to justice issues occur;

- help inform future decision making at a policy level; and
- provide evidence to assist with allocation of future pro bono and financial resource.

MPs have a unique insight into legal issues facing their constituents throughout London. According to a report by Young Legal Aid Lawyers, *Nowhere else to turn: The impact of legal aid cuts on MPs' ability to help their constituents* (March 2012):

“constituents frequently turn to MPs as a last resort when they have been unable to resolve their legal problems. As a result, MPs devote a significant amount of their time and resources to assisting their constituents in resolving their problems.”



Executive summary

We observed 325 constituents' appointments at their MPs' surgeries, between October and November 2016 and found that:

- 89% of appointments related to issues of legal concern;
- the most common areas of concern were:
 - housing (37%)
 - immigration (23%)
 - welfare benefits (13%); and
- of the legal problems recorded 22% related to a disability and 25% of housing issues involved an issue of disability.

MPs' surgeries are working hard to alleviate and compensate for the absence of legal advice availability by engaging in individual casework. Often specialist legal advice is not available, recommended or known about and therefore legal advice and remedies are not pursued.

The main recommendations in this report are:

- a) Training for MPs and caseworkers on identifying legal issues, legal aid availability and referral resources. This is vital to ensure that legal aid and law firm referrals are being made when full legal representation is available. This will help MPs and caseworkers concentrate their resources on issues where legal representation is otherwise unavailable.
- b) This report provides a brief introduction to some of the sources of legal advice available in London. However, what is necessary to assist MPs' caseworkers and constituents is a comprehensive database of free legal advice available to individuals in London, including:
 - (i) What areas of the law they cover.
 - (ii) What they can offer, e.g. casework or one-off advice.
 - (iii) Any eligibility criteria for assistance.
 - (iv) Geographic location.
- c) Public legal education needs to be more readily accessible and to be provided to constituents to inform them of the law in relation to all the areas identified in this report.
- d) Increase funding/resources for Law Centres and CABs so that they have the capacity to help people seeking advice in the areas of the law they cover.
- e) Further collaboration between lawyers, MPs and charities to ensure that resources are effectively allocated and duplication of work is reduced.
- f) Housing issues are a particular problem in London, due to the lack of available housing. We would recommend specific investment and focus on legal services in relation to housing advice to those that live in London.



Methodology

Hogan Lovells and Alex Chalk MP, on behalf of the APPG on Pro Bono, contacted the 73 MPs based in London inviting them to take part in this project.

Of these, 21 MPs participated and volunteers from Hogan Lovells attended 40 surgeries, observing 325 constituents' appointments, throughout the months of October and November 2016. We observed MPs from across the political spectrum; 5 were Conservative MPs, 15 were Labour MPs and 1 was a Liberal Democrat MP.

The MPs' surgeries varied in format. In some surgeries constituents were initially seen by caseworkers and, potentially, then referred to the MP. In others, the caseworkers had already triaged the issues prior to the surgery so that all the constituents who attended met with the MP. Some surgeries only saw 4 or 5 constituents where as others saw up to 35.

Volunteers from Hogan Lovells were given training by the Pro Bono Community on how to identify "legal" and "non-legal" issues at the surgeries, the basics of legal aid availability and referral resources. Additionally, the volunteers were given a guide as to the categories and sub-categories of legal problems they might face, to allow them to accurately categorise issues that arose.

Volunteers also recorded any anecdotal information provided by MPs and their caseworkers and a further survey was circulated to MPs and their caseworkers by email to obtain qualitative data following attendance at the surgeries. Qualitative and anecdotal information is used in the context of this report to provide a wider picture of access to justice issues faced by constituent members and how MPs deal with legal issues that arise.

Each constituent signed a consent form allowing Hogan Lovells and the APPG on Pro Bono to use and report on their information on an anonymous basis and to develop and publish aggregate statistics.

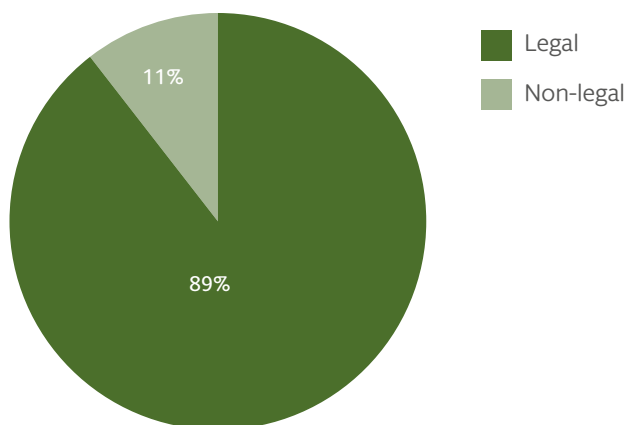
The findings of each volunteer were quality checked following the surgery to ensure issues had been correctly identified as legal or non-legal and the correct legal category selected from the description of the issue, to ensure the consistency of the data.

Quantitative Data

This section gives an overview of the data obtained at the MPs' surgeries.

Legal v non-legal

From the 40 surgeries and 325 constituents' appointments, we observed 352 issues raised by constituents. For constituents who attended surgeries with more than one issue, each issue is identified separately. Of those issues, 315 (89%) were legal and 37 (11%) were non-legal. Please refer to the definitions section of this report, at page 32, for further information about how issues were categorised as legal and non-legal.



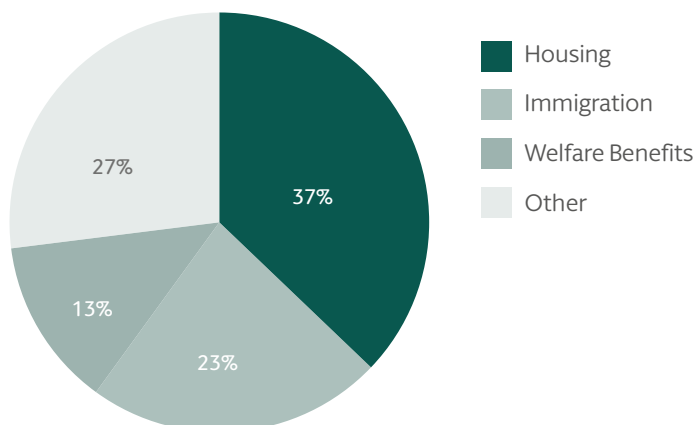
Non-legal issues

While the focus of this report is on the legal problems coming through MPs' surgeries, we also recorded the types of non-legal problems which arose. Of the 37 non-legal problems encountered by our volunteers, the most common area of complaint was education (24%). There were also a number of constituents who wanted their MP to help with passport applications such as signing passport photos (11%) and concerns relating to Brexit (11%).

Other non-legal problems included those relating to traffic, student finance, the NHS, parking, religion, transport and housing.

Legal problems

Our data shows that the three most common areas in which constituents had legal problems were housing (37%), immigration (23%) and welfare benefits (13%). For these three areas of the law identified we break down the issues further in the following charts.

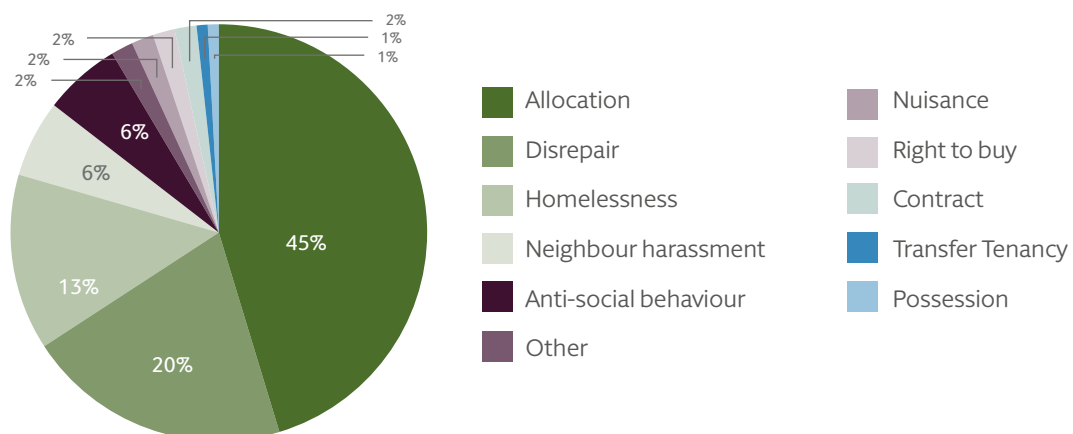






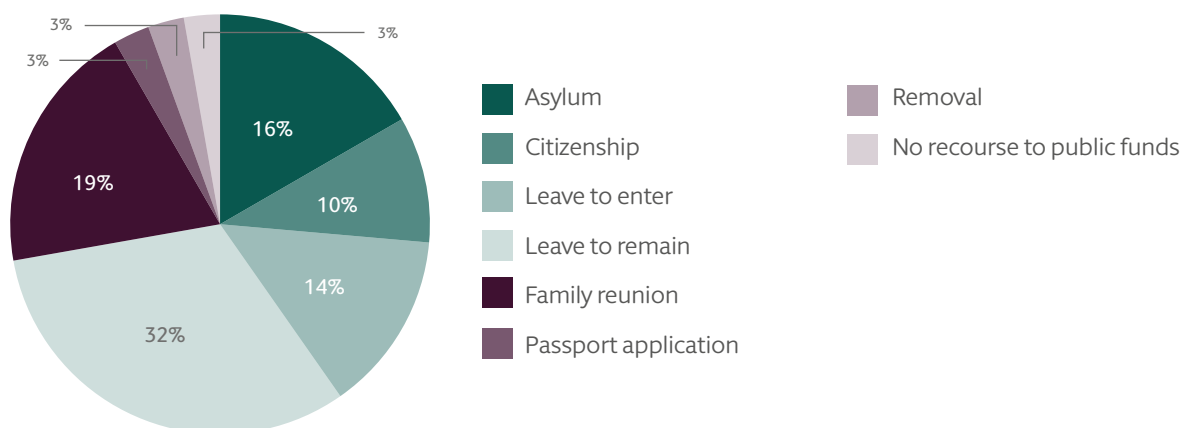
a) Housing

In total there were 117 legal issues in the housing category, representing 37% of all legal issues recorded. The housing legal problems break down into sub-categories, the most common of which were allocation (45%), disrepair (20%) and homelessness (13%).



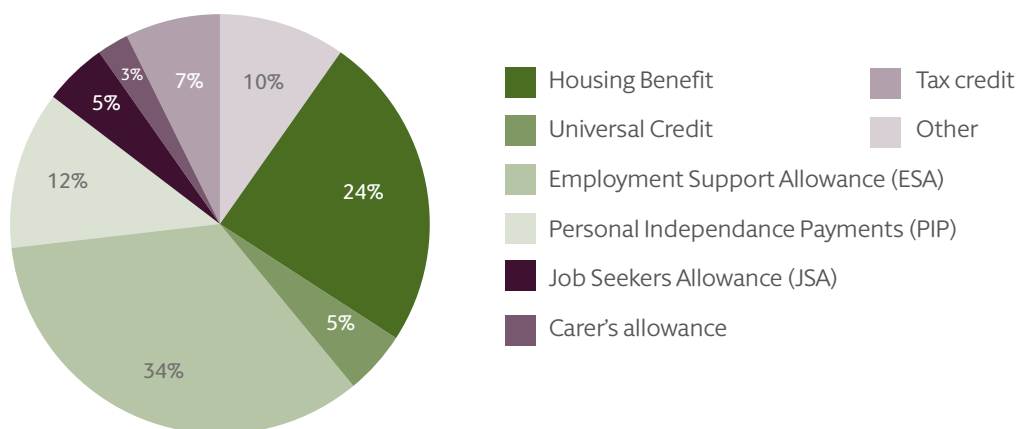
b) Immigration

In total there were 72 legal issues relating to immigration of these most common problems of were leave to remain (32%), family reunion (19%), asylum (16%) and leave to enter (14%).



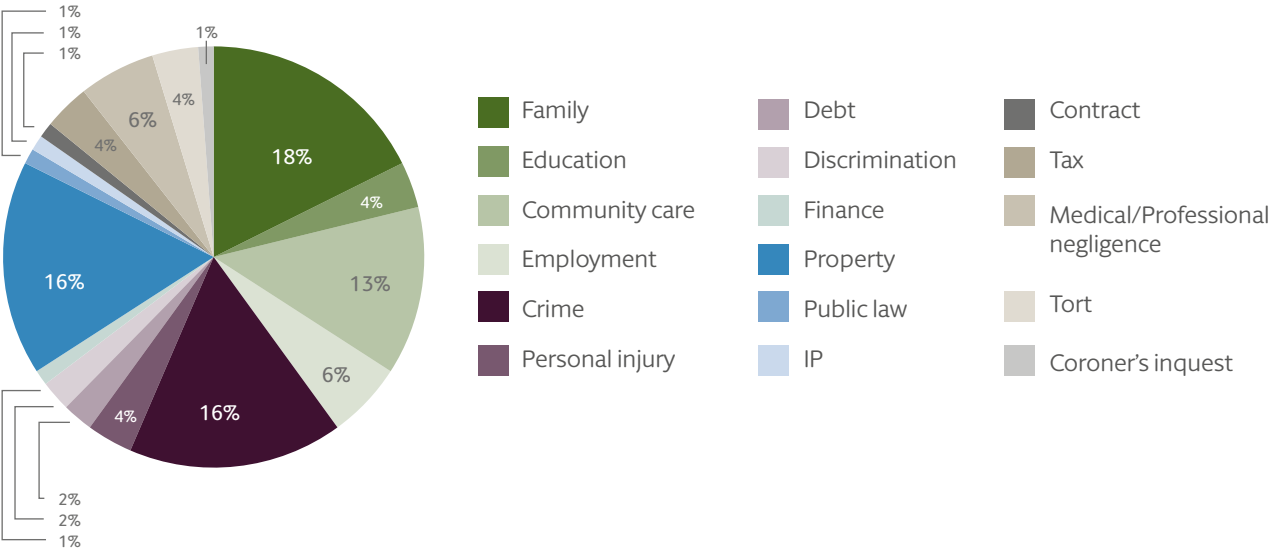
c) Welfare benefits

In total there were 41 legal problems in the welfare benefits category. The most common legal problems relating to welfare benefits were those concerning Employment Support Allowance (34%), Housing Benefit (24%) and Personal Independence Payment (12%).



Other legal problems

There were a number of other legal problems observed in the MPs’ surgeries. Of these, the most common were family (18%), crime (16%), property (16%) and community care (13%). Crime included people who were the victims of a crime and those who had been accused of a crime.

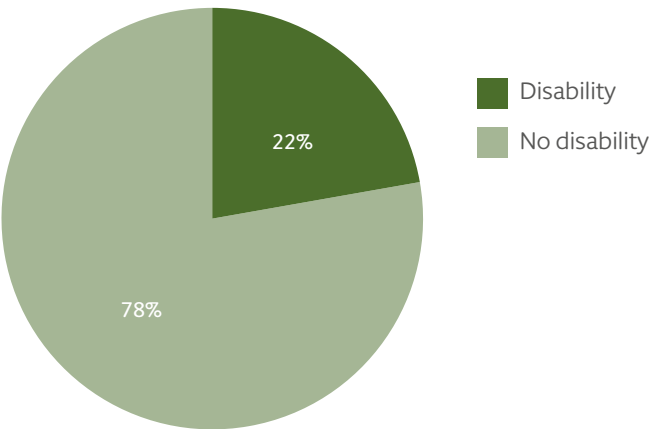


Disability

We noticed a trend in our data collection that a large proportion of legal problems involved a disability. We therefore identified the issues in which the constituents had raised disability as connected to that issue. Our data shows that of the legal problems recorded, 22% of those involved a disability.

Of the 117 legal problems to do with housing, 29 involved a disability (25%).

It should be noted that this does not reflect the number of constituents with a disability, only how many issues specifically related to a disability. A specific enquiry was not made as to whether a constituent had a disability, in line with our role as observers.





Qualitative Information

This section of the report highlights some of the qualitative information we gathered, either through our direct observations at the surgeries or from information we were given by MPs or their caseworkers.

Legal issues arising at MPs' surgeries

In many appointments dealing with legal issues, the support of an MP was valuable to the constituent for reasons such as bolstering an application or appeal, speeding up a decision or utilising the MP's network of contacts. Further, it was clear that many constituents felt that MPs' surgeries play a positive role in giving a voice to people and in opening a direct line of communication between constituents and their elected representatives.

A significant number of constituents, however, were attending their MP's surgery when obtaining legal advice was ultimately required or would have been beneficial to the constituent, even if this was not actually identified by the constituent or the MP.

One MP told us that the number of people attending their surgeries is increasing but that their ability to help is decreasing.

Legal aid ineligibility and an inability to pay for legal advice were reasons given by constituents for visiting their MP.

“

It is hard to get representation for tribunals and court cases. Some litigants in person can get into all sorts of trouble.

Frances Simmons, Constituency Office Manager for Emily Thornberry, MP for Islington South and Finsbury

”

Housing

We were told by a number of MPs that housing has become the biggest problem at their surgeries in recent years and a dramatic increase in the number of housing issues was reported to us. One MP estimated that housing now accounts for around 80% of cases they specifically handle. Another MP suggested that immigration used to be the most common issue to arise but that this has been overtaken by housing in recent years. This report has found that housing issues accounted for 37% of the legal issues presenting at MPs' surgeries.

MPs also voiced concerns regarding referrals for housing advice and information. An MP explained that although people with housing issues can be referred to Law Centres and Citizens Advice, these are operating at full capacity and are overwhelmed by the number of people seeking legal advice. We were told that both Housing Benefits cuts and changes to housing association policies have created “an untenable situation” and consistently cause “confusion among constituents”, driving up the need for advice on housing rights.

Another caseworker suggested that even if wider legal support was available for constituents with housing problems, it might be impractical for constituents to enforce their rights given the shortage of available housing. This report found a significant number of housing issues related to housing allocation policy and procedure and a high proportion of those were due to overcrowding.

Homelessness was another area that came up regularly at surgeries. One MP thought that their local council is consistently failing to follow proper procedure in declaring people “intentionally homeless”, and is using the declaration as a response to the lack of available housing within the borough.

“It is difficult for people without financial means or public funding to obtain justice”.

*Roger Thistle, Senior Caseworker to Tom Brake,
MP for Carshalton and Wallington*

The lack of readily accessible advice can mean that constituents lack information about their housing rights and struggle to challenge decisions that rank them low on the housing register or classify them as “intentionally homeless”.

An example of an intentional homelessness case and how an MP dealt with this issue is that of a family who had been declared intentionally homeless due to being evicted from their temporary accommodation after one month. The housing agency told them that they could only provide alternative accommodation if they paid rent and a deposit in advance and sought a guarantor, which they were unable to do. The MP advised that they would need legal help to challenge the decision. The MP offered to write to the local council asking them to extend the offer of temporary accommodation and to send them details of advice agencies who might be able to help.

Not all MPs’ surgeries have the resources or knowhow to be able to identify when legal advice is required and when legal aid might be available. In another MP’s surgery a severely disabled woman was required to move from her current property because her landlord wanted to sell it. She had gone to the council and had been told that she could be accepted as homeless, but she would be housed outside of London. However, she could not leave London because of her care needs. The constituent explained that she was bidding for accommodation, but this process was too slow. She was told that her MP would take this up with the council and that the MP is currently trying to achieve change in housing policy. In this case study the response of the MP was useful, but legal advice was also required. Importantly, advice on homelessness is still in scope for legal aid but had not been sought by the constituent or addressed by the MP. In this case obtaining legal advice on the subject of when a council can discharge their legal duties by referring someone who is homeless outside of their borough could have been vital to this individual, and could have potentially supported the MP’s own enquiries.

A number of MPs and caseworkers raised the issue that training would be helpful on key legal issues such as availability of legal advice, resources and legal aid availability.



Immigration

Immigration issues accounted for 23% of all the cases we came across in MPs' surgeries. MPs voiced several concerns surrounding the treatment of people with immigration and asylum problems. One MP expressed concern that there was a view among immigration advisors that MP support would improve the quality of an application, and that this has led to a system of referral and cross-referral. Where this occurs, it can leave constituents confused and frustrated as they are passed from one source of assistance to another without any resolution. Frequently, immigration cases require long-term specialist support which MPs may be unable to provide; in such cases, adequate and sustained legal assistance is especially important.

An example of a common situation experienced at MPs' surgeries is that of an asylum seeker from a country in Central Asia. He had fled his home country after being suspected by a local terrorist organisation of supplying information to western forces. On his arrival in the UK four years ago, he had an interview at the Home Office and applied for asylum but has not heard anything since. As a result, he is unable to work and receives only minimal benefits. He wishes to remain in the UK permanently and to seek employment. The MP told him that they would contact the Home Office and demand a response to his application. We found it was common for MPs to assist with issues of delay rather than surrounding advice or legal issues.

Welfare Benefits

Most MPs were unaware of available referral resources for representation in welfare benefits tribunals, although some utilised charity resources. Some people attending the surgeries were seeking early advice, others had appeal hearings coming up or were experiencing sanctions. Often welfare benefits issues were coupled with other issues such as housing, family, debt or immigration.

Why is legal advice important?

As part of this exercise Hogan Lovells accepted referrals from the surgeries where we were expressly requested to assist and we were able to provide pro bono support. Whilst this was not the aim of this study it highlighted the value of legal advice. One issue was an employment issue for an employee with a disability, who urgently needed legal advice. The fact he did not have legal advice and support had exacerbated the situation due to his inability to deal with the issues on his own, as a result of his condition. Legal advice and support have been invaluable in stopping the situation escalating further.

Another case related to a highly emotive inquest as a result of a death of a family member. Prior to our involvement the hospital had been legally represented and the family had been unrepresented. The Coroner identified the need for an expert witness with knowledge of the condition in question. One of the key concerns for the family was the independence of the witness as it transpired the witness had worked with the hospital concerned during the treatment of the family member. The family had not been able to convey this point to the court prior to obtaining legal representation.

We were able to help both the court and the client through legal representation on the subject of expert independence. Like any legal submissions, this included reference to case law and legal precedent in the area, assisting the Coroner with their decision. As a result of this intervention, the Coroner limited the areas on which the expert was asked to opine. This would have been highly unlikely without legal involvement. Consequently, court time and distress to the family were reduced.

Referrals and Resources

A large number of our volunteers reported that MPs recommended or referred constituents to particular charities or legal advice agencies where they felt that constituents needed legal advice. In some cases where legal aid was unavailable, we heard reports of MPs using their own budgets to pay for their constituents to receive legal advice. We note, though, that this is rare, however it goes some way to demonstrating the severity of the situation.

It was clear from speaking to caseworkers that most are mindful not to hold themselves out as legal advisers.

One caseworker commented that their MP's office has "considerable" knowledge of housing, benefits and immigration procedure, but that they are unable to advise on complex cases. Where a complex case arises, the caseworker said that constituents are recommended to seek legal advice.

Given that immigration is a complex and specialist area of law, the ways in which MPs deal with immigration queries and complaints varied. Some MPs told us that they have immigration specialists among their caseworkers and one MP told us that she outsources all her immigration casework to an external agency.

Another caseworker told us that their MP's office has a general policy of not advising on employment or consumer disputes, and so constituents with these issues are automatically advised to obtain legal advice.

We did observe a few instances of MPs giving basic legal advice to constituent members. One piece of legal advice we observed being given was that autism is not a disability. This advice is incorrect; many people with autism would be considered disabled under the definition in the Equality Act 2010.

It is evident that law firms, external agencies and charities are vital both to MPs and to constituents' access to justice. First, they offer specialist advice and assistance together with substantial experience. Second, they are able to receive referrals from MPs (capacity permitting), thereby relieving time for MPs and their caseworkers. Third, they can offer an alternative source of help where MPs are unable to assist with wider legal issues or do not have the required knowledge.

Many caseworkers and MPs highlighted the importance of being able to make referrals. Key referral organisations and resources MPs mentioned include:

- a) charities – specifically mentioned were:
 - (i) Z2K, a charity which helps vulnerable Londoners facing poverty and debt to enforce their rights in areas such as housing and offers welfare benefits representation;
 - (ii) Citizens Advice, a charity that offers advice across the UK in areas ranging from debt and money to consumer disputes, immigration and housing;
 - (iii) Local Law Centres;

- b) the Law Society 'Find a Solicitor' tool; and
- c) law firms MPs know to offer pro bono support.

MPs also utilised the following resources to help them assist constituents with legal issues:

- a) House of Commons Library;
- b) the casework database;
- c) legislative guidance;
- d) training materials; and
- e) local authorities.

Whilst MPs utilised a number of Public legal education resources, they did not commonly refer their constituents to websites or information booklets they can access.

Several caseworkers and MPs responded that they would appreciate further information or training on resources available in London.

Whilst charitable organisations play a vital role, as one MP noted, such organisations can be overwhelmed by the number of requests for assistance and, generally, are already operating at full capacity.



Legal advice availability in London

Most of the issues identified as part of this report fall or once fell within the scope of legal aid. It is therefore beneficial to briefly consider the eligibility of legal aid to assess the extent to which the areas of the law identified as part of this report represent unmet legal need. We will then briefly explore some of the pro bono and charity resources available to constituents in London based on the key areas highlighted by this report.

The Legal Aid Context

On 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“**LASPO**”) came into force. To assess unmet legal need, it is therefore beneficial to briefly consider current legal aid eligibility criteria for the areas of the law identified in this report. LASPO resulted in an 80% reduction in civil legal aid and led to a significant number of advice agencies being closed across the UK.¹

Scope

As criminal law did not heavily feature at MPs’ surgeries we are only covering the availability of legal aid in civil matters.

Broadly speaking, civil legal aid remains available in the overarching categories of asylum support, claims against public authorities, community care, domestic violence, immigration detention, mental health, some areas associated with protecting children and vulnerable adults, some housing issues, and some family proceedings. However these broad categories are defined and then subject to exclusions by LASPO.

The Bar Council has published a useful summary of the net effect of the changes brought about by LASPO and its associated instruments.² The following areas are among those now out of scope:

- debt, except where there is an immediate risk to the home;
- employment cases;

- education cases, except for cases of Special Educational Needs;
- housing matters, except those where the home is at immediate risk, homelessness assistance, housing disrepair cases that pose a serious risk to life or health and anti-social behaviour cases in the County Court;
- immigration cases (non-detention), except those that involve asylum, domestic violence, victims of trafficking, or issues of national security;
- private family law (other than cases where criteria are met regarding domestic violence or child abuse); and
- welfare benefits, except for appeals on a point of law in the Upper Tribunal (but not advocacy in the Upper Tribunal), and onward appeals to the Court of Appeal and Supreme Court.

Some of these areas represent significant changes to the pre-LASPO regime. Pre-LASPO, for example, means and merits-tested legal aid in the form of both advice and representation was available for a host of immigration matters including citizenship, leave to enter and remain in the UK for study or employment, deportation and asylum.

Similarly, advice on Housing Benefits, housing allocation and housing disrepair (unless posing serious risks, as described above), have been removed from the scope of legal aid.

¹ LawWorks, “Clinics Network Report 2013 – 2014”, October 2014, page 3 | Ministry of Justice, “Legal Aid Statistics in England and Wales 2013-2014”, 2014, page 19

² Bar Council, “Changes to civil legal aid: Practical guidance for the bar”, November 2015, pages 12 and 13

Eligibility

In order to qualify for civil legal aid, most applications that fall within scope must satisfy two further eligibility hurdles. These relate to financial resources and prospects of success and are colloquially referred to together as the ‘means and merits’ test.

The means tests are set out more fully in Regulations made under LASPO in 2013³. The legislation sets financial eligibility limits based on an applicant’s gross income, specific disposable income allowed to be included in the calculation, and disposable capital. One of the changes made by LASPO was for a higher contribution by applicants from their income and capital if over a certain threshold.

The merits tests are also governed by further Regulations⁴. These have been subsequently amended, most recently in 2016. Briefly, the merits test assesses the ‘prospects of success’ of each case, that is, the likelihood that the individual applying for funding will obtain a successful outcome in the proceedings to which the application relates. The prospects are categorised according to percentage chances, and are subject to the general rule that a 50% chance of success is required for funding – with some exceptions.

Exceptional Case Funding

Section 10 of LASPO introduces a narrow exclusion to the rules on scope, by creating a category of ‘exceptional’ cases. Exceptional case funding (“ECF”) will be available if the Director of the LAA determines that it is necessary to provide legal aid because a failure to do so would be a breach of the individual’s rights under the European Convention on Human Rights (“ECHR”) as operated in the UK through the Human Rights Act 1998 (“HRA”) or other EU law. A separate category of ECF is also created in relation to inquests. Applicants for ECF must still satisfy the means and merits test in order to qualify for legal aid.

This measure was described as a ‘safety net’ to alleviate the impact of the cuts to civil legal aid. It has however been subject to public and judicial criticism since its inception in 2013, as a limited number of funding requests have been granted.

For example, the House of Commons Justice Committee concluded in 2015:

“The number of exceptional cases funding applications granted has been far below the Ministry of Justice’s estimate. We have heard details of cases where the refusal of exceptional cases funding to vulnerable litigants is surprising on the facts before us. We conclude therefore that the low number of grants together with the details of cases refused exceptional cases funding means the scheme is not acting as a safety net.”

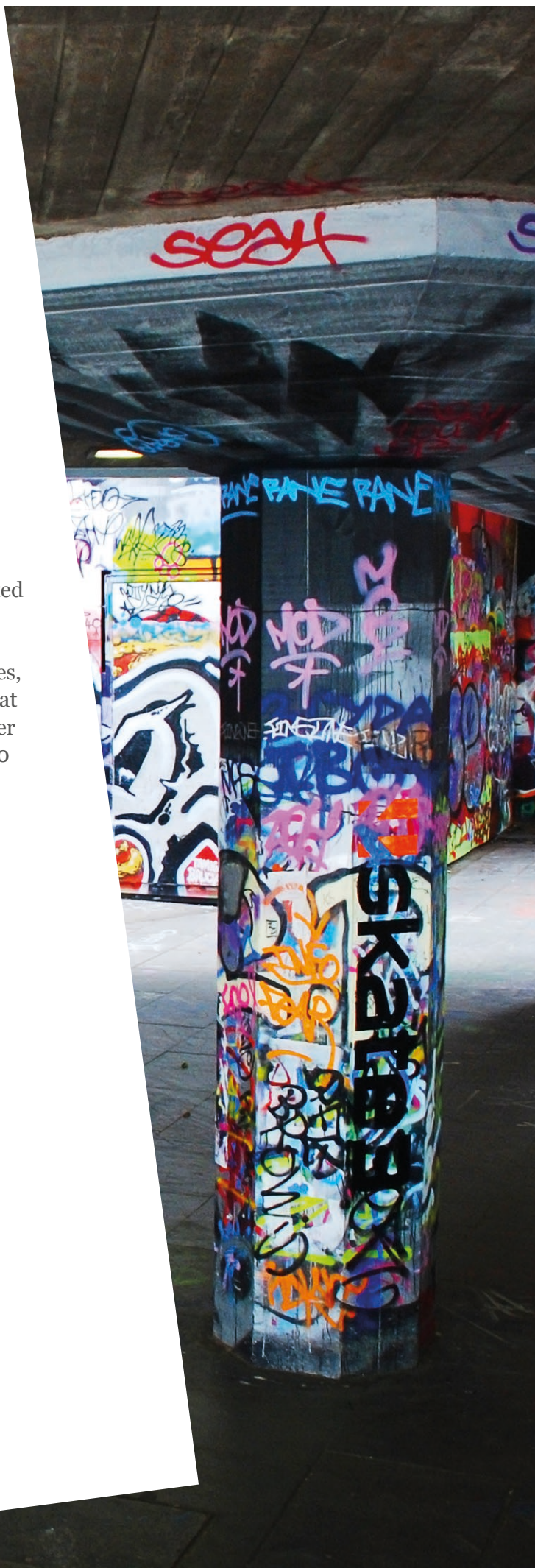
³ The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 (SI 2013, No. 480)

⁴ The Civil Legal Aid (Merits Criteria) Regulations 2013 (SI 2013, No. 104)

An Amnesty International Report of October 2016 states:

“In practice, however, the ECF scheme is inadequate and does not provide the promised safety net for vulnerable or disadvantaged people who are struggling to navigate complex legal processes and effectively advocate for their rights.”

Statistics cited in support of this, state that in the first year that the ECF scheme operated “1,315 applications were made, with only 16 people granted funding – a success rate of just over one per cent”. The report notes that even after a judicial review challenging the refusal to grant legal aid in six cases, the number of applications for ECF has remained at around 1,200 per year, rather than the much higher Ministry of Justice estimate which predicted 5,000 to 7,000 applications per year.



Legal support available in London from advice charities and pro bono resources

The below is not an exhaustive list but contains some of the charity and pro bono resources in London that overlap with the areas of legal need identified in this report.

Legal Advice and Representation

Citizens Advice advisers can help on a wide range of subjects including benefits, housing, immigration as well as consumer issues and debt issues

Website: <https://www.citizensadvice.org.uk/>
Telephone: 03444 111 444

Law Centres offer legal advice, casework and representation to individuals and groups. The areas of the law covered differ in each centre. Law Centres often also offer clinic appointments.

Website: <http://www.lawcentres.org.uk/>

The Gateway is a helpline run by Civil Legal Advice (CLA). The line is paid for by legal aid and provides specialist advice on housing (if at risk of being evicted), debt (if your home is at risk), domestic abuse and some issues involving children. Eligibility can be checked online.

Website: <https://www.gov.uk/civil-legal-advice>
Telephone: 0345 345 4345

The University of Law runs a pro bono advice line during term time (July to August; September to November; February to March). Law students will conduct initial interviews before providing advice supervised by a qualified lawyer. The centre can advise on employment, tenancy and family matters.

Website: <http://www.law.ac.uk/about/legal-advice-for-the-public/>
Telephone: 0148 321 6528
E-mail: ssadvice.centre@law.ac.uk

The BPP Legal Advice Clinic (BLAC) run by BPP University provides advice on family matters and housing matters including leaseholder disputes, landlord and tenant issues and preparation for tribunals. A law student will take your details over the phone, which is followed by a meeting with law students supervised by a qualified lawyer.

Website: <http://www.bpp.com/bpp-university/pro-bono/advice>

Telephone: 020 7430 5668
Email: blac@bpp.com

LawWorks connects people who need legal advice but are not eligible for legal aid with lawyers who provide advice pro bono.

Website: www.lawworks.org.uk/

Bar Pro Bono Unit matches barristers with people who need legal advice and representation. Referrals can be made by MPs, Citizens Advice or a solicitor.

Website: www.barprobono.org.uk

The UK Collaborative Plan for Pro Bono is a network of leading law firms committed to access to justice pro bono work. The member firms also commit to pro bono targets and information sharing. Member firms include: Allen & Overy, Freshfields Bruckhaus Deringer, Herbert Smith Freehills, Hogan Lovells and Linklaters. For further information see: <http://news.trust.org//spotlight/Collaborative-Plan-for-Pro-Bono-uk>

Advicelocal is a website that provides access to legal support in London. There is a searchable database of over 1500 organisations offering advice on issues such as welfare law, housing, debt and social care.

Website: <http://advicelocal.org.uk/>

Advice UK have a search facility on their website for organisations that are Advice UK members, who can offer advice in various areas of the law.

Website: <http://www.adviceuk.org.uk>

Child Poverty Action Group provides information, training and advice to families in poverty and their support workers.

Website: <http://www.cpag.org.uk/>

Some law firms offer ad-hoc pro bono advice or may work under conditional fee agreements that are out of the scope of legal aid <http://solicitors.lawsociety.org.uk/>

Housing

Shelter is a leading charity in the housing sector and runs a helpline that provides specialist advice on housing issues throughout London. Shelter also runs face to face session in a number of boroughs.

Website: <http://england.shelter.org.uk/>

Telephone: 0344 515 1540

Disability

Unity Law can assist people who have been treated unfairly at work because of their disability.

Website: www.unity-law.co.uk

Telephone: 0114 361 0000

Disability Law Service provides specialist legal advice for disabled people and their families on care in the community, discrimination and employment issues.

Website: www.dls.org.uk

Telephone: 020 7791 9800

Immigration

Asylum Aid provides assistance to all migrants including with housing, debt and immigration issues. It recently merged with the Migrants Resource Centre so provide support services such as English language lessons.

Website: <http://www.asylumaid.org.uk/>

Telephone: 0207 354 9631

Email: info@asylumaid.org.uk

Red Cross provides holistic support to refugees on orientation in the UK and accessing services. Legal Aid is no longer available for assistance in applying for visas for family members. Red Cross has qualified caseworkers who can assist with applications.

Website: <http://www.redcross.org.uk/>

Telephone: 0344 871 1111

Email: information@redcross.org.uk

Social Security and Employment Tribunals

Zacchaeus 2000 Trust (often called “Z2K”) supports vulnerable people with free advice relating to household debt, housing and welfare. They can organise representation at social security tribunals. They also run drop-in sessions, which are listed on the website.

Website: <http://z2k.org/>

Telephone: 0207 259 0801

The Free Representation Unit provides support in employment and social security hearings. They only accept receive referrals from agencies with whom they work but a full list is available at their website.

Website: <http://www.thefru.org.uk/>

Telephone: 0207 611 9555

E-mail: web form available at website

Public Legal Education and Information

Citizens Advice – has a very useful and informative website and mobile site giving information and advice on multiple areas of the law in plain easy to understand language.

Website: <https://www.citizensadvice.org.uk/>

The Law Society actively encourages the public to engage with legal education and contributed to a Public Legal Education Working Group report <http://lawforlife.org.uk/wp-content/uploads/Public-Legal-Education-Working-Group-report.pdf>

Citizenship Foundation helps people understand the law through programmes such as Lawyers in Schools and its SmartLaw mobile app.

Website:

<http://www.citizenshipfoundation.org.uk/>
<http://www.lawyersinschools.org.uk/>

Law for Life are a charity dedicated to ensuring that people have the knowledge, confidence and skills needed to secure access to justice. They also run the Advice Now website.

<http://www.lawforlife.org.uk>
<http://www.advicenow.org.uk>

The Direct.gov website (<https://www.gov.uk/>) is an excellent source of information and provides various free resources on legal support and legal aid. There is also a tool that individuals can use to find out if they qualify for legal aid: <https://www.gov.uk/check-legal-aid>





Conclusion

On the whole, the percentage of legal issues presented at MPs' surgeries was higher than anticipated prior to the project and higher than estimated by the majority of caseworkers and MPs. One reason for this may be a misapprehension of how much the law and our rights influence the day to day lives of people living in London. Fewer local policy issues were raised such as refuse collection or planning permission than anticipated.

This report is a specific reflection of the problems facing people in London and would most likely differ considerably were it to be replicated nationwide or in a rural constituency.

The most common legal issues were housing (37%), immigration (23%) and welfare benefits (13%), which correlate to areas that sustained dramatic cuts in legal aid provision. Family law also suffered sweeping legal aid reform, however the fact it was not as prevalent at MPs' surgeries could be because most of the cuts related to private family disputes rather than disputes involving government agencies or local authorities (as is the case with housing, immigration and welfare benefits). Therefore, constituents may not see the benefit of attending an MP's surgery for issues relating to private family disputes, for instance regarding children or divorce.

According to a recent survey by LawWorks, their network of independent clinics operating in London have seen an overall increase of 95% in the demand for pro bono legal advice in the past year⁵. LawWorks' data suggests family, employment and housing law to be the most common areas, but with a notable growth of 45% increase in immigration and asylum advice⁶. Employment is another area of the law not ordinarily connected to a government agency or local authority and therefore, as is the case with family, it could be that clinics in the LawWorks network would be a more likely resource of last resort. It is therefore important to look at this report in conjunction with other reports, such as that produced by LawWorks, to ascertain a true picture of legal need in London.

"It is clear that MP surgeries do have an important role to play but are not a substitute for legal advice."

A number of volunteers reported that their MP's surgery was an emotionally-charged experience, especially for those who have been signposted multiple times before attending their MP's surgery. LawWorks' report identified that over half of the clinics in their network are seeing an increase in the number of challenging clients, with clinic co-ordinators reporting that people are "*generally more frustrated and more frequently aggressive*",⁷ from being passed between various organisations, commonly coined as 'referral fatigue'. One of the challenges for members of the public and MPs when considering referral resources, is that many available resources are unable to offer complete support, they may be able to offer advice over the telephone, at a clinic or on a discrete issue, rather than on-going casework on the entire issue faced by the individual.

For many Londoners, their MP is a contact of last resort when they feel unable to obtain the justice they are seeking but they also supplement legal advice where they do have a legal advisor working with them. Using the MPs' surgeries to supplement legal advice seemed to have its benefits, such as raising policy issues with the MP and also MPs taking up issues with local authority or government departments. It is clear that MP surgeries do have an important role to play but are not a substitute for legal advice. Where legal advice was missing it was, on the whole, challenging for the constituent and the MP.

Issues highlighted in this report in relation to housing stock are important, as it is a good example of where public policy will be needed to resolve the legal issues faced by Londoners. Legal advice on their rights is,

⁵ LawWorks, "Clinics Network Report 2014 – 2015" November 2015, page 12

⁶ LawWorks, "Clinics Network Report 2015 – 2016" November 2016, page 10

⁷ LawWorks, "Clinics Network Report 2013 – 2014", October 2014, page 28

however, key as due to the limited availability of social housing it is important that people who are given incorrect priority are able to identify this.

It was interesting to see the innovative ways in which MPs' surgeries were adapting to the legal issues presented by constituents. It was particularly interesting to see that some MPs are using their constituency funds to enhance their ability to deal with legal issues. What is up for debate is the role MPs' surgeries should play in advising their constituents and some of this funding to support MPs' casework could be better redirected to advice agencies already in the constituency.


The ability to make referrals for legal advice when it is needed is vital for MPs and for constituents attending appointments. Identifying who can offer specialist advice and assistance is important, but it is also essential that they are able to accept referrals, thereby releasing time for MPs and their caseworkers.

Recommendations

1. Training for MPs and caseworkers on identifying legal issues, legal aid availability and referral resources. This is vital to ensure that legal aid and law firm referrals are being made when full legal representation is available. This will help MPs and caseworkers concentrate their resources on issues where legal representation is otherwise unavailable.
2. This report provides a brief introduction to some of the sources of legal advice available in London. However, what is necessary to assist MPs' caseworkers and constituents is a comprehensive database of free legal advice available to individuals in London, including:
 - (i) What areas of the law they cover.
 - (ii) What they can offer, e.g. casework or one-off advice.
 - (iii) Any eligibility criteria for assistance.
 - (iv) Geographic location.
3. Public legal education needs to be more readily accessible and to be provided to constituents to inform them of the law in relation to all the areas identified in this report.
4. Increase funding/resources for advice charities, Law Centres and Citizens Advice so that they have the capacity to help people seeking advice in the areas of the law they cover.
5. Further collaboration between lawyers, MPs and charities to ensure that resources are effectively allocated and duplication of work is reduced.
6. Housing issues are a particular problem in London, due to the lack of available housing. We would recommend specific investment and focus on legal services in relation to housing advice to those that live in London.
7. We welcome that the Government is starting a review into the recent legal aid reforms, and has promised a green paper on legal support next year. This is vital to identify what additional legal aid and support is required to ensure access to justice for the most vulnerable in our society. Assistance provided by charities through grant funding, public legal education and pro bono support are only able to supplement, rather than replace, a stable and adequate system of publicly funded support for people seeking access to justice.

“Sources of legal advice are available from a variety of organisations...signposting of such resources could be enhanced.”

A comprehensive database could take many forms, one option would be the use of smart phone technology through the creation of an app to locate services in geographic proximity to the constituent and identify services available to help with the constituent's specific issue.



“The Law Society commends the work of the APPG for Pro Bono, and the publication of this timely and important research into unmet legal need. Unfortunately, it shows that legal needs are wide-ranging and much more needs to be done to address them. This is a challenge that our members meet every day through the vast amount of free legal advice and pro bono that is provided to individuals, small businesses and charities. The commitment of the legal profession to promoting access to justice is evident in our generous, sector-wide approach to pro bono.

We will always reiterate that pro bono is not a replacement for a fully resourced justice system. It needs to be considered as part of an overarching strategy for reform on access to justice which considers all elements such as public legal education, court reform, court fees and public funding. I hope this publication will help us to bring together these initiatives for the benefit of those who need it most.”

The Law Society of England and Wales



Definitions

This section of the report details the definitions adopted in this report.

Legal and non-legal

A fundamental aspect of our research was measuring the extent to which “legal” problems arose at the MPs surgeries we observed. Therefore, establishing a simple definition of “legal” vs “non-legal” issues was crucial. We adopted the following definitions:

- A “legal” problem is one for which there might be a legal remedy. We had no regard to the merits of the legal issue.
- A “non-legal” problem is one for which there is no legal remedy.

This definition is consistent with other reports which have been carried out in relation to access to justice.⁸

Disability

We have adopted a definition of “disability” consistent with that in section 6 of the Equality Act 2010. The Act provides that a person has a disability if they have “a physical or mental impairment” and “the impairment has a substantial and long-term adverse effect on [that person’s] ability to carry out normal day-to-day activities.”

Housing

Allocation – commonly also known as rehousing. This is how a housing authority allocates, selects or nominates who should be given accommodation as secure or introductory tenant of accommodation held by that authority. An example is how a housing authority structures its ‘Waiting List’ for accommodation.

Disrepair – when some part of a tenant’s home is in need of repair and there may be a legal obligation on the landlord to make such repairs.

Homelessness – if someone is homeless, at threat of homelessness (for instance they are due to be evicted from their property), or should be treated as though they are homeless.

Neighbour harassment – if the course of conduct by a neighbour may amount to harassment under the Protection from Harassment Act 1997.

Anti-social behaviour – anyone acting in a way that is capable of causing nuisance or annoyance to someone in their neighbourhood.

Nuisance – where the comfort or quality of life of the public or a group of people is affected. For example, offensive smells, noise and problems with rubbish or sewage, or when an owner or occupier of a property significantly interferes with the use and enjoyment of neighbouring property. For example, leaking overflows, blocked pipes and gutters.

Transfer of tenancy – when a person is seeking to transfer their tenancy to another person.

Right to buy – seeking to buy the home you occupy if you are a secure tenant of a social housing landlord, including, a local authority or a non-charitable housing association.

Contract – if there is an issue relating to the terms of a lease or mortgage contract.

Possession / Eviction – where a landlord is seeking to have their tenant evicted.

⁸ See, for example, Young Legal Aid Lawyers, *Nowhere else to turn: The impact of legal aid cuts on MPs’ ability to help their constituents* (March 2012), page 33

Immigration

Asylum – where a person is potentially legally regarded as a refugee, e.g. unable to return because of the fear of persecution.

Citizenship – where the issue relates to a person applying for citizenship status in the UK. Citizenship is the status of a person recognised under the custom or law as being a legal member of a sovereign state.

Leave to enter – where someone is applying for leave to enter by an application for entry clearance. It may be granted for a limited or for an indefinite period, depending upon the category of the immigration rules. Leave to enter is granted to a person who is outside of the UK so mainly related to family members or friends.

Leave to remain – relating to people who are applying for leave to remain in the UK.

Family reunion – people given refugee status or humanitarian protection to bring their spouse and dependent children to join them in the UK.

Passport application – whether someone should be legally entitled to a British passport.

Removal – the process of being removed from the UK, if a person has broken immigration rules, for example.

No recourse to public funds – if a person's immigration status allows them to live in the UK, it may include a condition that they have no recourse to public funds. This means they will be unable to claim most benefits, tax credits or housing assistance that are paid by the state.

Welfare benefits

ESA – Employment Support Allowance. This benefit offers financial support to those who are unable to work because they are ill or disabled.

Housing Benefit – Housing Benefit helps a person pay their rent if they are on a low income.

PIP – Personal Independence Payment helps with the extra costs caused by long-term ill-health or a disability, if a claimant is between the ages of 16 to 64. It is not means tested.

Tax credit – Tax credits are state benefits that provide extra money to people responsible for children, disabled workers and other workers on lower incomes.

Universal Credit – Universal Credit is a single monthly payment for people in or out of work and is being currently rolled out in parts of the UK to replace existing benefits.

JSA – Jobseeker's Allowance is an unemployment benefit an individual can claim whilst they are looking for work.

Carer's allowance – Carer's allowance can be claimed by those who care for someone at least 35 hours a week.

Notes

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