



Public Law Project

RIGHTS of
WOMEN
helping women through the law

 YOUTH
ACCESS
Championing advice and counselling

Z2K
Zacchoeus
2000 Trust
Fighting poverty
through justice

Lucy Frazer QC MP
Parliamentary Under Secretary of State
Ministry of Justice
102 Petty France
Westminster
London SW1H 9AJ

Your Ref:

Our Ref: AP

Date: 5 April 2018

Dear Minister

Re: Post-Implementation Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012

We are writing regarding the proposed methodology for the long-awaited Post-implementation Review ('PIR') of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO').

We understand from the announced Terms of Reference ('ToR') for the PIR that the Ministry is "keen to engage with interested parties who wish to contribute to the evidence-gathering exercise of the Post-Implementation Review". The ToR set out the following regarding the proposed format of that engagement:

- Consultative groups led by MoJ officials, to which certain interested parties will be invited to participate. Interested parties will be grouped into four sectors: civil justice, family justice, criminal justice and the advice sector. Participants will vary for each group to broaden engagement and ensure the data and evidence discussed are as relevant as possible.
- Individual engagement between MoJ officials and interested parties who wish to provide data and evidence. This will be an avenue by which the MoJ can take into account the experiences of people who receive government-funded legal advice and representation.
- A route by which interested parties are able to submit data and evidence to MoJ officials for consideration as part of this work.

On the same date (8 March 2018) that the ToR were published, the Government announced that invitations had been sent "to stakeholders to take part in 4 sector-based consultative groups to inform the review".

As far as we are aware, the only information provided to date as to how anybody

who did not receive such an invitation could contribute to the review is the provision of an email address for the supply of “analytical evidence” to the review.

The signatories to this letter are organisations with significant knowledge of the operation of the legal aid scheme and the impact of the reforms to legal aid by LASPO and subsequent to LASPO. Annexed to this letter is a summary of each organisation’s expertise and experience. Several of us were signatories to a joint letter sent by a group of civil society organisations to the Lord Chancellor on 17 December 2017 expressing our willingness and interest in contributing to the PIR.

None of us has been invited to participate in any of the consultative groups. We have not been informed how else we can engage with Ministry officials during the PIR.

We believe that we are all in a position to make a significant contribution to any meaningful PIR and we are very concerned and surprised not to have been invited to participate in the consultative groups or otherwise informed how to contribute to the PIR. As well as our own knowledge of the legal aid scheme we believe we would also be able to contribute a wider perspective to the review, including by bringing in the perspectives of service users, such as young people, women, and victims of trafficking. We are concerned that this omission may be perceived as reflective of a lack of any meaningful intention to properly engage with the available evidence and key stakeholders, and being rather indicative of an intention to carry out a cursory review which will be more akin to a “tick box” exercise to meet the commitment which Government gave to Parliament during the passage of LASPO to carry out the PIR.

We are also concerned at the lack of transparency around the methodology for the review or the participants in the consultative groups. We understand that lists of the participants in the consultative groups have not been published, and even those who have been invited to participate do not know who else has been. Despite the long delay in announcing the review (which was due to complete within 5 years of the implementation of LASPO on 1 April 2013), there is still no transparency about the process.

We invite you to urgently:

- (1) Publish the names of the organisations who have been invited to participate in each of the four consultative groups;
- (2) Explain how the decision was made as to which organisations would be invited to join those groups and which would not;
- (3) Set out when and how other stakeholders who have not been invited to join the consultative groups will be able to provide evidence and submissions to the Review;
- (4) Explain what form the “Individual engagement between MoJ officials and interested parties who wish to provide data and evidence” will take;
- (5) Clarify whether the email address published in the 8 March 2018 announcement (laspreviewmoj@justice.gsi.gov.uk) is the “route by which interested parties are able to submit data and evidence to MoJ officials for consideration” and if so whether there is any date by which such data and evidence needs to be submitted in order to be taken into consideration.

Yours sincerely,

Amnesty International UK

The Anti-Trafficking and Labour Exploitation Unit (ATLEU)

Association of Lawyers for Children

Immigration Law Practitioners' Association

JustRights

Public Law Project

Rights of Women

Youth Access

Zacchaeus 2000 Trust

Annex

Amnesty International UK

Amnesty International is a global movement of over 7 million people, the world's largest grassroots organisation. Present in over 150 countries and territories. Amnesty International's mission is to undertake research and action focused on promoting respect for and protection of internationally-recognised human rights principles. Amnesty monitors law and practices in countries throughout the world in the light of international human rights law and standards, including the UK. It has consultative status before the United Nations Economic and Social Council and the United Nations Educational, Scientific and Cultural Organisation, has participatory status at the Council of Europe, retains observer status with the African Commission on Human and Peoples' Rights, has working relations with the Inter-Parliamentary Union and the African Union and is registered as a civil society organisation with the Organisation of American States.

Amnesty International UK has been working on civil legal aid reforms since the changes introduced by LASPO, as part of its mission to ensure the UK understands and meets its human rights commitments. Between October 2015 and June 2016, Amnesty International carried out a major research project into the impact of the civil legal aid cuts, focussing on a range of disadvantaged and marginalised groups. Desk research was combined with significant field research – over 120 individuals or organisations were interviewed, across the UK, and Amnesty was also permitted to spend five days shadowing volunteers at the Personal Support Unit, the first project of its kind in this field. The resulting report 'Cuts That Hurt', was widely welcomed as a unique contribution to the evidence available on the impact of LASPO. Amnesty has further provided written submissions to the United Nations on the UK's compliance with its human rights obligations as a result of LASPO, including to CESCR in 2016 and the Universal Periodic Review in 2017, with several states pursuing its recommendations to the United Kingdom as part of the latter inter-state process. Amnesty was also invited to give evidence on LASPO to the Joint Committee on Human Rights as part of its recent inquiry into 'Enforcing Rights' and has presented its research findings for further discussion at the APPG on Legal Aid, and with numerous individual parliamentarians.

Thousands of people joined our call in 2016 to the Ministry of Justice to commence this review as a matter of urgency. We have worked with other expert organisations to engage with the Ministry of Justice, including most recently a letter sent on 14 December 2017 setting out some initial thoughts on the PIR and raising key questions. The Minister replied to on 12 February 2018, mentioning the intention to set up expert panels for consultation. We believe that the PIR would greatly benefit from our expertise in this area, which comes from a different perspective than many of those invited and can thus assist in providing a truly comprehensive assessment, and would appreciate the opportunity to attend one of those panels.

ATLEU

ATLEU is the only specialist agency that is focused on delivering a holistic legal advice service to victims of modern slavery and has been recognised by peers in the legal and anti trafficking fields for its work. In 2016 ATLEU won the best legal aid firm/not for profit category at the Legal Aid Lawyer of the Year Awards.

ATLEU was also awarded the Anti Slavery Day Marsh Award for Outstanding Contribution to the Fight Against Modern Slavery – Legal Work on 18 October 2016. The Legal Aid Agency has given ATLEU a category one (Excellence) ranking in a peer review of its immigration cases.

ATLEU lawyers were closely involved in submissions throughout the passage of LASPO in parliament about the needs of victims of trafficking to advice.

ATLEU has acted in many of the most significant trafficking cases including: *Hounga v Allen* [2014] UKSC 47, *Taiwo & Anor v Olaigbe* [2016] UKSC 31, [Janah v Secretary of State for Foreign and Commonwealth Affairs \(“SSFCA”\) and Libya and Benkharbouche v SSFCA](#) [2017] UKSC 62, [Reyes and Suryadi v Al Malki and Al Malki](#) [2017] UKSC 61 and *Mruke v Khan* [2018] EWCA Civ 280.

ATLEU has increased national legal aid provision for victims seeking compensation after a judicial review against the Lord Chancellor. ATLEU has also established many important precedents for victims, including that caste discrimination is unlawful; Home Office failures on entry clearance give rise to a duty of reparation; legal aid is available for advocacy in the employment tribunal; the State Immunity Act is unlawful since it prevents all employees of foreign embassies bringing claims for compensation against employer states regardless of the nature of the employee’s work and a diplomat who employs a domestic worker could not be said to have acted within their “official functions” so they lose immunity from suit the moment they cease to be in post.

ATLEU is currently involved in a judicial review against the Lord Chancellor about access to legally aided immigration advice for victims of modern slavery. This followed a revised interpretation by the Legal Aid Agency in 2017 about what immigration advice was within the scope of LASPO for this group.

Association of Lawyers for Children

The Association of Lawyers for Children (‘ALC’) is a national association of lawyers working in the field of children law. It has approximately 1,000 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners practising in different areas of the country. Several leading members are specialists with over 20 years experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children’s law, and hold judicial office. The ALC exists to promote access to justice for children and young people within the legal system in England and Wales in the following ways:

- i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice;
- ii. lobbying against the diminution of such mechanisms;
- iii. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children;
- iv. providing a forum for the exchange of information and views on the development of the law in relation to children and young people;
- v. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and

vi. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and regularly attends the Legal Aid Agency's Civil Contracts Consultative Group meetings. LASPO Act 2012 brought seismic changes to the availability of legal aid in private family law disputes. This has led to a significant rise in the number of litigants in person appearing in the Family Court to try to resolve child arrangements issues. The ALC is able to offer information and knowledge about the impact felt by the changes to family legal aid: the impact on the Family Court and judiciary; the parents who are litigating without legal services and support; and significantly the children who are the subject of the proceedings. The ALC has a perspective to contribute to the review around the take up of family mediation, the need for and the helpful impact that early legal advice can have and the operation of the evidential requirements for private family law legal aid. The ALC has responded to all consultations on LASPO Act 2012 and given evidence to the justice committees of both the House of Commons and the Lords on this issue.

The Immigration Law Practitioners' Association

The Immigration Law Practitioners' Association ('ILPA') is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members.

ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official enquiries.

ILPA further provides training and best practice guidance to members, including cases that attract legal aid funding.

ILPA members frequently bring cases arising from LASPO, and have a wealth of experience in raising awareness of and building capacity for ECF, and has maintained a dialogue throughout the Legal Aid Agency. ILPA prepared submissions to Parliament before LASPO was enacted, in light of our members' specialist expertise in the area of immigration, which has been a key area affected by civil legal aid reform. ILPA staff and members have also contributed to and represented clients in litigation related to the operation of the ECF scheme.

ILPA was invited by Ministry of Justice officials to have a discussion about legal aid reform in order to prepare for the LASPO review, which took place on 23 August 2017. On that occasion ILPA was advised that the Ministry was meeting with practitioner groups they hoped to speak with throughout the review.

ILPA's Legal Director was interviewed by Ministry of Justice researchers for the report into the effects of LASPO on onward immigration appeals by Anita Krishnamurthy and Karen Moreton, part of the Ministry of Justice Analytical series, published on 3 August 2015. ILPA raised concerns about the very small number and narrow range of persons selected for interview for the report,

especially over the lack of representation of those outside London, the quality of the interview with our Legal Director and the quality of the resulting report. We raised those concerns again with Ministry officials involved in the LASPO review at the meeting on 23 August 2017.

JustRights

JustRights is a coalition of 30 leading children's, youth and legal organisations. JustRights wants to see a system of justice which gives all children and young people ready access to high quality independent advice, advocacy and legal representation whenever they may need it in the course of their lives.

JustRights partners share a belief that:

- Children and young people are a uniquely vulnerable client group with advice needs and advice-seeking behaviour that are distinct from those of all other client groups
- Only carefully tailored - and properly resourced - service delivery approaches will be successful in meeting the specific advice, advocacy and legal representation needs of children and young people
- Current arrangements do not provide the advice, advocacy and legal representation needed by children and young people if they are to enjoy the rights and protections the law affords them

The Public Law Project

The Public Law Project (PLP) is a national legal charity founded in 1990 which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage. Since the implementation of LASPO in April 2013, a major focus of PLP's work has been the civil legal aid reforms introduced by LASPO and subsequently, including as a result of the 'Transforming Legal Aid' consultation launched in April 2013.

From 1 April 2013 to 31 March 2017, PLP ran a project dedicated to assisting individuals, lawyers, caseworkers and non-governmental organisations with making applications for exceptional case funding ("ECF") under LASPO, s10. Through its exceptional funding project, PLP obtained a unique insight into the operation of the ECF scheme in its first years; PLP assisted 25% of all applicants who were granted ECF between 1 April 2013 and 31 March 2015. Since April 2017, PLP has delivered a programme of training throughout England and Wales to raise awareness and build capacity to make ECF applications and has published guides to applying for ECF for individual applicants and for family legal aid providers. PLP has had a dialogue with the ECF team at the Legal Aid Agency through which it has sought to identify practical improvements to the scheme. Most recently PLP met with the ECF team in August 2017.

PLP also acted in many of the judicial review proceedings arising from LASPO and the Transforming Legal Aid reforms. PLP acted for the claimant IS in *Gudanaviciene and Ors v Director of Legal Aid Casework and the Lord Chancellor* [2014] EWCA Civ 1622 and *I.S. v Director of Legal Aid Casework and the Lord Chancellor* [2015] EWHC 1965 (Admin) and [2016] EWCA Civ 464; for the claimants in *R (Ben Hoare Bell) v Lord Chancellor* [2015] EWHC 523 (Admin) and *R (Rights of Women) v Lord Chancellor* [2016] EWCA Civ 91. It also brought a successful challenge in its own name to the proposal to introduce a residence test for civil legal aid (*R (Public Law Project) v Lord Chancellor* [2016] UKSC 39).

On 21 December 2016, PLP wrote to the then Lord Chancellor, Liz Truss MP, regarding the forthcoming LASPO review setting out areas of particular interest or concern which the review ought to address and which further evidence could be provided. Following the 2017 General election, a copy of that letter was sent to the new Lord Chancellor on 16 June 2017 together with some further information. This led to an invitation to meet with a team of civil servants within the Ministry of Justice who were working on preparations for the review process and PLP's Legal Director spent over two hours talking to the then review team in late August 2017.

Rights of Women

Rights of Women (RoW) are a registered charity providing free and confidential legal advice to women and girls and engaging at a policy level on issues of accessing justice and violence against women and girls. RoW publish legal guides to help individuals and professionals supporting them through the law. RoW operate advice lines in family, criminal and immigration law which are all run by women lawyers. RoW also deliver second tier training to professionals who support women experiencing abuse and/or at risk of abuse.

In 2016 RoW successfully challenged the Government's evidential criteria for family legal aid at the Court of Appeal. Private family law proceedings were taken out of scope by LASPO although it was possible for victims of DV to apply for legal aid to participate in the proceedings if they were able to produce prescribed evidence of DV. Unfortunately the prescribed evidence could only relate to evidence of abuse that had taken place within 2 years and also the types of evidence that was permitted was very limited. RoW's research indicated that 40% of applicants would not be able to produce the appropriate evidence to access legal aid. RoW argued that the regulations were too rigid and prevented genuine victims of abuse from accessing legal aid. RoW's success in this case led the MOJ to review its current rules on accessing family legal aid in private family proceedings for victims of abuse. The time limit on evidence that an individual had suffered abuse within 2 years was removed and the types of acceptable evidence widened to include letters of support from DV organisations and housing support officers.

In 2016, RoW identified that there were unnecessary barriers to women who were seeking ECF. RoW was given a small grant to provide direct support to a limited number of women in order to monitor the system and ascertain how it is working. Following the conclusion of the project RoW expects to make policy recommendations in light of its experience.

Youth Access

Youth Access is the recognised body for youth advice services and is one of the seven full members of the Advice Services Alliance. Youth Access has significant expertise in young people's legal needs, having built up an unrivalled body of evidence on the subject over the past 15 years. That evidence indicates that young people account for around 25% of all legal need, yet legal aid and legal services are not currently meeting that need. Youth Access is preparing new evidence on young people's legal needs which will be highly pertinent to the review. Youth Access is also able to connect the MoJ directly with young people affected by changes to the legal aid scheme. It is vital that the review takes account of such user voices if it is to have any legitimacy with the public.

Zacchaeus 2000 Trust

Zacchaeus 2000 Trust has been taking a significant number of disability benefits claims to tribunal on a monthly basis and have achieved this through working with lawyers on a pro bono basis. But with an 85% success rate we have become increasingly worried about the fact that people appealing benefits are being denied access to legal aid when the DWP is so often getting the original decision wrong. In addition to those who access our services our concern is for those who just give up because they cannot access the limited free advice that is out there and so are unfairly living without the benefits they are entitled to, putting them at serious risk of living in poverty.