



Public Law Project

Keys to the Gateway:

**An Independent Review of the Mandatory Civil
Legal Advice Gateway**

Ben Hickman

David Oldfield

About the Public Law Project

The Public Law Project (PLP) is a national legal charity 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.

Within this broad remit PLP has adopted three main objectives:

- increasing the accountability of public decision-makers;
- enhancing the quality of public decision-making; and
- improving access to justice.

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PLP undertakes research, policy initiatives, casework, and training across the range of public law remedies.

Keys to the Gateway:

An Independent Review of the Mandatory Civil Legal Advice Gateway

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Whilst many have helped this work, the views and opinions expressed in this report are those of the authors alone.

Authors

Ben Hickman – Research Director, Myriad Research Ltd.

David Oldfield – Solicitor, Public Law Project.

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1. Executive Summary

- 1.1. On 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into effect. Together with regulations made on the same date, LASPO established the Civil Legal Advice telephone line as the only route by which certain legal aid services could be accessed (the Gateway). In the first instance, the Gateway has been introduced as mandatory in three areas of law.
- 1.2. As a consequence, individuals seeking advice and assistance ('Legal Help') in one of the three mandatory areas of law (Debt, Discrimination, and Special Educational Needs) can now only obtain that advice and assistance via the Gateway, unless they fall within one of the limited categories of 'exempt' individuals.
- 1.3. The Gateway has constituted a major shift in the delivery of publicly funded legal advice in the areas of law in which it operates. Parliament was assured that it would be extended to other areas of law only after its operation had been fully reviewed by the Ministry of Justice (MoJ). The MoJ published its review of the Gateway in December 2014.
- 1.4. This research project considers the extent to which the MoJ review engages with the key legislative and policy intentions behind the Gateway, as well as the extent to which the Gateway, as implemented, meets those intentions.

Methodology

- 1.5. This research project uses quantitative and qualitative research techniques and a range of data sources. Research methods have included a literature review, gap analysis of the MoJ review of the Gateway,¹ analysis of legal aid statistics, survey and interviews with front-line advice providers, Gateway Specialist Telephone Advice Providers, and other Gateway stakeholders.

Gateway rationale

- 1.6. The Parliamentary intention behind LASPO was to ensure access to legal aid in the '*highest priority cases*', as identified by Parliament (see Chapter 3). The specific policy rationale behind the Gateway was to '*protect access to justice while modernising the service and ensuring that it is affordable*'. Clear emphasis was placed on the concepts of client needs and convenience, better value for money, and a high quality service.

¹ Available at www.gov.uk/government/publications/civil-legal-aid-mandatory-gateway-research-findings

Gap analysis

- 1.7. Our literature review and gap analysis of the MoJ review (see Chapters 3 and 4 respectively) identify the following key areas of focus on which the remainder of this project has been based (see Chapters 5 to 8 respectively):
 - i. front-line experience of the Gateway
 - ii. case volumes
 - iii. case outcomes
 - iv. value for money
- 1.8. Our gap analysis also indicates the following additional major omissions from the MoJ review:
 - i. consideration of the impact of the Gateway on individuals who did not access it but who would have been entitled to do so;
 - ii. consideration of the impact on individuals 'exempt' from having to use the Gateway;
 - iii. assessment of the accuracy and quality of the Operator Service; and
 - iv. evaluation of the costs and savings produced by the Gateway.

Front-line experience of the Gateway

- 1.9. Data from front-line advice providers including Citizens Advice Bureaux suggests that awareness and promotion of the Gateway has been very limited. There has been a lack of coherent communication strategy and this seems to have contributed to a significant reduction in demand for advice in Gateway areas of law.
- 1.10. Our research indicates that the experience of service users going through the Gateway can be confusing and bureaucratic. We have also received reports that it can be difficult to secure a referral to a Gateway Specialist Telephone Advice Provider without additional legal support.
- 1.11. Interviews with front-line advice providers and Gateway Specialist Telephone Advice Providers also indicate that the Gateway Operator Service may not be functioning as intended. We received reports that the Operator Service is reliant on scripts (contrary to the Government's prior assertion that this would not be the case), as well as reports of inconsistency in advice, and of operators basing decisions to transfer callers to Specialist Telephone Advice Providers on callers' use of certain 'buzzwords' rather than on the wider content of telephone calls.

Impact on case volumes

- 1.12. Analysis of available data suggests that in some respects the Gateway may have constituted a barrier to access to justice. The number of Gateway matters started has been substantially lower than expected, notwithstanding that these areas of law were

identified by Parliament as being the highest priority cases which should remain within the scope of legal.

- 1.13. The number of Debt matters started under the Gateway has been about 90% less than the MoJ should have expected on the basis of its initial calculations on the impact of the Gateway (even after changes to the scope of legal aid were taken into account).² Similarly, the numbers of Special Educational Needs and Discrimination matters started have been at least 45% and 60% less, respectively, than figures provided in the Legal Services Commission tenders for Gateway services, which again took into account changes to the scope of legal aid.
- 1.14. Furthermore, since the introduction of the Gateway two of the three Gateway areas of law have presented the biggest decreases in Legal Help matters started across all areas of civil legal aid law: Debt matters have fallen by 50% and Discrimination matters by 58%. This is notwithstanding a general increase of 2% over the same period of time in the number of Legal Help matters started across all areas of law via all channels of advice provision.³
- 1.15. Referrals rates for face-to-face advice have been substantially lower than that previously estimated by the Legal Aid Agency in respect of Discrimination and Special Educational Needs (namely 0.2% instead of 10% in respect of Discrimination; and 0% instead of 10% in respect of Special Educational Needs).⁴ This may be as a result of Legal Aid Agency guidance setting out a face-to-face referral threshold which is only met in '*exceptional circumstances*'.
- 1.16. The MoJ has not considered the position of those unable (for whatever reason) to access Gateway services in the first instance. There is also limited analysis of the experiences of those who access the Operator Service, but who are not transferred to a Specialist Telephone Advice Provider for advice (as happens in 86% of cases).
- 1.17. The MoJ review states that there is '*no evidence that substantial numbers of users who qualify [for legal aid] are not accessing the service when they need it*'. This is a strong assertion given that the MoJ review has not considered the experiences of individuals who have not accessed the Gateway.

Assessing case outcomes

- 1.18. Our research suggests that there appears to be a corollary between the Gateway's mandatory channel of service delivery and less favourable case outcomes.

² See Chapter 6

³ See §6.40

⁴ Ministry of Justice, Gateway Review Summary, 2014 – §6.3

- 1.19. Around a third of all Debt and a quarter of all Discrimination matters handled by the Gateway and completed in the first half of 2014/15 resulted in 'outcome not known or client ceased to give instruction'. This does not compare favourably with other channels of legal aid advice provision e.g. by not-for-profit advice services or solicitors' firms, or with previous service delivery data in those areas of law.
- 1.20. In addition there seems to be a lack of quality assurance of Gateway services. Specialist Telephone Advice Providers have expressed concerns that advice quality under the Gateway may *'be driven into the ground by the current set up'*.
- 1.21. The National Audit Office has reported that the MoJ has *'a weaker grasp'* of the quality of advice under certain aspects of the Gateway. Whilst it stated that *'[q]uality of legal advice is assessed through a mixture of targeted and random peer reviews'*, no peer reviews of Specialist Telephone Advice Providers had taken place during the first year of the Gateway being in operation (or as of September 2014).
- 1.22. The MoJ has similarly confirmed that despite a relevant provision in their service contracts, no 'mystery shopping' exercises of Specialist Telephone Advice Providers were carried out during the first year of the Gateway being in operation. It has also indicated that no Specialist Telephone Advice Provider reviews of the Operator Service (as provided for in the Operator Service contract) had taken place since the introduction of the Gateway as of September 2014.⁵

Value for money

- 1.23. There is evidence to suggest that the Gateway is not achieving value for money across its services, despite this being a key objective behind the Gateway.
- 1.24. Total legal aid expenditure in Gateway areas of law has fallen in line with substantially lower volumes of Gateway work being carried out. However, headline reductions in total expenditure are not indicative that the Gateway is providing better value for money.
- 1.25. The MoJ projected that the Gateway would save £2 million annually. It also estimated £2 million of one-off costs (e.g. to establish new telephone capacity and cover additional procurement costs and communications costs).
- 1.26. £210,000 of the projected savings was based on an expansion of the Community Legal Advice helpline to other areas of law including Actions Against the Police, Non-Asylum Immigration, etc. However, this does not seem to have materialised given that no telephone advice service matter starts are recorded in any of these areas of law over the last year.

⁵ See §7.12 below

- 1.27. The majority of projected savings were also based on the lower costs of Specialist Telephone Advice Providers. However, the additional costs of the Gateway (e.g. Operator Service, determinations, etc.) seem to have out-weighed such savings in areas of law with relatively low costs per advice matter in face-to-face settings.
- 1.28. For example, the cost per Gateway Debt matter in 2013/14 was about 110% higher than (i.e. more than double) the cost per Debt matter in 2012/13 in the not-for-profit advice service setting once additional Gateway costs are included. It was also about 70% more than the cost per Debt matter in 2012/13 in the solicitors' firm setting.
- 1.29. The consideration of cost per Gateway advice matter on its own does not provide for an actual evaluation of value for money. Projected savings calculations assumed that service users would receive the same, or improved, services for less money. A comparison of the Gateway with 2012/13 face-to-face advice provision based on cost per matter that resulted in a beneficial case outcome indicates that the Gateway is substantially more expensive than that provided in other contexts – indeed about 170% more expensive for Debt matters than that provided in the not-for-profit advice sector in 2012/13, and about 100% more expensive than that provided by solicitors' firms in 2012/13.
- 1.30. The assertion that the Gateway would be a more cost effective channel for the provision of legal aid advice was unsupported by published evidence at the time it was proposed. The MoJ indicated that it would assess whether the Gateway has produced expected savings, and how costs compare with face-to-face advice services. However, there is no mention of final costs savings in the published MoJ review. This is notwithstanding that one of the main drivers for introducing the Gateway was the potential for such savings, and given that existing evidence about the potential for tangible savings is far from conclusive.

Transparency and Data Quality

- 1.31. There has been a lack of clarity around the approach taken by the MoJ to certain statistics.
- 1.32. The limited publicly available data on total number of calls for 2013/14 varies (figures range from 228,559 to 261,000). Data on the total number of calls received by the Gateway should be published with the regular legal aid statistical bulletins with breakdown as to category of law and outcome, including for example determination, operator work start, etc.
- 1.33. In one instance, the MoJ also significantly revised its publicly available statistics by creating a new data category of 'determinations' without providing clear accompanying definitions or an explanation for the change, which makes analysis of the data difficult.

Conclusions

- 1.34. Our findings indicate that there is insufficient evidence that the Gateway is meeting Parliamentary and policy intentions, and that in some areas those intentions are being undermined or frustrated. The MoJ review does not fully engage with these issues.
- 1.35. From a service user perspective, our findings indicate that there have been clear disadvantages of the Gateway including:
- very low levels of awareness of the service on the part of potential users;
 - significantly lower volumes of advice being given than anticipated;
 - an ongoing reduction in volumes of advice being given;
 - service user difficulties navigating and proceeding beyond the Operator Service;
 - significant numbers of matters resulting in ‘outcome not known or client ceased to give instruction’; and
 - very low levels of referrals to face-to-face advice being made.
- 1.36. Furthermore, in terms of value for money the Gateway may be a significantly more expensive system of advice than that in face-to-face advice settings once additional costs are taken into account, as our research suggests is the case in Debt matters.

Recommendations

- 1.37. We recommend that the MoJ do the following:
- i. Publish Gateway data as part of its regular legal aid statistical bulletin, and provide clear and concise explanations of each element of the bulletin to ensure transparency and understanding;
 - ii. Publish the outcomes of assessments made by Specialist Telephone Advice Providers of the Operator Service in the interests of transparency;
 - iii. Undertake further analysis and evaluation in respect of the following:
 - Value for money
 - Case outcomes
 - The face-to-face referral mechanism, provision of reasonable adjustments, provision of advice to exempt individuals, provision of advice in emergency cases; and provision of Legal Representation
 - Sustainability and wider economic and social impact of the Gateway and LASPO;
 - iv. Clarify face-to-face referral guidance to ensure it functions as anticipated;
 - v. Clarify and monitor Gateway quality assurance processes to ensure a high level of advice provision as anticipated; and
 - vi. Improve its communication strategy to ensure awareness of the Gateway.

2. Introduction

Background

- 2.1. On 1 April 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into effect. Together with regulations made on the same date, LASPO established the Civil Legal Advice (CLA) telephone advice line (the Gateway) as the sole and mandatory route to accessing and receiving the initial stages of civil legal aid advice in certain areas of law.
- 2.2. The purpose of LASPO was to ensure that access to justice would be secured in those ‘*highest priority*’⁶ areas of law that Parliament had expressly stated should remain within the scope of legal aid. The Government made clear that it ‘*strongly believes that access to justice is a hallmark of a civilised society*’ and that its reform of legal aid:

*aims to ensure that legal aid is targeted to those who need it most, for the most serious cases... to ensure access to public funding for those who need it most, the protection of the most vulnerable in our society.*⁷
- 2.3. The Government anticipated that following a Ministry of Justice (MoJ) review of the Gateway due to be completed by April 2015, it would

*introduce a phased expansion of the provision of specialist telephone advice into the areas of law remaining in scope [of legal aid, except in respect of asylum matters].*⁸
- 2.4. It was generally anticipated that the MoJ review would comprehensively examine certain aspects of the Gateway and its functioning. However, given the potential implications of the Gateway for access to justice, we considered that there was a place for additional independent research considering, amongst other things, whether the operation of the Gateway has met Parliament’s original legislative intent and the Government’s stated policy objectives.
- 2.5. This project began in May 2014, with publication intended in December 2014, before the anticipated publication of the MoJ review. However the MoJ review into the Gateway was published on 9 December 2014, earlier than expected and after a provisional final draft of this report had been produced. This report is therefore based primarily on information that was available prior to publication of the MoJ review. Although updates have been made where possible (particularly in terms of the gap analysis chapter), this report does not amount to an official response to the MoJ review.

⁶ HL Deb 27 March 2012, vol 736, col 1304

⁷ Ministry of Justice, Consultation, 2010 – §2.2

⁸ Ministry of Justice, Government Response, 2011 – §154 & 159

- 2.6. Throughout this document, references to ‘the Gateway’ are references to the CLA telephone advice line and its operation in respect of the three mandatory areas of law only. By contrast, references to the ‘CLA helpline’ are references to all aspects of the CLA telephone advice line (i.e. including in respect of non-mandatory areas of law, such as Housing and Family, for which initial legal aid advice can be provided via other channels of communication).

Research objectives

- 2.7. The main aims of this project have been to examine the following:
- The extent to which the implementation of the Gateway has met Parliament’s original legislative intent and/or the stated policy intentions;
 - The effect, particularly in terms of access to justice, of the introduction of the mandatory telephone Gateway;
 - The suitability and effectiveness of the proposed scope, objectives and methodology of the MoJ review of the Gateway; and
 - The feasibility of further research into the wider impacts of the Gateway, including any possible effects on access to justice.

Methodology

- 2.8. This project has been structured around seven complementary elements, and has utilised quantitative and qualitative techniques and a range of data sources. The seven elements have been as follows:
- Literature review** – A review of existing evidence, including international research, to establish context and identify avenues for investigation. This helped establish a set of research questions forming the basis for the remainder of the project. It also involved a review of the chronology of events leading up to the introduction of the Gateway, the legal framework within which the Gateway operates, and the rationale and intent behind the Gateway.
 - Gap analysis of MoJ Gateway Review methodology** – Using the research questions established in the literature review, a gap analysis of the proposed MoJ Gateway review methodology was undertaken to establish areas of interest falling outside of the scope of its work. This gap analysis ensured that, wherever possible, we avoided overlaps with the MoJ review and focused resources on those areas not under consideration. As the MoJ review was ongoing during this project, the majority of this element was limited to the information on scope and methodology available at the time. The MoJ review was published on 9th December 2014 (after a provisional final draft of this report had been produced) and although we have updated

the gap analysis chapter to reflect this, the chapter does not constitute a full gap analysis of the published MoJ review.

- iii. **Analysis of available quantitative data** – An analysis of all quantitative data relating to the functioning of the Gateway available as of December 2014. Legal aid statistics were analysed for trends and significant variation in volume, value and outcomes. Requests for Gateway Management Information data were made with limited success (due to the proposed publication of the requested data in the MoJ review, some of which is now available as part of the MoJ review).
- iv. **Freedom of Information Act requests (e.g. of Gateway performance, Operator Service training, etc.)** – We requested a range of information via Freedom of Information Act requests with particular focus on the contractual obligations of providers, performance measurement and quality assurance and Operator Service guidance materials and training.
- v. **Interviews with Gateway Specialist Telephone Advice Providers** – Semi-structured interviews were undertaken with nine of the eleven Gateway Specialist Telephone Advice Providers with the aim of exploring their opinions on the Gateway, possible barriers to access to justice, how effectively cases involving vulnerable people are being dealt with, and their experiences of the quality assurance processes for the Operator Service.
- vi. **Survey of front-line advice providers (e.g. Law Centres and CABx)** – A short online survey of Law Centres and Citizens Advice Bureaux was produced to measure the degree of engagement with the Gateway and identify possible areas of future research.
- vii. **Survey of other key Gateway stakeholders** - A short email survey was carried out of specialist interest groups and representative organisations with contact or knowledge of the Gateway.

2.9. The scope of this research was broad and required the exclusion of certain issues including the availability and quality of provision of advice to persons 'exempt' from using the Gateway and any impact of the Gateway on Legal Representation (i.e. work that generally pertains to court proceedings). Additional details on the methodologies used in each element are provided within this report. Copies of the survey questions and interview schedule are provided in Annexes 3, 4, and 6 respectively. Our findings in respect of the feasibility of further research are set out in a separate paper.

3. Legislative Background and Literature Review

- 3.1. This chapter provides an overview of the history of the implementation of the Gateway, the legislative intent behind it, and a review of existing literature and evidence on the provision of legal advice via telephone, including international research.
- 3.2. The aim of this chapter has been to establish the principles underlying the establishment of the Gateway and to provide context to any examination of its functioning. It has helped to define the relevant research questions that have informed the focus of the remaining chapters of this project.
- 3.3. This secondary research was undertaken in May to July 2014 and reflects research available at the time; it excludes consideration of the findings of the MoJ review.

Implementation of the Gateway

- 3.4. In November 2010, the MoJ consulted on ‘*a radical, wide-ranging and ambitious programme of reform*’⁹ of legal aid including the introduction of the Gateway. The proposal differed from the pre-existing ‘Community Legal Advice’ helpline (as it then was) in two fundamental respects. Firstly, it would be the sole mandatory route to accessing the initial stages of legal aid advice; and secondly, it would provide the majority of advice over the telephone (whereas the Community Legal Advice helpline had referred the majority of matters - approximately 85%¹⁰ - to ‘face-to-face’, rather than solely telephone, advice providers).
- 3.5. In June 2011, the Government published its response to its consultation. It acknowledged ‘*strong opposition to [the] proposal for a mandatory single gateway across most of the responses*’ (less than 4% of the near 2,000 responses received were positive).¹¹ Notwithstanding this, it decided to implement the Gateway initially in four areas of law (Community Care, Debt, Discrimination, and Special Educational Needs), with a view to later implementing ‘*a phased expansion*’ to most other areas of civil legal aid law.

⁹ Ministry of Justice, Consultation, 2010 – §1.2

¹⁰ Ministry of Justice, Impact Assessment, 2010a – §26

¹¹ Ministry of Justice, Government Response, 2011 – §6 annex D & p.277; also see concerns raised by opposition members before the Public Bill Committee ‘*I want to put on record the serious concern that Opposition Members have about the single telephone gateway and the way it is being rolled out. It has been ill thought out and has not been properly consulted on, and is opposed by almost all providers at all levels as a way of accessing legal aid. It is one of the key concerns about the Bill, because it is a way of strangling access to justice through technical measures at an early stage. Ironically, it will particularly affect those who are in most need of that help. Those views have been clearly expressed by several colleagues at greater length.*’ Legal Aid, Sentencing and Punishment of Offenders Bill Deb 8 September 2011, col 455

- 3.6. In March 2012, it reversed its decision to include Community Care in the mix of initial Gateway areas of law.
- 3.7. On 1 April 2013, LASPO came into force and the Gateway came into operation. On 9 April 2013, the Government initiated a consultation on further reforms of legal aid,¹² and yet further consultations were published in September 2013.¹³

Procedure under the Gateway

- 3.8. As a consequence, since April 2013, individuals seeking the initial stages of legal aid advice,¹⁴ in one of the three Gateway areas of law (Debt, Discrimination, and Special Educational Needs), have had no choice as to how they secure their advice: they have had to do so via the Gateway, unless they fall within one of the limited categories of 'exempt' individuals.¹⁵
- 3.9. In addition, individuals seeking the initial stages of legal aid advice on Family and Housing matters have had the *option* of telephoning the CLA helpline.¹⁶
- 3.10. The first stage of seeking advice under the Gateway is via a telephone call with the CLA 'Operator Service'.¹⁷ The Operator Service assesses whether an individual is financially eligible for legal aid, whether their matter falls within the scope of legal aid, and whether it falls within the scope of a Gateway area of law.
- 3.11. If a caller is deemed to satisfy those criteria, then they are transferred to a Specialist Telephone Advice Provider. The Specialist Telephone Advice Provider then 'determines' again whether the caller is financially eligible for legal aid, whether their matter falls within the scope of legal aid, whether it falls within the scope of a Gateway area of law, as well as whether it meets the requisite 'merits criteria' for the provision of legal aid advice. They also decide whether to refer the caller for face-to-face advice.
- 3.12. A right of review arises in respect of a determination made by a Specialist Telephone Advice Provider that an individual is ineligible for legal aid under the Gateway (for

¹² See Ministry of Justice, *Transforming legal aid: delivering a more credible and efficient system* (CP14/2013) which proposed e.g. a 'residence test', reforms to the 'merits test' requirements for legal aid work, and reforms to the funding of judicial review matters.

¹³ See Ministry of Justice, *Transforming Legal Aid: Next Steps* (2013); as well as Ministry of Justice, *Judicial Review: Proposals for further reform* (Cm 8703, 2013), which followed previous proposals for reform: Ministry of Justice, *Judicial Review – Proposals for Reform* (CP25/2012).

¹⁴ classified as 'Legal Help' (i.e. generally concerning advice prior to court proceedings being initiated: namely, advice and assistance other than (a) acting as a mediator or arbitrator; (b) issuing or conducting court proceedings; (c) instructing an advocate in proceedings; (d) preparing to provide advocacy in proceedings; or (e) advocacy in proceedings).

¹⁵ i.e. individuals in detention, individuals under 18 years old, and those already assessed by the Gateway as needing face-to-face advice in the last twelve months who are applying to the same provider in respect of a linked matter, Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 2 & 20.

¹⁶ Previously the 'Community Legal Advice' helpline.

¹⁷ Initially run by Capita Group Plc., and subsequently by Freedom Communications (UK) Ltd. via their sub-contractor Agilysys Limited from 2 November 2014 onwards.

reasons relating to that individual's financial means, or the merits of their case). The right of review is exercisable within 14 days and arises before the same Specialist Telephone Advice Provider that made the decision under review.¹⁸ A right of review also arises in respect of a decision not to refer an individual for face-to-face advice.¹⁹

- 3.13. Those not entitled to legal aid advice or with issues falling outside of the scope of legal aid (both under the previous Community Legal Advice helpline and under the Gateway) are signposted by the Operator Service to alternative free and paid-for services (e.g. not-for-profit advice services and solicitors' firms). At one stage, the Government also said that it would run a pilot scheme giving those individuals the option of being referred directly to paid-for advice.²⁰
- 3.14. For a full chronology of events leading up to the introduction of the Gateway, and a review of the legal framework within which the Gateway operates, see Annex 1 and Annex 2 respectively.

Government rationale and Parliamentary intent behind LASPO

- 3.15. The Government's primary objectives for the reform of civil legal aid were as follows:

to ensure access to public funding in those cases that really require it, the protection of the most vulnerable in our society and the efficient performance of our justice system. Taxpayer funding of legal advice and representation will be reserved for serious issues which have sufficient priority to justify the use of public funds subject to people's means and the merits of the case. ... The proposals in this consultation seek to deliver substantial savings in a fair, balanced and sustainable way.²¹

- 3.16. To this end Parliament subsequently identified and set out in primary legislation an exhaustive list of areas of law concerning those 'serious issues' of 'sufficient priority',²² to be retained within the scope of civil legal aid. The statutory scheme reflects the process that was undertaken, namely of '[p]rioritising critical areas [of law] for legal aid funding'²³ and targeting the provision of civil legal aid at those cases which need it most:

We have taken into account the importance of the issue, the litigant's ability to present his or her own case – including their vulnerability – the availability of alternative sources of funding, and the availability of other routes to resolution. As noble Lords know, we have used these factors to prioritise funding so that civil legal

¹⁸ Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 27

¹⁹ Legal Aid Agency, Guidance for Providers, 2013 – p.4. The Legal Aid Agency anticipated that about five to 10 per cent of matters advised upon would be the subject of a referral for face-to-face advice (Ministry of Justice, Impact Assessment, 2012 – table 1; reiterated in Legal Services Commission, *Invitation to Tender to deliver Community Legal Advice Specialist Telephone Advice Services from April 2013: Information for Applicants* (August 2012) – p.30).

²⁰ Ministry of Justice, Government Response, 2011 – §95 annex D

²¹ Ministry of Justice, Equality Impact Assessment, 2010 – §9 & 11, emphasis added

²² Ministry of Justice, Government Response, 2011 – p.3, Ministerial Forward

²³ Ibid p.4

aid will be available in the highest priority cases²⁴

Debt

- 3.17. In respect of Debt matters remaining within the scope of legal aid,²⁵ the Government assured Parliament that its proposals *‘ensure that legal aid continues to be available to an individual in relation to the immediate risk of losing their home, through possession or eviction’*.²⁶
- 3.18. The Government further explained that its focus was *‘on those cases in which the client faces serious direct consequences’*.²⁷ It made clear that its rationale was that cases involving *‘an immediate risk of homelessness’* were of the *‘highest priority’*,²⁸ because of the *‘gravity of the consequences’* of such matters including *‘the potential impact on the livelihood, health, safety and well-being of the litigant and their family’*.²⁹

Discrimination

- 3.19. In respect of Discrimination matters remaining within the scope of legal aid,³⁰ the Government assured Parliament that it considered funding of Discrimination matters to be *‘of the highest priority’*.³¹ The Government explained that it was *‘more than axiomatic’* that Discrimination matters are *‘important and that people who are less able to articulate their case or defend themselves should have priority’*.³²
- 3.20. It emphasised *‘the importance’* and *‘the nature of the issues at stake – addressing societal prejudice and ensuring equality of opportunity’*, and recognised that *‘some – particularly those with profound disabilities – may find it difficult to [present their own case]’*.³³

²⁴ HL Deb 27 March 2012, vol 736, col 1304, emphasis added; reiterated in Ministry of Justice, Impact Assessment, 2010b – §6, 11; Ministry of Justice, *Government Response to the House Of Lords Select Committee on the Constitution’s Twenty First Report of Session 2011-12: Legal Aid, Sentencing And Punishment Of Offenders Bill* (HL, 2011) – §5.1; and HL Deb 12 March 2012, vol 736, col 111; Ministry of Justice, *Transforming Legal Aid: Next Steps* (2013) – §1.6a; and *Lord Chancellor’s Exceptional Funding Guidance (Non-Inquests)* (2013) – §7; also see Ministry of Justice, Gateway Review Summary, 2014 – §.2.1; Ministry of Justice, *Government Response, 2011 – p.4, Ministerial Forward*.

²⁵ i.e. where an individual’s home is at immediate risk, including court orders for sale of an individual’s home, court orders for possession of an individual’s home arising out of a failure to make mortgage payments, and certain bankruptcy orders where an individual’s home is at risk.

²⁶ HL Deb 27 March 2012, vol 736, col 1296

²⁷ Legal Aid, Sentencing and Punishment of Offenders Bill Deb 6 September 2011, col 374

²⁸ Ministry of Justice, Equality Impact Assessment, 2011 – §2.36

²⁹ Ministry of Justice, Consultation, 2010 – §4.75

³⁰ i.e. in relation to contraventions of the Equality Act 2010, including in the context of Employment and Welfare Benefits matters – although this is limited to Legal Help matters (and not advocacy) in respect of cases in the First-tier Tribunal (Health, Education and Social Care Chamber) and the Employment Tribunal, though advocacy may be funded in the County Court, First-tier Tribunal (Immigration and Asylum Chamber), the Employment Appeal Tribunal and the Upper Tribunal (Education).

³¹ HL Deb 7 March 2012, vol 735, col 1869

³² HL Deb 24 January 2012, vol 734, col 969

³³ Ministry of Justice, Consultation, 2010 – §4.133-5

- 3.21. It also explained that *'continuing to provide advice for people to challenge alleged discriminatory behaviour goes to the heart of the [public sector equality] duty'* (to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations).³⁴

Education

- 3.22. Although the Government initially consulted on excluding Education from the scope of legal aid, it subsequently acknowledged *'the compelling arguments that stakeholders made concerning special educational needs cases'*.³⁵ It explained to Parliament that it would prioritise funding for *'the most important education cases, which are special educational needs, discrimination and judicial review'*³⁶ and thereby *'protect the vast majority of funding in cases involving children [including...] special educational needs cases'*.³⁷
- 3.23. As with Discrimination matters, the Government explained to Parliament that it considered the funding of Special Educational Needs matters to be *'of the highest priority'*³⁸ and one of *'the highest priority cases in the Upper Tribunal and appellate courts'*.³⁹ It recognised that potentially substantial caring responsibilities of parents meant that they were *'more likely to have particular difficulty in proceeding without assistance from a lawyer'* and that children with special educational needs were more likely than others to have disabled parents.⁴⁰
- 3.24. The Gateway was implemented as a means of realising Parliament's intention that legal aid should be effectively available in the areas of law which were specifically retained within scope.

Government rationale and Parliamentary intent behind the Gateway

- 3.25. The Government likewise summarised its objectives in respect of the Gateway specifically in terms of prioritisation and targeting:

We see this as another way of directing our resources to where they are most

³⁴ Ministry of Justice, Equality Impact Assessment, 2012 – §6.97-6.98

³⁵ HL Deb 18 January 2012, vol 735, col 584; Ministry of Justice, Government Response, 2011 – §63-65 annex B

³⁶ Ibid col 585

³⁷ HL Deb 23 April 2012, vol 736, col 1664; Special Educational Needs matters falling within the scope of legal aid are *'typically challenges relating to a local education authority's assessment of a child's special educational needs ... [which allows for the funding of] special educational needs cases for persons aged between 16 and 24 [...and] Legal aid in the form of advocacy may be made available for appeals in the Upper Tribunal on a point of law from decisions made by the First-tier (Special Educational Needs and Disability — SEND) Tribunal'* Explanatory Notes to LASPO – §824-6.

³⁸ HL Deb 7 March 2012, vol 735, col 1869

³⁹ HL Deb 24 January 2012, vol 734, col 974

⁴⁰ Ministry of Justice, Impact Assessment, 2011 – §2.59 - 2.60

*important and getting the best advice to people.*⁴¹

- 3.26. It laid a clear emphasis on the concepts of client needs, client convenience, simplicity, straightforwardness, and a high quality, reliable service for clients.⁴²
- 3.27. Another objective was to secure better value for money, with assurances being made to the Public Bill Committee that Gateway cases ‘*typically cost significantly less than the equivalent face-to-face service*’.⁴³
- 3.28. In respect of ensuring access to justice, Parliament was assured of the following:
- the Government’s priority is to protect access to justice while modernising the service and ensuring that it is affordable.*⁴⁴
- Our starting point is that telephone advice is effective and efficient ... The benefits of electronic services generally and the Community Legal Advice helpline service in particular are twofold. The first benefit is access ... The second benefit is quality.*⁴⁵
- 3.29. The Government confirmed that it was
- committed to monitoring the continued effectiveness of the helpline, and ensuring that vulnerable clients can effectively access legally aided advice services.*⁴⁶
- 3.30. Parliament was told that some individuals would be ‘*exempt*’ from having to use the Gateway and that ‘*where appropriate*’ callers would be referred to a face-to-face

⁴¹ Justice Committee, *Government’s proposed reform of legal aid* (HC 2010-11, 681-I) – Q385 & §160, emphasis added; also see HL Deb 24 January 2012, vol 734, col 1032.

⁴² E.g. see Ministry of Justice, Consultation, 2010 – §4.270; Ministry of Justice, Impact Assessment, 2010a – §6, 34, 81, and p.18; Ministry of Justice, Equality Impact Assessment, 2010 – §13; Ministry of Justice, Equality Impact Assessment, 2011 – §6.70; Legal Aid, Sentencing and Punishment of Offenders Bill Deb 6 September 2011, cols 294 & 296; HL Deb 20 December 2011, cols 1768-1770; HL Deb 14 March 2012, vol 736, col 288; HC Deb 17 April 2012, vol 543, cols 202-3; and in particular:

- ‘*[the Gateway] offers citizens the opportunity to access services in a more convenient and accessible manner*’ Ministry of Justice, *Government Response to Justice Committee’s Third Report of Session 2010/11: The Government’s proposed reform of legal aid* (Cm 8111, 2011) – §80;
- ‘*we do not consider that changing the channel of provision from face-to-face to telephone need have a negative impact on clients*’ Ministry of Justice, Equality Impact Assessment, 2012 – §6.90; and
- ‘*[we] assume the proposal would have no aggregate impact on the quality of service, customer satisfaction, downstream legal aid costs and justice system costs, or on case outcomes ... no significant impact on the overall demand for legal advice*’ Ministry of Justice, Impact Assessment, 2010 – p.2.

⁴³ Legal Aid, Sentencing and Punishment of Offenders Bill Deb 6 September 2011, col 295; also see Ministry of Justice, Impact Assessment, 2010a – §11; Ministry of Justice, Equality Impact Assessment, 2010 – §8 & 15; Ministry of Justice, *Government Response to Justice Committee’s Third Report of Session 2010/11: The Government’s proposed reform of legal aid* (Cm 8111, 2011) – p.3; Ministry of Justice, Government Response, 2011 – p.4; Ministry of Justice, Equality Impact Assessment, 2012 – §63; MoJ written evidence before the Justice Committee inquiry into the impact of changes to civil legal aid under LASPO (LAS 73, May 2014) – p.1

⁴⁴ HC Deb 17 April 2012, vol 543, col 204, emphasis added

⁴⁵ HL Deb 14 March 2012, vol 736, col 285, emphasis added

⁴⁶ Ministry of Justice, *Government Response to Justice Committee’s Third Report of Session 2010/11: The Government’s proposed reform of legal aid* (Cm 8111, 2011) §80; also see Ministry of Justice, Government Response, 2011 – §48 annex D; HL Deb 23 April 2012, vol 736, col 1600; HL Deb 27 March 2013, vol 744, cols 1095, 1116, 1117; as well as Simon Hughes MP’s understanding that whilst one objective was to ‘*reduce the deficit*’ the other was ‘*to ensure that the vulnerable are protected in a time of economy austerity and reduced spending*’, HC Deb 2 November 2011, vol 534, col 984-5; also note assurance that ‘*We are not forcing everybody through a telephone gateway; we are doing a specific and very narrowly drawn test ... This is precisely about ensuring that services remain accessible.*’ HL Deb 14 March 2012, vol 736, cols 285-6.

advice service.⁴⁷ The Government clarified that it had *'always agreed'* that telephone legal aid advice would not be suitable for everyone.⁴⁸

3.31. Parliament was assured that third parties could assist an individual to contact the Gateway and that they could be a family member or *'could equally be a member of a CAB or other support or advice service'*.⁴⁹

3.32. The Justice Committee was also informed that the Gateway would help to deal with the *'important issue'* of avoiding *'legal aid deserts'*.⁵⁰

3.33. The Government stated that any potential adverse impact on groups protected by discrimination legislation would be mitigated by adaptations and reasonable adjustments and that the Gateway was a proportionate means of achieving legitimate aims, which were as follows:

- *to achieve increased value for money in respect of legal aid expenditure.*
- *to streamline the process for people seeking legal help and advice for common civil problems;*
- *to provide more immediate access to advice services and for those services to be delivered through the most appropriate channel;*
- *to route clients to the most appropriate source of help, including self-help services, specialist advice services and Alternative Dispute Resolution services; and*
- *to resolve problems at an early stage to prevent them multiplying and escalating and so reduce the number of problems requiring resolution at a formal hearing.*⁵¹

3.34. In respect of the Operator Service, the Government explained that:

*all clients will receive an initial diagnosis of their problems ... with the CLA helpline providing not just a gateway to legal aid advice services, but also enabling access to the wider advice services market, including the voluntary sector ... Other organisations could benefit from the infrastructure of the CLA Operator Service, gaining referrals from clients who have already been triaged.*⁵²

3.35. The rationale for introducing the Gateway initially in only four areas of law was as follows:

In selecting the areas of law most appropriate for this initial stage of the mandatory single gateway we have considered:

- *whether there was any increased risk within each area of law of clients'*

⁴⁷ Legal Aid, Sentencing and Punishment of Offenders Bill Deb 8 September 2011, col 455; reiterated in Ministry of Justice, Government Response, 2011 – §48; HC Deb 17 April 2012, vol 543, cols 202 & 204; HL Deb 23 April 2012, vol 736, col 1600.

⁴⁸ HL Deb 23 April 2012, vol 736, col 1592

⁴⁹ Ibid col 1601

⁵⁰ Justice Committee, *Government's proposed reform of legal aid* (HC 2010-11, 681-I) Q385 & §157

⁵¹ Ministry of Justice, Equality Impact Assessment, 2010 – §15, emphasis added

⁵² Ibid §1.6-1.8 p.7

needs not being met by a telephone service;

- *the likely frequency of the need for Legal Representation or Controlled Legal Representation in an area of law;*
- *the likely frequency of emergency cases in the area of law;*
- *whether the existing Community Legal Advice (CLA) helpline service had any previous experience of delivering advice in the area of law.⁵³*

- 3.36. It explained that ‘very few asylum cases would be suitable for telephone advice, as many of the cases concern people who are detained’.⁵⁴ The rationale for those in detention being exempt from having to use the Gateway was because of ‘the particular difficulties they may face in freely accessing a private and secure phone line.’⁵⁵
- 3.37. Community Care was ultimately excluded as an initial Gateway area of law after the Government acknowledged that a higher than anticipated proportion of cases in that area of law that would require face-to-face provision.⁵⁶
- 3.38. In summary, the legislative and policy intentions behind the Gateway (including the emphasis on client convenience, high quality advice, and effective access to justice for vulnerable clients in priority areas of law) should be borne in mind when assessing the impact of the Gateway in the areas of law in which it operates.

Access to justice

- 3.39. The Government acknowledged that ‘a widely held view’ amongst consultation respondents ‘was that a mandatory single telephone gateway would restrict access to justice for those clients who would have difficulty using a telephone based service.’⁵⁷ Several respondents expressed concerns that ‘a telephone only service would not be able to meet [client] needs for reasons of vulnerability and comprehension, or complexity of the issues.’⁵⁸
- 3.40. If the Gateway were to create barriers to justice then this would be at odds with the underlying legislative intent.

Technology is a great asset and courts and legal services providers need to move forward with technological solutions to address the needs of the public they serve.

⁵³ Ministry of Justice, Government Response, 2011 – §28-29 annex D, emphasis added

⁵⁴ Ibid §154; although in 2013 less than fifth of asylum claims were subject to the ‘detained fast-track’ process, Ministry of Justice, *Asylum Data Tables Immigration Statistics April to June 2014* (28 August 2014) – tables 1 and 11.

⁵⁵ Ibid §154

⁵⁶ ‘Original estimates showed that 50% of Community Care cases would be able to go through the mandatory gateway. On that assumption, the cost of removing Community Care from the mandatory gateway would result in a loss in estimated savings of £0.6m per annum in steady-state. However, the revised assessment is that significantly fewer cases will be able to be dealt with on the telephone, with perhaps as few as 20-30% being able to be handled by telephone advice only, reducing the estimated savings.’ Ministry of Justice, Equality Impact Assessment, 2012 – §6.28

⁵⁷ Ministry of Justice, Government Response, 2011 – §7 annex D

⁵⁸ Justice For All, 2011 – p.7

*But not everyone will be able or willing to use the technology when it is first deployed. It is critical that courts never unfairly disadvantage a party because of new technology.*⁵⁹

3.41. Potential barriers to using the Gateway can be roughly grouped into the following (overlapping and non-exhaustive) issues:

- Financial and logistical barriers – including concerning people without access to a landline; people for whom the cost of the call is problematic; and people who lack the necessary privacy or freedom to make personal telephone calls to discuss legal advice.⁶⁰
- Communication barriers – including concerning people with a limited level of spoken English; people with disabilities, learning difficulties, or mental health problems; people who have limited ability to express themselves or understand, and act upon, information which they are given; and people who require additional emotional support.⁶¹
- Barriers caused by multiple and interdependent, or complex legal and social problems overlapping more than one area of law.⁶²
- Barriers relating to limited levels of literacy, and access to and management of documentation.⁶³

3.42. The Gateway provides a number of services designed to ensure that financial hardship does not create a barrier. These include call back services and the ability to request assistance via text or online. However, these may not resolve the most serious of financial hardship cases. Variable and poor network coverage could also serve as a barrier to those living in remote areas without access to a landline.⁶⁴

3.43. There is also evidence that some of the most disadvantaged groups are less likely to get in touch via telephone.⁶⁵ When looking at which social and demographic characteristics had the greatest impact on clients' preferred mode of receiving debt advice, the Legal Services Commission (LSC) Legal Services Research Centre found that

*clients identified as having a 'physical impairment/long standing illness' or 'mental/cognitive impairment' were significantly less likely to use telephone advice.*⁶⁶

⁵⁹ Cabral et al 2012 – p.266

⁶⁰ See for example, Patel & Smith 2013b, Pearson & Davis 2002, McKinstry & Sheikh 2006, Balmer et al 2012

⁶¹ See for example, Patel & Smith, 2013a, Balmer et al 2012, Patel & Smith 2013b, Attorney General & Justice 2012

⁶² See for example, Moorhead et al 2006, Pleasance et al 2004, Cabral et al 2012, Pleasance et al 2013

⁶³ See for example, Pearson & Davis 2002, Patel & Smith 2013b

⁶⁴ Patel & Smith 2013b

⁶⁵ Pearson & Davis 2002, McKinstry & Sheikh 2006, Balmer et al 2012

⁶⁶ Patel & Smith, 2013a – p.6

- 3.44. This was confirmed in Balmer et al 2012 which found similar results in the provision of Housing advice.
- 3.45. Some groups are less likely to use telephone and online services in general. National Audit Office 2013 found that those significantly less likely to be online included older people (51% of those aged over 64, compared to 91% of 15-64 year olds) and people who declared a disability (63%, compared to 95% without a disability).⁶⁷ The Committee of Public Accounts 2010 recommended maintaining face-to-face services dealing with tax obligations for older people. This is supported by other research findings that when asked about their preferred mode of receiving advice and support only 2% of adults aged over 45 chose via a national telephone helpline.⁶⁸
- 3.46. Patel & Smith 2013b found that advisors estimated the use of 'proxy' clients under the previous Community Legal Advice helpline to be around 10-20% of callers (i.e. where someone called on behalf of a friend or relative who was unable to access the service themselves). This may raise issues in respect of the ability of vulnerable people who lack support to access advice that they need. Advisers also considered that a single channel of advice provision could inhibit the building up of trust required between a client and their legal adviser, particularly in cases concerning more vulnerable clients.⁶⁹
- 3.47. Clients with poor mental health or learning difficulties are considered by many to be uniquely challenged when dealing with telephone legal advice services.⁷⁰ Particular issues raised concern the ability of telephone services to establish required levels of trust,⁷¹ the importance of additional emotional support⁷², and possible problems associated with the ability of clients to effectively instruct advisors or act upon advice.⁷³
- 3.48. Pleasance et al 2006 found that vulnerable people with long-standing ill-health or disabilities are more likely than others to have justiciable problems: in the 2004 Civil and Social Justice Survey, 38% of people with health problems or a disability had a justiciable problem compared to 32% of people who did not.
- 3.49. To assess whether the Gateway has had an impact on access to justice, it is necessary to assess whether the mandatory channel of advice delivery excludes certain groups from getting help. This is particularly so, given that the availability of a

⁶⁷ National Audit Office, 2013

⁶⁸ Age UK & Help the Aged 2009

⁶⁹ Patel & Smith 2013a

⁷⁰ Attorney General & Justice 2012

⁷¹ Patel & Smith 2013b; also see Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with service providers* (2014) – §4.2 & 4.4.

⁷² Balmer and Pleasance 2012a

⁷³ Patel & Smith 2013b, Munro et al 2001

range of delivery channels is an important factor in determining whether or not people seek advice.⁷⁴ Some studies conclude that to avoid inequity, telephone legal advice services should not be the only means of accessing a service.⁷⁵

Clustered problems

- 3.50. A review of the literature shows that the issue of clustered problems is prevalent. Moorhead et al 2006 found that 40-50% of observed clients of solicitor and advice agencies presented a cluster of legal problems crossing specialist boundaries. Smith & Patel 2010 examined monitoring data from Community Legal Advice Centres and estimated that at least 11% of clients had received help on more than one matter:

*The most common problem clusters have involved some combination of housing, debt and welfare benefits.*⁷⁶

- 3.51. The Commission of Inquiry into Legal Aid⁷⁷ has emphasised the importance of legal aid taking a holistic approach to clients' problems:

*to solve a person's problems effectively, he or she must be treated as a 'whole person'. Legal problems are interlinked and each problem must be addressed if there is to be resolution.*⁷⁸

- 3.52. Pleasance et al 2004 found that 17% of respondents to an LSC Legal Services Research Centre Survey had two or more legal problems, with distinct 'clustering' patterns forming where experience of one type of legal problem was likely to involve experience of certain other types of legal problem. These clusters included the following:

- A family issues cluster (involving domestic violence, divorce, relationship breakdown, and child law matters);
- A homelessness, unfair police treatment, and legal action being taken against the individual cluster;
- A mental health and medical negligence cluster; and
- A further cluster including money, debt, benefit, consumer transaction, housing, employment, and personal injury matters.

- 3.53. Pleasance et al 2004 state that problem clustering demonstrates the importance of cross-departmental and 'joined-up' interdisciplinary approaches to 'joined-up' problems:

⁷⁴ Buck 2009

⁷⁵ McKinstry & Sheikh 2006, Cabral et al 2012

⁷⁶ Smith & Patel 2010 – p.3

⁷⁷ An independent panel of non-partisan experts (comprising Evan Harris, former Liberal Democrat MP; Reverend Professor Nicholas Sagovsky, previously canon of Westminster Abbey; and Diana Holland, assistant general secretary of Unite).

⁷⁸ Young Legal Aid Lawyers 2011 – p.61

Dealing with all problems together, rather than in isolation, and through cooperation between services, has the potential to improve clients' outcomes.⁷⁹

- 3.54. Cabral et al 2012 emphasise the importance of avoiding fragmentation of service in minimising duplication of effort and inconsistency of service. Low Commission 2014 highlights a concern that in certain circumstances, funding structures based on discrete legal areas of law can create '*revolving door*'⁸⁰ problems. This is supported by Cournarelous et al 2006 who argue that dealing with legal issues in isolation can be inadequate when addressing clusters of co-occurring and interconnected legal issues.
- 3.55. Similar concerns have been expressed about the ability of people with mental health problems to access legal aid funding '*for issues that cannot be neatly delineated into different types and are often central to managing their mental health.*'⁸¹
- 3.56. Moorhead et al 2006 found that clients tend to raise most legal problems with their advisers explicitly, but a significant proportion of problems (about 12%) are raised implicitly through pro-active questioning from advisers and through general dialogue with them. Gateway clients may therefore receive limited assistance and service and not get the help they need if the Operator Service and Specialist Telephone Advice Providers only deal with matters that are explicitly raised by clients.
- 3.57. Pleasance et al 2013 highlights the range of legal surveys that evidence clustering, not just of justiciable problems, but also of issues affecting health, and issues that increase the likelihood of wider social exclusion.

Value for money

- 3.58. In the initial Impact Assessment of the Gateway, it was estimated that the provision of specialist advice by telephone rather than on a face-to-face basis would save between £50-70 million annually.⁸² This was subsequently adjusted downwards to an annual figure of £2 million, reflecting the limited initial roll out of the Gateway to only three areas of law.⁸³
- 3.59. There is a lack of robust evidence of the value for money provided by telephone advice services. The little existing research that there is provides conflicting pictures of whether telephone advice is indeed more efficient (or cheaper) than face-to-face advice. Balmer et al 2012b found that telephone advice took on average 14 minutes longer than otherwise when considering comparative cases, clients and stages of

⁷⁹ Buck 2009 – p.25

⁸⁰ Low Commission Report 2014 – p.16

⁸¹ Justice For All, 2011 – p.3

⁸² Ministry of Justice, Impact Assessment, 2010a – p.2

⁸³ Ministry of Justice, Impact Assessment, 2011 – §36

advice reached. In contrast, Patel & Smith 2013a found that the duration of Debt advice cases was 22 minutes shorter than that provided on a face-to-face basis (when controlling for other variables) *'with telephone advice having comparably shorter advice times at earlier stages of advice when compared to face-to-face cases, but exceeding face-to-face advice times for cases which reached the latter stages.'*⁸⁴

- 3.60. In Patel & Smith 2013b, Specialist Telephone Advice Providers involved in the Community Legal Advice helpline (as it then was) reported duplication in effort as they had to verify client and case details taken by the Operator Service:

*This pattern of verification suggests that there are limited resource savings in using the operator tier to gather anything more than the most basic details about clients.*⁸⁵

- 3.61. The MoJ has explained that *'[w]here an operator is in any doubt about whether a caller's problem is in scope, whether telephone advice is appropriate, or whether the caller is financially eligible for legal aid, he or she will be referred to a specialist advisor.'*⁸⁶ This raises the prospect of Specialist Telephone Advice Providers receiving a significant number of referrals of matters falling outside the scope of legal aid or who are financially ineligible, and of increased duplication of effort and bureaucracy, which may have knock on effects on overall efficiency.⁸⁷ There was a perception amongst telephone advice providers, in Patel & Smith 2013b, that the Operator Service often acted as little more than an additional layer of bureaucracy.
- 3.62. Ensuring that vulnerable groups are provided adequate legal advice services often requires the involvement of third parties⁸⁸ and consideration should be given to the cost of providing this support when assessing value for money of the Gateway.
- 3.63. Cookson 2011 details the range of knock-on or consequential costs of cutting legal aid on wider public expenditure and concludes that the legal aid reforms in general are unlikely to make a significant contribution to reducing the deficit because of the likelihood of substantial consequential costs in other areas of public expenditure.
- 3.64. The Commission of Inquiry into Legal Aid⁸⁹ found that reducing legal aid was *'a false economy'* because of the often significant consequential costs to the public purse of leaving problems unresolved:

When coupled with the human cost to the vulnerable and socially excluded of reducing legal aid, the panel finds these increased economic costs are

⁸⁴ Patel & Smith 2013a – p.16

⁸⁵ Patel & Smith 2013b – p.9

⁸⁶ Ministry of Justice, Equality Impact Assessment, 2012 – §6.44

⁸⁷ In addition, there is also *'limited evidence from Specialists of an interim screening stage [subsequent to the Operator Service screening stage, but] prior to Users actually interacting with a Specialist adviser'* Ministry of Justice, Gateway Review Summary, 2014 – §6.4.

⁸⁸ Low Commission Report 2014, Patel & Smith 2013a

⁸⁹ See fn 777

*unacceptable.*⁹⁰

- 3.65. This conclusion is mirrored in Citizens Advice 2010 which highlights research supporting an economic case for legal aid and which attempts to put a monetary figure on it (for example it estimates that for every £1 of legal aid expenditure on debt advice, the State saves up to £3).
- 3.66. Smith & Paterson 2014 raises questions about the extent to which significantly reducing the market of suppliers impacts on the market's ability to regulate the price and quality of legal aid advice.

Outcomes and satisfaction

- 3.67. Smith & Paterson 2014 highlights the disconnect between often high self-reported client satisfaction rates and the actual incidence of successful outcomes. Pearson and Davis 2002 found user satisfaction ratings to be associated with legal hotline outcomes, but emphasised that user satisfaction is an imperfect and limited measure of hotline effectiveness and, as a result, recommended that performance assessments should include random follow-up interviews and more in-depth analysis.
- 3.68. In respect of outcomes, Balmer et al 2012b has found that:
- mode of delivery is a significant determinant of outcomes achieved for service users, with a greater proportion of tangible outcomes delivered in the face-to-face setting.*⁹¹
- 3.69. Ehrlich 2006 examined callers who were told to take action by a legal hotline. It found that 22% of Welfare Benefits clients did not take the action suggested by the hotline. The reasons for this were mostly because individuals did not understand advice, did not remember what to do, or perceived it to be too hard to do.
- 3.70. Pearson & Davis 2002 has similarly assessed the effectiveness of five legal telephone hotlines in the USA. It found that, of those cases where an outcome could be determined, over half (52%) were unsuccessful. Most of the clients who did not act had failed to understand the advice they were given, or were too intimidated or overwhelmed to carry out the recommended action. It also identified the characteristics of those clients who were less likely to follow through on advice; these included those with depression, a family member having a disability or serious health problem, inflexible schedules (e.g. work), and literacy problems.

Transparency and accountability

- 3.71. Balmer et al 2012b highlights the importance of managing the profile and awareness of the Community Legal Advice helpline if it is to effectively respond to the needs of

⁹⁰ Young Legal Aid Lawyers 2011 – p.60

⁹¹ Balmer et al 2012b – p.26

the most vulnerable client groups. The importance of targeted promotion was also raised by telephone advice providers in Patel & Smith 2013b which claimed that client numbers fell after related advertising campaigns ended. It also claimed that promotion of services could help clients seek advice earlier and thereby increase the likelihood of a successful resolution. Smith & Paterson 2014 has likewise questioned whether a failure to publicise the Gateway would have an effect on the apparent demand for the service.

3.72. The Low Commission 2014 highlights the importance of monitoring the outcomes of the LASPO reforms, especially in the light of the legal sector's reduced research capacity. It recommended that the MoJ publish monitoring data quarterly and undertake impact reviews annually to examine the impact of the legal aid changes.

3.73. The MoJ has also stated that it is:

*'confident that implementing the telephone gateway in the limited areas of law will enable better monitoring of the impact on clients and providers in order to inform future decisions regarding any potential further expansion of the gateway.'*⁹²

3.74. The need for good quality performance management is also a key element of the MoJ Capability Action Plan which highlights the need for:

*high-quality, timely and well-understood performance information, supported by analytical capability, which allows you to track and manage performance and risk across the delivery system.*⁹³

Conclusions

3.75. This chapter has explored the legislative intent behind the Gateway and reviewed existing research to ascertain the questions most relevant to determining the impact of the Gateway. The four central research questions that arise are as follows:

- i. Is the Gateway a barrier to justice, especially for disadvantaged groups and vulnerable people?
- ii. Has the introduction of the Gateway provided value for money?
- iii. Does the Gateway result in good client satisfaction rates, and achieve outcomes for clients that are beneficial in comparison with other channels of advice delivery?
- iv. Is the Gateway being delivered in a transparent and accountable way?

3.76. We have excluded consideration of clients with clustered problems and how effectively the Gateway manages these, as being too broad a topic for the scope of this project (the complexities and issues it raises are likely to extend beyond the Gateway to the wider legal aid system).

⁹² Ministry of Justice, Government Response, 2011 – §27 annex D

⁹³ Cabinet Office 2012 – p.19

4. Gap Analysis of MoJ review Methodology

Introduction

- 4.1. The previous chapter concluded with a set of research questions relating to the impact and effective functioning of the Gateway.
- 4.2. This chapter is intended to provide a gap analysis of the methodology of the MoJ review to establish the areas of interest or importance that appear to fall outside of the scope of that work. This ensures that, wherever possible, we avoid duplication of effort and burden and that the remainder of this project addresses those questions least likely to be dealt with elsewhere. Any assessment of the chosen methodology is done in the spirit of a critical friend, to ensure that our work focuses on those areas that will provide the most value.
- 4.3. We approached the MoJ for details regarding the aims and methodology of the review and received a briefing note outlining its approach which is provided in Annex 7. Alongside this information we have also had discussions with MoJ officials undertaking the review, examined correspondence and information accessed via Freedom of Information Act (FOI) requests, and have considered the detailed project specification for the independent element of the MoJ review providing a qualitative analysis of Gateway user experience.
- 4.4. This gap analysis was produced prior to publication of the MoJ review. We have tried, wherever possible, to update our analysis, although this was ultimately done after this report was produced and so should not be considered an official response to the MoJ review.

What are the objectives of the MoJ review?

- 4.5. The main aim of the MoJ review was to *'robustly assess the accessibility and efficacy of the mandatory Gateway service'*.⁹⁴ The published report also states that the *'findings assess how effectively the Gateway is functioning; identify potential improvements that could be made to the service; and inform any future policy development around the Gateway.'* This is supported by six central research objectives:
 - i. to explore how effectively the Gateway has been implemented, including any problems that have been encountered, the reasons for these problems and ways in which they have been overcome;

⁹⁴ See Annex 7 for a note on the MoJ review Methodology on which this gap analysis was based. The full review documentation is available at: www.gov.uk/government/publications/civil-legal-advice-mandatory-gateway-review

- ii. to explore Gateway callers' experiences of using these services; identify any barriers or obstacles experienced by users, and identify any enablers or facilitators to effective use of these services;
- iii. to examine how effectively and accurately users' eligibility and advice needs are being assessed at the operator and specialist level;
- iv. to explore how appropriately and effectively the available reasonable adjustments are being used;
- v. to identify best-practice in the delivery of the Gateway service and remote legal advice;
- vi. to use the findings from the research to make clear and realistic recommendations about possible improvements to increase the accessibility and effectiveness of the Gateway service.

What methods did the MoJ review employ?

4.6. The MoJ review consisted of the following four main research streams:

- i. Analysis of quantitative management information (including volumes, demographics, matter types and outcomes) for 2013/14 from the Operator Service and telephone/face-to-face Specialist Telephone Advice Providers.
- ii. Qualitative interviews with 36 users of the Gateway (all of whom had reached the specialist adviser stage) to explore their experiences of using the service, including any obstacles and enablers to accessing the Gateway, and their views about whether the mode through which they accessed advice was appropriate and effective for them.
- iii. Qualitative interviews with individuals responsible for the front-line delivery of the CLA service employed at the Operator and Specialist levels of the service. Overall, 14 interviews were conducted with staff from the Operator Service, and 17 with Specialist Telephone Advice Provider
- iv. Qualitative interviews were also held with representatives from seven third sector organisations with experience and insight in delivering services to particular population groups (e.g. older people, people with physical or mental impairment, etc.) to explore their perceptions of the service's accessibility to these groups.

4.7. We also found mention in the various methodology notes, correspondence and tender documents of data from a client satisfaction survey, a survey of the Specialist Telephone Advice Providers to quantify their views on the accuracy and appropriateness of referrals made to them and an assessment of overall cost savings made by the Gateway.

Access to justice

4.8. The MoJ review took a *'process evaluation approach'* which means it looked in detail at how the Gateway functions, and checked for possible barriers or problems.

- 4.9. To do this it sought the views of a wide range of people including clients, the Operator Service, Specialist Telephone Advice Providers and third sector organisations. It explicitly evaluated how successful the Gateway has been in assessing users' advice needs and eligibility, and whether adjustments to facilitate accessibility have been used appropriately. The review does not seem to have considered how those people exempt from having to use the Gateway are now accessing services in Gateway areas of law, and this will need to be addressed before the full impact of the Gateway can be understood (particularly in terms of sustainability and access to justice).
- 4.10. The methods used in the MoJ review should provide valuable insight into the accessibility and effectiveness of the Gateway, particularly the interviews of Gateway clients undertaken by an independent team.
- 4.11. However, interviews were carried out with individuals who had been referred to a Specialist Telephone Advice Provider, and do not take into account the experiences of those who did not reach either the Operator Service stage (i.e. those who failed to access the Gateway at all) or those who spoke to Operator Service but did not reach the subsequent Specialist Telephone Advice Provider stage. The Operator Service currently transfers only 14% of calls through to Specialist Telephone Advice Providers.⁹⁵
- 4.12. The MoJ review was always unlikely to provide insight in respect of potential users who (for whatever reason) did not access the Operator Service stage of the Gateway. The pre-report methodology note ruled out '*an evaluation to establish the impact of the Gateway on civil legal aid clients [generally]*' given other concurrent LASPO reforms (e.g. the significant reduction in the scope of legal aid) as well as the lack of comparable current face-to-face services (now that the Gateway is the sole channel for seeking initial legal aid advice in Gateway areas of law). Similarly, the MoJ ruled out a comparison of pre and post-LASPO data in Gateway areas of law.
- 4.13. Quantitative analysis of the impact of the Gateway on civil legal aid clients generally would be reliant on assumptions which would limit the conclusions that could be drawn. However, the LSC provided estimates of the impact of LASPO and the Gateway on case volume and cost, in order to inform its savings estimates.⁹⁶ There is benefit to be gained from updating this methodology with more recently available data, and comparing the projected and actual figures (both volume and value), not least to provide context to any discussion of the potential impact on case volumes.
- 4.14. The MoJ review includes limited work with third-sector organisations including in respect of their roles as front-line advice providers and 'proxy' clients. However, there

⁹⁵ National Audit Office, 2014 – fig 9

⁹⁶ As detailed at §3.58 above.

would be benefit in gaining a wider insight into the interaction between front-line advice providers (e.g. Citizens Advice Bureaux and Law Centres) and the Gateway, including of assessing overall awareness of the service amongst organisations and clients.

- 4.15. The MoJ review claims there is *'no evidence that substantial numbers of users who qualify [for legal aid] are not accessing the service when they need it'*. This is a very strong assertion given that the review did not examine individuals who did not access the Gateway (or those who did not proceed beyond the Operator Service stage).
- 4.16. Any evidence that the Gateway is a *de facto* barrier to access to legal aid advice should be considered prior to any extension of the Gateway to other areas of law.

Value for money

- 4.17. The MoJ review 'Project Specification for the Qualitative Research into User Experiences of the Gateway' states that *'actual cost savings will be assessed as part of this review'*⁹⁷ and that:

*Data from the LAA and its predecessor the Legal Services Commission will be used to monitor the costs of the service, and the distribution of costs between telephone and face-to-face advice services.*⁹⁸

- 4.18. However, the MoJ review makes no mention of the final cost savings of the Gateway. This is a major omission given that one of the main motivations for introducing the Gateway was the potential for costs savings, and given that the existing evidence about the potential of the Gateway to provide tangible savings is far from conclusive.
- 4.19. The MoJ review does not consider the wider economic and social impact of the Gateway in terms of its effect on face-to-face providers, not-for-profit (NFP) advice providers or knock-on costs for other public services. This is an important consideration not just in terms of having the benefits of a holistic overview of the impact of the Gateway on these services, but also because these services support the Gateway,⁹⁹ and thereby its sustainability.

Outcomes and satisfaction

- 4.20. The MoJ states that it is not possible to compare Gateway outcomes with comparable face-to-face provision for the year 2013-14 (given that the latter group no longer exists as a result of the mandatory nature of the Gateway outside the small proportion of 'exempt' individuals and individuals referred for face-to-face advice).

⁹⁷ Specification for User Experience of Gateway Research – p.3

⁹⁸ Ibid p.7

⁹⁹ (e.g. by providing face-to-face advice when required, or 'proxy' services i.e. by calling the Gateway on behalf of an individual who is unable to access the service themselves)

- 4.21. The ability of the MoJ review to assess the accuracy of Operator Service assessments¹⁰⁰ has been limited. This is particularly the case because the MoJ has ruled out analysing regular assessments made by Specialist Telephone Advice Providers of the Operator Service, stating that:

The outcome of this assessment forms part of regular commercial in-confidence discussions between Capita and the LAA and thus are distinct from the one off measures (namely the qualitative research) and volume / user data that feeds into the Gateway Review¹⁰¹

- 4.22. Some insight into the accuracy of the Operator Service will be provided by other elements of the MoJ review methodology. However, exclusion of this relevant source of data is not consistent with the stated aims of the MoJ review to ‘*examine how effectively and accurately users’ eligibility for legal aid and their advice needs are being assessed at the operator...level*’. Data pertinent to a Government review of public services should be transparent where feasible.
- 4.23. Analysis of user experience and outcomes within the MoJ review is limited, particularly with respect to the Operator Service. This precludes a comprehensive assessment of value for money under the Gateway (as a measurement of quality of outcome is a crucial component of a value for money assessment).

Transparency and accountability

- 4.24. The MoJ review has published previously unavailable management information¹⁰² collected during the daily operation of the Gateway. The MoJ review has provided useful, if limited, analysis including in terms of protected characteristics and the use of reasonable adjustments.
- 4.25. However as set out at above at §4.21, the MoJ review has not considered reports arising from the contractual Gateway quality assessment processes. Consideration of these would provide for a more comprehensive and transparent assessment of the Gateway, particularly in the absence of other detailed data on the accuracy of Operator Service assessments.
- 4.26. As the MoJ review has taken a ‘*process evaluation approach*’ we anticipated that it would be interesting to see what conclusions were reached about the quality assurance processes and quality standards required in the future. However, it has not clarified the standards against which the Gateway is assessed, and what happens if it does not perform to those standards. This information should be a matter of public record.

¹⁰⁰ (e.g. of whether callers are financially eligible for legal aid, and whether their matters fall within the scope of legal aid, and if so, Gateway work)

¹⁰¹ See email from MoJ Principal Research Officer to Law Society (31 January 2014)

¹⁰² i.e. data collected to measure performance and drive improvement.

- 4.27. Recent research (notably Smith & Paterson 2014) has emphasised the importance of a clear communication strategy and of widespread promotion, on the success of the Gateway. The MoJ review refers to qualitative work with representative groups, which has helped to gauge the effectiveness of the Gateway communication plan. This is an area where ongoing work with front-line advice providers would be beneficial: awareness in this sphere is critical to ensuring that the Gateway is sufficiently known about by those who need to resort to it, and that it does not end up effectively serving as a barrier to access to justice.

Summary

- 4.28. We have examined the scope and methodology of the review and highlighted areas where further research would be beneficial, and in some instances necessary.
- 4.29. The remainder of this report looks to address these areas, providing primary research and analysis where possible, and identifying avenues for future research where it is not. It is divided into five chapters:
- Front-Line Advice Provider Experience of the Gateway
 - Transparency and Data Quality
 - Impact on Case Volumes
 - Assessing Case Outcomes
 - Value for Money

5. Front-Line Advice Provider Experience of the Gateway

'Information about the availability of the CLA telephone advice service is poor. The CLA web page on the MoJ website is difficult to find without knowing the precise search terms, and when found the layout is poor. The site seems more designed to filter people out than to encourage them to call. It is not clear what services are available and the telephone number does not feature prominently. We also believe that there is little awareness of the gateway amongst potential referring agencies so clients are not being signposted to it.'

Law Society of England and Wales, written evidence before the Justice Committee Inquiry into the Impact of Changes to Civil Legal Aid under LASPO, LAS39 (April 2014) – §7.5

Methodology and response

- 5.1. In July 2014, Public Law Project emailed a hyperlink to a short online survey to front-line advice providers, including Citizens Advice Bureaux (CABx) and Law Centres. The survey is provided in Annex 3 and was distributed via the following channels (incurring some overlap amongst those receiving the survey):¹⁰³
- Email directly to:
 - 90 CABx;
 - 50 (legal aid) solicitors' firms;
 - 37 law centres;
 - 15 other front-line advice providers; and
 - 19 local authorities.
 - Promotion of survey in the following:
 - Disability charity forum
 - Equality forum;
 - CAB managers' weekly e-bulletin and CAB legal e-bulletin; and
 - Law Centres Network monthly e-bulletin.
- 5.2. A total of 97 front-line advice providers responded to the survey. The majority were CABx (54%), Law Centres (16%) and solicitors' firms (14%). Whilst respondents were self-selecting we would expect them to be more engaged with the Gateway than non-respondents and therefore conclusions about low awareness of the Gateway should not be affected by the sample bias.¹⁰⁴

¹⁰³ Figures of those approached are approximate.

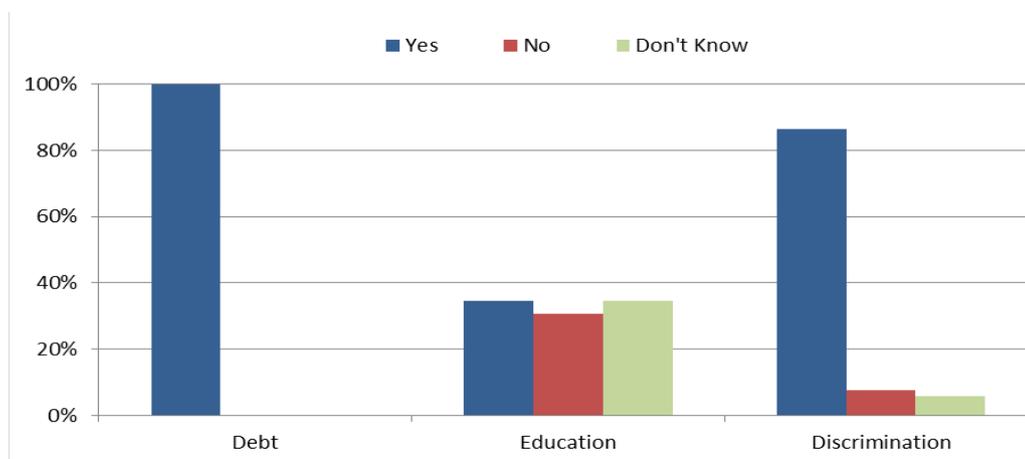
¹⁰⁴ (as people with experience of the Gateway are more likely to respond to a survey asking about their experiences than people who have not heard of the Gateway)

- 5.3. We also ran a short email survey targeted at other Gateway stakeholders, including specialist interest groups and representative organisations (provided in Annex 4). The intention of this was to assess the breadth of experience and awareness of the Gateway amongst these organisations. The email survey was sent to about 100 organisations, and we received responses from 26 organisations.
- 5.4. A full breakdown of response and all data tables relating to both surveys is provided in Annex 5. We made follow-up telephone interviews with a handful of the respondents who had provided specific reasons for not referring to the Gateway. These typically lasted between 20 and 50 minutes.

Requests for help

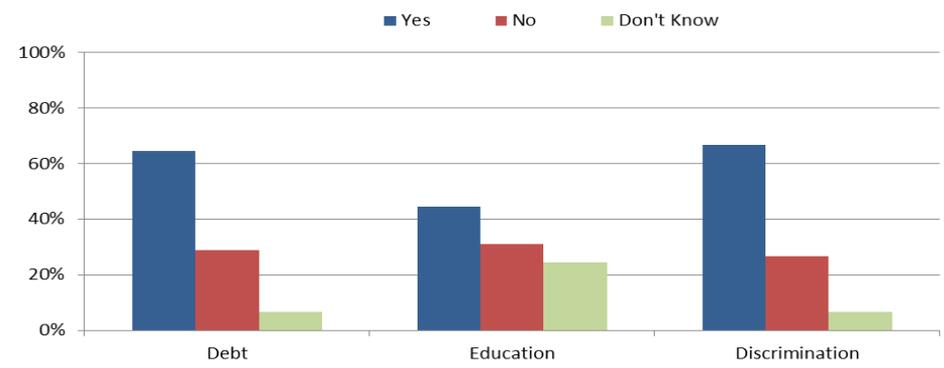
- 5.5. Respondents were asked whether they had received requests for help in the three Gateway areas of law since April 2013 (i.e. in the 16 months of the Gateway being in operation). We analysed responses for CABx and other respondents separately.
- 5.6. All of the CABx that responded had received requests for help in qualifying Debt matters, with a large majority also having received requests for help in Discrimination matters (87%). In respect of Special Educational Needs matters, answers were more evenly spread with only 35% of CABx having received requests for help (see Figure 1).

Figure 1: Percentage of CABx that had received requests for help in Gateway areas of law since April 2013.



- 5.7. For other respondents, the picture was more mixed (see Figure 2). Around two thirds had received requests for help in relevant Debt or Discrimination matters (64% and 67% respectively), while 44% had received requests for help in Special Educational Needs matters (half of which were Law Centres).

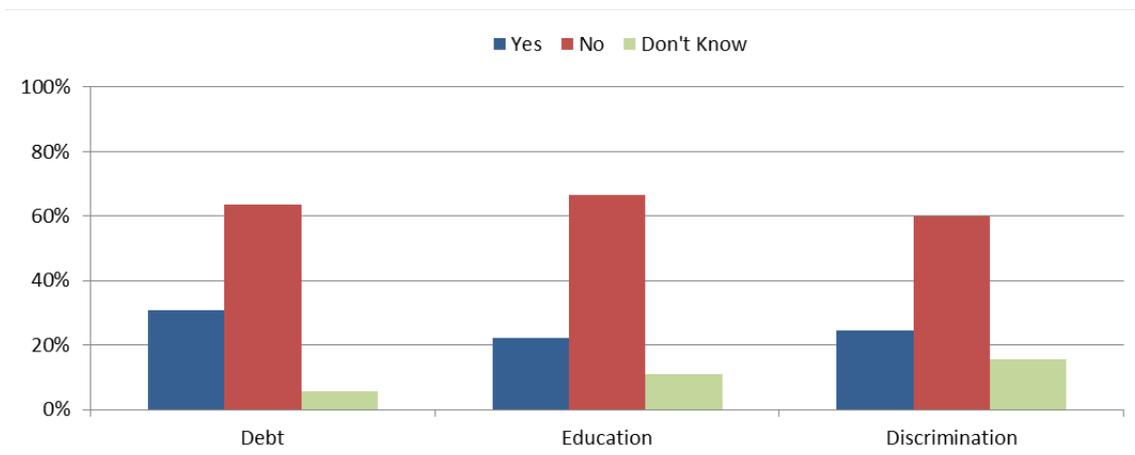
Figure 2: Percentage of other organisations that had received requests for help in Gateway areas of law since April 2013.



5.8. The high proportion of respondents that had dealt with requests for help in the three Gateway areas of law over the past year confirmed that the front-line advice providers responding to the survey were in a good position to provide potential insight into the functioning of the Gateway, and any effect it might be having on access to legal aid advice in the relevant areas of law.

Referrals to the Gateway

Figure 3: Percentage of CABx that had made referrals to the Gateway since April 2013.

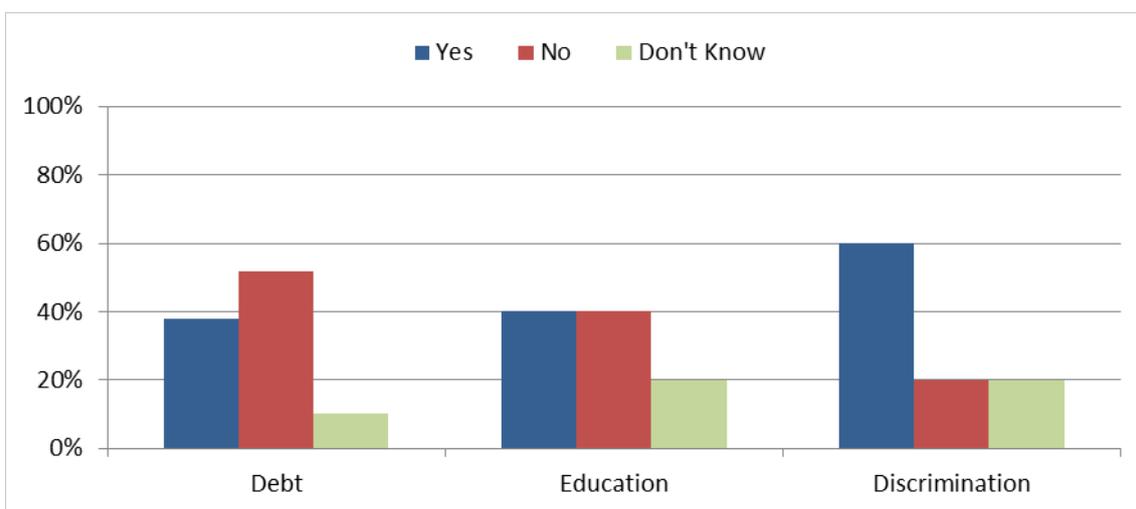


5.9. Respondents were asked whether they had made any referrals to the Gateway in those areas of law in which they had received requests for help.¹⁰⁵ Although all CABx respondents had received requests for help in qualifying Debt matters, only 31% had made a referral to the Gateway (see Figure 3). There was an even lower onward referral rate in respect of respondents who had received requests for help in Special Educational Needs matters (22%), and Discrimination (24%) matters.

¹⁰⁵ The total relevant respondents for this question varied according to whether respondents had answered 'yes' to the previous question for each of the three Gateway areas of law.

5.10. There was a slightly higher rate of referrals to the Gateway amongst other organisations, with solicitors’ firms and Law Centres being more likely to make referrals to the Gateway than other front-line advice organisations. Around 40% of all respondents had made referrals to the Gateway of Special Educational Needs and Debt matters (see Figure 4). In respect of Discrimination matters, the proportion of respondents that had made referrals was significantly higher at 60%. These referral rates are lower than might be expected given that legal aid firms are contractually obliged to signpost potential Gateway clients to the Gateway.¹⁰⁶

Figure 4: Percentage of other front-line advice organisations that had made referrals to the Gateway since April 2013



5.11. Specialist interest groups and representative organisations were asked in a separate email survey whether they had referred people to the Gateway, with around a quarter (27%) saying they had. They were also asked whether they had had any contact with the Gateway; only three out of 26 organisations reported that they had. Finally, they were asked whether they were aware of any individuals who had contact with the Gateway; five respondents confirmed that they were.

5.12. The low levels of those organisations reporting interaction with the Gateway further indicates low general levels of engagement with the Gateway. Some respondents had not heard of the Gateway. One respondent commented:

Our general feeling was that a number of members of the public had great difficulty accessing legal aid through the Gateway and those who were successful usually had to go a very roundabout way to get there.

¹⁰⁶ ‘You must signpost Clients or potential Clients to the helpline in respect of Gateway Work unless that Client or potential Client is an Exempted Person as described in the Procedure Regulations.’ 2014 Standard Civil Contract Specification (Community Care, Mental Health) – §2.45; 2010 Standard Civil Contract Specification (Clinical Negligence, Mental Health, Community Care, Actions against the Police etc., Public Law) – §2.68; 2013 Standard Civil Contract Specification (Family, Immigration and Asylum, Housing, Debt) – §2.49.

Reasons for non-referral

- 5.13. Where relevant, we asked respondents to provide a brief explanation of their reasons for not making referrals to the Gateway. A total of 46 open responses were provided; these were then coded to represent the most grouped responses.
- 5.14. 28% of respondents stated that the reason that they had made no referrals to the Gateway was because they were not aware of it, or of the role that it played in the potential provision of publicly funded advice. Over half of those that were unaware of the Gateway were CABx.¹⁰⁷ Other organisations that were not aware of the Gateway included a local authority, a Law Centre, universities and other front-line advice providers.
- 5.15. There were also doubts about the way that the Gateway was operating in practice. Upon further investigation these doubts were typically focused on the Operator Service stage.

Gateway promotion

- 5.16. The Government's LASPO Royal Assent Impact Assessment stated that the MoJ was 'developing a communication strategy to increase awareness' of the Gateway.¹⁰⁸ It stated the following in response to concerns expressed about the Gateway:

MoJ put in place robust channels and communications strategy to support the introduction of the LASPO changes. This involved an extensive engagement exercise with partner organisations who had traditionally been the main referral routes for clients into legal aid [and] communications all contained details of the assistance available from and means of contacting the CLA telephone helpline.¹⁰⁹

- 5.17. The response to our survey indicates that front-line advice providers have not been provided with sufficient information or support to understand the existence and role of the Gateway.¹¹⁰

¹⁰⁷ Respondent roles ranged from CEO and Service Manager, to Debt Caseworker and Advice-line Coordinator.

¹⁰⁸ Ministry of Justice, Impact Assessment, 2012 – §58(i)

¹⁰⁹ Civil Contracts Consultative Group, *Minutes of meeting on 9 September 2013* – §3.3, emphasis added; also see statement that the MoJ 'worked with a range of key referral partners to provide them with appropriate briefing about the CLA service', Ministry of Justice, *Written Evidence from the Ministry of Justice* (LAS 73, May 2014) – p.9; as well as assurances to Parliament 'We will be developing a communication strategy between now and 2013 when it will come online ... information about the line will be appropriate and specifically targeted to routes that individuals currently use to find out information' HL Deb 20 December 2011, vol 733 col 1767; reiterated in Ministry of Justice, Government Response to Gateway Review, 2014 – §2-4 chapter 3.

¹¹⁰ The MoJ review also found that: 'The CLA service ... was considered as having a low profile across all research participants' (Ministry of Justice, Gateway Review Summary, 2014 – §7.1) and that one client said 'it was very difficult to find' and that it seemed 'like it was hidden or something' (Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with users* (2014) – §2.1).

Experiences of the Gateway
Citizens Advice Bureau - Office Manager

'I have been a CAB Manager for well over five years and whilst we have a lot of promotional material for all sorts of other legal advice services (including in respect of family, discrimination, immigration advice, etc.), I am not aware of ever having received any promotional or awareness raising material about the Gateway. We certainly have no posters about it.

I am, quite honestly, shocked to find out from you that the only way to get publicly funded Legal Help advice in Debt, Discrimination, or Education matters, is via someone telephoning the Gateway. I have got to look into this. It was not the first port of call as far as I was aware. I am really surprised that we have not received more information about it.

We have so much information on our comprehensive information systems about other sorts of advice but there is hardly any mention of the Gateway, let alone of it being mandatory, or covering the specific areas of law to which you say it relates. We have not made many referrals to the Gateway because we just have not been aware of it. We must have more information about it if it is going to be extended.'

5.18. We made the following FOI request of the Legal Aid Agency (LAA):

Please could you provide ... information relating to the promotion and communication of the Gateway. In particular please could you provide:

- *the communication strategy document (or equivalent) for the Gateway*
- *the annual expenditure on promotion and advertising for the Gateway and a breakdown of expenditure¹¹¹*

5.19. In respect of the latter, the LAA responded with the following (in May 2014):

There is no separate dedicated communications budget for the changes brought about by LASPO, nor the CLA helpline. The costs of all communications in relation to the changes introduced by LASPO were met centrally by the LAA Implementation programme and MoJ Policy, as appropriate.¹¹²

5.20. No information is available on Gateway communication expenditure, notwithstanding that the MoJ previously acknowledged the importance of a communication strategy, which comprised one of the main elements of the anticipated £2 million 'one-off' Gateway costs (the marketing element of those one-off costs was initially estimated to be £1 million in the first year of operation).¹¹³

5.21. In respect of Gateway communication strategy documents, the LAA response disclosed several documents including a 'Channel Strategy Final Flowchart May 2012'¹¹⁴ which identified plans to 'Publicise mandatory gateway using communication materials – January 2013' and plans for the 'implementation of signposting strategy –

¹¹¹ Ministry of Justice, FOI Request 90201 (inc.90246) (12 May 2014) available at www.whatdotheyknow.com/request/cla_gateway_communication_strate#incoming-525618

¹¹² Ibid

¹¹³ Ministry of Justice, Impact Assessment, 2010a – §43; Ministry of Justice, Impact Assessment, 2012 – §32

¹¹⁴ Ministry of Justice, FOI Request 207329 at: www.whatdotheyknow.com/request/207329/response/520189/attach/6/Channel%20Strategy%20Final%20Flowchart%20May%202012.pdf

April 2013'. The FOI response also included a list of key milestones which 'were all completed on time'. The milestones included the following actions:

- Produce any new communication materials for HMCTS about the mandatory gateway and Online Gateway and distribute (to be ready Jan 2013)
- Publicise mandatory gateway using communication materials (Jan 2013)
- Review delivery of strategy and consider any next steps (May 2013)
- Evaluation of Project and Closedown (July 2013)

5.22. The MoJ stated that the most recent documents that it held relating to the communication strategy for the Gateway were from May 2012. It is unclear why several of the milestones set out above involve the creation and distribution of documentation after this date. At best, the MoJ has limited awareness of its up-to-date communication strategy documents which suggests that they may not have been given much prominence. This is notwithstanding that the Government states that it has been working 'continually' to 'refine the service and its promotion'.¹¹⁵

Experiences of the Gateway

Specialist Telephone Advice Provider A

'Awareness of the service is very poor. The demand for our part of the service is a sustained 50% of that which the LAA told us we could expect. This resulted in a painful period of readjustment, when having just recruited on the basis of the LAA's figures, we had to 'unrecruit' a significant number of legal advisers.

The CLA Specialist Telephone Advice Providers have raised this issue at meetings with the LAA, but the LAA has not done anything about it - they are not planning on doing any advertising of the service - their response is simply that that is just the way it is.'

5.23. Both the Low Commission Report (in relation to legal aid generally) and Smith & Paterson 2014 (in relation to the Gateway specifically) highlight the importance of a clear and effective communications strategy. Patel & Smith 2013b also evidence a direct link between promotion and take-up (telephone advisers claimed that client numbers fell after related advertising campaigns ended).

5.24. We have also found that guidance for front-line advice providers is not always clear. One of the introductory pages of key guidance for front-line advice providers states that '*any person wishing to apply for controlled work in the following categories must apply via the CLA; unless they are an exempted person'* after which it states '*Discrimination*' as one such category.¹¹⁶

¹¹⁵ Ministry of Justice, Government Response to Gateway Review, 2014 – §1 chapter 7

¹¹⁶ Legal Aid Agency, Guidance For Providers, 2013 – p.3, emphasis added

- 5.25. However, certain discrimination matters are not subject to the mandatory Gateway (namely, those that also fall within another LAA category definition area of law such as Actions Against the Police, etc. for which individuals do not have to telephone the Gateway).¹¹⁷ Individuals with such matters are entitled to seek face-to-face advice directly and are not subject to the Gateway.

The role of operators

- 5.26. The role of the Operator Service was always likely to be a contentious element of the Gateway, as non-legally qualified staff determine whether a person qualifies for legal aid (which is a question of potential complexity). The Government was clear about the role of the Operator Service, clarifying in its consultation response that:

*The operators do not simply follow a script but must be able to demonstrate that they can identify key words or issues from a client's description of a problem to ensure an accurate diagnosis of their legal problem. They are also expected to understand the different areas of law, including those areas within each category where a Specialist Telephone Advisor is able to advise. Additional specific training will be required to ensure that Operators are able to determine which matters are within the scope of legal aid.*¹¹⁸

- 5.27. However, various sources suggest that this does not appear to be the case. Operators themselves have been quite open about the fact that they are working through scripted questions to see whether a caller is eligible for advice under the Gateway, and the Government now acknowledges that:

*Operators rely on a computer based system which routes them through scripted questioning, to a final decision on whether the issue is in scope and should be referred to a specialist.*¹¹⁹

- 5.28. This appears contrary to the Government's prior assurances. The script or 'computer-based system' which routes Operators through their diagnoses of callers' legal issues is called 'Pinpoint'. Pinpoint raises general issues about whether the application of law to factual scenarios can be reduced to a purely administrative tick-box exercise, without running the risk of misdiagnosing peculiar, complex, novel, or poorly presented cases as having no legal aspect worthy of advice. The script should not mean that callers require some degree of understanding of the legal issues arising from their circumstances before contacting the Operator Service in order to secure a transfer to a Specialist Telephone Advice Provider for initial legal advice.

¹¹⁷ See definition of 'Gateway Discrimination matter', Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg 20

¹¹⁸ Ministry of Justice, Government Response, 2011 – §34 annex D, emphasis added (also see §37 annex D); reiterated in Ministry of Justice, Equality Impact Assessment, 2012 – §6.43

¹¹⁹ Ministry of Justice, Government Response to Gateway Review, 2014 – §11 chapter 5

Experiences of the Gateway

Local Authority - Community Welfare Rights Officer

'I make regular referrals to the Gateway and have done so at least 30 times since August 2013 when I first realised the scope of the service.

My experience has been that CLA Operators just do not have the skills to identify the relevant issues and as a result have misadvised clients of mine that their matters are, for example, out of scope of legal aid. For example, on three occasions the Operator Service allocated a discrimination matter of mine as a different type of matter altogether and therefore inaccurately advised my clients that their matters were out of scope. I had to argue the contrary with them on the telephone in order to secure legal aid for my clients. If my client had called without me accompanying them, then they would have been turned away on the incorrect basis that they were not entitled to legal aid advice, because they just would not have known what to argue.

I always do all the talking now after the telephone password is set up because I deal with severely mentally ill people and the system is not sufficiently user friendly to do otherwise. I have to spend time hand-holding my clients from the initial telephone call right through to the closure of the case - I act as an agent. Some of my clients are exceptionally vulnerable and ought to have received face-to-face advice, but none of them did. They had insufficient comprehension of what was happening as a result of advice being provided over the telephone.

Operators work to a script – I know that because that is what they tell me. If it were not for me doing all the leg work, my clients would fall at the bureaucracy stage before even getting through to an adviser at all; but even once they there get through to an adviser, there is so much paperwork, and five or six contacts with the adviser take place to establish just the financial eligibility before substantive advice is given, even though the Operator Service will have done all that assessment previously and even when clients are on simple benefits that 'passport' them through part of the financial eligibility stage.

- 5.29. Several sources have suggested to us that it is necessary to use certain 'buzzwords' to secure a transfer from the Operator Service to a Specialist Telephone Advice Provider. We are also aware of inaccurate Operator Service assessments which have resulted in individuals who qualify for legal aid being turned away on the incorrect basis that they do not qualify for legal aid.
- 5.30. At the same time, the MoJ review has found evidence of service users at the Operator Service stage finding '*particular personal questions intrusive*' and some Operators finding it '*hard to identify domestic violence issues and some mental health problems*'.¹²⁰
- 5.31. There are reports that the turnover rate of staff at the Operator Service is high, which would have an adverse impact on training staff and maintaining adequate standards, particularly given the complexity of the post-LASPO legal aid landscape.
- 5.32. We note that the MoJ review reports incidents of clients experiencing '*anxiety*', '*significant frustration*', '*disappointment and confusion*', as well as finding '*call charges problematic, using available credit or accruing a sizeable bill*' including one individual who '*was unaware of the call charges and reported spending so much that*

¹²⁰ Ibid §30 chapter 5; and Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with service providers* (2014) – §4.4

he had to borrow to pay a utility bill.¹²¹ These reports are not in line with the client-orientated objectives of the Gateway.

- 5.33. The proportion of individuals who are recorded as reliant on the support of third parties to engage effectively with the Gateway drops from 9.7% at the Operator Service stage, to about 1.8% at the Specialist Telephone Advice Provider stage.¹²² The MoJ review provides no explanation for the reasons behind this.
- 5.34. In respect of training, the Government assured Parliament of the following:
- On special educational needs, the Ministry of Justice is in discussion with the Department for Education to ensure that gateway staff have sufficient training*¹²³
- 5.35. However, an FOI request of the Department for Education requesting sight of documentation relating to the above, resulted in the following response:
- we have not provided the Ministry of Justice with any notes or guidance for the training of Gateway staff. Training for Gateway staff is a matter for the Legal Aid Agency.*¹²⁴
- 5.36. The Operator Service was initially run by Capita Group Plc., and subsequently Freedom Communications (UK) Ltd. (via its sub-contractor, Agilysys Ltd.) as of November 2014. Monitoring of the service provided by the new Operator Service contractor should ensure that problems reported of the predecessor are addressed prior to any expansion of the Gateway.

¹²¹ Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with users* (2014) – §2.2, 2.4, 4.2, & 4.4; the mental health charity Mind also conducted a survey to which *‘the majority of respondents who said they had tried to access the Government Civil Legal Aid service spoke negatively about their experience. Responses included “poor”, “rubbish” and “not worth wasting your time”.* Mind, *Written evidence before the Justice Committee Inquiry into the Impact of changes to Civil Legal Aid under LASPO*, LAS51 (April 2014) – §6.5

¹²² Ministry of Justice, *Civil Legal Advice mandatory Gateway: A secondary analysis of management information* (2014) – table 2.1 & 3.3

¹²³ HL Deb 27 March 2013, vol 744, col 1116

¹²⁴ Department for Education, *FOI Response 2014/0057336* 10 September 2014 paragraphs 11.61 to 11.66.

Experiences of the Gateway

Advice Charity A- Community Advocate

'I called the Gateway with my client sitting next to me to refer them for discrimination advice relating to an incidence of human trafficking. My experience of the Operator Service was very poor and extremely disappointing. The Operator kept saying things like "don't ask me these questions about scope and eligibility, I know absolutely nothing about the law or these procedures, you need to give me the information I ask for and I will put it into the computer, and the computer will tell me if we can progress or not."

There was a considerable amount of unnecessary hassle before the Operator accepted that I had authority to join with the conversation. My client was advised at the beginning that her matter was out of scope for legal aid. I had to intervene to satisfy the Operator that my client's matter was definitely in scope. She then let my client proceed to the next stage.

The Operator then advised my client that she was not financially eligible for legal aid. I have several years' experience in my current specialist advisory position and I was well aware of the particular financial eligibility point which the Operator claimed was problematic. I have arranged legal aid advice for several other individuals in exactly the same financial position as my client on the particular eligibility point being raised, and I know that it did not render my client financially ineligible. As before, I tried and tried to explain how my client was eligible, but the Operator just kept saying "oh I don't know what it is that you are talking about."

Having been denied legal aid (basically for the second time during that conversation), I asked if my client could have the refusal reviewed. The Operator said 'no'. I really was flabbergasted that this was the end of the process. I asked what the complaints procedure was, but when I googled the telephone number that the Operator gave me there and then, it turned out to be a generic MoJ number (for its press line or something equally unhelpful). I asked if I could speak to a manager, but the Operator explained that there was no one that I could speak to. I asked for a reference to which I could refer when making a complaint, but she said that there was no reference number.

I spent 1 hour and 40 minutes in total on the telephone and got absolutely nowhere. She just kept on saying "I don't know anything about the law, so don't ask me questions." All I was trying to do was establish the scope and eligibility of my client's matter, to get her past the hurdles so that she could get the legal advice that she was entitled to.

I failed.'

6. Impact on Case Volumes

Introduction

- 6.1. The MoJ review did not examine the impact of the Gateway on civil legal aid clients generally; instead it limited its focus to those that access its services. No attempt has been made to quantify the impact of the Gateway beyond this narrow scope, notwithstanding the following:
- i. A considerable number of concerns were raised throughout the Government's consultation process about the impact of the Gateway on clients being able to access legal aid, including in respect of individuals contacting the Gateway in the first instance. For example, the Disability Charities Consortium highlighted a concern that '*a sole telephone gateway may be an insuperable barrier to access*',¹²⁵ the Equality and Human Rights Commission stated that:

*our analysis concludes that people with learning difficulties, cognitive impairments or poorer mental health may be deterred from seeking advice ... There is a risk that having a mandatory telephone gateway will act as a prohibition or deterrent on access to justice.*¹²⁶
 - ii. Our research with front-line advice providers indicates a systemic lack of awareness amongst key organisations that would otherwise play a key role in making referrals to the Gateway; and
 - iii. Civil legal aid statistics show significant changes between 2012/13 and 2013/14, analysis of which would be beneficial particularly given that access to justice was a key objective behind the Gateway and that a '*key assumption*' had been that there would be '*no significant impact on the overall demand for legal advice*'.¹²⁷
- 6.2. The MoJ's justification for not considering the above is that scope changes would make accurate comparison impossible. Although comparisons would come caveated, this work would not be without worth, and we note that the LSC employed such methodology to calculate projected savings in support of the argument for reform.¹²⁸
- 6.3. The Government previously promised to '*monitor levels of people accessing the gateway in comparison with current and future [i.e. rather than past] services*'.¹²⁹ For

¹²⁵ Disability Charities Consortium, *Proposals for the Reform of Legal Aid in England and Wales: Statement from the Disability Charities Consortium* (14 February 2011) – p.4

¹²⁶ Equality and Human Rights Commission, *House of Lords report stage briefing: LASPO Bill* (March 2012) – p.11; the Government also acknowledged that '*Many of the concerns and issues raised about the proposals to expand the provision of specialist telephone advice ... included concerns that the proposals would*

- *limit access to justice and contravene human rights and equalities legislation due to the increased difficulties that many people would face in accessing specialist advice via the telephone. [... and]*
- *not be suitable for some clients such as those with hearing problems, older clients, younger clients, children, those with learning difficulties and clients at risk of abuse.*' Ministry of Justice, Government Response, 2011 – §63 annex D

¹²⁷ Ministry of Justice, Impact Assessment, 2010a – p.2

¹²⁸ See Ministry of Justice, Impact Assessment, 2012

¹²⁹ Ministry of Justice, Government Response, 2011 – §49 annex D

example, in respect of the ‘new category’ of Discrimination, the Government stated that:

*Data in relation to claims regarding to a contravention of the Equality Act 2010 are not available, as currently while these case are eligible for legal aid they are dealt with within the category of law within which they currently fall i.e. education or employment, and they are not separately classified as discrimination cases.*¹³⁰

- 6.4. However, there are ‘sub-categories’ of legal aid areas of law from which volume and value data can be extracted and analysed, and indeed this was the method employed by the LSC to calculate anticipated savings figures.
- 6.5. As this report is being produced after the publication of the first quarter data for 2014/15, we can compare ‘same quarter’ figures for the period following implementation of the Gateway. This is something which the MoJ has done frequently in its most recent statistical bulletin,¹³¹ but which it was not able to do in its review due to the timing of production.

Predicting volume of Gateway work

‘the community legal advice helpline already offers specialist telephone advice on debt, special educational needs and some discrimination cases. We trust that this provides sufficient knowledge on which to base our volume estimates and have a good sense about the realism of ensuring accessible services.’

Lord McNally,

House of Lords Debate, 14 March 2012, vol 736, col 286

- 6.6. We have used the LSC methodology that was used to project savings figures associated with the Gateway (i.e. which takes scope changes to legal aid into account) along with more up-to-date 2012/13 data, to produce estimates for expected volumes of Gateway work. The methodology and assumptions used by the LSC to calculate Gateway savings figures were obtained via an FOI request and are provided in Annex 8.
- 6.7. Whilst our estimates are caveated (in the same way that LSC projected savings would have been caveated), they provide a useful general context against which the actual Gateway work figures can be analysed. They also provide an indication of whether any unanticipated issues might be creating barriers to access to justice.
- 6.8. Table 1 summarises our application of the LSC methodology in order to produce anticipated volume figures.

¹³⁰ Ministry of Justice, Equality Impact Assessment, 2012 – §6.16

¹³¹ www.gov.uk/government/uploads/system/uploads/attachment_data/file/388799/legal-aid-statistics-july2014-sept2014.pdf

Table 1: Summary of methodology for Gateway volume projection

	A	B	C	D	E	F	G	H	I	J
	Proportion of matters remaining in scope	F2F matters completed 2012/13	F2F matters completed 2012/13 (remaining in scope) A x B	% of Gateway matters not resulting in a F2F referral	F2F matters completed 2012/13 (in scope) to fall under the Gateway (that do not result in F2F referral) C x D	Estimated F2F referrals 2013/14 C x (1-D)	Telephone advice matters completed 2012/13	Telephone advice matters completed 2012/13 (remaining in scope) G x A	Estimated number of Gateway matters 2013/14 (excluding F2F referrals) H + E	Additional Operator Work Starts (C uprated by 55%)
Discrimination	100%	1,650	1,650	90%	1,485	165	N/A	N/A	1,485	2,558
Debt	25.5%	62,571	15,958	95%	15,161	798	22,154	5,650	20,811	24,736
SEN	100%	441	441	90%	397	44	646	646	1,043	684
Total		64,662	18,049		17,042	1,007	22,800	6,296	23,339	27,977

- 6.9. In particular, we have calculated a figure for expected annual face-to-face advice referrals, and for expected annual Gateway matters excluding those face-to-face advice referrals (see columns F and I respectively). This was done by taking the face-to-face matters completed in 2012/13 (column B) and multiplying them by the estimate of how many would remain in scope (column A). The proportion of cases not referred to face-to-face advice (column D) was then applied to this total (column C) to arrive at a total annual Gateway matters figure (column E), and to deduce the number of face-to-face referrals (column F).
- 6.10. We have also estimated the expected additional 'operator work starts' (distinct from total calls as explained below at §9.3, column J) by taking the matters remaining in scope (column C) and up-rating them by 55%¹³² (to reflect ineligible, repeat and hoax calls). These additional calls were then added to the existing operator work starts in 2012/13 (154,945).
- 6.11. This results in an estimate of 182,922 operator work starts in 2013/14 (in respect of Gateway areas of law rather than in respect of the CLA Helpline in general).

¹³² As per the LSC methodology outlined in Annex 8.

Comparing expected and actual volumes of work

Experiences of the Gateway

Specialist Telephone Advice Provider B

'I do not know why volumes of work are so low: although the obvious problem is that service is not advertised anywhere – even the CABx do not know of it.

There is nothing really online anymore, like there used to be (there used to be a specific website). Providers are not allowed to do any marketing of their own (it is in our contract that we can only do it if approved by the LAA and the LAA does not approve it - we have tried to get material approved, but the biggest concession has been that we can email our partner organisations about the service, but we cannot print or leaflet or raise awareness through any of the usual marketing routes, even though the LAA would not be paying for it. The LAA has not given us a specific reason as to why and it seems to have no plans of its own to increase awareness - I suppose it would be paying for the cases that came out of it.'

- 6.12. Table 2 shows a comparison of expected and actual (2013/14) volume figures in Gateway areas of law. The actual number of Debt matters is about 90% less than expected, even after scope changes have been taken into account.
- 6.13. This results in the average number of matters started across the three Gateway areas of law being about 75% less than expected, despite more than expected matters being started in Discrimination and Special Educational Needs. This is because Debt matters are proportionately the largest Gateway area of law (based on our estimates, Debt matters should account for approximately 90% of Gateway work).

Table 2: Comparison of projected and actual Gateway matters started 2013/14

	Estimated Matters Started in 2013/14			Actual Matters Started 2013/14			% Difference
	Gateway	F2F	Total	Specialist Telephone Advice Service	Solicitors and NFP	Total	Total
Discrimination	1,485	165	1,650	2,301	0	2301	39%
Debt	20,811	798	21,609	2,081	353	2434	-89%
Education	1,043	44	1,087	1,147	6	1153	6%
Total	23,339	1,007	24,346	5,529	359	5888	-76%
Operator Work Starts			182,922			161,915	-11%

- 6.14. In respect of Discrimination, the LSC stated that its savings figures (on which we based the above expected matters started figures) were *'likely to be an*

underestimate' because the figures *'may have not captured all the required cases to calculate the Discrimination CLA savings.'*¹³³

- 6.15. However, the estimated figures for matters started that were set out by the LSC during its tendering process for Specialist Telephone Advice Providers in August 2012 are significantly higher than those in Table 2. The expected annual matters started in respect of Housing and Debt was 45,773, in Special Educational Needs it was 2,186, and in Discrimination it was 6,408.¹³⁴ As above, the LSC factored into account the scope changes of legal aid when calculating its figures. This indicates that number of matters started in respect of Special Educational Needs and Discrimination has been at least 45% and 60% less (respectively) than that anticipated by the LSC (again, after changes to the scope of legal aid have been taken into account).¹³⁵
- 6.16. We note that the MoJ review found *'consensus across Operators and Specialists'* that *'the main reason for lower than estimated User volumes'* was *'attributed'* to *'low level of awareness'*.¹³⁶
- 6.17. We have heard of several incidents of Specialist Telephone Advice Providers having encountered significant human resources and financial planning problems as a result of significantly lower than expected volumes of work being referred through to them.
- 6.18. It is also worth noting that only four Discrimination matters were the subject of funding at the Legal Representation stage of work throughout 2013-14 (despite for example 2,301 Discrimination matters being subject to initial legal aid advice under the Gateway).¹³⁷ Given the importance that Parliament placed on keeping Discrimination within the scope of legal aid,¹³⁸ and given Government assurances that *'that there would be no onward impact on the number of cases funded at the Legal Representation stage'*,¹³⁹ there seems to be a clear need for analysis (with the use of sub-category matter type codes) of whether, and why, there has been an overall decline in Discrimination work at the Legal Representation stage as a result of the Gateway.

¹³³ Ministry of Justice, Impact Assessment, 2012 – §57(ix)

¹³⁴ Legal Services Commission, *Invitation to Tender to deliver Community Legal Advice Specialist Telephone Advice Services from April 2013: Information for Applicants* (August 2012) – table A §2.40; reiterated in Ministry of Justice, *Pre-Qualification Questionnaire: Information for Applicants* (May 2012) – §1.26.

¹³⁵ The MoJ review confirms that volumes of Gateway work have been *'a reduction on provisional estimates'* Ministry of Justice, *Civil Legal Advice mandatory Gateway: A secondary analysis of management information (2014)* – §3.1.

¹³⁶ Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with service providers* (2014) – §.6

¹³⁷ Ministry of Justice, *Legal aid statistics: main tables April 2014 to June 2014* (25 September 2014) – table 6.2

¹³⁸ I.e. see §3.19 above

¹³⁹ Ministry of Justice, Impact Assessment, 2010a – §81

The face-to-face referral threshold

[Why did you want to see a Specialist face-to-face?] Because I had so much to tell him and I found it hard to put it all into emails. It was quite difficult you know. I mean, if I'd say something it'd lead to another question and another question and another question and another email, and I would have preferred to have been able to sit face-to-face and speak it with him.'

Ministry of Justice, *Civil Legal Advice Mandatory Gateway*

Findings from Interviews with Users (2014) – p.28

- 6.19. The Government assured Parliament that it would '*ensure that face-to-face advice continues to be available where it is genuinely necessary*', where it is '*more appropriate for the caller*', and where '*telephone service operators or specialists believe that they cannot provide a quality service without face-to-face contact*'.¹⁴⁰

*If the people who take the call, who are expert in finding out whether a person needs face-to-face advice, feel that people need face-to-face advice, they will get it. I am not just speculating.*¹⁴¹

- 6.20. According to the MoJ review, 177 referrals for face-to-face advice took place in 2013/14. Of these, 172 related to Debt matters, five to Discrimination matters; and none to Special Educational Needs.¹⁴² This equates to referral rates of 8.3% in Debt, 0.2% in Discrimination and 0% in Special Educational Needs. The latter two figures are considerably lower than the 5 - 10% referral rates anticipated by the LSC.¹⁴³ The MoJ review refers to face-to-face referral rates as being '*negligible*' in the Discrimination and Special Educational Needs contexts.¹⁴⁴
- 6.21. The threshold that must be met before a matter can be referred to face-to-face advice is as follows:

whether, taking into account all Service Adaptations and Reasonable Adjustments that are reasonably available to be implemented in respect of the relevant Client, the provision of the Remote Advice can reasonably be expected to enable:

- (a) you to understand and act on the Client's instructions; and*
- (b) the Client to understand and act on your advice.*¹⁴⁵

¹⁴⁰ HL Deb 14 March 2012, vol 736, col 286, emphasis added (also see col 285); Ministry of Justice, Government Response, 2011 – §39 & 42 annex D, emphasis added.

¹⁴¹ HC Deb 17 April 2012, vol 543, col 202; also see Legal Aid, Sentencing and Punishment of Offenders Bill Deb 8 September 2011, col 455; and HL Deb 23 April 2012, vol 736, col 1600.

¹⁴² Ministry of Justice, Gateway Review Summary, 2014 – §6.3

¹⁴³ 5% in respect of Debt, 10% in respect of Education; and 10% in respect of Discrimination, Ministry of Justice, Impact Assessment, 2012 – §57(i); reiterated in Legal Services Commission, *Invitation to Tender to deliver Community Legal Advice Specialist Telephone Advice Services from April 2013: Information for Applicants* (August 2012) – p.30.

¹⁴⁴ Ministry of Justice, Gateway Review Summary, 2014 – §1

¹⁴⁵ CLA Contract Standard Terms 2013 – §1.9 annex 1 (Specification)

- 6.22. Given that significantly lower than anticipated face-to-face referral rates have materialised, it may be that this ‘*exceptional circumstances*’¹⁴⁶ threshold is too high for the face-to-face referral mechanism to function as anticipated.¹⁴⁷
- 6.23. Some of the MoJ review data also requires clarification. An in-depth interview is cited as having been carried out with a Gateway client who received face-to-face Special Educational Needs advice during the same period of time that the review reports no Special Educational Needs face-to-face referrals having taken place.¹⁴⁸
- 6.24. The MoJ’s regular legal aid statistical bulletins¹⁴⁹ do not clearly show data that relates specifically to face-to-face referrals, or to the provision of advice to individuals who are exempt from having to use the Gateway. The MoJ should publish clear data on the extent to which advice is provided to both these categories of individuals, because they concern policies designed to ensure effective access to justice for vulnerable individuals, and also in furtherance of its commitments:

*The Government are confident that the gateway call operators and Specialist Telephone Advice Providers will be sufficiently experienced and trained to support vulnerable people. We plan to review the implementation and operation of the gateway ... to ensure that the exemptions, adjustments and support available properly protect those with disabilities and vulnerable people more broadly. We will publish a report of the review within two years of implementation.*¹⁵⁰

- 6.25. It may be worth analysing whether other legal aid reforms (e.g. the reduced scope of legal aid and reduced numbers of advice providers) are having an adverse impact on the ability of providers to make face-to-face referrals where the threshold is met. (One Specialist Telephone Advice Provider with whom we spoke expressed concern that it had been unable to find legal aid advice providers who would take on face-to-face referrals in 18% of cases in respect of its Debt and Housing telephone advice contract over the last year, notwithstanding best efforts to do so.)¹⁵¹

LAA guidance on the threshold

- 6.26. LAA guidance sets out the threshold that must be met before face-to-face advice can be provided. It considers the specific case of an individual who has ‘*relevant*’ paperwork that ‘*needs to be shared*’ with their solicitor, but which cannot be shared

¹⁴⁶ Ministry of Justice, Gateway Review Summary, 2014 – §2.1 & 5 (reiterated at p.3 & §7.2); also see Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with service providers* (2014) – §3.3 & p.30.

¹⁴⁷ I.e. see Government assurances set out at §6.19 above, and in particular HL Deb 14 March 2012, vol 736, col 285-6; HL Deb 23 April 2012, vol 736, col 1600; and HC Deb 17 April 2012 vol 543 col 201.

¹⁴⁸ Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with users* (2014) – table 1 appendix A & p.36.

¹⁴⁹ Available at: www.gov.uk/government/collections/legal-aid-statistics

¹⁵⁰ HL Deb 27 March 2013, vol 744, col 1110, emphasis added

¹⁵¹ We also note that the National Audit Office has reported that ‘*in 14 local authorities no face-to-face providers based in the area started any legal aid-funded work during 2013-14. Legal aid providers in a further 39 local authorities started fewer than 49 pieces of legal aid work per 100,000 people.*’ National Audit Office, 2014 – §3.23.

because it *'cannot be accommodated by the freepost service or electronic service or by intermediaries assisting the client to read and understand documents'*.¹⁵²

6.27. Such circumstances appear to give rise to a clear risk that ineffective or incorrect advice may be provided. However, the LAA guidance states that this scenario only comprises a *'secondary factor'* which *'**may** be taken into account'* (original emphasis), and if presented in isolation *'should not usually lead to a presumption that remote advice is inappropriate'*. Such an individual is unlikely to meet the threshold for face-to-face advice, unless additional factors are present which also weigh in favour of a face-to-face referral.

6.28. By way of background, the MoJ review reported the following issues concerning documentation:

*Exchanging documentation remotely could be more challenging for some, with concerns around security as well as practicality ... [There were] views from users which suggested that remote engagement may have compromised their ability to present the required information.*¹⁵³

*One participant paid almost £200 for staff in a high-street internet service to write up notes and send emails as they could not find an alternative way to communicate with the Specialist*¹⁵⁴

*[Evidence was also found of individuals who] found the process of establishing the validity of their claim problematic due to its duration, complexity or the documents required ... some people who use the CLA Gateway are not being diverted to face-to-face advice even though this is the most suitable service for them, and that some people are not being offered appropriate adjustments.*¹⁵⁵

6.29. There are other *'secondary factors'* (in respect of which the face-to-face threshold will not be met without the presence of additional factors), including the following:

- Cases where *'the client's confidence and experience of using the phone' is such that it 'could cause a significant barrier';*¹⁵⁶ and
- Cases where a client shows a *'level of emotional distress, that is unlikely to be accommodated by speaking to the client at another more appropriate time'*.¹⁵⁷

6.30. Again, these scenarios appear to depict circumstances in which telephone advice would not be appropriate, regardless of whether additional factors are present.

¹⁵² Legal Aid Agency, Suitability for Remote Advice, 2013 – p.14

¹⁵³ Ministry of Justice, Government Response to Gateway Review, 2014 – §24, 46 chapter 5, emphasis added

¹⁵⁴ Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with users* (2014) – §4.3, emphasis added

¹⁵⁵ Ibid §4.4 & 5.3, emphasis added

¹⁵⁶ Legal Aid Agency, Suitability for Remote Advice, 2013 – p.14. This is notwithstanding that the guidance also acknowledges that *'discomfort using remote advice may be more likely for older and younger clients'*

¹⁵⁷ Ibid

- 6.31. During the legislative process, the Government explained to Parliament that it was *'extremely important to bear in mind the flexibility that is built into this system'*.¹⁵⁸ However, the MoJ review states that:
- Both Specialists and Users argued for more flexibility around when face-to-face advice could be offered'*¹⁵⁹
- 6.32. The LAA's guidance for members of the public (in the form of a leaflet) is also misleading in implying that a face-to-face referral will take place when that arrangement would be a better way of receiving advice than over the telephone.¹⁶⁰ We note that a *'key finding'* of the MoJ review was that *'the need to manage expectations of Gateway users'* was a *'prevailing theme apparent in all of the qualitative strands of the review'* and that *'[u]ser frustrations often related to a disjunction between their expectations and the operational delivery of the service.'*¹⁶¹ Misleading guidance is also inconsistent with key objectives (e.g. of promoting client needs and client convenience) behind the Gateway.
- 6.33. Under the heading *'How we support access to the Gateway'*, the Government explains the following in respect of decisions to refuse to provide face-to-face advice:
- Users can request a review of the decision if they are dissatisfied'*¹⁶²
- 6.34. In the first five quarters of the Gateway being in operation, only one request for such a review has been recorded as having been made.¹⁶³
- 6.35. LAA Guidance on face-to-face referrals only refers to the Specialist Telephone Advice Provider (as opposed to the Operator Service) *'making the assessment'*.¹⁶⁴ One of the MoJ review's *'key findings'* was that assessments are *'deferred by operators to specialists'*.¹⁶⁵ However, Parliament was specifically assured that:
- both gateway call operators and specialist advisers will assess the specific needs of all callers case by case, and will, as appropriate, refer them to a face-to-face advice service if that is considered necessary.'*¹⁶⁶
- 6.36. LAA Guidance suggests that the threshold comprises only an option of last resort (i.e. to be considered only once all other forms of reasonable adjustments are ruled

¹⁵⁸ HL Deb 23 April 2012, vol 736, col 1600

¹⁵⁹ Ministry of Justice, Gateway Review Summary, 2014 – §7.3.

¹⁶⁰ It states *'you will normally get advice (known as legal help) from a Civil Legal Advice specialist adviser over the phone, online or by post. Your adviser will assess whether this is the best way for you to receive advice. If not, they can refer you to a face-to-face legal adviser in your region'*, Ministry of Justice, *Legal aid in debt, discrimination and special educational needs cases - A summary of what you need to do* (April 2013) – §3

¹⁶¹ Ministry of Justice, Gateway Review Summary, 2014 – §6.4 & 7.2; reiterated in Ministry of Justice, Government Response to Gateway Review, 2014 – §9 chapter 5

¹⁶² Ministry of Justice, Government Response to Gateway Review, 2014 – §15 chapter 4

¹⁶³ Ministry of Justice, *FOI Request 92824* (4 September 2014) – §3 annex A; the MoJ notes that it was also *'not exclusively a review of face-to-face restrictions but rather secondary to a merits review'*.

¹⁶⁴ Legal Aid Agency, *Guidance for Providers*, 2013 – p.4; also see Legal Aid Agency, *Suitability for Remote Advice*, 2013 – p.9.

¹⁶⁵ Ministry of Justice, Gateway Review Summary, 2014 – §1

¹⁶⁶ Legal Aid, Sentencing and Punishment of Offenders Bill Deb 6 September 2011, col 294, emphasis added

out and only when the legal duty to provide reasonable adjustments would otherwise apply).

- 6.37. However, in respect of reasonable adjustments, the MoJ review found the following:
- ‘Operators and Specialists relied upon a relatively narrow range’ of adaptations, which ‘were not routinely offered’, including where ‘it is clear that a User is struggling to communicate in English’;¹⁶⁷
 - The only Gateway client interviewed as part of the MoJ review that had relied on a translator, raised concerns ‘with the quality of interpretation ... this participant saw the more appropriate adjustment as being face-to-face contact, but this option was not made available’;¹⁶⁸
 - ‘despite requesting specific adaptations, these requests were not always accommodated’;¹⁶⁹
 - ‘Operators and Specialists agreed that adaptations could not accommodate the additional needs of those who were distressed, angry or had severe mental health issues’;¹⁷⁰

- 6.38. It summarised the situation as follows:

In essence, the research indicates that there are advantages in delivering the Operator stage of the Gateway remotely, but that these do not automatically transfer through to the Specialist stage.

*The nature of the sample meant that all participants had managed to contact the CLA, but it was evident that even these people had encountered obstacles in accessing the service.*¹⁷¹

- 6.39. The limitations of this research mean that it has not been open to us to analyse the extent to which the Operator Service correctly identifies and diagnoses emergency cases. However, we note that the MoJ review found a range of opinions ‘*on the process of receiving advice*’ within the pool of 36 clients that it interviewed, including some that were rated as ‘critical’. In this context, ‘critical’ means that they concerned ‘*time limits being missed by the Specialist, sense of not being taken seriously by them, [or] nothing heard at all.*’¹⁷²

¹⁶⁷ Ministry of Justice, Gateway Review Summary, 2014 – §6.3

¹⁶⁸ Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with users* (2014) – §4.3

¹⁶⁹ Ministry of Justice, Gateway Review Summary, 2014 – §6.3

¹⁷⁰ Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with service providers* (2014) – §4.4

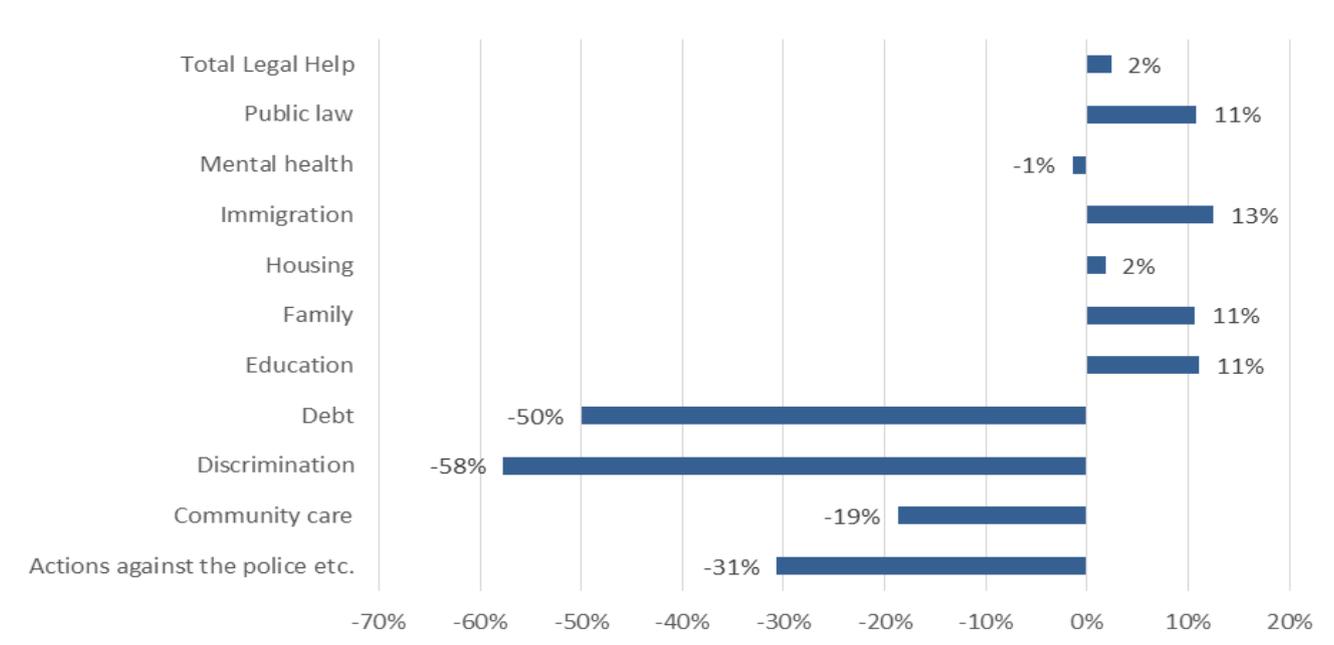
¹⁷¹ Ministry of Justice, *Civil Legal Advice mandatory Gateway - Findings from interviews with users* (2014) – §5 & 5.1, emphasis added

¹⁷² *Ibid* p.26; which clarifies that ‘Users had started the process of contacting the Specialist well in advance of the limits so it did appear that there had been delays. The range of views was evident for participants from each of the areas of law and regardless of whether they had completed their journey or not.’

Recent trends in volume of Gateway work

6.40. A comparison of all Legal Help matters started between Q1 2013/14 and Q2 2014/15 (the period since the introduction of LASPO) demonstrates a 2% increase in matters started across all channels of provision and areas of law (see Figure 5).

Figure 5: Percentage change in matter starts between Q1 2013/14 and Q2 2014/15¹⁷³



- 6.41. However, two of the Gateway areas of law show extreme reductions in matters started (-50% in respect of Debt; and -58% in respect of Discrimination).¹⁷⁴ Special Educational Needs shows an increase of 11%.
- 6.42. The MoJ may be concerned with the significant drop in Discrimination matters started given its position on these issues prior to the introduction of the Gateway.¹⁷⁵ Further investigation would be required to investigate the potential causes for such significant reductions in the volume of Gateway work.
- 6.43. The emerging data suggests a continuing trend in respect of both Discrimination and Debt matters. Table 3 shows the quarterly number of Gateway matters started by Specialist Telephone Advice Providers.¹⁷⁶ Both the Discrimination and Debt

¹⁷³ We have excluded any areas of law that had less than 100 matter starts in 2013/14 to reduce variability (although these figures are included in the total Legal Help figures). Each area of law includes matter starts from all channels of provision (e.g. NFP and solicitor is also included in Gateway matters).

¹⁷⁴ These percentages differ slightly from those on the previous page as they include all channels of provision and not just the Gateway.

¹⁷⁵ E.g. see §3.19 above

¹⁷⁶ There are a small number that went through to NFP advice services and solicitors' firms but these are excluded from this table.

categories experience a gradual decrease in matters started through the Gateway over the six quarters.¹⁷⁷

Table 3: Gateway matters started between Q1 2013/14 and Q2 2014/15

	2013-14				2014-15		% change in year to		% change since introduction of LASPO
	Q1	Q2	Q3	Q4	Q1	Q2	Q1 2014-15	Q2 2014-15	
Debt	575	587	453	466	359	304	-38%	-48%	-47%
Discrimination	733	671	429	468	409	310	-44%	-54%	-58%
Education	362	290	232	263	471	409	30%	41%	13%
Total	1670	1548	1114	1197	1239	1548	-26%	-34%	-34%

Recent trends in operator work starts

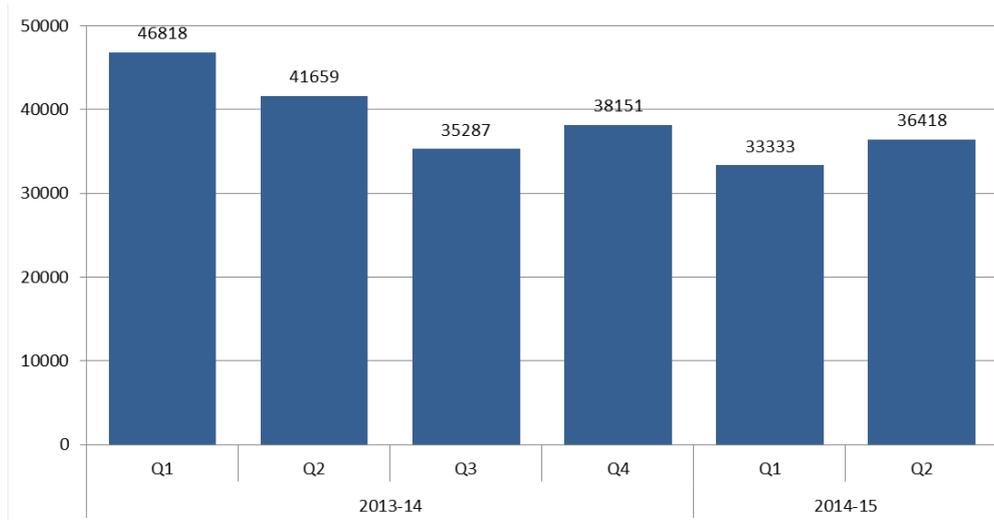
'if people have to go through a central call centre, which is the only way into the system, they will not get the same service as with NHS Direct, for example. With that service, if someone does not like what they get they can go to their chemist, GP or hospital, but this call centre will be the only way in ... It should be monitored by Parliament and Members of Parliament, as well as by the Government'

Simon Hughes MP

House of Commons Debate, 2 November 2011, vol 534, cols 988-989

- 6.44. The number of CLA Helpline operator work starts (i.e. relating to both Gateway areas of law and non-mandatory areas of law) has significantly decreased by 22% between Q1 2013/14 and Q2 2014/15. Figure 6 shows the quarterly Operator Service work starts since Q1 2013/14.

¹⁷⁷ Whilst each Gateway area of law experiences a dip in matters started in Q3 this is reflected in historic legal aid data and does not indicate a trend solely applicable to the Gateway.

Figure 6: Operator work starts between Q1 2013/14 and Q2 2014/15

- 6.45. Were the service to be functioning well, Operator Service volumes of work might be expected to have increased as more people became aware of the Gateway service as the sole route to advice and assistance,. However, this is not happening.
- 6.46. The increase in operator work starts as projected by the LSC methodology has also not materialised, instead being at least 11% less than projected.
- 6.47. The Government stated in its Impact Assessment that:
- an increase in the call volumes may not ultimately occur, for example if clients decide to access (and possibly pay for) other face-to-face advice provision rather than phoning the CLA helpline.*¹⁷⁸
- 6.48. However, this would seem an unlikely explanation given the findings of a recent report that *'cutbacks have destabilised and reduced the advice and legal support sector at a time of increased need'* such that *'[a]ll around the country we found advice agencies buckling under the strain, and ordinary people left with nowhere to turn.'*¹⁷⁹

¹⁷⁸ Ministry of Justice, Impact Assessment, 2011 – §34

¹⁷⁹ The Low Commission, *Tackling The Advice Deficit* (January 2014) – p.vii; and accompanying press release dated 9 January 2014.

7. Assessing Case Outcomes

Government position

- 7.1. During the consultation process for LASPO, the Government's stance on the possible effect that the Gateway would have on levels of client service shifted somewhat:
- The initial position was that *'there would be **no significant reductions in customer service quality, including customer satisfaction, customer costs and customer outcomes.**'*¹⁸⁰
 - Following an overwhelmingly negative response to the consultation, particularly in respect of the Gateway proposals,¹⁸¹ the Government stance altered slightly acknowledging that *'there **might be a reduction in customer service quality, including customer satisfaction, customer costs and customer outcomes.**'*¹⁸²
 - By the time LASPO reached Royal assent, the Government's line altered again, such that it considered that *'there **might be an impact on customers' perceived service quality, including customer satisfaction, customer costs and customer outcomes. However, it has been assumed that mitigating actions would be successfully undertaken to prevent any unintended impacts on service quality. Consequently it has been assumed that the quality of Legal Help would remain at current levels.**'*¹⁸³
- 7.2. The Government laid a clear emphasis on client convenience being one of the key objectives behind the implementation of the Gateway,¹⁸⁴ and has referred to customer satisfaction rates. However, satisfaction surveys generally reflect elements of respondent bias (e.g. because people who have received a good level of service are more likely to spend time completing a survey than those who have had a negative experience).
- 7.3. The context in which such surveys are undertaken must be made clear before resulting data can be evaluated, given for example that customer satisfaction surveys can depend on the stage at which, and the format in which, they are presented to self-selecting groups of respondents.¹⁸⁵ Any reliance on customer satisfaction

¹⁸⁰ Ministry of Justice, Impact Assessment, 2010a – §81, emphasis added

¹⁸¹ E.g. see §3.5 above

¹⁸² Ministry of Justice, Impact Assessment, 2011 – §53(vi), emphasis added

¹⁸³ Ministry of Justice, Impact Assessment, 2012 – §57(vi), emphasis added

¹⁸⁴ E.g. see §3.26 above

¹⁸⁵ The MoJ review acknowledges that positive client experiences of the Operator Service were *'dependent on the Users' own ability to provide the information requested of them and ultimately receiving a positive outcome (typically receiving Specialist advice)'* (Ministry of Justice, Gateway Review Summary, 2014 – §6.1); the Operator Service is also contractually required to *'maintain a satisfaction rating of at least 85% satisfaction (measured through automated feedback software) of Clients following initial call to the Operator Service'* (clause 5.8 and sch.5 (§3) of the contract for Operator Services with First Assist Services

should also not come at the expense of an assessment of matter outcomes and other indicators of a quality advice service.

- 7.4. Previous LSC research into the provision of legal advice and casework via a telephone advice line noted that even when the service provided the client with no tangible outcome clients were still likely to show high levels of satisfaction (58% would be likely or certain to recommend the service to others despite the advice line not being able to provide any help).¹⁸⁶
- 7.5. On one reading this demonstrates the good service that a telephone advice line can provide to clients. But, it also demonstrates that client satisfaction levels are of limited value when it comes to assessing the *quality* of the provision of legal advice. Recorded client satisfaction is not an accurate predictor of whether outcomes are substantially beneficial. It is therefore important that an accurate assessment of the effect of the Gateway on tangible case outcomes is undertaken to inform consideration of any potential expansion of the Gateway to other areas of law.
- 7.6. By way of background, the Government has acknowledged that '*many [consultation] respondents were of the view that there was a lack of robust research demonstrating the benefit and outcomes of telephone advice.*'¹⁸⁷ Indeed, the final LASPO Impact Assessment acknowledged previous LSC research (Balmer et al 2012b) that suggested that:

*the type of substantive benefit achieved is different between face-to-face and telephone advice. Clients are more likely to gain substantive benefit from a face-to-face service in Debt, Welfare Benefits and to a lesser degree Employment law. However, in Family and Education law, CLA telephone service clients are more likely to derive a substantive benefit in their case outcome.*¹⁸⁸

- 7.7. And the final LASPO Impact Assessment concluded that:

*Before any further conclusions can be drawn about the possible difference in outcomes based on channel a more detailed investigation is required.*¹⁸⁹

Recent trends in Gateway outcomes

- 7.8. Comparing outcomes is complicated by the fact that (at least using publicly available data) it is not possible to identify matters that both started and completed after the

Limited); also note SLA 8 table 5, appendix 4, of Contract with Agilisys Limited which includes reference to a 'service failure threshold' of 70%.

¹⁸⁶ Legal Service Commission, 2004 – p.21

¹⁸⁷ Ministry of Justice, Government Response, 2011 – §69 annex D; e.g. see Advice Services Alliance, *Response to the Ministry of Justice's consultation paper* – §4.34; Access to Justice Action Group, *Access to Justice Action Group Response* – p.73; Bar Council of England and Wales, *Response of the Bar Council of England & Wales to the Consultation Paper CP12/10* – §64 & 75; Just Rights, *The impact on Children and Young People of the Legal Aid, Sentencing and Punishment of Offenders Bill* – §6.3 appendix 1.

¹⁸⁸ Ministry of Justice, Impact Assessment, 2012 – §20, emphasis added

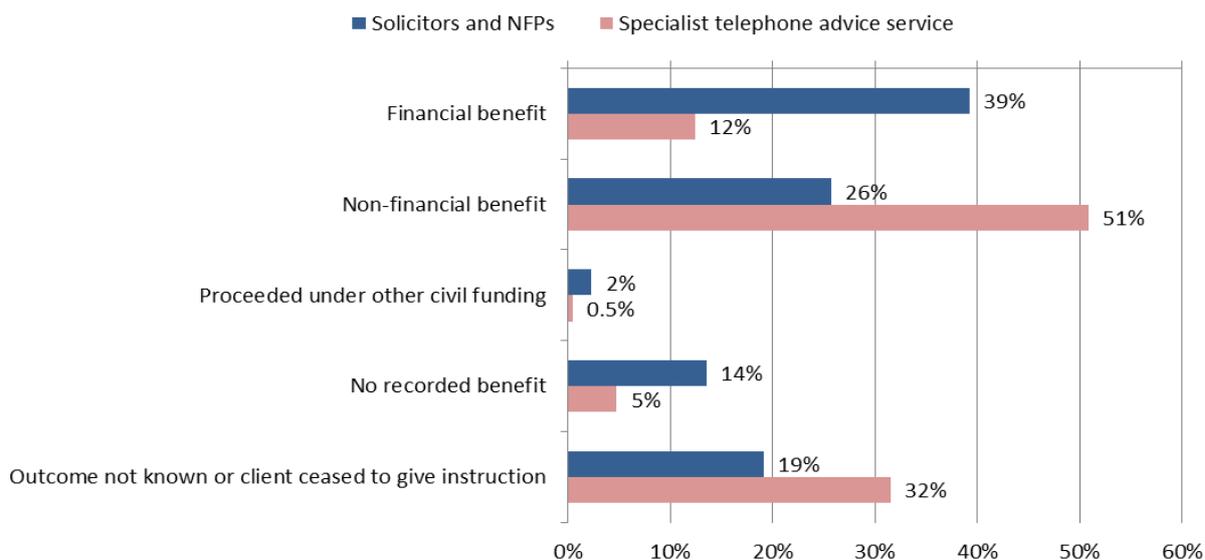
¹⁸⁹ Ibid §21

introduction of the Gateway. However, limited analysis on this basis was provided in the MoJ review, and more analysis on this basis in the future would be beneficial given its key relevance to quality monitoring.

7.9. If we assume that the Legal Help outcomes recorded in the first two quarters of 2014/15 relate mainly to matters that were started after the introduction of the Gateway, then we can compare outcomes in Debt matters between channels. There is insufficient comparable face-to-face data for this to be possible in respect of Discrimination and Special Educational Needs.

7.10. Figure 7 shows the variation in outcomes across the different channels of Debt advice. Telephone advice presents a significantly higher likelihood of ‘outcome not known or client ceased to give instruction’ and ‘non-financial benefit’ outcomes (almost a third of all Debt matters managed by the Gateway result in ‘outcome not known or client ceased to give instruction’). At the same time, NFP advice services and solicitors' firms appear three times more likely to result in ‘financial benefit’ than the telephone advice service.

Figure 7: Outcomes in Debt matters completed by channel of advice in Q1 & Q2 2014/15



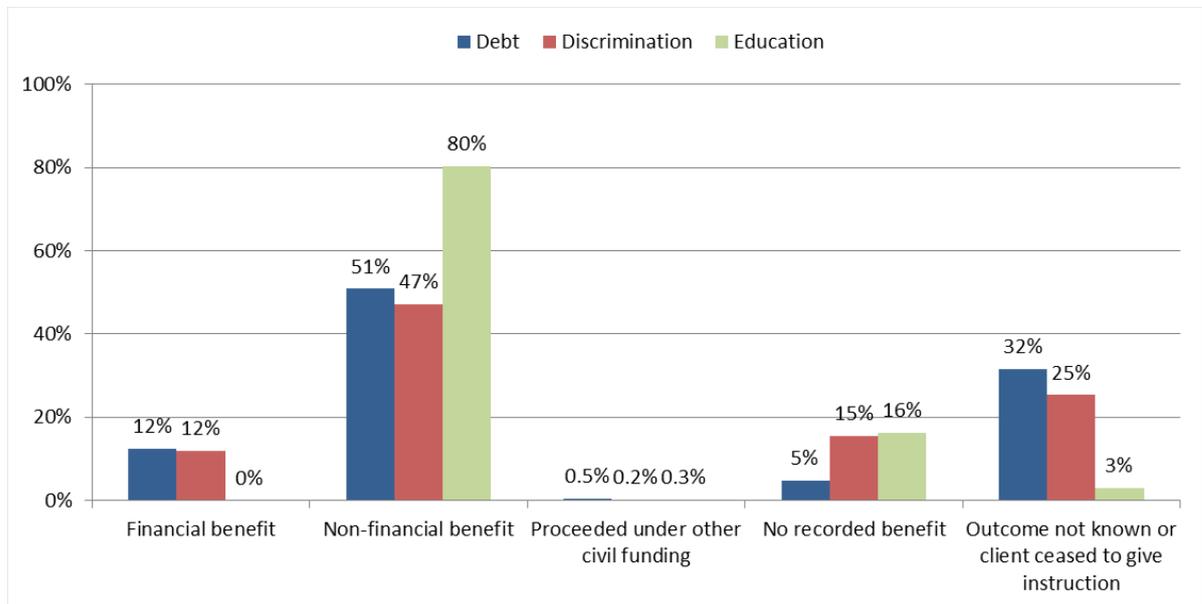
7.1. These significant differences require explanation, particularly given that the Government assumed the Gateway would have ‘no aggregate impact ... on case outcomes’ and that:

*if evidence is found ... that suggests quality may be affected, the LSC will investigate which mitigating actions are required to help ensure that, for all customer and case types of case, there should be no significant reductions in ... case outcomes.*¹⁹⁰

¹⁹⁰ Ministry of Justice, Impact Assessment, 2010a – §34

7.2. However, a greater understanding of the above data would require a more detailed breakdown of the data. The MoJ review provides limited analysis on the outcomes of Gateway cases, but did link matters started with matters completed, proving it would be possible to undertake more accurate and detailed analysis of Gateway outcomes.

Figure 8: Telephone advice service outcomes in Gateway matters completed in Q1 & Q2 2014/15



7.3. Figure 8 shows the difference in outcomes of all Gateway matters completed in the first half of 2014/15. As above, a significant proportion of matters result in ‘outcome not known or client ceased to give instruction’ and ‘no recorded benefit’ in respect of Debt (32%) and Discrimination matters (25%).

**Experiences of the Gateway
Specialist Telephone Advice Provider C**

‘More cases tend to just fall at the wayside under the Gateway than in the face-to-face setting, and we will often not even receive a response to our advice letters. This is often as a result of being unable to get proper instructions from clients, or from clients failing to get necessary documents to us - not just evidence of their financial eligibility, but relevant correspondence that we need in order to be able to take full instructions from them.

The system places a lot of responsibility on the client; those cases that run smoothly are for those clients who are savvy enough to know how to get things done, like how to scan and email documents to us without delay’

7.4. Our interviews with Specialist Telephone Advice Providers highlighted that more cases fall at the wayside than in the face-to-face setting. Possible reasons attributed to this concerned problems with documentation, inability to take full instructions, and too much being required of vulnerable clients.

Quality assurance and market controls

- 7.5. The number of national providers of Legal Help advice in each of the three Gateway areas of law is between three and five. (For example, prior to the Gateway there were 26 Special Educational Needs Legal Help providers, but under the Gateway this has been limited to three.)¹⁹¹ In the past the market has been assumed to play a role in regulating quality, on the assumption that individuals will generally seek advice from those organisations with the best reputation.
- 7.6. However, the Gateway (which allocates callers equally amongst the Specialist Telephone Advice Providers) removes the previously market-based incentive for organisations to provide quality services and advice. The Government acknowledged that *'reduction in volumes of face-to-face provision may lead to reduced competition, particularly if the contract sizes are small'*¹⁹² (which is what has taken place). All that seems to remain in terms of quality assurance are LAA auditing procedures which focus on ensuring that administrative procedures are complied with, rather than assessing and incentivising high quality legal advice.
- 7.7. The National Audit Office recently reported that the MoJ has *'a weaker grasp'* of the quality of advice under certain aspects of the Gateway (e.g. that of face-to-face advice) compared to that of the Operator Service.¹⁹³ For example, it noted that the LAA does not monitor client feedback or specify what feedback questionnaires should cover.¹⁹⁴
- 7.8. The National Audit Office also indicated that peer review is the main form of quality assurance of Gateway advice.¹⁹⁵

The elements the [Legal Aid] Agency monitors are:

- **Compliance with contractual requirements ...**
- **The accuracy of bills submitted by legal aid providers ...**
- **The quality of legal advice provided (whether the advice was correct) – Quality of legal advice is assessed through a mixture of targeted and random peer reviews; most reviews are targeted. A high proportion of the firms fail these.**¹⁹⁶

¹⁹¹ Ministry of Justice, *Legal aid statistics: main tables April 2013 to March 2014* (25 September 2014) – table 9

¹⁹² Ministry of Justice, *Impact Assessment, 2010a* – §86

¹⁹³ National Audit Office, 2014 – §13 & §3.9-3.14

¹⁹⁴ National Audit Office, 2014 – §3.13

¹⁹⁵ Peer review is *'a system in which a panel of independent experienced legal practitioners assesses the quality of work of other professionals against a set of criteria and levels of performance agreed with the professional community' and the LAA explains that it is 'used as an integral part of the Legal Aid Agency's (LAA) provider management strategy as a direct measure of the quality of advice and legal work of a provider.'* Legal Aid Agency, *Independent Peer Review of Legal Advice and Work Final Process Paper* (April 2013) – §1.1, 1.2

¹⁹⁶ National Audit Office, 2014 – §3.12 underlining added

- 7.9. When Parliament raised concerns about it being ‘vital’ that under the Gateway ‘the quality of legally aided work is not allowed to slip and that a two-tier legal system is not created’, the Government gave the following assurance:

Contracted specialist telephone advisers are required to meet a higher peer-review standard than face-to-face advice providers ... Once a provider holds a contract, its quality of work is checked through peer review. The provider must also meet a number of key performance indicators, which include criteria such as beneficial outcomes for clients and the cost of work not falling significantly below the fixed or graduated fee.¹⁹⁷

- 7.10. However, the LAA stated in September 2014 that ‘[t]here have been no peer reviews carried out on any CLA 2013 [i.e. Gateway Specialist Telephone Advice Provider] Contracts.’¹⁹⁸
- 7.11. The MoJ has also confirmed that no ‘mystery shopping’ exercises were carried out in respect of Specialist Telephone Advice Providers throughout the first year of the Gateway being in operation.¹⁹⁹
- 7.12. In respect of the Operator Service, the MoJ indicated in September 2014 that no Specialist Telephony Provider reviews had taken place since the introduction of the Gateway (as provided for in the Operator Service contract).²⁰⁰ However, the Operator Service contract between First Assist Services Limited²⁰¹ and the LSC requires that:

7.2 *The Provider [i.e. the Operator Service] shall send a sample of calls ... to the LSC at least twice per year for review by Specialist Telephony Advisers*

...

7.4 *Following completion of a review the Provider shall review the results and submit an analysis of the results (in a format to be agreed) to the LSC.*

7.5 *This analysis shall include:*

7.5.1 *a summary of the results;*

7.5.2 *an investigation in to the cause of any areas of problems highlighted by Specialist Telephony Advisers;*

7.5.3 *recommendations to improve the level of service offered to*

¹⁹⁷ Legal Aid, Sentencing and Punishment of Offenders Bill Deb 6 September 2011, cols 295, 307, & 309, emphasis added; reiterated in Ministry of Justice, Government Response, 2011 – §74 annex D; Ministry of Justice, Equality Impact Assessment, 2012 – §6.72.

¹⁹⁸ Ministry of Justice, *FOI Request 92671* (10 September 2014)

¹⁹⁹ Ministry of Justice, *FOI Request 90359* (20 May 2014); the Specialist Telephone Advice Provider contract states that ‘as part of our Assessment of your performance and compliance, our representatives may telephone, visit or otherwise contact you as if they were a Client and report the outcome to us ... If we do assess you in this way we will ... follow the Market Research Society Code of Conduct’, §9.11 of the CLA Contract Standard Terms 2013.

²⁰⁰ Ministry of Justice, *FOI Request 92670* (9 September 2014): ‘Please confirm how many Specialist Telephony Provider reviews have taken place’ to which the MoJ responded ‘I can confirm that there was one Specialist Telephony Provider review in June 2010m, April 2011 and August 2012.’

²⁰¹ The contract is between First Assist Services Limited and the LSC, albeit Capita Group Plc. subsequently acquired First Assist Services Limited in 2010; both contractual documents disclosed in Ministry of Justice, *FOI Request 90003* (13 June 2014).

clients; and

7.5.4 a plan setting out all actions necessary to remedy all issues identified within a period of 3 months

7.9 ... the provider must score an average rating of 3 – threshold competence [etc...]²⁰²

7.13. Furthermore, prior to the introduction of the Gateway, the MoJ explained that:

The provider of the gateway Operator Service will continue to be required to meet appropriate quality standards. Currently they are expected to meet the Community Legal Service (CLS) General Help Quality Mark and the overall CLA service has achieved the Customer Service Excellence standard.²⁰³

7.14. However, there seems to be no mention of compliance with a particular quality mark in the current Operator Service contract with Freedom Communications dated July 2014.²⁰⁴ The Low Commission reported that the CLS Quality Mark came to end with the introduction of LASPO and *‘there is no longer a consistent range of standards for the advice and legal support sector.’²⁰⁵*

7.15. Quality assurance under the Gateway therefore does not seem to be a priority for the Government, notwithstanding its stated commitment to maintaining a quality legal advice service. It is not clear on what basis Parliament was assured that advice under the Gateway would be *‘generally of higher quality’²⁰⁶* than the provision of face-to-face advice.

²⁰² Standard Terms and Conditions of Contract between the LSC and First Assist Services Limited dated 16 September 2009 – §7 sch.1 (disclosed in Ministry of Justice, *FOI Request 90003* (13 June 2014)), emphasis added.

²⁰³ Ministry of Justice, Government Response, 2011 – §33 annex D

²⁰⁴ This is notwithstanding that the contract with the previous Operator Service required the Operator Service to *‘achieve the General Help Quality Mark or equivalent within three (3) months’*, Standard Terms and Conditions of Contract between the LSC and First Assist Services Limited dated 16 September 2009 – §4.1 sch.4.

²⁰⁵ Low Commission, 2014 – p.1 annex 8

²⁰⁶ HC Deb 17 April 2012, vol 543, cols 202

Experiences of the Gateway

Specialist Telephone Advice Provider D

'Previously, the system ensured quality of advice as a result of market forces (i.e. the best quality advice providers would generally experience the highest demand for their services), but also with the use of peer reviews. However, the Gateway has done away with the market by reducing the number of providers to just three to five in each area of law nationally, and I am not aware of any peer reviews having taken place under the Gateway contracts like they used to. So there is currently no effective check on the quality of specialist advice providers. I am not optimistic that quality will not just be driven into the ground by the current set up. It is a real worry.

The price sensitive tendering needs to be looked at as it does not involve a good enough assessment of, or place sufficient weight on, quality of advice. Without the market and without peer reviews there is no assessment of quality except in terms of things concerning, for example, what your IT system is like, whether your policies up to date and whether you are filling in a load of forms; quality of advice is not measured by the Specialist Quality Mark, and even the LAA audit does not measure quality of advice – so I am an advocate of reintroducing peer review.'

Gateway matter starts and determinations

- 7.16. 'Determinations' refer to decisions made in respect of callers who are transferred from the Operator Service to a Specialist Telephone Advice Provider, but who are then told that they are not eligible for legal aid (for whatever reason, e.g. scope, financial eligibility).
- 7.17. The MoJ has confirmed that an individual who telephones the Gateway and is transferred through to a Specialist Telephone Advice Provider will have their enquiry classified as either a matter start or a 'determination' (such that these two categories are mutually exclusive). The relationship between matter starts and determinations gives an indication of the accuracy of Operator Service referrals.
- 7.18. Table 4 shows the total matters started and determinations made in Gateway areas of law during the whole of 2013/14 and the first two quarters of 2014/15. Throughout 2013/14 about one in three Discrimination referrals to the Specialist Telephone Advice Providers resulted in a determination. This increased in the first half of 2014/15 to more than one in two referrals.
- 7.19. The Government made a:

clear policy decision that, in order to minimise the risks of any misdiagnosis, CLA operators should be required to route all potential cases to specialists unless they were absolutely satisfied that they were out of scope.²⁰⁷

²⁰⁷ Ministry of Justice, Government Response to Gateway Review, 2014 – §16 chapter 5

7.20. However, at the same time as significant numbers of determinations are being made, a lower than anticipated proportion of callers (14%) are being transferred through to Specialist Telephone Advice Providers, who themselves report having ‘concerns that CLA operators are wrongly telling people that their cases are out of scope’.²⁰⁸

Table 4: Gateway matters started and determinations for 2013/14 and Q1 2014/15

	2013-14 Q1-Q4		2014/15 Q1 & Q2	
	Matter Starts	Determinations	Matter Starts	Determinations
Discrimination	2,301 (66%)	1,205 (34%)	719 (45%)	895 (55%)
Debt	2,081 (88%)	297 (12%)	663 (88%)	92 (12%)
Education	1,147 (83%)	230 (17%)	880 (89%)	112 (11%)
Total Gateway	5,529 (76%)	1,732 (24%)	2,262 (67%)	1,099 (33%)

7.21. Figure 9 illustrates the disparity between Discrimination and the other Gateway areas of law (in the case of other areas of law, only about one in 10 referrals result in determinations). It also shows an increase in the proportion of Discrimination referrals to the Specialist Telephone Advice Service resulting in determinations (from 19% in Q1 2013/14 to 61% in Q2 2014/15).

Figure 9: Determinations as % of all Operator Service referrals between Q1 2013/14 and Q2 2014/15



²⁰⁸ Coram Children’s Legal Centre, *Supplementary written evidence before the Justice Committee Inquiry into the Impact of Changes to Civil Legal Aid under LASPO, LAS101* (December 2014) – §31

- 7.22. Individuals have the right to request a review of a determination made by a Specialist Telephone Advice Provider that they are ineligible for legal aid.²⁰⁹ On average, less than 2% of individuals subject to a determination exercised their right to a review during the first five quarters of the Gateway being in operation.²¹⁰ In the Special Educational Needs category, only two individuals chose to exercise this right. None of the reviews were upheld.

²⁰⁹ Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg 27

²¹⁰ There were eight requests for reviews in Debt matters (out of 335 determinations, i.e. 2.4%); 34 requests in Discrimination matters (out of 1623 determinations, i.e. 2.2%); and two requests in Special Educational Needs matters (out of 271 determinations, i.e. 0.7%), Ministry of Justice, *FOI Request 92824* (4 September 2014) – §2 annex A.

8. Value for Money

*'We need to look at a whole range of issues more deeply. I hope that my noble friend will be willing to undertake further work on the advisability of a single mandatory channel; **that further work will be done on the relative costs involved**; and that the proposal's impact on equality and access to justice will be looked at very closely. There are real dangers that some of those most in need of help will fail to secure it through a mandatory telephone gateway.'*

Lord Shipley (Liberal Democrat peer)

House of Lords Debate 20 December 2011, col 1764, emphasis added

Introduction

- 8.1. One of the Government's overarching aims in implementing LASPO was to *'deliver better value for money for the taxpayer'*.²¹¹
- 8.2. The final LASPO Impact Assessment estimated the annual financial savings of the Gateway to be around £2 million. This was based on the same LSC projections discussed in previous chapters and provided in Annex 8. The projected savings breakdown was follows:
 - £1,330,000 savings from Debt matters being completed through the Gateway (rather than on a face-to-face basis).
 - £450,000 savings from Discrimination matters being completed through the Gateway (rather than on a face-to-face basis).
 - £320,000 savings from Special Educational Needs matters being completed through the Gateway (rather than on a face-to-face basis).
 - £210,000 savings from an expansion of the CLA helpline to other (non-mandatory) areas of law.
 - Along with £410,000 costs for an expanded Operator Service
- 8.3. This totalled £1.9 million savings (which was rounded to £2 million). The large majority of the estimated savings essentially came from the projection that costs per matter completed would be significantly lower for telephone advice than face-to-face advice, with savings outweighing additional costs (e.g. of an expanded Operator Service) by a factor of five to one.
- 8.4. The £410,000 costs for an expanded Operator Service were based on call volumes being a 55% uplift on the number of projected telephone advice matters (to reflect

²¹¹ Ministry of Justice, Government Response, 2011 – p.4; see also §3.27 above

ineligible, repeat and hoax calls, see Annex 8). However this is likely to have been an underestimate given that the Operator Service transfers only 14% of calls through to Specialist Telephone Advice Providers.²¹²

- 8.5. The £210,000 saving from the expansion of the CLA helpline to other areas of law was derived from assumed take up in the following areas of law: Actions Against the Police, Non-Asylum Immigration, Mental Health, Public Law and Misc. No matter starts occurred through the telephone advice service in any of these areas of law in either 2013/14 or Q1 2014/15. These £210,000 savings therefore do not seem to have materialised.
- 8.6. £2 million of 'one-off' adjustment costs (for example relating to the cost of developing the necessary new phone capacity, additional procurement costs and marketing)²¹³ are not mentioned in the savings calculations detailed in Annex 8.
- 8.7. Given that the potential for long-term savings was a driving force behind the Gateway reforms, it is worth considering the extent to which they have materialised, particularly given that the scheme involves additional costs to run and contains inherent inefficiencies (e.g. duplicated eligibility assessments).
- 8.8. In respect of the savings specifically anticipated in each Gateway area of law, we examine the cost of advice provision under the Gateway in the remainder of this chapter to see whether it provides the value for money that was expected.

Costs of providing face-to-face advice in Gateway matters

- 8.9. To begin with it is important to ascertain a comparative benchmark cost for the provision of face-to-face advice. Using 2012/13 data for NFP and solicitor advice provision we have calculated the average cost per Gateway matter completed in the face-to-face context.
- 8.10. Table 5 shows the value and volume figures for NFP advice services and solicitors' firms in Debt and Special Educational Needs (Discrimination was a new area of law so a 2012/13 benchmark cost is not available – although it should be possible for the MoJ to estimate this with reference to detailed sub-category codes, as it did when estimating projected savings).

²¹² National Audit Office, 2014 – fig 9

²¹³ Ministry of Justice, Impact Assessment, 2012 – §32

Table 5: Cost per Debt and Special Educational Needs matter completed in face-to-face setting 2012/13

	Debt matters			Special Educational Needs matters		
	Matters completed	Value	Cost per matter	Matters completed	Value	Cost per matter
NFP	55,383	£12,026,289	£217	213	£151,907	£713
Solicitor	7,158	£1,925,427	£269	713	£1,021,114	£1,432

- 8.11. The average cost of a Debt matter completed in a NFP advice service setting in 2012/13 was £217; while Debt matters for the same period in the solicitors' firms setting was £269. The average cost of a Special Educational Needs matter in the NFP setting was £713; whilst in the solicitors' firms setting it was £1,432. The differences in per matter costs highlight the benefit of assessing value for money separately for each category and channel.
- 8.12. The relatively high per matter cost in respect of Special Educational Needs reflects the nature and scope of work that falls within the 'Legal Help' stage of advice in this particular category of law (i.e. in addition to initial advice and assistance, it covers advice and substantive preparatory work relating to First-Tier Tribunal litigation, and this is likely to involve correspondence with several parties and matters generally spanning relatively longer periods of time).²¹⁴
- 8.13. As discussed earlier, the bulk of the LSC's projected savings came from the assumption that provision through the Gateway would cost *[o]n average ... an estimated 50 per cent less than the equivalent face-to-face service*.²¹⁵ The actual cost of face-to-face provision in 2012/13 is therefore a useful benchmark against which to judge the current cost of Gateway telephone advice.

Per matter costs of the Gateway

- 8.14. We estimated actual Gateway costs for the first two quarters of 2014/15, on the basis that Gateway matters completed in this period are likely to have resulted from a call made after the introduction of the Gateway (and only matters 'completed' have value figures attached to them in the publicly available data).
- 8.15. Calculations for the Gateway are not as simple as for face-to-face advice because they also include costs associated with the Operator Service and 'determinations'. Our estimates of the cost of the Operator Service and determinations are based on 2013/14 figures as we assume most calls that led to the matters completed in the first

²¹⁴ The MoJ review highlights that education matters often have longer case times (see analysis of management information in the MoJ review) which would indicate higher resulting costs.

²¹⁵ Ministry of Justice, Impact Assessment, 2012 – §7

half of 2014/15 would have occurred during this period. To ensure comparability with the benchmark figures only Debt and Special Educational Needs matters could be assessed (for the reason set out at §8.10 above).

- 8.16. The cost of the Operator Service was estimated in the LSC savings calculations to be £8 per call.²¹⁶ 261,000 calls were made to the CLA helpline in 2013/14 (according to MoJ submissions to the Civil Contracts Consultative Group).²¹⁷ As the available call volume data relates to the CLA helpline as a whole, we estimated the proportion of calls relating to the two Gateway areas of law that we are considering.
- 8.17. To do this we applied the proportion of total 'queries' fielded by the Operator Service in 2013/14²¹⁸ that related to Debt (22.5%) and Special Educational Needs (1.9%) to the total number of calls for that period (261,000). We therefore excluded 75.7% of calls (and therefore costs of the Operator Service) from consideration on the basis that they could be deemed to concern other areas of law.²¹⁹
- 8.18. We then multiplied the resulting figures (58,610 and 4,889 respectively) by £8. This provided an estimate of Operator Service costs for 2013/14 of £468,883 for Debt and £39,109 for Special Educational Needs. A rough half-year estimate of these figures is therefore £234,441 and £19,554 respectively.²²⁰ This rough costing estimate has its limitations and the MoJ will need to provide more accurate figures on the additional costs of providing services through the Gateway.
- 8.19. In addition to Operator Service costs, the Gateway incurs additional costs for 'determinations' (which are calls that are referred to Specialist Telephone Advice Providers but which do not result in a matter start. There were 297 determinations in Debt and 230 in Special Educational Needs during 2013/14 at a cost of £3,740 and £3,147 respectively. Therefore we have assumed that the additional cost of determinations on a half-yearly basis was £1,870 for Debt and £1,573 for Special Educational Needs.
- 8.20. We then added the estimated Operator Service costs and determination costs to the value of matters completed through the Gateway in Q1 & Q2 2014/15, and divided this by the number of matters completed in order to arrive at an approximate half-

²¹⁶ The awarded value of the contract to run the Operator Service from November 2014 was £7,920,000 with a contract length of 3 years. Assuming call volumes across the three years of 261,000 per annum, as per the figure MoJ provided to the Civil Contracts Consultative Group, this would make a per call cost of £10.11. The Operator Service cost estimates (based on £8 per call) we are working from may, therefore, be an underestimation.

²¹⁷ §5 Memo: MoJ communications on civil legal aid and the mandatory gateway, Kevin Westall, MoJ, September 2014, accompanying minutes to the CCCG meeting on 16 September 2014

²¹⁸ This is provided in the MoJ review analysis of management information.

²¹⁹ This is a rough proxy as we have no other way of determining how many actual calls related to particular Gateway areas of law without the MoJ providing more detailed information on call volumes and cost.

²²⁰ We are aware that the Operator Service provides sign-posting and referral services which are included in this figure, however, these services are provided for free in other settings.

yearly cost figure per Gateway matter completed in Debt and Special Educational Needs. The calculation and final figures are shown in Table 6.

Table 6: Telephone advice service cost per Debt and Special Educational Needs matter completed Q1 2014/15

	Estimated Operator Service cost	Cost of determinations	Value of matters completed	Number of matters completed	Total cost per matter completed
Debt	£234,441	£1,870	£66,648	659	£460
Education	£19,554	£1,573	£263,376	392	£726

- 8.21. The cost per Special Educational Needs matter through the Gateway in 2013/14, when additional costs are included, is slightly higher than NFP advice service provision (2%) but is cheaper than in the solicitors' firms setting (-49%). However, the cost per Debt matter is 112% higher than that in NFP settings in 2012/13 and 71% higher than that in solicitors' firm settings in 2012/13.
- 8.22. Given that our benchmark face-to-face costs are pre-LASPO figures it would be natural to question whether Gateway costs are higher than expected as a consequence of scope changes resulting in, for example, more complex cases being pursued and therefore higher individual case costs post-LASPO. Were this to be the case, then this would affect the accuracy of the MoJ's projected savings.
- 8.23. These figures suggest that in areas of law with relatively low per matter costs (e.g. Debt and Housing) the additional costs of Gateway provision may out-weigh any savings made by lower specialist telephone advice costs. For example, Housing matters (which cost £237 per Legal Help matter completed in 2013/14) may end up costing more if made subject to the Gateway, due to the higher additional costs and low potential for savings per matter in specialist advice.
- 8.24. Many of the high cost per matter areas of law (e.g. Asylum, Mental Health and Community Care) have already been disregarded as considerably less suitable for the Gateway.

Value for money of the Gateway

- 8.25. Consideration of per matter costs on its own does not enable an evaluation of value for money. Projected savings were based on the assumption that clients would receive the same (or better) services for less money. However, as discussed in the preceding chapter, the Gateway would appear to have a significantly higher rate of matters that result in 'outcome not known or client ceased to give instruction', which suggests clients may not be receiving the same level of service as they otherwise would.
- 8.26. In order to determine value for money, not only should the cost of the Gateway be considered, but the quality of advice provided must also be taken into account. One

indication of quality of advice is the formally recorded matter 'outcome' code (as discussed above, there seems to be limited alternative quality monitoring by the LAA).

- 8.27. One method of examining the value for money provided by the Gateway is to use the same approach as outlined above, but to base calculations only on those cases with positive recorded outcomes. Positive outcomes include 'financial benefit', 'non-financial benefit' or 'proceeded under other civil funding', as opposed to 'no recorded benefit' or 'outcome not known or client ceased to give instruction'.
- 8.28. Table 7 presents the resulting data, including a comparison of the total values of all completed matters across the various channels of advice. (Gateway figures are again from the first half of 2014, whilst NFP advice service and solicitors' firms - i.e. face-to-face advice - figures are again from the year preceding the implementation of the Gateway.)

Table 7: Cost per beneficial outcome of Debt and Special Educational Needs

Area of law	Channel	Total value (inc. additional costs)	Beneficial outcomes	Cost per beneficial outcome
Debt	Gateway (Q1 2014/15)	£302,959	420	£721
	NFP (2012/13)	£12,026,289	45,140	£266
	Solicitor (2012/13)	£1,925,427	5,320	£362
Special Educational Needs	Gateway (Q1 2014/15)	£284,503	316	£900
	NFP (2012/13)	£151,907	153	£993
	Solicitor (2012/13)	£1,021,114	510	£2,002

- 8.29. The cost of Special Educational Needs matters under the Gateway was £900 per beneficial outcome, which is 9% cheaper than that provided by the NFP advice sector in 2012/13; both Gateway and NFP provision in Special Educational Needs matters were significantly cheaper than that provided in the solicitors' firm setting.
- 8.30. However, the cost of Debt matters was £721 per beneficial outcome, which is 171% higher than that provided by the NFP advice sector in 2012/13, and 99% higher than provided by solicitors in 2012/13.

9. Transparency and Data Quality

- 9.1. The MoJ has made significant improvements in the availability and usability of data over the past year, for example with the publication of detailed quarterly legal aid statistics in comma-separated values (CSV) format. However there has been a lack of clarity around the approach taken to certain statistics, including in respect of explanatory notes and notifications of major revisions to published data.
- 9.2. Two examples are detailed in this chapter.

Telephone Operator Service

- 9.3. Total calls into the CLA helpline comprise of the following:
- calls to the Operator Service where no help is provided to the client;
 - ‘operator work starts’ (where the Operator Service do not refer a client to a Specialist Telephone Advice Provider, but assist in terms of signposting callers to advice providers, information resources, or alternative help lines);
 - ‘determinations’ (where the Operator Service transfers a client to a Specialist Telephone Advice Provider, but this does not result in a matter start); and
 - telephone advice service matters starts.
- 9.4. The sum of the four elements do not necessarily equate to the number of calls to the CLA helpline as callers may present multiple matters in one call, or may call multiple times in respect of one matter.
- 9.5. Statistics on the total number of calls received by the CLA helpline are not currently included in the published legal aid statistics (although this would be useful). They are also subject to considerable variation:
- In figures provided to the July 2014 meeting of the Civil Contracts Consultative Group a total of 261,000²²¹ calls were reported for 2013/14;
 - When we requested the total number of calls through an FOI request we were given the figure of 257,407 calls answered by the Operator Service for the same period of time;²²² and

²²¹ §5 Memo: MoJ communications on civil legal aid and the mandatory gateway, Kevin Westall, MoJ, September 2014, accompanying minutes to the CCGG meeting on 16 September 2014

²²² www.whatdotheyknow.com/request/206034/response/529134/attach/3/90003%20Ben%20Hickman%20final.pdf

- The National Audit Office report into Legal Aid reforms reports 228,559²²³ (again, for the same period of time).
- 9.6. Furthermore, the data on the number of ‘queries’ fielded by the Operator Service in 2013/14 published in the MoJ review was 189,797. Key data relating to the operation of the Gateway should be transparent and understandable.
- 9.7. In the MoJ review, Operator Service data is broken down by category of law. Such a breakdown would be useful of other publicly available data. Data on actual call volumes should be made available, with a breakdown as to category of law, result (e.g. determination, operator work start, etc.) and accompanied by comprehensive explanatory notes to ensure transparency and understanding.

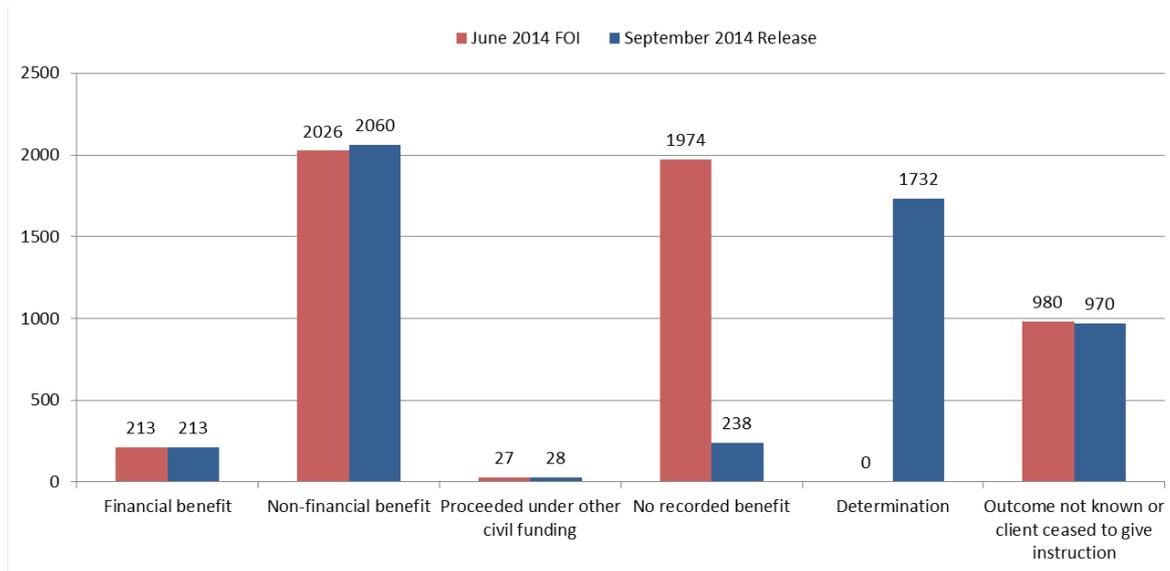
Changes to the categorisation of outcomes

- 9.8. The legal aid statistics published in September 2014 introduced a new category of data called ‘other work completed’ that was distinguished from ‘matters completed’. The only outcomes contained in this new category were ‘determinations’ from Specialist Telephone Advice Providers. The statistical team at the MoJ have explained that ‘determinations’ refer to callers who are transferred to a Specialist Telephone Advice Provider, but who are then told by the Specialist Telephone Advice Provider that they are not eligible for legal aid (for whatever reason, e.g. scope, financial eligibility).
- 9.9. Comparison of data received in a June 2014 FOI response (which did not include determinations)²²⁴ and the September 2014 LAA statistical bulletin (which did include determinations) indicates that 99% of ‘determinations’ were previously classified as ‘no recorded benefit’ (see Figure 10 below).
- 9.10. The reclassification was not explained and has meant that anyone undertaking a cursory analysis of the recent outcomes of the telephone advice service will conclude that a very small proportion (5%) of Gateway matters completed resulted in ‘no recorded benefit’ when a few months earlier this figure would have been 38%.

²²³ National Audit Office, 2014 – p.29

²²⁴ While the data did not include determinations as a category it did come with the following caveat: ‘The determination process was introduced in 2013-14 for matters referred by the Operator Service to advice specialists to provide assessment on scope and eligibility. These outcomes have no recorded benefit but under the current payment schedule will receive a fixed payment for the work’. Ministry of Justice, *FOI Request 92090*

Figure 10: Comparison of Gateway outcomes – June 2014 FOI and September 2014 data release



9.11. Despite being a major revision to the data there is little publicly available information on what determinations are or that the change was made, which potentially amounts to a failure to meet requisite standards under the Code of Practice for Official Statistics, in particular to ‘[p]rovide a statement explaining the nature and extent of revisions at the same time that they are released.’²²⁵

²²⁵ Office for National Statistics, *Code of Practice for Official Statistics*, 2009 – p.6, §2.6

10. Summary and Conclusions

'If the Government genuinely wishes to "redesign the system so that it caters much better for the needs of its clients" a single entry point telephone advice service is not the way to achieve this. ... we consider that whilst a telephone helpline may be useful to some people, it should not be the sole access point to Legal Help'

Equality and Diversity Forum

Written evidence before the Public Bill Committee considering the LASPO Bill (July 2011)

- 10.1. The rationale underpinning the Government's reform of civil legal aid was to ensure that legal aid was reserved for those matters of highest priority.
- 10.2. In respect of its proposals for the Gateway specifically, the Government emphasised client needs, client convenience, and a high quality, reliable service. Economic considerations, in particular a desire for better value for money, were also a key motivation.
- 10.3. We have examined the available evidence to assess whether the Gateway provides the quality of service expected, the value for money required, and results in a sustainable model of legal aid provision.
- 10.4. Our findings indicate that there is insufficient evidence that the Gateway is meeting Parliamentary and policy intentions. In a number of key areas the provisional indications are that those intentions may be being undermined. These issues should be fully addressed before any expansion of the Gateway is considered.

Summary

- 10.5. Our research with front-line advice providers suggests that not only is awareness and promotion of the Gateway very limited, but the experience of service users going through the Gateway is that it can be confusing, bureaucratic and dependent on the assistance of a third party legal expert (e.g. 'proxy' client) to secure a referral to a Specialist Telephone Advice Provider.
- 10.6. There are reports that the Operator Service is dependent on a script to assess eligibility for legal aid,²²⁶ contrary to the Government's prior assurance that operators *'do not simply follow a script'*.²²⁷

²²⁶ E.g. see §5.27 and text box on p3941

²²⁷ Ministry of Justice, Government Response, 2011 – §34 & 37 annex D; reiterated in Ministry of Justice, Equality Impact Assessment, 2012 – §6.43.

- 10.7. The MoJ has acknowledged that ‘*accessibility*’ is dependent on ‘*being aware of the service*’.²²⁸ However, there is evidence of a significant lack of awareness of the service amongst front-line advice providers.
- 10.8. A limited communication strategy and lack of promotion (potentially in conjunction with front-line advice provider concerns over how the Operator Service functions) appears to have led to (or contributed to) suppression in demand for advice in Gateway areas of law, despite those areas being amongst those prioritised by Parliament as the most serious.
- 10.9. Available data indicates that at least in some respects, the Gateway may have constituted a barrier to access to justice. In particular, the actual number of Gateway matters started has been substantially lower than expected, with two Gateway areas of law furthermore showing the biggest decrease in Legal Help matters started across all areas of civil legal aid areas law since LASPO came into effect.
- 10.10. If the low volumes of Gateway work are solely a result of a lack of awareness then before any expansion of the scheme is contemplated, a communication strategy should be developed and implemented, and awareness-raising work should be undertaken with front-line advice providers. Case volumes in the existing Gateway areas of law should also be monitored to ensure the effectiveness of the implemented strategies.
- 10.11. There are also indications that front-line experience of the Operator Service is variable and contradicts promises made to Parliament about the service. There is a significant variation between how the Operator Service handles Discrimination calls (where the ratio of determinations to referrals is 1:2) and calls in the other Gateway areas of law (where it is about 1:10). The MoJ review also highlights negative service user experiences of the Gateway, amongst a relatively small pool of 36 interviewees.
- 10.12. Available evidence indicates that cases in Gateway areas of law result in significantly higher levels of ‘outcome not known or client ceased to give instruction’ than other areas of law or previous channels of provision.
- 10.13. In respect of value for money considerations, our analysis suggests that it is unlikely that the Gateway has produced the limited savings that were forecast. In the Debt category, our analysis suggests that once additional Gateway costs are included, the Gateway offers reduced value for money per matter completed than alternative face-to-face channels of advice. This is before additional one-off costs are taken into account.
- 10.14. The Gateway will only save money if the potential savings from lower Specialist Advice costs outweigh the additional costs of the service. In areas of law where per

²²⁸ Ministry of Justice, Gateway Review Summary, 2014 – §6.1

matter costs are relatively low (as in Debt or Housing), high case volumes would be required before savings would amount to more than the additional Gateway costs. As the scope changes of LASPO have significantly reduced the overall number of legal aid cases, there is limited or variable potential for the Gateway to provide financial savings.

- 10.15. It is hard to see how any decision to extend the Gateway might be justified on economic grounds without a reassessment of the potential for the Gateway to provide better value for money than current channels of provision.

Access to Justice

- 10.16. No explanation has been given for the substantially lower than anticipated Gateway volumes of advice being provided.
- 10.17. Furthermore, since the implementation of LASPO, the greatest reductions in volumes are taking place in Gateway areas of law. While this does not prove causality, our findings indicate that a lack of awareness of the Gateway is suppressing demand for legal aid advice in at least some of the areas of law in which it operates.
- 10.18. The Gateway has not been promoted to the extent indicated during the consultation period. Communication strategies are out-of-date or unfulfilled, and Specialist Telephone Advice Providers express frustration and disenfranchisement, having put in place systems and hired personnel to deal with far higher volumes of work (in line with MoJ predictions set out during the tender process for telephone provider contracts) than that which has materialised.
- 10.19. There is concern that the Operator Service (previously run by Capita Group Plc. and now run by Freedom Communications (UK) Ltd.), far from providing the client-based service that was promised, is creating barriers for vulnerable service users through inflexible adherence to a script that ignores the complexity of service users' lives and of any legal issues that they may have.
- 10.20. The MoJ review has not evaluated the impact of LASPO or the Gateway on legal aid volumes, citing data comparability issues. While the major changes brought about by LASPO may complicate analysis, they do not rule out the possibility of drawing meaningful conclusions. If LASPO has brought about unexpected or unintended consequences as a result of scope changes or otherwise then that would be worth investigating, especially given that the underlying rationale of LASPO is to ensure access to justice. This is particularly the case given that the LAA should have access to more granular data to allow for more robust comparisons than that which can be undertaken using published data (e.g. using 'sub-category code' data which provides a breakdown of the categories of legal aid law, in order to enable comparative analysis of pre- and post-LASPO data).

- 10.21. In the absence of such analysis by the MoJ, legal aid data broken down by ‘sub-category codes’ should be made publicly available to ensure transparency and facilitate external auditing of the Government reforms. Each area of law displays very particular characteristics (both in terms of costs and outcomes) and additional detail may enable the causes of these differences to be identified and assessed.
- 10.22. Data should be made publicly available in respect of individuals exempt from having to use the Gateway given prior assurances to:
- ensure that the exemptions ... properly protect those with disabilities and vulnerable people more broadly*²²⁹
- 10.23. Similarly, data on face-to-face referrals should be published regularly in a usable format. Further ‘*monitoring*’ is required to ensure the currently ‘*negligible*’²³⁰ levels of face-to-face referrals do not preclude access to justice in circumstances where advice would not otherwise be provided effectively. We note that the MoJ review has reported that some service users ‘*are not being offered appropriate adjustments*’ in respect of disabilities they have, and that others are ‘*not being diverted to face-to-face advice even though this is the most suitable service for them*’.
- 10.24. LAA guidance should also clarify that the face-to-face threshold is not simply one of exceptionality given prior assurances to Parliament that referrals would be facilitated where ‘*more appropriate for the caller*’ and where ‘*a quality service*’ could not otherwise be provided.
- 10.25. The relationship between Gateway work and Legal Representation (i.e. the stage of advice following the pre-court Legal Help stage of advice) requires consideration given that only four matters in the Discrimination category were the subject of Legal Representation throughout 2013-14, and given that the Government’s intention was that the Gateway would result in ‘*no onward impact on the number of cases funded at the Legal Representation stage*’.²³¹
- 10.26. When assessing the quality of the Operator Service, it is important that satisfaction data from the service user survey is provided in context and not given undue prominence. Satisfaction surveys generally reflect elements of respondent bias. The MoJ should clarify when and how survey responses are collected and whether all callers are asked to participate or, for example, only the minority who get transferred through to a Specialist Telephone Advice Provider.
- 10.27. As callers have no choice about how to access legal aid there is a potential for quality of service to slip as providers focus on maximising profit (e.g. via increased call volume and minimised call length). The MoJ should consider whether the

²²⁹ HL Deb 27 March 2013, vol 744, col 1100, emphasis added

²³⁰ Ministry of Justice, Gateway Review Summary, 2014 – §1

²³¹ Ministry of Justice, Impact Assessment, 2010a – §81

Gateway model is creating perverse economic incentives, for example for the Operator Service, due to a lack of market protections.

- 10.28. Previously, two key mechanisms ensured quality of legal aid advice: market forces and peer reviews. However, both of these are in practice absent from the Gateway. If the Government is to deliver on its promise of a high quality Gateway advice service, then it should implement, and keep under review, systemic checks to ensure such quality.
- 10.29. There is otherwise a risk of sleepwalking into a situation in which, notwithstanding the best of initial intentions, there are insufficient safeguards against legal aid advice providers underperforming in terms of the quality (accuracy) of advice that they provide.

Value for money

- 10.30. Total expenditure on legal aid in Gateway areas of law has fallen in line with substantially lower than anticipated volumes of Gateway work. Relying on a headline of reduced expenditure does not provide meaningful insight. Efficiencies in this context should be derived from a reduction in the cost of providing a service, rather than from providing a service to fewer people.
- 10.31. An assessment of whether the Gateway provides value for money should therefore include comparisons of services not just in terms of total expenditure, but with reference to the volume of work carried out and the quality of provision in terms of service and outcomes. The pursuit of a reformed legal aid service should maintain a workable balance between controlling costs and ensuring quality (at a time when remuneration for legal aid has fallen significantly over a prolonged period of time - a reduction of 34% in real terms since 1998).²³²
- 10.32. The evidence in support of the proposal that the Gateway was a more cost effective channel for the provision of legal aid advice was inconclusive (and the MoJ has since confirmed that it did not have the time to undertake research to provide for an evidence-based programme of reforms).²³³
- 10.33. Our analysis indicates that the Gateway does not necessarily bring with it increased value for money. It involves substantial additional costs and all potential savings are directly linked to the volume of cases, such that as demand for legal aid has dropped, so too has the potential for the Gateway to provide financial savings.

²³² National Audit Office, 2014 – §3.20

²³³ Public Accounts Committee, *Oral evidence: Implementing reforms to civil legal aid, HC 808* (4 December 2014) – p.12-13.

Sustainability

- 10.34. The provision of legal aid advice by telephone has obvious benefits, but there is a clear difference between providing it as one of many channels available to service users, and enforcing it as the only possible option. If the general presumption is that client choice is beneficial and that *'there is benefit in providing access to services through a variety of channels'*,²³⁴ then there must be a sufficiently strong evidence-base to justify continuation or expansion of a scheme that provides advice via a single mandatory channel of provision.
- 10.35. The MoJ should continue to ensure that it does not create 'advice deserts', particularly having assured the Justice Committee that *'introducing an effective telephone advisory service'* would help to deal with the *'important issue'* of avoiding *'legal aid deserts'*.²³⁵ The National Audit Office has reported that in 14 local authorities no face-to-face providers based in the area started any legal aid funded work during 2013-14. Legal aid providers in a further 39 local authorities started fewer than 49 pieces of legal aid work per 100,000 people.²³⁶
- 10.36. The current Gateway model relies on third parties, including NFP advice services, to provide 'proxy' support services in around 10% of cases (i.e. where a third party calls on behalf of an individual who is unable to access the service themselves). However, as the impact of funding cuts continues to affect all sectors, those providing unfunded proxy services may not continue to be able to maintain such a service.
- 10.37. The sustainability of the Gateway (including in terms of, for example, the ability to refer service users for local face-to-face advice where necessary) must be properly considered if it is to function as intended in the long-term. Those in need of face-to-face advice and those exempt from having to use the Gateway should not be subject to a postcode lottery whereby only service users in some areas have a realistic chance of receiving face-to-face advice or proxy support services where required due to their proximity to one of an increasingly limited number of advice providers.

²³⁴ Ministry of Justice, Government Response, 2011 – §55 annex D

²³⁵ Justice Committee, Government's proposed reform of legal aid (HC 2010-11, 681-I) Q385 & §157

²³⁶ National Audit Office, 2014 – §3.23

11. Recommendations

Data

- 11.1. The MoJ should publish the following data as part of its regular legal aid statistical bulletin, in the interests of transparency and given substantially lower volumes of advice being provided under the Gateway than anticipated:
- a) Number of calls received by the Gateway broken down by category of law and outcome (e.g. matter started, determination, operator work start, etc.);
 - b) Number of face-to-face referrals from the Gateway broken down by category of law and outcome;
 - c) Number of individuals exempt from having to use the Gateway who contact the Gateway and are advised under it (broken down by category and outcome); and
 - d) Statistical data that was published in the MoJ review.
- 11.2. The legal aid statistical bulletin should also provide clear and concise explanations of each element of the published data to ensure transparency and understanding. This should, for example, clarify the meaning of 'determinations' and highlight the difference between calls into the Gateway, 'operator work starts', and Operator 'queries'.

Further analysis

- 11.3. Further research in respect of the following would facilitate a comprehensive assessment of the effectiveness and sustainability of the Gateway:
- a) Value for money – A full cost-benefit analysis of the Gateway taking into account additional operating costs, to enable accurate assessment of the potential savings provided by the Gateway.
 - b) Case outcomes – Detailed analysis of the extent of the impact of the Gateway on case outcomes.
 - c) Face-to-face referrals and reasonable adjustments – Analysis of whether face-to-face referrals and reasonable adjustments are facilitating access to justice as anticipated.
 - d) Exempt individuals – Analysis of any impact of the Gateway on individuals exempt from having to use the Gateway.
 - e) Legal Representation – Analysis of any impact of the Gateway on work at the Legal Representation stage of advice.
 - f) Sustainability of the Gateway – Analysis of the longer-term sustainability of the Gateway including in terms of the ability to refer clients for local face-to-face advice where necessary, and the avoidance of 'advice deserts';

- g) Wider economic and social impact of the Gateway (and LASPO) - Research into the wider impact of the Gateway and LASPO, including on NFP advice providers, face-to-face advice providers, and knock-on costs for other public services.

Procedure and strategy

- 11.4. The MoJ should improve Gateway promotional material and the communication strategy to ensure awareness by advice providers and the public; and Specialist Telephone Advice Providers should be able to promote their services.
- 11.5. In order to ensure that the face-to-face referral mechanism functions as anticipated, the MoJ should also clarify LAA guidance to reflect Government assurances to Parliament that the face-to-face mechanism would be *'flexible'*, and that referrals would take place where *'more appropriate for the caller'* and where *'a quality service'* could not otherwise be provided. Clarification should also be provided that referrals can be made by *'both gateway call operators and specialist advisers'*, as anticipated.
- 11.6. The MoJ should publish the outcomes of the regular assessments made by Specialist Telephone Advice Providers of the Operator Service given the insight that these provide into the accuracy and effectiveness of the Operator Service. Monitoring of the service provided by the new Operator Service contractor should ensure that problems reported of its predecessor are addressed prior to any expansion of the Gateway, and to ensure that peculiar, complex, novel, or poorly presented cases are not misdiagnosed as having no legal aspect worthy of advice.
- 11.7. The MoJ should clarify and monitor Gateway quality assurance processes to ensure that high levels of service and advice are provided as anticipated. Service standards should be published and regular assessment data should be publicly available in the interests of transparency and accountability.

Annex 1 Chronology of Events Leading to the Gateway

July 2004 – The Community Legal Advice helpline was established as one of the routes via which individuals could access and receive civil legal aid advice. It comprised an Operator Service which carried out a financial eligibility test, and if callers were eligible for legal aid, they would be referred to a Specialist Telephone Advice Provider for advice. Approximately 85% of cases were subsequently provided with face-to-face advice (and the remainder were provided with telephone advice).²³⁷ Contracts for the provision of specialist telephone advice were (and continue to be) subject to price competitive tenders. Individuals not eligible for advice were signposted to alternative sources of help. The service operated in six categories of law: Debt, Education, Employment, Welfare Benefits, Housing, and Family.

November 2010 – The MoJ published its consultation paper, *Proposals for the Reform of Legal Aid in England and Wales*.²³⁸ The paper outlined its proposal that the existing Community Legal Advice telephone line be established as the sole and mandatory route to accessing and receiving civil legal aid services in respect of all ‘Legal Help’ matters (i.e. matters that generally concern legal advice prior to initiating court proceedings). This ‘Gateway’ was proposed to cover ‘*all categories*’ of civil law. Face-to-face advice under the pre-existing Community Legal Advice telephone line would also be ‘*significantly scaled back*’ in favour of telephone advice.²³⁹

March 2011 - The House of Commons Justice Committee stated the following (in its Third Report of Session 2010/11 on the Government's proposed reform of legal aid):

*the fact that some clients might benefit from such a service, means that this is an option worth pursuing. We encourage the Government to do so, but would also urge it to work with both public and private providers of services to make sure the helpline is designed in a way which makes it effective for vulnerable clients. We urge the Government to monitor closely the effectiveness of the helpline, particularly for vulnerable clients*²⁴⁰

June 2011 - The Government response to its consultation was published.²⁴¹ It acknowledged ‘*strong opposition to this proposal for a mandatory single gateway across most of the responses*’ (less than 4% of the 1,956 responses received were positive);²⁴²

many respondents were concerned that the nature of a telephone service would make it difficult to make a proper diagnosis and assessment of callers’ problems and this could lead to an increased risk of incomplete or incorrect advice being given
many respondents were of the view that there was a lack of robust research

²³⁷ Ministry of Justice, Impact Assessment, 2010a – §26

²³⁸ Ministry of Justice, Consultation, 2010

²³⁹ Ministry of Justice, Impact Assessment, 2010a – §28

²⁴⁰ Justice Committee, *Government's proposed reform of legal aid* (HC 2010-11, 681-I) – §163, emphasis added

²⁴¹ Ministry of Justice, Government Response, 2011

²⁴² Ministry of Justice, Government Response, 2011 – §6 & p.277 annex D

*demonstrating the benefit and outcomes of telephone advice.*²⁴³

However, it decided to implement the Gateway initially in four areas of law - Community Care, Debt, Discrimination, and Special Educational Needs – with a view to later implementing ‘a *phased expansion*’ to cover other areas of law, following a ‘*review to determine whether the mandatory single gateway should be expanded*’.²⁴⁴

Its rationale for the Gateway only applying initially to four areas of law was as follows:

In selecting the areas of law most appropriate for this initial stage of the mandatory single gateway we have considered:

whether there was any increased risk within each area of law of clients’ needs not being met by a telephone service;

the likely frequency of the need for Legal Representation or Controlled Legal Representation in an area of law;

the likely frequency of emergency cases in the area of law;

*whether the existing Community Legal Advice (CLA) helpline service had any previous experience of delivering advice in the area of law.*²⁴⁵

14 March 2012 - The Government dropped its proposal to include Community Care in the initial mix of Gateway areas of law:

6.26 The Government always recognised that Community Care is a complex area of law and that around half of clients in this area would require face-to-face meetings with legal representatives even where only Legal help was being provided. Our ongoing engagement with a range of groups (including equality organisations) highlighted the challenges that would be faced in delivering a quality service to Community Care clients.

*6.27 As a result of this and further analysis the Government concluded that the numbers of Community Care clients requiring face-to-face advice is likely to be significantly higher than original estimates and will not be including this area of law in the initial mandatory telephone gateway areas.*²⁴⁶

8 May 2012 – LAA initiated the tender process for Specialist Telephone Advice Providers.

28 November 2012 – LAA announced the Specialist Telephone Advice Provider tender outcomes (for the provision advice from April 2013 onwards).

27 March 2013 - Crossbench peer Baroness Grey-Thompson of Eaglescliff successfully moved a motion to regret that the Civil Legal Aid (Procedure) Regulations 2012 (made under LASPO) ‘*fail to deliver sufficiently wide access to legal aid services for disabled persons*’, and that the Gateway category of ‘*exempted person*’ was defined ‘*too narrowly*’.

²⁴³ Ministry of Justice, Government Response, 2011 – §66 annex D, emphasis added

²⁴⁴ Ministry of Justice, Government Response, 2011 – §96 & 25 annex D, respectively

²⁴⁵ Ministry of Justice, Government Response, 2011 – §28-29 annex D, emphasis added

²⁴⁶ Ministry of Justice, Equality Impact Assessment, 2012 – §6.27

She called on the Government to amend the definition of those exempt ‘to include disabled and vulnerable people’.²⁴⁷

*In the area of Discrimination, often many disabled people do not even realise that they are being discriminated against because, at a low level, it is such a regular occurrence that it is accepted, wrongly, as the norm. ... I know this because I experience Discrimination at least every week of my life. I am talked down to, patted on the head, treated differently and refused access to goods and services that many take for granted. ... Hate crime figures against disabled people are at their highest level in 10 years of reporting*²⁴⁸

The Government stated that it was confident that ‘sufficient safeguards’ existed to assist access by vulnerable people.²⁴⁹

On the same day, peers debated and approved the Civil Legal Aid (Merits Criteria) (Amendment) Regulations 2013. Lord McNally (Minister of State, Ministry of Justice) said:

*I am confident that the legal aid scheme under LASPO meets the access needs of disabled people. However, I understand that the introduction of the mandatory gateway continues to raise concerns in this area ... They have also put in place a system to monitor the take-up of reasonable adjustments and adaptations, and to monitor the disability profile of gateway clients. ... The Government are confident that the gateway call operators and Specialist Telephone Advice Providers will be sufficiently experienced and trained to support vulnerable people. We plan to review the implementation and operation of the gateway in the initial three areas of law, to ensure that the exemptions, adjustments and support available properly protect those with disabilities and vulnerable people more broadly. We will publish a report of the review within two years of implementation.*²⁵⁰

1 April 2013 – LASPO and the Gateway came into effect.

2 April 2013 - LAA announced an amendment to the Specialist Telephone Advice Provider tender outcomes for Special Educational Needs (as a result of one provider, National Youth Advocacy Service, pulling out).

9 April 2013 – Government consultation on further legal aid reforms, *Transforming legal aid: delivering a more credible and efficient system*, was published.

15 May 2013 - LAA announced an amendment to the Specialist Telephone Advice Provider tender outcomes for Debt and Housing (as a result of the LAA withdrawing its prior award of a contract to Access Legal Training Limited).

5 September 2013 – The Government Response (*Transforming Legal Aid: Next Steps*) to its consultation on further legal aid reforms was published. It also formed a consultation on more legal aid reforms and stated the following in respect of the Gateway:

4.2 We have been monitoring the gateway since its implementation on 1 April 2013

²⁴⁷ HL Deb 27 March 2013, vol 744, cols 1102 & 1106

²⁴⁸ HL Deb 27 March 2013, vol 744, col 1103

²⁴⁹ HL Deb 27 March 2013, vol 744, col 1117

²⁵⁰ HL Deb 27 March 2013, vol 744, col 1100, emphasis added

and made a commitment to review its implementation and operation and publish a report of the review by April 2015. A key element of this review will focus upon the impact of the gateway on vulnerable and disadvantaged groups. It will include the exploration of any barriers or obstacles that different types of users may experience when accessing (including contacting and using) the gateway Operator Service, and consider how these may be addressed.

4.3 As standard, Civil Legal Advice monitors the protected characteristics of age, disability, race, religion or belief, sex and sexual orientation of callers and the use of the service's reasonable adjustments (including, for clients with disabilities, BSL, text relay, and use of third parties). This information will be used as part of the review.²⁵¹

27 February 2014 – Government Response to its earlier consultation (*Transforming Legal Aid: Next Steps*) was published.

8 July 2014 – Justice Committee held its first evidence session on its inquiry into the impact of changes to civil legal aid under LASPO. Concern was raised about the Gateway by those giving evidence.

9 December 2014 – The MoJ review of the Gateway was published.

²⁵¹ Ministry of Justice, *Transforming Legal Aid: Next Steps* (2013) – §4.2-4.3 annex F

Annex 2 Legal Framework

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

Section 1 LASPO states that the Lord Chancellor *‘must secure that legal aid is made available in accordance with’* the provisions of LASPO.

Section 9 states that legal aid must be available to individuals if their legal matter falls within the scope of legal aid and (on the determination of the Director of Legal Aid Casework, the ‘Director’) they qualify for legal aid:

(1) Civil legal services are to be available to an individual under this Part if— they are civil legal services described in Part 1 of Schedule 1, and the Director has determined that the individual qualifies for the services in accordance with this Part (and has not withdrawn the determination).

(emphasis added)

Section 11 goes on to specify that a determination as to whether an individual qualifies for legal aid, must be made in accordance with the relevant regulations that set out the means and merits tests (see below).

Section 12 states that regulations must make provision for the ‘review’ of such determinations (see Procedure Regulations below).

Section 27 allows the Lord Chancellor to restrict an individual’s choice as to the organisation which provides them with legal advice and as to the ‘means’ by which their advice is provided, such that it may be provided over the telephone or by other electronic means:

27 Choice of provider of services etc.

(1) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by the means selected by the individual.

(2) The Lord Chancellor may discharge that duty, in particular, by arranging for the services to be provided by telephone or by other electronic means.

(3) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by a person selected by the individual, subject to subsections (4) to (10).

(emphasis added)

Civil Legal Aid (Procedure) Regulations 2012 (the ‘Procedure Regulations’)

Part 2 of the Procedure Regulations (Gateway Work) sets out the procedure that applies to the provision of advice under the Gateway.

Regulation 20 states that ‘Gateway Work’ concerns the provision of ‘Legal Help’ by a ‘Specialist Telephone Advice Provider’ or ‘face-to-face provider’, in the following three areas of law:

- a) Debt (loss of home) matters falling within the scope of legal aid;
- b) Special Educational Needs matters falling within the scope of legal aid; and
- c) certain Discrimination matters falling within the scope of legal aid.

Regulation 17 states that individuals wanting Legal Help in respect of Gateway Work, must apply to the Gateway for a determination, unless they are an 'exempted person'. An exempted person instead has the choice of either applying directly to a face-to-face provider (as is the case for non-Gateway matters in general), or apply to the Gateway.

Regulation 20 states that an exempted person is an individual who:

- a) is detained (i.e. *'has been deprived of their liberty'*);
- b) is a child (i.e. under 18 years old);²⁵² or
- c) has in the last twelve months been assessed by the Gateway as needing face-to-face advice, and is applying to the same provider about a 'linked problem'²⁵³ that arises out of the first matter.

Regulations 17 and 18 state that an application for a determination must be made, and that it can be made by telephone, email, other prescribed electronic format, or post. Specialist Telephone Advice Providers must make a determination that an individual either qualifies or does not qualify for Gateway Work,²⁵⁴ and must specify whether work will be provided via a Specialist Telephone Advice Provider, or a face-to-face provider.²⁵⁵

Regulation 19 states that the description of provider may be amended (e.g. from Specialist Telephone Advice Provider to fact-to-face provider).

Part 3 (Controlled Work) of the Procedure Regulations applies to the Gateway (unless otherwise specified in Part 2):

Regulation 22 states that applications for a child or protected party must be made by certain people on their behalf.

Regulation 23 states that applications must be made in a form specified by the Lord Chancellor, and must specify the relevant form, matter, and category of civil legal services, and additional information/documents requested for a determination must be provided. Applications cannot be made within six months of services being provided by a different provider on the same matter.

Regulation 25 states that the Director must give an individual notification and reasons of any determination that their matter falls outside the scope of Part 1 Sch. 1 LASPO, that

²⁵² Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 2

²⁵³ i.e. *'a matter arising out of or related to a matter in which Gateway Work was provided by a face-to-face provider'*, Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 20.

²⁵⁴ Legal Aid Agency, Guidance For Providers, 2013 – p.4

²⁵⁵ Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 19(1). Determinations may be amended, Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 19(2).

they do not qualify for Legal Help, or of any withdrawal of any Legal Help previously granted.²⁵⁶

The Director (who can delegate his powers to others, in this case to Specialist Telephone Advice Providers) must also give notice of any right to apply (within 14 days) for a 'review'.²⁵⁷ However, Regulation 27 states that a right to review only arises in respect of a determination that an individual does not qualify for Legal Help (seemingly in respect of means or merits decisions only),²⁵⁸ or against certain types of withdrawals of Legal Help.²⁵⁹ Applications for review must be considered and the individual notified of the further determination. Regulation 28 states that no right of appeal arises (as in the case of Legal Help generally).

Part 4 (Licensed Work) of the Procedure Regulations states that in respect of Discrimination and Special Educational Needs matters, Specialist Telephone Advice Providers carrying out Controlled Work under their CLA Contract on these matters may also carry out Licensed Work. In respect of Debt matters, other Providers may be able to carry out such work under their 2013 Standard Civil Contract (covering face-to-face Debt matters).

Regulation 29 states that Licensed Work (i.e. basically advice which is required after the initial Legal Help stage) comprises civil legal advice that is either legal representation (that is not Controlled Work or Special Case Work) or Family Help (higher).

Applications for Licensed Work enclosing supporting documents must be made in a specified form, and applicants must generally be proposed parties to legal proceedings. Applications are made by Specialist Telephone Advice Providers on behalf of clients, and this may follow a Legal Help application having been made through the Gateway.²⁶⁰

Determinations that an individual qualifies for Licensed Work must lead to the issue of a certificate, subject to a maximum cost for any work carried out, any limitations, any conditions, and any financial contributions to be made by the individual towards the cost of their legal advice. Determinations may be withdrawn, and the Director must notify individuals of most determinations,²⁶¹ their reasons, and the right of the individuals to apply for a review within 14 days.²⁶² Regulation 45 states that an application for a review

²⁵⁶ Legal Help can be withdrawn in only limited circumstances, Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 26.

²⁵⁷ Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 15

²⁵⁸ when considering the wording of the following as a whole: LASPO s 9, 11, 12(5); and Civil Legal Aid (Procedure) Regulations 2012, SI 2012/30984, reg. 19 & 27.

²⁵⁹ namely withdrawals on the basis that an individual no longer qualifies, or that they have failed without good reason to comply with a requirement to provide information, or have provided information knowing/believing it to be false, Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 27(1).

²⁶⁰ Lord Chancellor's Guidance Under Section 4 Of Legal Aid, Sentencing And Punishment Of Offenders Act 2012 (June 2014) – §8.12

²⁶¹ Including as to scope, means, merits, limitations, conditions, certificate amendments, withdrawals, Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 43.

²⁶² Civil Legal Aid (Procedure) Regulations 2012, SI 2012/3098 – reg. 43

must be considered by the Director, who must notify the individual of their decision and any right of appeal (though an appeal does not arise in respect of a determination about means or scope).

Other regulations

Means - Regulations in respect of financial means, state that the financial eligibility test that must be met is the same as that which must be met in most non-Gateway matters, *Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013*.

Merits - Regulations in respect of merits state that the merits test that must be met is the same as that generally applicable in non-Gateway Work matters, namely that at Regulation 32 (Criteria for determination for Legal Help) of the *Civil Legal Aid (Merits Criteria) Regulations 2013*.²⁶³ Gateway Work that goes on to require Legal Representation (i.e. work beyond the Legal Help stage) must meet the same merits test as for non-Gateway matters, namely the General Merits Criteria set out in the same regulations.²⁶⁴

Remuneration – The remuneration of barristers (in independent practice) and experts is covered by Regulations 7 and 10 of the *Civil Legal Aid (Remuneration) Regulations 2013*. Regulation 5 states that the rest of these regulations do not apply to Gateway Work (on the basis that they have been awarded pursuant to competitive tendering as to price).

²⁶³ Civil Legal Aid (Merits Criteria) Regulations 2013, SI 2013/104 – reg. 32:

‘An individual may qualify for legal help only if the Director is satisfied that the following criteria are met—

- (a) it is reasonable for the individual to be provided with legal help, having regard to any potential sources of funding for the individual other than under Part 1 of the Act; and*
- (b) there is likely to be sufficient benefit to the individual, having regard to all the circumstances of the case, including the circumstances of the individual, to justify the cost of provision of legal help.’*

²⁶⁴ See Civil Legal Aid (Merits Criteria) Regulations 2013, SI 2013/104 – reg. 39 (Standard criteria for determinations for legal representation) – reg. 40 (Criteria for determinations for investigative representation), or reg. 41 (Criteria for determinations for full representation), respectively. However, certain Debt matters (namely court orders for sale/possession) will instead be subject to Civil Legal Aid (Merits Criteria) Regulations 2013, SI 2013/104 – reg. 39 (Standard criteria for determinations for legal representation) and the specific merits criteria (Housing) at reg. 61 (Criteria for determinations for full representation in relation to court orders for).

Annex 3 Front-Line Advice Provider Survey

Background

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 designated three categories of law as mandatory 'Gateway' work: Debt (where an individual's home is at risk), Discrimination, and Education (Special Educational Needs). In general this means that individuals seeking assistance in these areas must call the Civil Legal Advice (CLA) Gateway, for an operator to determine whether their problem is within the scope of legal aid and whether they are financially eligible, before they will be transferred to an advisor (in most cases, a specialist telephone adviser).

The Public Law Project is undertaking research into the Gateway. We are interested in knowing whether or not your [organisation] signposts people to the mandatory Gateway (both answers 'yes' and 'no' are useful to us) and/or whether you have any knowledge of the workings of the Gateway.

All information provided will be treated in strict confidence and no individual responses will be disclosed without prior permission. If you have any queries please feel free to contact David Oldfield (d.oldfield@publiclawproject.org.uk).

We would be grateful if you would complete this survey by 25 August 2014.

1. Please provide your contact details.

Name:

Role:

Organisation:

Email:

Telephone

Number:

2. Further contact

Please tick this box if you do NOT wish to be contacted by PLP in the future to discuss the Gateway.

3. Has your [organisation] received requests for help in the following categories since April 2013?

	Yes	No	Don't know
Education (Special Educational Needs)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Debt (where an individual's home is at risk)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. If yes, has your [organisation] made any referrals to the Gateway in the following categories since April 2013?

	Yes	No	Don't know
Education (Special Educational Needs)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Debt (where an individual's home is at risk)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. If your [organisation] has not made any referrals, please briefly indicate any particular reasons for this.

Thank you for your help.

Annex 4 Specialist Interest Group Email Survey

Dear [name]

Public Law Project is undertaking research into the mandatory Civil Legal Advice (CLA) Telephone Gateway and we are interested to know your views on its impact, and the extent of [organisation]'s contact with it. We are only approaching selected interest groups and/or representative organisations, so we would be very grateful if could respond.

By way of background, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 designated three categories of law as mandatory 'Gateway' work, meaning that individuals can now only seek legal advice in those areas of law by telephoning the Gateway. The mandatory Gateway categories of law (insofar as they remain in scope of legal aid) are: Education (Special Educational Needs), Debt (where an individual's home is at risk) and Discrimination.

PLP would be grateful if you would reply to this email briefly stating:

- 1) Whether your organisation has referred people to the Gateway;
- 2) Whether your organisation has had any contact with the Gateway; and
- 3) Whether your organisation is aware of any individuals who have had any contact with the Gateway?

All information provided will be treated in confidence. Please do not hesitate to get in touch if you have any queries.

Annex 5 Survey Response and Data Tables

Table 8: Response to front-line advice provider survey by type of organisation

Type of organisation	Number of respondents	% of total respondents
Citizens Advice Bureaux	52	54%
Law Centres	16	16%
Solicitors' firms	14	14%
Other front-line advice services	7	7%
Local authorities	4	4%
Universities	4	4%
Total	97	

Table 9: Number (and percentage) of respondents that had received requests for help in Gateway areas of law since April 2013

		Debt (where an individual's home is at risk)	Education (Special Educational Needs)	Discrimination
CAB	Yes	52 (100%)	18 (35%)	45 (87%)
	No	0 (0%)	16 (31%)	4 (8%)
	Don't know	0 (0%)	18 (35%)	3 (6%)
All other	Yes	29 (64%)	20 (44%)	30 (67%)
	No	13 (29%)	14 (31%)	12 (27%)
	Don't know	3 (7%)	11 (24%)	3 (7%)
Total	Yes	81 (84%)	38 (39%)	75 (77%)
	No	13 (13%)	30 (31%)	16 (16%)
	Don't know	3 (3%)	29 (30%)	6 (6%)

Table 10: Number (and percentage) of respondents that had made referrals to the Gateway since April 2013

		Debt (where an individual's home is at risk)	Special Educational Needs (SEN)	Discrimination
CAB	Yes	16 (31%)	4 (22%)	11 (24%)
	No	33 (63%)	12 (67%)	27 (60%)
	Don't know	3 (6%)	2 (11%)	7 (16%)
All other	Yes	11 (38%)	8 (40%)	18 (60%)
	No	15 (52%)	8 (40%)	6 (20%)
	Don't know	3 (10%)	4 (20%)	6 (20%)
Total	Yes	27 (33%)	12 (32%)	29 (39%)
	No	48 (59%)	20 (53%)	33 (44%)
	Don't know	6 (7%)	6 (16%)	13 (17%)

Table 11: Response to specialist interest group email survey by type of organisation

Type of Organisation	Number of Respondents
Advice provider	9
Campaigning organisation	4
Professional representative organisation	3
Specialist interest group	8
Referral agency	2
Total	26

Table 12: Number (and percentage) of respondent organisations which had referred people to the Gateway

Type of Organisation	Yes		No	
Advice provider	2	(22%)	7	(78%)
Campaigning organisation	0	(0%)	4	(100%)
Professional representative organisation	1	(33%)	2	(67%)
Specialist interest group	3	(38%)	5	(63%)
Referral agency	1	(50%)	1	(50%)
Total	7	(27%)	19	(73%)

Table 13: Number (and percentage) of respondent organisations that had had contact with the Gateway

Type of Organisation	Yes		No	
Advice provider	1	(11%)	8	(89%)
Campaigning organisation	0	(0%)	4	(100%)
Professional representative organisation	0	(0%)	3	(100%)
Specialist interest group	1	(13%)	7	(88%)
Referral agency	1	(50%)	1	(50%)
Total	3	(12%)	23	(88%)

Table 14: Number (and percentage) of respondent organisations that were aware of people who had contact with Gateway

Type of Organisation	Yes		No	
Advice provider	2	(22%)	7	(78%)
Campaigning organisation	0	(0%)	4	(100%)
Professional representative organisation	2	(67%)	1	(33%)
Specialist interest group	0	(0%)	8	(100%)
Referral agency	1	(50%)	1	(50%)
Total	5	(19%)	21	(81%)

Annex 6 Specialist Telephone Advice Providers – Interview Schedule

Introduction and Aims

Summary of aims and objectives of PLP project

Explain confidentiality and non-disclosure

About the Interviewee

Clarify interviewee role.

What does the company do?

What is their role in the Gateway?

How long have they been involved in this capacity?

Overall impressions

What are your opinions of the telephone Gateway Operator Service?

How well does the system work in your category of law?

Are there particular examples of when the Gateway has not worked as it should?

Vulnerable People

Have you had experience of vulnerable people using the Gateway (e.g. disabled, mental health, illiteracy, non-English speaking)?

Were there any particular challenges caused by the lack of face-to-face services?

Could more be done to help vulnerable people?

Clustered Problems

How do you go about identifying and managing all the clients' problems?

What happens if the client presents with multiple overlapping legal problems?

In your experience does the Operator Service do a good job at identifying all the relevant issues?

Quality Assurance Process

What are your experiences of quality assessing Operator Service calls?

How many have you done? What is the process?

How many cases have you personally designated as not suitable for telephone gateway?

Does your organisation receive a regular number of calls through from the Operator Service that should not have been put through?

Document Management

Does providing service through the Gateway as opposed to face-to-face pose any particular issues in relation to client documentation?

Government Review

Are you aware of/have you been involved in the Government Review of the Gateway?

Are there any areas you do not think it is adequately covering?

What issues do you think it is important for the review to address?

Given your experience would there be particular challenges in designating other categories of law as Gateway work?

Summary of Main Points

Provide Interviewee with quick summary of main points they have raised

Clarify any outstanding questions

Check if they have any further comments

Thank for participation and reconfirm non-disclosure

Annex 7 MoJ Gateway Review: Note on Aims and Methodology

Aims

The overarching aim of this review is to robustly assess the accessibility and efficacy of the mandatory Gateway service.

Overarching aims of the research are:

- a) Explore how effectively the mandatory Gateway has been implemented, including any problems that have been encountered, the reasons for these problems and ways in which they have been overcome;
- b) Explore Gateway callers' experiences of using these services; identify any barriers or obstacles that different types of Gateway client might have experienced when accessing and using the Gateway and subsequent specialist telephone advice, and identify any enablers or facilitators to effective use of these services;
- c) Examine how effectively and accurately users' eligibility for legal aid and their advice needs are being assessed at the operator and specialist level;
- d) Explore how appropriately and effectively the available reasonable adjustments (e.g. third party, BSL webcam, translation and call-back services) are being used by Gateway operators and telephone specialist advice providers;
- e) Identify best-practice in the delivery of the Gateway service and remote legal advice;
- f) Use the findings from the research to make clear and realistic recommendations about possible improvements to increase the accessibility and effectiveness of the Gateway service.

Due to the nature of the Gateway and its implementation, as well as to the other elements of the LASPO reforms including the significant narrowing of problems in scope of legal aid, it is not possible to conduct an evaluation to establish the impact of the mandatory Gateway on civil legal aid clients. This is because there is no equivalent comparison group of individuals with civil justice problems who are still receiving legal aid without going through the telephone Gateway. Additionally, a before-after approach is not possible as we are unable to reliably identify from our administrative data which pre-April 2013 legal aid clients would be still be in scope for legal aid post-April. Therefore, as the above aims and objectives indicate, the review will take a process evaluation approach.

Methodology

The review consists of four complementary elements using both quantitative and qualitative data from a variety of sources. The findings from these elements will be drawn together into one overarching report and will be used to develop robust and evidence-based recommendations about possible improvements to the service.

The four main elements of the review are as follows:

1. Analysis of quantitative management information for 2013/14 from the Gateway operator and telephone/face-to-face specialist advice providers that will provide information on the volumes and demographics of those using the service (including protected characteristics such as age, gender and disability), case types, the use of reasonable adjustments, referrals to face-to-face and telephone advice (including reasons for referrals to face-to-face advice), the length of advice provided, case outcomes, and complaints about the service. Data relating to all Gateway users (including those assessed as in scope/eligible and out of scope/ineligible) will be included in this analysis. The analysis will be presented on a whole year and month-by-month basis (as appropriate), to illuminate any in-year fluctuations or trends as well as providing an overall picture for 2013/14.
2. Qualitative interviews with Gateway users to explore their experiences of using the service, including any obstacles and enablers to accessing the Gateway, and their views about whether the mode through which they accessed advice was appropriate and effective for them. This element of the review will be contracted out by a team of researchers from the National Centre for Social Research and Dr. Nigel Balmer from the University College London.
3. Qualitative research with Gateway operators and telephone specialist advice providers (both telephone and face-to-face, in all three mandatory areas of law) to explore their experiences of delivering the service, their views on how accurately and effectively callers are being assessed with regards to problem diagnosis, financial eligibility for legal aid and suitability for telephone/remote advice, and the barriers and enablers that clients experience when accessing (or attempting to access) the service.
4. Qualitative research with a range of third sector organisations and organisations that represent, support and/or campaign on the behalf of individuals and groups who research suggests are more likely to experience barriers when trying to access the Gateway and telephone advice service. The research will explore their perceptions of whether these groups would struggle to access or effectively use the service and if so how prevalent the problem is, and provide insight into the nature of these barriers and suggestions for ways in which they can be mitigated.

All elements of the review will be conducted by MoJ analysts, apart from the qualitative interviews with Gateway users, which have been contracted out to external researchers.

Annex 8 LSC Methodology for Impact Assessment Saving Figure

This information was provided by the MoJ in response to a FOI request on how the potential Gateway savings were calculated. We have provided additional detail on the categories used, but any assumptions were derived by the LSC.

How was the £2m saving figure derived?

1. The additional costs of new Special Educational Needs (SEN), Discrimination (DISC) and Debt (DEB) cases coming in through the mandatory gateway were calculated by multiplying uplifted 2009/10 face-to-face matters by the cost of a phone call:
 - a. The cost of a phone call was estimated by policy officials to be on average £8
 - b. Face-to-face matters are uplifted by 55% which is to account for additional ineligible calls, repeat calls and hoax calls. This applies only to compulsory matters.
 - c. The additional cost is then reduced by X% to account for cases being removed from scope under the scope changes. Discrimination and Special Educational Needs are not reduced as all sub-categories deemed to stay within scope; Debt is reduced by 74.5%.
2. The savings made from moving SEN, DISC and Debt face-to-face cases to the telephone service was then calculated:
 - a. Phone cases were calculated as being 52% cheaper per case on average than face-to-face cases. This was based on 2009/10 volumes and average case values. The 52% is based on all categories of CLA case prior to the reform, such as Housing (HOU), Employment (EMP) etc.
 - b. 2009/10 face-to-face case spend on SEN, DISC and DEB cases was multiplied by 52% and by another % figure which represents the proportion of face-to-face cases deemed suitable for CLA referral (namely 90% in respect of DISC and SEN, and 95% in respect of DEB).
3. Savings in 2) are then reduced by 10% to account for the 10% reduction in civil and family fees and X% to account for cases being removed from scope under the scope changes.
4. Next, the expected savings from expanding the non-mandatory telephone service to other civil areas were calculated by multiplying the number of new CLA cases that would be brought in by the average cost of a face-to-face case, reduced by the 52% figure, reduced by X% for the scope changes and reduced by 10% for the fee reduction.
 - a. As in 2b), not all face-to-face cases were deemed suitable for transfer over to the CLA, only a certain proportion were. That proportion has been manually entered.
 - b. We do not believe that non-mandatory matters would have an increased uplift in hoax and repeat calls.
5. Having accounted for savings from other reforms, the additional costs calculated in 1) are subtracted from the savings calculated in 3) and 4) to get the net impact of CLA reforms – which is £1.9 million rounded up to the £2m figure in the Impact Assessment.

Categories of law

In respect of Debt:

- DPDE - Priority Debt(s)
- DNPD - Non priority Debt(s)
- DMDE - Mixture of both priority Debt(s) and non-priority Debt(s)
- DMCA - Representation provided under criminal legal aid
- DTOT - Other

In respect of Special Educational Needs:

- ESEN - Special Educational Needs and/or children unable to attend school

In respect of Discrimination:

- YDIS - Discrimination (Employment context)
- YEQP - Equal pay
- YMPI - Maternity/paternity issues
- EDDA - Disability Discrimination at nursery, school, college or LEA
- ADIS - Actions Against the Police etc.
- (half of) YOTH - Other (Employment context)
- BDIS - Discrimination (Public law context)

Assumptions

The analysis makes the following assumptions:

- That each phone call costs on average £8,
- That the 55% uplift is applied equally to SEN, DISC and DEB cases though some cases may have proportionately more ineligible calls or repeat calls than others,
- CLA cases were calculated as being 52% cheaper on average than face-to-face cases. This was based on 2009/10 volumes across all CLA case category types (not, for example, existing Debt cases only),
- Not all cases were deemed suitable for transfer over from face-to-face to the CLA helpline.

Our Adjustments

We updated the calculations with 2012/13 data which meant modification to some of the assumptions.

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