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PLP RESEARCH BRIEFING PAPER

The Civil Legal Advice Telephone Gateway

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Summary

This briefing paper provides an overview of the PLP research report '[Keys to the Gateway: an Independent Review of the Mandatory Civil Legal Advice Gateway](#).'

Relevant legislation:

- *Legal Aid, Sentencing, and Punishment of Offenders Act 2012*
 - Schedule 1, Part 1, Paragraphs 2 (Special Educational Needs)
 - 43 (Discrimination/Equality) and 33 (Debt)
- *Civil Legal Aid (Procedure) Regulations 2012 SI3098/2012*
 - Regulations 16, 17, 18, 19, and 20

Background

The Legal Aid, Sentencing, and Punishment of Offenders Act 2012 ("LASPO") and the Civil Legal Aid (Procedure) Regulations 2012 both came into force on 1 April 2013. They established the Civil Legal Advice ("CLA") telephone line as the only route by which individuals can access advice and assistance ("Legal Help") in three categories of law (Debt, Discrimination, and Special Educational Needs), unless they fall within one of the limited classes of 'exempt' individuals. In these three categories, the CLA telephone line is referred to as the "Gateway."

The introduction of the mandatory CLA Gateway for Debt, Discrimination, and Special Educational Needs marked a major shift in the delivery of publicly funded legal advice. The Parliamentary intention behind LASPO was to

ensure access to legal aid in the "highest priority cases."¹ The stated policy rationale behind the Gateway was to "protect access to justice whilst modernising the service and ensuring that it is affordable."²

Those seeking advice through the Gateway must first call and speak to the CLA "Operator Service," staffed by people who are not legally qualified. The Operator Service assesses whether a caller's case falls within a Gateway area of law and whether the caller is financially eligible for legal aid. If a caller gets through this stage, they will be transferred to a "Specialist Telephone Advice Provider," which is staffed by legal advisors who assess whether the case falls within a Gateway area, and (again) whether the caller is financially eligible for legal aid, before considering whether the caller's circumstances are such that they should be referred for face-to-face advice. If face-to-face advice is not required, the Specialist Telephone Advice Provider advises the caller over the telephone.

In response to a written Parliamentary Question it was revealed that, in the financial year 2016-2017, no cases in the Discrimination category of law were referred through the Gateway for face-to-face advice. The figures for Special Educational Needs and Debt were one and fifty-five respectively.³ The numbers of certificates of public funding issued in Gateway areas of law have also been strikingly low. In the financial year 2016-2017 there were 15 issued for Discrimination matters, and 33 for Debt matters.⁴ These

statistics indicate that the Gateway could be inhibiting access to justice.

Reviews and Research into the Gateway

The Ministry of Justice conducted a review of the Gateway, published in December 2014.⁵ In March 2015, the Public Law Project (“PLP”) produced a research paper: [Keys to the Gateway: an Independent Review of the Mandatory Civil Legal Advice Gateway](#).

Keys to the Gateway:

Aims and Methods

The main aims of PLP’s research were to examine:

- The extent to which the implementation of the Gateway met Parliament’s original legislative intent and/or 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 Ministry of Justice review of the Gateway; and
- The feasibility of further research into the wider impacts of the Gateway.

The research was structured around seven complementary elements, and used quantitative and qualitative techniques and a range of data sources. The seven elements were:

- *Literature review*: A review of existing evidence, including international research, to establish context and identify avenues for investigation. 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 Ministry of Justice Gateway Review methodology*: This ensured that, wherever possible, we avoided overlaps with the Ministry of Justice review and focused resources on those areas not under consideration.
- *Analysis of available quantitative data*: We analysed 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.
- *Freedom of Information Act requests*: We requested a range of information with particular focus on the contractual obligations of providers, performance measurement, quality assurance, and Operator Service guidance and training materials.
- *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.
- *Survey of front-line advice providers*: 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.

- *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.

Keys to the Gateway:

Key Findings

The findings of PLP's research raise serious concerns about the impact of the Gateway on access to justice. We found indications that the Gateway was not meeting the Parliamentary and policy intentions behind its introduction and, in some areas, that those intentions were being undermined.

Frontline Experience

- The promotion of the Gateway had been very limited, with the lack of a coherent communications strategy contributing to a reduction in demand for advice in Gateway areas of law.
- In service users' experience, the Gateway could be confusing and bureaucratic.
- It could be difficult to secure a referral to a Specialist Telephone Advice Provider without legal support.
- There were reports of inconsistent advice given by non-legally trained Operators.
- There were reports of Operators' decisions to transfer a caller to a Specialist Telephone Advice Provider being prompted by the use of certain 'buzzwords' rather than the wider content of the call.

Case Volumes

- The number of matters started through the Gateway was substantially lower than anticipated: the number of Debt matters was about 90% lower; the number of Discrimination matters around 60% lower; and the number of Special Educational Needs matters around 45% lower.⁶
- Since the introduction of the Gateway, the number of Legal Help matters in Debt had fallen by 50% and Discrimination by 58%, the largest decreases in Legal Help matters started across all areas of law.⁷
- Referrals for face-to-face advice in Discrimination and Special Educational Needs law had been significantly lower than estimated: 0.2% rather than 10% in Discrimination, and 0% rather than 10% in Special Educational Needs.⁸

Case Outcomes

- There appeared to be a corollary between the Gateway and less favourable case outcomes.
- Around a third of all Debt, and a quarter of all Discrimination, matters completed in the first half of 2014/15 resulted in 'outcome not known or client ceased to give instruction'.⁹ This did not compare favourably with other means of legal aid advice provision, or with service delivery data in those areas of law before the introduction of the Gateway.
- There seemed to be a lack of quality assurance for Gateway services, and Specialist Telephone Advice Providers had expressed concerns that advice quality may 'be driven into the ground by the current set up'.¹⁰
- The National Audit Office had reported that the Ministry of Justice has 'a weaker grasp'

of the quality of advice under certain aspects of the Gateway.¹¹ 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).

- The Ministry of Justice had confirmed that, despite provision in the 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 also indicated that, as of September 2014, 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.

Value for money

- There was evidence to suggest that the Gateway was not achieving value for money across its services, despite this being a key objective behind it.
- Total legal aid expenditure in Gateway areas of law had 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.
- The Ministry of Justice projected that the Gateway would save £2 million annually with an estimated £2 million of one-off costs.¹²
- £210,000 of these projected savings were based on the expansion of the Community Legal Advice helpline to other areas of law, e.g. Actions Against the

Police and Non-Asylum Immigration, which did not seem to have happened.

- The majority of projected savings were based on the lower costs of Specialist Telephone Advice Providers. However, the additional costs of e.g. the Operator Service and determinations seem to have out-weighed such savings in some Gateway areas of law. 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.¹³
- A comparison of the cost per matter of Gateway advice with face-to-face advice where the case resulted in a beneficial outcome for the client indicates that the Gateway is more expensive than face-to-face advice: about 170% more so for Debt advice provided in the not-for-profit advice sector in 2012/13, and about 100% more expensive than that provided by solicitors' firms in the same year.¹⁴
- 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.

Transparency and Data Quality

- There had been a lack of clarity around the approach taken by the Ministry of Justice to statistics.
- The limited publicly available data on the total number of calls for 2013/2014 varied, with figures ranging from 228,559 to 261,000.

- In one instance the Ministry of Justice significantly revised its publicly available statistics by creating a new data category of ‘determinations’ without providing clear definitions or explanations for the change, making analysis of the data difficult.

Ministry of Justice Review

The gap analysis of the Ministry of Justice’s Review of the Gateway, conducted as part of this research, identified the following major omissions:

- A lack of consideration of the impact of the Gateway on individuals who did not access it, but who would have been entitled to;
- A lack of consideration of the impact on individuals ‘exempt’ from having to use the Gateway;
- A lack of assessment of the accuracy and quality of the Operator Service; and
- A failure to evaluate the costs and savings produced by the Gateway.

Keys to the Gateway:

Recommendations

The conclusion of the research was that the Ministry of Justice should:

- Improve the promotion of and communication about the Gateway so that the public and other providers are aware of the service.
- Clarify guidance on when a referral for face-to-face advice is required, to reflect the assurances made to Parliament that the mechanism would be “flexible” and referrals made when “more appropriate for the caller.”
- Publish the outcomes of regular assessments by the Specialist Telephone Providers of the Operator Service.

- Monitor the Operator Service to ensure that complex, novel or poorly presented cases are not misdiagnosed as not requiring legal advice.
- Clarify and monitor Gateway quality assurance processes to ensure that high levels of service and advice are provided.
- Make the service standards and regular assessment data publicly available, in the interests of transparency and accountability.

Further research is needed in respect of the following:

- *Value for money*: a full cost-benefit analysis of the Gateway taking into account additional operating costs;
- *Case outcomes*: the impact of the Gateway on case outcomes;
- *Face-to-face referrals and reasonable adjustments*: whether face-to-face referrals and reasonable adjustments are facilitating access to justice;
- *Exempt individuals*: the impact of the Gateway on individuals exempt from having to use it;
- *Legal Representation*: the impact of the Gateway on work at the Legal Representation stage of advice;
- *Sustainability*: 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’.
- *Wider economic and social impact of the Gateway (and LASPO)*: 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.

The Ministry of Justice should publish the following data as part of its regular legal aid statistical bulletin:

- The number of calls received by the Gateway broken down by category of law and outcome;
- The number of face-to-face referrals from the Gateway broken down by category of law and outcome;
- The 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
- The statistical data that was published in the Ministry of Justice’s December 2014 review of the Gateway.

The legal aid statistical bulletin should also provide clear and concise explanations of each element of the published data to ensure transparency and understanding.

PLP’s recommendations do not appear to have been taken up by the Ministry of Justice.

The Gateway now

References

¹ See e.g. Ministry of Justice, [Transforming Legal Aid: Next Steps](#) (2013) §1.6a; also Ministry of Justice, [Government Response](#), 2011 p.4, Ministerial Forward; and Ministry of Justice, Gateway Review Summary, 2014 §.2.1.

² HC Deb 17 April 2012, vol 543, col 204.

³ [Legal Aid Scheme: Telephone Services: Written question – 111874](#), question asked 07.11.17 and answered 17.11.17.

On 26 September 2017, the Legal Aid Agency opened the tender for contracts to provide Civil Legal Advice services, including Gateway services, from 1 September 2018. On 5 February 2018, the Legal Aid Agency cancelled the procurement process for Gateway services in Discrimination and Education because they had received insufficient compliant bids.

On 28 March 2018, the Legal Aid Agency announced that two of the current education providers and one of the current discrimination providers had agreed to the extension of their contracts until 2020. The Legal Aid Agency also announced their intention to re-tender for contracts to provide Gateway services in the Discrimination category of law.

The failure to attract sufficient numbers of providers to tender for contracts in Gateway work, and the fact that only one of three providers in the Discrimination category was prepared to agree to an extension of their contract speaks to the viability and sustainability of the Gateway as a means of delivering advice.

⁴ [Legal Aid Statistics England and Wales October to December 2017](#), published 29.03.18.

⁵ Ministry of Justice [Civil Legal Advice mandatory gateway: overarching research summary](#) 2014; Ministry of Justice [Civil Legal Advice mandatory gateway: findings from interviews with users](#) 2014; Ministry of Justice [Civil Legal Advice mandatory gateway: findings from interviews with service providers](#) 2014 ; Ministry of Justice [Civil Legal](#)

[Advice mandatory gateway: secondary analysis of management information](#) 2014.

See also the [Government Response to the Review of the Civil Legal Advice Mandatory Gateway](#) December 2014.

⁶ The Public Law Project: [Keys to the Gateway](#) 2015 § 6.12-6.18.

⁷ As above.

⁸ The Public Law Project: [Keys to the Gateway](#) 2015 § 6.20.

⁹ The Public Law Project: [Keys to the Gateway](#) 2015 § 7.10.

¹⁰ The Public Law Project: [Keys to the Gateway](#) 2015 pg. 62.

¹¹ National Audit Office, [Implementing Reforms to Civil Legal Aid](#) 2014 §13 & 3.9-3.14.

¹² Ministry of Justice, [Impact Assessment](#), 2011 – §36; see also The Public Law Project: [Keys to the Gateway](#) 2015 § 8.2.

¹³ The Public Law Project: [Keys to the Gateway](#) 2015, Chapter eight.

¹⁴ As above.



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