



Submission to the Post-Implementation Review of the Legal Aid Sentencing and Punishment of Offenders Act 2012

PLP has serious concerns about the negative impact that the Legal Aid Sentencing and Punishment of Offenders Act 2012 (“LASPO”) has had on access to justice, particularly for some of the most disadvantaged in our society. The Government should be committed to ensuring meaningful access to justice as it is a fundamental precondition of a fair and democratic society. Given the constitutional, social and economic importance of access to justice, a scheme to facilitate it must be accessible, effective and sustainable. This submission explains the basis for this view and how, in PLP’s experience, the LASPO legal aid scheme is not accessible, effective or sustainable, and so has contributed to a worsening justice deficit.

PLP’s evidence shows that LASPO has not met the Government’s own stated objectives:¹

- LASPO does not target legal aid at those who need it the most.
- LASPO may not have delivered better overall value for money to the taxpayer.
- LASPO may not have discouraged unnecessary and adversarial litigation at public expense.
- If LASPO has resulted in savings to the cost of the scheme, it has been disproportionately to the detriment of access to justice.

The key findings drawn from our evidence are that:

- Removing areas of law from the scope of legal aid has restricted access to justice, with the lack of early legal advice preventing the early resolution of cases.
- There is a particular need to bring immigration cases and private law family cases back into the scope of legal aid.
- The financial eligibility criteria do not reflect financial realities. They make legal aid inaccessible for people already unable to sustain an acceptable standard of living even without having to pay for legal services.
- The Exceptional Case Funding scheme does not provide an adequate safety net for those who need legal aid to prevent a breach of their Convention or EU rights.
- The civil legal aid fees paid and cuts in the scope of legal aid under LASPO threaten the sustainability of legal aid practice, contributing to advice deserts.
- The mandatory telephone gateway is a barrier to access to justice and does not achieve value for money.

¹ Ministry of Justice *Proposals for the Reform of Legal Aid in England and Wales* 2010



The Public Law Project's Expertise

PLP is a national legal charity, established to help ensure that those marginalised through poverty, discrimination, or disadvantage have access to public law remedies. Our vision is a world in which individual rights are respected and public bodies act fairly and lawfully. We seek to improve public decision making and facilitate access to justice. Our priorities are to:

- Promote and preserve the Rule of Law;
- Ensure fair systems; and
- Improve access to justice.

PLP is based in London but has a national presence and standing. Uniquely for an organisation of our kind, we undertake research, policy initiatives, casework and training across the range of public law remedies. The contents of this submission are drawn from PLP's expertise and experience in all relevant aspects of our work.

PLP's Legal Aid Support Project

In response to LASPO, PLP developed an internal project to enable us to focus specific resources on the LASPO legal aid scheme. Our aim was with to mitigate, where possible and appropriate, the impact that the cuts would have on access to justice. Through the Legal Aid Support Project, PLP has engaged with LASPO on several different levels. We have supported many people impacted by the legislation, we have provided training and published resources, we have responded to government consultations and prepared briefings for Parliamentarians.

A particular area of focus was Exceptional Case Funding ("ECF"), the 'safety net' provision in s.10 LASPO. Between April 2013 and April 2016, we assisted over 150 people to make applications for ECF and provided ECF-related support to many others. We have published a number of practical guides and delivered training on accessing ECF. We also produced an independent review of the mandatory Civil Legal Advice telephone line ("the Gateway"), introduced under LASPO.

Where appropriate, we have brought litigation (both as instructed solicitors and in our own name) to challenge unlawfulness arising in the context of the implementation of the LASPO scheme.² Access to legal aid remains a key focus of PLP's work: we recently acted for the Law Centres Network in its successful challenge to the tender for the Housing Possession Court Duty Scheme (*R.(oao Law Centres Network) v The Lord Chancellor* [2018] EWHC 1588 (Admin)).

² See [PLP Briefing: Public Law Project Litigation](#)



Legal Aid and Access to Justice

There is no better recent exposition of the importance of the rule of law and the role of access to justice in securing the rule of law than the judgment of Lord Reed in *UNISON (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51. At paragraph 68 of his judgment he observed that:

“At the heart of the concept of the rule of law is the idea that society is governed by law... Courts exist in order to ensure that the laws made by Parliament and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade.”

At the very least, professional legal advice will vastly enhance an individual’s ability to access justice; many will be unable to secure effective access to justice without it. However, the cost of professional legal advice renders it unaffordable for a large number of people.³ The need for the state to fund legal advice and assistance in order to facilitate equal access to justice was recognised by the architects of the Legal Aid and Advice Act 1949. The intention was to *“provide legal advice for those of slender means and resources, so that no one would be financially unable to prosecute a just and reasonable claim or defend a legal right; and to allow counsel and solicitors to be remunerated for their services.”*⁴ During its passage through Parliament the then Attorney General Sir Hartley Shawcross described the 1949 Act as a *“Bill which will open the doors of the courts freely to all persons who may wish to avail themselves of British justice without regard to the question of their wealth or ability to pay.”*⁵

Facilitating equal access to justice was not one of the stated objectives of LASPO,⁶ although the decisions to retain areas of law within the scope of the LASPO legal aid scheme were based on factors relevant to whether legal aid is necessary to ensure access to justice at common law and under Convention and EU law.⁷ The terms of reference for this LASPO Post-Implementation Review recognise that *“the ability of everyone to resolve their legal*

³ See e.g. Joint Committee on Human Rights Tenth Report of Session 2017-2019: Enforcing human rights; 11 July 2018 page 13

⁴ 1948 White Paper announcing intention to introduce what became the Legal Aid and Advice Act 1949

⁵ *HC Deb 15 December 1948 vol 459 cc1221*

⁶ These were: to discourage unnecessary and adversarial litigation at public expense; to target legal aid at those who need it most; to make significant savings to the cost of the scheme; and to deliver better overall value for money to the taxpayer.

Ministry of Justice *Proposals for the Reform of Legal Aid in England and Wales 2010*; *Reform of Legal Aid in England and Wales: Equality Impact Assessment (EIA)* 21 June 2011; para 17

⁷ Ministry of Justice *Proposals for the Reform of Legal Aid in England and Wales 2010*



issues is vital to a just society”, however, in PLP’s experience, the LASPO legal aid scheme does not allow for this.

We do not seek to set out here detailed proposals for the design and operation of a legal aid scheme in England and Wales. However, there are some principles on which we believe that any such scheme should be built. The aim of a legal aid scheme in England and Wales should be to make justice accessible to all, and the scheme should be designed and properly funded so as to be accessible, effective and sustainable.

The scheme must be accessible to all who need it

For example:

- It must provide legal advice that is accessible regardless of any geographical barriers that users might face. This means that face-to-face advice must be available to people across England and Wales.
- It must allow legal advice to be delivered in a manner that is accessible to all who need it. Whilst existing and new technologies may provide welcome options for methods of advice delivery, advice delivered solely over the telephone or by other remote means will be inaccessible and ineffective for many; individuals must be able to access face-to-face advice if their circumstances mean that this is necessary to ensure effective provision of advice.
- It must be accessible to those who cannot otherwise afford to pay for legal advice. This requires any financial eligibility criteria to properly reflect current financial realities, and for there to be mechanisms to ensure that the criteria are reviewed regularly and revised if necessary.
- It must ensure that suitable legal advice and representation is available when it is needed, including for urgent cases. This means that any application process has to be efficient, and that any decision-making has to be accurate and timely.
- It must be promoted so that those who are eligible to use the scheme are aware that legal aid is available, and know how to access it.

The scheme must provide effective legal advice

For example:

- It must allow those who are eligible to access legal advice at an early stage in relation to the full range of interrelated matters that they are facing. The removal of key areas of law from the scope of legal aid has left individuals unable to get advice in relation to certain issues, impeding the resolution of other legal problems, and risking the breach of individuals’ rights under Convention and EU law.
- The advice provided must be sufficiently specialist, and of a sufficiently high quality.
- It must enable an eligible individual to access effective advice and representation for as long as is needed to resolve their legal issues. In some cases legal advice at an early stage will be sufficient to resolve a problem, but funding must be available to pursue the matter further if required.



- It must be independent, with decisions to fund free from ministerial influence or interference.

The scheme must be sustainable in the long-term

For example:

- It must be properly funded to ensure the financial viability of publicly funded legal work for the organisations and individuals relied upon to deliver advice under the scheme, and for future generations of lawyers.

PLP's Briefings and Written Evidence

PLP has published a series of briefings and evidence on some of the specific effects of LASPO based on our experience and expertise, which we summarise below:

*Legal Aid and Access to Early Legal Advice*⁸

LASPO removed important areas of law from the scope of legal aid, including where early legal advice is needed. PLP's briefing paper identifies five key issues relating to the availability of early legal advice which arise from the reforms to civil legal aid made by LASPO. The findings are based on a review of research conducted by other organisations that document how the availability of early advice has an impact on individuals and the civil justice system.

The five issues identified are:

- The reduction in the availability of early legal advice has meant that opportunities to resolve issues earlier in the process are often missed and problems escalate.
- The LASPO cuts have resulted in the availability of most areas of legal aid advice being limited. The closure of advice and not-for-profit organisations has led to the growth of 'advice deserts,' where individuals are unable to access any initial advice or legal assistance.
- Early legal advice is an important route into alternative dispute resolution ("ADR"), and a reduction in the availability of early legal advice reduces the opportunities available for people to be directed towards ADR, rather than litigation.
- Since LASPO the number of Litigants in Person ("LiPs") within the court system has risen, in part, as a consequence of the diminished availability of early advice. There is mounting evidence that this is imposing a costly burden on the courts and tribunals system.
- Where individuals are unable to access initial advice for their legal issues, there may be wider societal costs. For example, an additional burden placed on the NHS and the welfare system where legal issues escalate to greater social problems such as homelessness.

⁸ [PLP Research Briefing Paper: Legal Aid and Access to Early Advice](#)



The paper finds that, across the literature, a common view is that the failure to offer early intervention results in costly consequences, which could be prevented if advice was available to individuals from the outset of their case. Similarly, the rise of unmeritorious claims and LiPs within the family courts has been linked to the inability to access initial support. The reintroduction of early advice is now being requested by many.

The existing evidence suggests that the cuts to legal aid implemented by LASPO have had a significant and widespread negative impact on access to early legal advice, with broader implications for access to justice and the effective functioning of the justice system. PLP supports the reintroduction of comprehensive early legal advice.

*The Gap between the Legal Aid Means Regulations and Financial Reality*⁹

The LASPO scheme includes detailed rules governing financial eligibility for legal aid. LASPO introduced the requirement that people in receipt of passporting benefits satisfy a capital eligibility test;¹⁰ and increased the amounts payable by way of income contributions to public funding certificates.¹¹

PLP's briefing paper was published in July 2018. In it the criteria for financial eligibility for legal aid are explained, and their practical application assessed. The paper is informed by Professor Donald Hirsch's report, commissioned by the Law Society, "*Priced out of Justice? Means testing legal aid and making ends meet*".¹²

PLP's briefing paper highlights the following particular difficulties with the current financial eligibility criteria for legal aid:

- The upper limits on both income and capital, over which someone will not be financially eligible for legal aid, are out of date and do not account for inflation.¹³
- The allowances for housing costs to be deducted from an individual's income when assessing eligibility are out of date and do not reflect today's housing market.¹⁴
- Many households whose disposable income is just above the upper limit for eligibility will already be below the minimum income standard or in poverty.
- All households that are financially eligible, but required to pay contributions towards their legal aid will already be in poverty and will not be able to afford to pay contributions without experiencing greater financial hardship.

⁹ [PLP Research Briefing: The Gap Between the Legal Aid Means Regulations and Financial Reality](#)

¹⁰ Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013; Regulation 6

¹¹ Ibid; Regulation 44

¹² March 2018: <http://www.lawsociety.org.uk/policy-campaigns/campaigns/access-to-justice/legal-aid-means-test-report/>

¹³ The upper limits for disposable income and capital (above which people will not qualify for legal aid) have not been increased since 2009.

¹⁴ The amount deductible from disposable income to account for housing costs for individuals without dependents has remained capped at £545 since December 2001, even though the average UK rent has increased by 15.7% in the last seven years, and is currently £675.



- The amounts disregarded from an applicant's capital for their mortgage on and equity in their main dwelling do not reflect current house prices.¹⁵
- The financial eligibility criteria are particularly disadvantageous to families with children.¹⁶
- The financial eligibility criteria also disadvantage homeowners on low incomes.¹⁷

PLP's briefing concludes that the financial eligibility criteria under LASPO exclude people from legal aid who are already unable to sustain an acceptable standard of living without having to pay for legal advice and representation. They should be overhauled to ensure that those who are not otherwise able to pay for legal advice and representation are eligible for legal aid and are not expected to make contributions that they cannot afford.

Exceptional Case Funding¹⁸

LASPO removed significant areas of law from the scope of legal aid, and introduced ECF, which was intended to act as a safety net where the failure to provide funding would risk breaching an individual's Convention or EU law rights.¹⁹

PLP's briefing paper looks at the history of ECF, including application and success rates, the accessibility of the scheme and major litigation that occurred concerning its operation. Although there has been an increase in the number of applications and grants, the overall numbers remain much lower than even the Government projected.²⁰

The paper draws from PLP's experience of making ECF applications through its Legal Aid Support Project. Through this work, PLP obtained a unique insight into the operation of the ECF scheme in its first years; we assisted 25% of all applicants who were granted ECF between 1 April 2013 and 31 March 2015. PLP also acted for the Claimant I.S. in two cases which arose out of the problems with the ECF scheme: *Gudanaviciene and Ors v Director of Legal Aid Casework and the Lord Chancellor* [2014] EWCA Civ 1622, and *I.S. v Director of Legal Aid Casework and the Lord Chancellor* [2015] EWHC 1965 (Admin) and [2016] EWCA Civ 464.

¹⁵ They have both been capped at £100,000 since 2000 notwithstanding that house prices have increased 200% since then.

¹⁶ The current deductions from disposable income for dependents (£290.70 for each child and £181.41 for a partner) do not reflect the actual cost of supporting those people, and because the gross income limit remains £2,657.00 per month for all applicants, unless they have more than four dependent children.

¹⁷ The capital thresholds and the limited mortgage and equity disregards mean that anyone who owns a home worth more than £214,450.00 will be financially ineligible for legal aid, even if they are below the income thresholds. Since April 2013 this has included people who are recipients of passporting benefits. As it takes an average of 14 weeks to sell a property, this is not a solution if someone needs legal advice in the short to medium-term. Further, individuals on a low income will struggle to raise a loan secured against the property as their eligibility will be assessed on the basis of their ability to afford the loan repayments.

¹⁸ [PLP Research Briefing Paper: Exceptional Case Funding](#)

¹⁹ Legal Aid Sentencing and Punishment of Offenders Act 2012; section 10

²⁰ Prior to the introduction of LASPO, the Government's estimate of the annual number of non-inquest ECF applications was 6,500 with further applications anticipated for legal help: Ministry of Justice: *Legal Aid Reform: Excluded Cases Funding Process Equality Impact Assessment*; March 2012 page.9. In 2017-18 there were 2208 non-inquest ECF applications, the highest number since the scheme began: Legal Aid Statistics January to March 2018; 28 June 2018



In response to the claims in *Gudanaviciene* and *I.S.*, the government made a number of changes to the ECF scheme, including revised ECF guidance, and a new, shorter, application form introduced in November 2015. However, as this paper highlights, there are a number of ongoing difficulties with the ECF scheme, including:

- The lack of information and assistance available for applicants.²¹
- The complexity of the application forms.
- The inadequacy of the procedure for determining urgent applications.
- The additional hurdles an applicant must overcome once ECF is granted.²²

PLP's briefing concludes that ECF remains inaccessible in practice for many people, particularly for those who are trying to apply without the assistance of a legal aid provider, and that it is not providing the much-needed safety net for people who need legal advice and representation in areas removed from scope by LASPO.

*The Effects of LASPO on Civil Legal Aid in Wales*²³

PLP's briefing paper explores the effects of the LASPO reforms on civil legal aid provision in Wales. It draws on Welsh and UK Government statistics and reports; publications by legal professional bodies, Parliamentary Committees, Independent Commissions and the voluntary sector; academic sources; and informal consultation with solicitors and advice charities.

The findings demonstrate that LASPO has limited the availability of legal aid in Wales. It is of particular concern that:

- Between 2012-2017 Wales saw a larger proportionate fall in civil legal aid expenditure, and in firms providing legal aid, than England.²⁴
- There has been a reduction in legal aid providers for matters remaining in scope in Wales, leading to large geographical areas with sparse legal aid provision.²⁵
- Legal aid providers in Wales have been particularly adversely affected by the changes to legal aid, due to the distinct challenges of the advice landscape there.²⁶

²¹ For example: there is no readily available information on the ECF section of the website about the "means" and "merits" criteria, which an applicant for ECF must also meet; Since February 2017 there has been no direct telephone line to contact the ECF team at the Legal Aid Agency, as it has been merged with the main Legal Aid Agency customer service number, 0300 200 2020, and the email address has also been merged into one email for exceptional and complex cases.

²² For example, finding a legal aid provider to take on a case. If a provider can be found, they must then complete and submit further forms for ECF (an ECF application, and the means and merits test), and wait for confirmation from the Legal Aid Agency, which can cause further delays.

²³ [PLP Research Briefing: The Effects of LASPO on Civil Legal Aid in Wales](#)

²⁴ In 2011/12 to 2016/17, the Wales region saw a 34% fall in civil legal aid expenditure on solicitor firms and a 69% fall in civil legal aid expenditure on Not for Profit (NfP) organisations. For the same categories, the English regions saw average falls of 23% and 63% respectively. Ministry of Justice, *Legal aid statistics for England and Wales. Tables January to March 2017* (June 2017). Table 9.2.

²⁵ The number of firms in Wales providing legal aid has fallen by 29% since 2012; the average fall for the English regions is 20%. UK Parliament, *Legal Aid Scheme: Written question - 9862* (September 2017)

²⁶ A review conducted by the Law Society in 2013/14 found that 46% of firms in Wales indicated changes to legal aid had been either a 'fairly' or 'very significant problem', compared to an average of 24% of all law firms reporting similarly across England and Wales. The Law Society, *Problems faced by firms: The Law Society's Firm Survey 2013-14* (October 2014) page 6.



- Access to ECF is particularly limited in Wales, and more data is needed to identify why application rates are so low.²⁷

The findings of this paper indicate that Wales has been disproportionately affected by LASPO, with negative implications for access to justice there. It appears that this is particularly due to the significant reductions in civil legal aid expenditure and the spatially distinct nature of advice infrastructure in Wales.

Family Law and Access to Legal Aid²⁸

LASPO removed private law family cases from the scope of legal aid, with the exception of certain cases where there is evidence of domestic violence or child abuse.²⁹

PLP's briefing paper summarises research conducted with family law practitioners and not-for-profit organisations providing advice or support to parties in family cases. It examines how the cuts to legal aid have created additional barriers to justice for many people who need to access advice and representation for family law matters.

The research was conducted partly as a response to the low success rates of ECF applications for family matters, and highlights the limitations of the ECF scheme and why ECF does not provide an effective safety net for those most in need of legal assistance. It was also motivated by PLP's concerns about the rise of LiPs in family proceedings. The findings are based on responses from 16 participants, gained through an online questionnaire about access to legal aid, and three interviews.

The keys findings of the research are:

- Law firms and not-for-profit organisations are concerned by the limited, and sometimes non-existent, availability of legal aid for many family law matters.
- The reduced scope of legal aid for private cases has made legal aid contracts difficult for providers to justify as part of a business model, and the alternatives such as fixed fee or pro bono work are inadequate for ensuring access to justice.
- The ECF scheme does not provide fair or sufficient access to legal aid for out-of-scope family law cases.
- The absence of legal aid funding for initial advice prevents early intervention, prolongs disputes, and makes processes of alternative dispute resolution more difficult for people to access.
- The procedural complexity of family law means that access to free advice and representation is essential for fair and effective access to justice.

²⁷ Ministry of Justice data shows that in the years 2013-2015, providers in Wales made approximately 5% of all ECF applications; and 2%-3% in 2015-2017. There appear to have been no Housing ECF applications in Wales in 2015-2017 (102 have been made in the English regions during this time). Ministry of Justice, *Legal aid statistics for England and Wales tables July to September 2017* (December 2017) Table 8.2.

²⁸ [PLP Research Briefing Paper: Family Law and Access to Legal Aid](#)

²⁹ Legal Aid Sentencing and Punishment of Offenders Act 2012 Schedule 1 Part 1 Paras 12 and 13



- The long-term impact of the legal aid deficit is of particular concern, especially the detrimental effects on society where disputes involving children are not resolved.

Based on the findings, the paper makes the following policy recommendations:

- That the importance of legal aid in assisting people through complex and emotional family proceedings is recognised.
- That the application processes for legal aid are simplified, and that improvements are made to the payment system.
- That the scope of legal aid is broadened, bringing certain matters back into scope, including any proceedings involving children.
- That the financial eligibility criteria are reassessed to ensure that legal aid is accessible to those most in need.
- That the importance of early legal advice is recognised and legal aid for it is reinstated.

Overall, the research shows that LASPO has had a significant negative impact on access to justice in family law, and the ECF scheme has not been effective in ensuring the availability of legal aid for those who need it.

*The Civil Legal Advice Telephone Gateway*³⁰

LASPO introduced the Civil Legal Advice Telephone Gateway (“the Gateway”) as the only means by which individuals can access publicly funded advice in relation to Discrimination, Debt or Special Educational Needs matters.

PLP’s briefing paper, published in May 2018, considers PLP’s research “*Keys to the Gateway: an Independent Review of the Mandatory Civil Legal Advice Gateway*”,³¹ published in March 2015. The 2015 research raised serious concerns about the impact of the Gateway on access to justice in the areas of law to which it applies, concerns which do not, to date, appear to have been addressed.

The findings of PLP’s 2015 research, as set out in the briefing paper, include the following:

- The number of matters started through the Gateway was significantly lower than anticipated in all three categories of law.³²
- There had been a fall in the number of Legal Help matters opened in Gateway areas of law, and it may constitute a barrier to access to justice.³³

³⁰ [PLP Research Briefing Paper: The Civil Legal Advice Telephone Gateway](#)

³¹ March 2015: <https://publiclawproject.org.uk/wp-content/uploads/data/resources/199/Keys-to-the-Gateway-An-Independent-Review-of-the-Mandatory-CLA-Gateway.pdf>

³² 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. [Keys to the Gateway](#) paras 6.12 and 6.15

³³ The number of Legal Help matters in Debt had fallen by 50% and Discrimination by 58%, the largest decreases in Legal Help matter starts across all categories of law. [Keys to the Gateway](#) paras 6.41



Public Law Project

- There appeared to be a corollary between the Gateway and less favourable case outcomes.³⁴
- There was a lack of clear publicly available data on the operation of the Gateway.
- The Gateway may not be achieving value for money.³⁵

PLP's briefing paper sets out the recommendations made in the 2015 research, which include:

- To improve the promotion of the Gateway.
- To improve the guidance on when a referral for face-to-face advice is required to reflect the assurances made to Parliament that referrals would be made when "*more appropriate for the caller.*"
- To monitor the Gateway Operator Service to ensure that complex, novel, or poorly presented cases are not misdiagnosed as not requiring legal advice.
- To improve the transparency and accountability of the Gateway.
- To conduct further research into the operation and impact of the Gateway.

PLP's briefing notes that none of the recommendations made in PLP's 2015 report appear to have been taken up by the Ministry of Justice.

PLP's research indicates that the Gateway may constitute a barrier to access to justice, and that it may not be achieving value for money. It should be replaced with a scheme by which individuals can access legal services in a manner that is most appropriate for them. This means at the least giving people a meaningful choice between services delivered face-to-face and over the telephone.

The Public Law Project's Litigation³⁶

PLP has been involved, both as instructed solicitor and claimant, in much of the litigation that has shaped the LASPO legal aid scheme. PLP's briefing provides an overview of the following cases that PLP has been involved in:

- [*R \(oao Gudaviciene & Ors.\) v The Director of Legal Aid Casework & Or.* \[2014\] EWCA Civ 1622.](#)
- [*R \(oao I.S. by his litigation friend The Official Solicitor\) v The Director of Legal Aid Casework* \[2015\] EWHC 1965 \(Admin\) and *The Director of Legal Aid Casework v I.S \(by his litigation friend The Official Solicitor\)* \[2016\] EWCA Civ 464.](#)
- [*R \(oao Ben Hoare Bell & Ors.\) v The Lord Chancellor* \[2015\] EWHC 523 \(Admin\).](#)
- [*R \(oao Rights of Women\) v The Lord Chancellor* \[2016\] EWCA Civ 91.](#)

³⁴ About 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 instructions,' which did not compare favourably with other means of legal aid advice provision, or with data in those areas of law prior to the introduction of the Gateway. [Keys to the Gateway](#) see e.g. paras 7.3 and 10.12

³⁵ There was evidence to suggest that it was not achieving value for money across its services, despite this being a key objective behind it. [Keys to the Gateway](#) Chapter eight; see e.g. para 8.23

³⁶ [PLP Research Paper: LAPSOA briefing: Public Law Project's Litigation](#)



- [*R \(oao The Public Law Project\) v The Lord Chancellor \[2016\] UKSC 39.*](#)

In the litigation with which PLP has been involved, the Courts have considered the purposes of LASPO, and demonstrated a willingness to intervene where the Government has sought to further restrict the availability of legal aid through secondary legislation.

*Written Evidence of the Public Law Project to the Joint Committee on Human Rights Inquiry into Human Rights: Attitudes to Enforcement*³⁷

PLP's evidence addressed the question of access to resources, and the impact of LASPO on the ability of individuals to access the courts to enforce their human rights. Amongst other things, our evidence explained that:

- By removing important areas of social welfare law from the scope of civil legal aid, LASPO had impeded individuals' ability to protect their rights.
- Cuts to civil legal aid fees have threatened the sustainability of legal aid practice.
- There is a strong case for reinstating legal aid for Article 8 ECHR immigration cases in light of the high number of applications for ECF made and granted for immigration cases.

*Written Evidence of the Public Law Project to the Bach Commission on Access to Justice*³⁸

PLP's evidence to the Bach Commission focused on our experience of the ECF scheme; our experience of challenging the Government's use of delegated powers under LASPO; and our research into the operation of the Mandatory Telephone Gateway.

Conclusion

PLP's briefings and evidence summarised above demonstrate that the LASPO legal aid scheme is not accessible, effective, or sustainable. We particularly highlight that:

- The LASPO changes have resulted in the closure of advice and not-for-profit organisations, and have contributed to the growth of 'advice deserts,' where individuals will not be able to access face-to-face legal advice or assistance in their area.³⁹
- The mandatory telephone Gateway for Debt, Special Educational Needs and Discrimination legal aid does not allow people to access face-to-face advice even if needed to ensure it is effective. PLP's evidence is that the mandatory Gateway may act as a barrier to access to justice.⁴⁰

³⁷ <https://publiclawproject.org.uk/wp-content/uploads/2018/02/Written-submission-of-PLP-to-JCHR-inquiry-on-attitudes-to-human-rights-enforcement.pdf>

³⁸ <https://publiclawproject.org.uk/wp-content/uploads/data/resources/225/Evidence-of-the-Public-Law-Project-to-the-Labour-Review-of-Legal-Aid.pdf>

³⁹ [PLP Briefing: Legal Aid and Access to Early Legal Advice; PLP Briefing: The Effects of LASPO on Civil Legal Aid in Wales;](#) The Law Society Parliamentary Brief: Legal aid deserts in England and Wales; November 2016

⁴⁰ [PLP Briefing: The Civil Legal Advice Telephone Gateway](#)



- The financial eligibility criteria have not been revised to keep in line with financial realities, and now exclude people who are unable to sustain an acceptable standard of living without having to also pay for legal services.⁴¹
- People who are eligible for legal aid are often not aware that it is available, and if they are aware, are unable to access it. There is a lack of public awareness of the continuing availability of legal aid for Debt, Discrimination and Education matters through the mandatory telephone Gateway,⁴² and the ECF scheme is inaccessible in practice for many, particularly those trying to apply without a legal aid provider.⁴³
- The LASPO scheme does not always enable people who apply for legal aid to access legal advice and representation when it is needed. The procedure for determining urgent applications for ECF is particularly inadequate.⁴⁴
- The removal of significant areas of law from the scope of legal aid prevents people from accessing legal advice in relation to all of their interrelated issues. This allows disputes to escalate; impedes peoples' ability to protect their rights; and passes a costs burden on elsewhere, particularly to the courts and tribunals system, Local Authorities, the NHS, and the welfare system.⁴⁵
- The removal of private law family cases has undermined the financial viability of legal aid contracts, and the sustainability of providers in Wales has been particularly adversely affected by the LASPO changes.⁴⁶ More broadly, the sustainability of legal aid practice is in doubt, not least because civil legal aid fees have not been increased in line with inflation since 1998/99, and were subject to a 10% cut in 2011.⁴⁷

As a minimum, the recommendations in PLP's briefings and evidence should be implemented. These include:

- To address the need for advice in areas of the country where the number of providers is significantly lower than is required to meet the levels of need.⁴⁸
- To broaden the scope of legal aid, bringing certain matters back into scope, including family law proceedings involving children and non-asylum immigration cases.⁴⁹
- To recognise the importance of and reinstate legal aid for early legal advice.⁵⁰
- To amend the financial eligibility criteria so that they properly reflect current financial realities and make the legal aid scheme accessible to those who cannot otherwise afford to pay for legal services.⁵¹

⁴¹ [PLP Briefing: The Gap between the Legal Aid Means Regulations and Financial Reality](#)

⁴² [PLP Briefing: The Civil Legal Advice Telephone Gateway](#)

⁴³ [PLP Briefing: Exceptional Case Funding](#)

⁴⁴ [PLP Briefing: Exceptional Case Funding](#); [PLP Briefing: Family Law and Access to Legal Aid](#)

⁴⁵ [PLP Briefing: Family Law and Access to Legal Aid](#);

⁴⁶ [PLP Briefing: The Effects of LASPO on Civil Legal Aid in Wales](#)

⁴⁷ This amounts to a 34% cut in fees over those 13 years; National Audit Office: Implementing Reforms to Civil legal aid (November 2014) para 3.20; [PLP Briefing: The Effects of LASPO on Civil Legal Aid in Wales](#)

⁴⁸ [PLP Briefing: Family Law and Access to Legal Aid](#); [PLP Briefing: The Effects of LASPO on Civil Legal Aid in Wales](#)

⁴⁹ [PLP Briefing: Family Law and Access to Legal Aid](#); [PLP Written evidence to the Joint Committee on Human Rights: Attitudes to enforcement](#)

⁵⁰ [PLP Briefing: Family Law and Access to Legal Aid](#); [PLP Briefing: Legal Aid and Access to Early Legal Advice](#)

⁵¹ [PLP Briefing: The Gap between the Legal Aid Means Regulations and Financial Reality](#)



Public Law Project

- To remove the practical barriers to accessing ECF faced particularly by those who do not have the assistance of a legal aid provider to make an application. These include:
 - Improving the information and assistance available for applicants;
 - Reducing the complexity of the application forms and evidence requirements;
 - Introducing a proper emergency procedure for determining urgent applications;
 - Removing the additional hurdles an unrepresented applicant must overcome once ECF is granted.⁵²
- To ensure that legal aid is financially viable for providers.⁵³

The LASPO legal aid scheme has left justice inaccessible for some of the most disadvantaged in our society.⁵⁴ The implications of this for democracy and the Rule of Law are profound. The impact of LASPO on access to justice must be a central consideration of this Post-Implementation Review, and the need to deliver meaningful access to justice must inform any recommendations made as a result of it.

Ours is an adversarial common law jurisdiction, the proper operation of which assumes access to effective legal advice and representation. We note the planned reforms to the justice system as, for example, outlined in the paper *Transforming our Justice System*, published in September 2016.⁵⁵ We do not discount the possibility that, in time, a combination of new technologies and properly resourced inquisitorial courts *may* serve to reduce the extent to which access to justice in this country is dependent on legal representation. But that is not the position now, nor can it safely be assumed as a given outcome of the ongoing court reform programme. In any event, it will continue to be necessary for the means of ensuring access to justice to be accessible, effective and sustainable.

PLP, 27 September 2018

⁵² [PLP Briefing: Exceptional Case Funding](#)

⁵³ [PLP Briefing: Family Law and Access to Legal Aid](#)

⁵⁴ See for example: *Amnesty International, Cuts that Hurt: The impact of legal aid cuts in England on access to justice*; October 2016.

⁵⁵ Ministry of Justice, Lord Chief Justice of England and Wales, Senior President of Tribunals *Transforming Our Justice System*; September 2016