Annette Cowell  
Legal Aid Reform  
Ministry of Justice  
102 Petty France  
London SW1H 9AJ  

11 February 2011  

Dear Ms Cowell,  

**Proposals for the Reform of Legal Aid in England and Wales**

Lasas welcomes the opportunity to respond to the consultation paper from the Ministry of Justice titled “Proposals for the Reform of Legal Aid in England and Wales”. Each year, Lasas helps thousands of organisations to:

- give better welfare rights advice to their clients;  
- use technology to deliver more effective and efficient services;  
- influence policy for advice and legal services; and  
- raise awareness of the third sector's technology needs with funders and government

Lasas previously held a specialist legal aid contract for welfare rights advice, as part of our social security appeals representation team, although this service is no longer operational. We have worked with the Legal Services Commission through our AIMS database, which collects client data. Many agencies that use our services provide advice through the legal aid scheme, and we work closely with the advice networks whose many members are key constituents of the social welfare advice sector. We coordinate the London Advice Forum, and are a core member of the London Advice Executive, working with Advice UK, Citizens Advice and Law Centres Federation.

Our response concentrates primarily on proposals to remove welfare rights advice completely from scope for civil legal aid funding. However, we also have grave reservations about the negative impact upon access to justice that is available to thousands of individuals, as the result of wider proposals to drastically reduce the scope of civil legal aid overall. This does not overshadow associated concerns about many other aspects of the proposals. We agree with partner organisations and networks about the decimation of free independent legal advice that occur for at least 500,000 people every year, if the proposals are taken forward in their entirety.

Whilst acknowledging the desire for savings in departmental budgets as part of the wider drive to contribute to the Government's ambitions for public services to reduce spending, as part of the economic recovery, we have grave concerns that the approach proposed in this consultation paper will not only cause irreparable damage to the voluntary independent advice sector, but more worryingly, will also actually lead to increases in public spending in a number of areas. There is a singular lack of recognition of the savings to state spending byway of early advice interventions.
Welfare benefits

Welfare benefits are the single largest area of individual acts of assistance under the civil legal aid scheme, outside of Family law cases, numbering some 113,100 acts of legal help and 10 cases of representation in 2008/09. Intrinsically, welfare rights enquiries involve a citizen in dispute with a public authority, whether the DWP, HMRC or a local authority. Further, by their very nature, a significant proportion of people needing welfare benefits assistance will be on very low incomes, and are also likely to suffer from ill-health or disability. Cuts to this area of civil legal aid will almost inevitably lead to greater government spending on health service budgets and demonstrates a lack of cross-departmental thinking that we understood the coalition government was particularly keen to see in place.

The proposals look to save £22 million from the overall legal aid budget by removing all welfare benefits cases from scope. Yet, figures from the Ministry of Justice reveal that they estimate to have spent £19.8 million in 2009-10 on employment and support allowance appeals in the Tribunal Service alone. Further, the volume of these appeals continues to rise, with the latest figures showing a 41 per cent increase in Social Security and Child Support (SSCS) claims year-on-year. Within the SSCS jurisdiction, Employment and Support Allowance / Incapacity Benefit appeals increased by 56 per cent on the same quarter last year. 42 per cent of those appeals were decided in favour of the claimant, according to Tribunals Service statistics for the financial year 2009/2010.

These statistics clearly indicate:

- the level of need for welfare rights assistance amongst the general population;
- the degree of incorrect decision-making in one single welfare benefit;
- the high costs attached to rectifying incorrect decisions.

It must be emphasised that these statistics relate to mainly unrepresented appellants, as most representation at tribunals is out of legal aid scope already. Legal aid for welfare rights advice can assist individual claimants in preparing for their appeal hearing, and indeed, can often avoid the need for a tribunal hearing to take place in the first instance. Further, the success rates for individuals will inevitably be higher were appellants able to secure adequate representation through legal aid, rather than simply preparation for their hearing.

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1 Written answer by Jonathon Djanogly, Parliamentary Under Secretary of State, Ministry of Justice, Hansard Column 793W, 2 February 2011
2 Quarterly Statistics for the Tribunals Service, 2nd quarter 2010-11, 1 July 2010 to 30 September 2010, Ministry of Justice & Tribunals Service, 13 January 2011
3 Annual Statistics for the Tribunals Service, 2009-10, Tribunals Service, 30 June 2010
4 For example, Lasa’s social security appeals team had a success rate of 87% in 2004/05, when more than £1,000,000 was raised for individual clients.
They also undermine the assertion that welfare benefits disputes are easily resolved by the individual concerned. Social security appeals make up 43 per cent of the overall tribunal caseload. Additionally, we would flag up the fundamentally misleading description of alternative avenues of advice on welfare benefits. The consultation paper lists these as being:

- Jobcentre Plus;
- Benefits Enquiry Line;
- Child Poverty Action Group;
- Disability Alliance
- Free Representation Unit; and
- Parliamentary Ombudsman.

The first two bodies are effectively interfaces with the DWP who are responsible for many of the disputes in the first place – if the individual citizen was able to resolve their query with these bodies, they would not require any legal aid assistance in the first place. The next two organisations do not advise clients directly at all, although they do produce information aimed primarily at welfare rights advisers, with the CPAG handbook now standing at more than 1,600 pages, hardly indicative of a welfare benefits system that is easy to understand for an ordinary citizen.

FRU represent clients referred through front-line agencies and therefore have minimal impact on the 113,100 welfare benefit enquiries dealt with through legal help. This point is backed up by recent evidence from Emma Baldwin of FRU to the Justice Select Committee when she stated:

"we do not provide initial advice, so we do not do legal help work, which is what is being proposed to be cut, and in any event the pro bono sector has a small role to play. In terms of welfare benefits, we represent in about 500 tribunals a year, but currently there are 339,000 social security tribunal cases in the system. The work we do is small in comparison to the overall picture. As far as pro bono organisations go, we think that the volume of work we do is very high. We are not aware of anybody else doing work at that rate or at that level. We were concerned about the scale issue and an implication that we might be able to fill the gap. We are just not in a position to plug the gap that would be left if welfare benefit provision was reduced to the extent that we fear it might be if these cuts go through."

Finally, the Parliamentary Ombudsman deals with complaints against departments, and does not help citizens to resolve disputes over welfare benefit entitlement and related issues. With many independent voluntary sector advice agencies also struggling with cuts to other sources of funding outside of legal aid, we have grave concerns about the knock-on impacts on individuals needing assistance and agencies in coping with the higher volume of demand placed upon them,

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5 Oral evidence from Emma Baldwin, FRU, before the Justice Committee, Access to Justice: Government’s Proposed Reforms for Legal Aid Tuesday 1 February 2011, HC 681-ii
Rather than removing the ability of individual citizens to seek advice to challenge erroneous decisions in relation to welfare benefits, we feel that instead there is a very strong case to be made for the public authority making the erroneous decision to be required to pay for the financial costs involved in rectifying that decision in the claimant's favour. The failures of public authorities are a proven source of demand for advice\(^6\), rather than the simple fact of the availability of legal aid as implied in the consultation paper.

The consultation also overlooks the savings to state spending that arise from advice interventions. For every £1 spent on legal aid advice on welfare benefits, the state actually saves over £8 in other spending\(^7\). This is particularly important at a time when there are major welfare reforms underway, with housing benefit changes already underway and the imminent introduction of a Universal Credit.

Recent experience of the introduction of major new forms of financial support such as child tax credit and working tax credit strongly suggest that the Universal Credit could, initially at least, bring about an increase in the need for legal advice, rather than any reduction. Not only does early advice assist individual claimants to understand the new rules as they affect their particular situation, it also provides a valuable sounding board for government to understand how major changes are unfolding on the ground.

Indeed, research from the Ministry of Justice in 2009 stated\(^8\):

> “Legal Aid can change people’s lives. A lack of access to reliable legal advice can be a factor that contributes to the creation of social exclusion…Early intervention with good advice for problems that arise can prevent the involvement of the courts and can reduce hardship for a large number of people”

Far from encouraging people with welfare benefit problems to go through the tribunal system, early welfare benefits advice can avoid the need for expensive appeals hearings, help prevent poverty and reduce debt, avoid homelessness and contribute to local economies. It also has a crucial role to play in encouraging people into employment, where the ability to provide better-off calculations and ensure smooth transitions into work can occur.

**Housing**

Under the proposals, it seems that a tenant will be able to get legal aid if their landlord tries to evict them through the courts but will be unable to get legal aid if the landlord evicts them unlawfully. It is completely inappropriate to exclude unlawful eviction claims as a matter of public policy. It gives the wrong message to landlords who will realise that if they try to evict through the

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\(^6\) For example, Advice UK report “Outcomes in advice” found that 31% of all demand for advice services in Nottingham was caused by public bodies getting something wrong.

\(^7\) Towards a Business Case for Legal Aid, Citizens Advice, July 2010

\(^8\) Study of advice at local level, Ministry of Justice 2009
courts, their tenant can be represented but if they evict them illegally, then no such representation will be available

Legal aid will be available to appeal a review decision about impending homelessness and/or major disrepair disputes, but without adequate preparation for a case at an early stage, this will be of no practical use. If landlords in the private sector ignore their legal obligations towards tenants and if tenants are unable to challenge this behaviour, then effectively the protections given in law to tenants become meaningless.

These proposals give a green light to unscrupulous landlords that they can behave with impunity. Further, it is worth noting that housing and homelessness problems are the single most common reason for young people to present at youth advice services⁹. Preventing homelessness saves the state thousands of pounds spent elsewhere on temporary accommodation, health services, criminal justice and police services¹⁰.

It is well established that there are clear links between welfare benefits advice, housing advice and debt/money advice, and we have grave concerns about the potential knock-on impacts of increased homelessness that will arise if housing advice is removed from scope as proposed.

**Debt**

As noted above, social welfare problems including welfare benefits, housing and debt are often interlinked at the point that an individual seeks legal advice. The person may present to an agency about any of these 3 issues and discover that the solution lies in another area of social welfare law. Poor people on low incomes (who by definition are those who can be assisted through legal aid) are clearly more likely to experience debt problems and are less likely to be able to access professional advice to deal with their problems.

At a time when the Financial Inclusion Fund seems likely to cease with effect from March 2011, with the loss of over 500 money advisors across England and Wales, the removal of debt advice from scope will inevitably lead to individuals becoming more indebted and unable to properly sort out and settle debts in an appropriate and timely manner.

They may often find themselves in debt as a result of poverty, as a result of losing their job or as a result of having to borrow money in order to cover emergency expenditure. The assistance provided is not financial counselling but legal assistance requiring the skills of a legal expert to challenge the debts. The inability to deal with a person’s debt situation at the earliest possible stage will potentially leave them unable to avoid more serious problems and the need for additional state intervention e.g. the provision of temporary housing.

⁹ A proven early intervention model: the evidence for the effectiveness of Youth Information Advice Counselling and Support services (YIACS), Youth Access 2010

The average cost to the public of one person’s debt problem (including lost economic output) is estimated to be over £1,000, with more serious debt problems costing many times this amount\footnote{A helping hand: The impact of debt advice on people’s lives, Pleasance P, Buck A, Balmer J, Williams K, LSRC 2007}. Removing debt advice from scope seems to be a very false economy in financially difficult times.

**Clients**

Proposals to remove from scope all welfare benefits, employment and education enquiries, the majority of debt, housing, family and immigration cases, are estimated to see a reduction in at least half a million eligible cases every year.

We need to remember that this figure equates to half a million people seeking advice on a legal problem – people who will often be desperate for assistance in resolving extremely complex enquiries. The suggestion that these people seek advice through legal aid simply because they can, or because they are encouraged by legal aid providers to progress their cases, is simply not true.

There is an acknowledgement that proposals to take welfare benefits out of scope will have a potentially "significant disproportionate impact" on ill and disabled people, women and black and minority ethnic people\footnote{Legal Aid Reform: Scope Changes Equalities Impact Assessment (EIA), Ministry of Justice}. However, beyond the uninformed analysis of alternative avenues for seeking welfare benefits advice, the proposals say nothing meaningful about how the Ministry of Justice intends to ameliorate these impacts.

On this basis, and drawing on the initial rationale for pursuing and encouraging the involvement of not-for-profit organisations in the legal aid scheme in the first place under the Access to Justice Act 1999, we refute the claim that the legal aid scheme has been drawn more widely than originally intended.

Welfare benefits advice provides a vital legal support system for individual citizens in ensuring their ability to understand and enforce legal rights and responsibilities when in dispute with public bodies. To simply equate this with enabling access to financial entitlements overlooks a far more fundamental point about guaranteeing an adequate income in order to prevent poverty with all its detrimental effects on individuals and on wider society.

**Funding**

Whilst legal aid contracts are only one source of funding overall for the hundreds of independent advice services across England and Wales, there are clearly enormous implications for these services if publically funded legal advice is no longer available in areas such as welfare benefits, employment, debt, housing, education and immigration, as well as most family law disputes.
As well as the loss of income, the knock-on loss of social welfare services, and the loss of a cohesive and coordinated approach to civil legal aid provision, the reduction of at least 500,000 acts of legal aid assistance will inevitably place enormous strains on those agencies that are left to pick up the pieces. Independent advice services are seeing enormous reductions in funding at local levels, with services closing across the country.

In Birmingham, 5 CABx and the Birmingham Tribunal Unit are under imminent threat of closure. In Nottingham, the local authority welfare rights unit is to be shut down. In London, the pan-London grants scheme administered by London Councils has recently made proposals that would see funding stopped for approximately 50 frontline advice agencies (although the decision has been overruled for now on judicial review). The uncertainty around the future of the Financial Inclusion Fund has seen over 500 money advice workers in local Citizens’ Advice Bureau and advice agencies under notice of redundancy and they have also stopped taking on new clients due to this uncertainty.

The fact that it is estimated that between 77% and 92% of the cuts to scope for social welfare law will fall upon not-for-profit providers13 will have a devastating impact upon the sustainability of voluntary sector advice providers, and by extension, on hundreds of thousands of individual clients who will be unable to gain access to appropriate advice. Rather than removing the vast majority of social welfare legal aid provision from scope, we would like to see exploration of the possibility of all such provision being provided through not-for-profit advice providers, given their track record in reaching out to excluded and hard-to-reach communities.

Alternative funding streams could, and indeed should, be explored. For example, as suggested above, where a case arises from the decision of a public authority, there could be a charge placed upon them in terms of legal aid spending to resolve that case. Financial institutions could be levied to provide free debt advice through legal help, given their responsibilities towards those people who they provide credit to. A voluntary interest on client account scheme is a possibility, particularly if moves were made to secure support from the larger law firms at the outset.

**Potential Costs**

As well as denying legal help advice in over 500,000 instances, Lasa feels that there could be significant knock-on costs to government if the scope proposals are passed as they stand. Extra spending incurred by the state can arise from the other adverse consequences of not resolving a legal problem early14, which include:

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13 Legal Aid Reform: Cumulative Impact Equalities Impact Assessment (EIA) and Addendum to the Cumulative EIA, Ministry of Justice
• Physical and mental ill-health;
• Relationship breakdown;
• Domestic violence;
• Property damage;
• Moving house;
• Loss of employment;
• Loss of income.

Citizens Advice estimate that for every £1 spent on legal aid, the state actually saves 15:

• Housing - £2.34
• Debt - £2.98
• Welfare Benefits - £8.80
• Employment - £7.13

Extrapolating these figures against reductions in legal aid spending proposed suggests that knock-on costs to state could be as much as follows 16 -

<table>
<thead>
<tr>
<th>Category</th>
<th>Reduction in number of cases helped</th>
<th>Reduction in % terms against current provision</th>
<th>Estimated savings (£millions)</th>
<th>Estimated knock-on costs (£millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt</td>
<td>75,000</td>
<td>75%</td>
<td>£16</td>
<td>£47.68</td>
</tr>
<tr>
<td>Employment</td>
<td>13,300</td>
<td>100%</td>
<td>£4</td>
<td>£28.52</td>
</tr>
<tr>
<td>Housing</td>
<td>38,000</td>
<td>36%</td>
<td>£16</td>
<td>£16.38</td>
</tr>
<tr>
<td>Welfare benefits</td>
<td>113,100</td>
<td>100%</td>
<td>£22</td>
<td>£193.60</td>
</tr>
</tbody>
</table>

On these figures alone:

Total estimated savings - £49,000,000
Total estimated knock-on spend - £286,180,000

**Potential extra costs to state as a result - £237,180,000 at least**

**Conclusion**

We feel that these proposals, when taken in the round with a number of other recent government reforms, will lead to unforeseen and unwanted consequences far greater than the sum total of their parts. Denying access to justice for so many people could lead to greater civil unrest, at a time when this is already a major issue across the country.

Communities will be affected as individuals are excluded from civil society. Economic output will be impacted upon as people find that their routes back

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15 Towards a business case for legal aid, Citizens Advice, July 2010 (uses data from Legal Services Commission’s outcome data from legal aid work)
16 Legal Aid Reform: Scope Changes Impact Assessment, Ministry of Justice, 15.11.10
into employment obstructed by a miasma of related social welfare problems, for which they cannot find appropriate or affordable assistance to resolve. Public services will end up with far greater demands being placed upon them yet will simultaneously find it more difficult to meet demand.

As Belinda Pratten, of the National Council for Voluntary Organisations, said recently:

"We hear every day from organisations that are fearful for their future, and public spending cuts are already having a severe impact on charities’ ability to deliver vital services."

"Spending cuts must be managed intelligently, otherwise they will compromise the sector’s ability to support the individuals and communities who need them most."

Lasas hopes that the Ministry of Justice rethinks these wide-ranging proposals and looks again at where best to make cuts to legal aid expenditure, to avoid fatally damaging the independent advice sector in this country.

We would welcome the opportunity to discuss any or all of the above points in the months ahead.

Yours Faithfully

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