



LASPO Review Conference 15.06.18

Notes of All Sessions

Please note that in the Proposals/Solutions sections, sometimes there was unanimous agreement and sometimes issues were raised by one delegate. We have not edited out ideas. An attempt has been made to put at the top the proposals with the most significant support.

Chair’s Welcome and LASPO Review Team	2
10.00 Workshops	5
1. Early Advice – chaired by Lindsey Poole, ASA and James Sandbach, LawWorks.....	5
2. Clusters of Problems	9
3. Access barriers – adults.....	12
4. Access barriers – children and young people	18
11.30 Workshops	20
1. Housing, Welfare Benefits, Debt and Employment	20
2. Community Care, Mental Health and Mental Capacity	25
3. Immigration, Asylum Support and Statelessness.....	28
4. Actions against the State, Public Law, JR, Inquests, Prison Law	30
5. Family, Mediation and Dispute Resolution	32
12.30 Report back from workshops.....	37
14.00 Workshops	39
1. Operational Challenges ECF, Gateway, and fixed fees to be covered.	39
2. Sustainable Supply Base for the Future	43
3. Effective Delivery	49
16.00 Plenary – Future Proofing and Solutions	53

Chair's Welcome and LASPO Review Team

Nicola Mackintosh QC (Hon), Mackintosh Law, Co-chair LAPG welcomed everyone to this important event and thanked all organisations supporting this event and to everyone for making time in their busy lives to come and share their views about the effect of the changes to legal aid and justice for people in England and Wales. She thanked the MoJ team who have agreed to come and attend all the workshops during the course of the day.

This event was born out of the long awaited announcement of the post implementation review of the LASPO Act 2013, and a consultation process which showed the need for a wider collaborative effort to identify failings and provide solutions to the current crisis across the board. As we know there are so many issues and areas of legal problems, there was a real risk that crucial areas might be missed. So this event is intended to draw everyone together and to identify key themes alongside the detail of the legal aid and justice scheme.

There are many different organisations delivering legal services to people in need, and who have been directly affected by LASPO, but also many who have stopped offering those services despite need among the general public increasing because of LASPO. The cuts in scope and changes to eligibility have decimated the system, which is now in need of urgent repair.

The delegate list is impressive. It shows how (even at short notice) a wide range of organisations are genuinely concerned with ensuring that the rule of law is a reality, and not just a soundbite. We have people here from Law Centres, Advice networks, the Law Society, the Bar Council, charities and practitioners in private practices.

Today as a crucial opportunity to share expertise, and bring organisations together to show the wealth of knowledge we have about the way that the legal aid and justice system works, or does not work, for the people it is intended.

A word about legal aid. It is vital to recognise that it is not another welfare service, like education or health or housing, important though those services are. It is the means by which people without the means to pay can obtain justice. It is constitutionally different from other services and the state has a heavy responsibility to ensure that the public have access to justice. Otherwise the rule of law is meaningless. What use is a right to freedom, a right to life if there is no way of enforcing it?

As a reminder, when LASPO was implemented we went from an approach which was that all categories of legal problem were within scope, to a 'if it's not in the statute list in Schedule 1' it's not within scope. And the Exceptional Case Funding scheme was to be the safety net.

Under the previous system there was rationing, the Funding Code prioritised areas of law and set criteria for access to legal aid but this was very different to the very blunt tool which is LASPO, which just removed whole areas of legal problem from scope, and used other blunt tools such as cuts in eligibility to cut the budget in a time of financial crisis.

The policy aims underpinning LASPO were to:

1. Discourage unnecessary and adversarial litigation at public expense
2. Target legal aid at those who need it most
3. To make significant savings to the cost of the scheme
4. Deliver better overall value for money to the taxpayer

Has it? Report after report would say that at best, the third, saving money, has been achieved. But the others? No-one would say that the system is working well or delivering what it needs. And even

saving money must be questionable when the cost of people going without justice and litigating their own cases is considered.

In 2015 LAPG published the first edition of the Manifesto for Legal Aid. Even then, only two years after LASPO was implemented, the devastation to the justice system was apparent but another two years on, when we published our second edition in 2017, there had been yet more reports evidencing the horrific impact on ordinary people of removal and reduction of legal aid. LAPG proposed solutions and today is an opportunity to add to those solutions and showcase the legal aid scheme, what's broken and what will fix it.

The day is structured to focus on general themes, such as barriers to access and the need for early advice, followed by category specific workshops covering many areas of law. These will look at the operation of legal aid and how it can be effectively delivered. There is no single solution, no silver bullet – what would work for a disrepair problem would not work for a domestic abuse situation. It is much more complicated than that. And it's vital to understand fully the categories of different legal problems.

This is all about clients, the people who need the services. But it is also about service providers delivering day in day out, and the need to have a sustainable supplier base to meet client needs.

There is no single answer, it is complex. Listening and not reinventing the wheel is the answer whilst being open to different ways of improving access to justice. Let us not lose the remaining expertise we have, do not reform the system just for the sake of it.

Blue sky thinking is being contemplated so this is a great opportunity .I hope that the MoJ will be open to new ideas, and thinking in a different way. They say they are and we will take them at their word.

This is a day for everyone to get their thinking hats on, to be active and participate in workshops, to show how broken the system is and why that is but then to produce solutions which will improve the legal aid and justice system and fix it for the future.

We all want a sustainable system which repairs the damage which has been done and works much better in future. Ideas will be collected and collated throughout the day.

There may be a journalist around and this event is officially 'on the record' – this is a consultation event and I hope everyone will understand the need for transparency

LASPO Review team: Matt Shelley (MS) and Fiona Rutherford (FR)

Matt Shelley introduced the members of the PIR team (post implementation review) who are present.

This is the engagement phase of the review. Information has been sent out by the MoJ, the Terms of Reference have been published and information is being sent in by organisations/individuals. Please send in any information that you feel they should have. There have been a series of meetings (consultative group meetings) and one to one meetings. Purpose – to have many different forums to hear views from different people/organisations.

What are they looking at?

- What has happened over the past five years and where do we go next?
- Ideas and thoughts of where to go next and where to put money. Heard so far:
 - prison law and crime:
 - reversing cuts not the solution,
 - look at ways of organising the service,
 - early legal advice and support, delivering the overall savings for taxpayers. Relied too heavily on advice service to fill gap?
 - Eligibility and means testing across all parts of the service, real need to look at the impact of these.

Fiona Rutherford: focus of conversation around the front part of a person journey through the service and what can be done to support that and make it easier. What to work on next and what should be prioritised – would like to look at this today with delegates. Report at end of year (post implementation review).

Case Study. Ms B sought legal advice. In order to obtain a medical letter from her GP so as to access legal aid, the GP insisted on a fee of £80 (this is more than the legal aid will pay for a GP's medical letter/report in court proceedings). Client sold her cooker in order to pay for GP report to access legal aid for family proceedings.

10.00 Workshops

1. Early Advice – chaired by Lindsey Poole, ASA and James Sandbach, LawWorks

Case Study: Mike lives in a housing association property and had been in and out of work. He told Amnesty International that his changing situation, combined with the stress he was under, meant he did not claim the housing benefits to which he was entitled. He fell into rent arrears amounting to thousands of pounds as a result. James was not eligible for free legal help to try and resolve these initial problems. He only sought help when he was facing eviction, for which he was entitled to legal aid. He told Amnesty International “It was such a stressful time, I couldn’t sleep with the eviction hanging over me. I was facing being made homeless”. After an initial struggle to find a solicitor to take the case at short notice, the case was adjourned giving him time to find legal representation. His solicitor was able to get the eviction halted. Had he been able to access early legal help to advise him on the underlying housing benefits problem this situation may well have been avoided altogether.

The aim of the conference is to keep everything solution focused. Introductions of who is in the room and their area of interest.

Representative from Liberty said that their advice line has had a huge increase in calls.

James’ presentation (see PowerPoint presentation below)



Early Legal Advice
laspo[Autosaved].odt

James referred to the system in Canada – legal health checks. Be the fence at the top of cliff, instead of the ambulance at the bottom. Politicians are saying that early legal advice could save money, smaller problems easier and cheaper to fix. There are many templates and guidance for early intervention. Acting early is key to avoiding poverty (see Joseph Rowntree Foundation). There is a lot of evidence for early advice and action having a cost benefit. Savings of roughly £10 for £1 spent have been identified. See research by Citizens advice and Law centres Network among others.

What is early legal advice? There can be some discussion about this. Is it in the courts? Community advice? NHS/DWP, Citizens Advice? Etc. Be careful about the boundaries around advice between information, advice and legal help. What type of advice/solution? Triage and signposts. How to prevent problems arising in the first place – decision making processes earlier?

Systems thinking diagram. Change the way the system works.

Canada model on where does early advice fit in civil justice? Resolution spectrum - a good model to look at and develop?

Examples : slavery and trafficking, family justice, migrant children, homelessness prevention, litigants in person. *(these are on presentation flipchart)*

Questions/discussion and contribution from participants

How interested are the MoJ's PIR team in savings for other areas of MoJ/government? Matt Shelley (MS)- Very interested in savings everywhere, but needs robust information/proof of savings.

Penetration (why legal aid doesn't 'penetrate' other early advice systems) was discussed, e.g. homelessness prevention, people at risk from human traffickers— putting early back on the agenda should be done in a more 'joined up' way.

There is no question that early advice is relevant and useful. The real question should be who does that early advice? There seems to be an idea that students can do triage, this is wrong. How hostile society is to this client group – why are public bodies acting in this way? Voluntary sector has been over relied on, which has been decimated by the cuts.

Great role potentially for students, clinics and pro bono? Clinic approach recognises that these are legal problems and need proper legal advice and an understanding of how this works within the entire legal framework. Solutions are often not only legal, but practical (i.e. change the locks). MS – review team are looking at 'wider context' of early advice.

Addressing the policy drivers of demand. When the government makes changes, e.g. tax credits, should legal advice be included in the consideration of the changes? There is supposed to be a "justice impact test", but this may not always be carried out? MS – adamant that this should be taking place (David Lidington pushed this as Secretary of State).

Early legal advice had to be capable of being followed up. People need to be able to access the next stage of need.

Paths to Justice people necessarily go to (or need to go to): lawyers or legal advice in the first instance. People may go to the Police, ministers of faith or banks first. If law were more understandable, it could be understood by others not just lawyers, make a difference in terms of people understanding the law and what to do.

Changes seen in provision of individual advice can cause delays which increases costs. People will get one point of information, go away and make changes, then more delay as next meeting set up. Delays in the justice create mental health problems and more costs.

Mental health – despite the government's assurance of support, cuts have meant a delay in services as well as cuts in services. Added to which delays are causing a deepening of the problem. Anecdotally people are presenting more often with mental health problems.

On experienced commenter argued that "cost-benefit" was not a good basis for presenting the case – citizens rights would be a better argument. Relatively speaking UK has good initial info/advice framework - Citizens Advice network is the best in the world. Our problem is not the 'earliest' advice – it's just after that where 'legal help' is unavailable in so many areas and so little support for legal help. There needs to be overall support from the MoJ and a much wider approach to legal support. Technology has a role. There should be an ambition to make the system the 'best in the world'; this was not just about money – England and Wales still have higher spending than other jurisdictions with much better legal aid systems. The problem is that LAA's lack of independence compromises potential for developing and delivering any innovation solutions or a strategic approach to delivery.

Even with the Citizens Advice system though, there is an issue of access for everyone, and problem in triaging to the right legal advice. Knock on impact of not having the advice. Fixes – identifying by a

qualified lawyer, 3 hour meeting/discussion to resolve, focusing on problems able to be dealt with outside the legal framework. If not, costs could be provided for the most vulnerable.

Diagnostic solution – who is going to give that? Need broader knowledge. Where are the solicitors going to come from? Do we need the qualified lawyers to do this? Too often we talk about clients as one big group, but they are varied, with extreme differences. From the very vulnerable to the one able to do their own research, use online resources, etc.

Vulnerable people – often get into quite complex legal situations. Some of them have no GP, no knowledge of system, etc. One size won't fit all and some will need much more than a 3 hour meeting. Rationing legal advice by client group? Perhaps an initial meeting to identify the most vulnerable who will need more time? 3 hours diagnosis and service would be enough to start, with the obvious problem they first come in with, but three years later there may a larger problem. It is usually obvious who is vulnerable and needs more time – but who decides? Family law – creates conflict where there doesn't need to be. Family solicitors spend years of their lives telling clients what the law is and likely outcome and tell them not to contest etc.) especially in childrens' services. Family lawyers say can that say can co-create an early advice model with LAA. FAINS (Family Advice and Information Networks) were referenced as precedent for early intervention approach.

Bureaucracy for giving legal advice has increased, so half an hour talk will lead to hours of letters/paperwork/bureaucracy.

System needed that is flexible enough to deal with different points of the process in asking for advice – from the beginning to a person in crisis (some mental health or other problems may mean people do not seek help until they are in crisis). Early advice is available but barriers are in place which prevents people from receiving the advice (e.g. asylum claimant who was deported then returned, could have had early advice in the three days they were held but this was not provided).

If the rules were clearer you wouldn't need a solicitor for early advice. Number of advice agencies are closing or cutting back, limiting access. Local government funding as well as legal aid is very important for keeping these open. Same number of people needing advice, but the money has decreased.

Barriers – do not underestimate feelings of shame or embarrassment from the situation. Just asking for advice can be a big step. There may not be a solution to this, but there should be an awareness of this. The issue of trusted institutions/people is crucial to enabling people to obtain advice.

Other businesses/organisations (e.g. GPs, banks etc.) don't necessarily see when an issue is a legal one. Perhaps there is a place for education around this?

Many people do not know how to ask for advice. How do we signpost this? Can triage be placed in libraries, GP surgeries etc. But we need to be aware that libraries are closing. There is a big thrust toward digital – but need to be aware of how people approach information.

JS – final thoughts. Laws are about negotiating rules/rule based system. Challenge of breadth v. depth. Citizens Advice "Gateway" advice system cleared waiting rooms and queues, but controversial at first (as it didn't give enough time/depth). Contrast with AdviceUK 'systems thinking' model which suggests you need to "frontload" experts to achieve efficiency and outcome savings. Can both systems/approaches be delivered? There is no shortage of research and evidence on needs and outcomes (including input to outcome ratios), but in this field it is difficult to impossible to do counterfactual/randomised control group based research.

MS – final thoughts: One of the key messages we've heard. Persuading Treasury about the evidence, need to turn anecdotal and case study into research across the sector. Different groups of clients have different needs. When considering information to send take into consideration evidence based.

Points and proposals from delegates

- Government interest in savings in other departments – financial base for Treasury, pricey design, create the need
- Penetration – legal aid doesn't exist for many - publicity problem
- Underspend in civil
- Early advice sensible – who – how – how they know they have a problem : triage is not simple
- Hostility of public bodies – whilst it can be argued bad decisions cost money, Government may use bad-decision-making (e.g. benefits) to save money
- Policy reliance on voluntary sector – but voluntary sector itself relies on legal aid, funding for advice centres
- Role for students/volunteers but legal problems (legal advice) need more
- Next stages – people need to be able to progress
- Unbundling of cases – it is a start but there are serious concerns for professionals (see The Law Society Practice direction)
- Link to health issues – particularly mental health. Importance of access in health settings.
- Rights based arguments - find out rights but how take action?
- Consider whole system – duty to ponder, compare other jurisdiction, technology to help
- Solution – 3 hours of advice outside of legal system by lawyer – continue if client vulnerable
- Pro Bono – early diagnostic?? Who qualified/experienced/skilled?
- New generation of legal aid lawyers need training – how?
- Diversity of clients – those who don't act – protection for clients – not everyone vulnerable!
- Simple solutions
- Complexity of legal framework for very vulnerable e.g. migrants. Definitions. Who decides?
- Bureaucracy around system – flexibility is needed
- Referrals? Perceptions on high street
- Capacity issue for referrals
- Barriers – personal issues/stigma/embarrassment/ etc Face to face/digital
- Funding pathways into justice
- Information – admin/definitions

2. Clusters of Problems

Chaired by Nimrod Ben-Cnaan LCN and Ruth Hayes Islington Law Centre

Government had so much information when it decided to proceed with LASPO.

Dame Hazel Genn in a lecture earlier this week highlighted that what we call legal need has health effects. This needs to be borne in mind when planning a better system.

Clusters of problems could affect e.g. adults with long standing disabilities, lone parents, low income households, tenants in rented homes. We know where the problems cluster. What can we learn from the current failings?

Ruth shared some real life examples from practice. A number of things have changed since 2013. The need for people to prove their immigration status has shifted ground enormously.

Welfare reform- destitution is up as is homelessness. Many people have different working patterns and there has been huge growth in the numbers of zero hours contracts. Welfare benefits are dependent on a consistent pattern which is not reflected in reality.

Universal credit- Islington has not had the full roll out. Already, people with no arrears for forty years are now facing eviction. People who did not come into contact with legal aid now are. Issues with immigration status are affecting employment, so in one case the client was sacked but is not entitled to benefits as is not a citizen. The aim of LASPO to protect the most vulnerable is not happening.

Another example of a young teenager whose parent had just died and was caring for younger sibling. Benefits were turned off, his father was abusive, he felt like he was being thwarted at every turn. The landscape has changed.

Client journey - lack of capacity in sector is huge. Example given of a client sent to a partner organisation. They then sent them to CAB, who sent them to the Council, who sent them back to the Law Centre again. Even where things are in scope, people cannot always find a provider. This has happened in a number of cases where exceptional case funding has been applied for and succeeded but there is no one available to deliver that service for the client. These are judicable problems. They involve law and have solutions through formal justice mechanisms.

The chairs asked delegates for examples

An example was given of a project at a law centre funded by the Big Lottery. They have a crisis navigator. The person will see the duty solicitor. If the person has debt problems then they are sent to someone for help navigating that. In court proceedings an effective adjournment might be sought adjournment might be sought to allow them to deal with the underlying welfare issues. The only way to do this is grant funding for welfare benefits cases. The reasons behind these problems are for example universal credit or housing benefits problems being affected e.g. through employment contracts where income will vary. Sometimes legal aid is offered but with such a high contribution e.g. £100 pcm so the lawyer cannot actually recommend that someone who is already in debt takes on more."

Housing Possession Court Duty Schemes saw 40,000 new cases in one year – out of a total of 230,000 new cases that year. With fewer providers, there are likely to be significant difficulties obtaining advice before the hearing and therefore more cases seen on the duty schemes.

Legal Aid is available at the last minute to pick up the pieces but this is ineffective. CPAG has had a project for four years – running a welfare advice service in a food bank. This has brought in about £1m of money for claimants in backdated payments and new/increased monthly payments. This was funded by the Big Lottery. It is problematic being dependent on funding which is time-limited and may not be funded again. Should private and statutory donors be plugging the gap? Should we be accepting the status quo of LASPO? Should we in fact be looking at reinstating legal aid for welfare benefits? Recent Universal Credit judicial review case where request for it to be transferred from the Administrative Court to the Upper Tribunal as a specialist court. Judge at permission stage said it did not need to be transferred as it was classic public law. However judge at substantive hearing referred to the complexity of the UC legislation and questioned how ordinary individuals were meant to understand it.

The clustering issue is very real. For Citizens Advice, the central issue – that housing is funded but not welfare benefits and debt - is nonsensical. That must be tackled. Local authorities are picking it up. They have data which clearly shows the correlation between the issues. The representative offered data to MOJ. Data tends to show that people with mental health issues have more problems than those without. They would echo what was said about how hard it is to get assistance so everything is waiting until crisis. This is way too late.

A legal aid private practice practitioner who in 2008 worked at Fisher Meredith (which had a £7.5m turnover then but now no longer does legal aid) set up a social welfare legal aid practice. It appeared to be accepted then that dealing with clusters of problems was the way to go. His firm has a catchment area of 2 million. Post LASPO, people are queuing from 7am. In 2008, housing, debt, community care, welfare benefits were key social welfare law. Then lawyers were told that being able to recognise welfare benefits issues and deal was mandatory. Then those cases were taken out of scope.

Pre LASPO matters had to be split into separate cases to get paid for one cluster of problem. There were issues about this and careful scrutiny of clients' cases with several files opened especially at the same time. The legal problems would need different skills sets working on the issue. It's about the recording of a matter. There is a need to tackle clusters and there must be a system that can reflect this.

A representative from MIND quoted their report.

- People with mental health problems were far more likely to have reported legal problems.
- 52 per cent of respondents with mental health problems reported one or more legal problems, compared to 27 per cent of other respondents.
- 23 per cent of those with mental health problems reported experiencing six legal problems or more, compared to just eight per cent of people without mental health problems.
- 23 per cent of those with mental health problems reported experiencing six legal problems or more, compared to just eight per cent of people without mental health problems.
- People with mental health problems are
 - twice as likely to have had to move home or become unemployed due to a legal problem.
 - They are almost three times as likely to have suffered harassment, abuse, assault or threats, and
 - more than three times as likely to have suffered loss of confidence.
 - They are more than four times as likely to have become homeless or experienced poorer physical health, and
 - more than five times as likely to have experienced a relationship breakdown.

There is a higher incidence of people with mental health issues in poverty anyway.

Turning to the telephone gateway - disability discrimination is the biggest example of discrimination that has been reported. Issues around discontinuity of how advice is provided as gateway does not ask people to report back

Problems are multiplied for people without status. Exceptional Case Funding is not the solution. It takes 20 days to process an application but that's 20 days of no housing or no money. How do you survive? Incomprehensible rules, impossible for lay people to gauge status. There are fewer specialists. The status problem exacerbates all the big clusters of problems.

A delegate said that there needs to be a discussion about reversing cuts to legal aid. It is such a cruelty that you can only get legal aid at crisis point. This has had a huge impact on people's lives. People stepping in unpaid to fill these gaps and there is a huge amount of unpaid work.

Many organisations have had to make changes to survive post LASPO. Re-training is difficult. There are issues with tender rounds as supervisors cannot be appointed. Other funders, any further cuts will be massive e.g. local authority. If the system is predicated around other people doing the work then there will be a big shift in that. Funders focus their money on "special products". What has been lost is that sense of a network of provision open to most people. LCN looked into the law centres that survived and found that they mostly had Big Lottery Funding and local authority funding

Proposals

We want a better system for clients. Do not just patch over the existing system but bring in a system that's been thought through and designed. The current one is failing by its own standards. Uptake is declining annually.

Which problems do clients present with first? What are threshold problems to deal with first? Immigration? Welfare benefits? Income?

Given that problem clusters tend to be low income clients, remove means testing for social security issues.

Consider GPs referring into services and educating GPs. MoJ should be talking to mental health teams and organisations like MIND.

The fixed fee is unrealistic for immigration law. Either remove fixed fee or simplify the rules which are too complex. Return to hourly rate?

Tackle the DWP – what is it doing to make sure its decisions are better?

Assisted digital solutions won't work without actual support. They need to be allied.

Multi channel approach. Literacy issues, limited time on public computer isn't realistic. Lack of capacity undermines the good resources that are available

Address integration.

3. Access barriers – adults

Chairs: Nicola Mackintosh QC (NM) and Katherine Barnes (KB)

NM introducing the session: access barriers for adults, particularly those with a protected characteristic. From policy decisions affecting eligibility to what happens in litigation in the courts. It affects different groups in different ways.

Setting the scene: which groups should we be thinking about? People fleeing domestic abuse, people with learning disabilities, older people, people with mental health needs, women, BAME groups, asylum seekers and refugees, travellers. That does not cover all protected groups, but that hopefully makes us think about different ways different vulnerable groups will find it more difficult to access advice and access the justice system, and also perhaps even recognise that they may have a problem which has a legal solution.

NM: we are tasked with identifying where the problems are but also as importantly the solutions. Are there broad themes to the problems that vulnerable client groups face? I suggest: getting advice in the first place and the onerous requirements for getting evidence for eligibility.

Others: Cuts to the court estate, CCMS, Exceptional Case Funding – finding a solicitor who is able to deal with a client and make an exceptional funding application for which they may not get paid is really difficult.

NM: ECF was intended to plug the gap for those cases not covered in the mainstream legal aid scheme. How many have made applications? (A small number of hands go up). Those applications are usually not paid for, they take a huge amount of time.

Private practice partner: should be a simple system, scheme for emergency applications, lot of people don't know it's available, also very few immigration providers willing to do it

NM: dearth of providers across different areas of law.

A private practice partner raised the issue of loss of expertise and difficulty in recruiting supervisors. Another private practice partner agrees about the difficulty of recruiting legal aid lawyers in every area of work, competing against commercial practices – the pay disparity is huge. Others echoing that – pipeline issue if people cannot afford to become legal aid lawyers because of university debt, paying for the Legal Practice Course etc.

Solicitor: it seems a lot of firms don't renew their contracts because of the difficulty in complying with all of the rules.

NM: we get 5-10 new enquiries a day in my area of law, we turn them away because we don't have capacity to take them on. Others agreeing about difficulty to find a community care solicitor – it doesn't feel like it is cost effective for firms to take that work

NM: problems of getting advice, what about recognising that there may be a legal problem?

Others: problems within the court process once they start that, e.g. if self-representing; litigants in person have very little support available, lack of support to the non-legal sector who are trying to support litigants in person. Non-legal advice centres have nowhere to signpost people to.

NM: on barriers, nowhere to refer people to, leaving people unrepresented or giving up.

Academic researcher: those who are unrepresented face chaos, hitting wall after wall in the court process, particularly DV victims, speaking in front of the perpetrator in the court room.

NM: practical arrangements for people coming to court, accessibility – all pre-supposes that the physical environment will be available

Private practice partner: I have seen women just say "I can't go into court" because they will have to face the perpetrator

Academic researcher: court application has box to tick if you need adjustments, but no guarantee of getting them and people are reluctant to tick them as they do not want to appear difficult to the court

Others: closure of courts but also problems caused by the closure of court counters – nobody for anybody to talk to when they come into court. Security guards will send people to the housing duty possession scheme. The person providing court users with most information is security guards.

NM: other client groups?

Others: when you don't have local providers, you don't have local networks. Vulnerable groups' first port of call is not going to be a solicitor, it might be an advice centre if a local one exists – because they may not think of it as a legal problem with a legal solution. When there are those informal networks and support groups available, they can help people find legal assistance, but that is lost when accessing telephone support.

NM: telephone gateway for legal aid will be dealt with later today. In terms of that gateway and the way vulnerable groups seek advice, is that a barrier? Others: Private practice solicitor - yes, for disabled people particularly – we have had people be told they do not have a case, and they were wrongly advised and we subsequently took their discrimination case. NM: and what about people who can't access the gateway at all? Others agreeing – people do not know it exists, that there is any service available.

NM: and if they did know about it, would that solve the issue? Would they use the service? Others: no, clients with learning disabilities for example will go through the system saying 'yes' but coming out not knowing what is going on. Representative from independent public body – the CLA, a report showed that about 58% of callers to discrimination category self-identified as disabled or having a serious illness, significant numbers with mental health problem or learning disability, and last year

there were zero face-to-face referrals in the discrimination category – seems extraordinary that apparently none of them needed face-to-face advice. The operator is not looking at the paper work, but only relying on what the person is telling them it seems. How well are they trained to pick issues up?

NM: should there be a telephone service in parallel, and should people be able to access legal advice in the way that is best for them? Others agreeing – in parallel, but not mandatory. And important that those dealing with telephone advice know when they can and should refer and there is not a culture of non-referring. It is however difficult to refer and find solicitors to take on cases.

NM: can we think about how we are going to resolve this?

Private practice partner: would like to see Public Accounts Committee run assessment of how much it costs to keep children in care, vs cost of running care proceedings – think there would be a massive saving that is being currently overlooked.

Access to justice charity: big opportunity and concern about dovetailing of reforms to online courts system – feels like reform of system is working in silos with the review

NM: issue of delivery and approachability of services – if vulnerable client groups are more likely to need face-to-face advice, the digital programme will need to recognise that fully

Similarly to analysing knock-on effects of removing legal aid from certain categories, simplifying the process and speed of dealing with applications for ECF

Private practice partner: should be making strong case that cost-cutting has a discriminatory adverse effect on people with protected characteristics – e.g. doing a housing case for a person with learning disabilities and the additional support you need to provide them through the process, if being paid at Legal Help rates, already a shortage of providers, it is going to be more difficult for people with protected characteristics because providers can't afford to run a service in that area because it's not sustainable. We should be making an equalities argument about LASPO. If we can't have legal aid for everyone, the MoJ could look at bringing in costs protection to enable to allow people to bring claims even if they don't have legal aid and also court fees. NM: so a hollow/empty legal aid certificate?

Eligibility/accessing the system/number of providers

NM: we haven't talked about eligibility at all. Difficulties for different groups obtaining evidence, but the housing allowance of £545 per month, no allowances for extra costs of disability. What needs to be done to re-look at the means test? I know the LAA don't like discretion and grey areas, but that's the nature of people to some extent. All in agreement that means tests need to be urgently revised?

And thresholds need to be urgently brought up to date and inflated to realistic levels – e.g. most houses are worth a lot more than they were 10-20 years ago.

NM: and should some vulnerable groups have a different approach in terms of means testing? Is there a need to look at a different means approach for vulnerable groups?

Current means test assumes you can raise capital in your property. Adapted cars and homes for disabled people cost more – why is that counted towards means?

NM: urgent need to reform means test, and a need for vulnerable groups to be treated differently for certain types of issues

Barrister: tension between simplifying scheme but also having exceptions for vulnerable groups which are understandable and work in practice

Solicitor: vulnerable clients' means assessment, as far as I understand it you put that in the subject and it goes to the same email address everyone else uses. People's condition can deteriorate during proceedings as well.

NM: early advice and getting into the system, because we know there are problems going through the system – solutions in terms of at the beginning at the process?

Access to justice charity: people not knowing they are entitled to legal aid. Can't just be a national promotion, but also segmented around particular vulnerabilities. Promotion within user groups, language sensitive, culturally sensitive, a revisiting of the position

Private practice partner: how can you do that? My firm probably takes about 5% of the referrals we get each week – unless we can get more providers, it's risky to raise awareness

How can we get more providers? Payment needs to be reasonable – people need to survive and pay their staff. How about a common sense approach from the LAA, e.g. where a person is already eligible and has a new legal issue

Private practice solicitor: exceptions have to be a genuine exception – when the LAA designate things as discretionary, we run up against problems. There needs to be a change of approach by the LAA.

It was recognised that the LAA is risk averse on means assessment because they have been heavily audited by the audit commission. Is it just the National Audit Office that is driving the risk averse approach? A private practice partner think that had a big impact in terms of means, but are some decisions being interfered in politically?

Question about passporting for the means test.

NM: passporting for income still exists, but there is no passporting for capital – that should be brought back. Means test needs to be ripped up and started again with particular focus on people with vulnerabilities

Private practice partner: changing rules on DV eligibility, we tried very hard to de-complicate it and have a common sense approach. There was goodwill there, but when the Statutory Instrument came out, much of that common sense aspect has gone

NM: we've got to look at the means test and all the evidence required. Advice sector has been decimated and we know there is a dearth of legal providers

Access to justice charity: there has been an expansion in the clinical provision in universities – a conversation needed between our sector, MoJ and university sector.

NM: in terms of suppliers, do we need training grants for people to go into legal aid? There seemed to be general agreement on this. What else would help in terms of sustainability?

Private practice partner: Aston University has a sandwich course for law. Students look for a year-long placement and act as our triage process effectively. The three students doing this so far have all been offered training contracts as a result. How to do that en masse is a challenge for universities and providers.

Mental health charity: also grants for third sector and universities to provide advice. There is a supplier problem in advice outside the legal world **and** inside the legal world

NM: do we think that everybody in scope should be entitled to 2/3 hours of advice which is non-means tested, from the advice or legal sector?

Others agreeing. Barrister: if so, would you then be able to use that wherever is comfortable for you? A transferable voucher? Private practice partner: if a limited budget, spreading it more thinly and those most in need not able to access it. NM: if you restrict in terms of scope and client groups, that is a filtering system. Solicitor: a couple of hours of advice early that will stop things from escalating is actually a saving on the state. Private practice solicitor: means test needs to be brought up to date. NM: means test obviously needs to be revisited

NM: any very last minute contributions?

Academic researcher: vulnerable people in court process, needs to be more judicial training to ensure protection of vulnerable people in terms of approaches to cross-examination, organisation of courtroom etc, need a consistent and appropriate approach from judges

Barrister: mandatory minimum number of providers in certain areas? Academic researcher: geography is important, people not necessarily able to travel. The example was given of Cornwall where people in Land's End need to travel from Truro, 30-40 miles and 3-4 hours away by bus – only 2 firms in Penzance provide legal aid. Private practice partner: the answer is to pay legal aid firms a decent rate to ensure it is profitable, or pay the community to set up a law centre

NM: almost like grant incentives to identify where there are gaps to bridge the gaps. Access to justice charity: making sure sustainable system, number of mandatory providers forces a conclusion

to fill the gap now, to re-establish a provider base that is sensible. NM: support to look at mandatory minimum requirements? Solicitor: or at least looking at rules to keep contract, looking at how pedantic the LAA is in enforcing rules, and how decisions to remove contracts will affect geographical areas

Private practice partner: statutory requirement on MoJ to provide everyone in the country with reasonable access to legal advice, they would have to provide that. NM: or implementation of the Right to Justice Act

Proposals

- More awareness of entitlement to help
 - Tailored
- Through community groups
- Special provision needed for the disabled
- Need face to face option for the vulnerable alongside online
- LAA to take into account lack of providers. Payment and structure must be reasonable to attract and retain practitioners
- Operational changes re previous assessment of means. Common sense appeals process needed.
- Change LAA's risk averse approach
- Grants for third sector
- Grant incentives for legal deserts
- Training grants
- Requirement on MoJ to guarantee minimum provision in all areas
- 2 or 3 hours non-means tested legal advice for anyone in scope (?) + reforming means test
- Judicial training in vulnerability issues
- Minimum number of providers per area?
- Need research on costs elsewhere in the system – knock on effects
- Need to dovetail with digitalisation/online court – better communication needed
- Simplify process. Speedier. Emergency provision
- Cost cutting has discriminatory impact
- Costs protection for certain kinds of cases where no legal aid. Also court fees
- Better communication between sector, universities and MoJ

4. Access barriers – children and young people

**Chairs: Laura Janes, Legal Director, Howard League for Penal Reform
Nicola Jones-King, Partner & Head of Family and Child Law Division**

In addition to the disproportionate affect that LASPO has had on (vulnerable) young people, there is also a public legal education problem that ought to be considered – specifically as regards the extent to which young people regard the law as a tool that can assist and protect them.

Peter, a composite case study, was set out by Laura.

Peter is in his twenties, currently in a Youth Offenders Institution, and has been in and out of trouble with the police since he was 14 years old. He has been excluded from school. As a child, he was looked after by his grandmother, having suffered significant bereavement at a young age. His family has lived in this country since he was about two years old, but he is unsure of his immigration status. He has a child and has completed a parenting course while in custody. He is due to be released soon, but is unsure as to what he will do or where he will live. He is sometimes frustrated by the rules in the prison, and can be locked up on his own for long periods of time as a result. He has started to hear voices in his head.

The group then described problems experienced post-LASPO, as well as some potential solutions to those problems. Problems included:

- Litigants in person
- Mental health issues amongst young people
 - This encompasses issues in access to services and prevalence amongst young people accessing services
 - There is also an issue of individuals with mental health issues being reluctant to provide financial information (that is to say, the practical barriers to providing evidence of means when individuals are paranoid or otherwise restricted) – it was noted, as a positive, however, that proof of income is not required from young people in custody
- Aggregation of means with parents and carers
- A specific example of a 17-year old, pleading not guilty to a summary driving offence, but denied legal aid, was raised
- Increasing particularisation/stratification of the component parts of legal aid (which has meant that an individuals' legal issues can no longer be dealt with holistically)
- Loss of expertise
- Lack of legal education and inclusion
- Loss of immigration advice for young people
- Special educational needs – as regards the representation of young people with SEN and the involvement of their families
 - The lack of school exclusions advice (and total absence of legal aid) is worrying given the link between SEN and exclusions, the opportunity for exclusions to flag up SEN, and the link between exclusions and prison

A final MOJ perspective was offered: a holistic approach is interesting, but incredibly difficult.

Solutions included:

- Early legal advice, with softer support as a filter/gateway to that support
 - This covers entitlement to, for example, leave in care support – it was noted that the effects of cuts to legal aid have been compounded by cuts to social services)
- Passporting presumption
 - Taking note of cases involving children (and not just cases brought by them) and vulnerable adults
- Removing or changing the aggregate test for children
- Holistic services for young people, on a multidisciplinary approach
 - The need for a holistic *and specialist* approach was emphasised
 - It was suggested that legal advices and mental health services should be co-located in the same place
- Legal education and legal inclusion
 - Young people need to feel as though the law is something that they can use – something that is living and helpful to them, rather than something that is done to them
 - “Make the law work for you”
 - It was suggested that legal education might need to start earlier (on the school curriculum) – though it should not be forgotten that not all young people in difficulty are in educational settings
 - There is a need for this kind of education to be more imaginative and less prescriptive
 - Law in action
 - Just in time
 - There needs to be support in place for afterwards, too
- Legal aid for immigration and for education/school exclusions/SEN – bring back
- Tell your story to @legalhackette – it is still important to win hearts and minds – to emphasise the human reality of these issues

11.30 Workshops

1. Housing, Welfare Benefits, Debt and Employment

Chaired by Diane Astin, Deighton Pierce Glynn and Sally Cheshire, Mary Ward Legal Centre

Before LASPO people could get an adjournment in housing possession cases and sort out Housing Benefit problems. Now it is often impossible and, at best, hard to find somewhere else for them to get that help. There can be several adjournments and the case can last for months but often the person cannot get benefits resolved – the debt will not be sorted. There is a lack of early help, and the person may end up with a Suspended Possession Order so they are one step closer to being evicted. It takes longer to get these issues resolved and causes terrible stress for the people involved.

Ultimately, it will end up with a worse problem for the client. Does it cost the state less once you factor in the costs of agreeing several adjournments? That is one of the big problems.

Case study

Post LASPO, cases where someone needs early advice and with linked issues were taken out of scope.

Going through what can now help someone with post-LASPO

- a person with a problem with Housing Benefit, out of scope,
- rent arrears – out of scope,
- applying for allocation – out of scope,
- homeless application – out of scope,

A family law transfer may be in scope. An example was given of a lawyer who wrote a letter saying here are your options – you may be able to get advice about one of those issues. That lawyer advised her to claim Housing Benefit ASAP. The client rang the law centre and got a further appointment – she tried to get HB but was told by the local authority that she was not eligible so don't bother. The law centre tried to phone the Local Authority when she came to the appointment but they could not get through and they had to send her away and tell her to try again with the Local Authority to get HB so the arrears don't keep increasing. The best outcome would have been to try and broker a deal with her husband getting a studio flat and her keeping the family home. The case could not be sorted out post LASPO.

Possession claims, homelessness, disrepair and public law requiring JR.

Obtaining housing – when can you get legal aid?

- For homelessness when a person has had a negative decision and needs a review.
- Can't get for general advice about homelessness pre decision or about allocations unless homeless.
- Disrepair – used to be in scope – if in poor housing conditions people pre LASPO could bring a claim for damages and for works. Now can only get help for works not damages. Once works done Legal Aid falls away. No real saving for LAA as used to get Inter partes costs –

getting IP costs meant could do the other badly funded work because you could cross-subsidise.

- Trespassers – removal of right to Legal Aid for defending possession claims – especially affects gypsy/travellers.
- JR – destitute people. Public law challenges more and more – have to do it at risk of not getting paid at all. JR – no win no fee in practice for solicitors so increasingly not there as a real option as a remedy so a lot of protection of rights has basically been repealed.

NB. Homelessness reviews are in scope but fixed fee system means the fee is £157 + VAT. It might take 6-8 hours – in private practice a practitioner did 3 where did they 6 hours work and the hourly rate worked out at about £18 to £20 an hour – can't do it. It is not economically viable. When someone is ringing round lots of organisations and being told we don't have capacity to give an appointment it is because those organisations cannot do those cases because of the fixed fees.

Employment law – fewer places offer it. Discrimination gateway – most people have never heard of it – can't get case taken on and even if can get some pro bono or telephone advice most people struggle to manage their end of casework. Phone advice is not same service as face to face.

Discussion of link with benefits claim e.g. where more people are being found fit for work and there is conditionality on the benefit – more people being found fit for work when they're not really – status of work as employee are they an employee or self-employed etc. People driven to destitution because they then have no benefits because they are not keeping up with the work conditions. The example was given of someone not realizing he was on a zero hours contract – he got paid the same for the first couple of months but then was told he had not worked the hours to earn that money and so they reduced it. The rollout of Universal Credit will mean there is a need to understand the role of employment law advice in the package of other issues.

Discrimination work – people don't tend to come and say that that's the issues they have – they won't necessarily view it that way. It is all interlinked.

Question around what was included for Welfare Benefits pre-LASPO – advice and assistance with appeals to tribunal, not representation at the tribunal hearing but written representations before. Also help filling in complex forms like DLA forms. Importantly practitioners could get paid disbursements for interpreters and medical reports

It is not just Housing Benefit that it is important for people to get help with e.g. when facing eviction – it is other benefits too, especially with the rollout of Universal Credit. Income maximization to do with Disability Living Allowance and Personal Independence Payment etc. There is a critical role of triage in being able to look at the whole person and their needs and where you can draw on other specialists.

Means testing issues – homes taken into account for capital tests

Disrepair – serious risk of harm to health still in scope. Pre-Grenfell and Post-Grenfell. Claims for damages for disrepair are out of scope. If the tenant has a social landlord and goes for advice – they will be told to forego claim for damages unless they can find a solicitor doing CFAs. Risk assessment threshold for CFAs is very high so it is very difficult to find a solicitor doing it. Often these cases will

only be possible where the client has a housing association or Council landlord. Housing provision is clustered in central London – but still had the Grenfell atrocity.

Employment – disproportionate impact on people on low incomes – people forced to try and resolve on their own with some patchy input from lawyers. People coming to get advice about Welfare Benefits because they have lost their job and used up savings and could not get help. Study where 115 people interviewed, found 300 legal issues – interviews with people with issues which are no longer in scope. Getting a good reference from employer and not being dismissed can be the route of finding another job or keeping someone in paid work.

Lawyers and advisers may have to advise people not to go to court or not to defend a case even if there is a strong case because of the costs involved – not just legal costs and the other party's costs but also court fees and the cost of disbursements.

Judicial Review - the point about doing no win no fee work is that you do not get paid for any pre-permission work unless permission is granted so practitioners do a lot of work at risk. The defending party knows that and therefore the threat of JR is not so much of a threat as it used to be as they will know how difficult it is to bring a JR case. JR is frontloaded – practitioners do a huge amount of work just to issue application for permission which is a serious deterrent if they may not be paid anything. Get interim relief and then don't need to get permission. So much JR is gatekeeping. Housing and welfare rights rarely go further i.e. once the interim relief is granted, the permission hearing drops off. Explaining to MoJ what gatekeeping is – essentially where a local authority unlawfully turns someone away who is seeking assistance as a homeless person. It's very frequent and it's increasing because Local Authorities are under financial pressure and there is considerable staff turnover.

Homelessness Prevention agenda – clients need help going through the process. A person cannot get legal aid unless they have had a “no” decision that needs challenging. If the Local Authority knew someone was there to go through the whole process that would help with value for money.

Gatekeeping is increasing and there are fewer people who can support Domestic Violence clients. And then Universal Credit issues arise where clients simply cannot navigate the system.

UC mentioned a few times – PIR team is looking at Welfare Benefits being taken out of scope – they are looking ahead and have to take account of the changing landscape. Previously when HB was stopped you still had e.g. IS or JSA. Now if sanctioned or Universal Credit is stopped you have no income at all.

Tribunals Welfare Benefits – legal aid was never available for full representation but was only available for help with making applications and putting in representations. Significant sums were spent on benefits in past. LAA wanted to make savings for example on helping people to fill out forms but in Parliament there was an acceptance that the second tier tribunal work should be in scope. Also that some cases in first tribunal issues were so complex that couldn't expect people to do it themselves. Ministry of Justice said that if the tribunal said themselves that they had made an error of law it would be included. Amendment was supposed to come in to identify those cases and putting some capacity back in the system to deal with those complex cases. That did not happen.

- Bring back legal aid for all cases involving children because they suffer disproportionately
- Legal problems are most frequently suffered by people with mental health problems – bring these back into scope – rent arrears, debt, neighbour problems and an exception to scope limitations where clusters of problems. People with mental health problems experiencing clusters of legal problems should be exempt from standard eligibility criteria
- Mental health specialist advocates/advisers for individuals going through process (start-finish)
- PIR should conduct detailed impact assessment of LASPO on disabled people
- provide three hours funding for early legal advice
- for homelessness/immigration/benefits/employment
- as above reintroduction into scope of issues frequently faced by people with mental health problems (rent arrears, debt, neighbours)
- Exemptions/exceptions to scope/eligibility criteria for people with clusters of issues – try to tackle in a more holistic way - allow all linked problems to be dealt with
- Welfare benefits. Many said restore legal aid for benefits cases. Others said restore for benefits where facing possession proceedings/within proceedings. Delegates felt that there would be savings in other government expenditure. Introduce power for tribunals to make a (flat rate) “costs order” against DWP – may improve decision making? Challenging work capability assessment under ESA UC to tribunal (first tier). Welfare benefits back in scope (perhaps post MR [Mandatory Reconsideration]). Bring benefit advice and representation up to tribunal level back into scope for housing cases. Honour the offer on complex welfare benefits cases at first tier (ref Hansard) Re-establish legal aid at appeals stage (without rep) for welfare benefits
- Housing: Reinstate legal help in housing: disrepair, rent arrears
- restore legal aid for disrepair cases – can get rent arrears reduced significantly so LA will discontinue proceedings – LASPO created some unintended problems - end up with LIPs – backlogs at courts – hearings are taking months to be relisted. Often paid for by inter partes costs. Polluter pays
- Early advice housing/family crossover e.g. occupation order
- Judicial Review. Remove “at risk” element of JR
- Remove bar on legal aid to trespassers
- Reduce means testing and exempt e.g. homelessness cases. Increase financial eligibility thresholds. Reassess rent capital limits on legal aid so more realistic Means testing – higher threshold, broader passporting. Remove scope requirements for early advice and reinstate holistic early legal help (subject to reformed means test)
- Need to make casework affordable for firms and organisations e.g. homelessness reviews.
- Review of the areas of LASPO to ensure interlinked issues can be dealt with as a “whole” rather than individual aspects i.e. benefits, homelessness, rental arrears, alongside domestic violence
- Polluter pays – when an appeal is won on basis of a “bad” decision by a public body (e.g. mistakes of fact or errors of law) the department e.g. DWP bears costs of the appeal process
- Access to effective “triage” for clients to diagnose remedies for multiple/complex legal problems – rather than having to wait for a negative decision by a public body or court proceedings
- Can legal expenses insurance be of assistance in social welfare areas of law? Historically insurers have not been interested and people can not afford premiums.
- Interpreters and other disbursements need to be funded.
- Get rid of mandatory telephone advice and allow people to choose a service that best meets

their needs. Not no telephone advice but should be able to choose. Make CLA non-mandatory

- Debt – some may not have been legal work but there are some which get quite complicated – bad enforcement practice – early advice is the key. Practical advice is key – some link between LAA and Money Advice Service? Needs link because don't want a situation where someone gets four half hour advice sessions at a library with someone who prints some stuff off the Internet for them. That's helpful for some people but not if e.g. they really need a debt relief order.
- Government to fund a lawyer in every jobcentre
- GPs constantly trying to support people – should be capacity for them to refer people at an early stage Give GPs capacity to refer social welfare law cases to lawyers
- Polluter pays principle – especially for WB tribunals where DWP has made a bad decision
- Innovation grants – digital space digital tools at present have to go to trusts and foundations to fund it – can get scale – hampered in innovation
- Free legal advice to be reintroduced as a funded service rather than relying on pro-bono i.e. restore legal aid perhaps in hubs rather than individual law firms
- Provide “innovation grants” to foster independent legal information in social welfare categories (including digital tools)
- Reinstate “level 1” type work back into Legal Aid regime

2. Community Care, Mental Health and Mental Capacity

Chair Nicola Mackintosh QC(Hon), Mackintosh Law and Sophy Miles, Doughty Street Chambers

In 1990s the Community Care Act was introduced to assess people's needs. It was for Local Authorities to work out what people needed. Later in the 90s it was put into the legal aid scheme. Community care will cover for example a person, often with a disability, who is in need of services but they are not being provided. There is a right to a service.

The initial enquiry may be presented as a position of crisis from a carer or client. Benefits may have been stopped or some other crisis occurred. Another presentation may be when the client is in an institution and something arises out of the care they are/are not receiving.

An example was given of a child who is sofa surfing. They have been to social services and been told that they cannot be helped. That is an example of a cross over between community care and housing. And there's a risk aversion approach at LAA where people are not receiving funding and are falling between the gaps.

Another example was given of a mental health client attending a day centre during the day but presenting as homeless at night.

Nicola stressed that community care is less defined than other areas of law. Cases require skilled questioning and/or investigation.

Another example was given which covers challenges to detention under the mental health act. We have a right to freedom under the Magna Carta e.g. F took some drugs clubbing and got detained in hospital. He was not released because they didn't believe his delusions of grandeur. There were legal issues about risk, the nature of disorder, treatment plan. Need specialists and expertise. There is a fixed fee system which pre-dates LASPO. It is too rigid and fees are very low. The fees do not incentivise proper preparation in order to get value for money. There is fragility in the supplier base. Good value for money in these cases. Often only one person who deals throughout the case. There are obvious overlaps with community care.

Mental capacity case example given.

There is no mental capacity legal aid contract. Currently that work is carried out under the community care contract or mental health contract. There was a plea for that not to be changed.

Types of case:

- disputes about decision making. Do you have capacity to make decisions for yourself or does someone else, e.g. the court, step in? Is this temporary or permanent?
- Tribunal- the importance of experts was emphasised
- If a person lacks capacity-what is in their best interest? There is an obligation to listen to their wishes and give them due weight. These may range from
 - where they should live
 - contact with people who may have abused them sexually, physically or financially
 - consent to sexual relations
 - Marriage

Practitioners need to know about the legal obligations of the National Health Service and various services etc. New act – cases now often deal with deprivation of liberty. There is a lot of enthusiasm

among younger practitioners doing this work but there is a real risk of burn out. There is no comprehensive programme of support. One practitioner said that she was about to start group counselling for her team, recognising the stress they were under.

Prior to Mental Capacity Act- these rights weren't being asserted anywhere.eg disabled child resident with one parent. Other seeks contact, parent refuses. The act gives these families a voice.

Problem areas for clients:

There is a dearth of practitioners so there is nowhere to refer people.

One delegate explained that she set up a legal team at a charity and then moved to Mencap with this team. They receive 12,000 calls a year. 35% are about community care. 10% are about mental health. None of these caseworkers have practising certificates but are focusing on early part of the issue before referring to lawyers. There is often nowhere to refer so they are setting up pro bono clinics. But pro bono is not the answer. Look at statistics - very few cases are going to court.

People do not know their rights. They have very few places -often nowhere - to go for help and no delegated functions to grant legal aid certificates. The emergency route has really slowed down. Practitioners cannot keep on doing work on meritorious cases that they might not get paid for. One practitioner said that they are taking far fewer cases because of this

It is time consuming to complete an application. The administration and logistics are a huge deterrent.

One organisation found that about 1/3 of people will drop off even if referred if they are not supported with filling in the relevant forms.

There was a concern about the Legal Aid Agency being too risk adverse in granting legal aid in these cases.

There is an urgent need for revision to the means test. The elderly is a growing group. They own property but can't raise money on it.

Community care clients are often very time consuming as need support throughout. Many have difficulties accessing and providing information but also difficulties in engaging.

Community care covers a huge range of statutory services but a number were missed out in the definition in LASPO which means that practitioners cannot provide advice on that. It is a very blunt tool.

There are knock on impacts when these issues are not resolved.

Solutions
Need to revise means test
Streamline process. Passport existing information rather than requiring new information for each application
Fixed fees in mental health tribunals. Make more flexible. Have windows for lower and upper limit. Relatively low volume area of work
Early legal help for community care - so many cases are solved with one email. Would need reasonable quality assurance over that advice. Or allow a few hours of non means tested advice.
Deprivation of liberty- inconsistent. One route is means tested and the other is not. Results in deprivation of liberty with no support. Unlawful. Especially common with issues of financial capacity
Telephone advice doesn't fit with this group. Possibly support for telephone route in parallel with support
Community care supervisors have to be full time. Many of the lawyers here are women. So practitioners need something that works for flexible working to allow for this. Turning away lots of meritorious cases.
Blanket rules. Need some sort of accreditation like immigration caseworkers. Or flexibility with supervision and contracts.
The problem is that the numbers are getting lower. So it appears less of a problem. Needs to be proved that there is demand.
Community care cases start off with legal help. Very low paid work but high skills required. It does not make financial sense for the most skilled people to do this work. Mental health is accredited.
Why does there have to be a limit on new matter starts? Block contracts?
Hostile environment effect directed at clients.
There is no obligation in LASPO Act to consider access to justice. Before LASPO there was. Bring it back.
System not sustainable – make it sustainable

Matt Shelley asked for the data from Mind.

3. Immigration, Asylum Support and Statelessness

Chairs Jawad Luqmani, Luqmani Thompson & Partners and Maurice Wren, CEO Refugee Council

Maurice explained that a lot of Refugee Council's clients struggle because they are unable to access legal advice. The fundamental problem that we are responding to is poor decision making by authorities in an austere world where other options are closed down. People seeking justice in immigration and protection sphere are particularly affected. Refugee Council suffers from a diminished provider base – advice deserts have increased in scale and scope. One consequence is cost-shunting – voluntary sector and pro bono provision has to step in, and local authorities have to pick up the consequences of individuals not being able to regularise their immigration status. Having retained asylum legal advice at the initial stage, the ability to deliver it in a quality way was diminished by changes to scope. Unhelpful demarcation between immigration and asylum issues – e.g. legal aid for refugee family reunion was removed. He referred to the cost and bureaucracy in the Exceptional Case Funding Scheme.

Jawad explained what is still available under legal aid

- Asylum
- Immigration Bail
- Qualification Directive
- Leave on trafficking
- SIAC
- Leave for domestic violence victims

Availability of legal aid is very protection heavy.

The LAPG Manifesto proposed:

- Advice for those in detention in relation to underlying reason for detention
- Advice for those who are additionally vulnerable because of age or health
- Reintroducing legal aid for refugee family reunion
- Reintroducing legal aid for potential victims of trafficking
- Reintroducing legal aid for all domestic violence victims

Discussion:

Repeated applications for Exceptional Case Funding is wasteful of time and the LAA delay in making decisions prevents the adequate presentation of cases. Many solicitors will not want to take on cases that require making ECF applications because of the additional work and risk.

A number of voluntary organisations run ECF projects but the time taken to make those applications is significant, delays are rife (taking on average at least 30 days for decision), and then the lack of capacity in the sector means that it can be difficult to refer cases to solicitors. It is not a sustainable model for people to be assisted to access the ECF scheme through pro bono provision. ECF scheme is incompatible with existing structures for trafficking victims (among others). It is important to remember that the Home Office is not a neutral decision maker – anyone making an immigration application is being tipped into an adversarial system and are being asked to navigate the most complicated set of rules. The consequences of getting that wrong are significant, given the context of the hostile environment – decisions can leave people unable to access health care, rented housing, bank accounts etc.

Scrutinising and challenging Home Office decisions is integral to that decision making improving.

Early Legal Advice Project Evaluation (2012) made the case that properly resourcing the front end of the decision making process leads to more grants of asylum are made in the first stage, fewer cases go to appeal and cost savings follow.

Many ECF applications are granted – does this suggest the cases should just be brought back into scope? Should solicitors/firms have delegated functions to grant ECF? They will be routinely audited anyway, so any abuse of the system could be picked up? Could this reduce spend because wouldn't have the administration costs of processing the ECF. But would there be too much concern on the part of the LAA for providers to do this?

There are reports of taking up to a year to find a competent immigration provider for victims of trafficking. Fixed fees (£238 per case) are a disincentive for taking on cases. Lawyers need to be paid for the work that they do. Back and forth with Legal Aid Agency on applications is adding to delays. Simplifying the Immigration Rules would help deal with the inaccessibility of the system. Review how new advisors could become trained and qualified.

Summary

- 1) Is it sustainable for ECF route to be supported pro bono?
- 2) Is the speed of ECF decision making rendering it irrelevant?
- 3) Access to justice includes effective decision making and oversight
- 4) Would delegated functions for ECF work or present too great a risk on audit?
- 5) Reintroduction into scope – see LAPG proposals above
- 6) Cost shift arguments justify some categories of individuals being brought back into scope e.g. looked after children
- 7) Proper remuneration even in cases that are 'won' (i.e. settled) even if technically refused
- 8) Need for fair pay for work you do/ when you get paid.
- 9) Simplifying Home Office immigration rules
- 10) Reduce arbitrary low disbursement limits and emergency certificates
- 11) Increasing supplier base from different sources and providing public legal education.
- 12) Reduce 'punitive' costs of Home Office applications.

4. Actions against the State, Public Law, JR, Inquests, Prison Law

Chairs Oliver Carter, Irwin Mitchell, Co-chair of YLAL and Dr Laura Janes, Howard League for Penal Reform

This workshop will focus on public law and inquests.

Example of a Judicial review: 19 year old who had been in custody since childhood. There has been a reduction in judicial reviews in social welfare categories of law and therefore for ordinary people. There are difficulties in bringing emergency JRs – bring back delegated functions for JR. There has to be efficient processing of certificates for emergency JRs. Lack of backdating is a problem.

A wholesale review of remuneration regulations and rates is needed. Rates have gone down in actual terms and have not kept pace with rising cost of living. There is insufficient payment across the board. There is a loss of expertise in this area as lawyers leave and therefore less capacity.

Inquests – requiring families to provide financial information. Evidence of means, when this will be waived? Solution – where it's likely to be waived, don't ask for it. Do merits test first. No backdating – even though there is much work to be done before. A solution would be that you are covered from the date you signed your legal help form, but at present the work is now not covered despite it requiring a lot of work.

There needs to be a deep review of payments and types of payments. There are clients who are not receiving help due to problems with the payment system.

A reduction in JRs looks like a success in reducing unnecessary cases; however, what it may really point to is that people are being denied help/justice. These cases are often necessary, but there are barriers to bringing a case. Cost shift analysis and open up justice to everyone again. There is a sense of savings being made. What is being lost? These cases challenge poor decision making by the state.

Inquest – there is no emergency application so there are barriers to emergency requests. Article 2 inquests, but disagreement with coroner so no idea how these decisions are being made. No route for emergency applications. Legal help waiver can be granted, but if auxiliary things happen, you cannot challenge. Need to create a process for emergency requests.

Actions against the state: a troubling theme that the government is making decisions that go against agreements by the courts. Also if it is being ignored long enough the problem will go away. Waiver goes to the main inquest, but not to ancillary problems – the waiver should cover these as well. Review decision making for quality independence.

Delays in the system caused by administrative 'computer says no' problems. As a minimum, the infrastructure needs to be put in place to help the clients.

Problems with CCMS – great for fixed fee cases but does not work for other cases. A system needs to be set up to work with the more complex litigation.

Rates need to be reviewed and simplified. Last rise was 1996 and cuts in 2012. Care lawyers have had two cuts in rates. Cuts to services – 2 firms where there used to be 7 doing legal aid work in one area. There is a big loss of expertise.

Issue of getting evidence to individual client's needs is broader than just inquests. Start on a file, but by the time it progresses mental health issues have started – so unwilling to go through the process again. If already on legal aid, why go through the process again unless there is evidence of substantial change? Simplify the eligibility process; certificate when approved for one case so it doesn't have to be done again within a period of time.

Thresholds also need to be reviewed as poverty has changed.

Long waits for coroners before the Legal Aid Agency will review. Cover every issue but still declined, feels as if they are not reading the application. On review they are usually accepted. Culture within the LAA has changed; used to be a culture of pride and accomplishment at working to deliver justice. Reinvigorate the positive culture and ownership of cases by caseworkers. You now cannot talk to team members or caseworkers – a definite policy.

Long delays in emergency inquiry requests – supposed to be in 5 days, but can take months. Pre inquest Review hearings are not considered an emergency, PIR should be covered.

Delays in emergency funding, delays when refused on merit but then overturned. There is a lack of discretion on the part of the LAA. Review of eligibility thresholds. Payments should also follow the actual work. Need to think about human cost.

Problem	Solution
Unresolved problems/injustice Scale unknown	Legal need surveys/cost shift analysis
Reduction in social welfare/ordinary people JRs Remuneration Regs (no perm; no pay, no backdating)	Review Regs and remuneration
Difficulties applying for emergency JR (no delegated function)	Bring back delegated functions in JR Efficient JR processing of certs (emergency)
Inadequate payment – loss of expertise	Review rates/thresholds presumption/means/simplify
Evidence of means and all civic - especially where may be waived.	Non means testing for art once merits passed Waiver? NDV inq or ancillary remove delay in auth LH until certificate paid
Inq legal help not backdated/paid – substantive cert	
Inquest no emergency application	Have emergency procedure
State shadow decision making on substantive legal issues	Review decision making for quality and independence
Practical blocks – cannot amend until grant! Delays. 'Computer says no'	Better infrastructure time to meet providers' needs for client (CC MS) especially complex cases
Loss of expertise by providers	Ownership of cases. Culture change in LAA – pride in achieving justice. Human cost of delays
There is no urgent app for Pre Inquest Review hearings	Bring in urgent app to include Pre Inquest Review hearings
JRs front loaded - not recognised in payment arrangements	Payment to follow the work
Costs protection rules	

5. Family, Mediation and Dispute Resolution

Jenny Beck JB and Cris McCurley CM chaired.

MOJ stressed that while anecdotal stories are really important, equally important is the data. Ministers want this.

JB stressed that we want to focus on solutions but before that ensure that we are on the same page re problems. JB summarised main problems as a consequence of LASPO

Start with case study re means (Vicky case study). JB noted the gap in provision caused by this problem.

Largest number people affected by LASPO in family law. JB referred to the LAPG Manifesto Which called for the following:

- Provision of funding for early initial advice, which might include a referral to mediation;
- Reinstatement of legal aid in private family children cases, with application of the sufficient benefit test to preserve the fund in children cases;
- Reinstatement of legal aid in private applications for financial orders, with proper administration of the statutory charge to protect the fund;
- Reinstatement of funding for private law applications for extended family members (for example, grandparents) seeking to care for children, where their parents are not able to do so. The criteria to access legal aid for such applications could be a letter of recommendation from children's services;
- A discretion to grant legal aid to a party who is not eligible for legal aid, but where the costs to the justice system overall would be greater if the party was not represented.

She highlighted particularly the impact on grandparents etc. who aren't themselves victims of abuse. JB - 80% of cases are out of scope

Olive Craig - ROW: the most pressing issue is direct cross examination of survivors of Domestic Violence.

Jess Mant - Leeds and Cardiff Uni - research - experience of self representation of victims of DV. Inconsistent approaches of judges. Court process raises lots of issues for people using it.

Joanna Walker, Philcox Gray – there is a particular concern about Special Guardians or those trying to discharge SG orders. They are often left on their own in a hostile court environment. Ellie Cronin of The Law Society - noted also SGO - these cases have the characteristics of public law cases but because they come under private family law the funding was removed by LASPO, this seems to be an unintended consequence of LASPO and the funding of SGOs should be re-instated urgently.

Rachel Rogers – Resolution's list of concerns includes the operation of Exceptional Funding, both obtaining and obtaining quickly. There needs to be funding provision for parties in family cases with serious consequences for those involved, especially for parents involved in SGO proceedings and for those without gateway evidence of abuse but where mediation is clearly unsuitable.

Penny Scott – is in private practice and chair of The Law Society's Family Law Committee. Special Guardianship needs to be unpicked. She noted that in Devon the local authority will pay £150 for the

deemed suitable couple to get advice. It is not appropriate given the level of advice needed. This is a slipshod way of trying to provide kinship care which is worthwhile. This impacts on solicitors' professional role and impacts on kinship. There is a need to move away from adoption as a public policy. Without legal aid there is a hole in joined up thinking across justice system. We need coherence in the justice system.

Cris McCurley private practice - in her area the local authority will fund but excludes parents so essentially these are care proceedings through the back door. JB – this is quite a complicated area - quasi care proceedings with unrepresented parties. PS - is a discrete issue which could be resolved.

Nicola Jones-King, private practice and Association of Lawyers for Children. She represented a woman with a long history of DV and multiple Children Act proceedings because father made multiple applications. The client made an application for funding – the means assessment took Aug 17 - Jan 18 because of repeated document requests and the final offer was on the basis of £6000 contribution. By then the final hearing was listed in Children Act proceedings. This brings about pressure for the court and stress for practitioners.

JB noted the bureaucratic nightmare, particularly in urgent cases. There are plenty of examples but she was mindful of need to look at solutions.

Cheryl Morris – Official Solicitors Office

1. Matrimonial homes no longer discounted - so that has a big impact on entitlement. Clients with a lack of financial capacity cannot get a loan to fund advice
2. Mediation - was the government idea to be a solution. But example of man taken to mediation by wife and cousin queried the outcome because it appeared very one-sided. Turned out husband completely lacked capacity and was highly susceptible. Are mediators trained to consider capacity?

It was noted that the Civil Contract Consultative Group has asked for MOJ data, pre and post data. Still waiting.

PS - can I submit estimates of costs involved in cases pre and post data. But what methodology? Extrapolations? Matt Shelley said yes today.

JB scenario: a worried mother was anxious about her ex-partner being granted contact as she was worried that he will keep the children. But if he does she won't be able to get legal advice as no DV. So she's not going to run the risk of letting him see the children. He can't afford advice so has tried to negotiate:

- So he could demand contact
- He could bring an application unassisted
- Or he can walk away and have no contact with his children.

This could lead to the involvement of the police. She could litigate in response at huge costs to the state. Or she could risk losing the children. A whole generation of children might not know one of their parents. This is a real practical problem for non-Domestic Violence cases. There are frictions but no violent situation, exacerbated by lack of early advice.

When clients do get advice it is amazing the difference it makes to resolving these problems quickly and in a non-confrontational way.

Cris and Jenny have spent the last couple of years negotiating the DV gateway. Tried to make it less complicated but new Regulations are still complicated.

Case study about 'assessment'.

JB noted that the DV gateway was resolved in part. But there remain many serious problems post LASPO.

Delegates noted the amount of unpaid work that CM would have had to do for that case - important take away for legal aid lawyers who are not just trying to make money. It may be cheaper to do it pro bono!

JB suggested a call to bring back at cases where there is a credible case and means assessment. The intended and unintended consequence for the family life, which is the fabric of society, is horrendous. Bringing all back seems unlikely. But want to explore an idea about protecting certain cases. Excluding perpetrators from legal aid means that the government has created a new form of abuse which is happening in court. A screen in court doesn't protect women from terror so many cannot even think about the going to court. Legal aid needs to be extended to all elements of the case.

Explore: Early legal advice returns. Mediation still promoted. Mediators trained to assess vulnerability and capacity. This should syphon off, with proper public legal education, large number of cases, some can't mediate:

- people who are too terrified
- where there is an imbalance of power

There must be funding in place to trigger application and CAFCAS report, with assessment of whether or not there is abuse. There must be funding for both parties so women are not exposed to further abuse. This is targeting those who government intended to protect. It will have to be accepted that some perpetrators will get legal aid. But these proposals will get child centric decisions because parties will be properly advised and won't clog up the court system at great cost.

CM pointed out that the Family Justice report on the care crisis identified that it costs £26,000 a year to house a child in care. There are now far fewer courts and facilities. There is no space for parents in private law to protect their children. They cost a fraction of care proceedings. If there is no space in court these cases won't get heard in a timely manner. Victims won't be able to protect themselves and their children. Judges are avoiding injunctions because of a lack of court time. Some clients may be dissuaded by judges and give up because they are already facing many barriers. If they go back to their abuser it may end up as a massively expensive care case.

There was a proposal that there should be judicial training particularly on DV cases and that training needs to be from specialist front line agencies.

LIPs – one issue is where judges put equal right to examine on a par with right to protect victims. A charity worker highlighted that females in the system feel re-victimised by the system. All said the court system makes the abuse worse.

There is concern that CAFCAS will do shorter reports and shorter telephone interviews to make efficiencies. Will those reports be reliable and can they be the gatekeeper? They lack the resources.

There is a need for training for court professionals. There are problems e.g. when there is a lack of separate waiting rooms for victims and perpetrators. Ushers for example who don't understand the problem or are too busy to deal or who have no way of dealing if there are no spaces available.

There needs to be training for LAA caseworkers about DV, not just the law i.e. understanding the urgency of situations. There needs to be a focus beyond physical abuse. The government's own definition is wider than that used under the Legal Aid scheme.

Concern was raised about the lack of appeal processes for legal aid applications.

JB asked the MoJ what methodology would help? How to cost out the process needed to protect victims? Cheaper just to fund the perpetrators? Better outcomes for children, faster and more effective. Fewer entrenched positions. Shorter proceedings. Need the data. But legal aid businesses are on the verge of collapse, not sustainable. So they can't take the time needed to find the data - haven't the time but need the MOJ to cost the models and generate some of the data.

The MoJ confirmed that they have analysts working on this.

JB proposed a small working party working with LAA/MOJ analysts? Develop the methodology for working out costs (need CAFCAS data too). Work out a journey with children's best interests at its heart.

PS and CM would love to work with an analyst. JB - we would map out proposal and get as much buy in from the stakeholders. PS - can do scoping exercise. JB - with right equipment we could increase take up of mediation.

CM - delays in legal aid can be a lifetime for a child. NJ example was 7 months to work out if will get funded. Huge delays via CCMS. Children left in harm for this whole time.

1. Rework model to establish savings from bringing back early legal advice, encourage mediation and redistribute savings to fund both parties to Fact Finding Hearing in contested cases where Domestic abuse is an issue. Thereafter funding to fall away for any party not following CAFCASS recommendations without justification. This removes the opportunity for perpetrators to use the courts to further abuse by exercising their right as LIPs to cross examine. Proceedings are expedited. Saving of court time. More savings to plough into prevention and early advice etc . Also deals with the concerns some pressure groups have about false allegations being made to frustrate contact as everyone is represented until the facts are established.

2. Special Guardianship Orders

3. 16.4 cases. These are private law proceedings. Sometimes the Court appoints a Guardian (effectively a social work qualified professional who is independent and doesn't work for Social Services) to represent the interests of the child. The court does this increasingly to get the case managed where there would otherwise be LIP chaos. Better if the parties were properly funded and cost neutral.

4. Bring back legal aid for finances. Cost neutral statutory charge cases. Help women (usually) receive the support from ex husbands (usually) rather than falling back on the state.

12.30 Report back from workshops

Chair or person from each workshop fed back– 2 minute summary of main problem and interesting solutions.

Early advice: it is needed and is the solution but there are still questions around who, what and where. Who should triage -specialists or not? Significant savings to the state are delivered by early advice. It is a bit of a mix and there is no single standard model that would work as it is more complicated than that. More focused information at an early stage would be very useful.

Solution: early advice!

Clusters and impact: what remains in scope is undermined by what is left out of scope. Review what is in scope and look at access. If on benefits you should be accepted automatically. Immigration issues arise and the world of work has changed – need to look at zero hour contracts and the fact of fluctuating income. There is less practitioner capacity. People with mental health issues have difficulty accessing advice.

Solutions: there is a need to simplify immigration law. Simplify the fee structure. Joined up government thinking is vital. Changes to DWP would take away some of the work. Digital should not be seen as a separate thing but as part of the system.

Access barriers for adults: there is a range of vulnerable groups, more barriers to identify that they have a legal problem. There are barriers in the requirements, which are too restrictive. The means test does not take into account the real costs of living and rent/expenditure. This excludes people even in the category area. There is nowhere to send people because there is a dearth of practitioners. Court estate – physical barriers also cause problems.

Some solutions: more advice outlets, more advisors, more accessibility, easier means tests, should there be a scheme for 3 to 4 hours of non-mean tested advice, having a telephone system in tandem with face to face but not mandatory so people can chose the route most useful to them.

Access barriers to children/young people: same as adults in many ways. Children's needs in a silo, young people do not know that they have a legal problem.

Solutions: look at Howard League peer support project – shows young people what the law can do and how to seek help. Needs to be a service they can trust and will go to. Young people, especially BAME, do not trust the system. Children should be fast forwarded through.

Housing, WB, Debt and Employment:

Solutions: welfare benefits and disrepair should be brought back into scope. When local government knows they can be challenged and may have to pay costs means they may keep properties in better repair in the first place. Early accessible advice is needed – one solution would be to have a lawyer in every DWP office and in GP surgeries. Debt advice, early advice is crucial so it does not become a major issue. Employment law should be in scope as if people cannot receive help they cannot stay in work and this leads to larger problems.

Immigration, asylum support, statelessness: length of case with no payments, complexity of ECF procedure and delays, in one example given 4 separate ECF applications for each stage of the appeal in the same case, administrative hurdles created and complexity of Home Office rules and the amount of fees.

Solutions: regular case payments, simplify ECF case procedures and speed up processing, more realistic disbursements, remove administrative hurdles, simplify Home Office rules and reduce fees, Delegated functions for cases which are already in exceptional case regime - bring back into scope. Bring back funding for certain groups.

Families:

Solutions – bring back legal aid, scope for parents and special guardians. Target legal aid at those most in need, such as victims of domestic abuse.

Community care, mental health and mental capacity: There are a lot of issues that need a lot of attention. Fixed fee is incredibly low which leads to a dearth of practitioners in the area. Legal education is needed so people know what their rights are and where to get help. There is no adequate route for emergency legal aid. Issues around information that people are asked to give to qualify for legal advice/aid. Common sense approach to means testing, allowing a lawyer to give 2 to 3 hours to discuss what the problems are. Is telephone advice useful to some groups? There are concerns about supervision issues.

Solutions: Increase fixed fee to ensure supplier base (and review availability of supervisors under contracts); increase legal education; improve process for emergency legal aid; make eligibility requirements simpler to satisfy; allow two or three hours of advice in straightforward process; review access to telephone advice; support and training needed to encourage new lawyers into this area; and review contracting process.

Actions against the state: means testing: a huge number of people cut out, also in inquests where waiver will take place anyway. Legal aid rates are not sustainable and lead to a lack of practitioners. High profile case. Review of rates, payment, backdating of work where it has been carried out properly. Change for means testing.

14.00 Workshops

1. Operational Challenges ECF, Gateway, and fixed fees to be covered.

Chairs Katy Watts and Polly Brendon

ECF: Provide outline of perceived issues, then propose to open to discussion. There have been legal challenges to the ECF guidance and operation of the scheme as a whole. There are continuing problems with the scheme, although it is working better than it was in its first year. Immigration seems to be working best, but in other areas of law applications are quite low and acceptance is low.

Operational challenges – some problems have come up again:

- 1) the complexity of the form, new form introduced in 2015 which is better, but still aimed very much at providers and too complex for individuals.
- 2) Lack of information and assistance available, both for individuals and providers. It is almost impossible to get through to the ECF team on the phone. Telephone and email have been merged and they will not put you through to the ECF team.
- 3) Urgency – there is a lack of an emergency procedure, and problems with getting ECF urgently. The LAA aims to make decisions on urgent applications within 5 working days, but we understand that they are extending this to 10 working days as they weren't meeting the 5 working day target.
- 4) When unrepresented individuals make applications they are required to submit means and merits forms, but if they identify a provider the provider then needs to fill in all those forms again.

Apply for ECF to determine whether an application for ECF can be made – yes there is now provision for that, but unknown if anyone has applied successfully. So this could be a barrier, but it's unknown. Presumably it extends the time needed to get ECF if two applications have to be made.

In relation to certain types of case there seems to be a decision to reject these ECF applications until you have had to threaten or issue JR proceedings. The JRs cause more costs (so JR costs £9000 for a case that would have cost £4000). It feels like you're involved in a game where the rules change. There used to be humans with names in the LAA ECF team; now that seems to be gone. Practitioners want a single person dealing with an application. Identical cases, one accepted one declined. So time has to be spent showing the inconsistency. Need to have an ECF team who are responsible for cases and with a way to contact them.

Gateway: Background: PLP published a report "*Keys to the Gateway*" in March 2015, looking at the mandatory telephone route into getting legal advice in certain categories of law. It is not easy to get information about the operation of the system. Telephone operators are not legally trained and no numbers are published for, numbers of people who are not able to get to the gateway, numbers who are referred to legally trained telephone advisors, numbers who are refused.)

In the financial year 2016/17, the number of face to face referrals for cases that came through the gateway were:

- discrimination 0,
- special educational needs 1,
- debt 55.

These numbers are very low.

It seems as though if you do not have a solicitor you cannot go through Gateway – so a person ends up at crisis point. It's unworkable for an entire area of law.

Case study: the person got legal advice for the right answers to get through the process, but still could not get a face to face meeting.

Discrimination – is there any breakdown of who is calling and why they are being refused. Who makes that decision? Figures were available for one year, but they aren't generally publically available. 6000 calls, 3000 to advisor, 2000 not viable, case outcome 4 cases and in 0.1% were granted. Statistics not being published routinely so there is no way to find out what is going on. Statistics should be published regularly. 58% of discrimination callers said they had physical or mental disabilities. How many people who really need legal advice are unable to access this telephone system? And if you need legal advice to answer the questions, how many are able to get through to legal advisors?

Ask: that the Gateway system be scrapped and a new system set up where clients can decide how to access help.

Eligibility: means testing. Requirement for those on passporting benefits to be tested for capital which immediately puts a massive administrative hurdle in the way of them getting legal aid. Once clients are asked for bank statements, they never reappear. It takes longer to make an application. In many cases where they have not been eligible it's because they are too ill to spend money so it's built up or they have someone else managing their money they have too much for eligibility rather than the client.

It is too complex system and clients need to provide too much documentation. What used to take 1 hour now can take up to 2 hours, most of which is trying to figure out eligibility.

Still using rates from 2001 for financial eligibility; these are completely out of date.

Dilemma for practitioners- do they accept funding which could be revoked, which would put them at risk. This is usually an issue in emergency cases. Also will the provider take on a case where a client may not be able to pay? The provider can carry the risk for months.

There used to be one form with set questions which was sent to a person who then gave an answer. Now it is done on computer and is much more complex.

Practitioners reported cases where mental health has progressed to the point where the person is not able to engage – nothing has changed on the case but they still have to go through the process again.

On obtaining the evidence, much of the money earned by some clients is sent back to their country of origin. And foreign information can be difficult to obtain – how much is the land worth, how much is the partner earning, need for payslips from countries which may not provide payslips, no access to telephones. This can be disproportionate. These questions can lead to a fundamental breakdown in trust.

Solutions: what evidence is it reasonable to require to prove means? And how many times should people have to prove their means? There is a need for trust. With this client base, this cannot be about justifying everything on a bank statement. Asking children for bank statements – if there even is a bank account there won't usually be any money in it - disproportionate. Need for flexibility/discretion. Unnecessary rules need to be reviewed.. Update the eligibility criteria to reflect reality. This can all be done while still ensuring proper use of public money.

Fixed fees: need to be increased or scrapped. Fees vary, sometimes massively, depending on area of law. If it's up to three times the fixed fee, you can apply for hourly rate. This could discourage advisors from taking on simple cases. Then it becomes more complex before it is dealt with. Immigration cases are handled differently which leads to a huge loss for practitioners (need for both Legal Help and CLR files to go three times over the fixed fee in order to get the escape fee for both files). Some of the most vulnerable people are unable to access advice.

This needs to be properly funded. Either scrap the fixed fee or raise the rates. The calculations that led to the figures are old. And based on a different case mix. There is also inconsistency across the funding – i.e. an unaccompanied child is eligible for work carried out on the hourly rate, but if there is a parent then it is a fixed fee.

Look at the larger picture – early advice is helpful and is a lower cost, but fixed fees work against this. Disincentives for early advice, when there should be incentives for early advice.

Suggestions: A system to pay for 500 hours for reviewing case rather than submitting individual claims? If three times is the threshold, why not just double? It is double in some areas, so why not in others? It is a system clearly meant to underfund, but why? Based on old figures and so historical that it is no longer relevant. It was also based on a lot of people doing smaller bits of work, not these larger special cases.

CCMS

Allow digital signatures. If you are going to have the declarations then should be able to do that digitally.

Same merit system every time.

Improve consistency in decisions. Perhaps linked to simplicity, make the process less complex.

There are too many hoops and different ways of needing to prove situation and need. Teams do not communicate – silos – so e.g. may meet the Gateway requirements, but can't prove this in other places because Gateway doesn't provide the information.

Delay – capacity issue. By the time funding has come through, the situation has become worse, thus more expensive. VHCCs – in court and still no decision. Lot of work being done at risk while waiting for LAA to make decisions, because court dates are coming up or even happening. Supreme Court agrees to hear case, but LAA delays until nearly time for the case or even denies the application. Set time limits which the LAA must meet.

Not discussed in detail: delegated functions. Acceptability of providers – rules for contracts need updating.

Flipchart:

Problems	Solutions
Eligibility	
Lack of trust	Remove the capital test for people on passporting benefits Allow flexibility/discretion in relation to the evidence requirements No contributions on emergency certificates Update the financial eligibility criteria, including the allowances, to bring them in line with financial reality. Revise the financial eligibility criteria to prevent disability related income/capital from rendering
Disproportionate evidence requirements	
Capital means testing for reporting benefits	
Disability related benefits taking over capital limit	
Overcomplicated	
Self-employed/0 hour contracts difficulties with calculations and evidence requirements	
Means threshold – out of date see Law Society report eg limit for single people moving costs	

<p>Non-dependents' contributions – will their means be considered to be available to the applicant Delays moving onto substantive certificate Means review – lose clients trying to obtain evidence</p>	<p>people ineligible Trust clients and providers; take a proportionate approach to means re-assessment.</p>
ECF	
<p>Pre action letters to get funding Cost of JRs to get funding v funding for substantive case Communication with ECF team</p>	<p>For the LAA to develop better communication channels for providers and applicants. Designated LAA caseworkers who can be contacted about applications</p>
Other	
<p><u>CCMS</u> Declarations against instructions Merits assessments on scope amendments</p> <p><u>Delays</u> High Cost Case Plans a particular problem</p> <p><u>Supervisor status</u></p>	<p><u>CCMS</u> Allow digital signatures</p> <p><u>Delays</u> Reinstate delegated functions</p>
Fixed fees	
<p>Disincentive to take on legal help work Early legal advice Practices write off legal help work Wait until can use certificate/situation gets worse Specific problems with immigration 3 x threshold problematic as has to be for both LH and CLR Inconsistency across immigration</p>	<p>Scrap them or improve the fixed fees and escape fee hourly rates paid . Lower the escape fee threshold Provide funding for a post rather than pay providers case by case for advice at legal help level</p>
Gateway	
<p>Referrals to face to face advice Very few certificates issued Impossible to access for individuals who lack capacity Clients who need face to face can't access (50% in first year had disability) – they disengage Need legal advice to get through Lack of information from MOJ – hard to know what's happening</p>	<p>Stop it being mandatory</p>

2. Sustainable Supply Base for the Future

Chair: Carol Storer (CS), Ruth Hayes, Islington Law Centre, Siobhan Taylor Ward, GMLC/YLAL and Ellie Cronin, The Law Society

CS then introduced the session which will cover private practice, not for profit agencies, the advice sector, recruitment, retention and retirement, financial stability, loss of expertise.

CS outlined the main problems faced. There are a lot of problems, generally most people are exhausted on a day-to-day basis – clients' needs are huge. Practitioners are motivated by their clients and cannot always deliver for them.

- There are people you could help but are outside the scheme, but if you keep helping them without being paid, you will collapse as a private practice or not for profit.
- Another issue is how much unpaid time there is – too much complexity, too much 'stuff' not covered. Solicitors and caseworkers can't bear not to help people, but cannot keep doing work unpaid as they will go bust. Outcome – if you are not being paid a proper rate for work, you are either not earning enough money or you are working excessively long hours. The fees are a struggle, too much unbillable time, too much administration, too much that drives people to distraction.
- There is an IT system called CCMS – LAPG has received hundreds of emails from people giving examples of problems with CCMS
- Getting financial information together for a client.
- Applying for legal aid and hitting obstacles. Don't underestimate how sapping that is for case workers.

CS' view from members' feedback that there are too many issues that people are having to face, preventing them from getting on with acting for clients. Plus practitioners have professional responsibilities to do work to a certain standard, ethical responsibilities, responsibilities to the court – these are often not recognised by the Legal Aid Agency. It is very hard for people to do what they should do. On most cases, legal aid is paid at a rate where you have to work really long hours or earn very little – when carrying student debt as well this is not an option - it is really hard for organisations to be sustainable.

There is a public perception of lawyers earning a lot of money. CS: for politicians there have been many attacks on lawyers, and it's not just one party – politicians find it very easy not to support the legal aid system by planting ideas about "fat cat" lawyers. Lawyers have to tell people they might not get what they want. Telling a family or housing client that they may not get what they want is a problem, and there is a perception issue.

CS: what would make it sustainable? What would make it better?

Private practice practitioner. It is so difficult – when she first set up her firm 20 years ago, the hourly rates for legal aid were about the same as they are now, but every other cost to our firm has gone up. "When we first set up, we could make it work with legal aid rates and inter partes costs when we won cases, but now legal aid rates don't pay what we need to pay to make the firm work, so we have to take work where we get inter partes costs to subsidise the legal aid work. Controlled work costs us about twice as much as what we are paid per hour to do it. For basic legal aid work, we don't get paid as much as it costs us to do the work. If legal aid rates do not increase, the amount of work we do that isn't going to result in inter partes costs is driven down. If the government wants us to do work that doesn't result in inter partes costs, they are going to have to pay for it at some level. My private rate is £317 per hour; for controlled work I get paid less than £50 per hour. It costs around £120 per hour without profit to do the work. My firm doesn't pay brilliantly; we don't really make a

profit. We run a very efficient firm, we do everything we can, we employ paralegals and trainees to do the more basic work – that's just the reality. When you see the work that doesn't have inter partes costs, people in private practice have to move out of that, e.g. housing work. It is just less and less sustainable. We just recruited for a housing solicitor – we are rated number 1 for housing work in Chambers – and we didn't get many applicants. That is indicative of the industry as a whole. It is not possible to make a target of three times your salary as a housing lawyer, so people have stopped doing housing work in private practice in the way they used to. You see what happened with Grenfell and that's just the beginning of it if you don't have access to the law. If you want access to the law, you have to grapple with these issues.'

A private practitioner proposed an idea on inter partes costs. The LAA has a unit called the Debt Recovery Unit. If on cases where the lawyer gets a costs order inter partes, if at that stage a bill was prepared, the supplier gets paid by the LAA the amount on the bill, they can then get on with other work seeing other legal aid clients, it is transferred to the Debt Recovery Unit then who get the money - that would be fairly costs neutral. And all the expertise within the LAA could be put into chasing money to get back for the government. He then gave a practical proposal – a private landlord loses possession proceedings, costs order made against them, costs are quantified and they don't pay – they say they can't afford to pay. They say they will have to sell one of their properties to pay the costs, and in order to get a quick sale they will sell it to the local authority who use it for temporary accommodation for homeless people. That property from the portfolio of that private landlord has gone back in effect to council housing stock at affordable rents for homeless applicants – seems to be a win-win. The Debt Recovery Unit would no doubt be very slick at recovering costs.

Inter partes costs are the rates you get which are set by local courts on the basis of what solicitors should be paid. The Costs Office – part of the court system – says these are the rates that should be paid, and legal aid lawyers are paid a fraction, maybe a fifth or a sixth, of those costs. The government is saying "this is what lawyers generally should receive", then paying lawyers a fraction of that on legal aid.

CS introduced Siobhan Taylor-Ward (STW) from Young Legal Aid Lawyers and now a trainee solicitor.

STW explaining what YLAL does representing a range of lawyers from students up to lawyers of 10 years' Post Qualification Experience . A key objective is social mobility in the sector. They produced a social mobility report this year – "Social Mobility in an Age of Austerity" – and it is really depressing.

A lot of people want to do this work because they really believe in access to justice, but are not able to get into it or are dropping out. What are the reasons?

- Debt and professional course fees – LPC is £11,000 on average, BPTC is £16,000, can't get funding in same way as undergraduate,
- Very unlikely to be funded by an employer,
- Very unlikely to get a job offer before completing the LPC, so there is uncertainty on top of having no money.
- Not enough grants and scholarship to cover this.
- Debt is really high – 72% have debt over £15,000. When you go into work, 53% earning under £25,000. It just doesn't balance. It's understandable why people won't go near the work, or have tried and aren't able to survive because of having to service their debt.
- Comparing salaries alongside national average wage, and wages paid to commercial trainee solicitors of £35,000-£40,000.
- Unpaid work experience is another major barrier to the profession, seen as a prerequisite to getting into the legal aid sector to get their foot in the door for a paid job. Legal aid firms aren't able to pay to train people, so it is better to have people with experience – therefore

it is harder to get that experience in the first place. YLAL members recognise how beneficial it is to get that work experience, but cannot go on for months without being paid. It's not a fair situation.

- Another issue related to that is the London-centric nature of this kind of work. Representative bodies, conferences, training, internships etc – almost all are in London. Those outside London are at a disadvantage.
- Another barrier – stress and lack of support – leads to people dropping out of the profession. Financial issues in terms of salary, but also financial targets which you cannot make without killing yourself, people are working so many hours unpaid dealing with vulnerable clients, you can't do the work without pushing and pushing yourself, clients have traumatic stories that you have to absorb and deal with.
- The toxic political atmosphere also affects our members, the government, the press – we are all “fat cat” lawyers – that affects people and how we think about the job and ourselves.
- Parents and carers really struggle with balancing work and other commitments. Legal landscape still quite old-fashioned in terms of flexible hours and working from home. There are recommendations in the report, and we have handed it to the LASPO review team.

Private practice practitioner commented that what Siobhan says is what we hear, and it is hard to join the dots – we want to give people good working conditions and a good salary. We offer counselling to our staff, we don't want to put loads of pressure on staff, but however much we want to do it – it feels to me as if the whole industry is slightly in crisis, and people are leaving it to do something else and have a nicer life

STW: in session before, we discussed community care jobs – there are no jobs available. You cannot find a new generation if there are no jobs

The LSC training contract grants were axed – at the time the MoJ said there are too many lawyers chasing too little work. One assumes that is not correct for legal aid lawyers

CS: this is a profession that has embraced technology and changed working practices to bring in paralegals.

Private practice practitioner: we must not forget that legal aid rates have actually gone down over the last 10 years, and all other costs have gone up. The north-east has the lowest standard rate of pay. We have one of the most deprived, vulnerable communities, but we cannot recruit people because we cannot pay them. There was outrage in Sunderland as Unison called a strike when teaching assistants were being paid £22,000 – that is what we pay newly qualified solicitors.

What about legal aid lawyers who are carers? And with the ageing population, more people are becoming carers – how can legal aid lawyers manage to be carers when there is so little flexibility?

Private practice practitioner: on trainee solicitors and funding, I had my first trainee solicitor in 1982 at a law centre, from 1985-97 and we employed a new trainee every six months. That was private practice and we paid for that. At my current firm, we have trained up six so far, but it is increasingly difficult. This may only work for London – this conference is in Freshfields, there are people here from pro bono units, before I was at a law centre I worked for a magic circle firm – there are enormous sums made in the City, they are always doing pro bono advice and providing venues, but we would only need a fraction of their annual income to finance grants. Perhaps a Grenfell grant for legal aid suppliers from city practices, with formal links to city practices. Various people have told me today information about Grenfell, which I see as a watershed – it's just wrong, we train people so that once they came out of training, they would be capable of seeing tenants like that and giving

them accurate advice on disrepair. Grenfell is absolute poverty next to millionaires, and that's what we have with lawyers – those earning huge sums, and those on the breadline. If they gave a grant of £50,000 a year for us to take a trainee, we could pay London wages

STW: the Legal Education Foundation fund training contracts for law centres, CABs and legal aid practices, either funding themselves or by firms in the area clubbing together. I am a Justice First Fellow. That is something to try to plug the gaps in the sector. A practitioner in a firm commented: JFF is a fantastic thing, and we were lucky to have a trainee, and we offered her a job but after qualifying she took a job outside legal aid which paid her £45,000 and provided a car. We put so much into training her

One delegate commented that it's not the responsibility of City firms to fund legal aid, it's the responsibility of the government

Ellie Cronin : In April 2018 The Law Society published data showing a looming crisis in the number of criminal duty solicitors – in 5-10 years there will be insufficient numbers in several areas. There are insufficient young lawyers in criminal defence, with a mean average age of 47, and in many regions higher. This is likely to have a catastrophic effect on the justice system when criminal defence solicitors retire.

In parts of the country there are no duty solicitors under 35, on the Isle of Wight the youngest duty solicitor is 55, which is not sustainable. As we've heard from STW, many young lawyers want to work in criminal law, but once they qualify move to other areas.

YLAL report shows the significant barriers to pursuing a career in law. The government campaigns to recruit people in nursing and teaching and pays for training. The crisis has developed after years of cuts. Housing advice deserts – The Law Society produced an advice desert map in June 2016 which showed a third of legal aid areas had one or no housing provider. The recent LAA tender for housing contracts resulted in a re-tender in 39 areas because of insufficient bids. Suffolk has long been an advice desert for housing. The new law centre bid for and got a housing contract but despite advertising for a housing supervisor they have not been able to recruit for one which means they will as it stands not be able to take on that contract. As the advice deserts grow, the loss of expertise grows and recruitment becomes increasingly difficult.

CS: there is a real structural problem now. The LAA wants to be able to say there are quality standards, but if you reach the point where there are not enough supervisors across the country, you are going to lose contracts and therefore providers doing this work. We get a lot of calls from people who say the supervisor standard has become a problem in getting contracts. There is something about having a very complex civil legal scheme where the LAA is putting contractual provisions in which distort the market and have unintended consequences, and supervisor and quality standards have to be looked at again if you are going to have a sustainable system

One practitioner commented that they were told off by a district judge for trying to provide a Rolls Royce service on Robin Reliant pay.

Law centre lawyer: the old NFP contract used to have a breakdown of notional amounts for salaries, running costs etc. She does not think you could construct a model enabling you to run a service at £47 per hour. The MoJ needs to consider what a well-run practice could do. There is now no link to real costs. Nobody comes into legal aid to be rich. People leave the law centre to work in the city in the commercial sector as trainees, and earn more than anybody in the law centre

There is a disconnect between requirements of being a law centre and the work we can actually do. More and more housing providers are not doing certain work because it does not pay enough and is not financially viable.

Delegates were then given time to discuss and make proposals. What do you need to survive? i.e. how many hours at what rate? What are your solutions? What is needed to attract people to legal aid and to retain people? How can you make a sustainable system?

Proposals

- Enormous sums of money in the city with pro bono advice and providing venues – only need a fraction of that to finance grants, e.g. a 'Grenfell grant' of £50,000 per year to fund a trainee solicitor
- Low paid work across the board is unsustainable. Low fees used to be supplemented by inter partes rates but less so now. Increase hourly rates to competitive / comparable rate
- Tie remuneration of lawyers to civil service pay
- Economic review of legal aid rates/ Independent economic review of sustainable rates of pay and regular index linked reviews
- Allow supervisors more flexibility to allow for part-time working / maternity (e.g. if a supervisor is working three days, plus is accessible on phone the rest of the time, then this should count as one FTE). Review contract requirements for supervisors. Higher rates for supervisors
- Independent salaried advocates service in areas of need (geographical areas)
- How to get young lawyers to stay in legal aid? In USA, some colleges waive the fees for students who want to do publicly funded work; the sector needs to be healthy enough to support young lawyers; it needs more money – firms are working at bare bones, there are no efficiency savings to be made
- how necessary it is and how much we get paid.
- Minimum salary for trainee solicitors
- LAA research on the number of people turned away due to lack of capacity; analyse the case types actually being delivered (are any areas not being provided?)
- Devolved powers / delegated functions, particularly for judicial review as you do not get paid if you don't get permission anyway
- Reinstate training contract grants
- NfP block contract model
- Client stories to tell to journalists
- Analyse gaps in provision
- Publicity so there is more awareness of the benefits of legal aid work
- Public legal aid pathways grant (as in the former College of Law)
- Find ways to enable contracts to be more flexible
- More help on how to manage a firm effectively (The Law Society)
- Polluter pays principle
- Partnerships with city firms to train trainees
- Make the legal system accessible to all – don't pretend that legal aid as it is gives access to justice. Most people can't get a legal aid lawyer.
- To prevent the government making further cuts, the government has to be held to account for propagating the fat cat myth. The public needs to understand the nature of the work,
- Regulate professional course fees
- Work on quantifying how many people are turned away by legal aid providers
- IT investment – court closure and the move to online working will create more pressure

- LAA Debt Recovery Unit – legal aid lawyers get inter partes costs order, the bill is paid by the LAA and they then recover from the Defendant
- Targeted work for particular client group(s)
- Reverse cuts

Ruth Hayes talking about collaboration – but it takes money and time. Firms pay where they have a relationship, but that will be in cities. It should be state-funded. There was a discussion about a levy on firms – it would just shift the money. There is a looming crisis where funders have funded work post-LASPO for five or six years, but they are now moving on to other problems and that funding will be lost, and with that the expertise will be lost. All of that goes once you have lost that bit of funding. It needs an organisation and a structure.

Lack of capacity within legal aid lawyers is a huge problem. Getting ECF feels like a big win, but you can't get people to take the work on. Capacity issue in the sector is undermining a lot of collaborations, and distorting the role of small groups who could start providing advice but feel they would lose any other role because the demand for it would be so high.

There needs to be another look at pooled money – could the LAA partner with the Big Lottery Fund for example, working with groups facing the biggest barriers including people with disabilities and children. Changes to the LAA contract are needed to support work in other settings with less bureaucracy and targeting people in priority need.

Finally, there needs to be an improvement to the supplier base to enable referrals to be made. There is a huge amount of wasted time in identifying legal need but then suppliers saying they cannot take the case on. There has to be an opening up of the supplier base.

CS: IT innovation is hindered by the problem of the lack of money in the legal aid sector for people to innovate. Final word from anyone on any burning issues?

Private practice practitioner: bureaucracy of legal aid, devolved powers/delegated functions (MoJ rep confirming this was covered in another session)

Delegate from NfP sector: the number of people turned away from legal aid because of capacity issues – analysis of this because it is a completely unknown number.

Catherine Baksi: get the word out in the press, tell me about your clients,
catherinebaksi@hotmail.com

Cost draftsman: hourly rate to survive depends on region, if doing High Court work will earn circa £550 per day, bottom end of Legal Help County Court etc £325 per day – make your own mind up if that is sustainable

Another delegate raised the polluter pays principle.

3. Effective Delivery

Chair: Jenny Beck (Beck Fitzgerald) and Lisa Wintersteiger (Law for Life)

The session was introduced and covered:

- the use of technology
- the use of lawyers and non-lawyers
- PLE and routes into advice

NM - block contracts for the delivery of legal aid was raised earlier today.

LIP Network – technology and digital tools are useful in providing alternative doors to justice, particularly in advice deserts. An example of this would be for cyclists who have been injured to navigate the Personal Injury process online. The issue however, is always accessibility as there will be many people unable to use technology or for whom technology is unsuitable.

OS office -Technology is not so relevant to their job. The main issue is obtaining legal aid for people without capacity, those who won't or can't provide financial information for example.

LawWorks Pro bono is not the answer, but it can compliment or add to the provision of legal aid. The MOJ don't seem to use the Social Value Act. There is the potential to say that if pro bono work is being delivered as part of partnerships then it adds social value. We can apply this principle more broadly to the commissioning of government legal advice.

Additionally, we have examples to show that Skype clinics can work. Can this work in advice deserts like Devon and Cornwall?

The problem remains however, that as with the telephone gateway, you can't tell who cannot access digital services.

Shelter - It is not just about those with protected characteristics who are excluded from telephone and digital services. Shelter is looking to pilot technological solutions i.e. a tool for uploading bank statements and sending them to their lawyer before they see them and further IT for covering all the eligibility questions. They are seeking to make existing administrative processes, such as checking eligibility, more efficient.

Mind -Technology provides both opportunities and barriers to this client group.

MOJ -Pointed out that there are still obstacles around the transparency of data. Why are practitioners having to find solutions rather than technology companies coming to lawyers? And is the current structure of how data is held by lawyers or government departments acting as a barrier to technological solutions?

Freshfields – we are involved in CourtNav with RCJ Advice. This technology has a lot of potential at the public legal education and the route in stage. The court reform programme appears to be an elephant in the room i.e. the Briggs Report. The first stage is around getting early access to legal help and knowing what issues to put in to enable the second stage, (the case officer review) to be more effective. But if you cannot see what work is going on and what decisions are being made at stage 1,

then stages 2 and 3 won't work. And that is a legal aid and advice issue. HMCTS staff are very worried about the divide between information and advice, and nervous about straying for good reason.

A potential interim solution could be funding through legal aid or legal help independent lawyers to do stage 1. Someone needs to provide advice. Has the reform programme budgeted for this? Is it sustainable?

ASA - Technology creates a lot of worries but we shouldn't be anti-technology as a sector. Sometimes technology is presented as though it offers solutions that will resolve all problems. However, it can actually have serious impacts - i.e. on defendants being interviewed by Skype and a further impact on pleas and sentencing. There will inevitably be negative consequences for relationships and interactions especially given the lack of personal contact from one-to-one interactions which is difficult to measure but can't be ignored. There is a need to look at how this is measured and reported on.

Garden Court- Criminal courts are now largely digitalised and we should look to them for lessons. There is a real concern about the rise of McKenzie friends in court which is often exploitative and other issues over the equality of arms between parties.

HJA - housing solicitor - Some of the savings made from the use of IT are now being lost because of tightening up with GDPR and with long-lasting teething problems - see for example CCMS.

Law for Life- In the current context of major gaps in provision, non-legally trained staff (e.g. social workers, Mind, mental health workers etc) are taking on very complex work without being properly resourced and supported to know when and where they need to make referrals. While, with PLE support, they can do a lot to meet needs by providing early information and assisting with triage, they are also doing work that should be referred on to lawyers.

Bar Council- echoed the need for specialist advice. There is a loss of expertise in certain areas because of remuneration levels.

Youth Access-we see the provision of advice as a mental health intervention. There is a need to understand clear boundaries and when to refer clients on to specialists. We are also undertaking a PLE programme for young people. There is a two way street for access into advice - those already in the system who need advice and others interested in mental health who view advice from a rights perspective. We are looking at legal inclusion as well as looking at legal capability – i.e. the law is a tool for you and not just something done to you. Technology is very important for this campaign in terms of reaching young people.

It was also noted that while it is very hard to get funding for advice, it is easier to get funding for mental health interventions where the health issues are often triggered by legal problems.

CLP-Provide advice nationally on the law relating to travellers and gypsy communities. Much of the work is carried out pro bono and involves ECF applications. There are issues around the use of technology when working with gypsy and traveller communities such as literacy rates and cost of extra work and poor digital access in rural areas. Services actually tend to be delivered by post.

A client's first point of contact should be with someone who is legally trained otherwise the advisor may miss legal issues or not diagnose properly.

A further point to remember is that CCMS must work or practitioners are doomed. There are still fundamental issues with the design of the system.

Cardiff Uni - undertook research mainly focused on Litigants in Persons using technology to obtain advice. Most clients who took part in the research had received no form of advice and were clutching at straws so obtained support through social media/Facebook etc. There is support but there remain real concerns about the advice from other users of the system notably with McKenzie friends. Another area where this is problematic is in family law which can entrench adversarial positions.

There is a need for government led PLE on what's in scope, who is eligible etc. Feedback from MPs' caseworkers is grim.

The delegate also noted that sometimes changes in technology have made access to justice even more difficult (see the complications of the new DV gateway). ECF is also not fit for purpose due to the complexity and difficulty in getting assistance to apply.

Private practice solicitor - CCMS is not working.

The clients that we represent cannot adequately use IT to access services and advice. These include older client group in care homes and hospitals and clients with head injuries and learning difficulties. Further work needs to be done on which types of cases are suitable for different levels of triage scrutiny.

Referral points: pre-LASPO there was a robust advice sector and good links between specialists and non-specialists.

Post-LASPO there is a distinct lack of both advice agencies and specialist suppliers. As a sector, we need to increase the number of agencies and establish better links between them.

He suggested training grants for firms to work with advice agencies to ensure cooperation between the two.

Some hearings could be dealt with by video links, i.e. directions hearings, but the technology fails too often.

LCN- Clients don't conceive of their problems as legal in the first instance. We see real problems with people dropping out of a resolution before getting to a service or a lawyer. We are not designing a system that really caters for the different needs of different people - some who need face to face advice, some who don't.

Law Centres are experimenting with technology. However none of those solutions are replacing frontline services.

Law for Life -Technology shouldn't lead the solutions but could form part of them. The focus should not be on attempting to remove human interaction but rather in improving those interactions.

There are already good examples of the use of IT in the sector.

Solutions:

1. Lawyers – non lawyers

The MOJ don't seem to use the Social Value Act. There is the potential to say that if pro bono are part of partnerships then adds social value. This principle can be applied more broadly to the commissioning of government legal advice.

There is a distinct lack of both advice agencies and specialist suppliers. As a sector we need to increase numbers and create better links because clients don't always conceive of their problems as legal in the first instance.

One way of ensuring this is by encouraging training grants for firms to work with advice agencies to ensure cooperation between the two.

2. PLE and routes in

With PLE support non-lawyers can do a lot to meet needs in early information and assisting triage, but shouldn't undertake work that should be referred on to lawyers.

PLE offers effective routes in for vulnerable groups, for example young people, mental health.

Need to understand clear boundaries of who can do what and when to refer on to specialists. See advice as a mental health intervention.

Need government led PLE on what's in scope, who is eligible etc.

3. Technology

Criminal courts largely digital - look there for lessons

Skype clinics can work.

We need to design a system that really caters for the different needs of different people - some who need face to face advice, some who don't.

Technology can have serious impacts. Studies will need to be undertaken to look at how this is measured and reported on.

A potential interim solution for the development of the online court, could be funding through legal aid or legal help with independent lawyers undertaking stage 1. Someone needs to provide advice. Has the reform programme budgeted for this? Is it sustainable?

Look to pilot technology solutions. i.e. tool for uploading bank statements and sending to their lawyer before they see them. Tech for covering all the eligibility questions. About making existing admin processes more efficient. Such as checking eligibility.

Technological solutions are being tried and used in the sector, learn from what has worked and what hasn't already.

Follow up : Matt Shelley - it would be useful to know what IT solutions and projects are being trialled and developed. Email them all to him. And he would like to see them in action.

16.00 Plenary – Future Proofing and Solutions

Feedback from 14.00 workshops.

Big ideas reported back from each of the chairs:

1. Lisa W: polluter pays - new issue. Is legal aid part of the welfare state? Distinguish between the requirement of any legal provision and the on-costs elsewhere in the system. So any legislation has to anticipate and resource that.
2. Carol S: MOJ research into legal need and research on fees. It is vital that there is evidence-based policy making on sustainability, linked to fees.
3. James Sandbach noted we cannot research the outcomes for people who are deliberately denied advice to see what happens to them.

Matt Shelley noted they collect a lot of data but the information given by the sector when the MOJ asks for evidence is largely anecdotal. Sector does not seem to be able provide actual data, which could then be used alongside anecdotal information to inform policy. He suggested data on who is being turned away or cannot access legal aid. Many people noted that there is a real issue around whether providers can afford to collect this sort of data. Polly Sweeney noted that providers may be willing to do this for a period, if it is genuinely going to influence policy.

Ruth Hayes said expressed demand for advice is a really unreliable way of working out real demand.

Nimrod Ben Cnaan knows that lots of data can be used as proxy indicators - rise in homelessness acceptances, evictions, etc. indicates market failure.

James Sandbach noted the biggest collector of data is government itself. Need to share across departments.

Steve Hynes, Director of Legal Action Group.

1. Identify the problems and solutions - can't always do it on data available.
2. Why not look at other ways – even a salaried system?
3. Redesign - why not design the system first and then develop technology?
4. Passporting is a no brainer.
5. Invest in talent - first in law bursary for legal training .
6. Legal aid impact test - from one department to another.
7. Invest to save – i.e. consider the health consequences of not getting legal advice. Look strategically not in silos.
8. £1.4 billion - go back to first principles and see what you can get for that in terms of delivering access to justice and solve social problems.
9. Other pots of money -contingency fees, personal injury etc need to be examined.
10. Back to first principles - it should be about the needs of the people. Legal aid as a public service. Client focussed.