



MoJ ref: [ADR61448]

17 October 2018

*Dear Karen,*

### POST IMPLEMENTATION REVIEW OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (LASPO)

I would like to begin by thanking you for bringing the debate on legal aid and the post-implementation review of LASPO, and for your subsequent letter; this subject is of great interest to me. I have addressed each question from your letter below, but if you require any further information, please do not hesitate to contact my office. I would also be interested in meeting you to discuss this further and my office will be in touch to arrange a time to do so.

As I noted in the debate, I believe it is fundamental that individuals have access to justice, namely the ability to determine their rights in a fair and impartial way. For those that cannot afford to pay for legal services, legal aid is an important part of this process. This is why the Government committed to an evidence-based review of LASPO, and my team have undertaken a comprehensive evidence gathering process as part of the post-implementation review. Once the evidence has been reviewed, we will identify where there may be gaps in the availability of evidence and where the Government may wish to consider commissioning additional research. The review itself will consider the impact made by LASPO and the extent to which it achieved its objectives. We are continuing to engage with a wide range of actors across government to try and identify any impacts of the LASPO reforms on those departments including any costs that may have been generated by the reforms. I have personally met representatives from a number of charities and law centres as well as hosting roundtable discussions on domestic violence and technology in the justice system in order to gain a greater understanding of the impact of the legal aid changes. Those discussions, and this debate, will have better informed our thoughts and views on the LASPO review.

#### Process

We have published the agendas of the first round of consultative meetings, which are available online. We have chosen not to publish meeting minutes at this time, however the subject of these meetings will be included as part of the review.

We have met with over 80 individuals and organisations during the evidence gathering process and received submissions from many more interested parties. The review team are now assessing the evidence gathered during the engagement process, alongside internally sourced data, with the aim of publishing the findings of the review by the end of the year. It will then be determined as to whether any additional research is necessary.

You asked whether we have made an estimate of the number of providers which may close before the implementations of any findings of the review are made. We haven't commissioned a specific estimate of this, but I am happy to announce that 1546 of firms have agreed to contracts.

### Discrimination/HR cases

The Civil Legal Advice Gateway (CLA) provides an important service for people to remotely access publicly funded legal advice. Statistics around the telephone gateway were brought up in the debate and I would like to expand on these. We recognise that the volume of face to face referrals from the CLA service in the category of discrimination are low. However, as part of the service, when determining whether remote advice is suitable for a person seeking help, CLA specialist advisors will assess whether they can understand and act on their instructions and whether the person can understand and act on the advice provided by them. There are a range of service adaptations and reasonable adjustments available to assist people to access advice through this service. These adjustments can mean that a face-to-face referral is not necessary in order to provide the person with the advice and support they need.

When considering the statistics on Discrimination matters in particular, it is also important to recognise that people can receive discrimination advice from providers who hold contracts in other categories of law such as Housing, Community Care or Claims Against Public Authorities, where the underlying discrimination issue relates to the provision of housing, social care services or public authorities carrying out public functions, for example. In these circumstances, there is no requirement for clients to access the services via the Mandatory Telephone Gateway and these cases are not included in the LAA's Discrimination category statistics.

You asked if we have made an estimate of the number of people with protected characteristics such as mental health problems, who have been denied legal aid since the introduction of LASPO. This is not data which the Legal Aid Agency would capture, however, cases concerning mental capacity were retained in scope of legal aid and last year we spent over £40million on mental health cases.

We are committed to ensuring that reasonable adjustments can be made to support individuals with a disability or protected characteristics to access legal advice. As to the number of dependent children who have not been granted legal aid, this is not data that the LAA would capture but I can confirm that the post-implementation review of LASPO is considering equalities data collected by the LAA to consider whether the changes have disproportionately affected people from vulnerable groups. My team have also sought out data from relevant stakeholders to understand the impact on all users including those with protected characteristics such as mental health problems, and how they may struggle to engage with the system, including representing themselves in court.

It is important that we do not pre-empt the conclusions of this review; however, I believe that ensuring that the most vulnerable people can access justice is of the highest importance. This is why we are now bringing forward changes to immigration legal aid for unaccompanied child migrants. I am also working closely with the Immigration Minister to identify the best ways to provide support for those in the immigration system.

In addition to the above, the Government is assessing, and will continue to assess, the impact leaving the European Union will have on the justice system.

Legal aid for unaccompanied and separated child migrants has been and is available via the Exceptional Case Funding (ECF) scheme and our evidence shows applications for these cases have an extremely high success rate. It is currently 59%, the highest proportion and number of grants since the scheme began.

The operation of the legal aid scheme is and always has been routinely monitored and it is right that where issues are identified, based on strong evidence, we take the appropriate action. We listened carefully to the concerns raised by The Children's Society and reviewed both their evidence and our own evidence for these matters. Following this, we decided to bring this cohort back into scope and are working closely with The Children's Society on this change to ensure that this group is able to access justice.

It is of the utmost importance that we ensure adequate provision across the country to assist the most vulnerable individuals and ensure legal aid is available across England and Wales. We are committed to ensuring that this continues to be the case in a way that is accessible to everyone – be it face to face, on the telephone or online for all legal matters, including immigration advice.

The MoJ has carried out and commissioned research into alternative dispute resolution (ADR) services. For example, a mixed method research project was commissioned by the MoJ to explore the extent to which Mediation Information and Assessment Meetings (MIAMs) are encouraging publicly and privately funded clients to attend mediation, and which resolution methods clients who attend MIAMs choose to resolve their family disputes. We have also worked closely with external academics in other projects looking at ADR. This has included work as part of the Mapping Paths to Family Justice project which looked at the usage, experience and outcomes of different forms of ADR. We also publish a Family Research Bulletin which summarises the findings of recent research relevant to family justice. ADR is a subject matter which we have received further material on from external stakeholders and will also be considered as part of the review.

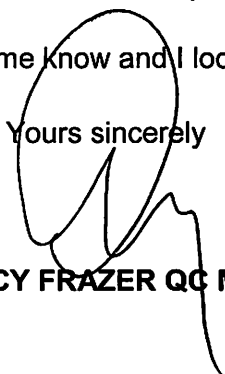
As part of this review, we have considered the impact on litigants in person and the potential impacts on the courts. It is an issue I take very seriously, this is why we have spent around £6.5million since 2015 to give support to litigants in person through the Litigants in Person Support Strategy.

It is imperative we ensure that publicly funded legal services remain attractive to young lawyers coming into the system to ensure the provision of legal aid services into the future. We recently launched a consultation on a proposed £15m of investment in the scheme for criminal advocates, and a number of our proposals are specifically designed to address the concerns of the most junior advocates. This is only the beginning of the process, we will continue to work closely and collaboratively with the legal professions and representative bodies to ensure that we are doing everything we can to ensure the attractiveness of these professions.

That said, it is important to recognise that the sustainability and attractiveness of the professions is not just a matter for the government; there are important roles for the professions and regulators to play. For instance, the Solicitors Regulatory Authority is currently working on introducing a new Solicitors Qualifying Exam, which it hopes will lower costs and open up a variety of routes into the profession. In addition, the Bar Standards Board has a Future Bar training programme of regulatory change, focussing on education and training for the Bar. I am committed to continue our close working with the market to deliver on this ambition. I am meeting with the President of the Law Society to discuss this and a number of other issues.

If you have any further questions, please let me know and I look forward to meeting with you soon.

Yours sincerely



**LUCY FRAZER QC MP**