

Ministry of Justice Green Paper – proposals for the reform of legal aid in England and Wales

Response from the Law Centres Federation



Who we are

1. The Law Centres Federation is the representative body for the national network of community based Law Centres. There are currently 56 Law Centres delivering a range of innovative legal services to financially and socially disadvantaged individuals and communities.
2. Embedded in local communities, run by committees of local people, not-for-profit and staffed by teams of expert lawyers who have chosen to base their careers on service rather than on profit, Law Centres provide free legal advice and assistance to the poorest and most vulnerable members of society. Without Law Centres and other not-for-profit advice agencies, hundreds of thousands of people will have no meaningful access to justice.
3. Law Centres provide legal advice and representation on a variety of civil law matters, including housing and homelessness, employment, discrimination, immigration and asylum, more complex debt and welfare benefits cases, community care, mental health, education and family law work.
4. Each year Law Centres help 120,000 people. Independent research found that for every £1 spent by a Law Centre in the provision of legal service, at least £10 was generated in savings and social benefits.
5. Law Centres rely on legal aid, local authority grants and corporate and individual generosity to provide these services. All of these areas of funding are under threat.

Introduction

6. The proposals contained in the Green Paper fundamentally undermine the UK system of justice and are a direct attack on the most vulnerable members of our society. They will do damage that cannot be undone and whilst these cuts may appear to reduce spend at the Ministry of Justice, they are likely to increase it.

7. *‘Poor people are not simply rich people without money.’¹*

The client imagined by the Green Paper is not one Law Centres recognise. Our clients are poor, have low educational attainment, poor literacy and numeracy, higher than average rate of disability, poor command of English, poor mental health (often caused by the legal problem), often lead chaotic lives.

They are not, in the words of Jonathan Djanogly MP, Legal Aid Minister, on 7 February 2011, “rushing to the courts to do battle”. They come to us at the end of a long chain of events that have unravelled in their lives when they are on the eve of eviction, have absolutely no income at all, don’t understand what is going on and have no idea what to do. The legal assistance provided to them by Law Centres, and funded by legal aid, currently represents a wise investment of public money. It helps people become more self-reliant and prevents their descent into misery.

8. We therefore challenge the underlying premise that £350 million of savings needs to be achieved. We believe that at a time of £6 billion bank bonus pots, to launch a wholesale attack on our civil justice system, and one that is acknowledged to be targeted at those in the lowest two income quintiles, is extremely ill judged. It ignores not only our duties in domestic and international law but also the very nature of our legal system and of our just society. It attacks a system of justice and equality born in 1215 with the signing of the Magna Carta.

9. There is acknowledgement that the implementation of the proposals may lead to a significant reduction in fairness of dispute resolution leading in turn to:

- Reduced social cohesion;
- Increased criminality;
- Reduced business and economic efficiency;
- Increased resource costs for other Departments; and
- Increased transfer payments from other Departments.

10. Our daily experience tells us rather that they will have these consequences.

11. Based on LSC 2009/2010 data, **725,000** people will be denied access to legal aid. (The Ministry of Justice’s impact assessment is based on 2008/09 data and so the cuts will impact around 200,000 more people than their estimate.) This cut then represents over a 59% cut in civil legal aid services to the public and a 69%

¹ Stephen Wexler, “Practicing Law For Poor People,” *Yale LJ*, 79 (1970), p. 1049.

cut to legal help scheme which gives initial help and legal advice, and is the very service that is targeted at early intervention and avoidance of litigation. Cuts such as these have not been proposed for any other public services and they are cuts that will directly impact on the poor and those least able to have access to any alternative. They seriously undermine the rule of law in this country.

12. On 27 January 2011 Dr Klearchos A. Kyriakides of the University of Herefordshire Law Faculty sent a letter to the Right Honorable Kenneth Clarke QC MP Lord Clarke which we feel succinctly dealt with the impact on our justice system and the Rule of Law. To quote from Dr Kyriakides' letter:

"I would like to draw your attention the observations of Lord Clarke of Stone-cum-Ebony during his tenure as Master of the Rolls and Head of Civil Justice. According to Lord Clarke MR, the rule of law means 'more than a sound bite for rolling twenty four hour television news'. It follows that: 'It is not sufficient therefore to announce our commitment, either implicitly or explicitly, to the rule of law. We must have the means by which that principle can be given proper effect.'² As Lord Clarke MR acknowledges, the rule of law cannot properly exist without an adequate legal aid scheme: 'Let me be clear', he explains, 'I am not suggesting that the taxpayer should be expected to provide a blank cheque. But I am suggesting that the State should properly understand that properly funding the civil and family justice systems is as essential a part of a society committed to the rule of law and to open democratic ideals, as is properly funding the criminal justice system. It is essential in this way because the three systems are in fact no more than three facets of an indivisible whole and it is that whole that is or should be the living embodiment of our commitment to the rule of law.'"

13. Basing wholesale reform of the civil justice system and legal aid scheme on the arbitrarily arrived at £350million figure has lead to ill thought through proposals which have been subject to no proper impact assessment and which will have longer term and ongoing adverse implications for public expenditure; for social cohesion; and for the overall fairness of our justice system.
14. Further it has been acknowledged that a full impact assessment has not been made. There has been no assessment of the impact on overall government spending nor indeed against the costs of additional administrative burdens to be imposed.
15. We strongly urge ministers to reconsider this £350 million starting point and instead to work in partnership with legal aid lawyers and the legal advice sector

² Lord Clarke of Stone-cum-Ebony MR, 'Access to Justice: Hope Springs Eternal – The Mary Ward Legal Advice Centre Annual Lecture', 15th July 2009, official website of the Judiciary: <http://www.judiciary.gov.uk/Resources/JCO/Documents/mr-mary-ward-lecture-150709.pdf> (last accessed on 27th January 2011).

to establish how improvements to the justice system can be achieved and how properly savings can be made.

Avoiding Litigation

16. The proposed scope changes, insofar as they are aimed at social welfare law (housing, debt, welfare benefits, education and employment) attack not unnecessary litigation but the very level of service which is used to provide early legal advice and assistance aimed at avoiding litigation and at assisting individuals in dealing with their own problems.
17. Of the proposed cuts, £60 million is targeted at Social Welfare Law (Debt, Housing, Welfare Benefits, Education and Employment). Of this, £54 million will be saved from the Legal Help scheme. Legal Help is low level fixed fee legal aid paid specifically to assist early resolution of disputes with the aim of avoiding the need for costly litigation. Its expenditure is already controlled.
18. There is no evidence to back the Government's assertion that those experiencing civil legal problems are racing to the courts; that they are too litigious. Indeed the reality is the opposite. The 2006-2009 Civil Justice Survey published by the Legal Services Research Centre (LSRC) in 2010 found that there had been a 36% increase in legal need since 2007. Those with the most civil legal problems are black and non-white people, those living in high-density housing, lone parents, those on benefits and victims of crime. More importantly, those eligible for legal aid were more likely to do nothing to resolve their legal problem(s) than the general population even though the problems associated with poverty are more pronounced, more frequent and 50% more likely to result in stress related ill-health and other adverse effects.
19. Removing Legal Help in complex areas of law will not assist in avoiding litigation but rather is likely to cause litigation as more individuals are subjected to claims by creditors, landlords and indeed by Government Departments and Local Authorities.

A scheme beyond its original intentions

20. Much is made in the Green Paper about the legal aid scheme having grown beyond its original intentions. Perhaps those proposing these changes should be reminded that each of the extensions of the legal aid scheme has been implemented by Parliament and based on their interpretation of changing social need and indeed on budgetary constraints.
21. In 1949, Lord Rushcliffe envisaged that legal aid would give access to justice to all those people of 'small or moderate means' and indeed 80% of the population were covered by it. In 1979, 30 years later, 79% of the population qualified for advice on ANY aspect of English Law. In 2010 only 34% of the population was

eligible for legal aid. The original intention was to ensure that all UK citizens, regardless of means, would be treated equally and fairly before the law.

“I believe that there is much in our British system of justice of which we can all be proud. Its defect has been that it has not been equally available to everyone and has depended upon the resources and advice for which one can pay. It has been said by one famous judge that justice is available to the public in the same way as the Ritz Hotel is available and on the same terms.”³

22. We now live in a society that is significantly more complex than that of 1949. Ours is a rich multicultural society with an extensive and complex civil legal framework. Since 1949 we have rightly developed hundreds of complicated and detailed protective laws in the areas of housing, employment, education, immigration, family, social security and benefits. We are now subject to what Lord Bingham of Cornhill in 2006 referred to as a legislative hyperactivity with many thousands of pages of complex new primary and secondary legislation finding its way onto the statute books every year.
23. The current government is proposing further significant legislation to meet what it feels are the needs of the day – we have to wonder if any of that legislation is based on an assumption that we can or should turn the clock back to 1949. Indeed we note that Government is being rather selective in its wish to return to 1949. In that year some 80% of the population was eligible to receive legal aid. This year less than 34% are eligible. This Green Paper suggests further restricting eligibility rather than returning it to its 1949 levels.

Targeting the Not-for-Profit Sector

24. The proposed scope changes also specifically target Not-for-Profit legal advice providers who work in communities and with the poorest and most vulnerable people in those communities.
25. The Ministry of Justice acknowledges that these proposals represent a 77% cut in legal aid spend in the NfP sector (versus a 25% cut in the for profit private sector). This 77% cut represents just 3% of the overall legal aid spending.
26. At a time of the proposed Big Society, these cuts will destroy locally based, locally managed, volunteer-reliant, not-for-profit legal advice services, the building blocks of the Big Society. The Ministry of Justice acknowledges that these cuts will take £60 million of the £78 million legal aid spends invested annually in not-for-profit agencies. In Law Centres alone this will mean that 85,000 people each year would go without help.

³ Arthur Skeffington MP, *HC Deb* 1954, v 531, cc 1889-98 (in a debate on the Legal Advice and Assistance Act 1949).

27. Legal Aid income for Law Centres will be reduced from £9m in 2009/10 to just over £4m if all proposals are implemented. Together with cuts to Local Authorities and other Government funded programs, Law Centres on average will have to try to operate on 30% of their current budget. Some will lose all their funds.
28. Outside of the social welfare law categories, the scope cuts attack family law and in particular cases affecting women and children. The family law proposals are directly discriminatory against women and will further worsen the already significant inequality of arms between divorcing spouses. Whilst the family justice system may need to be reformed, this should be done properly rather than as a side effect of the removal of legal aid.
29. Notwithstanding our general opposition to these proposals we do recognise the need to reduce expenditure.
30. 42% of all cases undertaken by Law Centres relate directly to errors and maladministration on the part of Government Departments and local authorities. Many millions of pounds are wasted each year through unnecessary delays in the justice system and through inefficiencies in the way the courts work.
31. The last Government passed hundreds of new laws, many poorly drafted and complex in nature, which has led to an increase in the need for legal advice. Sadly the Legal Aid Impact Assessment which should have accompanied each of those new laws seems to have had little real impact.
32. We also support much of the Law Society's Access to Justice Review which made a number of detailed proposals on how the Civil and Criminal Justice systems could be improved and how significant savings could be found.

Question 1: Do you agree with the proposals to RETAIN the types of case and proceedings listed in paragraphs 4.37 to 4.144 of the consultation documents within the scope of the civil and family legal aid scheme? Please give reasons.

33. Yes. However this response should in no way be taken as agreement or acceptance that any areas of law currently funded should be taken out of scope. We believe that it is fundamentally wrong to seek to achieve savings by denying the poorest and most vulnerable in society access to justice.
34. The appropriate way to achieve savings from the legal aid scheme is to achieve efficiencies within the justice system; improved quality in initial public sector decision making and to properly apply and consider the legal aid impact assessment when passing other legislation.
35. Further savings can be made through improved performance and efficiency at the LSC and through greater control of high cost cases.
36. Real long-term savings can only be made by designing a legal aid system with the client, not Treasury, at its heart, using the expertise of those working everyday with clients in the legal aid sector.
37. We are however concerned at the conditional nature of some of these proposals and the lack of clarity as to exactly which cases will remain in scope. As an example, the proposals rely on phrases like “immediate risk of homelessness”, “serious disrepair” and “domestic violence” and yet none of these phrases and pre-conditions for receiving legal aid is properly defined within the Green Paper or, where they are defined, the definition seems to be unreasonably narrow and restrictive. Greater clarity of the full extent of these exclusions by definition is needed. For instance we consider extremely important that a realistic definition for domestic violence be used which includes threatening behaviour or psychological, financial or emotional abuse as well as physical violence. The definition across Government is “any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality” indeed we note that since publication of the Green Paper the Supreme Court has considered the definition of domestic Violence in the case of *Yemshaw v Hounslow London Borough Council* ([2011] UKSC 3; [2011] WLR (D) 18) and we strongly urge Government to adopt the proper broader definition.
38. We endorse the continued funding of discrimination cases and judicial reviews.
39. There is a pressing public interest in preserving this type of assistance. The rights underpinned by the anti-discrimination legislation (reinforcing the principle of equality and distinguishing people by merit alone) and the capacity to seek judicial intervention in public decisions, are fundamental to a democratic society. It is not enough to have the laws. It is only by enforcing those laws that individuals, corporations and public bodies will observe the rights they accord.

40. However the retention in scope of discrimination claims raises an important issue about cross-jurisdictional claims.
41. An overwhelming number of employment discrimination claims cut across more than one cause of action. It is common for a discrimination claim to be combined with an unfair dismissal claim, and a third and/or fourth claim such as redundancy payment, breach of contract, working time or wages. They are all litigated in the same claim. In such cases surely it would be impractical for public funding to cover just the discrimination element. A solicitor would be negligent not to advise on the full range of potential claims and, as many of the claims stem from the same or related facts, it would be senseless to break the claims up and take them all separately. Even if this were done, the Tribunal would move to consolidate them.
42. We suggest that where part of a claim remains in scope, provision should be made to bring the otherwise excluded element back within scope so as to avoid the bizarre situation of an individual being able to pursue just one part of an action.
43. We also welcome the retention of legal aid funding for housing possession cases, for counterclaims for disrepair in possession cases, for homelessness appeals and for serious disrepair cases.
44. We endorse the view that these are cases where the consequences for individuals and their families are grave and that specialist legal advice and representation is essential.
45. Legal aid funding for such cases also represents good value for money in savings to the public purse; a study by the New Economics Foundation found that the prevention of one eviction could save up to £34,000 in local authority and central government expenditure.
46. As with employment, there may be housing cases that combine actions that remain in scope with those actions that may be taken out of scope. Housing remedies are not freestanding and one remedy may be used in conjunction with another.
47. We also support the retention of asylum cases within scope but we believe that the definition of asylum should be widened to include family reunion cases not least because these cases often contain complex Article 8 arguments. Indeed in this area we support the response of the Immigration Law Practitioners' Association and in particular their response to paragraphs 4.43 – 4.55 and paragraphs 4.64 – 4.68 of the Green Paper.
48. We strongly agree with the retention of legal aid for domestic violence cases but, as mentioned above, we consider that the definition of domestic violence at the retention of legal aid for domestic violence cases should be brought in line with that used by the United Nations and other government departments. We do not agree that the domestic violence related immigration cases should be removed from scope. Law Centres practising immigration and asylum law see clients

where there are serious breaches of Human Rights but which are not asylum cases, for instance cases of domestic violence against non UK spouses.

An example is North Kensington Law Centre, which receives referrals from Southall Black Sisters, an organisation based in Ealing in West London, who brief UKBA on issues relating to migrant spouses and from other organisations working with migrant ethnic minority women. If the scope changes are introduced, Law Centres will be unable to continue this type of work because victims of domestic violence, although protected in family law, are not exempted from proposed immigration cuts.

Question 2: Do you agree with the proposal to make changes to court powers in ancillary relief cases to enable the Court to make interim lump sum orders against a party who has the means to fund the costs of representation for the other party? Please give reasons.

49. No, but this is because we oppose the removal of family cases from the scope of legal aid in the first place.
50. Whilst we welcome the courts being given the power to make interim lump sum payments we believe that the thinking behind this proposal is deeply flawed.
51. If a client is without resources to seek legal advice or bring proceedings, and if legal aid is unavailable, how will they be able to seek an interim lump sum order from the court (and demonstrate in the context of such an application that their opponent should be subject to such an order)? In a Green Paper that purports to be about discouraging litigation and recourse to the courts, this proposal seeks to actively encourage the commencement of proceedings and judicial involvement.
52. The reality is that those with the “means to pay for the costs of representation” of another party are likely to be the husbands and those needing to apply for interim orders are the wives – who are unlikely to have the funds to apply for such orders in the first place. It is often the case that significant expense and exploration is needed to establish the financial situation of individuals in divorce proceedings, some of whom deliberately seek to hide their assets or worth.
53. This proposal, if implemented, will further increase the inequality of arms between divorcing spouses and will have a disproportionate impact on women and in most cases, on the children of the marriage.
54. We do support the reform of family law and divorce proceedings and a movement away from the adversarial nature of such proceedings however this must be achieved through wholesale review of the family law system rather than by accidental effect of reform of the legal aid scheme.
55. Changes effecting access to legal advice and assistance in the family area (indeed in any area) must be properly considered and evaluated, ensuring fairness to all parties and further that the interests of children are paramount. Further and simplification of procedures much be such that equality of arms is preserved.

Question 3: Do you agree with the proposals to EXCLUDE the types of case and proceedings listed in paragraphs 4.148 to 4.245 from the scope of the civil and family legal aid scheme? Please give reasons.

56. We strongly disagree with these proposals. Whilst we accept that there is a case to review the nature and costs of litigation and the growing cost of legal aid, we do not accept that the correct approach is to deal with these complex issues by simply denying 725,000 people access to justice.
57. The context for Law Centres is that we see 120,000 clients each year. Over 70% of them we assist in the categories of law to be removed from scope. Of them, 42% come to us because of mistakes made by Government Departments or Local Authorities.
58. Our data indicates that our clients are typically poor, have lower than average educational attainment, have poor literacy and numeracy, come from non-English speaking backgrounds, have a higher rates of disability, a higher than average number of clients are under 25, 60% are women, only 45% have access to a pay-as-you-go mobile phone, do not use the internet to access goods or services, and often lead chaotic lives.
59. Neither the LSC nor the MoJ currently collect demographic data that can indicate the extent of the client's disadvantage or the complexity of their lives.
60. As a result, many of the proposals have been made without knowledge or experience of the type of client that uses the services Law Centres provide. This is reflected in the nature of some of the proposals and in the poor quality of the Impact Assessments (discussed below).
61. These scope proposals are at the very heart of the anticipated savings, representing potentially £279m of the £350m savings sought. They cover multiple complex areas of law and different levels of service within those areas and yet they are subject to just one question within this consultation. This implies a complete lack of understanding of the implications or impact of these proposed scope cuts.
62. Equality before the law, the very basis of the Rule of Law, will fall away. This not only undermines our legal system but also the very concept of democracy in the UK. These changes are not simply a change of scope, they close the door on the ability of poor people to assert their most fundamental rights, many enshrined in legislation. It is hard to square the proposals in this Green Paper even with the Government's obligations under the Human Rights Act 1998, namely:

Article 4: The Right not to be held in forced labour or servitude – inconsistent with the likely impact on the victims of trafficking if the proposed cuts to immigration are implemented;

Article 6: The right to a fair hearing – likely to be denied to hundreds of thousands of people as a result of the removed access to legal advice and representation;

Article 8: The right to respect for private and family life and home – inconsistent with the proposals to deny legal assistance to divorcing couples, to protect their children and to allow them to resolve issues around family finance and particularly the family home. Also inconsistent with the proposals in immigration which will lead to the breakup of families and will stop those to whom we have rightly given asylum from being reunited with their families;

Article 1 of the First Protocol: The right to peaceful enjoyment of property – inconsistent with the proposals to deny legal aid in Welfare Benefits cases (benefits having been determined to be within the definition of property in this Article). Also inconsistent with the removal from scope of various types of housing case and likely also the removal from scope of most debt cases;

Article 2 of the First Protocol: The right to an education – inconsistent with the proposals to remove assistance for those who are unable or unable to properly access education.

63. The proposals to have a residual scheme to bring matters back into scope if there are “human rights” or international law issues creates a level of complexity and confusion that will effectively deny access to justice for many people, especially at the level of Legal Help where it is hard to see how such a system can be justified in the current fixed fee regime. Given our views on the state’s obligations to provide access to legal advice and representation we believe that the MoJ has wildly underestimated how often that scheme will be used.
64. Over 725,000 people in desperate need of legal advice and assistance will be denied that help if their legal problem falls into an area of law that the Ministry of Justice proposes is not worthy of public funds. These are the areas of law that the poor are most likely to experience – the law of everyday life.
65. We have a justice system of which we should be rightly proud, and a legal aid system which supports that justice system by allowing the poorest in society the same rights to go to law as the very richest in society. We have a rich network of locally based legal advice providers, embedded in communities and able to reach out to the most vulnerable people within those communities. These proposals will undermine the very bodies that hold our society together and which ensure that it remains just and fair.
66. In determining which areas to exclude from scope, the Government suggests that the following issues have been considered:
 - a. the objective importance of the issue, taking into account the matters at stake;
 - b. the litigant’s ability to present their own case;

- c. the availability of alternative sources of funding; and
 - d. the availability of other routes to resolution, and the legal advice and assistance available to individuals to help them achieve a resolution, including the extent to which the individual could be expected to work at resolving the issue themselves.
67. **Objective importance:** The impact assessments published with this Green Paper suggest that some of the likely impacts of the implementation of these proposals are reduced social cohesion, increased criminality and reduced business and economic efficiency. It is hard to see, on any analysis, how any of these proposals can, when objectively considered, be so unimportant as to warrant withdrawal of legal aid given the likely impacts. Furthermore, many areas of law are dismissed as being primarily about money. For those who have no money, or are being denied access to money, or illegally sacked and so will earn no money, money is of the highest importance. For many of our clients these are a life or death matter.
68. Related to the assessment of importance in the Green paper is whether the matter requires *legal* advice. All work undertaken by Law Centres requires legal skills to resolve. Law Centres were established 40 years ago because general advice available in the community at that time could not provide a lasting resolution to many of the problems presenting. Furthermore, the need is so great within poor communities, and our resources so restricted, that we have to ration services to those most in need, least able to help themselves and that no other local service or general advice provider can assist. As a result, all work done by Law Centres requires a lawyer and cannot be solved with a cup of tea and a chat.
69. **Ability to present own case:** Even a casual understanding of the types of clients seen by Law Centres would lead those proposing these changes to see that our clients, at least the vast majority of them, will never be in a position to present their own case. Law Centre clients end up as our clients because they have been unable to deal with their own problems or present their own cases. LSCR research suggests that those eligible for legal aid are least likely to be able to present their own cases.
70. **Alternative sources of funding:** Many of those seen at Law Centres have complex cases and complex personal needs. They are not the types of cases, or indeed clients, who would be able to obtain CFA's or the necessary insurances – nor are they the types of individual who would carry other insurances or have savings or capital that could be used to fund legal advice or assistance.
71. These proposals, if implemented, along with cuts to council grants and other funding will decimate the third sector legal advice network. This will have a devastating effect within communities as the known and trusted sources of legal advice are no longer available. They will lead to a 77% reduction in the funding for not-for-profit legal advice agencies. There will literally be nowhere left for people to go and therefore no alternative sources of legal advice and assistance

(as opposed to general advice and assistance which is already not funded under the legal aid scheme and therefore not a viable replacement for the services being cut). With a further 86% of what's left in scope proposed to be dealt with through a telephone only service, this will leave just 3% of the original funding in place for face-to-face not-for-profit legal aid services. That is not sufficient to maintain those services.

72. **Other routes to resolution:** The “alternative sources of advice” quoted in the Green Paper are largely illusory. Local authority in-house services, even where available, have never provided a full casework service and in any event there is frequently a conflict of interest. The pressure on local authority funding will inevitably mean that such services are shrinking or disappearing completely. Shelter’s casework services are provided mainly through legal aid funding and will disappear to a large extent if the proposals are enacted.
73. In many parts of the UK there is no other form of legal assistance for complex matters such as benefits appeals, in which Law Centres currently have a high rate of success. The Green Paper suggests that the Free Representation Unit (FRU) will be able to assist in representation at Tribunals in some Welfare Benefits cases. The Government is referred to the comments on FRU’s website:

“We should point out that the consultation document gives a misleading impression of FRU. It wrongly uses the role of FRU to support one of its conclusions. It points out correctly that FRU represents clients in Tribunals. It then illogically uses FRU’s representation work in Tribunals as part of the justification for withdrawing Legal Help for initial advice work in welfare benefits cases. FRU does not provide initial advice to clients. The work that FRU does can therefore be no part of the justification for withdrawing Legal Help in this area. FRU is in no position to replace the invaluable work of publicly funded solicitors, Law Centres and Citizens’ Advice Bureau in giving initial advice”

74. One of the main rationales for removing these areas from scope is that it is thought that legal help in these matters can be provided pro bono. Lord McNally, in a recent meeting with LCF, told us so. Law Centres and other NfP organizations already rely heavily on Law Firms for financial and pro bono assistance. Even if there is a greater pro bono capacity for this work available, the impact of the proposed cuts is that many agencies will close.
75. Without organizations to host pro bono lawyers, provide their professional indemnity insurance, train them in the areas of law required by the poor, it will not be possible to provide the service. Pro Bono cannot replace the extent of services currently provided. People will miss out. Already chaotic lives will unravel further costing the government many thousands more than the current legal aid fixed fee. These scope cuts, rather than saving money, will cost government significantly more. They represent a wanton waste of public funds at time of supposed fiscal responsibility.

76. It is perhaps also worth reminding those considering these cuts that the legal aid scheme is built around expertise and specialism. Those providing legal advice in a particular area of law need to be suitably trained, work allocated appropriately and properly supervised by a qualified supervisor. This is at the very heart of the Specialist Quality Mark. Pro Bono assistance, whilst an extremely valuable tool, does not typically provide the necessary level of subject specific legal expertise for ongoing cases or complex cases.

Welfare Benefits

77. Currently the legal aid scheme funds the provision of legal advice and assistance to individuals in respect of welfare benefits issues. Most of this assistance is provided through the Legal Help scheme where a fixed fee of £167 is paid for the provision of up to 9 hours of legal advice and assistance.
78. Legal advice is not available on basic benefits entitlement or even, except in the case of complex benefits like Disability Living Allowance, to help clients apply for such benefits. Instead legal aid is only currently available where an individual has been wrongly refused benefits and where the lawyer dealing with the case considers that there is sufficient benefits to take the matter on (balancing prospects of success and costs benefit). Legal aid is only available to help individuals to challenge incorrect decisions of public authorities.
79. Some of these cases proceed to Tribunal hearings and some ultimately to judicial review hearings but the vast majority is resolved with around 4-7 hours work corresponding and discussing the legal issues with the authority in question. £22 million of the expenditure to be saved in respect of welfare benefits issues to be saved from the Legal Help scheme – from the scheme designed to provide early intervention to stop the escalation of problems.
80. The involvement of a specialist benefits adviser working under the Legal Help scheme frequently leads to a compromise solution, or some form of resolution, that does not involve the heavy public expenditure of public officials writing/preparing appeal papers and the Tribunal Service arranging and holding hearings. In many cases the clients do not want to lose their ‘day in court’ and it is the adviser who explains to them the wisdom of accepting a resolution that allows the appeal to lapse. Public officials in the benefits offices, and the Tribunal Service, have frequently commented that it is less time consuming for them to deal verbally or in writing with a specialist benefits adviser rather than with the claimant themselves (or a friend/advocate of the claimant).
81. Without specialist benefit advisers those clients would have greater difficulty in resolving their benefit disputes, if they were able to resolve them at all. This very frequently leads to a sense of disillusion among people who feel that they would have been better to remain wholly dependent on benefits. Good quality specialist benefits advice helps with problems that are not at all uncommon in the transition between being on benefits and being a worker, or in situations where part time hours fluctuate (or work is casual/temporary).
82. If individuals do not receive the benefits to which they are entitled then the consequences may be significant. They may fall behind in their rent or other debt repayments; they may be unable to properly provide for themselves or their families; they may be more likely to be inclined towards criminal or other socially unacceptable behaviour; their health and particularly their mental health and well-being may suffer and ultimately they may be forced into a situation where they are subjected to expensive legal proceedings (for possession of their property or for removal of their children). It is difficult to see any justification for

suggestion, as the Green Paper does, that welfare benefits matters have no objective importance.

83. This is in the face of clear European Law that recognises welfare benefits as possessions under Article 1 of the First Protocol of the European Declaration on Human Rights. The *Stec & others v UK* (formerly *Hepple & others v UK*) has ruled that non-contributory benefits are 'possessions' for the purposes of Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR).
84. Clients who are able to represent themselves and achieve a suitable outcome are already likely to do so and therefore it is not unreasonable to assume that those seeking help under the legal aid scheme are already the least likely to be able to represent themselves. This is especially true of those who come for help to Law Centres. Our clients tend to be at the very periphery of society.
85. Under no objective measure would these individuals ever be in a position to present their own case. Law Centres and other local not-for-profit advice agencies are often the place of last resort where those who cannot find help elsewhere and who cannot help themselves come for assistance.
86. There are no currently available reliable sources of funding to provide legal advice and assistance in respect of welfare benefits matters. Some local authority grants can be used to fund benefits work but many such grants are under threat themselves – or have already been removed. It is not unusual to find grants currently being reduced by upwards of 40%.
87. Those seeking legal advice from Law Centres on benefits issues have typically already complained to the relevant benefits agencies and have been unable to resolve the issues. They are unable to resolve these matters themselves and, given the overall likely impact of these and other cuts on local advice agencies, there will be nowhere else for them to turn.
88. Removal of funding in this area will likely stop individuals retaining or obtaining their property and will likely therefore be a breach of Article 1 of the ECHR. It will lead significantly increased overall social costs and to the potential breach of Article 8 of the ECHR given its likely impact on family life and the capacity of individuals to maintain a roof over their heads.
89. Further these proposals come at a time where it is stated Government policy to thoroughly overhaul the benefits system and to introduce a single unified benefits/credit system. A time where help and representation has perhaps never been more important and also in the face of proposals to punitively remove benefits for some individuals who are deemed to be taking sufficient steps to find employment.

Robert came to see Camden Community Law Centre after he attended a medical examination and the Department for Work and Pensions found him capable of work. Robert had most of one of his lungs removed several years ago. He found it difficult to walk even a few steps without becoming severely breathless.

The Law Centre assisted him to appeal to the First-tier Tribunal against the Incapacity Benefit decision and also advised him to claim Disability Living Allowance. Robert's Incapacity Benefit Tribunal was successful and he was awarded arrears. However, in the meantime his Disability Living Allowance application was refused. The Law Centre assisted him to appeal against that decision and the second Tribunal held that he was entitled to the high rate of the care and mobility components for an indefinite period.

Robert would have been unable to represent himself before the First-tier Tribunal. Representation at the Tribunal involves much more than turning up and presenting the case. In this instance, the Law Centre assisted Robert to draft two witness statements and also to prepare submissions to the Tribunal.

The submissions involved applying the law to Robert's case and researching relevant case law to assist him. Robert was very breathless, even on sitting. In addition, he had difficulty understanding the proceedings and what was required to make his case successful.

Amma was referred to Gloucester Law Centre by a local advice agency for advice and assistance with regard to her benefit claims. Amma, a Ghanaian national, had entered the UK lawfully as a family member of an EU national living and working in the UK.

After being in the UK for some time Amma was subjected to serious domestic violence by her husband and had to flee the family home. She was assisted by a local domestic violence support group who were able to provide accommodation as she was in a very vulnerable and fragile state.

However Amma had no income and the Law Centre advised her that although she was no longer living with her partner, following the violence she retained entitlement to benefit derived through his status as an EU worker and should claim Job Seeker's Allowance and Housing Benefit.

The law in this area is complex and the Department for Work and Pensions (DWP) were very reluctant to deal with the claim, asking for all sorts of further information and indicating that they did not accept what the Law Centre was arguing. At the same time Amma's Housing Benefit was incorrectly refused on the basis that she did not have the right to reside.

After a great deal of persistence over a number of months the Law Centre was able to convince the DWP that the Law Centre's legal arguments were correct and Amma, who had been fed in the meantime by a local church, was awarded backdated Job Seeker's Allowance and Housing Benefits. Without the Law Centre's intervention Amma would eventually have been evicted from her accommodation, with all the expense and drain on public resources which that involves.

Debt

90. £16 million of the proposed savings in the Debt category of law are to be achieved through reductions in Legal Help. Just £1 million is anticipated to arise from the more costly legal representation spend.
91. At the Legal Help level a fixed fee of just £200 is paid to fund up to around 9 hours of work to help individuals resolve complex legal disputes with their creditors without the need for litigation. The average costs to the public of one person's debt problem (including lost economic output) is estimated to be £10004, with more serious debt problems costing many times this amount.
92. Many individuals who seek the legal advice of Law Centres are extremely poor. Many arrive with wrongly imposed debts that ought to be challenged. They may often find themselves in debt as a result of poverty, as a result of losing their job or as a result of having to borrow money in order to cover emergency expenditure. Many are on a spiral which could lead to them falling behind on further payments and to eventually losing their home and becoming a significant burden on society. The assistance provided is not financial counselling but legal assistance requiring the skills of a lawyer to challenge the debts.
93. Although debts directly related to the loss of a property (rent or mortgage arrears) are to be left within scope, all other debt matters are to be removed. This means that instead of being able to deal with a person's debt situation at the earliest possible stage and thus assist them avoiding more serious problems and possibly the need for additional state intervention (in the context of benefits or the provision of housing).
94. The proposal to remove insolvency legal advice assumes wrongly that all bankrupts will have no or very little to lose from this remedy. In fact, for example, bankruptcy can kill off career prospects, cause the long term loss of the family home and the loss of effective transport trapping the bankrupt in his or her home and this fact would not always be understood by would be bankrupts without legal advice. Below is a case study where but for the intervention of a Law Centre adviser a client's bankruptcy would have led indirectly to the loss of her home for her and her children:

Mrs T is married with 3 children of which two are at University. She lost her job in 2004 due to suffering from Bells Palsy. The couple owns their own home and for some reason, the council tax is in her name only. With a high mortgage payment and only the income from husband's plumbing business, the family got into difficulty and did not pay the council tax properly between 2004 and 2008. After bailiffs failed to collect the arrears, Lambeth Council moved towards issuing bankruptcy proceedings.

⁴ "A Helping Hand: The Impact of Debt Advice on People's Lives – Pleasance P, Buck A, etc. LSRC 2007.

Due to her illness, Mrs T exacerbated the position by not opening letters addressed to her. The petition was heard on 16th November 2009 when Mrs T missed the hearing by ten minutes after it began on time. She had to register with Westminster Council to pay the parking charge for leaving her car near the Strand courts and this took an inordinate time. As a result, she faced the loss of her home as the only way that the council tax debt of £4023 could be paid although there were no other creditors in support of the petition. The Law Centre helped her to apply for the petition to be annulled.

On the 12th January, we succeeded in getting an annulment after the family of Mrs T lent her enough money to pay the council tax arrears although the annulment was opposed by the council. We also negotiated time to pay the petition costs and agreed a figure of £3600. Unfortunately two more hearings took place while we argued over the amount of the costs of the trustee in bankruptcy which costs were reduced eventually from £1715 to £529. We are still disputing the amount the council solicitors want to charge for essentially a watching brief during the two further hearings.

95. The Insolvency Service has developed the format of Debt Relief Orders for straightforward insolvent debtors owing up to £15000 where fast track insolvency can only be obtained by an intermediary, an adviser in the free money advice sector. This is a good example of how the sector acts to save the insolvency service and the courts incalculable time in dealing with debt matters. However it will be difficult to find an intermediary to help with a Debt Relief Order after these cuts as the advisers have to be funded from their other work and the funding is often legal aid which will have been removed from scope under these proposals.
96. Indeed it is difficult to see how legal debt advice will be available to more than a few of those requiring it if these proposals are enacted against a backdrop of the cessation of a large amount of debt advice with the closure of the Financial Inclusion Fund and the slashing generally of local authority budgets to fund it. The Green Paper suggests, as alternatives, that debtors could approach National Debtline or the Money Advice Trust as alternatives. In fact, the Money Advice Trust provides no advice to the public but simply seeks to promote and improve the service by others. National Debtline provides telephone advice followed by excellent fact sheets and self-help materials which can only work if the debtor has the literacy and confidence to understand and use them in dealings with creditors who may well pressurise the debtor successfully to depart from the National Debtline material. Many of our clients don't have the ability to compose letters etc. and require face to face assistance.
97. Although debts directly related to the loss of a property (rent or mortgage arrears) are to be left within scope, all other debt matters are to be removed. This means that the Law Centres will no longer be able to deal with a person's debt situation at the earliest possible stage and thus assist them avoiding more serious problems and possibly the need for additional state intervention (in the context of benefits or the provision of housing). For example, Hackney

Community Law Centre and Islington Law Centre have organised the duty solicitor scheme at Clerkenwell & Shoreditch County Court for some 30 years, one of the busiest in the Country. Evidence from the duty solicitors suggests that around 90% of cases seen by duty solicitors are cases of rent arrears, and in 90% of those cases timely money advice might have obviated the need for litigation. Once this problem is identified, the District Judges will expect solicitors to try and resolve underlying benefit and debt problems, and if they are unable to do so because of a narrowing in scope at this stage there will be insufficient capacity in the non Legal Aid voluntary sector, making possession orders and eviction more likely.

98. These proposals also come at a time of increasing unemployment and ever-higher fuel, food and living costs. To remove early level legal intervention in debt matters for individuals who are otherwise unable to assist themselves or present their own cases is short sighted in the extreme.

Housing

99. We endorse the response to this consultation submitted by the Housing Law Practitioners' Association. We understand that confirmation was provided by the MoJ to Representative Bodies in the following terms:

"For the avoidance of doubt, our proposal is that all cases where the claimant is homeless or threatened with the risk of homelessness and is seeking homelessness assistance under Part VII of the Housing Act 1996 will remain within scope. This includes, for example, legal aid to assist a party to make an application for homelessness assistance, or for a review of that decision under section 202 of the Housing Act 1996, or further appeals"

100. This section of our response was drafted before this confirmation was given and discussion of homelessness is included in case those giving this confirmation were mistaken or in case Government seek to shift their position.

Homelessness

101. The law of homelessness is complex and difficult and it will be impossible for applicants to deal with the review stage without assistance. Reviews often require gathering of information such as medical information which applicants will find difficult to deal with. Local Authorities dealing with scarce resources often gatekeep (obstructing access to a homelessness application). Where a household does not include children, or where the household lost their previous accommodation due to rent arrears, the tendency of the Local Authority will often be to refuse a duty based on non –vulnerability or intentional homelessness.
102. S204 appeals, for which funding is retained, are not ordinary housing cases where the Court has jurisdiction to determine facts. Rather they are highly technical administrative law cases, akin to judicial review. At the same time, they are second appeals and the Courts regard the function of the review officer as a semi judicial first appeal. It makes little sense to remove funding from this first appeal. Housing Review officers are more likely to formulate "appeal proof" decisions if applicants do not have expert legal advice at an early stage. If reviews are not dealt with properly there is likely to be an increase in the number of appeals, but for reasons stated more of them may fail. Most homeless applicants who might expect to be housed are by definition extremely vulnerable.

One Law Centre assisted a refugee from the Democratic Republic of Congo who had been subjected to imprisonment, torture and gang rape. She was suffering from severe psychological trauma including severe Post Traumatic Stress disorder. On receipt of her refugee papers she was given 28 days to leave her NASS/UKBA accommodation. She applied to the Local Authority who accepted the facts of her case and her condition but found her to be non priority need. We were able to persuade the Council to extend temporary accommodation pending the review which was in the Council's discretion rather than as of right (thus avoiding Judicial Review proceedings) and gathered supporting medical evidence. After representations the Council agreed at review stage to accept a duty, and a s204 appeal was avoided.

103. Excluding Housing Benefit work at the legal advice and assistance stage will be counterproductive and more expensive in the long term, for similar reasons to withdrawal and welfare benefits legal advice. Pre-emptive legal advice and assistance can reduce rent arrears and prevent possession claims being issued, thus saving obvious expense further down the line.
104. Legal advice on re-housing options also deals with complex information supported by medical and other documentary evidence. Accessibility to legal advice is essential to ensure that re-housing issues are dealt with properly and fairly. Withdrawal of funding for legal advice on transfers of social tenants to other more suitable housing is short sighted in cases where social landlords are found not to be properly applying their own criteria. While we acknowledge that in the vast majority of cases social tenants seeking a transfer the criteria may have been properly applied and in effect the tenant will have to wait until a suitable property has become available, the reality is that Legal Aid providers avoid such cases. Funding should be properly available where due to vulnerability of the client and complex factual or medical issues there are real issues about the suitability of existing accommodation and how the priority should be regarded. Withdrawing this advice will leave Judicial Review as the only available alternative, leading to more expense in resolving these rarer cases (particularly if one takes into account that the outcome of most successful Judicial Reviews is simply a reconsideration by the authority which may come to an identical conclusion by another route and further Judicial Reviews).
105. Of particular concern is the removal of legal aid for actions for breach of quiet enjoyment, and civil actions in relation to harassment and unlawful evictions. It is our experience that landlords in the private sector frequently ignore their legal obligations towards tenants and if tenants are unable to challenge this behaviour effectively the protections given in law to tenants become meaningless. It is perverse that under the current proposals, a tenant will be able to get legal aid if their landlord tries to evict them through the courts but will be unable to get legal aid if the landlord evicts them unlawfully. In

straightened economic times we find that Local Authorities, who are tasked with prosecuting illegal evictions rarely do so.

106. Early legal advice to private sector tenants often saves public money. The potential costs to other public authorities of allowing landlords to ride roughshod over tenants' rights should be taken into account. Law Centres are frequently approached by private tenants who have been unlawfully evicted by a landlord who has simply changed the locks without due process of law. Using Legal Help funding we can contact the landlord and persuade them to re-admit the tenant by the threat of legal action. Again this saves costly legal proceedings in the County Courts.
107. Without specialist intervention by solicitors who can back up threats of action with the issue of proceedings the landlord's actions would remain unchallenged. Tenants who have been unlawfully evicted may then require help and assistance from various public authorities, e.g. housing as homeless, social services for assessments, admission to hospitals at very significant cost to the public purse. Such actions are not purely actions for damages but are about protecting tenants and restoring their rights to their tenancies. If any damages are awarded they tend to be low and are often a redress for damaged or missing belongings. They are a deterrent against landlords behaving unlawfully. Such cases are not suitable for CFAs as there is no insurance available. The removal of legal aid for such actions will facilitate unlawful evictions.

One Law Centre was contacted by a local sixth form college regarding a student who had been locked out of his council flat by his landlord and was sleeping in a stairwell. He approached his Local Authority who warned his landlord but this was ignored. We contacted the Landlord and were successful in negotiating a peaceable re-entry.

108. Similarly removing legal advice on landlord and tenant conditions makes little sense. In practice such legal advice is sought most often when something has gone wrong with this relationship, for example refusal by the Landlord to restore a deposit, or a small claim over disrepair. A small amount of legal advice and assistance can enable tenants to run a successful small claim.
109. Funding for disrepair should continue. We note that funding is to be preserved in cases where the disrepair in question is "serious", but there is very little guidance as to what that entails. We support the case for the threshold for funding disrepair in claims under CLS Certificates to be as at present i.e. provided that it is above the small claims limit of £1,000 compensation and £1,000 value of repairs. Withdrawal of funding for basic legal advice and assistance under the legal help scheme is likely to lead to delay and expense in the justice system however. For example, the line between statutory nuisance and structural disrepair can be confusing, and appropriate legal advice in a small claims can save (expensive) Court time at a later stage.

110. Legal aid for disbursements is necessary in the early stages of disrepair actions in order to assess the merits of the case; in nearly all cases experts reports will be required.
111. While as noted housing legal advice attracts particularly vulnerable clients, especially in homelessness, work by Law Centres with youth groups in the last 5 years shows that this is a demographic which would be particularly badly hit.
112. Prevalence of youth homelessness: Shelter Research found that almost 60% of homeless people seeking legal advice in London were aged under 25. Almost 40% of people accepted as homeless by Local Authorities are aged 16-24. This is almost certainly an under estimate of youth homelessness as many young people are not accepted as homeless (Department for Communities and Local Government, Tackling Youth Homelessness, March 2007).
113. Young people are seven times more likely to experience homelessness problems but eleven times less likely to get legal advice. (Youth Access, Rights to Access, 2002).
114. Objective Importance: Young Homeless People are incredibly vulnerable. In a sample survey of 275 Law Centre young clients, we found that:
- 15% were homeless as a result of domestic abuse
 - 7% were care-leavers
 - 20% had mental health issues
 - 5% were ex offenders
 - 15% were young parents
 - 10% had disabilities
115. An independent evaluation of young people's legal advice services asked young people where they would be without the advice. 20% of the young people said that they thought they would be dead. Other young people reported that they would have been sectioned, had their children taken into care, or been imprisoned. (MBA Rights to Access Evaluation 2007)
116. Young People could not represent themselves: The Green Paper itself admits that children and young adults are not able to represent themselves "We do not consider that this class of individuals would generally be able to present their case effectively." In reference to gang injunctions, the Green Paper states "Because these cases involve the state, it is not appropriate for parties to resolve these matters themselves". We would argue that the same is true for all young people's cases.
117. Young people cannot access other forms of advice effectively: Our experience and that of our youth partners is that poor decision making by Local Authorities results in thousands of young people being turned away from housing and support services. The Law Centres Federation and Youth Access jointly chair the London Youth Advice Forum, a network of 42 youth and advice agencies

working across London. A survey amongst members about young homeless people's experiences of Local Authorities found:

- Every Local Authority turned away young homeless people, who were in priority need of housing, for spurious and challengeable reasons. Mediation was not found to be generally effective, partly based on the numbers fleeing domestic violence.
- The majority of Homeless Persons Units were seen as hostile to young people. Any 'advice' offered there to young people was seen to be biased and inappropriate, aiming to divert young people away from Local Authority support which they were entitled to.

118. Indeed, these issues are so prevalent that we have been working on a project with the Local Government Ombudsman to coordinate multiple complaints.
119. Law Centres work in partnership with Connexions advisers, Youth Offending Teams, College Welfare Officers and other referrers. Almost all the young people supported by Law Centres, have already been supported by these other professionals, who, whilst they offer a range of services, find that they cannot tackle the homelessness without legal intervention. Only action from a legal adviser setting out the Local Authorities duties, and often threatening legal action can bring about practical change in young people's housing situations. Legal advice at the review stage actually prevents further litigation.
120. There are significant reforms to social housing being proposed by the Government including the introduction of new short-term tenancies. Such changes make it even more important that tenants should be able to receive legal advice. With proposals to end secure tenancies for life, and for Local authorities to discharge (their) homeless duties by securing private sector tenancies, it is likely that this sector will be providing increased level of housing for vulnerable people and families who need to be protected.
121. The right to housing and to take action to defend that right or to enforce obligations of others in respect of that right is a basic human right in a civilised society and citizens should not be deprived of that right merely because of lack of means.
122. The "alternative sources of advice" quoted in the Green Paper are largely illusory.
123. Local authority in-house services, even where available, have never provided a full casework service and in any event there is frequently a conflict of interest. The pressure on local authority funding will inevitably mean that such services are shrinking or disappearing completely. Shelter's casework services are provided mainly through legal aid funding and will disappear to a large extent if the proposals are enacted. The Local Government Ombudsman deals only with a narrow range of cases and has limited powers and capacity.

124. A serious and useful reform of housing for the poor would be to introduce stricter statutory rent control and additional security for private sector tenants as exists elsewhere in Europe (e.g. France and Germany). This would lead to less public expenditure on Housing Benefit and on accommodating the homeless.

Employment

125. The impact on people's lives on unresolved disputes at work and/or job loss is immense. We challenge strongly the suggestion that these matters are not sufficiently important to merit support from legal aid, because the issues at stake are primarily financial. This is taking a very limited and naïve view of the importance of work in an individual's personal life. It is often fundamental to their sense that they are valued participants in society, and to maintenance of self esteem and a feeling of being in control.
126. We see many of our clients suffering from mental health problems which they did not have before they encountered problems at work/termination of employment. Furthermore the loss of income which results from job loss, catapults some clients into those areas of need which have already been recognised in the Green Paper as deserving assistance, such as homelessness. We see cases where the pressure of job loss contributes to family breakdown, which leads to family problems which it is proposed be retained in scope.
127. Timely intervention on a legal level in employment disputes can stop or reverse job loss and prevent the emergence of the problems mentioned above. We are not speaking of matters which can be dealt with by an informal chat round the table between employer and employee. What is often required is the authority of a lawyer to set out the law for employers, (who are not always aware of their obligations), threaten litigation and suggest and achieve a compromise. It can often mean starting litigation (whether for people still in work or post termination of employment). In many cases the submission of a convincing claim which is coming from a professional source, will be sufficient to make the employer change tack and where there has already been job loss, re-engagement or reinstatement can be achieved.

Our client fell seriously ill while on holiday abroad. She was not able to contact her employer (a well known retail chain) with the frequency and in the manner demanded by the employer. Messages she did leave were taken but not passed to the correct people. Warning letters to her home were not received because she was not there. She was dismissed in her absence. Returning to the UK, she tried to get her manager to reverse his decision but he was not interested. There were good grounds on both a procedural and substantive level for challenging the dismissal on unfair dismissal principles and after proceedings were issued higher management took notice and the claim was settled with reinstatement.

Our client (a Muslim) did not return to work from a visit to his native country, Iran, when he said he would because he was embarking on a sex change operation and suffering from depression because of the difficulties of raising this with his Muslim family. He did inform his employers (a well known retail chain) but not before he was expected back. Even though he had a reasonably long period of previous good service he was dismissed by an unsympathetic manager. We intervened on his behalf and obtained another appeal hearing with the top HR directors and he was re-engaged at a different store.

128. Even where preserving or retrieving the position is impossible, our experience is that getting the right legal advice and obtaining some sort of remedy in relation to what the client sees as a terrible injustice (sometimes people have lost a job they held for ten years or more) helps the client come to terms with what has occurred, gives some sense of justice obtained, some sense of perspective, repair to damaged self esteem and some closure. We see many clients who cannot set their minds to moving on and finding new work until this is obtained.
129. It is a matter of wider public interest that the vast raft of employment legislation be enforced. Over the last two decades the quantity of legislation guaranteeing rights and protections in the workplace has increased tenfold. It is essential that employees can successfully take on and win employment Tribunal cases against their employers if we are to have a culture of employers observing this body of law. When one employee successfully challenges an employer, the result will inform his treatment of the entire workforce. Furthermore, many employers, particularly those with HR departments, will keep their eye on cases and outcomes publicised and will adjust their policies, procedures and practices accordingly.
130. If employees become increasingly unsuccessful in defending their rights, or give up before they try, then employers across the board will become aware of that and the law will be devalued.
131. The assumption is made that employees (claimants) can present cases themselves “because of the easily accessible and user-friendly procedure of the Tribunal”. We strongly challenge that.
132. The law which is to be argued at the Tribunal is much more extensive and complex than when Employment Tribunals were established. At that time we did not have all the regulation relating to employment contracts, working time, national minimum wage, family and dependants rights, maternity rights, protection for whistleblowers, rights in relation to TUPE transfers, redundancy information and consultation provisions. Even in relation to unfair dismissal which did exist in the early days of industrial Tribunals, there have since then been hundreds and hundreds of cases refining the concepts relating to the substantive issues, the procedural issues and the issues relating to compensation.

133. Fine points in all this detailed legislation are often under scrutiny in the course of these claims and the case law needs to be referred to.
134. It is just not the case that what is involved is a simple informal discussion about issues of fairness in the day-to-day sense.
135. While they may be more informal than some courts in not having such rigid rules relating to procedure and evidence, Employment Tribunals still have a considerable number of rules which make them inaccessible to laymen. The issues relating to time limits can be complex particularly when problems are long running.
136. Commencing a claim requires the basis of the claim to be set out in full in writing and for some claimants (see below re vulnerability) this is difficult. Once a case is underway, claimants are required to submit complex calculations of loss (difficult for someone who does not understand any of the legal principles governing the award of compensation), comply with directions as to disclosure, agree bundles of documents, prepare chronologies and written witness statements. We find that even well educated, highly literate clients need assistance with these items because they are not everyday documents. Clients in underprivileged groups (see below), who struggle to write a simple coherent letter, have no chance of keeping up with these requirements.
137. At the Tribunal hearings themselves, in the majority of cases the claimant has a barrister for an opponent. On this basis alone they can hardly be called "accessible and user-friendly." If not a barrister, then usually there will be a solicitor. It is in only a few cases that an employee will have a lay employer standing up against them. The inequality of arms is therefore considerable.
138. Furthermore, the expertise of the opposing solicitor or barrister is relevant to the proceedings, because they are conducted in a highly legal framework. There are sometimes opening statements, there is examination in chief, there is cross-examination, there is an opportunity for re-examination and there are legal submissions made, both verbally and written.
139. Cross-examination is a particularly difficult skill and it needs to be appreciated that just as with criminal trials, the claim will often depend on findings of fact where the factual matrix is complex and disputed. It is often by effective cross-examination that the truth can be drawn out and so claimants, who are subject to cross-examination themselves, who cannot effectively cross-examine in return, are highly disadvantaged.
140. It is totally unrealistic to assume that Employment Judges can redress the balance by assisting litigants in person. They are put in a difficult position when this becomes necessary and they are not really able to do this. They are meant to be impartial, not trying to assist the claimant set out their case more effectively. So while the Judge may be able to ask questions to try and draw out the facts, he is not permitted to prompt the claimant to raise points or challenge submissions which he is not doing on his own initiative.

141. We appreciate that at present representation is not funded. However, all the pre trial preparation currently is funded and as long as it is, it at least enables practitioners to prepare the cross-examination and submissions etc and be paid for the bulk of work, even if they have to manage the actual representation on other funding.
142. Furthermore, it is important to appreciate that equality of arms is important not just in the hearing itself but from the outset and all the way through the preparation. If the claimant has the case professionally argued and prepared, as is possible under public funding at present, it is our experience that the case will more speedily be settled and representation at trial will not become necessary. This is because when they have an equal opponent; employers are more likely to recognise the possibility of eventual defeat.
143. In support of the suggestion that people can take their own employment Tribunal cases, it is stated that “We do not consider that those bringing these claims are generally likely to be particularly vulnerable.” We strongly challenge this assumption.
144. It is not the case that people in work must, by definition, be educated, intelligent, literate, competent, possessing good English language skills and mentally and physically in good health. We acknowledge that people with those attributes will generally be employed, but the converse is not true; it is not the case that all those who are in employment have those attributes.
145. Our clients are mostly composed of employees working in the lowest paid and most unskilled jobs, typically, cleaners, shop assistants, street sweepers, refuse collectors, security guards, care workers, labourers, drivers and porters. Many of them have poor English. Their level of education, literacy and intelligence are often low. Many of them are suffering from physical or mental disabilities. All of this affects their confidence and their ability to undertake a claim which involves standing up and conducting written and verbal argument with much more able opponents who they also see as figures of authority. The majority of our clients struggle to write an effective letter, let alone draft pleadings and a coherent witness statement. But all the corresponding documents on the employer’s side will be drafted by or with the legal advice of a lawyer.
146. Furthermore, the fact that anti-discrimination law has a substantial part devoted to employment law, in particular offering protection in the areas of race, disability and age, in itself acknowledges that people who are in these vulnerable and minority groups are also workers.

Our client worked for a leading supermarket chain as cashier. She suffers from a progressive condition by which she is going gradually blind. She had repeatedly asked if her nightshifts could be altered to day shifts so she could see her screen better. She was prepared to move to another store in the same area if necessary. Even though she saw day shift people around her being given extra overtime in the day, her request was always turned down. She was low paid, of low education and very under confident. She could manage to write simple letters asking for the change to be made, but she could not manage to make a Tribunal claim. She did not have any idea of the legal framework in which such a claim might be made and it was obvious to us that without our intervention she could not do anything more. When we put in a Tribunal claim for disability discrimination arguing that this was a reasonable adjustment which could be made and Head Office became involved, they suddenly found the shifts she requested and there was no need to take the claim further. Yet the claimant could not have afforded to pay for this help nor done it herself.

147. We are aware that there is a perception in government, that the involvement of legally qualified representatives at Employment Tribunal claims serves to lengthen the case unnecessarily and to increase the adversarial nature of the claim. This perception underpins some of the proposals set out in the current consultation by BIS on Resolving Workplace Disputes. We challenge that myth and suggest that there is no data or evidence that this is established in fact.
148. Removal of employment from scope will not reduce judicial time spent. The government's own Survey ('the SETA Survey' published 2010) shows a high level of involvement of claimant lawyers in the process of achieving any result that reduces the tribunal & judicial time and cost.
149. 60% of claims were settled between the parties without govt., ACAS or judicial intervention. In addition almost half of all claimants involved a representative in managing and preparing the case and of those that did, more than half (57%) were either withdrawn or settled by ACAS or privately. Of those cases that were lodged and that settled without a hearing 88% of the claimants felt it was the right decision to involve a main adviser/ representative.
150. The involvement of lawyers giving good quality legal advice and the need for Tribunals to be assisted in case management are interlinked: the experience of Law Centre lawyers is that any further reduction in tribunal costs and time will be achieved only as a combination of good quality timely legal advice to the claimant and the capability of tribunal judges to reduce case management time pre-hearing.

Immigration

151. The Green Paper suggests that since immigration is a personal choice and therefore legal advice in relation to immigration should not be paid for from the legal aid fund. We strongly contest this argument. The majority of the people seen by Law Centres are already in the UK, many are destitute, often living rough or have complicated family structures, and some are minors. The majority have language barriers or are suffering from mental ill health. Some have been trafficked here and survived the most appalling situations. To suggest that these individuals should be denied access to justice because they have made a life choice is insulting and wholly fails to understand the situation that many immigrants find themselves in.
152. Most immigration cases do not involve lifestyle choices by the financially comfortable. Instead they concern:
- whether people are allowed to join or remain with spouses, partners, children and parents;
 - whether people will have to leave the UK where they have lived for years, sometimes for decades, often as a result of someone else's decision, for example a parent or former spouse or partner, including cases in which they will be leaving close family members (who may be British) behind.
 - whether a person who has fled domestic slavery can live safely in the UK away from those who abused them.
 - what happens to a person (including children) when a relationship breaks down, including as a result of domestic violence;
 - what happens to children whose claims for asylum having failed, cannot be returned to their country of origin because their safety and welfare cannot be guaranteed;
 - what happens to young people who as children have been allowed to remain in the UK, sometimes for many years, until they turn 18.
153. These are extremely important issues, often engaging human rights considerations. There are 34 Law Centres providing Immigration and Asylum legal advice and representation as part of a holistic service to local communities across England. For most, if not all of the local communities served by Law Centres these two areas of law are a vital part of the 'cluster' of advice needed as a compliment to Housing, Welfare and Employment legal advice. Law Centre statistics show that without Immigration and Asylum legal advice being available at a local level the job of assisting people becomes delayed and protracted as expertise in these complicated areas of law is not readily available.
154. The United Kingdom is a very different society today than it was even 20 years ago. Society is more complicated with different races and nationalities living together as part of the patchwork that makes up local communities. It is common nowadays to check an individual's status in the UK before legal advice can be given in areas of law such as housing for example. This is due to

the fact that criteria have to be met whereby an individual has a right to be housed. In addition, it is a criminal offence for an adviser who is not accredited or qualified to offer legal advice in immigration. And so, immigration matters arise regularly in the course of other legal aid work.

155. The fact that Immigration and Asylum legal advice is limited in its current availability exposes what are genuinely vulnerable people to exploitation by unscrupulous advisers charging large sums of money for advice that is not worth the paper it is written on. The best safeguard against bad advice is good legal advice provision.
156. Law Centres provide an expert service at a local level, achieve excellent outcomes for their clients that produce long lasting impacts but are struggling to make ends meet under the Fixed Fee regime. Furthermore the costs involved in maintaining accreditation and training require subsidy from other areas of law in a mixed economy of provision in Law Centres. The Green Paper proposes that areas of law taken out of scope could be picked up by the not-for-profit sector. This is a totally unrealistic proposal.
157. Immigration and Asylum legal advice is not a lucrative area of law to practice. The fee structure is extremely complicated with different payments for different stages of a case. Fees are subject to more scrutiny than any other area of law. The idea that loads of lawyers are making huge sums of money out of people seeking to enter the UK is a fallacy.
158. Moreover, legal aid could play an essential part in ensuring that Government departments spend money wisely, and as parliament intended. UK Border Agency is an example of a 'polluter pays' principle whereby the department that generates costs for the legal aid budget and for the courts, could meet those costs. Such a scheme would tackle:
 - The need for a department to consider whether it is appropriate to bring in new laws or procedures, especially in haste, with provisions drafted in haste and the worse for that;
 - The quality of decision making;
 - The Home Office's conduct as a litigant.
159. A 'polluter pays' scheme with the UK Border Agency would produce savings not only in the Ministry of Justice but in the Home Office itself.
160. The Ministry of Justice should take steps to ensure that it is in a better position to identify the need for, and demand, legal aid impact assessments and to challenge impact assessments produced by departments when these are inadequate. There have been a significant number of changes in immigration law resulting in more litigation to resolve issues with new laws. This also makes it much more difficult for an individual to represent themselves. Acts of parliament in relation to immigration law have been passed in 1993, 1996, 1999, 2002, 2005, 2006, 2007, 2008, and 2009. There has also been many more regulatory and rule changes.

161. Examples of case studies undertaken by Law Centres:

Brent Community Law Centre:

“The cases we've been dealing with have involved forced labour trafficking. It's common in forced labour cases for women to be brought over on a domestic worker visa and then made to work in conditions of enslavement, without pay. Generally their Domestic Worker visas are allowed to expire by their employer, causing them to become overstayers and therefore more vulnerable to the exploitation of the employer.

Some women may want to continue their domestic worker status with an alternative employer. Immigration legal advice is needed to make discretionary applications outside the rules. Trafficked women are also now entitled to limited leave to remain under the recently implemented Council of Europe Convention against Human Trafficking. Trafficking victims are entitled to 30 days leave to recover and to take a decision regarding their possible cooperation with the authorities. A renewable residence permit may be granted if their personal situation so requires or if they need to stay in order to cooperate in a criminal investigation. Trafficking cases must be referred to the UK Trafficking Centre to prompt that leave and additional rights of support. That work would be treated as immigration work as opposed to asylum. Additional help may be required at the end of the process for example in relation to re-settlement.

There are various problems for people from the local community seeking immigration help.

Poor quality, exploitative immigration advice is still a problem. Those without experience of the system or with a lack of understanding about legal aid, still end up with immigration lawyers who charge and provide a poor service. We have a fairly regular stream of such cases, particularly of clients who have ended up going to a community organisation to seek help when things go wrong.

In our experience, it is common for some parts of the community to only access help through informal sources e.g. through grassroots organisations. These are trusted environments particularly for those with limited language and limited experience of dealing with the legal advice system. The Law Centre's trusted relationship and proven track record with these community groups means that they prefer to signpost cases to the Law Centre, particularly where these involve vulnerable people. It also enables them to play a continuing role with the case. For example, we have a strong relationship of legal advice support and referral with the local Women's Aid centre. These cases generally involve relationship breakdown due to violence for women whose immigration status remains dependent on the violent partner.

Cases that come to the Law Centre often present with immediate other needs, for example, clients with no income and lack of housing; the immigration issue only becomes apparent in attempting to address these other issues.”

A minor was brought from Nigeria and left with 'family' in the UK. She was physically, mentally and sexually abused by her aunt and the aunt's boyfriend's. She became pregnant as a result of the boyfriend's sexual abuse. She managed to escape and went to the police. The police contacted her aunt who reported her as an overstayer. She was promptly arrested, interviewed by immigration officers and was required to report to the police. She was referred to the Law Centre by Women's Aid. Social Services refused to assist due to lack of immigration status. At the time she came to the Law Centre, nothing was known about the abuse. On the face of it her case appeared to be an Article 8 based on her long residence (she has been in the UK since 2001) and was therefore opened as an immigration case. Only with time did the abuse come to light. The case is now proceeding as an asylum case. A criminal investigation is underway, including in relation to her father's trafficking of her as a minor. It has gone to the Asylum and Immigration Tribunal who have recognised her as being so vulnerable that special measures are being introduced for the hearing, which would normally be used for minors (she is now 24 years old). This involves arrangements for an all female hearing and protective arrangements for her giving evidence. The asylum aspects of the case would not have come to light if the case was not initially taken on in terms of the immigration aspects.

The consultation paper suggests that immigration cases do not involve cases of particularly vulnerability. There has been no consideration of cases involving minors who are living alone abroad. We recently represented a client who has been recognised as a refugee in the UK. All of her family members were missing apart from her young sister who was living alone in Ethiopia. She was incredibly vulnerable as a young woman living alone in a country where she had no right to be. As a Muslim woman it was inappropriate considering that she had no male family member to care for her. We represented her sister in respect of her application to come to the UK; undertaking a potential judicial review when the Home Office failed to apply their policy to allow the application to be made free of charge; and represented in respect of the appeal when the application was refused. Eventually the Home Office reversed their decision a few days before the appeal hearing and the client and her sister have been reunited ensuring that they are both now living safely in the UK.

162. We believe that case studies set out above illustrate the need for Immigration and Asylum legal advice to be available at a local community level. As represented in the above cases many people are referred to and between local community groups and trusted organisations. In terms of community cohesion and fair treatment of people this is a vital component of legal advice work and

prevents people from falling through the safety net that the UK prides itself in having.

163. We also believe that the above case studies illustrate the lack of capacity and ability for individuals to represent themselves. These are desperate sometimes life and death situations, and we are concerned that people who simply cannot manage without representation will put them at risk in trying to raise money to pay for legal advice if the Green Paper proposals are carried through.

Rupa, the eldest daughter of a Bengali family, approached Rochdale Law Centre because her step-father was abusing her siblings and her mother—locking them in the house, abusing them sexually, beating them, and depriving them of food.

Rupa's mother was afraid to approach the authorities, as she did not know what her immigration status was, and she dreaded being deported and separated from her children.

Rochdale Law Centre has a specialised service for female refugees and immigrants which assisted the family in filing police reports and obtaining the support of social services. The Centre also regularised the mother's immigration status so that she would not have to return to Bangladesh, and could remain in the UK to care for her children.

Rupa's mother is now taking English and job-training classes, and Rupa and her siblings are receiving counselling and doing well in school.

164. Hammersmith and Fulham Law Centre brought the first ever immigration case using genetic fingerprinting developed by Sir Alec Jeffreys at Leicester University. Andrew, a young boy born in London but returned to Ghana at the age of four after his parents divorced, was refused re-entry to the UK on the grounds that he was not a British citizen. The Law Centre used the executive power of the local MP to prevent the child's removal and set about trying to prove he was his mother's son. Eventually, the DNA evidence won the day and Andrew was allowed to stay.

Education

165. We are very concerned that Education is being removed from scope. The clients represented in this area are some of the most vulnerable members of our community. The majority are disabled children and those with special educational needs from deprived backgrounds who are trying to access essential educational services and provision. According to LSC statistics 92% of Education cases are successful - the majority of these cases being Special Educational Needs (SEN) cases. This represents extremely good value for money for government and also demonstrates the repeated failure of local authorities to fulfil their statutory responsibilities towards disabled children.
166. Research demonstrates that disabled children are more likely to live with a parent that is disabled this makes representation in this area very important.
167. Education is comparable to areas such as Community Care and should remain in scope.
168. Education costs £1.2m in legal aid but saves the public far more than this each year.
169. An appropriate placement for a child with special educational needs may mean the difference between that child learning how to communicate or remaining unable to communicate for the rest of their lives. In addition some children with special needs have significant and life-threatening disorders such as epilepsy. Local authorities frequently oppose specialist placements for them on the grounds that some other organisation should be paying, even if the disorder and its consequences have major educational impacts. This failure can in some cases, put the child's life at greater risk. The arguments in these cases are extremely complex both factually and legally, and need representation (at least to the extent of case preparation).
170. In cases of bullying, clients may suffer serious physical or psychological harm. Investigation of these cases often reveals that the client actually may have learning difficulties such as autism which is not being dealt with at the school. Children with Asperger's syndrome are particularly vulnerable to bullying and also to psychological damage, especially if they are not adequately supervised during non-structured social times, or given specific education in the social skills they need to deal with the ordinary rough and tumble of the school playground. Children can become suicidal and self-harm if their situation at school is not resolved. These issues should all fall within scope and legal help needs to be available so that the right support can be provided in school to mitigate the consequences of bullying
171. The impact of the correct education on the ability of the child to develop skills to carry them into independent adulthood is immense. Without the correct provision, many children with the most serious disabilities will fail to learn independent living skills or how to communicate, leading to high levels of cost to social services (and the community care budget) once they reach the age of 19. In addition, a high proportion of prison inmates have learning difficulties.

172. The cost of failure both to these as individuals, and society as a whole is extremely high, and often permanent. Any savings made by removing support for SEN cases from legal help, will be significantly removed, if not outweighed by increased costs on the criminal budget (both in providing legal aid at trials and also on prison costs).
173. There is a long established connection between Youth Offending and school exclusion. 72% of offenders have been excluded from school. 50% of individuals who are excluded from school by the age of 14 years will be convicted of a criminal offence by the age of 22 (NACRA Annual Review Report 2009) to cite just one within a raft of statistics highlighting the connection between school exclusion and youth offending. Disabled students are 3 times more likely to be excluded from school.
174. Failure to access the right educational provision for our most vulnerable children will mean that they are more likely to leave the educational system having failed to acquire sufficient skills to allow them to enter the Employment market; basic life skills and independence skills which will mean an inability to live semi/independent lives, which in itself will lead to an increased cost in terms of social care.
175. It should be noted that the Consultation Paper failed to acknowledge the impact on children; the Equality Impact Assessments only being conducted in relation to parents yet:
- Disproportionate numbers of boys (black boys in particular) and children with SEN are permanently excluded from school.
 - 60% of all children who leave school without any GCSEs at all suffer from a disability.
 - Disabled children are 3 times more likely to be NEET (Not in Education, Employment or Training) by the age of 19. (Cassen and Kingdon, Joseph Rowntree Foundation, 2007).
176. There is also little point in bringing a judicial review claim to enforce a statement of special needs, if the statement itself has not been challenged properly and is so inadequately drafted as to be unenforceable. Law Centres practicing this area of law have found that in their experience the majority of statements initially drafted by local authorities are poor in their drafting.
177. The government must recognise that there are many types of dispute where individuals may need to rely on legal aid to assist them in cases where external factors beyond their control have affected their lives.
178. There is a significant cross-over between SEN cases and DDA claims. The Green Paper proposes that DDA claims will remain in scope, yet SEN appeals which may revolve around the same fundamental issues, but are aimed at improving the position for the future rather than merely compensating for past problems, are being removed. The distinction between an SEN case and DDA case is a fine one and will be difficult both to apply and to justify.

Litigants' ability to present their own case

179. It is suggested that the inquisitorial nature of an SEN hearing be taken into account in deciding if a person can represent themselves. The inquisitorial system is used throughout the rest of Europe for all cases and there is no suggestion that those cases would be able to proceed without representation purely because they were being heard within an inquisitorial arena. It is because education cases are presently not funded at the Tribunal hearing itself, that it is so important for them to be funded at an earlier stage so that clear arguments can be presented. While it may appear that the Tribunal merely has to apply some basic rules to some straightforward facts, this is an area which is full of legal complexities far beyond the average persons knowledge of the law. These arguments are extremely complex for lawyers to debate and require an in-depth knowledge of the subject area. A child with a disability is more likely to have a parent with a disability and consequently there is an additional barrier that faces applicants in these cases.
- 180.
181. In addition, in order to stand a real chance of success in Tribunal the parents of the child need to have independent expert reports. The ones obtained by and for local authorities provide little in the way of help and guidance, and in some cases, local authorities and health trusts issue guidelines specifically preventing their experts from providing details of the kind of specified and quantified provision that the child needs. At a recent meeting of the South West User Group of the SEND, one of the local authority representatives queried why it was that the Tribunal did not accept many of their reports. The deputy President, Judge John Aitken, indicated in reply that parental reports were often more detailed and more independent as the educational psychologist for example, was not employed by the local authority. In addition, many health service reports were very brief and non-specific. Law Centre experience is that parents who do not have access to such reports are at a serious disadvantage in all but the most obvious of Tribunal appeals. The cost of such reports is outside the financial resources available to those who would be entitled to legal aid representation.
182. In order to present arguments at court or in Tribunal, a person has to be clear about what evidence is required and on what the law requires. Parents do not have this knowledge and frequently focus on aspects of their child's provision that is irrelevant, (such as health or social services provision) and do not focus or bring evidence on the important points. Whilst Tribunal panels may be able to ask some questions during the hearing itself, they are not able to get at evidence which has simply not been thought about in advance.
183. By the very nature of these cases disability is involved, families can often be at breaking point. For example, in the case of a child that is seeking a residential placement, parents will have experienced the extreme pressure of trying to care for a disabled child and find it extremely difficult to focus on anything other than the day to day struggle. Because of this they may not be able to mount a

sufficiently strong case for a residential placement which ultimately is needed as the only way of keeping the family together. .

184. Yet another key issue is equality of arms. Local authority caseworkers have a wide experience of these cases, both appearing in Tribunals and getting access to a legal team. In some areas, local authorities almost invariably appear represented by an experienced education law barrister, regardless of whether the parent has any support either from a representative at the hearing or throughout the process. This is extraordinarily intimidating for parents. Parents of a disabled child are at a significant disadvantage not only do they have a lack of legal and technical knowledge but they will also suffer the anxieties of dealing with a case that is so personal to them, as well as the pressures of caring for their disabled child and the rest of their family at the same time.
160. It is important that recognition of the impact of a child being forced to abstain from school for reasons such as exclusion have on the family as a whole. In a recent study of the outcomes for children and families undertaken by ADP Consultancy with Islington Law Centre one of the most striking factors was the ability of parents to resume work once they knew their child was safely in school. An unexpected result/outcome was to learn that many of the clients who had not been able to work due to their child not being in school were now in employment.
185. In many cases, local authorities appear to prefer to deal with lawyers rather than the parents in the legal proceedings. A recent issue of the Local Government Lawyer newsletter, reporting on the proposed legal aid reforms set out the view that this would not be helpful to local authorities. As local authority resources are already stretched and limited, the extra time that caseworkers will have to spend dealing with confused and disadvantaged parents will put even more pressure on their resources. This will impact adversely on their overall service delivery to fraught and anxious parents of disabled children.
186. It appears that no legal aid will be available to go to the Upper Tribunal to appeal against a decision of the First Tier, despite the fact that this is almost invariably on a point of law which parents are extremely unlikely to pick up for themselves and even less likely to represent successfully. To make matters worse, it also seems that there will be no legal representation to take the matter on to the Court of Appeal if necessary. Given that the only appeal rights in this area relate to appeals on points of law, this decision seems irrational. In effect, the parent of a child is dependent on two arms of the state (the SEND and the LEA) to get decisions right for their child unless they have sufficient funds to challenge the state.
187. The majority of cases are SEN cases and these will frequently involve a significantly high level of complexity. Anything statute based is complex by its very nature and education has received a significant number of changes to legislation over recent years.

188. The previous Government commissioned Brian Lamb to produce a report on the workings of the SEN system, and he came to conclusions which are very relevant for the current proposals from the Ministry of Justice. The relevant recommendations from the final Lamb report are set out in detail in Chapter 5. The following sections are particularly relevant:

“5.80 It is better for everyone if provision is made for children without recourse to the Tribunal. However, the cases going to a hearing are becoming more complex and issues under contention are more likely to be matters of law to be decided, rather than matters of fact to be established. Despite changes in the Tribunal system, many parents are finding appeals too difficult and complex and feel unable to pursue their claim without legal support. This leaves only those with considerable personal and financial resources able to afford representation.

5.81 With increasing complexity and in the interests of equity legal aid should be available for parents attending a Tribunal hearing. This is a matter with direct consequences for parental confidence. However, subject to financial qualification, there is already provision, for ‘exceptional funding’ where a case meets a criterion of overwhelming importance to the client or a threshold for complexity. This scheme has been little used, is not well publicised and the procedures for accessing the funding are reported as being slow and complex.

5.82 The Ministry of Justice should review the procedures and the timescales for accessing funding with representative legal advisers working with parents of children with SEN. The scheme should be re-launched by March 2010. If a re-launched scheme does not increase access to legal aid in complex cases, all parents who qualify should be entitled to legal aid for representation at Tribunal.”

189. In the Islington Law Centre study parents were very vocal in their view about their own ability to represent themselves. One parent quoted;

“The people we had known and built up relationships with within the Local Authority departments suddenly wouldn’t co-operate anymore and there was no longer any more joined-up thinking. So that’s when you had to fight your case. The people you thought were always on your side were transparently no longer as they had to defend their own positions and it was quite a bizarre situation we were in - if it hadn’t been for people such as yourselves (Law Centre) we would have got nowhere”.

“You are faced with a bureaucracy and you are one person and it doesn’t work - if you have a fulltime job you cannot fight it. If your child has a broken tooth you take them to a specialist but this is like

being up against a huge brick wall and you don't know which brick to start picking away at or build on, it's too big and with conflicting reasons, responses and views and there is also subterfuge".

190. Although a significant number of other recommendations in the Lamb report were in fact implemented, this latter one was still under discussion at the time of the General Election in May 2010, in order to try and sort out the mechanics of such a scheme which the DCSF (as it then was), supported. While we accept that it is the prerogative and duty of the new Government to look again at spending commitments, the current proposals are wholly retrograde and fly in the face of available evidence.
191. An additional area fraught with difficulty is that of 'looked after children'. In these cases the corporate parent is also the local authority which determines their education and how much money will be spent on it. Consequently if that local authority gets the decision wrong, there will be no-one to challenge this unless the foster parents are prepared to pay for this out of their own income. There is a high percentage of children in the care system with special educational needs, and if there is no lawyer to fight their corner they will get forgotten. All research shows that looked after children currently perform at the bottom of all league tables for educational achievement and are at high risk of subsequent social problems and criminal behaviour.
192. There is concern that Disability Discrimination Act cases will be missed because clients say that their case is about admissions or exclusion when the true root of the problem is related to a disability. This is a particular risk if a non-specialist telephone gateway is used to assess the case initially and decide whether it falls within scope. Disabled children and those with special needs are 3 times more likely to be excluded than other children. The consultation paper fails to recognise the underlying disability related root causes or carry out any proper impact assessment on these.
193. The checks and balances that these types of case put on the provision of services by the local authorities is very important and if these are removed then there is a risk that local authorities may be more inclined to meet the needs of children whose parents they know will be in a position to take the matter further rather than those from poorer areas who will have little or no recourse to redress. This can only lead to a diminution of services for disabled children, particularly at a time when local authority budgets are under severe pressure.
194. The description of educational issues sometimes falls far short of the type of services that are dealt with under this area of law and appears designed to minimise the importance of the issues by focusing on exclusions and students. The majority of cases are SEN cases. There are suggestions that these cases "may affect a child's educational attainment and future life choices". In reality these cases may be the choice between being able to live independently as an adult in the future or remaining institutionalised for the rest of their life. Similarly failing to provide the right therapies may prevent a disabled child from learning to communicate so that they remain unable to communicate for the

rest of their life. These are not simple life choices, they are human rights. They are no less worthy of consideration than the rights of the elderly to live their lives in dignity as mentioned under the section on community care. In addition, the statements on life choices in the context of exclusions seem to presume that the child who has been excluded has actually committed the offence alleged against them. Head Teachers can and do get such decisions wrong, yet on the basis of this argument a completely innocent pupil is to be deprived of legal representation for life choices he or she has not made. The person charged in a criminal court with the same offence is of course entitled to support but a child (who may even be below the age of criminal responsibility) is not to be given legal advice. This, on the face of it, seems contrary to common sense.

The availability of alternative sources of funding

195. Alternative sources of funding do not apply to Education cases. The vast majority of these cases are not related to damages and therefore CFAs are not an alternative.

The availability of other routes to resolution

196. The Advisory Centre for Education and the charity Independent Parental Special Educational Advice, which both have volunteers and staff who provide help for parents are quoted in a recent Times article as being "swamped" with requests and cannot take on more work, as the Government has suggested. Education law practitioners have discussed the proposals with ACE and IPSEA and the National Children's Bureau (whose members include the National Parent Partnership Network). All these organisations have stated in no uncertain terms that they were not consulted by the MoJ (or indeed any other body) before this proposal was made in the consultation paper, and are extremely concerned at the suggestion that they can undertake work for which they simply do not have the capacity. ACE does not carry out casework for Tribunal appeals and parents are normally limited to a short telephone conversation which is inadequate for a proper management of a case.
197. IPSEA relies on practitioners to carry out the case preparation for Tribunal on many of the cases they represent, they do not fund expert reports as they do not have capacity. They do not have the finances to deal with disbursements. As a result many of the poorest members of society including many parents who themselves have learning difficulties will not be helped in any way through the system. Parent Partnerships, similarly, are unable to take on this role.
198. Using the Ombudsman to deal with education cases is a very slow process often taking in the region of 6 months or more. They do not deal with SEN cases, which are the vast majority of cases taken and arguably the most significant. Additionally, the Ombudsman does not have any powers to compel

the local authority to act they can only make recommendations. While many local authorities will follow recommendations, not all do.

Exceptional funding

199. 'Exceptional funding' – very few claims have been put forward for exceptional funding under the present system because of the excessive amount of time it takes for a decision to be reached, and the vast amount of paperwork it generates in order to try and persuade legal aid officers, with no specialist knowledge, what the case is really about. Under the present system of exceptional funding the application is made under legal help which at least covers some of the costs involved in replying to what appear to be totally misguided questions and points raised by the LSC. Under the new system, practitioners will have to fund this work themselves and will simply not be prepared to do so, on the basis of practitioner experience so far. In addition, in recent cases, decisions have taken 6 months to come through. This is simply unacceptable in Tribunal cases with a two month statutory deadline for lodging an appeal. Given the small proportion that education law takes of the total legal aid budget, it is highly unlikely that the LSC will be able to provide staff with regular experience of education cases or the knowledge to handle them with any greater skill or rapidity.

Comparison with Community Care

200. Education cases are comparable with those of Community Care. The MoJ have stated that "we consider that the issues at stake in these cases are very important because they can substantially affect the individual's ability to live an independent and fulfilled life. Indeed, in many ways, education cases have a much longer lasting effect on someone's life. If someone is not receiving the correct level of respite care from social services, and is able to challenge this and get the correct provision put in place, their life rapidly returns to the position it should have been in. If however, a local authority delays in putting the correct educational provision in place for a period of time, the effects can last throughout a child's school career and into adulthood, manifesting in lowered self esteem, as well as poor educational achievement and significantly reduced ability to live an independent and fulfilled life. On this basis alone, it appears irrational to remove education from scope while retaining community care.

Question 4: Do you agree with the Government's proposals to introduce a new scheme for funding individual cases excluded from the proposed scope, which will generally provide funding where the provision of some level of legal aid is necessary to meet domestic and international legal obligations (including those under the European Convention on Human Rights) or where there is a significant wider public interest in funding Legal Representation for inquest cases? Please give reasons.

201. If, contrary to our objections, the proposed scope changes are pushed through then our view is that a new scheme for considering funding for otherwise excluded cases is essential. It is clear that Government is suggesting that this excluded cases funding scheme be the method to allow the Government to meet its obligations under European, international and human rights law, is insufficient to do so. For the vast majority of Law Centre clients, the complexities of making such exceptional funding applications are such that many thousands of people will continue to be denied legal aid, even where there is a clear international or human rights obligation for their cases to be funded. It is far from clear, given the whole destruction of the legal sector likely to be wrought by these proposals (especially the non profit legal advice sector), who will be able to assist clients in applying for legal aid in these cases.
202. We believe that many of the cases otherwise excluded do engage human rights issues and further that, certainly so far as Law Centre clients are concerns, most clients will be unable to represent themselves and, faced with the complexity of the legal issues and the legal process, will need representation to ensure their Article 6 rights to a fair hearing.
203. However we do not understand how these proposals will apply to work at the Legal Help Level – work which is just as likely to engage human rights issues as those at the Representation level. Is the MoJ proposing an exceptional funding scheme for individuals to use in order to access a £174 housing fixed fee or a £168 benefits fixed fee?
204. How is this system to be administered? Complex exceptional funding decisions are currently made by the LSC's Special Cases Unit and are reviewed by the LSC's legal team with final decisions being made by the MoJ. This is already a complex and expensive process. As far as we can see the MoJ has made no attempt to quantify the costs of administering such a scheme where it becomes the norm rather than the exception.
205. Further, as with other proposals in the Green Paper, we have seen no attempt at analysis of the additional administrative burden to be placed on providers or indeed on clients in having to apply for funding through this route. Certainly at the legal help level it is likely that the overall costs of making and processing the application will far exceed the legal help fixed fee.

Question 5: Do you agree with the Government's proposal to amend the merits criteria for civil legal aid so that funding can be refused in any individual civil case which is suitable for an alternative source of funding, such as a Conditional Fee Agreement? Please give reasons.

206. The merits criteria in the Funding Code already make clear that legal aid "may" be refused if a case is suitable for alternative funding however this criterion is rarely used by the LSC to refuse funding. This is because the vast majority of cases, which receive legal aid funding, are already unsuitable for alternative funding.
207. Conditional Fee Agreements tend to be available in "money" cases where damages are being pursued. There are already very few damages claims funded through the current legal aid scheme and there will be barely any at all if the proposed scope changes are pushed through. In that context this proposal seems pointless. For most areas, CFAs will simply not be available or appropriate, such as re-housing applications and welfare benefits and debt legal advice.
208. Moreover, who will decide if a case is suitable for alternative funding? Does the MoJ mean theoretically suitable or actually suitable – indeed will applicants have to prove that they have actively sought alternative funding through a CFA but have been unable to find a firm (or insurer) willing to fund the case?
209. If the LSC seeks to apply this criterion where alternative funding is theoretically available but actually unavailable then the volume of appeals to the LSC's Independent Funding Adjudicators will increase significantly.
210. Thus for this proposal to work, applicants will have to try to shop around for solicitors willing to take on cases under CFA, solicitors will have to see clients and refuse them, the final solicitor preparing the application for funding will have to spend additional time establishing and explaining the alternative funding position in the application, the LSC staff will have to spend additional time considering the application of the proposed criterion and the volume of associated appeals will be significant.
211. We note that no administrative burden calculation has been undertaken in the relevant Impact Assessment nor has there been any proper attempt at a costs benefit analysis for this criterion, particularly as against the types of cases likely to be funded if the scope proposals are implemented. It appears that there is no view in the Green Paper whether this change will save money or cost money.
212. Further this proposal will not assist the clients of not-for-profit legal organisations who are precluded from entering into Conditional Fee Arrangements with clients by virtue of the rules in the Solicitors Code of Conduct and, for many, by virtue of their constitutional documents.

Question 6: We would welcome views or evidence on the potential impact of the proposed reforms to the scope of legal aid on litigants in person and the conduct of proceedings.

213. As we have already discussed, Law Centre clients are, on the whole, different to those seen by private practice solicitor firms. As referred to earlier, many of our clients have mental health problems, learning difficulties, substance dependency issues, and language or communication difficulties and already live on the periphery of society. They are the most vulnerable; the most excluded; the least likely to be able to help themselves unassisted; and the least likely to be able to even begin to be able to litigate in person.
214. The MoJ impact assessment for this proposal acknowledges that more research is needed if this proposal is to be implemented but rather glibly refers to a finding that cases where the litigant was in person do not tend to last any longer than cases where the litigant is represented. This finding is not supported by other research in the area. Further it does not consider the many thousands of individuals who, faced with the prospect of having to present their own case, just give up and are thus effectively denied access to justice.
215. We refer you to the findings of research commissioned by the Law Council of Australia in 2004 (*Erosion of Legal Representation in the Australian Justice System*).
216. Following major cuts to the Commonwealth Legal Aid Budget in 1999 the Law Council of Australia undertook research to identify impact on courts 5 years on. They found that by 2002 filings at the High Court alone by unrepresented litigants had increased from 28% in 1998 to 40% in 2002 with only 0.7% of them successful. Across all courts they found that there were:
- Increased delays at all stages of proceedings;
 - Increased costs to the courts;
 - Increased costs to represented litigants;
 - Increased violent outbursts at courts;
 - Increased administration for both court staff and judges;
 - Lengthier cases as judges were required to provide greater and more detailed assistance;
 - Reduced ability of unrepresented party to negotiate a settlement or desire to do so;
 - Less likelihood of a settlement;
 - Greater likelihood of costs being awarded against an unrepresented litigant: 68%;
 - More than twice as likely for the unrepresented litigant to have case dismissed or fail.
217. Wholesale removal of legal representation and increased self representation is a fundamental change to the system of justice in this country and if it is to happen it must be part of a broader reform of the justice system, one which is

properly researched, assessed, planned and implemented – it should not be the by-product of short sighted and ill assessed cuts to the legal aid scheme.

218. Even if such changes were to be made, some contingency would need to be in place for those clients who, regardless of any improvements in the justice system, would still be unable to present their own cases. Those people are likely to be the individuals already being seen by Law Centres rather than those being seen by law firms. The proposals contained in this Green Paper will likely destroy the existing network of Law Centres and will therefore remove the very places that the most vulnerable clients turn to for help.
219. “Poor people are not rich people without money.” Removing legal aid will not suddenly educate them; it will not suddenly cure their addictions or their mental health problems; it will not suddenly give them the capacity or ability to resolve their own problems and present their own cases.
220. The Legal Services Research Centre, funded by the MoJ and LSC, has reported that those eligible for legal aid are significantly less likely to resolve their problems without assistance and that the consequences for these individuals is markedly worse than for individuals whose income is higher and who are thus ineligible for legal aid.
221. These proposals will fundamentally change the system of justice in this country. It will have the immediate effect of denying the most vulnerable in society any form of access to justice. Where there are court proceedings, those proceedings are likely to take longer to prepare for and to conduct and the outcomes for litigants in person are likely to be markedly less just. Many thousands of individuals, unable to present their own cases and having nowhere left to turn to help them, will effectively be denied any access to justice.

Our client was dismissed while on long-term sick leave with back trouble caused by an injury at work. He started his own Employment Tribunal claim for unfair dismissal. The claim was sketchy and in adequately set out or explained and appeared to include claims which the Employment Tribunal cannot hear.

The claim was started in January 2010 and although directions were issued in early April, the claimant was totally unable to deal with them. Furthermore the opponent did not understand the basis of the claims which had been made and from April to July were involved in frantic correspondence with the Tribunal which took up judicial time as they tried to get the claimant to clarify the case.

A hearing date set for two days in July had to be postponed till November. When we met the client in July we contacted the Tribunal and respondent to restate and clarify the claimant's case and reduce it to the real issues and presented it more powerfully to the respondent. We helped the claimant start complying with directions and gave him sound legal advice on his prospects of success.

He had not appreciated the legal obstacles to winning a case which he rightly saw as stemming from unfairness and was suddenly prepared to compromise where he had not been before. At the same time, presented with a more convincing claim, the respondent were prepared to compromise where they had not been prepared to consider it before and the claim was settled for £2000 in August, saving the need for any more Tribunal involvement or hearing time.

Our client took several claims against her employer. She started them herself and although there was a sound basis for some of the claims, some of the claims were inappropriate and all of them were presented poorly and were muddled. Because of the nature of the claims and the serious effect on her of the incidents complained of, she had inflated expectations of the value of the claims.

She was adamant that she would not settle for less than £100,000 and was determined to go to trial. The case was listed for a ten-day hearing. We tidied up and clarified the claims for her and at a subsequent CMD were expressly thanked by the Judge for doing so. We then managed, through careful legal advice, to persuade the client to settle the claim out of court for £35 000 and a lengthy hearing was avoided.

THE COMMUNITY LEGAL ADVICE TELEPHONE HELPLINE

Question 7: Do you agree that the Community Legal Advice helpline should be established as the single gateway to access civil legal aid advice? Please give reasons.

Question 8: Do you agree that specialist advice should be offered through the Community Legal Advice Helpline in all categories of law and that, in some categories, the majority of civil legal help clients and cases can be dealt with through this channel? Please give reasons.

222. We have combined our answers to questions 7 and 8.
223. No. A telephone-based service is and should continue to be a valuable method for accessing legal aid services but not the compulsory only or “single” gateway to accessing such services. This is the most damaging of all the proposals and the one that most seriously undermines equal access to justice.
224. We accept that it may be possible that specialist legal advice can be offered in all areas of law we do not agree that the majority of civil legal help clients and cases can be dealt with through this channel.
225. Currently the CLA helpline advises people who to a certain extent have self selected to use a telephone helpline. The effectiveness of CLA may therefore not be able to be assumed if the service is a compulsory single gateway.
226. Further, the proposal wrongly appears to assume that the bulk of Legal Help work involves simply preliminary advice. In practice, Legal Help frequently, and properly, involves casework covering the full range of “advice and assistance” (as this element of the CLS scheme used to be known). As well as frequently requiring documentary review and explanation, casework will typically also involve correspondence with other parties and continued liaison with client as well as, where appropriate, applying for a funding certificate. It is not possible to predict in advance which cases will and which will not require detailed follow-up or in depth casework. It is a mistake to assume that the majority of work can be undertaken over the telephone.
227. In many cases, the nature of the issues, the volume of documentation, the existence of current proceedings or communication difficulties will make telephone advice inappropriate. The cases that may be suitable for telephone advice are likely to be a small minority.
228. Around 45% of Law Centre clients only have access to high cost pay-as-you-go mobile phones. Many clients actually come to the Law Centre to use the telephone. Most of our clients cannot afford to ring a telephone gateway. Many will live in areas of poor mobile phone reception, especially those in rural areas, and will thus be unable to access the service when needed or, if they do, reception problems could lead to miscommunication or failure to properly hear or appreciate advice or instructions. A phone back service requires the client to lead an orderly life. Usually if the person is finally seeking help in desperation

(as are so many Law Centre clients), they want it now. Any type of barrier turns them away.

229. Telephone advice is certainly suitable for some types of case and is the most convenient way of accessing services for some people but this does not mean that it is the best way to access all legal aid services – indeed since publishing the consultation document the MoJ has, it seems, recognised this fact and has issued an addendum explaining that “emergency cases will not be required to ring the helpline” – although what is an “emergency case” is yet to be determined. Who will decide whether it is an emergency – is the client, who is already unable to resolve their own case without assistance, supposed to know and understand the criteria for emergency legal aid? In such emergency cases where do they go? Sadly they won’t be able to go to their local Law Centre as these may no longer exist as a result of these proposals.
230. At present people know where to go for legal advice locally. If individuals do not then local authorities and community groups know where to refer them. There are established and valuable local referral and outreach networks that have evolved to provide access to services for individuals who won’t or can’t walk into solicitors firms or who cannot access help online or through existing telephone services. These proposals will destroy those local networks and many thousands of people in desperate need of help will fall through the cracks.
231. If a single gateway is established the EIA estimates that face to face not-for-profit providers will lose 86% of their income (with for profit solicitor providers losing 74%) but this does not include the scope cuts. Alongside the cuts to scope (if pursued) the proposal will lead to Law Centres effectively losing 97% of their legal aid funding which in turn will lead a significant number of Law Centres closing (as indeed will law firms and other advice agencies when the cumulative impact of the scope cuts and phone service bits). The consequence will be a shortage of face to face providers which is contrary to the stated aim to cater much better for clients needs.
232. The MoJ is proposing a fundamental change to the way in which legal advice services are accessed and yet has not indicated an understanding of how the proposals will work. This is another example of the risk of basing whole system change only on consideration of the amount of money that can be saved from one Departmental budget (without looking at any other social or financial costs).
233. It is also based on some very unreliable figures. The Green Paper and Impact Assessments suggest that CLS telephone advice is around 45% cheaper than face-to-face legal advice but the paper does not seek to understand what might be driving this price difference.
234. In response to a Freedom of Information Act request the LSC has provided data which shows that the key factor is that CLS telephone cases average just over 2 hours in length. The current fixed fees for Legal Help are based on

national average case-lengths of 3.5 to 4.5 hours. The critical question must be why are CLA telephone cases significantly shorter?

235. There are various possible explanations. One is that the nature of telephone advice is such that only the simpler and quicker cases are dealt with by CLA telephone providers. This means that the more complex cases go to face-to-face providers.
236. As an example, the average case-length in a housing legal help matter at one London law centre is 6 hours. The Law Centre in question receives a fixed fee of just £174 for this work. If this work were to be properly done by a CLA telephone provider, charging by the hour as is allowed under their contracts, the likely cost would instead be around £286.50, an increase of 65% and not the decrease of 45% anticipated by the MoJ.
237. However there is another more disconcerting likely reason for the difference in case length. The original CLA contract made clear that if cases were concluded within 2 hours and 12 minutes, no legal help form (and full means assessment) would be necessary. This led many of the CLA providers to implement systems under which client files were closed after just 2 hours of work - a curiously similar figure to the average case length detailed by the LSC data. We strongly suggest that MoJ undertake a proper like for like analysis of CLA telephone work before suggesting it as a viable alternative to face-to-face provision.
238. Another stark figure from the data provided in the Impact Assessment is that 650,000 matters appear to have been resolved by the operator service without having been referred to a specialist provider. These are highly likely to have been generalist matters which did not fall within the definition of legal aid contained within section 4 of the Access to Justice Act and which could not have given rise to a Legal Help matter start. Presumably the operator service has been paid for fielding these calls and dealing with these issues. Had those individuals presented at a face-to-face provider, that provider would have determined eligibility for legal help and, if the client's case did not meet the relevant criteria, no legal help would have been given and no charge against the LSC made. It seems that face-to-face provision is cheaper than CLA telephone advice whichever way you do the sums.
239. Many Law Centre clients, indeed many people in society, will not be able or will be unwilling to use a telephone based advice service. Many do not have phones, many have language, education, social or other difficulties which preclude them from accessing such services or, even if they can access them, from properly explaining their predicament – often it is only by review of the documents and correspondence that a legal adviser can establish whether the client has a case suitable for legal aid funding and thereafter what help needs to be given.
240. Either the scheme will operate as a 'successful' gateway preventing people from accessing legal advice or it will add an additional tier and therefore additional costs. If it denies people access to face-to-face legal advice it will

operate to undermine the position of those people who struggle with the phone due to language lifestyle health and other factors.

241. The Green Paper rightly points out that some people find it difficult to take time out of the working day to visit a lawyer, but equally many clients insist on being seen in person, for the reasons set out above amongst others, and there are serious equal opportunity implications in the proposal. Again information published by the LSC shows that disabled clients are significantly more likely to use face-to-face services than telephone services.
242. Many of our clients do not seek legal advice as soon as an issue arises, so by the time they do so they have amassed a large amount of paperwork and need face-to-face legal advice. The proposal states that the single gateway will provide a simple straightforward way of accessing civil legal aid access but our view is that for many it will in fact just put up further hurdles for vulnerable people already under a lot of stress who just want a local provider they know and trust and can visit in person.
243. Another difficulty with this proposal is that it means, presumably, the people agreeing to take the case on under public funding will not be those who then have to take on and run it. We strongly believe that the person who advises initially needs to be the person who then follows through with the work, as they will be the ones who have to deal on a practical level with the particular challenges the case presents.
244. We acknowledge that, for some people and in some cases, a telephone based service is a suitable and convenient method of delivery. Law Centres have provided a telephone service since their inception as a first point of contact and as part of set of services designed to meet the specific needs of individual clients. We also acknowledge that in appropriate circumstances the current CLA is a useful part of the legal aid system. Critically, we do not agree that the majority of civil Legal Help clients and cases can be dealt with through that channel.
245. Significant work has been done on the importance of the first contact for people with legal problems. The first contact establishes the trust that is required to get the whole story, all the evidence, and to understand the entirety of what is happening. If the client does not fully disclose or if the first contact fails to uncover the real or all the problems, then the situation will not be effectively resolved. The cost of the service is wasted. The problems escalate. Triage is not a cheap channelling device but rather a specialist service in its own right that requires an expert to perform it.
246. Similarly much research has been undertaken on how to most effectively and cost-efficiently work with disadvantaged and marginalised people. This work indicates that the key factor in achieving a lasting outcome is trust and the quality of the relationship between (in this case) the client and the lawyer. The first contact is critical for establishing an effective relationship.

247. This proposal indicates little experience of the difficulties faced by many thousands of clients, especially the clients who come to Law Centres. There is no consideration given to proper legal practice or the need, in many cases, to have face-to-face contact with clients and immediate access to documentation at the very first meeting – even to establish whether there is a legal issue or dispute at all.
248. It is often only in a face-to-face meeting that the adviser can sit with the client and review the various documents and likely un-opened letters brought by the client in a carrier bag that allows the adviser to (a) understand the nature of the case and (b) determine whether it is suitable for legal aid.
249. Further we believe telephone advice is not suitable for legal advice where a complex dispute has already arisen and there is a complex factual scenario to get to grips with. If discussions are going to be long, face to face meetings are better for taking in complex information. In many cases there has to be more than one meeting to properly discuss and investigate everything. Furthermore, complex employment law issues are generally “document heavy” and they will generally involve lots of papers, which need looking at. Often these have to be looked at without the client present, but even being able to glance at them when they are present is helpful and this is of course not possible if advice is over the telephone.
250. We strongly urge Government to reconsider this proposal. Its impact has not been properly thought through or evaluated. It should, we believe, be subject to an entirely separate evaluation and consultation process.

Question 9: What factors should be taken into account when devising the criteria for determining when face-to-face advice will be required?

251. It should be a matter of client choice – not because clients should necessarily be able to choose face-to-face services on a whim but because clients will already know which method of delivery is most suitable for them. Many will already be aware of their own limitations and will, without the need for any state intervention or the application of any artificial criteria, determine whether phone, online or face-to-face services are most suitable.
252. Telephone advice services have been freely available for many years now under the CLA scheme and have been well publicised by both the LSC and the service providers and yet many hundreds of thousands of clients continue to reject that method of accessing legal aid in favour of face-to-face local services. They do so because they recognise that, for them, it is the most appropriate and effective way to get the legal advice that they desperately need.
253. If these proposals are to be implemented, regardless of their clear inequity and the total lack of any proper impact assessment, then amongst the criteria must be:
- Complexity of the case and number of related problems
 - Complexity of the client's personal needs
 - Communications Difficulties
 - Vulnerability including mental health and substance dependence
 - Language Difficulties
 - Illiteracy
 - Lack of Resources
 - Value for Money

Question 10: Which organisations should work strategically with Community Legal Advice and what form should this joint working take?

254. The Law Centres Federation would welcome the opportunity to work with Community Legal Advice to continue making telephone based services one of the ways, but not the single way, to access legal advice services.

Question 11: Do you agree that the Legal Services commission should offer access to paid advice services for ineligible clients through the Community Legal Advice Helpline? Please give reasons.

255. No. The only reason that a telephone operator service would offer paid service through the CLA telephone helpline is if they are being paid to do so (either because they offer that service themselves or because they receive some form of fee from the provider which does offer the paid for service). This immediately creates a serious conflict of interest.

256. Individual call centres are likely to incentivise referrals to paid services (as this will inevitably generate income for the company) and this will likely lead to clients being inappropriately referred to paid services where free legal services are most appropriate.

257. Further it is hard to see what paid services are suitable for individuals such as Law Centre clients who, by the very nature of their entitlement to legal aid, are impecunious and likely unable to pay.

FINANCIAL ELIGIBILITY

Question 12: Do you agree with the proposal that applicants for legal aid who are in receipt of pass porting benefits should be subject to the same capital eligibility rules as other applicants? Please give reasons.

258. No. Those on pass porting benefits are already likely to be in the lowest income quintile and are most likely to need access to savings to cover emergency expenditure and to contribute towards ongoing living costs – as they are extremely unlikely to be able to rely on obtaining any form of credit (except from the least scrupulous of lenders). Unlike non-passported recipients they are more likely to need to draw on their savings and least likely to be able to replace them.
259. The capital eligibility limit for legal aid is already considerably less than that for other state benefits (including the very income benefits that passport legal aid eligibility) and this proposal targets those in society who have already been judged the most economically vulnerable,
260. In addition this will require a full capital assessment to be undertaken for these clients where none is now necessary. This will likely lead to 12 – 18 minutes of additional work per otherwise passported client. The impact assessment makes no attempt to analyse the cost of this additional administrative burden. Nor indeed, as with the other financial eligibility impact assessments, does it discuss the likely savings to be achieved if the scope and other changes are implemented.
261. It is difficult to see that there is any cost benefit in this proposal. It is targeted at the poorest and most vulnerable recipients of legal aid and is inconsistent with the approach taken by other Departments and in respect of other benefits.

Question 13: Do you agree with the proposal that clients with £1000 or more disposable capital should be asked to pay a £100 contribution? Please give reasons.

262. No. The relevant impact assessment makes clear that at least 2/3 of the savings associated with this proposal are from the “reduction in legally aided business no longer provided”. Given the nature of this proposal this means that the majority of the savings are intended to be made as a result of otherwise eligible individuals refusing or rejecting legal aid as a result of their refusal or inability to pay this £100 contribution.
263. This is designed as a punitive proposal aimed at the very poorest in society. It is intended and acknowledged to disincentivise legal aid take-up in the context of proposals which also seek to make legal aid available only for the most serious and complex of cases where it is clear, on the basis of the MoJ proposals, that individuals will not be able to resolve problems themselves or where alternatives to legal aid are unavailable – or indeed where those individuals are seeking to assert or protect fundamental human rights.
264. £1,000 to £3,000 is a small amount of available capital and for those who are eligible for legal aid based on their income, these miniscule reserves will be essential, especially at a time of increasing fuel, food and other living costs and employment uncertainty.
265. The proposal is that the legal aid provider collects this contribution but no attempt is made to establish the likely cost of the additional administrative burden of collecting and processing this payment. Clients are unlikely to present with this money and many may be reluctant to pay it quickly or even in one tranche. Some will ask to spread the payments and ultimately the time spent discussing the payment and explaining why it has to be made, accepting the payment (or indeed chasing it) and finally banking and accounting for the payment will likely exceed the £100 in any event.
266. For Law Centres this proposal would also damage the very proposition that lays at the heart of our relationship with clients, namely that we do not charge them for our services. The reason many people feel that they can come to us for help is because they know that we will not charge them for providing that help. Pushing ahead with this proposal will damage the very basis of our trusted role within the community.
267. Lastly this proposal is estimated to lead to likely savings of between £1 million and £3 million but this is based on current spend. If some or all of the proposed scope cuts are implemented then this proposal is likely to have negligible financial benefit to the legal aid budget and will cost provider significant amounts to administer.

Question 14: Do you agree with the proposals to abolish the equity and pensioner capital disregards for cases other than contested property cases? Please give reasons.

268. No. This is an unfair attack of the savings and capital of those who, in the case of pensioners, have contributed most to society already and who will be unable to access capital, especially capital locked in the equity of a property.
269. This proposal confuses the value of property with the capacity of property owners to access that value.
270. Those who, based on income, are otherwise eligible for legal aid are extremely unlikely to be able to access finance or credit and are therefore unlikely to be able to unlock the value of their equity. If they are able to obtain finance then the impact of repayments or up-front costs are likely to make it impossible for them to actually obtain the loan of proceed with the matter – and therefore they will be denied legal aid (see the answer to question 13 above).
271. The average costs incurred under a legal aid certificate can often be somewhere between £5,000 and £7,500. An unsecured personal loan of £7,500 to be repaid over 48 months will involve a repayment of around £180 pcm (at current interest rates). This will have a significant, and for many unmanageable, impact on monthly income versus expenditure. Whilst lower rates can be achieved for secured loans, these loans typically require up-front expenditure on legal fees etc.
272. These proposals are likely to end up costing more than they save. Borrowing £7,500 over 48 months will cost the client over £1,150 in interest payments – clients who are already accepted as being in the lowest 2 income quintiles and who will, if the other proposals are implemented, be seeking legal aid for the most serious and complex of cases.
273. These proposals are unfair and the impacts have not been properly considered.

Question 15: Do you agree with the proposals to retain the mortgage disregard, to remove the £100,000 limit, and have a gross capital limit of £200,00 in cases other than the contested property cases (with a £300,000 limit for pensioners with an assessed disposable income of £315 per month or less)? Please give reasons.

274. This proposal continues to confuse the illusory money in property equity with accessible money, especially for those whose income would otherwise qualify them eligible for legal aid.
275. Whilst we do not disagree with the removal of the £100,000 mortgage disregard we do object to its replacement with an equally arbitrary and meaningless £200,000 (or indeed £300,000 for pensioners) gross capital limit.
276. This arbitrary sum will immediately put those living in the south-east (or indeed in otherwise affluent areas of the country) at a disadvantage because of the existing disparity in property values from area to area.
277. If there are to be capital / property related disregards then they should reflect, as a percentage of value, the average property prices in given zones or areas, subject to minimum thresholds (e.g. £200,000 or X% of the value of the equity, whichever is higher).

Question 16: Do you agree with the proposal to introduce a discretionary waiver scheme for property capital limits in certain circumstances? The Government would welcome views in particular on whether the conditions listed in paragraphs 5.33 to 5.37 are the appropriate circumstances for exercising such a waiver? Please give reasons.

278. If the proposals in respect of capital and other disregards are implemented (proposals with which we strongly disagree – see above) then a waiver scheme will be essential. Most otherwise eligible applicants will find it impossible to obtain credit to unlock their capital and those that could technically obtain credit would be unlikely to be able to afford to pay for it (see the answer to question 14 above). As a consequence the LSC will need to become lender to these individuals.
279. Credit from the LSC would be necessary where the applicant has been unable to obtain credit or where, even if credit were available, the repayments would cause financial hardship.
280. Given this the conditions set out in the Green Paper seem appropriate.
281. We would however question whether there has been any real cost benefit analysis for this and for the other eligibility proposals. The use of the waiver scheme is most likely to be the norm rather than the exception. This will involve individuals making futile applications for credit. This will cause significant burden to lenders who will be required to process many thousands of obviously futile applications and to provide written refusals. These applications will also likely adversely affect the credit ratings of those making the applications.
282. The LSC would then need to maintain the staffing and infrastructure to process these credit applications, to register any associated charges and enforce and recover monies on the sale or other disposition of the properties in question.
283. Further if these are to be contractual charges (rather than statutory charges) then there will be additional costs associated with registration and potential in terms of seeking any necessary consent from existing mortgage holders.
284. The impact assessment for these proposals fails to address any of these issues or indeed to do any proper cost benefit analysis.

Question 17: Do you agree with the proposals to have conditions in respect of the waiver scheme so that costs are repayable as the end of the case and. To that end, to place a charge on property similar to the existing statutory charge scheme? Please give reasons. The Government would welcome views in particular on the proposed interest rate scheme at paragraph 5.35 in relation to the deferred charge.

285. See the answer to question 16 above. If there is to be a waiver scheme then it is essential that the charge be placed on the property as discussed however, for the reasons given above, we do not consider this approach to be in any way cost effective.

286. Any interest should be simple interest and the rate based on the prevailing base rate but with a cap of 8%. The interest rate should be reviewed at least every 6 months to ensure that clients are receiving the best possible rate.

Question 18: Do you agree that the property eligibility waiver should be exercised automatically for Legal Help for individuals in non-contested property cases with properties worth £200,000 or less (£300,000 in the case of pensioners with disposable income of £315 per month or less? Please give reasons.

287. Yes but only subject to our response at Question 15.

Question 19: Do you agree that we should retain the 'subject matter of the dispute' disregard for contested property cases, capped at £100,000 for all levels of service? Please give reasons.

288. Yes but not capped at £100,000. The subject matter of dispute status recognises that those applying for legal aid are extremely unlikely to be able to secure any credit against the property or indeed to otherwise unlock the value of the property as a result of the dispute over ownership.

Question 20: Do you agree that the equity and pensioner disregards should be abolished for contested property cases? Please give reasons.

289. No. In contested property cases, applicants are extremely unlikely to be able to secure any credit against the property or indeed to otherwise unlock the value of the property as a result of the dispute over ownership.

Question 21: Do you agree that, for contested property cases, the mortgage disregard should be retained and uncapped, and that there should be a gross capital limit of £500,000 for all clients? Please give reasons.

290. No. See our response to Question 21 above.

Question 22: Do you agree with the proposal to raise the levels of income-based contributions up to a maximum of 30% of monthly disposable income? Please give reasons.

291. This does not apply to Law Centre clients.

Question 23: Which of the two proposed models described at paragraphs 5.59 to 5.63 would represent the most equitable means of implementing an increase in income-based contributions? Are there other alternative models we should consider? Please give reasons.

292. We do not support any of the proposals.

CRIMINAL REMUNERATION

293. LCF makes no comment on the issue of Criminal Remuneration other than to support the response to this Green paper submitted by the Legal Aid Practitioner's Group.

CIVIL REMUNERATION

Question 31: Do you agree with the proposal to reduce all fees paid in civil and family matters by 10% rather than undertake a more radical restructuring of civil and family legal aid fees? Please give reasons.

294. No. There is no 10% margin in the current fees.

295. Research undertaken by LCF on the impact of the introduction of the Fixed Fee, and provided to the Minister's Legal Advice at a Local Level Study in 2009, showed that Law Centres have subsidised the current fixed fee with their reserves which are charitable funds accrued for charitable purposes. This proposal alone has the potential to force the insolvency of many Law Centres and legal aid practices.

296. It is important to remember fees paid in civil cases differ depending on the level of service. In terms of Controlled Work, especially Legal Help, the rates typically paid are standard (fixed) fees (unless the case becomes exceptional). For Licensed Work (under legal aid certificates) and for exceptional Controlled Work cases at, the rates paid are Prescribed hourly rates.

Legal Help

297. Legal Help is paid by way of fixed standard fees. For a Housing matter that fee is just £174 (£200 for Debt and £168 to Welfare Benefits). These fees can already pay for up to 9 hours of work in some cases.

298. These fees are supposed to reflect an average matter cost based on an underlying hourly rate and an average case length of around 4 hours. The assumption underlying these fixed fees is one of swings and roundabouts – with some cases taking less than 4 hours and some taking more but the average staying at around the 4 hour mark.

299. This average case-length was calculated by reference to the average length of time reported by private practice solicitors working under the previous LSC Standard Civil Contract and was, it is suggested, reflective of the work undertaken for clients seen by those solicitor firms.

300. These fees were not calculated by reference to the work done or clients seen by Law Centres and other not for profit agencies (as, at the material time, they were paid under an entirely different scheme contained in a different contract).
301. As we have already explained, ours are not typical clients. Many have significant difficulties and many; coincidentally have been turned away from for-profit law firms, unwilling to take on such complex clients or cases. As a result, the lawyers in Law Centres find that the average case-length is not 4 hours but rather 7 hours. This is not surprising given the nature of the clients that they see.
302. This means that most Law Centres are already being paid for significantly less work than they actually do – and are therefore already receiving a lower underlying hourly rate than solicitor firms (1/7 the fixed fee rather than ¼ the fixed fee). This proposal will make Legal Help almost certainly non-viable.
303. We accept that the average case length Legal Help data held by the LSC is less than 7 hours. However that is a result of under-recording. Many agencies only record the actual time spent on a case if it is likely to go to exceptional.
304. The recent LSC tender process has led to many Law Centres receiving the minimum of just 100 matter starts (and in some cases just 50 matter starts). 100 matter starts, at our average case-length of 7 hours, will take around 700 hours – that's 0.65 FTE (based on a FTE delivering 1100 hours of legal advice work per year). However the fee income capable of being generated by those 100 matters (at the relevant fixed fee of £174) is just £17,400 – insufficient to secure the services of the caseworker necessary to do the work in question. A 10% reduction would take this figure down to £15,660.
305. This proposal affects Legal Help and fixed fees differently to the way it affects certificated work and hourly rates. In the context of Legal Help it is incompatible with the way in which the LSC has just commissioned legal services and awarded matter starts. It will further have a disproportionate impact on not for profit agencies that already operate at the very margins of financial viability.
306. If rate cuts are to be implemented, and we strongly disagree that they should, then they should be implemented at the time of the next tender exercise and in such a way that the effect can be mitigated by the volume of cases bid for and awarded in that process.

Hourly Rates

307. The market rate for an 8-year plus qualified solicitor doing County Court work in outer London, as recognised by the SCCO, is around £215. The LSC prescribed rate payable for legal aid work is just £70 per hour, already £145 below the market rate.

308. This prescribed rate has been frozen since 2000 whilst inflation has averaged 3.5% across the period.
309. Legal aid work is already, on an hour by hour, case by case basis, underpaid. To reduce this already low hourly rate by a further 10% seems to have no reference to the actual costs of doing this work or indeed to the market rates for doing such work.
310. The Green Paper suggests that any fee reductions will not be imposed until the full impact of the scope changes can be evaluated. However, MoJ officials have made it known that the fee cuts are anticipated to be implemented in October 2011, some months before the scope changes are likely to be debated in Parliament and implemented, and therefore before it is possible to know and assess their likely impact.

Question 33: Do you agree with the proposal to cap and set criteria for enhancements to hourly rates payable to solicitors in civil cases? If so, we would welcome views on the criteria which may be appropriate. Please give reasons.

311. We agree that enhancements should be capped and we broadly agree with the caps suggested in the Green Paper. We see little justification for 100%-200% enhancements in the current financial climate.
312. We do not however agree that the MoJ or LSC should set further criteria for the award of enhancements, especially as they have not in any way sought to set out in the Green Paper what those criteria are.
313. The Standard Contract, and the Unified Contract before it, already sets out detailed contractual provisions defining whether enhancements should be paid and then what issues should be considered when deciding how much enhancement should be paid.
314. These contractual provisions are based on established costs law and court practice and do not, in our view, require further amendments although we accept that further guidance on the interpretation of the contractual provisions may be helpful, provided that it does not seek to improperly limit the conditions in which enhancements are payable.

Question 35: Do you agree with the proposals?

- **To apply 'risk rates' to every civil non-family case where costs may be ordered against the opponent; and**
- **To apply 'risk rates' from the end of the investigative stage or once total costs reach £25,000, or from the beginning of cases with no investigative stage?**

Please give reasons.

315. No. Risk rates were rates invented by the special cases unit and seem based neither on the Prescribed Rates nor indeed to the underlying market rates. They are forced on legal aid providers in high cost cases who have no choice but to accept them if they are to continue representing their clients.
316. At some £145 less than the market rate, prescribed rates are already risk rates. Any solicitor doing work under a legal aid certificate recognises that the risk of doing so is that they may only be paid at the prescribed rate and there is no evidence that solicitors knowingly pursue unwinnable cases or that application of risk rates would, were this situation to exist, change behaviour.
317. There seems little more than anecdotal evidence that the use of risk rates has decreased the amount of litigation or indeed increased the number of cases settling.
318. This seems to be little more than a proposal to further cut payment rates as any widely applicable risk rate would have to be set out in the contract and would thus then become the prescribed rate.

EXPERT REMUNERATION

Question 39: Do you agree that:

There should be a clear structure for the fees paid to experts from legal aid;

- ***In the short term, the current benchmark hourly rates, reduced by 10%, should be codified;***
- ***In the longer term, the structure of experts' fees should include both fixed and graduated fees and a limited number of hourly rates;***
- ***The categorisations of fixed and graduated fees shown in Annex J are appropriate; and***
- ***The proposed provisions for 'exceptional' cases at out at paragraph 8.16 are reasonable and practical?***

Please give reasons

319. We recognise and support the proposal that better control of expert's remuneration needs to be imposed.
320. We are however concerned that limiting experts fees in this way could mean that leading and high quality experts will be unwilling to work for legally aided clients – which will have the effect of further increasing inequality of arms and will prejudice the capacity of legally aided clients to pursue cases and achieve justice. This could have a serious effect on the capacity of legally aided clients to achieve fair and proper outcomes.
321. We would support a longer term project to work with the legal professions and experts to codify the rates paid to experts and to apply appropriate payment rates however we do not support the proposals in this paper.
322. We believe that the potential impacts of this proposal, as with all others in this Green Paper, have neither been appreciated by the MoJ nor indeed properly assessed. We note that the LSC has grappled with the issue of expert fees for many years and that none of the detail of the various projects and pilots undertaken by the LSC in that regard are discussed or reflected in these current proposals. Indeed we note a total lack of reference to any data or research to support these proposals.

ALTERNATIVE SOURCES OF FUNDING

Question 40: Do you think that there are any barriers to the introduction of a scheme to secure interest on client accounts? Please give reasons.

323. We support the proposal to introduce a scheme to secure interest on client accounts with 3 provisos:

- The scheme must be voluntary;
- the money must be managed by an organization such as the Access to Justice Foundation and must not be incorporated into state provided legal aid funds;
- The funds are statutorily ring-fenced for the provision of legal assistance to the poor.

324. However we recognise that the biggest barrier to introducing such a scheme is that law firms will be unwilling, and for some financially unable, to forego monies that they were previously able to keep.

325. There is currently a small voluntary client account scheme run by Allen & Overy and Weil Gotshal and Manges. The revenue from the scheme goes to London Legal Support Trust to benefit legal advice agencies in London and the South East. The natural recipient in the long term for any larger scheme would be the Access to Justice Foundation which would ensure that the benefit is available throughout England and Wales.

326. We have concerns in relation to a compulsory scheme. Foremost of those is that experience in other countries, particularly the Carpa scheme in France, indicates that the administration of compulsory schemes is expensive in relation to the benefits. In a compulsory scheme much of the cost of administration would be borne by the scheme whereas in the current voluntary scheme the administration falls largely on the donor firms who accept it willingly.

327. In addition we are concerned that a compulsory scheme would affect the viability of smaller firms if spread to all firms. That could actually reduce access to justice especially in rural areas.

328. We would propose that a great effort be made to create a far more extensive voluntary scheme in line with the Big Society agenda. Initially the aim would be to attract as many as possible of the largest 100 firms with proceeds being devolved through the Access to Justice Foundation to the regional Legal Support Trusts to support local free legal advice agencies. The Foundation would retain some funds to support national agencies.

Question 41: Which model do you believe would be most effective:

- **Model A: under which solicitors would retain client monies in their client accounts, but would remit interest to the Government; or**
- **Model B: under which general client accounts would be pooled into a Government bank account?**

Please give reasons.

329. Neither model. The money must not be remitted to government but should be managed by an independent trust fund established for that purpose, such as the Access to Justice Foundation.

330. However we believe that client monies should be retained by the solicitors in their own client accounts and not in a central Government account. It would then be for the solicitors to remit the interest to the independent trust fund.

Question 42: Do you think that a scheme to secure interest on client accounts would be most effective if it were based on a:

- **mandatory model**
- **voluntary opt-in model; or**
- **voluntary opt-out model?**

Please give reasons.

331. None of the models. The money must not be remitted to government but should be managed by an independent trust fund established for that purpose.

Question 43: Do you agree with the proposal to introduce a Supplementary Legal Aid Scheme? Please give reasons.

332. Provided that the proposals made by Jackson are implemented and damages are increased such that and monies taken do not adversely impact the damages awarded for clients, we would support it.
333. Further any damages awarded to pay for future care costs or in respect of expenses already incurred should be ring-fenced and protected.
334. However the scope proposals are such that, if implemented, few if any damages claims will be funded under the legal aid scheme and therefore this proposal seems to be somewhat disingenuous.
335. We believe that the Government should consider an alternative approach to money claims and consider bringing more back into scope - including, for instance, personal injury cases.
336. The effect of the statutory charge was such that, when funded through the legal aid scheme, personal injury cases were cost neutral. As much money was recovered through the charge as was expended on cases.
337. If these cases were brought back into scope and a SLAS introduced, taking 10-20% of damages as a contribution to the legal aid scheme, we suggest that not only would this work be self funding but that it would also be a significant net contributor to the legal aid fund, such that it could support some or all of the areas currently suggested for cuts.
338. At present the benefit of excluding personal injury cases from scope is enjoyed by the insurance industry (for costs insurance) and by the legal profession (in the context of success fees). Removal of personal injury cases from the scope of the legal aid scheme has been instrumental in causing the current no win no fee litigation culture.

Question 44: Do you agree that the amount recovered should be set as a percentage of general damages? If so what should the percentage be?

339. The percentage recoverable should not be from general damages but only from damages not otherwise ring-fenced for essential future expenditure.
340. Jackson proposes a 10% enhancement to damages and therefore any SLAS contribution should normally be 10% however we can envisage cases where the damages are such the amount paid into the legal aid fund could be as much as 20%.

GOVERNANCE AND ADMINISTRATION

Question 45: The Government would welcome views on where regulators could play a more active role in quality assurance, balanced against the continuing need to have in place and demonstrate robust central financial and quality controls.

341. It is difficult to understand what this proposal seeks to achieve. The 2010 tender process and the new Standard Contract accepted Lexcel as an alternative to the LSC's SQM. In this regard, and for many existing legal aid providers, the Regulator (the SRA) is already the principal quality assurance provider.
342. However a number of the financial control requirements and quality provisions previously contained in the SQM were instead written into the Standard Contract. These can only be enforced by the LSC (either directly or through a contracted agency).
343. The real issue here is the introduction of less invasive and more risk based quality and financial control procedures. At present the LSC relies on burdensome audit procedures that are often seemingly indiscriminately applied to providers. It is difficult to see how making a Regulator responsible for administering these functions will be of any benefit at all.
344. Instead effort should be put into developing realistic and achievable contract rules; in contracting with high quality and reliable providers; in monitoring performance and being more sensitive about when audits should be undertaken – and more consistent in undertaking those audits.
345. The LSC's abandoned "Preferred Supplier" approach seemed to acknowledge and seek to address these problems but it was abandoned because of the costs of Peer Review as a gateway.

Question 46: The Government would welcome views on the administration of legal aid and in particular:

- **The application process for civil and criminal legal aid;**
- **Applying for amendments, payments on accounts etc.,**
- **Bill submission and final settlement of legal aid claims; and**
- **Whether the system of Standard Monthly Payments should be retained or should there be a move to payment as billed?**

346. The LSC spent some years exploring the concept of a preferred supplier system under which high quality providers would be subjected to lighter touch risk based procedures. We believe that the preferred supplier approach worked and should be reinstated.
347. At present, cases are funded case-by-case meaning that every individual case entails applications processes, potentially amendment processes and ultimately cost assessment and billing processes. Significantly less resource could be used if block contracting were introduced and where a single fee was paid for multiple cases.
348. The fee, number and nature of cases, and any exclusion could be defined and performance against any contract could be measured en bloc rather than case-by-case.
349. Previously the LSC model for commissioning services from the not-for-profit sector was to pay an annual fee for the provision of 11 hours of legal advice – rather than paying fixed fees for individual cases. Since the introduction of this fixed fee scheme we have seen no meaningful increase in the number of clients seen but a marked increase in the administrative burden (both for Law Centres and for the LSC) in processing those fixed fees. If the LSC were concerned about the number of clients to be seen then a minimum number could be contractually set.
350. Greater use of electronic working should be made as should greater use of devolved powers. In addition, removal of certificate limitations (in favour of robust final costs assessment) would reduce the need for amendment applications and associated appeals. This is particularly true of costs limitations which are automatically applied by the LSC computer system without any real reference to the nature of the case.
351. Returning the bulk of the bills assessment to the Courts will also save significant LSC administrative expense.
352. As discussed above, the many and various LSC audit/financial stewardship/contractual control procedures should be harmonised and properly structured and should be applied properly and consistently.
353. The system of standard monthly payments should be retained. It is easier to process for the LSC and provides cash-flow certainty for providers. Previous poor contract management by the LSC allowed large deficits to be built up by

some providers however new systems and more regular reconciliation should stop this situation from arising in future.

354. Significant cost to both the LSC and to legal advice providers is caused the LSC's seemingly random and inconsistent approach to audit (as mentioned above). Significant savings could be made by implementing a single contract compliance/audit system based on clear rules and detailed guidance which can be followed both by LSC staff and providers. Audits should be properly risk based and, within a rigid framework, tailored to the nature of the provider and the risk presented.

Question 47: In light of the current programme of the Legal Services Commission to make greater use of electronic working, legal aid practitioners are asked to give views on their readiness to work in this way.

355. Law Centres are ready and willing to engage in more electronic working however if the function of data entry is to pass from the LSC to the providers then they should be properly remunerated, by being allowed to include such work within their claims, for undertaking that work.
356. Further the LSC has a poor record for introducing new IT systems and therefore any more to greater use of electronic working should involve systems developed hand-in-hand with providers, which have been rigorously user tested and incrementally implemented..
357. Any associated software must be made free to use as must any associated support services.

Question 48: Are there any factors you think the Government should consider to improve the administration of legal aid?

358. A policy-stable environment would allow both the LSC and providers a chance to develop appropriate and improved administrative systems. LSC (and its successor body) needs to stop making changes. It needs to stop introducing new systems; new forms; new outcome codes; new procedures; new audits; new rules. It also needs to consistently apply the rules that it has and to publish clear, concise and unambiguous guidance on its approach to those rules. It often feels like changes to the administration of legal aid are made on a monthly basis. This increases costs to the providers as well as the LSC.
359. As an example, the LSC has for many years had a robust contractually based audit programme however it has failed to properly apply those audit functions. Now, reacting to criticism from the NAO, it has invented an extra contractual audit function (although it does not refer to it as an audit function) called “Financial Stewardship”. This wholly new audit function was introduced without proper consultation and was not backed by any proper guidance or procedures – indeed the latest version of the published guidance still contains inaccuracies. It is not even clear how this new audit function fits into the new Standard Contract or indeed what the appeal procedures are. This new audit process is now being applied to many hundreds of legal aid providers at significant expense both to the providers and to the LSC. As far as we can see no evaluation of the administrative burden of this process was undertaken and there was no clear justification for abandoning the previous audit processes.
360. What is needed is a period of stability and a scheme which properly understands the administrative burden being imposed and the difficulties faced by practitioners whose primary obligation and concern must be to their clients.

IMPACT ASSESSMENTS

Question 49: Do you agree that we have correctly identified the range of impacts under the proposals set out in this Green Paper? Please give reasons.

Question 50: Do you agree that we have correctly identified the extent of impacts under the proposals set out in this Green Paper? Please give reasons.

361. We have combined our responses to these two questions.

362. The likely increased costs of these proposals and their impact on the health of our society and legal system are vast. The impact assessments published with this Green Paper are of the poorest quality. We suggest that they do not, in any meaningful way, address the likely impact of these proposals. These impact assessments, whilst identifying some of the likely impacts, do not attempt any proper costs benefit analysis.

363. The cumulative impact assessment suggests that the totality of the savings achieved if all of the proposals are implemented would be likely be around £418 million but it is practically impossible to understand how this figure has been reached, especially given that the individual impact assessments contain no proper costs benefit analysis or indeed any attempt at such analysis (including even the administrative burden figures).

364. As far as we can see the impact assessments do not follow the Government's own guidance on conducting impact assessments. In particular they do not identify or set out the various options considered. The Government's impact assessment toolkit suggests that at the consultation stage

“all the options considered should be identified, together with their potential for achieving the stated objectives. A shortlist of options should be taken forward to the next stage of policy development and associated IA (using analysis of the costs and benefits to establish the most feasible solutions...)”.

It goes on to read,

“all the information presented in the IA Template should be explained in the Evidence Base. It is particularly important that the Evidence Base should show how the headline costs and benefits have been generated by clear and transparent presentation of figures and any assumptions used ... and robust evidence for key non-monetised costs.”

365. The impact assessments do not show the appropriate costs versus benefits and seem to seek to do no more than hint at the non-monetised costs – although we would submit that some of the non-monetised costs identified could and should have been monetised. It seems that the Government has treated as non-monetised costs anything that it could not be troubled to

monetise – including the critical question of how much these proposals, if implemented, will cost other Government Departments, local authorities and other parts of the public sector.

366. The approach taken in the cumulative impact assessment (and indeed in some but not all of the individual impact assessments) is to state the same figure for the cost as for the benefit (on the basis that “legal aid is a transfer payment hence the costs to the body making the transfer should equal the benefits to the body receiving the transfer”). We suggest that this is the wrong approach and not one consistent with the guidance on conducting an impact assessment.
367. In discussing the likely costs of these proposals the Government acknowledges that

“as a result of people who no longer receive legal aid or who choose to no longer take up legal aid tackling disputes in different ways, or of disputes remaining unaddressed, there may be a deterioration of case outcomes. In particular case outcomes might be less fair than beforehand. A significant reduction in fairness of dispute resolution may be associated with wider social and economic costs such as:

- *reduced social cohesion. For example, failure to apply the rule of law fairly may generate an inclination not to respect rules and regulations and not comply with social norms and expectations, generating social costs;*
- *increased criminality. This may arise if unresolved civil or family disputes escalate, or if criminal means are used to resolve disputes in future, or if a known lack of legal aid encourages people to take advantage of others who might find it harder to defend themselves in future;*
- *reduced business and economic efficiency. Failure to enforce rights and not applying the rule of law may undermine work incentives, business uncertainty and the operation of markets;*
- *increased resource costs for other Departments. If civil and family issues are not resolved effectively people might continue to rely upon the state, including because failure to resolve one issue may lead to another arising. This may include health, housing, education and other local authority services including services provided by the voluntary and community sector;*
- *increased transfer payments from other Departments. Similar to the above, reduced resource transfers from the legal aid fund might lead to increased financial transfers to the poorest, e.g. via welfare benefits or tax credits. For example, if people who previously received legal aid might use their own savings in future to finance a case and in doing so they might pass a benefits threshold.”*

368. Yet none of the impact assessments attempt to properly assess the likelihood, extent or financial or other costs of these impacts – impacts which are inevitable (rather than which “may” arise according to those drafting the impact assessments).
369. Thus to suggest that, in year 3, the costs of the proposals will be £379 million and the benefits will also be £397 million does nothing to help those considering these proposals, or indeed those making these proposals, decide whether the costs outweigh the benefits or vice versa.
370. Despite having identified the likelihood of increased transfer payments from other departments; of increased resource costs of other departments; of reduced business or economic; and of increased criminality, the Government has made no attempt at estimating the likely costs of these impacts.
371. Existing research, referred to previously, suggests that the net benefit to the public purse of £1 spent on legal aid is £10 saved. Even if applied only to the £60 million to be cut from the social welfare law Legal Help budget, that would suggest costs of £600 million versus the best estimate of savings of £418 million.
372. When considered alongside the likelihood of reduced social cohesion and the other non-monetised costs it is clear that not only do these proposals make no fiscal sense but further, that their likely adverse impact on society is hugely disproportionate to any short term financial benefits achieved.
373. Even if you drill down into the specific proposals you see a continued failure to attempt to properly evaluate the likely costs of implementation. In the context of the proposed telephone gateway, the proposals anticipate savings of around £60 million per year on the basis that telephone advice is 30-45% cheaper than face-to-face legal advice. We have already discussed that data shows the average length of a telephone advice case to be around 2 hours whereas the average length of a face-to-face case is around 3.5 to 4 hours (and for Law Centres, given the nature of our clients, the actual average is close to 5-7 hours). With around 105,000 housing NMS per year the cost, at the current fixed fee of £174, is around £18.27 million. If these cases were to be transferred to CLA telephone providers then, at the average of 3.5 hours per case (the figure arrived at when dividing the fixed fee by the nominal hourly rate), the costs would be £17 million (based on the acknowledged average CLA provider housing hourly rate of £46.31) however this does not include the associated operator costs. Indeed, the MoJ acknowledges that if all current legal help cases are instead put through the telephone operator service then that service would likely field 2.79 million calls each year at a cost of £8 per call (that's £22.32m), on top of the costs of providing the specialist legal advice. But this is just part of the likely increase.
374. The Impact assessment suggests that currently 60% of all calls to the operator service are resolved without the matter being referred to a specialist adviser. This means that on top of the provision of specialist legal advice (100,000

matters in 2008/09) the CLA operator service provided 235,000 acts of non-specialist non-legal advice (at a cost of £1.43m based on the current operator charge of £6.10 per call). None of these matters would have been chargeable to the legal aid fund had the client presented at a face to face service as none would have lead to a specialist Matter Start.

375. Of course if 60% of the calls taken by the service do not lead to specialist legal advice, and as we know that the 1.8 million matters likely to be dealt with by the CLA telephone service are all existing specialist Matter Starts, then it is likely that these non specialist calls will be in addition to the 1.8 million specialist matters dealt with through the service. Even if the 60% figure decreases to say 50%, the CLA telephone service will still cost an additional £7.2 million (900,000 calls at £8 per call) over an equivalent face-to-face service. In short, there is absolutely no evidence, on the figures provided by the LSC with the consultation paper and indeed afterwards in response to FOI requests, that the proposals to move away from face-to-face legal advice to a telephone based service will save any money at all.
376. The figures above are less than robust (as we do not have access to the full underlying data set) but we use them to show that even a cursory analysis of the data to hand would have allowed the MoJ to conduct some form of proper costs benefit analysis for these proposals, an analysis which would clearly have demonstrated that these proposals will result in additional costs rather than saved expenditure. In producing these impact assessments the Government has either been oblivious to data currently held by them or they have sought to deliberately mislead. Either way, the impact assessments are deeply flawed and cannot be relied upon by any reasonable decision maker in determining policy or in justifying decisions.
377. Further we are alarmed to see that other policy options, which we know to have been considered, have not been included either in the Green Paper or indeed in the impact assessments. As an example we understand that an option supported by some involved in developing these proposals was to leave areas of law within scope but to tighten the Funding Code criteria to make it harder to get legal aid where it was possible for the client to represent themselves or to find alternative assistance – in effect applying on a case by case basis, the very tests that Government suggests that it has applied to the areas of law as a whole.
378. We understand that this option was discounted as there would be no saving in LSC administrative costs and as the savings from legal aid expenditure would not be sufficiently large, despite the fact that the cumulative proposals appear to achieve savings of £68 million more than the Government is seeking to make (£418 million as opposed to the £350 million being sought). We are curious as to why this option was not outlined in the impact assessment as having been considered despite the fact that the Government's own guidance on impact assessments clearly states that "All the options considered should be identified, together with their potential for achieving the stated objectives."

Yet again it seems as though those proposing these cuts are only presenting half of the picture.

379. Indeed what also strikes as alarming is that despite the 2009-2010 data being freely available (on the LSC website), the MoJ has based its impact assessment on the 2008-2009 figures. The 2009/10 data shows that the number of people likely to lose legal aid as a result of these proposals is not 550,000 but rather 725,348. The proposed cuts effect around 66% of civil legal aid spend and 69% of expenditure on Legal Help. The MoJ suggests that 77% of the funding for not-for-profit agencies will be taken away leaving just 23% - but this is just based on the scope proposals. The impact assessment for the telephone gateway suggests that 86% of this residual work will be dealt with by telephone advice providers. This leaves just 3% of the original not-for-profit funding in place. It is hard to see that this type of analysis has been undertaken in the cumulative impact assessment.
380. Collectively these issues must lead us to question the proposals and of the impact assessments that accompany them.
381. Further we believe that the nature of the proposals is such that they demonstrate that Government has not properly assessed the impact on those currently eligible for legal aid and on the society more generally. In particular no proper consideration appears to have been given to its duties set out in the Equality Act 2010 (the Act). In summary, those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
382. The Act helpfully explains that having due regard for advancing equality involves:
- Removing or minimising disadvantages suffered by people due to their protected characteristics.
 - Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
 - Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
383. The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.

384. Data provided by the LSC suggests for instance that face to face legal advice services have 38.8% of clients described as disabled, compared to just 17.9% for CLA telephone advice (with the difference varying between the categories of law and being strongest in welfare benefits where face to face has 63.5% described as disabled compared to 22.4% for CLA telephone advice). Taking education work out of scope is likely to have a disproportionate impact on children and young people and their families from minority ethnic groups and those who are disabled. The removal of homelessness cases will, again, have a disproportionate impact on young people.
385. In employment cases clients are 55% women, 24% ethnic minorities and 9% disabled, in non-homeless housing they are 60% women, 31% ethnic minorities and 27% disabled and in welfare benefits they are 54% women, 27% ethnic minorities and 29% disabled. This compares to a national population of 51% women, 8% ethnic minorities and 18% disabled people. These figures show a significant adverse impact for ethnic minority people across all these categories and for disabled people in relation to non-homeless housing and welfare benefits.
386. Section 6 HRA imposes a clear duty on all public bodies, including the Ministry of Justice, not to infringe any of the rights it guarantees. This duty clearly applies to the formulation of policy to ensure that policies are not developed which, if implemented, would breach the rights protected in the HRA. The ability to access legal advice and representation is a vital part of the right to a fair trial under Article 6(1) ECHR. The ability to access a court is also central to the right to an effective remedy under Article 13 of the ECHR. The removal of legal aid for welfare benefits issues precludes people from protecting their possessions (as defined under Article 1 of the First Protocol). The inability to access legal advice and representation may also lead to violations of other fundamental rights protected under the HRA, such as the right not to be subject to inhuman and degrading treatment (Article 3, ECHR) and the right to respect for a private and family life (Article 8, ECHR). Given the engagement of these rights it is vital that the Ministry of Justice ensures that it is fully complying with its section 6 HRA duties to ensure that any changes made to legal aid do not breach these fundamental human rights.
387. The Equality Impact Assessments pay no regard to the impact these changes will have on children and young people across any of the equality groups. This breaks with the future equality obligations under the 2010 Act, and violates international obligations under the UNCRC (Article 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status)
388. These proposals will disproportionately affect women, young people, the disabled and people from BME communities. It is hard to see how they can be seen to be removing or minimising disadvantages suffered by people due to

their protected characteristics, taking steps to meet the needs of people from protected groups where these are different from the needs of other people and encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low!

389. Finally a number of impact assessments also contain inaccuracies, rely on non-evidence based statements and rhetoric to seek to justify proposals which, we suggest, even those making them must surely recognise, have no cost or wider benefit to society.

Question 51: Are there forms of mitigation in relation to client impacts that we have not considered?

390. Yes. We refer you to the Law Society's Access to Justice Review published in November 2010 which contains a number of well researched and argued proposals for decreasing expenditure whilst maintaining access to justice. While Law Centres Federation does not support each of the proposals we commend the approach taken and note that significant savings can be made while at the same time ensuring the maintenance of free legal services for the poor.
391. We believe that the answer lays not in removing people's rights and excluding them from the legal system but rather in simplifying and improving public sector decision making and clarifying laws and in removing waste.
392. Some potential options are:
- Adapting the Funding Code Criteria to make it harder to get legal aid where help could and should be accessed elsewhere or where the client could properly present their own case;
 - Bringing more money claims back into scope (particularly personal injury cases) and introducing a supplementary legal aid scheme where the income is specifically ring-fenced for legal aid purposes;
 - Introducing a levy on the banking and financial sector to pay the costs of providing legal advice on debt and associated issues;
 - Introducing a 5% increase to all court fees which could be paid into the legal aid fund and ring fenced to fund the legal aid scheme;
 - Encourage the courts to be more proactive in ordering costs against the polluter, especially where the polluter is a Government Department or local authority, as this costs disincentivise will, we believe, affect behaviour and improve the quality of decision making;
 - Simplify the administration of the legal aid scheme and re-introduce the pre-2007 block contracting concept for Law Centres and CABx thus saving considerable administrative expenditure;
 - Recognise and develop the importance of not-for-profit specialist legal advice providers and work with them to ensure the most cost effective methods of delivery.
 - The Government's over-arching agenda is to 'nudge' citizens to greater self-reliance. A successful 'nudge' is achieved through clever design. The most famous example is that to save money cleaning men's toilets, a fly was printed at the centre of the urinal. The clever design technique worked. To ensure the best use of public money, and to meet the needs of the poor, the system must be redesigned. Legal aid should be redesigned with the client at its centre, using the evidence of what works, particularly for disadvantaged people, using the expertise of those who work every day within their communities directly providing legal aid.

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