

Proposals for the Reform of Legal Aid in England and Wales

(Ministry of Justice)

Statement from the Disability Charities Consortium **14 February 2011**

We are the Disability Charities Consortium (DCC), an informal coalition of seven disability charities: **Leonard Cheshire Disability, Mencap, Mind, RNIB, RNID, RADAR, and Scope**. We offer information, support and advice to over ten million disabled people in the UK. The DCC comes together to work on issues of shared concern.

This statement sets out our strong opposition to the proposals for the reform of legal aid, which will have a disproportionate impact on disabled people. Some of our members will respond to the consultation individually and with more detail. We confine our comments to disabled people as users of civil legal aid.

Disabled people have worse life chances and are frequently denied the same opportunities as non-disabled people. Their lives are complex and the challenges they face even more so.

Access to justice is vital for disabled people to secure full and equal citizenship. The proposals undermine the principle of equal access to justice on which our legal system is based, which enables disabled people to challenge injustice, unfairness and violation of their human rights.

A third of disabled people in the UK live in poverty and disabled people are twice as likely to live in poverty as other citizens. Poverty is caused by a range of factors including unequal access to education and employment, health inequalities and the higher costs of living with a disability.

Disabled people also face significant discrimination in their day-to-day lives – e.g. in education, employment and public life – because of inaccessible infrastructure, lack of support, negative attitudes and social stigma.

Scope of legal aid provision

We strongly oppose the significant reduction of the scope of legal aid proposed by the Ministry of Justice.

While we welcome the decision to protect community care, public law remedies and mental health related law, the decision to retain these discrete areas of law alone is likely to be inadequate both to protect disabled people and to achieve the Government's aims of long term cost savings.

Disabled people rarely have single defined problems that fit into neat categories. For example, the very same "vulnerable people" that the Government identifies as requiring advice in areas of mental health and community care will also require timely housing and debt advice to promote their independence and prevent crises. Secondly, limiting advice to crisis point situations is less effective and ultimately more expensive than giving early support to prevent a crisis developing.

While we welcome the exemption of discrimination from the proposed reductions in scope, this will not prevent the proposals having a hugely negative impact on the lives of the many disabled people who seek the protection of the law in order to secure the rights to which they are entitled and need. A claim in relation to discrimination will often be intrinsically connected to other claims such as unfair dismissal, consumer issues or special educational need.

Most people do not recognise that they have a potential discrimination claim, and this only comes to light after initial legal advice has been sought. Even if they do recognise they have a discrimination claim, and that they will still potentially be eligible for legal advice and help, the infrastructure for such advice may simply not be there any more.

Excluding housing, debt, welfare benefits, education, employment and family law from the scope of legal aid will have a disproportionate impact on disabled people, as they are more likely to experience issues in these areas. This could lead to further marginalisation of disabled people, who will be at risk of falling below a decent standard of living, being excluded from education and employment, and driven further into poverty. Given the

concurrent significant reforms of the benefits system, the need for disabled people to be able to challenge erroneous decision-making could not be of more importance. Currently, in 40% of appeal cases a decision based on the Work Capability Assessment is overturned. Without legal aid for welfare benefits cases, people will be left with no recourse to appeal against a system we know is flawed.

We are also opposed to the removal of clinical negligence, which will disproportionately affect disabled people who are more likely to need to litigate these issues, by nature of their greater need for treatment and care. These cases are often complex, requiring detailed expert evidence and can take years to resolve. This is a technical area, which requires the input of a specialist lawyer, so disabled people in this situation would be unable to self-represent, contrary to the Green Paper's assertions.

Removing legal aid for asylum support and immigration will have devastating impacts on people with a disability or health condition facing issues such as refugee family reunion, domestic violence, or deportation. This will undermine their rights to protection as they are particularly vulnerable – due to language barriers and an inaccessible and complex system. Also, the stigma and dangers attached to disability and mental illness in some other countries which are not fully appreciated by immigration officials and tribunals.

As it is, disabled people often struggle to get fair justice in courts and tribunals as information is not provided in an accessible format and reasonable adjustments, for example sign language interpreters or extra time, are not offered. Many disabled people cannot “represent in person” for impairment-related reasons. For example, the very features of the court environment and justice process can be triggers for distress and exacerbate symptoms of mental health problems or learning disabilities – i.e. long sittings, unknown rules, authority figures and official procedures, questioning or interrogation. Legal help and representation is therefore essential to give disabled people equality of arms.

Community Legal Advice Telephone Helpline

It is proposed that the Community Legal Advice Telephone Helpline becomes the single gateway to legal aid. We are

extremely concerned about this proposal, as providing legal advice only in this way will not be appropriate or accessible for many disabled people. For people with a range of impairments – mental health conditions, learning disabilities, physical or sensory impairments – a sole telephone gateway may be an insuperable barrier to access. Moreover, diagnosis of the complex legal issues disabled people often face is just not possible via a telephone only service. Face-to-face legal advice can be crucial for people where people experience communication difficulties, mental distress or have clusters of multiple problems.

We believe there has been a failure to consider the need for reasonable adjustments to be made and the legal duty to promote equality of access. Disabled people should be able to access advice in a way that best promotes equal access to justice for them and this needs to be built into the system from the outset.

Eligibility

Access to legal aid has been successively reduced and now only those on the lowest incomes benefit from free access. Cuts in eligibility will hit disabled people hardest, as they are more likely to be users of legal aid and to be on low incomes.

The proposals fail to take into account the extra costs of living with a disability. 'Disposable income' is a misleading term as essential costs must be met from this, such as household bills and debt repayments, as well as the extra costs for disabled people e.g. charges, means-tested services, support to manage their condition. Disabled people's cases may also be more complex thus incurring extra costs.

Taking money from small amounts of savings (the proposal for people with £1000 to contribute £100 to their costs) would mean the sacrifice of essential disability-related items, presenting a barrier to accessing legal advice and representation. The rationale behind requiring contributions seems to suggest that litigation is a matter of 'personal choice' or that people are 'prone' to litigate. We are unclear what research has led the Government to the conclusion that this is prevalent amongst those who have recourse to legal aid, as in our experience a legally aided litigant may often have no choice in starting proceedings or may be drawn into them against their will.

Other sources of funding

The proposals place a high degree of confidence in the ability of the voluntary sector to step into the void left by the reduction of legal aid. Advice services provide a very important service, and are especially valuable in terms of early intervention and prevention of escalation of conflict and litigation. However, organisations which provide legal advice, e.g. law centres, CABx, Disability Law Service and some disability organisations, are already under considerable pressure and can only deal with a small number of cases. Advice deserts already exist across the country and these will grow with the tight squeeze on funding that many organisations experience, as cuts to local authority funding bed in. High quality legal advice is still very much needed to support disabled people's cases.

We welcome the recognition of the work that many advice services provide but we urge the Government to back this up with sustainable funding which is in addition to access to legal help and representation, not in place of it.

In reality, there are unlikely to be alternative sources of advice available for disabled people if legal aid is cut. The voluntary sector and pro bono sources of advice are already stretched and local government cuts are affecting them already. Legal expenses insurance and self-representation are not effective alternatives – the first being inaccessible and the second unrealistic to expect disabled people to navigate complex procedures and present detailed lengthy cases in person.

Equality impact assessment

The Equality Impact Assessments (EIAs) fail to express or represent adequately the true impact on disabled people. The figures are an underestimate as they are incomplete and do not include those who are carers, advocates, parents or associates of disabled people who may access legal aid on their behalf.

There is a reason why disabled people are amongst the biggest users of legal aid – that is because they are more likely to face a number of legal problems including challenges to their rights. Many

cases arise because of the failure of statutory bodies to meet their legal duties or because of their administrative shortcomings.

The EIAs should take account of the disproportionate impact these proposals will have on disabled people, as well as the likely cost to other government departments, local authorities, and indeed other budgets within the Ministry of Justice if advice is limited only to crisis situations. Early advice has been shown to bring significant savings to the public purse, with £10 saved for every £1 invested in early intervention.¹ We consider it would be short-sighted for Government to implement these reforms without attempting a whole system cost-benefit analysis and urge that there are **no** reductions in either scope or eligibility.

Conclusion

By withdrawing legal aid, the Ministry of Justice would be encouraging a culture in which failures of employers, service providers and public bodies to comply with the law are unchallenged and disabled people are penalised. Denying disabled people access to justice will have a devastating impact on their access to housing, right to family life, education and employment chances, health and wellbeing. Ultimately, these proposals will cost the state more in the long-run, as problems are not nipped in the bud but snowball into a crisis, which in turn will require other public services to make a costly and potentially longer-term intervention.

As an alternative to these proposals, we urge the Government to urgently review other costs drivers identified by the Law Society in their recent review of the system, including the administrative costs of the current legal aid system and procedural inefficiencies of the court systems. This fits squarely within the fiscal context in which responses to the Green Paper are requested.

We want a system that:

- Provides first-class advice and representation to disabled people and their families; available and easily accessible; on a range of issues;
- Operates with a minimum of bureaucracy; and
- Delivers fair outcomes.

¹ NEF consulting/Law Centres Federation (2008) *The Socio-Economic Value of Law Centres*

Legal aid is a vital means to challenge injustice, giving access to funding for people who need it, protecting the most vulnerable in our society, and providing the most efficient performance of the justice system and compliance with the government's legal obligations. The proposals put this all under threat. We call on the Government not to deny disabled people fair access to justice.

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