

# Unequal before the law?

The future of legal aid



Edited by Jon Robins

**SOLICITORS JOURNAL**  
**Justice Gap** series



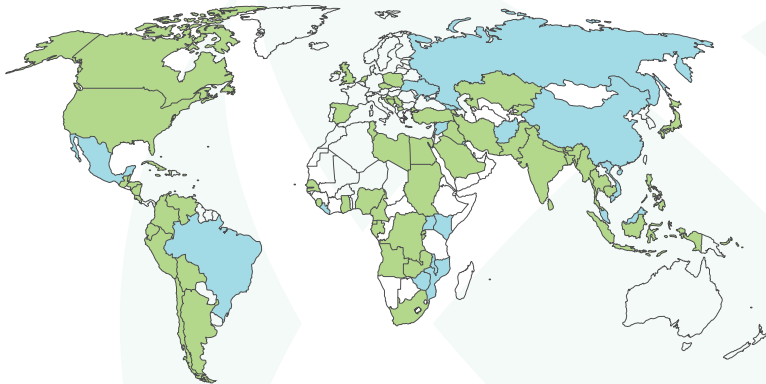
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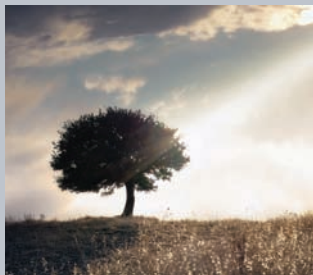
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*Linda Lee*

# 1. Foreword

## Protecting individuals for the benefit of society as a whole

What would happen if three disinterested people looked into the question of why we have legal aid and what would be the effect of reducing funding?

The Commission of Inquiry comprising Dr Evan Harris, Diana Holland and the Reverend Professor Nicholas Sagovsky have no vested interest in the issue. They have taken a dispassionate look at the facts and reported on their findings. They have considered the value of legal aid both to the individuals receiving assistance and to society as a whole.

The testimony the commission heard from individual clients was very powerful.

But powerful and moving as individual cases are, of even greater importance is the commission's recognition of how failure to deal with individual cases could impact on society as a whole. Legal aid is a vital part of ensuring that everyone is equal under the law. Government and others including some who are rich and powerful such as landlords, spouses, employers, and pharmaceutical companies, ignore or are ignorant of the protections that should be offered to individuals. Without legal aid these wrongs could not be corrected. If parliament's law

cannot be enforced, the rule of law is meaningless. The commission also found that legal aid prevents unnecessary public expenditure by tackling problems early thus saving greater expense for other government agencies.

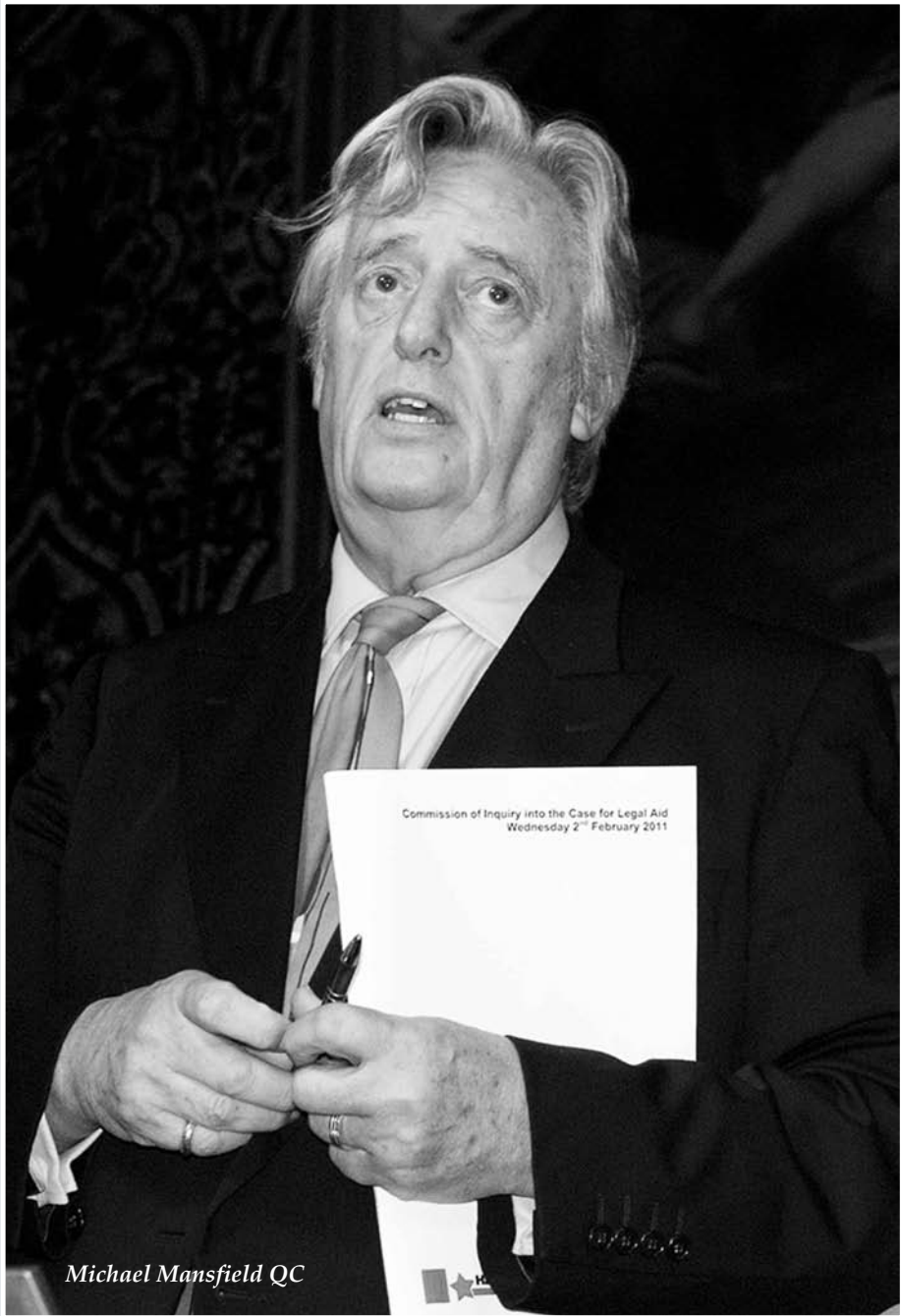
The Law Society has expressed grave concern about the impact of the proposed legal aid cuts on the types of cases examined by the commission which is why we launched the Sound Off For Justice campaign (<http://soundoffforjustice.org>).

Although some may accuse the society of looking out for solicitors, the commission has no interest whatsoever in protecting lawyers and their incomes. They have expressed many of the same concerns that we have, sometimes in even stronger language. The more that people look at this subject dispassionately and objectively, the greater the understanding of what these cuts would mean, for the clients affected, for the public purse, and for society as a whole.

We commend this report as a valuable addition to the debate.

*Linda Lee*

President of the Law Society of England and Wales



*Michael Mansfield QC*

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## 2. Introduction

'Access to justice' is not just about access to the courts or litigation. It is a much broader concept. It encompasses a recognition that everyone is entitled to the protection of the law and that rights are meaningless unless they can be enforced. It is about protecting ordinary and vulnerable people and solving their problems. Yet the law is complex such that most ordinary people with small or even moderate means cannot access the law without help.

Earlier this year MPs were given a series of powerful, sometimes uncomfortable, reminders as to the important role of legal aid in protecting access to justice in our society. The event took place in the House of Commons on 2 February 2011. It was organised by the Haldane Society of Socialist Lawyers and the Young Legal Aid Lawyers. The Commission of Inquiry into Legal Aid was a unique event. The exclusive focus was about examining what kind of safety net our system of publicly funded law provides for ordinary people, sometimes poor and vulnerable, who rely upon it.

A series of ordinary people who have used legal aid gave testimony before a distinguished panel of non-lawyers in a crowded committee room 10. The former

Liberal Democrat MP Evan Harris, the canon of Westminster Abbey, the Reverend Nicholas Sagovsky and Diana Holland, assistant general secretary of the trade union Unite, weighed up evidence they heard at the session as well as written submissions from the recipients of legal aid and experts.

*Unequal before the law* publishes the findings of the three panellists, non-partisan and independent-minded experts who all have a long track record of promoting social justice in their communities. By their own account, they are relative strangers to the specifics of legal aid. For this reason, their balanced consideration of all the evidence both 'for' and 'against' reducing legal aid and their key findings serve as a critical warning as to the importance of legal aid at a time when it is under threat.

This is the third publication, edited by Jon Robins, produced by Jures ([www.jures.co.uk](http://www.jures.co.uk)) and published by *Solicitors Journal* in the *Justice Gap* series which aims to shine light on different aspects of access to justice. The 'Justice Gap' refers to the increasing section of the public too poor to afford a lawyer and not poor enough to qualify for publicly funded legal help.

*Michael Mansfield QC*

### 3. Executive summary

The Commission of Inquiry was convened to investigate the role and importance of legal aid to our society, considering both the cases for and against reducing legal aid.

The commission comprised three eminent non-lawyers: Dr Evan Harris, Diana Holland and Canon Nicholas Sagovsky. For more information about the commission, see Chapter 4.

The commission first considered the workings of the current legal aid system, its history and development and its cost. This information is set out in Chapter 5.

The commission considered both oral and written evidence on the importance of legal aid from individuals who have benefited from publicly funded legal work. This testimony is set out in Chapter 6. The commission also considered a number of reports and documents as to the importance of legal aid in upholding the rule of law. This evidence is summarised in Chapter 7. The sum total of this evidence comprised the case for legal aid.

The commission also considered the arguments for reducing legal aid contained in the government's 2010 green paper on legal aid together with reports from Policy Exchange, the Adam Smith Institute and the Society of



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*Panel members: Michael Mansfield QC, Reverend Professor Nicholas Sagovsky, Diana Holland*

Conservative Lawyers. This evidence is set out in Chapter 8. It comprises the case against legal aid.

Having considered the evidence the commission makes the following findings, which are set out in more detail at Chapter 9:

1. legal aid is vital to protecting the rights of vulnerable people;
2. legal aid is vital to upholding the rule of law;
3. legal aid is essential to holding the state to account;
4. cutting legal aid is a false economy;
5. a holistic approach is needed in providing legal aid;
6. cuts to legal aid will drive out committed lawyers;
7. cutting legal aid is not a fair or effective way to reduce unnecessary litigation.



## 4. The commission

The Commission of Inquiry into Legal Aid was organised jointly by the Haldane Society of Socialist Lawyers and Young Legal Aid Lawyers (YLAL). We were asked by the two organisations to report on the legal aid scheme overall and the extent to which it is important to ‘access to justice’.

The commission was prompted by the publication of a Ministry of Justice green paper, *Proposals for the Reform of Legal Aid in England and Wales*, issued in November 2010. The paper proposed sweeping cuts to legal aid (summarised at Appendix 1). However, the commission’s remit was broader than the scope of the green paper itself.

The commission consisted of three independent members: Dr Evan Harris, Diana Holland (assistant general secretary of Unite) and Canon Nicholas Sagovsky. The panel, for whom legal aid was a relatively novel area, carried out its work unpaid and came to task with open minds, determined to hear both sides of the arguments for and against reducing legal aid.

**Dr Evan Harris:** formerly the Liberal Democrat MP for Oxford West and Abingdon between 1997 and 2010, and spokesman on human rights and equality from 2003-2010. He served on the Joint Committee for Human Rights between 2005 and 2010. He is a leading advocate of freedom of expression, a trustee of article 19 and co-founded the Libel Reform Campaign in 2009. He was an officer of the All-Party Group on Refugees and is a member of the BMA Medical Ethics Committee. He is

currently the director of the Centre for Evidence-based Policy and is a vice-chair of the Liberal Democrat Federal Policy Committee. He writes a blog for *The Guardian* on science and civil liberties.

**Diana Holland:** assistant general secretary (equalities and organising) of Unite the Union. She leads on the women, race and equalities agenda. She has many years’ experience negotiating on equal pay, family policy, union equality representation and harassment with a range of employers. She is a long-standing campaigner on poverty, violence against women, migrant domestic workers and the under-representation of women, black, Asian and ethnic minority, disabled, young and LBGT workers. She is a former president of the Confederation of Shipbuilding and Engineering Unions. She is a member of the TUC Women’s Committee, Equality Act Senior Stakeholder Group, the chair of Global TUC Women’s Committee and of International Transport Federation Women Transport Workers. She is national Labour party treasurer and has given evidence to select committees. She was previously a member of the Equality and Human Rights Commission Equal Pay Group, the Equal Opportunities Flexible and Part-time Working Inquiry and the Minister’s Disability Advisory Committee.

**The Reverend Professor Nicholas Sagovsky:** until recently sub-dean at Westminster Abbey. He has contributed to debate on key social justice issues such as benefit levels, debt, the community charge,

the financial crisis and asylum. After graduating from Oxford he worked at the Mayflower Centre, Canning Town, and as a teacher at Scott Lidgett Comprehensive School in Bermondsey. Then, after ordination, he was a curate in Newcastle-upon-Tyne before moving to Cambridge for graduate studies. He was appointed vice principal at Edinburgh Theological College, and later dean of Clare College, Cambridge. More recently, he was William Leech professor in applied christian theology at Newcastle University and then professor of theology and public life at Liverpool Hope University. Nicholas was a commissioner on the Independent Asylum Commission, which comprehensively reviewed the UK asylum system. His most recent book is entitled *Christian Tradition and the Practice of Justice*.

The panel was assisted by Michael Mansfield QC, who acted as counsel to the inquiry.

With the assistance of law centres and solicitors' firms (see Appendix 4), Haldane and YLAL obtained testimony for the commission to consider from a large number of individuals who had benefited from legal aid. Most of the testimony was provided in writing and is reproduced here at Chapter four.

The central feature of the commission's inquiry was an event in parliament on 2 February 2011 where the commission received oral evidence. The event was open to the public and was well-attended. The commission heard evidence from Mrs Whitehouse, EP, Steven, Subera and Zoe Kealey. Two participants, Stella and SH, had recorded videoed testimony. The commission also heard from Kathy Meade, housing and community care solicitor at

Tower Hamlets Law Centre, and from the Child Poverty Action Group, Bail for Immigration Detainees, the PCS Union, Liberty, the Howard League for Penal Reform and the Young Legal Aid Lawyers.



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Dr Evan Harris

The commission made a point of contacting organisations which had expressed or, in their view might express, support for the principle of cuts to the legal aid system: the Adam Smith Institute, the Policy Exchange, the Taxpayers' Alliance and the Society of Conservative Lawyers. They were invited to attend a further oral evidence session or to make submissions in writing. The Adam Smith Institute and the Taxpayers' Alliance did not respond.

The Society of Conservative Lawyers told us that they had no 'party line' on the availability of legal aid and gave us a copy of its pamphlet *Access to Justice* which contains essays by individuals on the funding of litigation. The Policy Exchange agreed to respond in writing to questions.

In producing this report the commission has considered all of the evidence and testimony set out above as well as various responses to the green paper and other contemporary and historical documents on the legal aid system.

## 5. Legal aid: 1949 – 2011

Legal aid, often described as the fourth pillar of the welfare state, needs to be understood in context, including its origins, its development over the years, its cost and recent proposals for change.

### Some history

The modern system of legal aid was created by the Legal Advice and Assistance Act 1949<sup>1</sup>. The Act was part of sweeping social reforms introduced by Attlee's post-war Labour government.

Before the Act legal aid consisted of limited assistance for impoverished defendants in criminal cases as required by the Poor Prisoners' Defence Acts of 1903 and 1930. In addition, the Criminal Appeal Act ensured legal aid was available for appeals against a conviction for murder; death by hanging being the mandatory penalty for those unsuccessful in their appeals. The system was far from comprehensive – in 1938 of the 19,079 people sent to prison by the police courts only 327 had been granted legal aid.

Legal advice for poorer litigants in civil cases, on the other hand, relied heavily on the good will of lawyers prepared to work for free. In the period between the first and second world wars, it became increasingly clear that this was not sufficient. Social upheaval and changes to the law meant demand for divorce was increasing.

It was against this backdrop that the 1949 Act was drafted. The Act represented the first coherent attempt to provide a comprehensive system of state-funded legal aid. The idea was to allow for litigants of modest means to be assigned a lawyer to advise them and, if

necessary, to represent them in court. The Act was a direct result of the recommendations of the Rushcliffe committee, who reported to parliament in May 1945. Lord Rushcliffe envisioned a scheme where barristers and solicitors in private practice would be paid by the state to provide legal advice. His report made a number of very simple yet highly principled recommendations which went on to underpin the new scheme. These included that:

- Legal aid should be available in all courts and in such manner as will enable persons in need to have access to the professional help they require.
- Legal aid should not be limited to those who are "normally classed as poor" but should include "those of small or moderate means".
- Those who cannot afford to pay anything for legal aid should receive this free of cost.
- There should be a scale of contributions for those who can pay something toward costs.
- Cases should be subject to a merits test as well as a means test.
- The cost of the scheme should be borne by the state, but the scheme should not be administered either as a department of state or by local authorities.
- The legal profession should be responsible for the administration of the scheme.
- Barristers and solicitors should receive adequate remuneration for their services.

Although often described as the fourth pillar of the welfare state, legal aid has traditionally

been provided by private law firms.

Initially legal aid was predominantly used in criminal and divorce cases. But in the decades that followed the inception of the scheme, cultural, social and legal changes meant legal aid began to be used for other areas. There was an increased emphasis on areas of law such as housing, welfare rights, immigration law and employment. Such changes went hand in hand with the establishment of the first law centres in the 1970s; a movement that sprang from a belief that "the legal aid scheme had failed to address the legal needs of the poor and disadvantaged".<sup>2</sup>

Until 1988 the legal aid scheme was administered by the Law Society. Questions arose about conflicts of interest as the body administering legal aid funds was also the body representing the lawyers who were paid out of the fund. To remedy this, the administration of the scheme was transferred to the newly created Legal Aid Board.

By the mid-1990s fears arose that the scheme was not being directed at the right cases. A large proportion of the non-family legal aid was spent on personal injury cases and there was less emphasis on social welfare. Simultaneously, the cost of legal aid was outstripping inflation. It was in order to remedy such problems that the Access to Justice Act 1999 was introduced, fundamentally changing the legal aid scheme.

## Legal aid today

The Access to Justice Act 1999 created the Legal Services Commission, the body which is today charged with the administration of the legal aid scheme replacing the old Legal Aid Board.<sup>3</sup> The scheme is split in two with the Criminal Defence Service administering criminal legal aid and the Community Legal

Service running civil legal aid. All legal aid is now subject to both a means test and a merits test to ensure that public money is not granted to those who can afford to pay or for cases that are either bound to fail or inconsequential.

## *Criminal legal aid*

Broadly speaking, criminal legal aid pays for advice and assistance from a solicitor for anyone being questioned by the police in connection with a suspected criminal offence, advice and assistance in connection with any criminal matter (for example, preparing a case for court) and representation in court by a barrister or solicitor.

Currently, advice in the police station is free to any person being questioned in connection with a criminal offence irrespective of their means. Outside these circumstances anyone wanting to apply for criminal legal aid is subject to a means test, except recipients of Job Seekers Allowance or Employment Support Allowance. Different means testing is used depending on whether a person is in the magistrates' or Crown Court. However, the threshold is set relatively low with anyone earning just over annual minimum wage being subject to a means test.

Criminal legal aid is also subject to an 'interests of justice' test. This test considers, for example, whether a person faces imprisonment or whether they face losing their livelihood. In the Crown Court, where the defendant may often face a more severe penalty than in the magistrates' court, the interests of justice is automatically met. Means testing in the magistrates' court combined with the interests of justice test results in around one third of all defendants being granted legal aid (green paper 3.39).

## *Civil legal aid*

Civil legal aid is available to pay for advice and assistance on a wide range of issues currently including family disputes (for example, divorce and child contact proceedings), debt, education, immigration, employment, housing, mental health, community care, welfare benefits and asylum. Civil legal aid sometimes extends to representation in court by a barrister or solicitor, though this depends on the specific area of law involved. Civil legal aid can take the form of initial advice and assistance ('legal help') and full public funding to cover representation in court proceedings.

Before full public funding can be granted to an individual, there is a rigorous merits test that must be met so as to ensure that what are deemed to be unworthy legal cases are not funded by legal aid. There is some variation in the merits test depending on the specific area of law and whether or not it is representation or just advice which is needed. However, in most instances the following broad principles apply:

- Legal aid will only be provided where there is 'sufficient benefit' to the client to justify work being carried out.
- Legal aid will only be provided if it is reasonable for the matter to be publicly funded having regard to any other potential sources of funding such as a conditional fee agreement, insurance or other persons or bodies who can reasonably be expected to bring or fund the case.
- Legal aid may be refused if there are complaint systems, ombudsman schemes or forms of alternative dispute resolution which should be tried before litigation is pursued.
- Legal aid for full representation will

be refused if the prospects of success are unclear or poor.

- If the claim is primarily a claim for damages, legal aid for full representation will be refused unless the prospects of success are more than 50 per cent.
- If the claim is not primarily a claim for damages, legal aid for full representation will be refused unless "a reasonable private paying client would be prepared to litigate".

Civil legal aid is not available for businesses and does not fund personal injury cases, boundary disputes, company or trust law. Civil legal aid is also not available to fund representation before most tribunals (the mental health and immigration tribunals being the main exceptions). However, for tribunals, such as those covering employment and welfare benefits, legal aid can provide initial advice to the client, but the funding stops at the court door. Some individuals are able to obtain pro bono representation at these tribunals. Despite the lack of funding for a lawyer to represent a client at a tribunal hearing, many people are able to benefit from advice and assistance to prepare their cases.

Civil legal aid can, in certain circumstances such as divorce cases, take the form of a loan. In divorce cases the loan is often secured on the home. The 'statutory charge' applies where an individual has recovered or preserved money as a result of having received legal aid to be represented at court. The statutory charge means that the Legal Services Commission is entitled to receive any costs that it has paid out in legal aid from the money recovered.

Civil legal aid has increasingly become the preserve of the poorest in society.

According to Ministry of Justice figures, 80 per cent of those receiving legal help and around 90 per cent of those receiving legal representation were in the poorest 20 per cent. When the civil legal aid scheme was set up in 1950 it provided 80 per cent of the population with a means-tested entitlement to legal aid. By 2009 this had fallen to 36 per cent of the population.<sup>4</sup>

### **How much does the government spend on legal aid?**

In 2008-09, according to the Ministry of Justice, the total spend on legal aid was £2.1bn.<sup>5</sup> Of this £1.182bn was spent on criminal legal aid and £0.917bn on civil legal aid. This breaks down as 1.6m and 1.3m individual acts of assistance for criminal and civil issues respectively. Most criminal legal aid advice is given in police stations and magistrates' courts, but more money is spent on assistance at the Crown Court.

Since 2003-04 criminal legal aid spend has decreased by 12 per cent in real terms, and civil legal aid expenditure has decreased by 15 per cent. Despite this the number of cases has actually risen during this period. The National Audit Office (NAO) credit the rise in the need for civil legal aid as being a direct response to the economic climate.

### **The state of the market**

The legal aid budget is a politically charged issue. Government announcements concerning cuts are often accompanied by the release of information about how much the highest earning legal aid lawyers are paid. In 2008-09 five barristers were listed as earning in excess of £700,000 per annum for criminal defence work. While the variation and the complexity of the fee structures across legally aided work makes it difficult to generalise, *The Guardian*

reported that the actual median salary of a legal aid solicitor in 2009 was a rather more modest £25,000 per annum.<sup>6</sup>

Meanwhile, the viability of private practice legal aid firms is at risk. In a survey conducted by the NAO, one in six firms said they were not making any profit from criminal legal aid cases. A significant minority (14 per cent) of those surveyed were on the verge of walking away from criminal legal aid work, stating that it was "very unlikely" that they would still be conducting criminal legal aid in five years.<sup>7</sup> The primary reasons for this were the lack of profitability and the likely introduction of best value tendering – a process where firms will need to bid competitively with each other for legal aid contracts.

New entrants to legal aid are finding it increasingly hard to obtain training contracts and to sustain a career in legal aid work.<sup>8</sup>

### **International comparisons**

Britain's legal aid system is often compared favourably to that of other countries. The government describes it as "one of the most comprehensive, and generous in the world" (green paper 3.41). The NAO notes that £22 per capita is spent on criminal legal aid, more than any other comparable developed nation except Northern Ireland.<sup>9</sup> However, the NAO points out that these differences are partly attributable to the greater defence costs inherent in Britain's adversarial legal system, in contrast to other jurisdictions where judges play a greater investigative role. Over the period of time which the NAO analysed, over one million more prosecutions were bought in England and Wales than in any other country under comparison.

### **Proposals for changes to legal aid**

Since 2005, there have been more than 30

Michael Mansfield  
QC, Reverend  
Professor Sagovsky,  
Diana Holland

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1949 – 2011

government consultations on the future of legal aid, culminating in *Proposals for the Reform of Legal Aid in England and Wales* – the government’s 2010 green paper on legal aid. This consultation was published by the government in November 2010 with the aim of achieving in the region of £350m of savings from the legal aid budget. The paper proposed the most radical changes to legal aid in modern times.

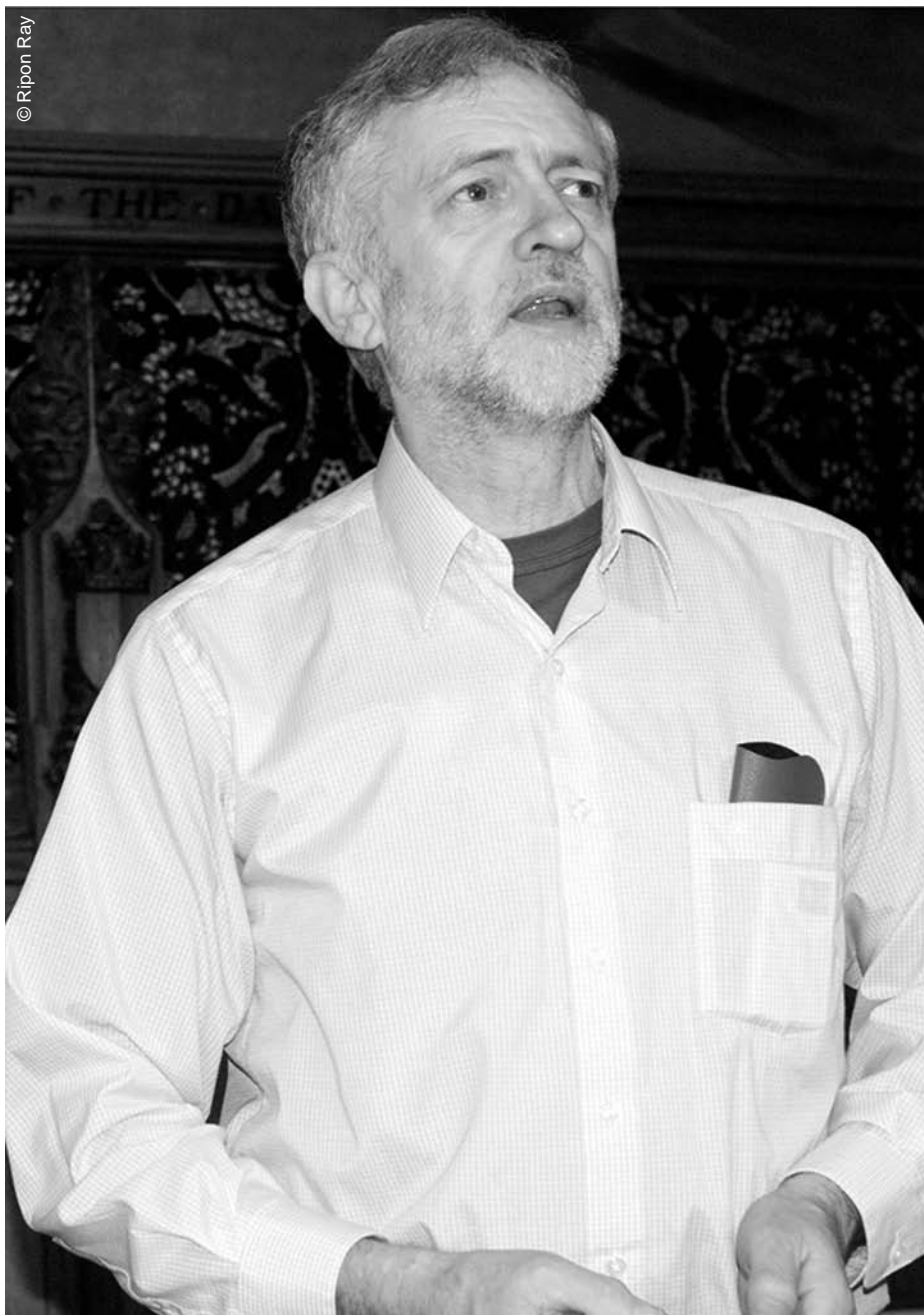
A summary of the key proposals are set out in Appendix 1. If implemented, civil legal aid

will no longer be available for many legal issues including education, debt, welfare benefits, private family law (except where domestic violence is present), housing (except where there is a direct risk of homelessness), immigration and employment.

The financial eligibility criteria will be tightened so that fewer people are eligible for legal aid. The paper also proposed further reductions in lawyers’ fees and that criminal legal aid “become subject to competitive tendering”.

### Notes for Chapter 5

1. See generally: A Elson ‘The Rushcliffe Report’ (1946) *The University of Chicago Law Review* Vol. 13(2) 131-144; Steve Hynes and Jon Robins, *The Justice Gap* (2009, LAG); *Report of the Committee on Legal Aid and Legal Advice in England and Wales* (Cmd. 6641); T Bingham, *The Rule of Law* (2010, Penguin) pages 86-89; Lord Justice Jackson, *Review of Civil Litigation Costs: Preliminary Report Volume One*, May 2009; the *Access to Justice Bill: Legal Aid Research Paper 99/03*
2. Law Centres Federation, *History and Funding of Law Centres*
3. See generally: Legal Services Commission, 2010, *Legal aid in the courts – a guide*; Legal Services Commission, *Funding Code Criteria; Legal Aid Reforms: Scope Changes Impact Assessment*
4. Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report*, December 2009, pages 68-69
5. See green paper (chapter 3) and NAO, *The Procurement of criminal legal aid in England and Wales by the Legal Services Commission*, November 2009
6. *The Guardian*, 17 November 2009
7. *Solicitor summary for criminal legal aid*
8. Young Legal Aid Lawyers, *Legal aid lawyers: the lost generation in the ‘national crusade’ on social mobility*, February 2010
9. NAO, page 14, paragraph 1.8



*Jeremy Corbyn MP*



## 6. The case for legal aid: individual testimonies

This chapter sets out the testimony received by the panel. The accounts presented here are from recipients of legal aid, practitioners and the charity sector. This testimony aimed to present the personal impact of legally aided work on individuals, families and communities. It constitutes the positive case for legal aid.

Names have been changed or abbreviated so that the individual cannot be identified except where the person has specifically agreed that their full name be used.

### Debt

**Abbi received help in relation to her student debts. Help from a legal aid solicitor allowed her to gain a debt relief order, freezing her debts and relieving the stress caused by her financial situation**

I am 25 years old and I live in Hanborough in Oxfordshire with my partner. I have been living there for about a year. Before that I was a student at Leeds University for four years. While I was at university I found it very difficult to make ends meet. My student loans only just covered my rent and nothing more. I had some part-time work – bar jobs and things – but I was still finding it difficult to cover essential living costs. My parents do not have much money and were not able to give me any extra financial support. As a result I ran up significant debts on credit cards and overdrafts to fund my course and the costs of living.

After I left university I moved in with my partner in Hanborough. With the way things are at the moment I could not find a job straight away. I was receiving Job Seekers Allowance but it was extremely hard to make ends meet. I really wanted to start working.

I was running up more debt on credit cards. I was taking credit cards from banks offering zero per cent balance transfers which I would use to pay off other credit cards. By moving the debt around I was trying to keep the interest low, but I wasn't able to pay anything off.

I managed to get a job in July 2010 through the Future Jobs Fund – a council-run programme working through the Job Centre to get people back into work from benefits. The job was in design and development at an e-learning company, which was great. It was exactly the kind of job I was looking for. However, it was part time and only paid £140 per week.

Unfortunately I was earning so little money and my partner was out of work so I still wasn't clearing my debts. By that time I owed about £12,000 in credit cards and the interest was building up. It is so hard when you are this much in debt. It feels like any money you are earning is just being thrown into a bottomless pit to make the minimum payments and getting the extra charge every now and again when a payment is missed. I went online to try and search for options and heard about a debt relief order. I thought this might be able to help so I went to the Citizens' Advice Bureau to ask about it. They referred me to a solicitors' firm.

My solicitor explained what a debt relief

order does. It is a bit like a less severe form of bankruptcy. It freezes all your debts for a year and if your financial situation does not significantly improve then all your debts are wiped clear. It imposes a lot of restrictions on a person but I realised this was a way that I could finally clear my debts and have the huge financial weight lifted off my shoulders.

My solicitor explained to me that I would have to leave my debts for about six months before I applied for an order. Because I had been moving the debt around a lot and paying off some credit cards with others, the court might not accept that I was unable to pay off the debts.

My solicitor wrote to all my creditors and arranged to freeze my debts and for me to only make token payments. This really helped me. The credit card companies had been putting pressure on me to repay all of my debts. After they received my solicitor's letters they stopped the telephone calls and warning letters. This was a great relief.

In November 2010 I went back to my solicitor and filled out the forms to apply for the order. My solicitor sent it off and within a few days I heard that my application was accepted.

Getting this order was so important for me. Being free of the debt is such a massive relief; I can start afresh. I managed to get a full-time position at my job and I am now earning £210 per week. I still do not have much money to play with but at least I am not just throwing money away.

I could not have done it without legal aid. There was no way I could afford to pay for legal help. I needed a solicitor or an adviser to write to the debt companies for me. Without their letters I don't think they would have agreed to freeze my debts. It was incredibly useful to sit down with somebody, go through all of my papers and plan for the future.

Without legal aid, people in my situation could end up turning to crooked money lenders and getting involved in bad situations making their lives even harder.

## Immigration and asylum

**Ahmed, an asylum seeker from Iran and a survivor of torture, received help with his asylum claim**

While in Iran, I was imprisoned and tortured in February 2000 for three months and again in August and September 2002. I'm a long-term counselling client of the Medical Foundation for the Care of Victims of Torture North West.

I had help from a solicitor based in London. I managed to go to meetings but I failed to attend lots of appointments because of my deteriorating mental health. I was afraid to speak to people and rarely had money to make a call so I could only ring my lawyer occasionally about the progress of my asylum case. My asylum application was refused and I lost my subsequent appeal.

In March 2007 I was made homeless and my mental health got worse. My solicitor offered to make a new claim for asylum but I was told I would have to pay for this. By then I was very low, living in difficult conditions and clearly didn't have money to pay for a lawyer.

At this time the Medical Foundation referred me for an initial appointment with Greater Manchester Immigration Aid Unit in May 2007. I was regularly sleeping on the streets at night and had no money whatsoever. My only regular contact was the weekly counselling session. I also frequently dropped into the Medical Foundation offices between sessions for emotional support, to wash and

to be indoors. I found the company of others so difficult.

The GMIAU agreed to meet me at the Medical Foundation and with my familiar counselling interpreter. We talked about a new asylum claim but I had little faith in being able to explain myself. But the new solicitor had more experience and skills in working with clients with vulnerable mental health and meeting in a safe setting allowed me to explain what I'd been through to make a fresh claim. I arranged appointments so that I would see my counsellor immediately after the solicitor.

The new claim was made in December 2007 and I applied and was accommodated while the claim went through. I was granted indefinite leave to remain in December 2009. I'm still severely traumatised and I hope that I can now address this more fully without fear of return to Iran. It is clear I would not have been able to access legal representation without legal aid, but, most importantly, without the care and expertise shown by GMIAU in working with the most vulnerable survivors of torture.

## Debt and housing

**Simi Azmi received legal aid to help with her debt and housing problems after her ex-husband ran up tens of thousands of pounds of debt**

**I**n 2009 I was forced to seek legal assistance because of debts that I owed from various loans that my husband had taken out. My husband and I had married in 2003. It was difficult at first as our families did not approve of the marriage because I am originally from Pakistan but my husband's family is from India.

We bought a house together in Chingford in 2004 after obtaining a mortgage from Halifax. About two years later, my husband remortgaged the house with Northern Rock and we redeemed the mortgage from Halifax. He told me this was because the new mortgage was at a better rate and he wanted extra money to decorate the house. I did not really understand at the time but I signed all the relevant documents because my husband told me too.

Then in October 2006 my husband took out a further loan from Barclays, secured against our house. Again I did not really understand the procedure but my husband made me sign the documents relating to the loan. I also had to speak to someone from Barclays over the phone to say that I agreed to the loan. Although I had said that I agreed, in reality I did not know what was going on. Whenever I had questioned my husband about this loan or the previous mortgage he became angry and shouted at me. He would threaten to leave me if I didn't agree to sign the documents and would even threaten me physically. I felt I had no choice but to agree. My husband always took care of that side of things. He also lied to me about how much money we were borrowing. He told me the loan from Barclays was for £20,000 but I found out later on it was actually for £60,000.

In July 2008, when our second child was just a few months old, I found out that my husband was in a relationship with another woman. In fact he had married this other woman in a religious ceremony. When I found this out my husband left me and our children. It was only after this that my husband told me the true extent of the loans he had taken out after I questioned him about them. As well as the Barclays loan he had taken out another loan of £30,000 and had huge credit card bills.

Around the end of 2008 I started getting

letters from Barclays saying that I was in arrears. I was not working at the time. I had two young children and my husband had always been the financial provider. I was scared and I did not know what to do. I got a letter from the bank's solicitors in early 2009 that threatened to repossess my house. At this stage I realised that I had to do something or my children and I would become homeless.

I went to a consumer credit agency for advice and they put me in touch with my solicitors. They were amazingly helpful. They arranged for me to have legal aid funding for my case, which was vital as I had absolutely no resources at that time. I was unable to even approach my family for assistance as we still had not repaired our relationships after falling out over my marriage. My solicitor went over my finances with me and I realised how bad the situation was. There were two loans secured on our house that I jointly owned, and there were even some credit card bills that were in my sole name although it had been my husband who had used them.

My solicitor told me that I could file for bankruptcy which would clear my debts. I knew this was a big decision but there was not any other way out that I could see. I just wanted to be able to start afresh and forget about what my husband had done to me. My solicitor helped me go through the process of filing for bankruptcy. There was a huge amount of work and forms to fill out, but my solicitor was fantastic. There is no way I would have been able to do it without them. I would not have even known how to go about applying for bankruptcy and I definitely would not have been able to get together enough evidence to have a successful application.

My application was allowed and I was declared bankrupt in May 2009. That helped

to get rid of the majority of my debts. However, it was not enough to prevent me from losing my home, as Northern Rock managed to get a possession order against me.

After the order was made I was terrified. The thought of being homeless with my children was making me so stressed that I was becoming ill. However, my solicitors helped me apply to my local council for accommodation and even recently granted my application for permanent accommodation.

**“We would be lost without legal aid and the lawyers who carry out this work. They got me my life back”**

If I hadn't been granted legal aid I do not know what I would have done; I was totally lost. I had no money and no one to turn to get help from. I would not have been able to represent myself and I would not have been able to get myself declared bankrupt. I would have probably had a lot of my possessions repossessed and when my house was taken away I would have been left homeless with my children.

Since I was successfully declared bankrupt my life has been so much better. After my husband moved out I was receiving letters from so many creditors threatening action against me and saying bailiffs would be sent round to take my possessions. I was so stressed and scared that there were times when I could not even sleep. Now things are so much better; I have a roof over my head and I am able to start again.

I really did not have any options other than legal aid. It can be so difficult for people in a similar situation to mine without resources or any friends or family to approach for help.

We would be lost without legal aid and the lawyers who carry out this work. They got me my life back.

## Community care, housing, immigration

**AB received legal aid to obtain advice in his community care, immigration, asylum support and housing cases from the same firm of solicitors over two to three years**

I arrived in the UK a few years ago after fleeing persecution in my home country. I claimed asylum and was granted a limited amount of leave to remain in the UK. Before my leave ran out I applied for further leave to remain. However, there was a mix up at the Home Office and they claimed they had not received my application.

When I had been awarded leave to remain in the UK I had been granted permission to work. I was also allowed to claim benefits to help me pay for food and rent. I began to look for work and recover from my terrible experiences in my home country.

After my leave ran out my benefits stopped. This meant that I could not afford to pay my rent and around three years ago I was evicted from my home for rent arrears. After my eviction I had to sleep on the streets. During this time I was attacked on quite a few occasions. I also became ill very quickly and eventually I ended up in hospital around a year later. I was diagnosed with a long-term illness and I was also suffering from severe depression because of my situation.

After a few weeks the hospital wanted to discharge me. They referred me to social services. Social services refused to help me.

Around this time I began to receive help from a charity and they referred me to solicitors for help with my housing situation. My solicitors wrote to social services threatening court action unless they conducted an assessment and housed me until the assessment could be completed. In the end social services decided that I was so ill that they would house me and provide me with financial support.

In time my health gradually improved and I was able to move out of social services accommodation into housing provided by the Home Office. However, the Home Office wanted me to move away from London. Although my health had improved a little, I was still in need of the support I had from the local medical and charitable services. My solicitors made representations to the Home Office to say why it was important for me to stay living in London and these were accepted.

I also received help from the immigration department at my solicitors' firm. I renewed my application for leave to remain and last year I was granted indefinite leave to remain. My Home Office housing came to an end and I made an application as homeless to the local authority. I did this because I had nowhere else to go.

At first the local authority refused to accept an application from me. They also refused to provide me with emergency housing, even though I had already been evicted and I had provided evidence of my medical conditions. I asked my solicitors for help. Again they wrote an urgent letter asking the local authority to provide me with housing and accept an application (as I understand they are under a legal duty to do). They threatened to take my case to court if the local authority did not do this. Luckily very quickly the local authority agreed to accept an application and to place me in emergency housing. A few months later

the local authority accepted that they had a duty to make sure there was housing available for me to live in.

It was really important for me to get legal advice when I was in hospital. They wanted to discharge me, but I had nowhere to go. It was my solicitors who managed to persuade the local authority to look after me because of my illness. If I had not been housed then I feel my health would have got a lot worse.

I would not have been able to pay for my solicitors on a private basis as I had no income. The charity I was involved with had tried to help me get housing from social services, but, as they could not start court proceedings, I think social services were just able to ignore them.

I think the legal aid system is great. All of my housing, immigration and other legal issues have been resolved and this couldn't have happened without legal aid. I believe it is very important to have this support.

## Housing

**Caroline received legal aid after she was evicted from her flat and became homeless. This helped her to prove to the council her need for accommodation because of her severe mental health problems**

Legal aid helped me when I was evicted from my home after my private landlord increased the rent and I could no longer afford to pay it.

I had lived in my home for around 20 years. I had not worked since 2004 on account of my quite severe mental health issues. I suffer from agoraphobia, paranoia and severe anxiety which causes me to have panic attacks. I

also suffer from depression. I received housing benefit to help me pay my rent.

In 2009 my landlord contacted me to say that the market value of the flat was much higher than what I was paying and they wanted to increase my rent by £500 per month. Housing benefit would not cover this increase and I could not afford the extra, so I was facing eviction.

After my landlord started court action to evict me I approached my solicitor. Unfortunately my solicitor advised me that I did not have a good chance of avoiding eviction. I was very worried about this because I did not have any money or savings to fund a deposit for a new home. I was worried that I would be homeless. However, my solicitor told me that because of my medical problems the local authority may have a duty to re-house me once the court made a possession order.

In the end the court did allow my landlord's claim for possession and I was evicted. After this my solicitor helped me apply to the council for emergency accommodation. I was placed in a hostel with shared facilities. My anxiety and paranoia were making it extremely difficult for me to live there with lots of different people. My solicitor wrote to the council and managed to persuade them to provide me with self-contained accommodation until they made a final decision on my homeless application. I was very grateful for this.

A few weeks after I made my application the council made a decision that they did not have a duty to house me because my mental health problems were not severe enough. My solicitor helped me ask for a review of the council's decision. She suggested that I would need good medical evidence to help with my case, but this was difficult.

When I was examined by my GP he diagnosed only 'mild depression'. There is

nothing mild about it – at that time I had had two complete breakdowns since 2004 and had overdosed three times. I had had only brief appointments with my GP and one with a psychiatric nurse, which is why I think they did not fully understand my problems.

The breakthrough came when my solicitor arranged for me to see a private psychiatrist who assessed me for more than one and a half hours. The psychiatrist confirmed that I was suffering from a number of serious mental health conditions and that my health would be at risk if I were made street homeless.

With the help of this extra evidence and the fantastic work of my solicitor the council accepted my case and overturned their original decision. This was around the end of October 2010.

**“This case felt like life and death for me. I was so worried about losing the emergency housing and becoming street homeless”**

Legal aid was really important in my case. There is no way that I could have explained my situation to the council in the way that my solicitor did. The pressure of trying to sort it out myself would have severely hit my mental health. Also I could not have paid privately for the psychiatric report. Without this report, I don't think I would have won my case. If legal aid is cut, people like me will not get the help they need in future.

This case felt like life and death for me. I was so worried about losing the emergency housing and becoming street homeless. Since winning the case, my life is so much better. I feel optimistic and am looking forward to viewing potential properties. It is now just a matter of

time before I can get my own home, so I am feeling positive and can start looking forward to life again.

## Housing

**Rosamund During had advice and representation in her housing case, enabling her to defend eviction proceedings following the break-up of her marriage**

I needed legal help after my landlord started court action to evict me for rent arrears. I was in the process of splitting up with my husband. He was due to move out of our family home and had stopped paying the rent, which I had no idea about. As a result, our landlord started possession proceedings against us.

I was still living there with our four children, so I was really worried about what I was going to do. I was on a low income and could not afford to pay off all of the arrears. I approached the Citizens Advice Bureau, but was told my case was too complicated for them to help me. However, they provided me with a list of solicitors' firms that do housing work and I subsequently approached one of the firms which agreed to take on my case.

My solicitors applied for legal aid so that they could help me defend the eviction action. They explained my problems to my landlord and the court. Eventually the court agreed not to evict me as long as I continued to pay an amount towards my arrears each week.

My rent payments are now manageable. I'm in the process of having the tenancy transferred into my sole name and I feel that I have now got through a very difficult time.

I was delighted with the help I received from my solicitors using legal aid. I do not feel that I

could have represented myself in the possession proceedings. I really needed their help.

## Immigration

**Vicky Guedalla is a retired solicitor and former partner in Deighton Guedalla. She recently retired after 25 years as a legal aid lawyer. She gives details of several young clients who required her advice and assistance for immigration claims in difficult and sometimes tragic circumstances**

I am horrified by the government's proposal to end public funding in all but asylum and detained cases. If the regime now proposed had been in place during the past quarter of a century clients such as these would have been denied access to legal advice and assistance.

### 'Claude'

The little boy I will call Claude arrived unaccompanied from Congo on a passport which indicated its bearer to be seven years old and contained an indefinite leave to remain stamp. Immigration officers were doubtful, and interviewed the man, a Congolese national with indefinite leave to remain, who met him at the airport. The man claimed that the child was his son returning from a trip back to Congo, but he demonstrated no interest in the child's welfare, and the interaction between them showed no familiarity. Immigration declined to entrust the child to him, but instead granted temporary admission into the care of social services pending further enquiries. He was placed with a foster family.

DNA testing undertaken by social services showed that the man at the airport was indeed

not the father, following which immigration refused leave to enter and indicated that they were investigating the practicalities of removing him. Social services brought the child to me for advice and to conduct his appeal.

Claude was at this stage still struggling to follow the instructions he had been given by those who sent him here – to the effect that he had lived here before and had come to rejoin his father even though this was manifestly not so. The first crack in his facade came with his delightfully typical childish outrage at being told that his passport made him just seven years old: "That's not right! I'm eight already! I had my birthday before I came!" And as trust between us built it became possible for him to reveal his real name and what he actually remembered of his life before being sent to the UK.

It appeared that he was an orphan who had been living for some time in the house of someone he believed to be his grandmother but with a number of other children whose relationship to himself, if any, was unknown to him, some of whom had left for different destinations abroad. The suspicion of a child trafficking operation arose.

At first instance appeal, conducted on human rights grounds, the judge made an egregious error of law and found that as there were no specific removal directions yet in place there was no valid appeal before him. The case had to go to the Upper Tribunal to correct this, and was remitted back for fresh hearing. The end of the story was that, since there was no one to whom he could safely be returned in Congo, Claude was granted discretionary leave to remain and continues to live with his foster family, with whom he had quickly formed strong bonds. Under the government's proposals it seems that, because Claude was not an asylum seeker, he and his carers would have had no access to publicly



funded legal assistance and would at best have been left in limbo with no secure status for an indefinite period, or at worst returned to who know what hazards in Congo.

### *'Paul'*

The child I will call Paul was also eight years old when he was brought to see me by his social worker. He was from Jamaica, where he had been abandoned in infancy by his mother, whose whereabouts were unknown but understood to be somewhere in the USA. Paul had been cared for thereafter by his paternal grandmother, but when he was six she died in a fire which he was blamed for causing. Rejected by his family in Jamaica, his father brought him to the UK, left him to the care of a purported 'uncle' and 'aunt', and left the country. Paul was brought to the attention of social services by his school who suspected ill-treatment and were concerned by his highly disturbed behaviour. He was taken into care and placed in a specialist therapeutic home. A full care order was subsequently obtained.

Paul was then brought to see me for advice on regularising his immigration status. I prepared his application. Eventually he was granted indefinite leave to remain. I was then able to assist in the preparation of his application for registration as a minor for British citizenship, giving appropriate advice on the approach to the question of parental consent in such circumstances. Where will those caring for children like Paul be able to turn to for immigration legal aid help in the future if the present proposals go through?

### *'Jamal'*

The client I will call Jamal is from Somalia. He was a little boy when fighting overwhelmed Mogadishu in 1991 and his family scattered. He was later granted a visa to come to the UK to

join a relative who had been granted exceptional leave to remain here. Jamal learnt English, went to school here, got part-time work while continuing to study and became a British citizen. Meanwhile, the Red Cross traced his mother to a settlement in Ethiopia, where she was living with his older married brother and his family, supported by his brother's work as a bus driver. But then news came that his brother had been killed in a road accident, and his widow died in childbirth shortly afterwards. This left the elderly mother in sole charge of two toddlers and a baby.

**“Legal aid is needed to ensure that meritorious cases are fought to an appropriate conclusion, through the higher courts if necessary, if the system is to have any integrity. Asylum is not the only human right, and the rule of law should be protected from budget cuts”**

Jamal immediately assumed full financial responsibility, struggling to send money from his meagre wages. As soon as he was able to find full-time employment so that he could meet the requirements of the immigration rules, he travelled to Ethiopia to take his mother and the children to the British embassy in Addis Ababa to apply for visas to come to the UK as his dependents. The applications were refused on the grounds that there was no evidence of the relationships.

Jamal turned to me for advice and I was able to prepare and conduct the appeals. DNA evidence (which Jamal would not have known

how to obtain by himself, even if he could have afforded it) proved the relationships to the satisfaction of the judge, but the appeal was lost at first instance because of an erroneous interpretation by the judge of the requirement for adequate accommodation. So the appeal had to go to the higher tribunal which ordered a complete re-hearing, resulting in the appeals being allowed.

The old lady and her grandchildren are now here living with Jamal, who continues to support them. Where will future 'Jamals' be able to turn for legal advice and representation in time of dire need?

### Not good enough

These are just three examples of many that spring to mind of non-asylum cases where access to publicly funded legal assistance was crucial in matters of profound importance to clients. Children like Claude and Paul have not 'chosen' to live in the UK, any more than Jamal had done – and neither the adult Jamal nor his grandmother had chosen to shoulder family responsibilities in such tragic circumstances.

It is not good enough for the government to protect access to legal assistance in asylum and detention cases, and to pretend that other aspects of immigration law do not impact profoundly on the lives of many who are not in a position to pay privately for lawyers and who have not chosen the situation in which they find themselves. It is such an unrealistic distinction in so many cases that it would be better not to attempt it at all.

Neither is it good enough to pretend that the tribunal can itself stand surrogate for independent representation in cases where appellants are unrepresented. It might do its best but is not itself infallible as to matters of law (which unrepresented appellants cannot be expected to argue for themselves) even when a case has

been properly presented, as two of my examples above show. Legal aid is needed to ensure that meritorious cases are fought to an appropriate conclusion, through the higher courts if necessary, if the system is to have any integrity. Asylum is not the only human right, and the rule of law should be protected from budget cuts.

## Family

### SH received legal aid to secure the home she had shared with her abusive partner

I needed legal help after my partner became abusive and I found myself and my children without a home.

We had bought our home together before our children were born. Over time our relationship began to break down. My partner started to drink more and he would be abusive towards me. Although he was not physically violent, he would threaten me physically and was emotionally abusive. He was aggressive and controlling and would shout at me over nothing, telling me I was worthless. Sometimes he would take my bank cards and keys and leave the house for long periods, leaving me stranded in the house and unable to go anywhere.

I became afraid for myself and my children. I decided that I had to get out of the relationship. Eventually I moved out of the home taking our two children with me. This was an extremely difficult time for me. My youngest child was only one-and-a-half years old and I had not yet returned to work. My partner had provided for us financially and so I had no resources of my own that I could access. I was having to stay with a friend, but it was not at all suitable because the children and I were all having to share the same bed.

Although I was joint owner of our home and I was taking care of our children, my partner refused to move out. Because of his aggressive and unreasonable behaviour, I found it impossible to talk to him or negotiate with him in any way about the use of our home or dividing up our assets. Whenever I did try to discuss these issues with him he would be domineering and aggressive. I realised that I needed assistance, which was when I approached a firm of solicitors.

My solicitor was absolutely fantastic. She told me that I could apply for a court order to get back into my home. I was worried as I had very little money to pay for legal help. I had no access to money because everything had been controlled by my partner. However, my solicitor told me that I could get help through legal aid and she sorted it all out.

At first my solicitor wrote to my partner to try to resolve the case before going to court. However, he refused to respond to any of my solicitor's letters or other correspondence. Therefore we had to go to court.

It was really important to me to have help from my solicitor and also my barrister. They explained what would happen during the court proceedings and what I would have to do. I had never been to court before and I had no idea what the procedure was. I was really worried.

At the preliminary hearing my partner represented himself. He was emotional in court and tried to control the hearing. I was very upset by his behaviour. At the second hearing he turned up at court but left before the hearing started. During the hearing my barrister cross-examined me. If my partner had had to do this, or if I had been forced to cross-examine him, I think the hearing would have descended into some kind of slanging match because the situation was so emotional and highly charged.

After the court hearing, the judge granted an order saying that I could move back into my home with my children and my partner had to move out.

Without legal aid I would not have been able to get the help I needed. I would have either been forced back into an abusive relationship or had to move to a refuge with my two children.

**“Without legal aid I would not have been able to get the help I needed. I would have either been forced back into an abusive relationship or had to move to a refuge with my two children”**

I know that the government talks about people being too ready to use the courts as a first answer to their relationship breakdown problems, but in my case I had no choice. My partner was being totally unreasonable and there was no way to negotiate with him without bringing him to court. I needed a greater power than myself to deal with him and for him to listen to. It is people in situations like mine that the legal system is there to protect.

## Discrimination

**Mrs Hughes received legal aid for advice and representation in a disability discrimination claim**

I suffer from multiple sclerosis and a lung condition. Due to my ill health I am dependent on my wheelchair to move around outside and sometimes indoors. My husband

cares for me full time.

We have many people in our community who have mobility problems including the elderly and other disabled people. Most shops in our town have made adjustments, some by simply having bells outside their front doors so that people with mobility problems can let them know when they need help to gain access. Larger stores have level floor access.

Around three years ago one of the larger stores closed down and the owner applied for planning permission to subdivide to create two new units. As my husband is chair of the local access group, he was given the planning application to look at. The application together with an 'access statement' said that level access would be maintained.

Sometime in summer 2008 before the shops were finished, I was concerned to see that one of the shops now had an eight inch step outside which people had to use to gain access. In November when the shop opened for business I asked to speak to the manager of the shop about the issue. She could not say what the company would do about it. I sent the company emails and letters asking them to remove the step or put in a ramp. The company did not answer me.

I was certain that the shop was breaching the Disability Discrimination Act, but I did not know what to do about it. Over the next few months I contacted the council, my MP, the building inspectors and the minister for disabled people. This made no difference. Some of them did not even answer my requests for help, which was extremely difficult as under the DDA it is only the disabled person who can take a case forward. That meant nobody else could have helped me complain.

I visited my local Citizens Advice Bureau.

They telephoned a national charity to ask for advice on what I could do. The charity told me that if I continued with a claim under the Disability Discrimination Act and I lost then the company could take my home away. I was very worried about this and it almost made me gave up.

**“I do not think the company would have listened to me or changed its behaviour without my solicitor’s persistence. They had tried to ignore me, but they could not ignore him”**

Eventually one of my local council contacts gave me the name of a solicitor in London who had acted for other disabled people in the past. I contacted the solicitor and he told me straight away that I could apply for legal aid to help me take on the company.

After listening to my story and doing some initial investigation my solicitor wrote to the company, warning them that I would go to court unless they took action to address the discrimination that I was suffering. The company still refused to remove the step or put in a ramp. In the end, we had to issue a claim.

As part of the claim, my solicitors obtained a report from an independent disability access expert. He found that not only was the step a problem, but also within the shop itself they had not taken reasonable steps to adjust the shop for disabled people to use.

My claim moved closer to a hearing and probably because of this pressure the company eventually admitted that they were liable under the Disability Discrimination Act. They agreed to install an internal ramp at

the shop, which has now been done. They also agreed to pay my solicitor's legal costs, which means that the legal aid money will be repaid.

I understand that the government is proposing changing the rules about who will be able to get legal aid funding in the future. People who own their own home, like my husband and I, may not be eligible for help. I am concerned about this. I could not have afforded to pay privately for a solicitor, as we are on a very low income (receiving pension guarantee credit and disability benefits).

Without legal aid I would not have been able to force the company to comply with the Disability Discrimination Act. I had already done as much as I could without going to court. Without my solicitor's help I would not have known how to go about taking the company to court. I do not think the company would have listened to me or changed its behaviour without my solicitor's persistence. They had tried to ignore me, but they could not ignore him.

I really appreciated my solicitor's help throughout this case. He was great and explained everything to me every step of the way. It was wonderful to feel that someone was on my side against a big company. If legal aid is withdrawn to others in a similar situation, I believe that discrimination will possibly increase, as large bodies realise that the vulnerable in society do not have the means to contest their actions.

## Immigration

### Kamaljeet received legal aid funding for her immigration claim

I am originally from India. In 2001 I married my husband, a Dutch national of Indian descent. He had been living and working in the

UK for two years before our marriage. After our wedding I moved to the UK to start our married life together. I was granted a residency permit that allowed me to stay initially for two years. This was renewed in 2003 and I was granted residency for another five years. Very quickly I settled in and the UK became my home.

During our marriage my husband was abusive, domineering and controlling. Sometimes he was physically violent with me. I was very unhappy. I had not thought that my husband would treat me this way after our marriage. However, I felt I had no choice but to remain in the marriage and do what my husband told me.

After our first daughter was born my husband suggested we travel to India to visit his family and show them our new daughter. After we had been there for a month or so, my husband returned to the UK. He suggested that I stay an extra month for a holiday which I thought sounded fine, and so we agreed that I would fly back to the UK the next month.

While I was in India I found out that I was pregnant again. My husband told me that it would be better if I stayed out in India a little longer so that our families could care for me while I was pregnant. I was not sure about this because really I wanted to return to my home in the UK. However, I was expected to be submissive to my husband and so I felt I had no choice other than to go along with his wishes.

Over the next few weeks and months each time I suggested coming home to the UK my husband would make an excuse as to why it was better for me to stay in India a short while longer. Even after I had our second daughter my husband did not allow me to travel to the UK. He made excuses each time I asked to return home.

A short time later my husband stopped calling and he refused to accept my calls. There was no way of my getting in touch with him. It became clear to me that my husband had

abandoned me in India.

After I tried to get my passport from my husband's family I found out that the Home Office had revoked my residency permit a few months ago. When my husband had returned to the UK the first time he had written to the Home Office and told them that we had been divorced. They had then revoked my residence permit.

This period was incredibly distressing for me. It was terrible living back in India. I felt like a complete outcast, isolated and ridiculed. My husband was well known and respected where I was living. I found out that he had told lies about me and said that it was my fault we had split up. I also found out that he had been in a relationship with another woman back in the UK since early on in our marriage. The other woman was also originally from my husband's family's home town which added further to my embarrassment and shame. I was desperate to return to the UK along with my children. I felt it was important to return to my home where I had built my life.

After a lot of time and effort on applications I eventually managed to obtain a temporary visa for me and my children to return to the UK. I stayed with relatives in Reading and paid an immigration lawyer to help me apply for leave to remain. The solicitor did not mention that I could have received legal aid. Instead I struggled to afford their fees.

The case was taking a long time. Finally my solicitors told me that the Home Office had refused my application. I wanted to appeal the decision but I couldn't afford to pay my solicitors any more. I wrote to the Home Office myself to appeal the decision but they sent me the wrong forms to fill out. By the time they realised they had made this mistake the time period for appealing the decision had expired.

The Home Office then notified me that they intended to remove me from the country. I was distraught. I did not have any money left as I had spent all of my savings on legal fees. My parents had even had to sell some of their possessions in India to send me money. The thought of being forced to return to India distressed me greatly. I could not return as an abandoned wife with two young children – I would be treated as an outcast again.

**“In India I was isolated and absolutely miserable. My husband had lied to me and abandoned me, but I was the one who was being blamed for it and had to live with that shame. Now that I am back in the UK I am so much happier. I would not have succeeded without legal aid”**

In desperation I spoke to a family friend in the UK who was an immigration barrister. He recommended a different firm of solicitors for me to approach, which I did.

My solicitors were fantastic. They were the first people who told me that I could qualify for legal aid. It was through their work that I discovered that the Home Office had made several mistakes with my applications. At my hearing, the Home Office representative admitted that several mistakes had been made and that I should have been granted residency. After this hearing I was granted leave to remain in the UK.

I have now been able to rebuild my life. In India I was isolated and absolutely miserable. My husband had lied to me and abandoned

me, but I was the one who was being blamed for it and had to live with that shame. Now that I am back in the UK I am so much happier. I would not have succeeded without legal aid. I spent everything I had trying to get back to the UK and then fighting to stay there. It was only when I got legal aid that my case was resolved.

## Inquests

### **Zoe Kealey's brother died in Wormwood Scrubs. It took the family some time to obtain legal aid for them to be represented at the inquest**

I am the older sister of Darwin Stanley Kealey, who died on 12 September 2008 in HMP Wormwood Scrubs. Darwin was a loved and cherished member of our family.

When Darwin died my family had no idea of what lay ahead. Few details were passed to us except that Darwin had hanged himself at Wormwood Scrubs. The weeks following his death were spent in shock and making arrangements for his funeral.

We had no understanding of the financial legal costs of obtaining legal representation to find out what happened to my brother. As Darwin died in a government institution we simply assumed that the government would fund this. However, to our astonishment we found that our family's limited financial means were to be extensively scrutinised. My mother, who is a part-time cook suffering from a serious disability and with very limited savings, was asked to contribute to the costs of legal representation. The savings that she had had been left to her by my late father and was his attempt to provide for her in her old age. She could not believe that she was going to have to choose between losing her

tiny amount of financial security and having no legal representation.

My solicitor, Kat, argued with the Legal Services Commission that my mother was not able to contribute to the funding of the inquest. The anxiety about funding the case simply added to the stress and upset.

Legal aid was eventually granted so that we had representation at the inquest. I cannot imagine how other families cope without the support that we had. Without legal aid and a solicitor to go through the case step-by-step my family would never have gained any understanding of the law and the legal responsibilities these agencies had towards my brother. Kat liaised continuously with my family and fought our corner in a way that we would never have been able to do.

Together, we worked through what happened to Darwin and what went wrong:

On 10 September 2008 Darwin was arrested for common assault and taken to Kensington Police Station. While in police custody he repeatedly self-harmed. He was placed in a CCTV-monitored cell, the footage of which shows my brother systematically removing every item of clothing and tying it around his neck in an attempt to strangle himself. All his clothing was eventually removed and he was left in the cell completely naked. The footage also shows my brother repeatedly banging his head against the wall and running across the cell with his head down until he hit the wall, apparently knocking himself out and collapsing naked on the floor. When police officers visited him in the cell Darwin told them that he had nothing to live for and that he "might as well end it".

Darwin's vulnerability was obvious. While in police custody he was seen by three separate medics, who all noted varying levels of risk of self-harm or suicide. Although an entry

was made on the custody record of Darwin's attempts to self-harm, this was not communicated to staff employed by the private escort company, Serco Limited, which took him to West London Magistrates' Court the following morning.

Any prisoner who is transferred into detention is accompanied by a document called the Prison Escort Record (PER) to record any risk of self-harm. The custody sergeant responsible for Darwin failed to detail Darwin's many attempts to self-harm, and failed to complete the form correctly in accordance with the Standard Operating Procedures operated by the Metropolitan Police. This fact was recognised in an independent investigation carried out by the Independent Police Complaints Commission. As a result of the police's failures to document Darwin's risk of suicide or self-harm, Serco staff had limited details about his vulnerability.

But Darwin's PER form did contain a ticked box informing Serco staff that Darwin was at risk of suicide/self-harm. The Serco policy relating to suicide and self-harm clearly states that Serco must open a suicide/self-harm warning form when there has been any attempt to self-harm in custody in the past month. This did not happen.

Darwin pleaded guilty to common assault at West London Magistrates' Court and was sentenced to 112 days in prison. He was transported by Serco staff to HMP Wormwood Scrubs where he arrived at approximately 6pm on 11 September 2008.

On arrival at the prison, staff had available to them the PER, which briefly noted his risk of suicide and self-harm, as well as medical reports from the medics at Kensington Police Station which detailed some of his attempts at suicide/self-harm. None of these documents were considered for the purposes of assessing

Darwin's risk of suicide or self-harm while on entry to prison. Prison staff stated this was because they would always rely on Serco staff to have produced a suicide/self-harm warning form to identify any prisoner at risk. This did not happen.

Darwin was then examined by a nurse (employed by Hammersmith and Fulham Primary Care Trust) who failed to examine his medical records or the PER.

On the morning of 12 September 2008 Darwin was found hanging in his cell.

Darwin was 28 at the time of his death. The jury at Darwin's inquest, which concluded in March 2010, identified no less than nine failings on the part of the police, Serco, the prison and the PCT. The jury found that Darwin died of an act of self-harm "in part because the risk of taking his own life or harming himself was not recognised and appropriate cautions were not taken to prevent him from doing so".

My brother's death was a tragic incident which could have been prevented if any one of the people responsible for his care had taken the time to consider the evidence available to them in accordance with their various procedures and policies. If this had happened Darwin would have been placed under observation which could have prevented his death.

As a result of the jury's findings, the deputy coroner for West London, Elizabeth Pygott, wrote to the Lord Chancellor, Sir Paul Stephenson (then commissioner of Police for the Metropolis), the chair of NHS Hammersmith and Fulham PCT, the secretary of state for health and the chairman of Serco Group Plc to make a report in accordance with rule 43 of the Coroner's Rules 1984. This rule provides that, where evidence at an inquest gives rise to concerns that circumstances create a risk that other deaths will occur, action should be taken to prevent or reduce the risk of future deaths.



In her letter, Pygott stated: “It is the lack of common understanding about how the PER should be used which gave rise to serious concerns in this case and has potential disastrous consequences for other detainees.”

**“When we arrived on the first day of the inquest it was incredibly daunting. There were eight interested parties in total, all of whom were legally represented. I do not know how we would have been able to cope without our barrister”**

All this information would never have come to light without the support and assistance I received from my legal team. Kat Craig of Christian Khan Solicitors and Marina Sergides of Garden Court Chambers worked tirelessly to obtain and scrutinise all the documentation and ensure that evidence was heard to explain the circumstances surrounding my brother’s death, and to ensure that such deaths may be prevented in the future.

When we arrived on the first day of the inquest it was incredibly daunting. There were eight interested parties in total, all of whom were legally represented. I do not know how we would have been able to cope without our barrister. She fully understood how intolerably upsetting it was to relive the final hours before my brother’s death.

As a family we needed to hear what happened to Darwin to be able to grieve and cope with our loss. We also wanted to ensure that any failures and missed opportunities were properly identified. I could never have coped

with the emotional heartache while at the same time trying to pursue legal arguments about the scope of inquest. How could any family be able to listen to how their loved one died at the same time as considering the evidence being given by witnesses and thinking up questions?

Without the help of our legal team we would never have known what happened to Darwin. Darwin’s death was a tragedy and has left a hole in our family that will never be filled. Yet I consider that we were the lucky ones to receive legal aid and to have a legal team representing us. My family has found some solace in the knowledge that the state has been notified of the failings identified by the jury, and we hope that no other family will have to suffer in the way that we have.

## Education

**L is the mother of a 16-year-old boy with Asperger’s syndrome. She has battled with her local authority for a number of years to secure for her son the help that he needs with his education**

I would be very concerned if the funding of legal assistance with educational tribunals was withdrawn.

While most parents have the ability to understand the procedures, some do not and this impacts upon their child’s ability to access an appropriate education. The procedures can be confusing and complex. This is stressful enough, but if you consider that you are also emotionally involved then this makes a difficult situation even worse. It is often physically and mentally tiring just being the parent of a child who is going through the tribunal

process. The added stress of having to coordinate alternative education for your child is underestimated.

I have to care for my eldest son and his younger sibling and hold down a part-time job. The fight – and I do not use that word lightly – has been incredibly time consuming and physically and mentally draining.

Children and young people with special education needs (SEN) have a big enough challenge just getting through the day. They and their families have to adjust their lives to cope with life-long conditions that impact on every aspect of family life. It can be incredibly difficult to access appropriate educational provision for some of these children. Budget constraints are understandable, but every child has legal and moral rights to a fair and appropriate education. Too often they are placed in mainstream schools with a lack of qualified SEN teaching staff or the appropriate provision is out of the area and that can mean residential placement.

In my experience, my son has been neglected by the local authority with regard to his education. He has spent considerable periods without formal education and is now receiving a limited education which does not meet all his needs. I have attended many, many meetings where I often feel there is a hidden agenda and the local authority is covering itself. I had to use the legal right to obtain an assessment of my son to obtain a formal diagnosis when it was blindingly obvious there were concerns. He has suffered not only in not having an appropriate education, he is a bright and capable young man, but his social skills have been impeded and he is now very reclusive.

Ultimately his case is likely to end up in court, not through choice but because he has been so let down. He deserves better and I would not want another family to go through

what we have. Frustratingly, so many professionals involved have told me ‘off the record’ he has been neglected but none are prepared to put pen to paper to support us for fear of rocking the boat with the local authority.

I do not excuse my son’s behaviour which led to him being removed from mainstream teaching. My argument is that he was failed without the right environment and support to enable him to be educated appropriately.

To obtain a fair and reasonable outcome, I feel that a third party who is not emotionally involved and who is working in the neutral best interests of the child, at a time of considerable stress, is a provision that should not be withdrawn.

## Debt advice

**Leena received help with her debt problems. Her solicitors helped her collect the evidence needed for a successful bankruptcy application**

**I** needed help from legal aid when my debt problems became too much for me to deal with.

My debt problems had started around 1999 after I lent my brother around £25,000. Our parents’ landlord (a local authority) had told them that they were going to sell the property. Both of them were elderly and unwell and we did not want them to move. So, my brother suggested he could buy their home, which would mean they could stay there.

I lent the money to my brother, for which I had to borrow a lot of money myself, and he promised he would pay it back. Despite his promise he never repaid me. I did not have anything in writing from him and my parents passed away shortly afterwards, so there was

nothing I could do to prove that he owed me the money.

My debt issues became worse when I lost my job. I had been on a low income anyway and struggling to afford debt repayments, but when I became unemployed they became impossible to manage.

I had tried dealing with my debt problems on my own. Before losing my job I managed to agree a freeze on some of my debts and was making token payments on others. However, that meant the interest on the debts was soaring. I was receiving threatening letters from creditors saying that they would send round bailiffs. I had thought about bankruptcy but I would not have known how to go about making an application and I was afraid of the embarrassment.

By the end of 2009 I decided I had to do something. The letters from creditors were coming all the time and any money that came in was disappearing straight away. I approached my solicitors in October. They were incredibly helpful and sorted everything out for me. They went through my finances with me and told me I could apply for bankruptcy. I thought this would be my best option because I just wanted to be able to start again. I had so much debt that I could not see any other way out and it was ruining my life. I have two young children and I was finding it increasingly difficult even providing the essentials for them.

My solicitor helped me put the evidence together and make the application. There was a huge amount of paperwork and there is no way I could have done it all by myself. After I made the application, it was accepted and I was declared bankrupt.

Things are so much better now. I have been able to get back on my feet and I am trying to better myself. I am currently volunteering to

help get back to work. Last year I took a teaching assistance course and I am currently taking an access to social work course. I hope to be working again soon.

Legal aid was so important for me. I had absolutely no financial resources and without it I would not have been able to get assistance. I know that I would not have been able to do the bankruptcy application myself; it was just too complicated and there was so much to do. If I had not got the fantastic assistance I received through legal aid I probably would have lost a lot of my property to the bailiffs.

Alternative sources of advice are just not enough. Whenever I went to the Citizens' Advice Bureau it was very difficult to get an appointment because they were so busy. If I did get an appointment I would end up seeing a different person each time who would not be familiar with my case. I think it would be terrible if legal aid was cut for debt issues – people in my position would have no chance of having their problems resolved.

## Housing and welfare benefits

### DM received legal aid for help with his homelessness case

**I**n 2006 I applied for help with my housing to my local authority. They agreed to fund the deposit for a private-rented home. After I found one that I could afford (along with some help from housing benefit) my family and I moved in.

I began to get into trouble with my rent when my housing benefit was reduced. I found out later that after a year in my home a rent assessment officer had decided that the rent was too high for the type of flat and the area I was living in. Therefore the council

reduced my benefit by £50 every week. I found it difficult to make up the shortfall on my limited income from part-time work, and so my rent arrears increased.

I tried to speak to the council about my housing benefit claim and to ask why it had been reduced. Nobody could clearly explain why it had been suddenly reduced after one year.

In the end the rent arrears were so high that my landlord started a possession claim against me. At that time I did not realise that I could get legal help to defend the landlord's claim. As it was a private tenancy, I thought that he was able to evict me whenever he wanted. The court made a possession order against me without a hearing.

When my family and I were evicted we applied as homeless to the local authority. We were placed in emergency hostel accommodation. This housing was not very good but we were grateful to have a roof over our heads.

The council investigated our case and eventually made a decision that they could not continue to house us because they said I had made us homeless by not paying the rent. I didn't think this was right – I had been paying the rent, it was just that it was too high for me to manage. The council's decision letter said that I had 21 days from the date of the letter to ask for a review. They also said that we would have to leave the emergency hostel within a short space of time.

I handed in a letter to the council's offices to ask them to review their decision. However, the council refused to do this, saying that I had missed the deadline to request the review and they could not accept my request after this.

As the council had refused to review my case, our emergency housing was terminated and we were evicted. My partner and children went to stay with a friend for one night. I stayed with one of our other friends as neither

had enough space for all of the family. Our friends could only put us up for one or two nights at most.

The next day my partner went with the children to a local law centre. She explained her personal circumstances and what had happened. The law centre said that they could not help her as they were very busy. However, the law centre solicitor put our case on an email group of local lawyers and advisers to ask if anyone in the area could help her. My solicitor saw the law centre's email and agreed to help.

**“If my partner had not gone to the law centre that day then our family could have been forced to live in separate homes with different friends while looking for a new home”**

The following day we went to my solicitor's office. She immediately wrote an urgent letter to the council asking the housing department to accept the review and provide more emergency housing while they carried out their review. My solicitor also asked social services to help because my young children were at risk of being homeless. The letter warned the council of court action unless they agreed to house our family. Luckily, shortly after receiving my solicitor's letter the council agreed to provide us with emergency housing that same day.

After this my solicitor investigated what had happened with my last tenancy. She got a copy of my housing benefit file and found the rent assessment decisions. From this she could see that it was not my fault that the rent had become unaffordable. She wrote detailed representations to the council about this and other

issues in my case. In the end they agreed to overturn their original decision. They accepted that they have an ongoing duty to make sure that my family has somewhere to live.

I am very grateful to my solicitor and legal aid for helping my family with this case. If my partner had not gone to the law centre that day then our family could have been forced to live in separate homes with different friends while looking for a new home. Also, it would have been difficult for me to find a new home because of my low income and previous history. We could have been living apart for a long time.

Without my solicitor's help I could not have known or explained to the council the reason why my housing benefit had reduced and my rent became unaffordable. I could not have paid for legal advice, as my part-time work does not bring in much money and I have my partner and young children to look after. I am thankful for the work that my solicitor did for me.

## Housing

### EM received help escaping an abusive partner

**I**n 2007 I approached a housing solicitor for help. I had been trying to escape an abusive and physically violent ex-partner. Even though we were not together he would still come and go from my home whenever he wanted. It felt like he had complete control over me and because we had a child together it was difficult for me to avoid him.

When he was at my home he would start arguing with me and sometimes become physically violent. When I rang the police he would disappear before they arrived. They were never able to catch him and arrest him. Instead they advised me to apply for a transfer

from my landlord (a local authority) and move to a new home, where he would not be able to find me.

I asked the council to transfer me. I showed them pictures of my bruises and injuries. I gave them police records and crime reference numbers. My case went to the emergency rehousing panel but they turned me down. Apparently I did not have sufficient evidence to show that my life was seriously at risk.

After the council turned me down I did not know what to do. My mum suggested that I get some legal advice from a housing solicitor. That is when I contacted a firm to ask them to help me.

My solicitors wrote a letter and referred me to another council's homeless person's unit. I was placed in a safe house immediately. I fled my previous home with my son. We left all our belongings and clothes. We just escaped and I was in the emergency hostel accommodation for around eight months. The new council accepted that they had a duty towards me and my son as a homeless family fleeing violence in my old home. I was placed on a waiting list for a new home and eventually I was granted a temporary home with a housing association. I have just recently been offered a more secure, permanent home for my son to grow up in.

I am very happy now everything is over. My son and I can live in peace knowing that my ex-partner does not know where we are and I am thankful for being able to get legal aid to help me with my case. If legal aid had not been available to help me then I do not know what I would have done. I could not have done this on my own.

## Welfare benefits

### Mr and Mrs Mansell were helped

## by free legal advice to retain their pension credit

I am writing this letter to express my concern about the proposed legal aid cuts. I found myself in difficulty recently following a decision by the DWP to refuse to pay me any pension credit. They also told me that I had been overpaid by more than £11,000. This left me with barely any income for my wife and I, and we struggled to survive on what we had.

With professional welfare benefits advice we were able to prepare for a tribunal hearing against the decision to refuse pension credit. We were successful in this. We were also able to quickly change the decision that we had to pay money back to the Pensions Service.

The rules involved in the Pension Service's decision were complex and not easily understandable. We also found that the Pension Service itself confused the issue further in advance of the hearing which would have made it nearly impossible for us to deal with the case on our own.

I would not be able to afford to pay for legal advice and would support legal aid continuing to support people like myself.

## Housing

### Jean Martin had help to stop her being evicted

I needed legal help when my landlord tried to increase my rent to a level I could not afford. I live in a rented house in Enfield where I've lived most of my life. My parents were the original tenants of the house and they already lived there when I was born in 1943. I lived in the house from my birth up until 1975. At that stage I moved out briefly to

live with my partner. Our son was born in 1976 when I was still living away from the house. Shortly before my mother passed away in January 1978, my partner, our son and I moved into her home. At that stage my partner and I took over the tenancy. I've lived here ever since. My partner passed away in 2001 and my son moved out not long after, so since then I have lived here alone.

In February 2010 I received a letter from my landlord informing me they were going to increase my rent to £250 per week. My rent at the time was only £125 and I was receiving housing benefit to pay for it. I contacted the council but they told me housing benefit could only cover £165 per week. The changes would take effect from April 2010 so I did not have much notice. I knew that I would not be able to afford to pay the extra rent, so I was very worried.

I initially approached Enfield Council Housing Advice for assistance. They helped me challenge my landlord's decision as he was legally required to give me six months' notice of a change in rent.

This meant I was able to put back the date of effect of the new rent until November 2010. However, I was still extremely worried as I did not know how I was going to pay the extra rent. The only income I receive is from housing benefit and my pension which is very small and only just covers my outgoings as they are.

Housing Advice then referred me to a solicitors' firm. They were absolutely great. They advised me that because I had been living in the house for I was a protected tenant under the Rent Act. This meant that the landlord could not lawfully raise my rent to the level he wanted. They managed to sort out the whole thing for me by helping me apply to court to establish that I was a protected tenant.

My solicitor rang me in early December 2010 to say that the court had accepted that I was a protected tenant. He informed me that this meant that if my landlord wanted to increase my rent in the future it would have to be an allowable increase and it would very likely be covered by my housing benefit. As yet my landlord has not tried to change my rent again. I was so happy when I heard this.

All the worry and stress had been like a lead weight around my neck. It had made me ill and I was even taking anti-depressants which I had never had before.

There is no way I would have been able to stay in my house without legal assistance. My solicitor told me that being a protected tenant under the Rent Act is very rare. I definitely would not have been able to discover it by myself. If it had not been for my solicitor I am sure my landlord would have raised my rent and I would have had to leave my home.

That is why legal aid is so important for people like me. I have been lucky, I got help, but there are so many people out there who still need it.

## Asylum law, housing and welfare benefits

**The following is a letter from Souleikha Mouhamed who received help from Hackney Community Law Centre for both asylum and housing problems**

My mother and I came to the UK in December 2002, as we fled the civil war in Somalia. My father was murdered in the civil war, and to this day we do not know whether my brothers or sisters are dead or alive.

We were living with a Somali friend, who after few weeks asked us to leave her house, so we became homeless. The solicitor who was representing us at that the time did not give us the right support and advice, and as a result our asylum claim was refused and the case was closed.

**“For us, the law centre has been a lifeline, and I am sure it has been and continues to be the same for many others. I will always be grateful for the help I received”**

A friend told us about Hackney Community Law Centre and how the housing solicitor was extremely helpful and supportive. We had nowhere to sleep the night we went to the law centre. The housing lawyer contacted various departments of the council and got a court order over the telephone. We were placed in a bed and breakfast at one o'clock in the morning.

At the time, we also had immigration problems. The immigration solicitor at the law centre was not only helpful, she was understanding, caring and compassionate. Thanks to her, our immigration case was reopened. We went to court to appeal the decision by the Home Office and we were successful. We were then granted refugee status.

Since then the law centre has helped us to be rehoused by the council, and is helping with our request for a transfer (my mother is disabled and we live up a flight of stairs). They have also represented my mother once at the lower tribunal for my mother's Disability Living Allowance appeal and we are waiting

for another hearing.

We have moved on with our lives now, and I am about to complete my university degree. One day I may work in the NHS. I was horrified to learn about drastic proposed legal aid cuts, which would mean that in the future the law centre would not be able to help people like us with benefit and money advice, immigration and housing problems. I would ask the government to rethink.

The law centre has been so helpful to me and my mother. It's a place dedicated to helping people like us. For us, the law centre has been a lifeline, and I am sure it has been and continues to be the same for many others. I will always be grateful for the help I received and thank both our solicitors from the bottom of our hearts.

## Childcare and family

### EP received help in the wake of the break up of an abusive relationship in relation to divorce and care proceedings

I married my husband in 2002. Soon afterwards we began to have problems. My husband previously had a high-profile job as a banker in London, although when we met he had left his job and was living off capital. He had lived a party lifestyle and at the time we got married he had an addiction to cocaine. At the time I was naive and didn't realise how severe the problem was. We attempted to deal with this by moving away from London, but this didn't work.

Over the next few years my husband's behaviour became worse. He was older than me, very domineering and controlling. He was also physically abusive. My health began to suffer

because of his behaviour and our situation. I became withdrawn. I began to spend almost all of my time in the house just with our daughter. I did not have support from my family at the time. I began to drink heavily and ended up developing a serious alcohol addiction.

Our marriage deteriorated further. We would both be violent towards each other, particularly when I had been drinking a lot. I did try to leave my husband a number of times during this time but he would always threaten me. He told me that he would make sure he got custody of our daughter and that I would never see her again.

On one occasion my husband and I had a serious fight. The police were called to the house. Our daughter was only three at the time and, because my husband and I had been violent with each other, social services became involved.

Over the next year things were awful. Child Protection was working with me and my husband, but because of his drug addiction and my alcohol addiction we were getting worse. I was so miserable that I was just giving up on life. I did not have the energy or the will to try and sort myself out. As part of our work with social services my husband and I had agreed not to be around our daughter at the same time. When social services found out that we had broken that agreement they began court proceedings to take my daughter into care.

This was when I first approached my solicitors. I was worried about how I was going to pay for her because I was not working and we had huge financial difficulties. However, my solicitor told me I could qualify for legal aid funding.

My solicitor was amazing. She was incredibly supportive, far beyond her professional duties. At that time I was so unhappy, I was an alcoholic and in an abusive marriage. I was



unable to function properly as a mother. My solicitor helped me every step of the way. During custody proceedings the judge strongly recommended that I seek a residential treatment programme for my alcohol addiction, which I did. While I was in the residential programme the court made a special guardianship order in favour of my father.

**“Over the next year things were awful. Child Protection was working with me and my husband, but because of his drug addiction and my alcohol addiction we were getting worse. I was so miserable that I was just giving up on life”**

Around this time I realised that if I was ever going to properly repair my life I needed to get out of my marriage, so, with the help and support of my solicitor, I started divorce proceedings. At that stage I was pregnant with our second daughter. Because Child Protection had been involved with us for so long, our second daughter was placed on the child protection register when she was born.

After I completed the residential programme although I had stopped drinking I still had difficulties. I was still very emotionally weak. I suffered from anxiety which was made worse by the continuing difficulties with my husband and the stress of the divorce proceedings, and I often had panic attacks. After a short time in temporary housing I moved in with my father who was still caring for my oldest daughter.

The divorce proceedings took a huge amount of time. There were many issues to be

resolved, such as contact arrangements for the children, and my husband was being extremely uncooperative. He was determined to obstruct any progress and managed to drag out the proceedings for a long time. My solicitor was a great support throughout. There is no way I could have done it myself. I was still so fragile at the time and my husband would say nasty, abusive and untrue things about me during the hearings. The idea of going through that without the legal assistance I had is inconceivable.

It took a long time, but in the end things improved. I have stayed off alcohol, my second daughter is now off the child protection register and in February 2010 the order giving my father special guardianship of my first daughter was revoked. My husband also got treatment for his addiction and was able to give up drugs. He got a new job and lives abroad now. Our divorce was finalised in October 2010 but we have been able to build an amicable parental relationship for the sake of our children.

Now I am a functioning parent and I'm starting to rebuild my life. It is still difficult thinking about all that has happened but I am so much better than I was. I am indebted to my solicitor. She was unbelievably supportive. It was more than just a professional relationship. She helped me see that I was never going to improve my life unless I got out of my abusive marriage. When I was at my worst I needed someone whose professional duty it was to be honest with me.

Without legal aid I do not know where I would be now. I had no resources of my own when I left my husband. Neither of my parents was financially stable enough to lend me money and my husband had left us in such a dire financial situation at the time that I could not borrow money. Without the assistance I

got through legal aid I probably would have lost both my children and may still have been an alcoholic and in a violent relationship.

## Family and debt advice

### Steven had help in family contact proceedings and advice on his debt issues

I needed legal advice to petition for a divorce against my wife. Most importantly, I wished to put in place arrangements to see my two children. In addition, I had major debts incurred during the marriage that were solely in my name.

In relation to my debt situation, my solicitor recommended a debt relief order which meant that, although this affected my credit rating, I did not have to pay my debts unless I had sufficient disposal income. This has provided great relief to me and means I have sufficient money to see my two children.

**“I am now going through a divorce and have formal arrangements in place to see my children. Because of the work undertaken by my solicitors, I can now move on with my life and work on building a better future for myself and my children”**

My solicitors have provided me with excellent advice and support. Without them it would be hard to think of the possibility of a decent life. I am now going through a divorce and have formal arrangements in place to see

my children. Because of the work undertaken by my solicitors, I can now move on with my life and work on building a better future for myself and my children.

I knew from research on the internet that I was entitled to legal aid. I am alarmed to think that people in my position will find it increasingly hard to have access to legal aid funding.

In certain circumstances I believe going to court is the only satisfactory option available. I am about to partake in mediation, which is not ideal for someone in my circumstances – the distance between myself and my ex makes this option impractical. I find no comfort in the fact that both parties are entitled to change their minds. However, the benefit of obtaining a court judgment is that it provides certainty and both parties know what is expected of them and the consequences. This is particularly important when negotiating rights to see my children.

## Community care and housing

### Subera received legal aid after her local authority refused to house her and her 12-year-old sister

I received help from my local law centre when I was applying to the council for accommodation.

I am from Bangladesh originally and I moved to the UK with my father and two younger brothers in 1999 when I was around nine years old. In 2005 my father became sick and was taken into hospital. He passed away shortly afterwards. I was only 15 at the time and I was left trying to look after my two brothers, aged 14 and ten, by myself. After a short while my school found out about the situation and informed social services. All three of us

were then taken into foster care. I was housed in a placement separate from my brothers, which I found difficult and upsetting.

Shortly after turning 18, I moved to London and began to live in a supported housing scheme for young people. I had been accepted to study psychology at a London university.

I had been living in the supported housing for about three months when I got a phone call from my mother in Bangladesh. She told me that she was suffering from cancer. At the time my little sister was just 12 years old and still living with our mother in Bangladesh.

My mother told me that she had become so sick that she could not care for my sister anymore. There were no other family members who could take my sister in and already some family members were talking of marrying my sister off. My mother was extremely worried. She asked me if I would care for my sister and I said I would. A few days later my mother sent my sister over to London with one of her friends. This was in June last year. The friend then went back to Bangladesh, leaving me to look after my sister.

I had not been able to make any plans for my sister's arrival as this had all happened so suddenly. Unfortunately my sister was not allowed to stay with me at the supported housing scheme as it only housed people over 16 years old. At first I tried to hide the fact that my sister was living with me just until I could find somewhere else to live, as I knew they would ask me to leave and we would be homeless. I could not arrange anywhere else for us to live because I had very little money and few resources. In the end I had to tell the people at the housing scheme about my situation. They told me that if I wanted to live with my sister I would have to leave. There was no way I could abandon my sister, so I was given

one week to leave my home.

I approached my local law centre for help. They had given me housing advice when I first arrived in London and I thought they had been really great so I went back to them.

The law centre advised me that I could apply to the council for emergency accommodation. I went to the council but they refused to provide emergency housing. They told me that it was my fault that I was homeless as I was voluntarily looking after my sister.

My adviser helped me obtain a statement from social services that confirmed I was my sister's sole guardian. They also helped me put together evidence that my mother was sick and unable to care for my sister. I had evidence to show that I could not secure my own housing. Even with this evidence to support me and the support of social services, the housing department still refused to house me and my sister. They told me that if my sister really did not have anyone else to care for her then I should put her into foster care and stay in the supported housing by myself.

I was shocked and devastated when the council told me that. I was simply trying to do what was best for my sister and it felt like I was being punished for that. I had promised my mother I would take care of her and there was no way I could put her into foster care. I had been in foster care myself and knew the difficulties that go with it. I did not want to put her through that.

At the end of the week I had to move out of my home. Social services had agreed to provide housing for me and my sister for a short time while my application for housing was being processed. I knew that the social services housing was just a temporary solution and I was so worried because I did not know what was going to happen to us. Every time I spoke to the housing department I got the

same response, no matter how desperate I said my situation was or how much evidence I provided.

When I told the law centre this they immediately wrote to the housing department. My case worker told me that the housing department was definitely wrong to refuse my application. In the letter she demanded a review of the decision and threatened court action unless my sister and I were provided with emergency housing. The council did review the decision and confirmed that they have a duty to make sure that my sister and I have somewhere to live. Within the next couple of days we were provided with temporary accommodation in a two-bedroom flat.

**“We are still living in temporary housing but I am currently bidding for permanent accommodation for us. Already our situation is so much better”**

We are still living in temporary housing but I am currently bidding for permanent accommodation for us. Already our situation is so much better. We have some stability and I am able to concentrate on my studies at university and taking care of my sister. I have managed to find a school for her and she is doing well.

I would not be in this situation if it was not for the help I received from the law centre. They were so supportive of me throughout, not just with the legal side of things but also personally. Every time I approached the housing department myself I was refused with the same excuses. It was only when my case-worker intervened and wrote to them directly that any progress was made. Without their

assistance I would either be homeless or I would have had to put my sister into foster care. This kind of help is so important for people like me who have so few resources and who are just trying to make a life for themselves and their families.

## Housing

**Mrs Whitehouse received help when her landlord tried to sell the house in which she had been living for almost 50 years**

I needed help from a solicitor when I received a letter from my landlord’s solicitor saying that she wanted to come and speak to us about our flat. The solicitor came round shortly after this and told my husband and I that my landlord wished to sell our flat. The solicitor told us that there was nothing we could do to prevent this and that it would be unwise to try and fight it in court as we would definitely lose.

The prospect of being moved from our home was terrifying. We had lived in our flat since 1962. We were elderly (my husband was 79 at the time of our trial and I am now 78) and we had hoped to stay living in our home until we were no longer well enough to do so.

Our landlord showed us another flat that we would be moved to if we agreed to leave and I did not like it at all. There were few windows so it was much darker than our flat. Also, although it was still within our local area, it was a very different community.

Our flat is on a lovely street and I am involved in my community. I am president of Housing for Young Employed Men of Limited Means (HYELM), an organisation that provides affordable housing and facilities for key

workers and young people (of both genders now) of limited means in London. I also act as trustee for the InterChange Trust, an organisation based in Hampstead that provides activity programmes for youngsters, some with difficult backgrounds, often involving mental health or physical disability issues or criminal backgrounds. I also founded the Netherhall Neighbourhood Association in 1983 and remain on its board.

My neighbours are even more important to me now that my husband has passed away. They often help me with chores such as giving me lifts to do my shopping and they recently turned up unexpectedly to clear my front steps during the snow and ice. More than that, my flat has been my home for nearly 50 years and moving to this other flat would have been like moving to another world.

I felt it was important to get some legal advice about what was happening to us. We approached a tenants' advisory group in Camden who provided a list of solicitors that would deal with housing issues like ours.

The solicitor we found was fantastic. She told us that we qualified for legal aid funding and arranged it all for us. We thought we had a good case but unfortunately at the first court hearing we lost. However, our barrister told us that she could not believe that we had lost the case. She said that in her opinion the judge had been clearly wrong and that we should appeal.

My husband and I were initially wary of the idea. The whole situation had been incredibly stressful and had affected our health. We were not sure if we could stand the stress of dragging it out further. Also, I felt awful about taking further money from the public purse to fund our case, even though my solicitor had explained to us that it was our right and that this is what it was there for.

In the end we trusted our barrister's opinion and agreed to appeal. It was lucky that we did, because when the case went to the Court of Appeal we won with a unanimous verdict. All three judges said that our landlord's case was extremely weak and they were quite critical of the first judge who had sided with our landlord.

**“The prospect of being moved from our home was terrifying. We had lived in our flat since 1962. We were elderly – my husband was 79 at the time of our trial and I am now 78 – and we had hoped to stay living in our home until we were no longer well enough to do so”**

Unfortunately my husband was not alive to see that decision, as he had died from a heart attack while the appeal was still ongoing. I am sure it was not the sole cause, but I also have no doubt that the stress of this whole situation was part of what caused my husband's death.

I am completely indebted to legal aid. At the time of the case my husband and I were long retired and had survived on benefits for a long time. My husband used to work as a freelance filmmaker, producing, directing and filming. It did not pay much though as he was often out of work and he had not made any provision for our old age such as a pension. If we had not received legal aid we would have had no way of funding this case. We would have had to move out to the flat that our landlord was offering, leaving our home of 50 years and all our friends, without knowing

that our landlord had no right to do this.

I did not want to have to take public funding for this case, but there was not any alternative. Luckily, because we won the case my landlord was required to pay all our legal costs so all of the money we had received went back to the government. When my solicitor told me that I was almost as happy about it as I was about winning the case. My husband and I were vulnerable people, and vulnerable people need to have the support of legal aid.

(The Court of Appeal decision can be found on Bailii: *Whitehouse v Lee* [2009] EWCA Civ 375.)

## Family

### **Yvonne received legal aid to help apply for guardianship of her grandson, after he suffered from abuse from his father**

I wanted advice on what I could do when my grandson was taken by social services following accusations that his father (my son) had been physically abusing him.

The police removed my grandson after an anonymous phone call to them concerning child abuse. My son, who was later arrested, phoned me when his child was taken away. I contacted the police and found out that my grandson had been taken by social services so I went to their offices.

I was allowed to take my grandson along with a social worker to visit a child protection officer and a doctor. At first he wouldn't say what had happened but he later described the violence to the doctor. After we had seen the doctor I took my grandson home to live with me and my two youngest children.

Over the next few weeks I didn't hear

much from social services. I thought I was not getting much information or support. It felt like they had just forgotten about me and my grandson.

**“My grandson was taking a long time to settle in. When he first moved he was upset and showed the emotional strain. He was worried that he had betrayed his dad and was suffering from nightmares and bed-wetting”**

My grandson was taking a long time to settle in. When he first moved he was upset and showed the emotional strain. He was worried that he had betrayed his dad and was suffering from nightmares and bed-wetting. Sometimes he felt resentful towards his dad and he would be cold and rigid around other family members. He didn't like to be embraced and I think his dad sometimes told him that the rest of us didn't love him.

I began to think that I wanted a more formal arrangement in place for looking after my grandson. I was concerned that my son would be able to come and take him away whenever he wanted. When I decided that I needed advice I went to the Citizens' Advice Bureaux. There was no indication that the CAB could assist me and they gave me a list of local solicitors' firms to visit.

I picked the firm that was closest to my home. I'm not sure what I would have done if it had been further away. I didn't have any help looking after my grandson and had to take him to school and collect him. It would

have been very difficult for me if there had been no local legal aid advice available.

My solicitors they told me what my options were, including applying for a residence order or special guardianship order. I took some time to think about it. I liked the sound of a special guardianship order. It sounded like the role I wanted to have where I would have the same rights as a parent when making decisions about my grandson. I also wanted to ensure that he couldn't just be taken away again. With the SGO in place it would mean someone would have to get a court order to take him from me.

I was also happy because I could explain all this to my grandson. He was having a difficult time and was worried that his dad could take him back at any time. He wanted to be able to visit his dad but he didn't want to live with him.

I went back to my solicitors and told them I wanted to apply for an SGO. They told me that I would have to get a residence order in place first, and then I could apply for an SGO. They applied for the orders for me, putting all the evidence and information together. I do not think that I could have done this on my own – I needed the help of those who were qualified and able to work on my behalf.

I've been to court around four times throughout this process. Each time a solicitor has been there with me, which I have found a great support. In that time my son was banned from direct and indirect contact with his son. He also received a two-year suspended sentence. I haven't got the SGO quite yet but we're going to court again in a couple of months and I've been told that I should get it then.

Since coming to live with me my grandson's come a long way. The bed-wetting and nightmares have tapered off and you can see

from the way he holds himself that's he less tense and more relaxed. He is opening up and expressing himself more – his dad always cut his hair short but he decided he wanted an Afro. I wasn't sure about it myself but we're beginning to see who he really is.

I think having call centres as the first point of contact would be a mockery of the legal system. When I needed legal advice I was vulnerable and felt that I needed someone to talk to face to face, not over the phone. I don't think legal aid costs too much – you can't put a price on things that are priceless. If you remove this funding then it would cause even more breakdown in society.

If I had not been able to afford legal advice then I might have tried to represent myself. But I don't know how I would have dealt with all the paperwork or known who to chase and for what information to help my case. It would have felt as if it was me up against all the other authorities involved. In the end it was the court that got the local authority to do all the things it should have been doing in the first place. Before the court hearings no information had come from social services; it had all come from the solicitors. I felt like social services were waiting to see what everyone else – the police, the courts, and so on – would do.

I am very grateful to legal aid and my solicitors for their help so far. The school says that my grandson is a changed child. He was always able academically, but now he has blossomed and no longer bottles things up. I don't think that could have happened without taking the action that I did.

Without legal aid my grandson would be living in an uncertain and unsafe situation. There would have been a constant risk that his father would come and take him away at any time. He can't do this now.



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*Shami Chakrabarti*



## 7. The case for legal aid: the rule of law

“Wherever law ends, tyranny begins” was how 17th century philosopher John Locke summed up the rule of law. We considered a range of evidence and information to the effect that the rule of law is integral to a democratic society and that legal aid is a vital component of this.

### What is the rule of law?

For the late Lord Bingham, a former senior law lord, the rule of law meant: “All persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.”<sup>1</sup>

That is, everyone must adhere to the law, no one should be above it, and everyone should have the protection of the law when they need it.

According to Bingham, the rule of law encapsulates a number of different principles, including:

- Equality before the law: the laws of the land should apply equally to everyone.
- Ministers and public officers at all levels must exercise their powers in good faith, fairly, for the purpose which they were given to them, without exceeding the limits of such powers and not unreasonably.
- The law must provide adequate protection of fundamental human rights.
- Access to justice: as an unenforceable right is of little value to anyone, everyone should have the means to resolve their disputes without prohibitive cost and as a last resort people should be able to go to court to have their civil rights determined.
- A fair trial: procedures for resolving disputes should be fair. This encapsulates

the idea of ‘equality of arms’, i.e. that the dice should not be loaded against one side or the other.

### The importance of the rule of law

The rule of law is central to our modern system for protecting human rights. The first of the major human rights documents drawn up after the Second World War was the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948. The affronts to humanity committed during the war were still fresh in the minds of the commission, chaired by Eleanor Roosevelt, which drafted the declaration. The preamble to the declaration says “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.

It is precisely this principle, among others, upon which the European Union is founded. Article 2 of the consolidated version of the EU treaty states:

“The union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which pluralism, non-discrimination,

tolerance, justice, solidarity and equality between women and men prevail.”

In 2008, the then leader of the opposition, now the British prime minister, David Cameron, declared his commitment to the rule of law stressing its importance to British society:

“There’s a long list of things we might include in any description of our national character, or ‘Britishness’. But I don’t think we need engage in some protracted exercise to define our shared values. We can do it in a single phrase. Freedom under the rule of law. This simple, yet profound expression explains almost everything you need to know about our country, our institutions, our history, our culture – even our economy. It is why British citizens are free men and women, able to do what they like unless it harms others or is explicitly forbidden. And why no one and nothing is above the law. These shared values, enshrined in our constitution and institutions over centuries, are the foundation of our civilised society. They are democratic, progressive and protect our human rights.”<sup>2</sup>

These points were echoed in the Ministry of Justice’s 2010 green paper on legal aid, which states that “the government strongly believes that access to justice is a hallmark of a civilised society”.

### The role of legal aid

We have considered a broad cross-section of evidence on the role of legal aid in upholding the rule of law. The judiciary is particularly outspoken on this. Lord Bingham explains in his book is that “denial of legal protection to the poor litigant who cannot afford to pay is one enemy of the rule of law”. Lord Clarke, former Master of the Rolls, argues that the government cannot simply pick and choose what parts of the justice system it funds. He says:

“[T]he 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.”

It is well established that legal rights are meaningless without the means to enforce them:

“*Ibi jus ubi remedium* as the courts used to say when Latin was still in vogue. The language may have fallen out of favour since the Woolf reforms, but it cannot be denied that the truth expressed by the claim that where there is a right there must be a remedy remains as valid today as it did in 1702. The truth expressed here is one that those interested in civil justice in general, and access to justice in particular, have long understood. It is a truth that Bentham, that great 19th century philosopher and reformer, noted when he attacked what would soon become known as our, then, Dickensian civil justice system on the grounds that its inadequacies rendered ‘talk of equality, rights, liberty and justice’ a chimera. In the absence of a means to effect a remedy through which to enforce legal rights and obligations, the language of rights is meaningless. As our American cousins are known to say, talk is cheap.”<sup>3</sup>

Lord Justice Jackson in his comprehensive review of civil litigation costs also recognised the importance of the legal aid system in maintaining access to justice, stating:

“...the vital necessity of making no further cutbacks in legal aid availability or eligibility. The legal aid system plays a crucial role in promoting access to justice at proportionate costs in key areas... The maintenance of legal aid at no less than the present levels makes sound

economic sense and is in the public interest.”<sup>4</sup>

Lord Neuberger, Master of the Rolls, has been equally forthright. In his keynote address to the Law Society and Bar Council in 2009, he said:

“Today, not least because of the effects of the credit crunch, many countries are finding it difficult to fund legal aid. Economic reality must, of course, play a part. It must play a part in any future reform. But we should still ask how we manage to find ourselves in the situation that the total (criminal and civil) legal aid budget

for 2008 came to no more than the total NHS budget for two weeks. Reverting to Heber Smith, the rule of law and the defence of the realm are the most fundamental and well-established duties of government: if either fails, the more recently developed, high-profile and expensive government services, such as

the provision of health, education and social security, become impossible or of little value. Why some might ask, as a society, are we willing to invest so little on legal aid, when both the unacceptably unfair effects on individuals and the fundamental risks to society of the denial of justice to many citizens are so profound?”<sup>5</sup>

The impact assessments published alongside the government’s 2010 green paper set out in alternate terms the effects of cutting legal aid. They warn of the “wider social and economic costs” of cuts and say reducing legal aid may result in “reduced social cohesion” as a result of “failure to apply

the rule of law fairly”, encouraging people “not to respect rules and regulations and not comply with social norms and expectations”.

Similarly the impact assessments note the potential for “reduced business and economic efficiency” as “failure to enforce rights and not applying the rule of law may undermine work incentives, business certainty and the operation of markets”.

Campaign group Liberty stressed to the panel the constitutional role of legal aid in

**“Access to the courts to uphold individual rights does more than simply vindicate the individual in the particular circumstances of his or her case. Successful challenges set precedents, raise awareness and help to instill human rights considerations into public sector decision making”**

upholding the rule of law and protecting human rights. It described legal aid as “fundamental to enforcing individual liberties across the board and ensuring a thriving culture of rights”, saying: “Access to the courts to uphold individual rights does more than simply vindicate the individual in the particular cir-

cumstances of his or her case. Successful challenges set precedents, raise awareness and help to instill human rights considerations into public sector decision making.”<sup>6</sup>

Liberty’s evidence stressed that human rights are illusory without legal aid to help enforce them: “[E]ffective access to the courts is an integral part of the human rights regime as a whole. Without publicly funded legal representation many individuals will be effectively precluded from seeking redress and thus denied access to an effective remedy.”

It also pointed out that cuts to legal aid would create an inequality of representation. “The principle of equality of arms will never

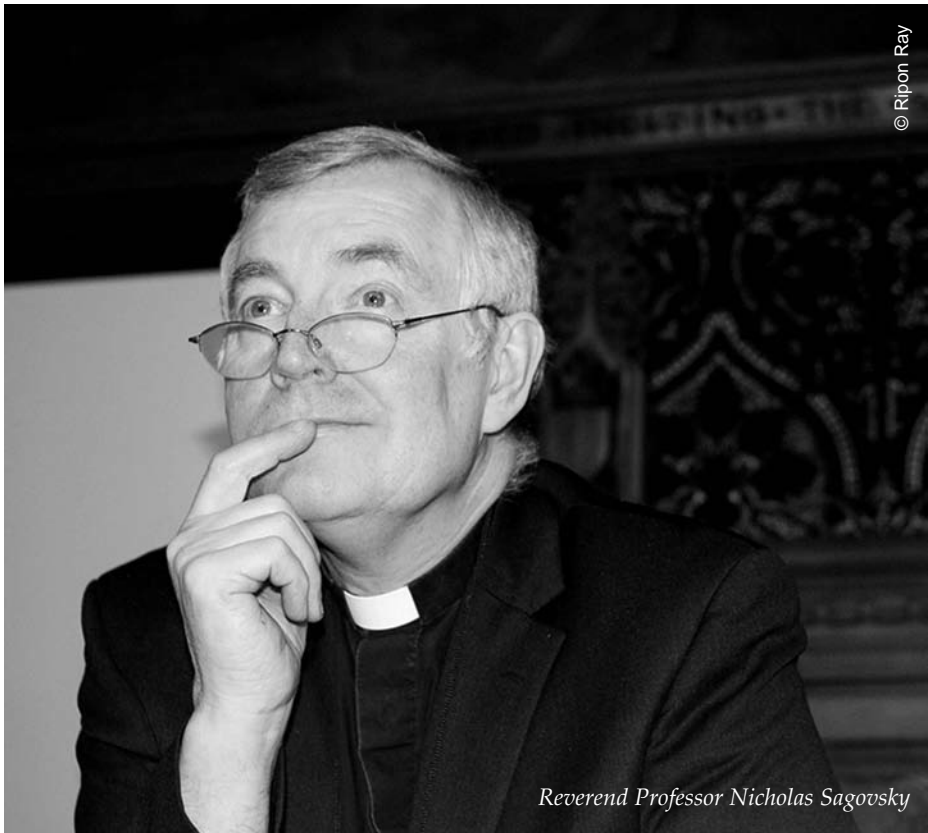
be achieved if publicly funded legal representation is of a lesser quality than privately funded representation, or is so scarce as to be in practical terms unavailable.”

The evidence suggests that, without a prop-

erly funded public legal system, those unable to afford private representation will have either poor quality representation or none at all. If ordinary people cannot access justice then the rule of law is undermined.

### Notes for Chapter 7

1. Tom Bingham, *The Rule of Law* (2010, Penguin London) page 8
2. Speech to the Foreign Policy Centre, 24 August 2008
3. Lord Clarke of Stone-cum-Ebony, *Hope springs eternal: The Mary Ward Legal Advice Centre Annual Lecture*
4. Lord Justice Jackson, *Review of Civil Litigation Costs: Final Report*, December 2009
5. Lord Neuberger MR Keynote address, the Law Society and Bar Council Opening of the Legal Year Ceremony, 30 September 2009
6. Liberty, *Response to the Ministry of Justice Proposals for the Reform of Legal Aid*, February 2011



*Reverend Professor Nicholas Sagovsky*

## 8. The case against legal aid: the arguments for changing the current system

The panel considered arguments for reducing legal aid in depth. The government's 2010 legal aid green paper provides a comprehensive case for reducing legal aid. We also invited the Ministry of Justice to participate in the event on 2 February 2011. Jonathan Djanogly, under-secretary of state for justice, declined to attend the evidence session but responded in writing (Appendix 3).

We made a point of contacting organisations which had expressed or, in our view might express, support for the principle of cuts to the legal aid system. We approached the Adam Smith Institute, the Taxpayers' Alliance, the Society of Conservative Lawyers and the Policy Exchange. Of these organisations the Taxpayers' Alliance and the Adam Smith Institute did not respond. We have considered the latter organisation's publication *Access to Justice: Balancing the Risks*.

The Society of Conservative Lawyers told us that they had no 'party line' on the availability of legal aid and provided us with a copy of its publication *Access to Justice* which contains essays by individuals on the funding of litigation.

Policy Exchange offered to reply to written questions. We also considered their publication *Controlling Public Spending: How to Cut 25%*, and an article by their director entitled *How can we get the legal aid bill down?*

### Too much unnecessary litigation and legalism

A recurrent theme in the documents is that there is too much unnecessary litigation in society. Or, as the Adam Smith Institute puts it, legal aid is encouraging "risk-free speculative litigation".<sup>1</sup> In support of this, in his letter of 20 January 2011, Jonathan Djanogly states:

"The scope of legal aid has widened enormously over the years and we believe that this has encouraged people to bring their problems before the courts too readily, even when the courts are not well placed to provide the best solutions. This has led to the availability of taxpayer funding for unnecessary litigation. The aim of our proposals is to

reserve taxpayer funding for legal advice and representation for serious issues which have sufficient priority to justify the use of public funds subject to people's means and the merits of the case. The proposals would ensure that legal aid continues routinely to be available in cases where a litigant's life or liberty is at stake, or where they are at risk of serious physical harm, the immediate loss of their home, or where they face intervention from the state in their family affairs which may result in their children being taken into care."

This mirrors the stance taken by the Lord Chancellor Ken Clarke, introducing the legal aid green paper to the House of Commons: "It cannot be right that the taxpayer is footing the

bill for unnecessary court cases that would never have even reached the courtroom door were it not for the fact that somebody else was paying.”<sup>2</sup>

The implication is that the taxpayer is funding cases which are either trivial or could be better solved by other means. Neither the government nor the Adam Smith Institute cites any specific examples of unnecessary litigation funded by the taxpayer.

However, Ken Clarke has given education law, where current funding is only for preparatory work, as an example of over-legalism: “It is simply not right for the taxpayer to help inject an element of what is really legalism into problems that should in the end be resolved taking into account the best interests of the child from an educational point of view.”<sup>3</sup> The green paper proposes to scrap education altogether from legal aid.

### **Not always necessary**

The second principle criticism directed at the current legal aid system is that public funding may not be necessary to resolve the dispute. For example, the government in proposing the areas of law which it considers should be removed from the scope of legal aid have been guided by whether or not the individual might be able to present their own case without legal advice or representation; whether alternative sources of funding such as conditional fee agreements or insurance might be available; or whether there are alternative routes to resolution, such as advice from a voluntary organisation or the existence of an ombudsman.

To the same end Policy Exchange advocate greater reliance on the voluntary sector and assert:

“There is also significant scope for bringing new money into the system to help moderate demand on the taxpayer. One possibility is

that the insurance market could step in more as the state withdraws, providing before-the-event legal expenses insurance to a much wider portion of the population (something we are investigating at Policy Exchange).”<sup>4</sup>

### **Taking responsibility**

A third criticism of the legal aid system, implicit in the government’s green paper, is that individuals are not taking sufficient responsibility for their problems. The government states that “in many matters, we would expect individuals to work to resolve their own problems, rather than resorting to litigation at the cost of the taxpayer” and that their proposals have been guided by a desire to encourage people “to take greater personal responsibility for their problems” (green paper, paragraphs 2.11 and 4.3).

Closely linked to this is the idea that cases which have arisen from a personal choice made by an individual are less worthy of public funding. For example, the government states:

“There is a range of... cases which can very often result from a litigant’s own decisions in their personal life, for example, immigration cases resulting from decisions about living, studying or working in the United Kingdom. Where the issue is one which arises from the litigant’s own personal choices, we are less likely to consider that these cases concern issues of the highest importance” (green paper, paragraph 4.9).

### **Too expensive**

The fourth point which is made is that our current system, which costs in the region of £2bn per year (green paper, paragraph 2.9), is simply too expensive. To this effect, the Policy Exchange says “funding for what is the most generous legal aid system in the world cannot be sustained at current levels” and



Dr Evan Harris

that while the government proposed reforms are “significant” they “still leave us with one of the most expensive legal aid systems in the world” and could go much further.<sup>5</sup>

Similarly, the government has made repeated references to the fact that our legal aid system is expensive when compared to other jurisdictions, labeling it “one of the most expensive such systems in the world” and that: “While comparisons with other countries are difficult... evidence suggests that we spend more legal aid than other comparable countries in Europe and elsewhere” (green paper, paragraph 2.9).

### Grown beyond original intentions

The fifth and final criticism that we have noted

from the reports is that the legal aid system has expanded beyond that which was originally intended.

The Lord Chancellor, Ken Clarke, when introducing the government’s green paper to parliament on 15 November 2010, stated: “I believe that there is now a compelling case for going back to first principles in reforming legal aid. The current system bears very little resemblance to the one that was introduced in 1949.”

Similarly the green paper notes that: “Although economic recovery is one of the main drivers, legal aid is, in any event, in need of fundamental reform. It is an expensive scheme which has expanded far beyond its original intentions” (paragraph 1.7).

#### Notes for Chapter 8

1. A Barton, *Access to Justice: Balancing the Risks*, page 3
2. Hansard, 15 November 2010
3. *Ibid*

4. Neil O’Brien, director of Policy Exchange, ‘How can we get the legal aid bill down?’ *The Daily Telegraph*
5. *Ibid*; A Lilico, H Sameen and E Holmes (Policy Exchange, 2010) *Controlling Public Spending: How to Cut 25%*





## 9. Findings of the panel

**W**e carefully considered the arguments both for and against reducing legal aid in economically challenging times. In receiving evidence, we were struck by the key role legal aid plays in a diverse range of issues that we all consider essential for a healthy society: these included fairness before the law regardless of wealth and fighting for the right result, whether it be keeping your home or uncovering errors by the state that have caused the death of a loved one. Our eight findings are firmly rooted in the evidence we received:

### (1) Legal aid is vital in protecting the rights of vulnerable people

We were struck both by the importance of the issues and the vulnerability of those who told their stories. The impact on the well-being of any of these people had they not received legal aid would have been devastating. From the testimony which the panel received, the following stood out as examples that underpin this finding:

Mrs Whitehouse, who received legal aid to help to successfully challenge an attempt by her landlord to evict her, said:

“The prospect of being moved from our home was frankly terrifying. We had lived in our flat since 1962. We were now elderly (my husband was 79 at the time of our trial and I am now 78) and we had hoped to stay living in our home until we were no longer well enough to do so.”

Yvonne, who received legal aid to help gain guardianship of her grandson who had been abused at the hands of his father, spoke of the change which this made to the child’s life:

“Since coming to live with me my grandson’s come a long way. The bed-wetting and nightmares have tapered off and you can see from the way he holds himself that he’s less tense and more relaxed. He is opening up and expressing himself more – his dad always cut his hair short but he decided he wanted an

Afro. I wasn’t sure about it myself but we’re beginning to see who he really is.”

18-year-old Subera gave oral testimony to the commission about how her local authority refused to house her and her 12-year-old sister, until she was helped by legal aid lawyers at the Tower Hamlets Law Centre:

“I tried to hide the fact that my sister was living with me just until I could find somewhere else to live, as I knew they would ask me to leave and otherwise we would be homeless... In the end I had to tell the people at the housing scheme about my situation... I was given one week to leave my home.”

Steven, who had legally aided representation to help him arrange contact with his children and resolve his debt issues, also gave oral evidence to the commission, saying: “I can now move on with my life and work on building a better future for myself and children.”

EP, who received legal aid for her divorce and to help her when her local authority started care proceedings to remove her children, described her life before these problems were resolved:

“Over the years my husband’s behaviour became worse. He was older than me and very domineering and controlling. He was also physically abusive. My health began to suffer because of his behaviour and our situation. I became withdrawn. I began to spend almost all

of my time in the house just with our daughter. I did not have support from my family at the time. I began to drink heavily and ended up developing a serious alcohol addiction.”

The experiences of EP mirror those of SH who described in her testimony what life was like before legal aid helped her gain occupancy of the home she had shared with her abusive partner.

“Over time our relationship began to break down. My partner started to drink more and he would be abusive towards me... He was aggressive and controlling and would shout at me over nothing, telling me I was worthless. Sometimes he would take my bank cards and keys and leave the house for long periods, leaving me stranded in the house and unable to go anywhere. I became afraid for myself and my children. I decided that I had to get out.”

Souleikha Mouhamed, who received assistance from Hackney Community Law Centre for his asylum and housing applications, described his life before he found sanctuary:

“My mother and I came to the UK in December 2002, as we fled the civil war in Somalia. My father was murdered in the civil war, and to this day we do not know whether my brothers or sisters are dead or alive.”

Leena, who received legal aid to help her with her debts, said in her evidence:

“I had so much debt that I could not see any other way out and it was ruining my life. I have two young children and I was finding it increasingly difficult even providing the essentials for them.”

Mrs Hughes described her physical disabilities to the commission:

“I suffer from multiple sclerosis and a lung condition. Due to my ill health I am dependent on my wheelchair to move around outside and sometimes indoors. My husband cares for me full time.”

When a new block of shops was built near her house which she was not able to access in her wheelchair, legal aid enabled her to bring a disability discrimination claim to have the problems rectified.

AB who received legal aid across a spectrum of interwoven areas including community care, immigration, asylum support and housing, described how his problems spiraled before his solicitor was able to help him achieve stability:

“My benefits stopped because I was no longer entitled to receive them. This meant that I could not afford to pay my rent and around three years ago I was evicted... I had to sleep on the streets because I had nowhere else to go... I was attacked on quite a few occasions. I also became ill very quickly and eventually I ended up in hospital around a year later. I was diagnosed with a long-term illness that meant I had problems with my physical health. I was also suffering from severe depression.”

Finally, Simi Azmi, who received legal aid to help with her debts and her housing problems after her husband had ran up tens of thousands of pounds of debt against their house and in her name, described her situation before legal aid helped her to file for bankruptcy successfully:

“I was scared and I did not know what to do. I got a letter from the bank’s solicitors in early 2009 that threatened to repossess my house. At this stage I realised that I had to do something or my children and I would become homeless.”

The picture painted by the evidence we considered is clear. Many of those who receive legal aid are among the most vulnerable in society. They include the elderly, the disabled, the abused, children and the mentally ill. They each have legal rights which they would not have been able to enforce without legal aid.

They have a wide variety of complex problems that raise issues of homelessness, destitution, domestic violence and the separation of families. Such issues are not only of great personal importance to the individuals involved but are of importance to any society as a whole as they are rightly problems which a forward-thinking society should strive to eliminate.

The panel regards it as wholly correct that legal aid is available to help these individuals solve their problems and rejects outright any change which would result in these individuals going unaided, their difficulties unsolved and their rights denied.

## **(2) Legal aid is vital in upholding the rule of law**

Every person we heard testimony from was entitled to the protection of the law. Without legal aid they would not have received this protection. It is on this basis that our second finding is that legal aid is vital to upholding the rule of law.

The panel was strongly influenced by comments made by members of the judiciary, both former and current, such as the late Lord Bingham who described “denial of legal protection to the poor litigant who cannot afford to pay [as] one enemy of the rule of law”.<sup>1</sup>

That the rule of law is fundamental to our democracy can be seen clearly in article 2 of the consolidated version of the EU treaty which sets out the values and ideals upon which the EU is built and to which we continue to aspire:

“The union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the member states in a society in which pluralism, non-discrimination,

tolerance, justice, solidarity and equality between women and men prevail.”

Without a properly funded public legal system, those unable to afford private representation will have either poor-quality representation or none at all. If ordinary people cannot access justice then the rule of law is undermined. There can be no semblance of equality before the law when those who cannot afford to pay a lawyer privately go unrepresented or receive a worse kind of representation than those who can.

**“The picture painted by the evidence we considered is clear. Many of those who receive legal aid are among the most vulnerable in society. They include the elderly, the disabled, the abused, children and the mentally ill. They each have legal rights which they would not have been able to enforce without legal aid”**

We have considered the argument that personal life choices should play a part in whether a person is entitled to legal aid. For example, this argument would mean that a person should not be entitled to legal aid if their problem arises from a choice to come to the UK to study. This argument does not take into account the complexity of human life and error. For the rule of law to work effectively, legal aid must be available where injustice would otherwise follow.

We received persuasive evidence from campaign group Liberty. Liberty’s evidence

stressed that human rights are illusory without legal aid to help enforce them:

“Effective access to the courts is an integral part of the human rights regime as a whole. Without publicly funded legal representation many individuals will be effectively precluded from seeking redress and thus denied access to an effective remedy.”<sup>2</sup>

We agree with this statement but wish to emphasise that upholding the rule of law requires more than upholding those rights which are classed as ‘human rights’, i.e. those rights which are specifically protected under the Human Rights Act 1998. There is simply no point in having any legal rights at all – be that a right to a home, a right to asylum, or a right to have contact with one’s children – if those rights can not be enforced. As Lord Clarke puts it, “talk is cheap”.<sup>3</sup>

### **(3) Legal aid is essential to holding the state to account**

Legal aid plays a vital role in holding the state to account for its mistakes and failings, and ensuring that they do not happen again. While philosophically this may fall within the ambit of our second finding, we felt that this issue was so important that it should be addressed distinctly.

Of all of the evidence that we considered, there is no case which illustrates this point more poignantly than that of Darwin Kealey, who was found hanging dead in his cell at HMP Wormwood Scrubs on the morning of 12 September 2008. He was 28 years old:

“The jury at Darwin’s inquest, which concluded in March 2010, identified no less than nine failings on the part of the police, Serco, the prison and the Primary Care Trust and found that Darwin died of an act of self-harm ‘in part because the risk of taking his own life or harming himself was not recognised and

appropriate cautions were not taken to prevent him from doing so’.

“As a result of the jury’s findings, Her Majesty’s deputy coroner for West London, Elizabeth Pygott, wrote to the Lord Chancellor, Sir Paul Stephenson (then commissioner of Police for the Metropolis), the chair of NHS Hammersmith and Fulham Primary Care Trust, the secretary of state for health and the chairman of Serco Group Plc to make a report in accordance with rule 43 of the Coroner’s Rules 1984. This rule provides that where evidence at an inquest gives rise to concerns that circumstances create a risk that other deaths will occur, or will continue to exist in the future, action should be taken to prevent the occurrence or continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances.”

The importance of legal aid in holding the state to account for its failings was also clear from the evidence received from Subera and from EM, whose cases had been handled in an overtly inappropriate manner by the state. For example, when Subera told her local housing department about her plight and that of her 12-year-old sister:

“The housing department still refused to house me and my sister. They told me that if my sister really did not have anyone else to care for her then I should put her into foster care.”

Similarly, EM related to us her experience after she approached her local authority to ask it to transfer her to a property away from her abusive partner:

“I asked the council to transfer me. I showed them pictures of my bruises and injuries. I gave them police records and crime reference numbers. My case went to the emergency rehousing panel but they turned me down. Apparently I did not have sufficient evidence to show that my life was seriously at risk.”

Vicky Guedalla, retired immigration solicitor, also gave us details of a number of young clients who required her advice and assistance for immigration claims. She helped them overturn wrong decisions by the Home Office and obtain support from social services or the Home Office where it had been wrongly refused. In one memorable instance she described the decision which she helped to overturn as being an “egregious error of law”.

Liberty, in its written evidence, stressed the long-term benefit of correcting such mistakes:

“Access to the courts to uphold individual rights does more than simply vindicate the individual in the particular circumstances of his or her case. Successful challenges set precedents, raise awareness and help to instill human rights considerations into public sector decision making.”<sup>4</sup>

Without legal aid, decisions such as those described above would remain unchallenged and the failings of the public bodies would stand unnoticed and uncorrected. The panel regards the ability to hold the state to account as a fundamental facet of the rule of law. Where legal aid is necessary to achieve this it should always be provided.

While alternative forms of legal funding are beyond the remit of this Commission of Inquiry, we have considered with interest the report of the Justice Select Committee, which recommends that bad decision making by public bodies be penalised through the principle that ‘the polluter pays’.

“[W]e think there is potential for... a ‘polluter pays’ principle to be extended considerably, with the DWP (and other public authorities whose decisions impact upon the courts and tribunals) required to pay a surcharge in relation to the number of cases in which their decision making is shown to have been at fault. We think that in rejecting this idea as a ‘robbing Peter to

pay Paul’ transfer of funds around the public purse, the minister is overlooking the potential benefit such a policy would have in providing a financial incentive to public authorities to get their decisions right first time.”<sup>5</sup>

If savings are to be made from public expenditure then we regard such solutions as preferable to reducing legal aid. It would be wrong in principle for the state to tolerate bad decision making by public bodies while at the same time removing the ability of ordinary people to hold those bodies to account for their mistakes by reducing legal aid.

#### **(4) Cutting legal aid is a false economy**

We see considerable force in the argument that cutting legal aid is a false economy as the provision of legal aid to solve problems early on creates significant savings further down the line. We note that this has been recognised by the Ministry of Justice in the impact assessments accompanying its 2010 green paper on legal aid.<sup>6</sup> These set out the potential for reductions in legal aid to cause:

- 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, people who previously received legal aid might use up their own savings in future

to finance a case, and in so doing they might pass a benefits threshold.

Citizen's Advice quantify these "knock-on costs" as follows:<sup>7</sup>

- For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34.
- For every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98.
- For every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80.
- For every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.

The extent of the false economy of legal aid cuts was clear from the individual testimony that we received which demonstrated the potential for unsolved legal problems to spiral out of control. For example, AB who received legal aid across a spectrum of interwoven areas including community care, immigration, asylum support and housing, described how his problems spiraled before his solicitor was able to help him achieve stability:

"My benefits stopped because I was no longer entitled to receive them. This meant that I could not afford to pay my rent and around three years ago I was evicted... I had to sleep on the streets because I had nowhere else to go... I was attacked on quite a few occasions. I also became ill very quickly and eventually I ended up in hospital around a year later. I was diagnosed with a long-term illness that meant I had problems with my physical health. I was also suffering from severe depression."

In this instance a lack of benefits advice early on escalated to result in homelessness, together with physical and mental health problems.

This placed an increased burden on the local authority housing department as well as local healthcare facilities. This economic cost was in addition to the devastating human cost.

When coupled with the human cost to the vulnerable and socially excluded of reducing legal aid, the panel finds these increased economic costs are unacceptable. These knock-on costs provide a strong argument for maintaining levels of legal aid at least at the level they are currently at.

### **(5) A holistic approach is needed in providing legal aid**

For legal aid to be effective, a holistic approach must be taken. That is, it must allow a person to solve all of their interlocking legal issues and not just discrete aspects of them. In considering the evidence the panel was struck by how certain legal issues are often interwoven with others. For example EP, who gave oral testimony to the panel, described how the domestic abuse which she suffered at the hands of her partner exacerbated her alcoholism. Increasingly she found herself unable to look after her children at which point the local authority initiated proceedings to take them into care.

Legal aid helped her defend the childcare proceedings and divorce from her husband. It was only by solving this entire web of issues that EP was able to break away from her abusive husband, move on with her life with her children and start studying.

The legal issues (domestic violence, childcare proceedings and divorce) cannot be neatly separated out. If legal aid were not available for any one of these issues then the outcome of EP's case might have been very different.

Equally, in her oral evidence, Laura Janes of the Howard League for Penal Reform spoke of a young person who she had represented

for a number of years who had just been released on parole. He had come from a traumatic background, fleeing from Kenya with his mother at the age of six years, and from a young age had been moved from pillar to post through the care system with his needs never truly being met by social services. He became involved in crime and was sentenced to a long term of imprisonment at the age of only 16. In custody he made exceptional progress winning a national music prize, and mentoring other children in the prison.

**“There can be no semblance of equality before the law when those who cannot afford to pay a lawyer privately go unrepresented or receive a worse kind representation than those who can”**

To secure his release on parole, Ms Janes explained that she had to battle with social services to ensure that he would have a home to go to when he was released; fight with the prison service to ensure that he was not moved to an adult prison, undermining his rehabilitation; stop the Border Agency in their attempts to deport him; before finally, successfully, representing him at his parole hearing. The young person is now employed as a mentor in the community working with other young people from troubled backgrounds to ensure that they do not make the same mistakes that he did. If the young person had not been able to get help for any one of his varied and complex legal issues then the final outcome might not have been such a happy one.

The finding which we make is that to solve a person’s problems effectively, he or she must be treated as a ‘whole person’. Legal problems are

interlinked and each problem must be addressed if there is to be resolution. This means that legal aid must be available across the spectrum of legal issues which affect individuals. Any attempt to remove legal aid from certain areas of law, for example debt, on the basis that those issues are less important than another of law, say housing, is overly simplistic.

## **(6) Cuts to legal aid will drive out committed lawyers**

We are concerned that cuts to legal aid will result in committed lawyers withdrawing from the legal aid profession.

In her oral evidence, Shami Chakrabarti, director of Liberty, referred to Tony Blair’s stated intention to “derail the gravy train of legal aid”. Ms Chakrabarti described this as a “wicked misrepresentation” in her testimony and we agree. We were impressed by the commitment and dedication of lawyers working in legal aid who gave testimony to us. Ms Janes, in her capacity as chair of the Young Legal Aid Lawyers, emphasised to us that in her experience young legal aid lawyers entering the profession were uniformly motivated by social justice and frequently spent long periods of time undertaking unpaid internships or low-paid paralegal work and accumulating large amounts of debt to achieve this.

We are aware that lawyers in private practice earn considerably more than those dependent on legal aid. We are aware that there are a handful of barristers, principally conducting criminal defence work, who are paid large sums from the legal aid scheme. We are sympathetic to the Law Society’s proposal that no individual should earn more than £250,000 per annum from legal aid. However, we believe that these few high-earning barristers are unrepresentative of legal aid lawyers as a whole. On 17 November 2009 *The Guardian* published a survey of public sector

pay rates. The average salary of a legal aid solicitor – after several years of experience in the job – was £25,000, number 74 in the list, lower than average salaries of social workers, environmental health officers, nurses or indeed the public sector median salary of £27,686.

**“Shami Chakrabarti, director of Liberty, referred to Tony Blair’s stated intention to ‘derail the gravy train of legal aid’. Ms Chakrabarti described this as a ‘wicked misrepresentation’ in her testimony and we agree”**

Our principal concern is that cuts to legal aid will mean that fewer and fewer committed lawyers will be able to work in this area. Ultimately, this can only mean that the vulnerable clients who rely on these lawyers will lose out.

By the same token we are concerned any further cuts to remuneration for legal aid lawyers will mean that firms will not be able to subsist as it will no longer be financially viable for them to practice in those areas of legally aided law.

At the oral evidence session, Kathy Meade of the Tower Hamlets Law Centre spoke about how increasingly stretched the resources of the law centre are becoming. The centre now faces considerable cuts if the proposals contained in the government’s 2010 green paper are implemented. If law centres like Tower Hamlets are forced to close then those who live in that area will not be able to get the legal help they need. This will be to the detriment of the individuals who lose out on the protection of the law but it will also be to the detriment of communities as a whole who rely on these local services for support.

## **(7) Cutting legal aid is not a fair or effective way to reduce unnecessary litigation**

Cutting legal aid should not be used as a blunt instrument to attempt to reduce litigation. We agree in principle that the taxpayer should not be funding unnecessary or trivial litigation. We also agree that alternative dispute resolution and mediation can assist in achieving justice for litigants and should be used where appropriate.

However, we consider that the appropriate way to achieve these goals is through proper use of the existing restrictions on legal aid which already mean that legal aid will only be provided where:

- There is “sufficient benefit” to the client to justify work being carried out.
- There are no viable alternative sources of funding.
- Alternative steps to bringing the case have already been explored.
- The prospects of success are reasonable.
- “A reasonable private paying client would be prepared to litigate (in non-money claims) or where the prospects of success are over 50 per cent (for money claims).”<sup>8</sup>

If these criteria are used robustly then legal aid will not be available for unnecessary litigation. The alternative of cutting legal aid is not a fair means of achieving this goal as it will not prevent the rich, or businesses, from litigating, it will only prevent poorer more vulnerable people from litigating to protect their rights.

Equally, cutting legal aid is not necessarily an effective way to reduce litigation. Many of those who gave evidence to us were defendants in legal proceedings, so the litigation had been initiated by a person or organisation that did not receive legal aid. One example is Rosamund During: “I needed legal help after my landlord started court action to evict me for rent arrears...



I do not feel that I could have represented myself in the possession proceedings.”

Cutting legal aid will not prevent such litigation. It will simply mean that either the weaker party will be unrepresented or will be deterred from pursuing justice altogether.

### **(8) Findings specific to the government’s 2010 green paper on legal aid reform**

Finally, at the time the commission was receiving evidence, the government was consulting on the content of its green paper *Proposals for the Reform of Legal Aid in England and Wales*. Therefore, in addition to its more general findings the commission considers that it is appropriate to comment on these proposals in light of the evidence that it has considered.

The first point to make is that we understand that the government’s proposed cuts are intended to preserve legal aid for “those who most need it, for the most serious cases” (green paper, paragraph 2.2). In making this assessment they have considered “whether the consequences of the case at hand are objectively so serious as to add weight to the case for the provision of public funds” (paragraph 4.13). The implication is that the cases for which they propose that legal aid should no longer be available – which corresponds to nearly 70 per cent of cases for which legal help was granted in the year 2008/09 (paragraph 43) – are not sufficiently important to justify public funding, or could be resolved or funded by other means.

While we agree with the principle that legal aid should not be available for trivial issues or be used to fund unnecessary litigation, we are unconvinced either that legal aid is being used to fund unnecessary cases or that the government’s proposal would ensure that the most serious cases are still funded.

As we have set out in our findings above, it

was only too clear from the testimony which we received that legal aid funds cases that are of great importance both to the individuals concerned and to society as a whole. We note that around half of the cases which the commission received evidence on would not qualify for legal aid if the proposals in the green paper are implemented (see Appendix 2). None of these cases involved large sums of compensation and so it is difficult to see how a conditional fee agreement would work. In each of these cases legal action was the individual’s last resort.

Second, we understand that it is the intention of the government that much of the legal advice which is currently provided by solicitors and advice agencies across the country will instead be provided through a telephone advice service. We consider that such a development would be profoundly unwise. It was clear from the evidence which we received that many legally aided individuals are too vulnerable to communicate their problems over the phone. For example, Yvonne, who gained guardianship of her grandson with the help of legally aided advice, stated: “I think having call centres as the first point of contact would be a mockery of the legal system. When I needed legal advice I was vulnerable and felt that I needed someone to talk to face to face, not over the phone.”

Kathy Meade of the Tower Hamlets Law Centre also made the practical point that trying to take instructions over the phone takes much more time.

Third, we are concerned with the government’s intention to replace legal aid for advice and representation in family proceedings with funding for mediation only. Many of the family cases which the panel considered involved incidences of domestic violence. For example, JG who needed legal aid to gain custody of her children after her husband took

them away without warning: “My husband had been physically and emotionally abusive towards me. On one occasion the abuse was so bad that he was arrested and bailed to stay away from me.”

Mediation may not be appropriate in such cases. Where mediation is appropriate, we believe it should be properly funded and not forced on the parties involved. Mediation is only likely to be successful if both parties enter into it freely.

Fourth, and finally, we are concerned that the government considers that cuts to legal aid are needed as the legal aid scheme has expanded beyond its original intentions. The Lord Chancellor, Ken Clarke, when introducing the government’s green paper to parliament on 15 November 2010, stated: “I believe that there is now a compelling case for going back to first principles in reforming legal aid. The current system bears very little resemblance to the one that was introduced in 1949.”<sup>9</sup>

We disagree with this reasoning. The original intention of the legal aid scheme, as set down by the Rushcliffe Committee, was that legal aid should be available in all courts and in such manner as will enable persons in need to have access to the professional help they require. The idea was that it should not be limited to those who are “normally classed as

poor” but should include “those of small or moderate means”.

Before the 1949 Act, legal aid consisted of limited assistance for impoverished criminals, whereas civil legal aid was virtually non-existent and legal advice for poorer litigants in civil cases relied heavily on the good will of lawyers prepared to work for free. The Act was drafted at a time when social change, such as increased demand for divorce, and the social reforms of the early 20th century were leading people to recognise that a more comprehensive system was needed. When the civil legal aid scheme was set up in 1950 it provided 80 per cent of the population with a means-tested entitlement to legal aid. By 2009 only 36 per cent were eligible. Almost 80 per cent of those receiving legal help in 2009 and around 90 per cent of those receiving legal representation were in the poorest 20 per cent of the population.<sup>10</sup>

The green paper proposes that legal aid should no longer be available for the majority of civil cases, and that eligibility for civil legal aid should be reduced further so that only the very poorest are eligible for legal aid. Remuneration for criminal cases will also be reduced. This to us seems to be a retrograde step which overlooks the history and context of the legal aid scheme and runs contrary to the intentions of its founders.

### Notes for Chapter 9

1. Thomas Bingham, *The rule of law* (2010, Penguin), page 88
2. Liberty, *Response to the Ministry of Justice Proposals for the Reform of Legal Aid*, February 2011
3. Lord Clarke of Stone-cum-Ebony, *Hope springs eternal: The Mary Ward Legal Advice Centre Annual Lecture*
4. Liberty, *Response to the Ministry of Justice Proposals for the Reform of Legal Aid*, February 2011

5. House of Commons Justice Committee *Government’s proposed reform of legal aid: Third Report of Session 2010–11*, HC 681 Volume I
6. Legal Aid Reforms: Scope Changes Impact Assessment
7. Citizens Advice, *Towards a business case for legal aid*, July 2010, page 2
8. Legal Services Commission, *Funding Code Criteria*
9. Hansard, 15 November 2010
10. Legal Aid Reforms: Scope Changes Impact Assessment

# Appendix 1: overview of the 2010 green paper

The following is a brief synopsis of the changes to legal aid proposed in the government's 2010 green paper on legal aid.

## (1) Changes to the scope of civil legal aid

Legal aid will no longer be available for the following issues:

- Debt matters where the client's home is not at immediate risk.
- Education.
- Employment.
- Other housing matters.
- Immigration where the individual is not detained.
- Private law children and family cases (where domestic violence is not present).
- Welfare benefits.
- Ancillary relief cases where domestic violence is not present.
- Clinical negligence.
- Tort and other general claims.
- Consumer and general contract.
- Legal help for the Criminal Injuries Compensation Authority.

Legal aid will remain available for the following issues:

- Asylum.
- Claims against public authorities which involve the abuse of position of power; and/or significant breach of human rights; and/or negligent acts or omissions falling very far below the required standard of care. Claims which involve only

"serious wrongdoing" to be excluded.

- Claims arising from allegations of abuse and sexual assault.
- Community care.
- Domestic violence where there is objective proof of the violence consisting of ongoing (or recent) legal proceedings for domestic violence; where there is a court order in place relating to domestic violence; or where there is a conviction for domestic violence.
- Family mediation in private law family cases.
- Housing.
- Immigration detention.
- International child abduction.
- Mental health.
- Judicial review.
- Public law children.
- Legal help at certain inquests.
- Discrimination proceedings.
- Environmental matters.

## (2) Changes to the financial eligibility criteria for civil legal aid

### *Property value to be considered:*

Currently a person will be ineligible for legal aid if they have more than £8,000 of disposable capital. During assessment the LSC disregards the first £100,000 of equity and the first £100,000 of their mortgage. The government proposes to remove this equity disregard and extend the mortgage disregard to £200,000 (£300,000 for low-income pensioners).

### *Increased contributions from capital:*

The government intends to increase contributions which people should make towards their legal aid costs from their capital. Those who have between £1,000 and £3,100 of disposable capital will pay a flat fee of £100.

#### ***Increased income contributions:***

Currently those who have a disposable monthly income which is between £315 and £733 have to pay contributions toward their legal aid bill up to a maximum of 20 per cent of disposable income. The government proposes that this be increased to 30 per cent.

#### ***Abolition of benefit passporting:***

Those who are in receipt of income-based Job Seeker's Allowance, Employment Support Allowance, Income Support or Guarantee State Pension Credit will no longer be automatically 'passported' onto legal aid. The rationale is that those who receive these benefits may have up to £16,000 savings. Normally a person who has more than £8,000 in savings would not be eligible for legal aid. This means, in effect, that the rules are more generous for those on benefits.

#### ***Abolition of pensioner disregard:***

Currently pensioners who have less than £315 disposable income per month are subject to a more generous eligibility threshold in that they can have up to £100,000 in savings and still be eligible for legal aid (the pensioner disregard). The government proposes to abolish this pensioner disregard.

### **(3) Changes to the way civil legal services are delivered – the single telephone gateway**

Currently, clients are free to obtain legal advice through a solicitor of their choice in person. The paper proposes introducing

a single telephone gateway, although the scope and extent of this is not clear. From the limited information in the paper, it could replace almost all initial face-to-face legal advice with a mandatory phone service.

### **(4) Changes to the fees which legal aid lawyers are paid**

The fees which are paid to lawyers for undertaking civil legal aid work are to be reduced by ten per cent across the board. Competitive tendering is to be introduced for legal aid contracts, whereby legal aid contracts will be awarded by the LSC to those firms that can undertake the work for cheapest.

### **(5) Changes to criminal legal aid**

There is to be greater use of 'fixed fees', whereby a fixed amount is payable for a legal aid lawyer to undertake a particular piece of work irrespective of the amount of time which that work takes. Fixed fees are to be used to incentivise early guilty pleas, so that the longer a case goes before the defendant pleads guilty the less their lawyer will get paid. Competitive tendering is also to be introduced.



## Appendix 2: who would get legal aid if the proposals in the green paper are implemented?

This appendix is intended to illustrate the impact of the government's 2010 green paper on legal aid on the individuals who gave testimony to the panel. The list below aims to set out which of these individuals would still receive legal aid if the proposals in the green paper are implemented. In some instances the individual would still be eligible for help with a certain part of their problems, but not with another. In these instances the list includes views of panel as to whether that person would have been able to satisfactorily resolve their problems.

The list below only considers whether a person's problem falls within one of the types of law for which legal aid will still be available. So, for example, legal aid will no longer be available for debt advice if the proposals in the green paper are implemented so anyone with a debt problem would not get advice. However, the effects of the green paper are substantially more wide ranging than this. It seems likely that many firms will not be able to continue providing legally aided advice because lower volumes of work and a cut in rates will make publicly funded work non-viable and this will create legal aid advice deserts where it becomes difficult or impossible for people in certain areas of the country to get help.

The green paper also proposes that every person should have to go through a 'telephone gateway' to get legal advice. Some will be referred on to solicitors, others will

have to make do with the advice they receive over the phone. It seems eminently possible that a number of very vulnerable people will struggle to communicate their problems over the phone and will miss out on the help to which they are entitled. The list below does not take into account whether telephone advice would have been suitable for the person.

Finally, the green paper proposes that the financial eligibility criteria for legal aid be tightened. It will become harder for pensioners, homeowners and those on benefits to get legal aid. Those on very low incomes will have to pay increased contributions toward the cost of their case and that might deter people from seeking legal advice. Since the panel received no information on the financial resources of those who gave evidence, no comment has been made as to whether the person would still be financially eligible.

Where the list says that a person would still get legal aid, it must be read with the caveat 'Assuming there is a solicitor to help them, they are able to manage with telephone advice and they are not financially ineligible.'

### Abbi

Abbi, the graduate with debt issues who had recently secured a part-time job, would no longer be eligible for legal aid to help resolve her debt issues. Without legal aid, by her own admission, she would not have been able to apply for a bankruptcy order and her

numerous creditors would not have stopped haranguing her.

### **Ahmed**

Ahmed, the torture survivor from Iran, would still be eligible for legal aid with his asylum claim but would not be eligible for advice on applying for asylum support. The testimony shows that Ahmed's traumatic background and his mental health problems meant that a stable environment was crucial to his ability and willingness and to make the claim for asylum. It may be that without help and advice to apply for asylum support he would not have been able to carry on his asylum claim.

### **Simi Azmi**

Simi, whose husband took out a number of loans and mortgages in her name, would not receive legal aid to help her resolve her debt issues though would still get legal aid to help her obtain local authority accommodation after she became homeless. In the view of the panel, early legal advice on her debts might have meant that she never lost her home in the first place and the expense of local authority accommodation might have been avoided.

### **AB**

AB, who had fled persecution in his home country and was suffering from long-term illness and depression, would still get legal aid for his asylum claim, for his community care issues and to help him when he was homeless. However, he would not be eligible for legal aid to help him with his asylum support issues. AB is clearly an exceptionally vulnerable person. Not having legal help with his asylum support would certainly have impacted harshly upon his welfare and, in the circumstances, would likely have increased the bur-

den on social services who were caring for him in other ways.

### **Caroline**

Caroline, who has severe mental health issues, would still be eligible for legal aid to help with her housing applications after she became homeless.

### **Rosamund During**

Rosamund, who faced eviction, would still be eligible for legal aid.

### **Vicky Guedalla**

Vicky Guedalla provided evidence of a number of extremely young and vulnerable children who she has advised and represented in their immigration cases. None of these children would be eligible for legal aid.

### **SH**

SH had an abusive partner who subjected her to domestic violence. There is a high likelihood she would not get legal aid. The green paper proposes that legal aid should be available in this type of case where there is "objective evidence" of the domestic violence. The threshold is a high one and the victim must show that there are either ongoing legal proceedings relating to domestic violence, a court order relating to domestic violence or a criminal conviction for domestic violence. On the face of it, the domestic violence in SH's case does not make the grade. As well as this the domestic abuse which she experienced was not physical, rather it was emotional and psychological. The green paper implies that legal aid will not be available for this type of abuse.

### **Mrs Hughes**

Mrs Hughes, who has MS, would still get

legal aid for her disability discrimination claim.

### **Kamaljeet**

Kamaljeet would not get legal aid to help with her immigration appeal.

### **Zoe Kealey**

Zoe would still be eligible for legal aid.

### **L**

L would not get legal aid for advice on how to best represent her severely autistic child at the Education Tribunal.

### **Leena**

Leena would not get legal aid to help her resolve her debt issues.

### **DM**

DM would still get legal aid to help him when he became homeless.

### **EM**

EM would still get legal aid to help her and her son when they became homeless.

### **Mr and Mrs Mansell**

The pensioners Mr and Mrs Mansell would no longer get legal aid to help overturn the refusal to award them pension credit or to dispute the £11,000 which it was claimed that they owed.

### **Jean Martin**

Jean Martin would still get legal aid to contest his eviction from his home.

### **Souleikha Mouhamed**

Souleikha, the homeless asylum seeker, would still get legal aid for his asylum claim and homelessness issues.

### **EP**

EP, who became increasingly dependent on alcohol as her husband became increasingly abusive, would still get legal aid for the court proceedings when the local authority tried to take her daughter into care. However, there is a good chance that she would not get legal aid for the divorce proceedings as she lack sufficient 'objective evidence' of the domestic violence. This is crucial in her case, as it was only by obtaining a divorce that she was able to make a fresh start.

### **Steven**

Steven would not get legal aid for his divorce proceedings, where contact arrangements were put in place so that he could see his children.

### **Subera**

18-year-old Subera and her 12-year-old sister would still get legal aid to help them when they became homeless.

### **Mrs Whitehouse**

There is a real possibility that Mrs Whitehouse, who together with her husband faced eviction from their home of 50 years, would not get legal aid. This is because they had been offered somewhere to live and so were 'merely' facing the loss of their home and not homelessness.

### **Yvonne**

Yvonne would still receive legal aid to help her apply for the guardianship of her grandson.

# Appendix 3: letter from Jonathan Djanogly



Ministry of  
**JUSTICE**

BY E-MAIL

Liz Davies, Haldane Society of Socialist Lawyers  
Laura Janes, Young Legal Aid Lawyers

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20 January 2011

**THE CASE FOR LEGAL AID: AN INQUIRY INTO PUBLIC FUNDING AND ACCESS  
TO JUSTICE: WEDNESDAY 2 FEBRUARY 2011**

Thank you for your invitation of 18 January to attend your inquiry. Unfortunately I am unable to attend in person due to existing diary commitments. Please accept my apologies.

As you are aware, our current Legal Aid Reform consultation is taking a fundamental look at legal aid and is seeking views on proposals to deliver a more efficient legal aid system, focused on those that need it most within the financial constraints that the Government now faces.

Our proposals represent a radical, wide-ranging and ambitious programme of reform which reflects the Government's commitment to ensuring that legal aid is available to those who need it most, for the most serious cases in which legal advice or representation is justified.



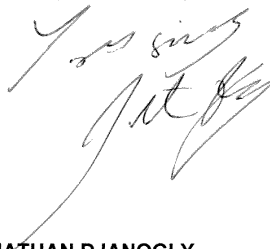
The scope of legal aid has widened enormously over the years and we believe that this has encouraged people to bring their problems before the courts too readily, even when the courts are not well placed to provide the best solutions. This has led to the availability of taxpayer funding for unnecessary litigation. The aim of our proposals is to reserve taxpayer funding for legal advice and representation for serious issues which have sufficient priority to justify the use of public funds subject to people's means and the merits of the case. The proposals would ensure that legal aid continues routinely to be available in cases where a litigant's life or liberty is at stake, or where they are at risk of serious physical harm, the immediate loss of their home, or where they face intervention from the state in their family affairs which may result in their children being taken into care.

Legal aid must play its part in fulfilling the Government's commitment to reducing the fiscal deficit and returning this country's economy to stability and growth. The proposals on which we are consulting are therefore designed with the additional aim of achieving substantial savings. The Government believes that taxpayers' money should only be used for those who need it most and for the most serious cases in which legal advice or representation is justified.

The consultation is due to close on 14 February and can be accessed at the link below:

<http://www.justice.gov.uk/consultations/legal-aid-reform-151110.htm>

I would hope to receive substantive responses from both of your organisations. However, as part of the consultation process, if you are content to submit them, we would also be interested to hear the views expressed and the evidence collated by your enquiry which will be considered as part of the response to consultation.



**JONATHAN DJANOGLY**

## Appendix 4: acknowledgments

**L**aw centres, individuals and solicitors' firms who assisted in the gathering of testimony and/or contributed to the event on 2 February 2011. First and foremost we would like to thank all of those who gave testimony to the panel.

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**We would also like to thank the following organisations:**

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**Doughty Street Chambers**

**Fisher Meredith LLP**

**Foster & Foster**

**Garden Court Chambers**

**GMB Hendon branch**

**Hackney Community Law Centre**

**Hansen Palomares**

**Hodge Jones & Allen LLP**

**Immigration Law Practitioners Association**

**Medical Foundation for the Care of Victims of Torture**

**Mitre House Chambers**

**Philcox Gray & Co**

**Pierce Glynn**

**Sheffield Law Centre**

**The Howard League for Penal Reform**

**Tower Hamlets Law Centre**

**Turpin & Miller**

**Wainwright & Cummins**

# GOVERNMENT CUTS TO LEGAL AID WILL COST MORE THAN THEY SAVE

## THE GOVERNMENT'S DESTRUCTIVE CUTS:

- Will save £350million but cost the taxpayer much more
- Leave families, the unemployed, the elderly and infirm with no access to justice
- Remove legal support in cases of clinical negligence, welfare and employment
- Will leave 725,000 victims without justice each year
- Reduce social cohesion, increase criminality and silence the vulnerable
- Abandon the principle that everyone is equal in the eyes of the law

## THE SOUND OFF FOR JUSTICE POSITIVE REFORMS:

- Save £384 million from the Legal Aid budget without removing areas of support
- Continue to provide access to justice for the most vulnerable members of society
- Retain the principles of a Legal Aid system that has served people well for over 60 years
- Are based on capping legal fees and improving efficiency in all key areas
- Fully accept that litigation should be the last resort for settling any dispute
- Were devised independently with 17 fully costed savings

# DON'T BE SILENCED BY CUTS TO LEGAL AID TAKE POSITIVE ACTION NOW

VISIT



**SOUND OFF FOR  
JUSTICE.ORG**

## Unequal before the law?

### The future of legal aid

The Justice Gap refers to the increasing section of the public too poor to afford a lawyer and not poor enough to qualify for legal aid. At the heart of any notion of a decent society is not only that we have rights and protections under the law but that we can enforce those rights and rely upon those protections if needed.

To that end, the Attlee government introduced our system of legal aid in 1949 as a fundamental building block of the welfare state. The architects of that welfare state decreed that legal aid shouldn't be restricted to those people 'normally classed as poor' but should also include those of 'small or moderate means'.

Something has gone wrong. That scheme is in danger of being reduced to a minority sink service. Eligibility for legal aid dropped from 80 per cent of the population in Attlee's day to less than one in three of us.

This publication is part of a series co produced by *Jures* and *Solicitors Journal* about closing the justice gap.

**Michael Mansfield QC**

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