

LASPO Implementation Review Consultation Response

Law for Life (incorporating Advicenow)

September 2018

This is Law for Life's response to the Ministry of Justice's Post-Implementation Review of Part II of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). We have limited our response to the areas in relation to which we have some experience or evidence to supply.

1.1 About Law for Life

Law for Life is a multi award-winning¹ independent information and education charity. We serve over a million people in England and Wales via the [Advicenow](https://www.advicenow.org.uk)² service, through online provision of multimedia legal information and learning tools. Our curated information service brings together 1600 pieces of public legal information from over 250 UK websites.

We serve a substantial number of vulnerable users and users with protected characteristics. 29% of our users identify as low-income workers, 46% identify as disabled, and 48% have a household income of below £1,100 per month after tax. We help a significant number of litigants in person or potential litigants in person (accounting for 75% of all of our survey respondents in 2017-18). Our [digital tools](#) for overturning welfare benefit decisions have produced 17,000 personalised letters this year.

The online service is often used by intermediaries and helpers that might be advisers, but also community workers and family members. 10% of our survey respondents say they are using Advicenow to help someone else to deal with a legal problem but are not an adviser and a further 7% are advisers.

Law for Life also deliver community-based education and training aimed at building knowledge, skills and confidence in dealing with legal matters. We cover a range of topics with a cross-cutting curriculum aimed at building foundational legal concepts and skills. We often work through trusted helpers in community settings, be they migrant and asylum groups, youth and social workers, teachers or faith leaders. In some cases we also work directly with vulnerable people, for example social housing tenants and, more recently, women in the immigration and asylum system and Roma families.

¹ Winner Legal Aid Lawyer of the year award: Access to Justice through IT 2017, Plain English Campaign winner 2009, 2017, British Interactive Media Award 2018: Shortlist Product design and conscience category

² www.advicenow.org.uk

1.2 Summary recommendations:

- Recognise and invest in public legal education and information as a vital tool in early intervention, preventing problems from escalating later on.
- Recognise the importance of public legal education and information in triage and appropriate referrals to legal services, ensuring the objective set out in LASPO 2012: that legal aid is targeted to the most in need. Without improved levels of legal capability in the UK population substantial gaps in access to justice and legal exclusion will persist.
- Commissioning structures should be reformed to provide for early advice models that specifically welcome legal information and education delivery strategies.
- Develop an ‘innovation grants’ approach to identify and co-design high quality solutions involving digital delivery. The sector is starved of investment and despite some highly successful digital interventions that offer economies of scale there is a need to expand and learn from what works and what doesn’t.
- Some people will not be able to benefit from digital interventions, or may only be able to do so with the help of someone else. Community based education and training that integrates on and offline information and education is an effective mechanism for reaching vulnerable groups, building their legal capability and ensuring that legal assistance is available to those who need it most.
- Actively develop a stream of work to encourage those with protected characteristics to recognise that they may have a legal issue, that they may be entitled to legal aid, and to tailor services to their needs. This aims to stem the disastrous drop off in discrimination claims and the overall uneven impact on groups with protected characteristics.
- Support the role of ‘trusted intermediaries’ with an effective strategy for PLE for front line workers including youth and community workers, health providers and support workers to be better equipped to deal with the legal issues that they encounter.
- Incentivise the provision of transparent, low cost or unbundled legal assistance for those unable to access a full service traditional model of legal advice. This must be properly integrated with information and education support both on and offline.

1.3 Context for LASPO 2012 implementation: Legal needs and legal capability in the UK population.

Analysis of the national UK Civil and Social Justice Panel Surveys³ reveals on-going significant gaps in legal knowledge and capability amongst the UK population, creating substantial barriers to access to justice and undermining the rule of law. The unevenly distributed profiles of legal capability in the population correlate with other aspects of personal capability, and compound underlying disadvantage and social exclusion. The way in which people come to understand the law and legal processes is framed by pre-existing beliefs and attitudes and by their social and familial settings. Confidence or lack of it impacts on their ability to act effectively and navigate day-to-day legal encounters.

Both population wide and targeted legal needs analysis findings point to the need to recognise the lack of reach of traditional legal services into the lives of people who experience common and sometimes complex legal issues, their reticence to seek legal advice and the concomitant need to reshape justice policies to be more responsive and proactive in providing multidimensional forms of assistance in a timely and targeted way.

1.3 The emergence of Legal problems⁴

- The most common legal issues emerge from day-to-day social and economic interactions: consumer, employment, neighbour and money management issues account for more than half of all problems reported.

³ The Civil and Social Justice Panel Survey (CSJPS) is a nationally representative survey of people's experience of, and response to, problems with a legal dimension and involved face to-face interviews with 5,113 respondents aged 16 and over in their own homes across two waves, the first in 2010, the second in 2012. As a consequence of closure of the Legal Services Research Centre following LASPO 2012, the independent research centre of the Legal Services Commission was closed. The loss of research capacity represents a significant loss to the evidence based needed to ensure effective use and allocation of justice expenditure in the civil context.

⁴ See Pleasence. P, Balmer. N, Denvir. C, *How People Understand and Interact With the Law*, (Cambridge, 2015) https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/HPUIL_report.pdf

- Some people are more likely to experience legal problems. Vulnerability to legal problems increases as a consequence of low income, age (being young or older), reduced educational qualifications, and ill-health. In addition, manual and routine workers as well as migrants are particularly prone to legal problems.
- Over half of the people who experience legal problems describe negative impacts including stress-related ill-health, loss of income or confidence, physical ill-health and family breakdown. The collective impact on the wellbeing of individuals and the economy is substantial.

1.4 Understanding legal rights, entitlements and duties.

- There is a substantial knowledge deficit in the UK. Most people lack effective knowledge of legal rights, and many people misinterpret or misunderstand their rights.
- When tested with fact-based scenarios, on average 59% of people are able to demonstrate some understanding of their rights, however there is significant variation across legal areas.
- Only 25% of people claim to know their legal position completely when they experienced a legal problem, rising to 45% of people who claim mostly to know their rights.
- Knowledge of rights in regard to family problems is worryingly low, with only 38% of people knowing some of their rights in the case of domestic violence, and 37% in the case of divorce or separation. Knowledge of employment rights and welfare entitlements both fall below 40%. Some areas of law are particularly prone to misinformation, such as consumer law.
- Overall, younger⁵ and older people, lower skilled workers, and migrants appear to have less knowledge than other groups.

1.6 Legal Capability⁶ and Legal Services

- Most people handle their legal problems alone. On average, only 6% of people use a lawyer for their legal problems, a further 4% use advice agencies. Awareness of legal services is low.

⁵ Measuring young people's legal capability, 2010 <http://lawforlife.org.uk/wp-content/uploads/2013/05/measuring-young-peoples-legal-capability-2009-117.pdf>

⁶ See Wintersteiger. L, *Legal need, legal capability and the role of public legal education* (London: Law for Life, 2015). <http://www.lawforlife.org.uk/wp-content/uploads/Legal-needs-Legal-capability-and-the-role-of-Public-Legal-Education.pdf>

- Only 11% of people identify legal problems accurately. Characterizing a problem as legal more than doubles the likelihood of an individual seeking legal help, and substantially increases the likelihood of getting some kind of help rather than handling the issue alone.
- Internet use is on the rise, around 25% of people use the Internet to solve legal problems, however not everyone is able to use online provision well.⁷
- Legal capability was a key indicator for the effective use of legal services. People with low levels of legal capability are more likely not to act, and less likely to sort things out alone. They are less able to successfully solve legal problems, and are twice as likely to experience stress-related ill-health, damage to family relationships and loss of income.

1.7 Beliefs and attitudes about the law

- Beliefs about law are bound to people's social and cultural contexts. Their sense of fairness and wider norms inform how they interpret the legal dimensions of their lives.
- Legal problems are more complicated than people believe. Around 50% of people feel confident that they can achieve a fair resolution to a prospective issue until they encounter a legal problem.
- Levels of confidence decline significantly when a real legal problem occurs, with an even greater decline as more legal problems are experienced.
- Problems relating to money, welfare benefits, domestic violence, care proceedings and clinical negligence are the issues that have a particularly negative impact on levels of confidence and a sense of disempowerment.
- Older people over 60, new migrants and people in poor physical and mental health all had less faith in their ability to resolve issues positively, and within households this lack of faith tended to be felt more generally.
- The characteristics of people with low levels of legal capability are the same as those who are at greater risk of experiencing legal problems, a fact that compounds their risk of becoming socially excluded.

⁷ Preventing Digital Exclusion from Online Justice, Justice Working Party, 2018.

<https://2bqk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2018/06/Preventing-Digital-Exclusion-from-Online-Justice.pdf>

2.0 LASPO 2012: The impact of changes to scope, eligibility, alternative routes to advice or resolution on people, advice and third sector providers and the justice system.

2.1 General impact:

- Most people involved in civil law proceedings in England and Wales are not eligible for legal aid, can't afford to pay for legal services, and therefore have to represent themselves. Until recently most information about going to court assumed that litigants had a lawyer.⁸
- Evidence from Advicenow service users reveals the difficulties that citizen's experience attempting to access a system designed for lawyers, not citizens with no legal training, knowledge, or experience.
- Many generalist information providers simply do not have the necessary expertise for legal information production and design of this kind leaving significant gaps where citizens are unable to find accurate and accessible information about their legal matter.
- There has been an overall decline in the provision of good quality and accessible legal information. Our 2013 survey of legal information providers indicated that 55% had experienced a decline in funding for the legal information provision. Of those 55%, 75% said they focused on a more limited range of topics.
- Law for Life made recommendations on the information needs of litigants in person⁹ and the associated need to provide funding to grow the capacity and skills of information providers in the legal sector.
- In order to increase access to justice for litigants in person (LiPs), and to reduce the burden on the courts there is increased and urgent need for tailored information and education about court processes and legal proceedings where previously citizens were signposted to legal aid.
- There is a failure to recognise the need for the frequent updating of legal information resources and the need for independently produced and trusted legal information (for example, where public bodies are subject to challenge it is wholly inadequate to expect

⁸ See Law for Life: Civil Court Restructure Interim consultation, 2016 <http://www.lawforlife.org.uk/wp-content/uploads/Civil-Courts-Structure-Review-interim-report-Law-for-Life-response-February-2016-FINAL.pdf>,

⁹ Meeting the information needs of litigants in person (2014) <http://www.lawforlife.org.uk/wp-content/uploads/Meeting-the-information-needs-of-litigants-in-person.pdf>

citizens to trust the legal information provided by the same body that they are in dispute with).

- Many people are confused about when they can get legal aid and what for; the access to exceptional funding regime is cumbersome and inaccessible to the majority of people.
- Despite rigorous evidence of the lack of legal knowledge and capability in the UK population (see 1.3-1.7 above), too much information provided by the state makes huge assumptions about what people know, understand and can do.
- Public legal education for adults is patchy and underfunded; the ability to combat low levels of legal capability has been hindered as a consequence. This represents a false economy given the far great cost of unnecessary helplessness in avoiding or managing legal problems. MOJ economists estimated this failure cost individuals and the public purse £13 billion over a three year period.¹⁰

2.2 Specific legal areas impacts:

- Changes to legal aid for family law have resulted in increased numbers of Litigants in person who are looking for information, advice and assistance to deal with problems relating to family and relationship breakdown.¹¹
- Lawyers are beginning to recognise the need to package their services differently to reach more people, adapting to a rapidly changing market. There is a need to encourage the supply of unbundled and affordable services, which can be effectively blended with greater self-help.
- Advicenow service users report a lack of early advice; early advice would prevent unnecessary litigation and address the early stages legal problems holistically.

¹⁰ Causes of Action: Civil Law and Social Justice, Second Edition, LSRC Research Paper No. 14, Pascoe Pleasence et al, 2006. Norwich: The Stationery Office. See more generally Developing Capable Citizens: The Role of Public Legal Education, 2007 Public Legal Education and Support Task Force

¹¹ 450,000 people a year use Advicenow for family matters. Case study example of an Advicenow query:

“i am having to take my estranged husband to court as he wont agree to any financial provision for myself and our daughter. I am receiving family credits as I do work but he has not paid any maintenance for 6 months now and we are really struggling financially .I can not afford to pay a solicitor so am trying to do this all myself but I could do with some help so I can be really prepared. He does have a solicitor and I am very worried about going to court.”

- The impact of legal aid cuts on immigration law has been significant. There has been a reported substantial loss of many legal-aid providers; service users report difficulties in finding reliable and good quality immigration advisers/ legal representatives. This has led to reports of exploitative agencies and unqualified practice in the field of immigration where service users are particularly vulnerable.
- Many cases do not satisfy "merit" criteria, however legal advice is required in the first instance to gather suitable evidence.
- Organisations who offered good and up-to-date information on immigration and asylum matters, like the Immigration Advisory Service, have now closed, leaving a complex and fast-changing area of law with very little in the way of good information for the public. There is a significant lack of legal information about immigration tribunals, this leads to anxiety and confusion, compounded by the loss of interpreting services. This leads to unjust and poor outcomes for tribunal users.¹² Moreover as Brexit approaches, the need for high quality legal information for migrants will be heightened.
- In the housing context reductions in the scope of eligibility on disrepair issues has led to tenants being unable to challenge private landlords for their poor housing conditions. We have also received reports that counter-claims for disrepair are extremely difficult for litigants acting alone where disrepair exists.

3.0 The impact of changes to encourage alternative routes of resolution and alternative methods of accessing advice, remuneration on recipients and providers of legal aid services and advice services and third sectors and on the development of new forms of legal support provision by the advice and third sectors.

- Loss of Legal Services Commission funding for our Advicenow service in 2012 significantly reduced the scope of legal information service provision for the public. At a time when citizens most need access to independent, accessible and accurate legal information the service was faced with closure. Subsequent partial funding has been secured under the auspices of the Litigant in Person Strategy in 2014. However, this does not provide sufficient

12 . <http://www.lawforlife.org.uk/blog/immigration-and-nationality-information-deficit/>

support for the wide range of (independent) civil legal information needs that the public experience.

- Despite the recognition of the importance of public legal education for the public as a crucial element of assistance to help citizen navigate legal issues and avoid unnecessary disputes, no investment has been made into improving public understanding of the law. This militates against the Governments stated objectives in LASPO 2012 to discourage unnecessary and adversarial litigation and to target legal aid to the most in need.
- The evidence suggests the urgent need for justice reforms to focus on the capability of individuals and communities in solving everyday legal issues.

4.0 Recommendations to the LASPO Implementation Review Consultation:

- Recognise and invest in public legal education and information as a vital tool in early intervention, preventing problems from escalating later on.
- Recognise the importance of public legal education and information in triage and appropriate referrals to legal services, ensuring the objective set out in LASPO 2012: that legal aid is targeted to the most in need. Without improved levels of legal capability in the UK population substantial gaps in access to justice and legal exclusion will persist.
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- Support the role of ‘trusted intermediaries’ with an effective strategy for PLE for front line workers including youth and community workers, health providers and support workers to be better equipped to deal with the legal issues that they encounter.
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ENDS.