

The Post-Implementation Review of LASPO

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Hi there, I'm Charlotte Crilly, and I'm a Teaching Fellow on the Undergraduate Laws Programme. Today I'm doing an LSM blogpost on the recent Post-Implementation Review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or "LASPO" for short.

Chapter 6 of the LSM module guide explains the background to LASPO. Briefly, the Act was implemented in 2013, and brought about dramatic changes to eligibility for legal aid. It did this by withdrawing some areas of law completely from the scope of legal aid. So, for example, most family law cases were no longer eligible for legal aid at all, no matter what the financial circumstances of the claimant. This was a big change from the way legal aid had previously operated.

LASPO was the subject of a considerable amount of criticism. It was argued that the Act had substantially reduced access to justice. The Act led to a large number of people becoming litigants in person, that is representing themselves in court because they were not able to pay for professional representation by solicitors or barristers. This not only disadvantaged the litigants in person themselves, but also affected the court system which faced long delays caused by litigants who were unfamiliar with the conduct of cases in court. LASPO had a detrimental effect on the provision of legal aid services and created so called 'advice deserts' – parts of the country in which no legal aid services were available. Numerous bodies, including the House of Commons Justice Committee and Public Accounts Committee criticised the government for failing to carry out sufficient research prior to implementing LASPO on the effects that the cuts to legal aid would have. The government's arguments were that the legal aid budget was too large, and that savings needed to be made.

In February 2019, the government published its long-awaited post-implementation review into LASPO. A post-implementation review is a process carried out after legislation has come into effect to monitor and evaluate whether the legislation has met its intended objectives. Many commentators had for a long time called on the government to carry out a post-implementation review of LASPO, in order to reflect upon the considerable impact it had had. Many hoped that a review would spur the government on to reinstate at least some areas of legal aid, to remedy many of the injustices perceived to be caused by the Act. The original planned publication date for the LASPO review was the end of 2018, but in the end, the government failed to meet this deadline and the report was published in February 2019.

So what are the findings of this long-awaited and important review? In brief, while accepting in principle the importance of people being able to access the justice system, the review argued that legal aid must be sustainable in the current difficult economic circumstances. There is thus no wholesale reinstatement of large areas of legal aid as a result of the review, which the most optimistic may have hoped for. Instead there is the offer of a small amount of extra funding in some limited areas, with the majority of the government's proposed solutions to legal aid being presented in an Action Plan which accompanies the review. In the action plan, the government puts forward a number of ideas based on the principle that people should receive help with their problems before legal advice or litigation is required. The Lord Chancellor states that 'for too long our approach to supporting access to justice has been concentrated on funding for court disputes', and that 'early intervention is key and it is upon this that our new vision for legal support is founded'. To enable earlier intervention in people's legal problems, the government's plans

include exploring how web based products, better signposting and joined up support services can be used.

The review was informed by stakeholders and interested parties including legal aid providers, the legal advice sector, judges, academics and parliamentarians. These stakeholders raised a number of concerns about LASPO. One such concern related to the greater prevalence of litigants in person. As chapter 6 of the module guide points out, litigants in person find it difficult to navigate the legal system without professional assistance, and this also puts pressure on the courts. The review notes the concern that the increase in litigants in person is changing the way the justice system operates, with particular concerns surrounding judges providing advice which could, if not handled sensitively, undermine their impartiality. While accepting that litigants in person do require more support, the review does not consider that the court system cannot function with the increased presence of litigants in person, and states that access to a lawyer is not always the correct or most affordable answer.

Another concern was the issue of advice deserts. The government's answer here is that flexibility of provision and digital solutions can be of assistance.

Measures put forward in the Action Plan published with the review include a very limited reinstatement of publicly funded legal advice in limited areas. These include piloting the expansion of legal aid for face-to-face early legal advice in a specific area of social welfare law, and reinstating immediate access to face-to-face legal advice in discrimination, debt and special educational needs cases. A number of additional measures are also proposed, such as investing money in technology to deliver legal support services, enhancing the support offered to litigants in person and launching a campaign to improve awareness of how people can access legal support. The scheme for Exceptional Case Funding, which allows for legal aid where there would otherwise be a breach of human rights or EU law, will be simplified. Most of the focus is, however, on heading off problems before they reach the stage of litigation or even lawyers and legal advice.

The review has met with a mixed response. The Bar Council, the professional body for barristers, professes itself to be 'disappointed' with the review, saying that the extra funding for legal aid promised by the government is only a 'drop in the ocean' given the huge impact LASPO has had on restricting access to justice. The Law Society is more optimistic, and hopes that the changes proposed will make it easier for people to qualify for legal aid. The Chair of the House of Commons Justice Committee, which as I've mentioned was critical of LASPO, welcomed some aspects of the review, but was concerned that proposals for further reviews and pilot evaluations could be seen as postponing meaningful action being taken. The Justice Committee Chair also questioned the government's use of the term 'legal support', which suggests something short of the actual provision of legal advice. The Legal Action Group, a charity which works for access to justice for the most disadvantaged in society, stated that the review only contained 'small (though welcome) tweaks around the edges' which 'in no way compensate for the loss of access to justice for the public LASPO has caused'.

Given the strength of the criticisms of LASPO since the date of its implementation, it is clear that this review could never hope to provide all the answers. But it is to be hoped that it will be at least a small step in the right direction, of restoring legal aid to those who need it most and improving access to justice at least to some extent. It will be interesting to see what the effect is of some of the government's action plan points being put into place in due course, and whether these are effective in enabling greater access to justice or are just an attempt to avoid putting sufficient resources into the justice system. Is a focus on early problem solving a sensible idea or just a way of avoiding proper resourcing of legal advice and litigation in the courts?

Thank you for listening to this blog post and I hope you enjoyed it and found it useful.