



Office of the Children's Commissioner

The impact of Legal Aid changes on children since April 2013

Desk-based research

September 2014

**Dr Helen Powell, Mark Sefton, Marisol Smith and Amy Randall
Perpetuity Research and Consultancy International Ltd**

About us

The Office of the Children's Commissioner (OCC) is a national public sector organisation led by the Children's Commissioner for England, Dr Maggie Atkinson. We promote and protect children's rights in accordance with the United Nations Convention on the Rights of the Child and, as appropriate, other human rights legislation and conventions.

We do this by listening to what children and young people say about things that affect them and encouraging adults making decisions to take their views and interests into account.

We publish evidence, including that which we collect directly from children and young people, bringing matters that affect their rights to the attention of Parliament, the media, children and young people themselves, and society at large. We also provide advice on children's rights to policy-makers, practitioners and others.

The post of Children's Commissioner for England was established by the Children Act 2004. The Act makes us responsible for working on behalf of all children in England and in particular, those whose voices are least likely to be heard. It says we must speak for wider groups of children on the issues that are not-devolved to regional Governments. These include immigration, for the whole of the UK, and youth justice, for England and Wales.

The Children and Families Act 2014 changed the Children's Commissioner's remit and role. It provided the legal mandate for the Commissioner and those who work in support of her remit at the OCC to promote and protect children's rights. In particular, we are expected to focus on the rights of children within the new section 8A of the Children Act 2004, or other groups of children whom we consider are at particular risk of having their rights infringed. This includes those who are in or leaving care or living away from home, and those receiving social care services. The Act also allows us to provide advice and assistance to and to represent these children.

Our vision

A society where children and young people's rights are realised, where their views shape decisions made about their lives and they respect the rights of others.

Our mission

We will promote and protect the rights of children in England. We will do this by involving children and young people in our work and ensuring their voices are heard. We will use our statutory powers to undertake inquiries, and our position to engage, advise and influence those making decisions that affect children and young people.

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Contents

About the Office of the Children's Commissioner.....	2
List of abbreviations.....	5
Executive summary.....	6
Introduction.....	10
1. Background context.....	14
2. Changes resulting from LASPO.....	18
3. Direct and indirect impact of changes.....	31
4. Response of organisations and sectors.....	44
Conclusions.....	55
References.....	58
Appendix A: Cases and Matters In and Out of Scope of The Legal Aid Scheme Following LASPO.....	66
Appendix B: Methodology.....	71

List of abbreviations

ASSIA	Applied Social Sciences Index and Abstracts
IBSS	International Bibliography of the Social Sciences
Cafcass	Children and Family Court Advisory and Support Service
CSJS	Civil and Social Justice Survey
CRIA	Child Rights Impact Assessment
ECHR	European Convention on Human Rights and Fundamental Freedoms 1950
FOI	Freedom of Information
IMB	Independent Monitoring Board
LAA	Legal Aid Agency
LASPO	Legal Aid, Sentencing and Punishment of Offenders Act 2012
LiP	Litigant in person
MoJ	Ministry of Justice
NMS	New Matter Starts
ONS	Office for National Statistics
PLP	Public Law Project
PPO	Prisons and Probation Ombudsman
SMOD	Subject matter of the dispute
TLA	Transforming Legal Aid

Executive summary

The implementation of the Legal Aid, Sentencing and Punishment Act 2012 (LASPO) and some proposals from the Transforming Legal Aid (TLA) consultations have resulted in a number of significant changes to the Legal Aid process. The reforms enforced through both have seen the scope and eligibility of Legal Aid funding reduced across civil and prison law. These changes have prompted considerable concern from a number of organisations working with and representing individuals within the legal system, and particular criticism has been directed at the likely impact of these changes on children and young people.

In seeking to understand the significance of the impact made by the changes to Legal Aid since April 2013, the Office of the Children's Commissioner (OCC) commissioned a desk-based review of available literature and data. The following report presents the findings and will be used by the OCC to inform their development of a Child Rights Impact Assessment (CRIA) of the changes made to civil and prison law Legal Aid since April 2013.

Methodology

A Rapid Evidence Assessment was undertaken to systematically review relevant literature and data available. Sources searched sought to explore emerging evidence of impact post-April 2013, with focus given to relevant information pre-LASPO in helping set the context within which the changes have been enforced. A number of limitations became apparent through the searches undertaken within each of the areas of reform (asylum and immigration, civil matters and prison law). Many of the sources available are not broken down according to age group, making it difficult to differentiate the particular needs of and impacts upon children and young people. The review commissioned focused predominantly on those under the age of 18 years old; however consideration has also been given to young adults aged 18–24. In addition, whilst some evidence does exist of the impact of the reforms, greater time is required for the full impact to be measured and reported on.

In addition to using data and literary evidence to assess the impact of the changes made on children and young people, it is also important to establish the behavioural responses of other actors, in the justice system and elsewhere, to the legal reforms. The review was supplemented with a number of in-depth interviews with a range of non-legal and legal organisations supporting children and young people. This provided further anecdotal insight on the likely impact of the changes, with limited evidence available at this stage to reinforce these experiences and views.

This initial review has helped identify early indicators of impact on the lives of children and young people. The information presented in the report provides an important starting point to understanding the implications of LASPO and

helps identify gaps in knowledge and the need to continually monitor the effect of the changes on children and young people.

Implications of the legal reforms

The Government's commitment to reform Legal Aid in England and Wales has been driven by the stated desire to maintain the credibility of the Legal Aid process, but also influenced by the desire to reduce costs and limit the numbers of cases ending up in court, many of which the Government considers can be resolved without the provision of Legal Aid funding. The changes resulting from LASPO have seen specific areas of civil, family and private law being removed from scope. This includes matters relating to asylum and immigration, debt, employment, education, housing, private family law and benefits. Changes have also resulted in funding being removed for certain prison law matters concerning the treatment of prisoners and some sentencing decisions (i.e. categorisation of prisoners).

The Government issued further proposed changes to those introduced by LASPO through the TLA consultations. These have seen the removal of certain areas of prison law from Legal Aid funding, such as matters relating to the treatment of prisoners. TLA also placed further restrictions on the merits test, resulting in cases assessed as having 'borderline' prospect of success failing to qualify for civil Legal Aid funding. In addition, those who are not seen as having a strong connection to the UK and do not satisfy a 'residence test' would also be removed from scope under TLA proposals. This would result in most remaining legally aided non-asylum immigration work being out of scope.

Impact on children and young people

Prior to the implementation of LASPO and TLA, the Government sought to gauge the response to the proposed changes by running a consultation process. It became apparent that there was limited support to the reforms; with many concerned about the impact the changes would have generally, and also more specifically on children and young people.

The Government estimated that the changes to the scope of Legal Aid would involve a reduction in a volume of 6,000 cases for those under 18 and 69,000 for those aged 18–24. There were certain areas which it was envisaged would be most affected: these included private family law, immigration, debt, housing and welfare.

Whilst it is still too early to establish a good understanding of the quantifiable impact on children and young people, it is apparent from recent data and anecdotal accounts that there is variability in the volume of cases affected by the changes. Since April 2013 there has been a significant reduction in number of new private family law cases funded by Legal Aid. However there have been increases in the number of litigants in person and unrepresented cases. The Government's desire for greater use to be made of mediation in diverting family cases from court is currently not being fulfilled.

There is emerging evidence that there has been an increase in the number of cases requiring legal advice and assistance for immigration matters, many of which would have previously fallen within the scope of Legal Aid. This has certainly been the experience of the not-for-profit and pro bono sector. Yet there has been a noticeable decline in the number of asylum cases seeking advice. This is possibly explained by a general perception that Legal Aid is no longer available for immigration or asylum, as well as a reduction in the number of providers, making it harder for individuals to access the services they need.

It is still unclear what extent the changes made to the scope of prison law matters have impacted on children and young people in custody. Set against the broader context of a declining custody population, many voluntary organisations have not witnessed the level of impact they expected. Many children and young people are deterred from progressing a legal issue on the basis that the process is seen as lengthy and unlikely to support them in addressing the matters they face. Nonetheless there are still children and young people who require legal support and assistance to deal with serious and complex issues, such as access to appropriate services (e.g. housing and mental health) and a number of organisations have set up pro bono services to ensure that the necessary advice and representation is provided.

Organisational response to the reforms

The changes resulting from LASPO since April 2013 have seen reductions in the number of Legal Aid contracts. There has been a fall in the number of civil and criminal providers with an evident decline in the number of Legal Aid contracts for family law, immigration and education. There has also been a notable decline in the number of specialist firms offering support to children and young people. This is seen as fundamental to ensuring that often vulnerable children with specific needs, such as learning disabilities, poor family support and those serving sentences in prison, are dealt with appropriately and empathically. The not-for-profit sector and the pro bono sector have both witnessed an increase in the number of young people seeking advice and legal assistance.

The Government considers that those with problems removed from scope of Legal Aid will be able to seek advice from the voluntary sector. However those in the voluntary sector, like many local organisations, have experienced budget cuts and therefore a reduction in the service they can offer. This reduction has prompted wide concern that children and young people will fail to receive the support and representation they need.

Attempts to limit the impact made post-LASPO include reliance upon alternatives to legally-aided advice, assistance and representation. This includes the use of mediation in family law and the complaint processes for areas such as prison and education issues through to litigants representing themselves or paying privately for legal assistance.

A good level of understanding and skill is required to navigate through the legal system. Despite this, families and children and young people are choosing to represent themselves in attempting to resolve legal issues. This presents enormous challenges to individuals trying to resolve matters across the board but in particular in relation to immigration and asylum issues and prison law. The vulnerability of such individuals, in particular where language and literacy issues, neurodisability or mental illness are evident, coupled with little or no support, greatly impacts on their ability to progress their case successfully. This has resulted in a number of voluntary organisations providing pro bono advocacy and legal advice services in an attempt to mitigate the impact of the changes.

The Government considers that many matters can be resolved through existing complaint processes. However this assertion has been met with criticism, with such processes seen as failing to understand and respond appropriately to the complexity of issues children and young people face. For instance, for those seeking to resolve prison law issues, the Prison and Probation Ombudsman (PPO) and Independent Monitoring Board (IMB), have expressed concern that they will not be able to meet the potential demand of requests they will receive nor provide the appropriate legal support required.

Conclusion

The evidence presented in this review has provided early indications of the impact of LASPO and TLA on children and young people. The availability of data to inform this is currently limited, and more detailed insights available towards the end of 2014 and into 2015. These will inform many of the anecdotal views being offered by the range of voluntary and Legal Aid organisations and provide a more conclusive indication of the impact made since April 2013.

It is clear that further monitoring needs to be conducted on the number of new cases coming forward and the means by which issues are being addressed and resolved. What is apparent at this early stage is that whilst the impact does not appear to be as great as first envisaged, it is unclear whether this is being masked by individuals choosing not to resolve matters or seeking alternative means of resolution. In both instances, further investigation is needed on the impact these changes are having on both the short term and long term welfare needs of children and young people.

Introduction

The Legal Aid system in England and Wales is currently undergoing extensive change. LASPO substantially reduced the scope of Legal Aid from April 2013 by removing several categories of civil and family cases from the scheme, either wholly or in large part. Further significant limits on the availability of Legal Aid are being introduced following proposals put forward in 2013, referred to in this report as TLA (MoJ, 2013a; MoJ, 2013b).

The OCC, in common with others involved in representing the interests of children and young people, has expressed concern that the changes to Legal Aid will have significant adverse impacts on these groups (OCC, 2011; OCC, 2012; OCC, 2013). The Government estimated early on that the changes under LASPO alone would involve a reduction in volume of 6,000 cases on behalf of clients under 18 and 69,000 cases on behalf of those aged 18–24.¹ However, whilst the Ministry of Justice (MoJ) has undertaken several impact assessments in respect of the changes, including equality impact assessments, there has as yet been no assessment specifically regarding the likely impacts on children, or on young people within the remit of the OCC.²

Aims of the research

The OCC commissioned Perpetuity Research to research quantifiable impacts on children and young people in light of the changes to Legal Aid since April 2013. This includes reforms implemented by LASPO and changes introduced through TLA. The OCC will use this research to inform the wider work they are undertaking in developing a CRIA of the changes made to Legal Aid.

The specific aims of the research include:

1. Assessing the changes to legal services available to children and young people since 1 April 2013.
2. Assessing the availability of other forms of advice and assistance to children that might mitigate these changes, plus any changes to the non-legal advice and assistance sector since 1 April 2013.
3. Determining the direct and indirect impacts of the changes on children and young people and the role of alternative provision in supporting their needs.

¹ For details see: Commons Written Answers to PQs, 20 July 2011: Column 1112W at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110720/text/110720w0005.htm>

² OCC's remit under the Children Act 2004 includes all children under 18 in England, or in other parts of the United Kingdom for reserved matters, and young adults aged 18–24 who fall within section 9 of the Children Act 2004 (broadly speaking, care leavers and those with an Education, Health and Care plan or learning disability).

4. Assessing the behavioural responses of young people and other actors in the justice system and elsewhere (including litigants, courts and tribunals but also public authorities or other entities exercising public functions) to the Legal Aid reforms.

Methodology

In order to respond effectively to the aims of the research, a two-stage methodology was adopted. This included:

- undertaking a Rapid Evidence Assessment (REA) of existing research, literature and data, pre and post 2013
- qualitative discussions with a number of relevant organisations supporting children and young people with legal needs.

Rapid Evidence Assessment

Due to the timescales available for undertaking the research, it was agreed that the most effective approach to reviewing available literature was through an REA. This would allow information and data to be gathered and assessed systematically, allowing robust assertions to be drawn from the review.

The approach adopted encompassed:

- Published research located using electronic databases such as the Applied Social Sciences Index and Abstracts (ASSIA), and the International Bibliography of the Social Sciences (IBSS).
- Published data on the number of children and young people from Office for National Statistics (ONS); data on the numbers of people experiencing legal problems from the Civil and Social Justice Survey and other legal needs surveys.
- Published reports and statistical releases by key actors in the civil, family and criminal justice system such as the Legal Aid Agency, HM Courts and Tribunals Service, Children and Family Court Advisory and Support Service (Cafcass), the Ministry of Justice (MoJ), and the offices of the relevant Ombudsmen. These included impact assessments published by MoJ to date.
- 'Grey' literature including reports by organisations and third sector bodies acting in regard to children and young people.
- Evidence submitted to public consultations and inquiries such as the responses to the Ministry of Justice consultations on the Green Paper which preceded LASPO and TLA, written evidence to the Joint Committee on Human Rights inquiry into the impact of Legal Aid changes on access to justice, and evidence submitted to the Low Commission on the future of advice and legal support.

Further details on this process and the search terms used are provided in the Appendix.

It was essential that consideration was given to the number of challenges that the review would face, including questions about the reliability of data collection and recording by the various organisations and the inherent time lags in the civil and criminal justice systems which make it difficult to interpret the data gathered both prior to and following changes to the Legal Aid schemes. The comparisons of the periods immediately pre- and post-April 2013 are potentially quite problematic, given the behavioural drivers which made for a peak in numbers of applications for Legal Aid in the period leading up to April, and the presence of 'legacy' Legal Aid cases which may be progressing in the courts and tribunals for some time yet. In seeking to mitigate against these limitations, the review sought to be as comprehensive as possible in accessing available literature and data post-2013.

It is important to note that information post-April 2013 on the impact of the Legal Aid changes is still in its infancy. As a result, assumptions on the impact made to children and young people will still need to be made, with further, more conclusive evidence unlikely to be available until 2015. A number of the assertions made by organisations on the perceived impact of the changes are anecdotal or based on numbers accessing Legal Aid pre-2013.

Qualitative discussions

To supplement the review of published data and literature, a total of seven interviews were conducted with key stakeholders (which included a range of charitable organisations working with children and young people across criminal and civil law issues) to ascertain their perspectives on:

- how the landscape of access and provision has changed since LASPO
- the availability of statistical data and grey literature
- how other actors in the justice system have altered their behaviour as a result of LASPO
- their views on the forthcoming changes to the Legal Aid scheme
- their assessment of any impact on children and young people and the extent to which this is evidence-based.

This provided useful context to the information being drawn from the REA as well as offering first-hand experience of impacts made on children and young people. It also enabled relevant documentation and data to be identified, supplementing literature gathered through the rapid evidence assessment.

Structure of the report

The information gathered through the REA and qualitative discussions is considered throughout the rest of the report.

- Chapter 1 provides contextual background on Legal Aid pre- and post-2013 as well as a useful overview on the numbers and characteristics of children and young people in England and Wales.
- Chapter 2 summarises the legal reforms implemented by LASPO and TLA according to details relevant to the key areas of law experiencing change.
- Chapter 3 presents anecdotal and literary evidence on the assumed and emerging direct and indirect impact of the legal reforms on children and young people.
- Chapter 4 provides a discussion on the responses of statutory and voluntary organisations to the reforms and the setting up of alternative provision in attempting to continue to support children and young people where Legal Aid funding has ceased.

1. Background context

Summary of reforms to Legal Aid

The Coalition Government, which came to power in 2010, committed itself to 'undertake a review of Legal Aid in England and Wales' (MoJ, 2010). This was motivated in part by the desire to reduce public expenditure but also by a view that too many civil problems led to unnecessary litigation in the courts. The Government therefore embarked on a series of reform proposals to the operation, remuneration and administration of the Legal Aid schemes.

This section sets out the key changes that have come into effect since April 2013. The emphasis throughout is on those changes affecting scope, means and merits for civil Legal Aid and prison law (not changes that are concerned with administration, procurement for services or the reform of fees).

Civil law (including family law)

To be eligible for civil Legal Aid, potential applicants must meet three conditions:

- the matter must be within scope of the Legal Aid scheme (the scope test)
- the client must pass the financial eligibility criteria (the means test)
- for representation, there must be at least a 50:50 prospect of success in the case and for Legal Help, the advice and assistance provided must be of 'sufficient benefit' to the client (the merits test).

LASPO made significant changes to what matters could be funded through civil Legal Aid, removing many areas of civil and family law out of scope of the scheme. In deciding which areas of law and matters to retain within scope, the Government took into account four key elements: the importance of the issue; the litigant's (and potential litigant's) ability to present their own case (including the venue before in which a case is heard; the likely vulnerability of the litigant and the complexity of the law; the availability of alternative sources of funding; and the availability of alternative routes to resolving the issue (MoJ, 2011). Legal obligations arising under domestic, European and international legal obligations also guided the choice about which matters justified public spending. Full details of which matters remain in scope and which have been removed from the Legal Aid scheme are provided in the Appendix.

In brief, the matters which can no longer be funded through civil Legal Aid include: asylum support (except where accommodation is claimed); consumer debt (except where there is an immediate risk to the home); employment; discrimination; education (except for cases of special educational needs); housing matters (except those where the home is at immediate risk,

homelessness assistance; housing disrepair cases that pose a serious risk to life or health; anti-social behaviour cases in the County Court; immigration (except asylum and detention); private family law (other than cases where criteria are met regarding domestic violence or child abuse, or where the funded party is a child); and welfare benefits (except for appeals on a point of law in the Upper Tribunal and onward appeals to the Court of Appeal and Supreme Court). In addition, a number of miscellaneous cases were also removed from scope including Criminal Injuries Compensation Authority cases; cash forfeiture actions under the Proceeds of Crime Act 2002; legal advice in relation to a change of name; actions relating to probate or land law; actions concerning personal data; tort and other general claims; and legal advice on will making.

For those matters that remain in scope in the categories of debt and education and discrimination, services are accessed via a mandatory telephone gateway. As a result of concerns raised during the consultation, some clients were made exempt from the gateway, namely those who are:

- in detention (including prison, a detention centre or secure hospital)
- under 18
- have been previously assessed by the gateway as needing face-to-face advice, received this advice within the last 12 months, and are seeking further help to solve a linked problem from the same provider.

Legal Aid funding for mediation in private law family cases was retained. The Government also remodelled the Exceptional Funding regime so that it could, in theory, provide Legal Aid for cases excluded from scope, but where Legal Aid might be necessary to enable domestic and international legal obligations to be met, or where there is a significant wider public interest in funding legal representation at inquest cases.

In addition to scope changes, LASPO also brought changes to financial eligibility for Legal Aid. The three major changes regarding eligibility were:

- **Passporting benefits:** all applicants will be subject to means testing regarding their capital. Therefore, those on passporting benefits will only be passported in respect of the income part of the means test.
- **Subject matter of the dispute (SMOD) disregard** will be capped at £100,000. This will apply for all levels of service including controlled work/legal help.
- **Contributions:** The levels of income-based contributions will be increased to a maximum of approximately 30% of monthly disposable income.

Reform of the Legal Aid scheme did not stop with LASPO, with further changes proposed in a consultation paper published by the MoJ in April 2013 (MoJ, 2013a) and a supplementary consultation, published in September

2013 (MoJ, 2013b). TLA announced the Government's plans to introduce price competitive tendering for criminal Legal Aid, but also outlined reforms to the civil Legal Aid scheme with proposals to alter scope, eligibility and merits. Although financial savings continued to be a driver for the changes, the Government also argued that the proposals were necessary to '*boost public confidence in the Legal Aid system*' (MoJ, 2013a) and to '*maintain the credibility of Legal Aid as an integral part of our justice system*' (MoJ, 2013b, para 1.5).

The key change to scope following the TLA consultation was the removal of most areas of prison law from Legal Aid funding, for example, matters concerning the treatment of prisoners (even for prisoners with learning disabilities and/or mental health problems). These changes were implemented on 2 December 2013. As a result, only the following matters of prison law are currently within scope of the Legal Aid scheme:

- proceedings before the parole board where the board is considering to direct release
- sentence calculation where there is a dispute over the date of release minimum term reviews
- disciplinary matters where additional days may be imposed or where the 'Tarrant Criteria' apply.³

Borderline cases

The merits test allows Legal Aid to fund representation in cases that have at least a 50% prospect of success. The reforms proposed in TLA tightened the merits test so that cases assessed as having 'borderline' prospects of success do not qualify for civil Legal Aid funding. This change was justified on the basis that a private paying client of average means would not pursue a case with a borderline chance of success. Cases that were previously permitted included some public law, private family, housing and immigration cases.⁴

Residence test

Significantly, proposals for reform in TLA linked public confidence in the scheme with funding targeted not just at specific cases but also at specific groups of people. The existing scheme permits non-residents who qualify on scope, means and merits to access the Legal Aid scheme for cases taking place in England and Wales. For the first time, it was proposed that Legal Aid funding would be restricted to those with a 'strong connection' to the UK. In

³ Application of 'Tarrant' criteria – where a prisoner requests legal advice or representation at disciplinary hearings, if granted by the governor then the hearing will be adjourned to allow the prisoner to contact a solicitor.

⁴ This change has resulted in the loss of a concession to unaccompanied children who had a right on appeal on asylum grounds and *prima facie* came within a relevant Convention. These children were granted Legal Aid on the basis that their case would, at least, meet the borderline threshold. See Matthews (2014).

order to receive funding, the Government proposed that applicants would have to satisfy a residence test, and would need to meet two conditions:

- be lawfully resident in the UK, Crown Dependencies or British Overseas Territories at the time of the application
- have been lawfully resident for a continuous period of 12 months at some time in the past.

Asylum seekers would be exempt from this test, as would serving members of the armed forces and their families. Following consultation, the Government agreed to further exemptions, including cases of the following type: detention cases; certain victims of trafficking; certain domestic violence or forced marriage cases; certain cases relating to the protection of children; and appeals heard by the Special Immigration Appeals Commission. Children under the age of 12 months would also be exempt from the requirement to show 12 months lawful residence, although not from the requirement to be lawfully resident at the date of application; and asylum seekers granted permission to remain would have their residency assessed from the date of their asylum claim and not their decision date. A break of up to 30 days in lawful residence in the 12 month period would also be permitted.

The Public Law Project (PLP) challenged the introduction of the residence test by way of judicial review proceedings in which OCC was an intervener. In *R (PLP) v Lord Chancellor* [2014] EWHC 2365 (Admin) the Divisional Court found the residence test to be outside the powers to make secondary legislation conferred by LASPO and unlawfully discriminatory and therefore to be unlawful. Following this judgment the Government withdrew the draft regulations introducing the residence test from Parliamentary consideration. This report was written before the Divisional Court's judgment and therefore the likely impact of the residence test is included in our research.

2. Changes resulting from LASPO across England and Wales

The Government have been clear that to effectively reduce costs associated with Legal Aid, specific areas of law should be excluded from funding. The justification for these changes results from the Government's belief that the system has been used inefficiently, with Legal Aid supporting inappropriate and lengthy civil and criminal cases that can be best resolved without the provision of Legal Aid. Chapter 1 has provided a broad context on the changes that have been implemented through LASPO and TLA. This chapter explains in more detail the reforms that have been made to specific areas of civil and criminal funding.

Changes resulting from reforms of Legal Aid in immigration and asylum

The reforms to the Legal Aid scheme have impacted on the asylum and immigration category of law by removing significant matters from scope. The only non-asylum immigration cases which remain in scope are: applications for leave to remain by a victim of trafficking (if there has been a conclusive positive decision, or a positive reasonable grounds decision); applications for leave to remain under domestic violence immigration rules; immigration detention; and asylum support for initial decisions where accommodation is sought. Most non-asylum immigration work is out of scope, including children cases. Refugee family reunion cases have been classed as 'immigration' and not 'asylum' and these have also fallen out of scope of Legal Aid.⁵

Furthermore, changes have also led to the removal of Legal Aid for foreign nationals facing removal, even where there is a need for consideration of rights to private and family life under Article 8 of the European Convention on Human Rights (ECHR).⁶ Even where matters remain in scope, proposals for the introduction of a residence test would further restrict access to Legal Aid for the remaining immigration matters as potential applicants may not be able to evidence their residence to meet the requirements.

Separated or unaccompanied asylum seeking children seeking to extend their leave to remain in the UK

Within Europe, the United Kingdom was the fifth top destination for unaccompanied asylum seeking children in 2012, behind Sweden, Germany, Belgium and Austria. In 2012, 1,125 unaccompanied minors applied for asylum (Matthews, 2010; OCC, 2014). Having been refused asylum, and being unable to return to their country of origin when there is no one to care

⁵ A judgment handed down in the High Court on 13 June 2014 (<http://www.bailii.org/ew/cases/EWHC/Admin/2014/1840.html>) found that the Legal Aid Agency had unlawfully refused exceptional case funding in six immigration cases. The judge also found refugee family reunion to be within scope of legal aid under LASPO. Pending an appeal the LAA has issued guidance authorising the opening of matters in family reunion cases (<http://www.justice.gov.uk/legal-aid/newstlatest-updates/civil-news/update-on-refugee-family-reunion-work>)

⁶ See LASPO Part 1, Schedule 1m para 22–26 for further details.

for them, the majority of these children are granted discretionary leave to remain in the UK (known as UASC leave), for a period of 30 months or until they reach the age of 17 and half years (whichever period is shorter). Children wishing to extend their discretionary leave are no longer eligible to get legal help with their applications, even though these claims may involve complex issues of law in relation to Article 8 of the ECHR.

Children born in the UK or who have spent many years in the UK

Many children who are born in the UK, or come to the UK with a parent or relative live here for many years without realising that their immigration status has not been regularised. These children may have extensive ties to the UK and being returned to their country of origin would breach their right to private and/or family life under Article 8. These children no longer have access to Legal Aid which means that if Article 8 is the sole basis of their claim to remain in the UK, they will not be able to get legal assistance. Research suggests that there are approximately 120,000 migrant (undocumented) children resident in the UK, half of whom were born here (Sigona and Hughes, 2012). Most irregular migrant children are under 12 and live with their parents or close relatives.

Children facing removal with, or separation from, their parents

Where decisions are made to remove a parent or parents from the UK, children face the risk of being separated from one or both parents, or of being separated from friends or family if they leave the UK with their parents. This may occur because their parents' application for asylum has been refused, or because a parent is subject to deportation. While there is a paucity of data concerning the numbers of child dependents among those in detention, numbers of successful appeals against Article 8 ECHR deportations provide some indication of the potential scale. According to a response to a Parliamentary Question, 299 foreign national ex-offenders had appeals against deportation allowed on the grounds of Article 8 (with or without other articles of the ECHR) in 2012 (Gower, 2013).

Although some of these appeals would have been successful because of close spousal links, many would have involved dependent children. A small-scale study involving families separated by immigration detention identified 101 children of 47 parents, of whom 91 were British citizens (Bail for Immigration Detainees, 2014). Eleven of these parents had been removed or deported without their children. With an absence of Legal Aid, such parents will have to represent themselves at deportation appeals, and may be unaware of what evidence to provide so that the court considers the best interests of their children properly.

Destitution

While asylum matters remain within scope of the Legal Aid scheme, asylum support (other than for advice on accommodation) under sections 4 and 95 of the Immigration and Asylum Act 1999 has been removed. Asylum support regulations are complex and can be difficult to navigate without legal advice. Although exact numbers are not available, it is estimated that there are 10,000 children living on asylum support, including almost 800 children on

Section 4 support intended for refused asylum-seeking adults (Children's Society, 2013a).⁷

Family reunion

Under legislation in the UK, refugees who have been granted status in the UK are entitled to request family reunion from the UK Visas and Immigration Service. Although it is difficult to know how many people would need specialist legal assistance to apply for family reunion, a study by the British Red Cross showed that in 2010, 5,000 visas for dependents of individuals with refugee status or humanitarian protection were issued in the UK (White and Hendry, 2011). The same study showed that around half of applicants for refugee family reunion had received legal advice and assistance from a solicitor. Although the judgment handed down in the case of *Gudanaviciene and others V DLAC (CO/16894)* (2014) found that refugee family reunion is within scope of the Legal Aid scheme, an appeal is pending. If successful, the appeal will result in family reunion cases again being excluded.

The MoJ estimated that the changes to scope resulting from LASPO would remove 460 asylum cases and 53,560 immigration cases from the Legal Aid scheme each year (based on 2009–10 data). In addition to the indirect effects of cases for adults that involve dependent children, this figure included almost 2,500 non-asylum immigration cases brought by children under 18 in their own right (Just Rights, 2011).

Residence test

Concerns have been raised by numerous organisations about the impact of the residence test on children. The Children's Society has highlighted the following groups as being particularly likely to be affected (Children's Society, 2011):

- unaccompanied migrant children and care leavers
- refused asylum-seeking children, young people and families who cannot return to their country of origin
- children who have been abandoned by their parents or carers
- age-disputed young people including those in immigration detention
- disabled migrant children and those with special educational needs
- young victims of trafficking and exploitation who do not access the National Referral Mechanism
- parents and children who are victims of domestic violence but cannot prove abuse and do not have documentation to prove residence

⁷ This cites a Parliamentary Question which indicated that there were 20,894 asylum seekers in receipt of Section 95 support at the end of 2011, half of which were estimated to be children. See HL Deb, 19 June 2012, c281W. A further question showed there were 779 dependent children under 18 in receipt of Section 4 support.

- undocumented migrant children and young people at risk because of their irregular immigration status
- children, young people and families who have lawful residence (including refugee status, discretionary leave or humanitarian protection) who have been in the UK for less than 12 months but have no financial means.

The MoJ has acknowledged that it cannot determine the numbers of people likely to be affected by the changes as data on 'residence' has not been gathered in Legal Aid administrative systems in the past. Nevertheless, there is a clear overlap with those groups of children and young people potentially affected by scope changes, in particular the estimated 120,000 undocumented children resident in the UK. Non-UK nationals will be at a particular disadvantage compared with UK nationals.

Changes resulting from reforms of Legal Aid in private family law

This is an area in which children and young people are most likely to be impacted by Legal Aid changes indirectly, as dependents of parties and potential parties to litigation, rather than directly as parties themselves. However, it is an area in which litigation, alternative dispute resolution or failure to resolve problems may have substantial impact upon children, as these cases include:

- Private law children cases – these most often concern arrangements relating to with whom a child should live, spend time, or otherwise have contact, or when they should do so.⁸ They may also involve court applications for prohibited steps orders, specific issue orders, parental responsibility or in certain circumstances financial provision.⁹
- Financial remedy cases – these almost invariably concern the division of income and assets on divorce.
- Domestic abuse – these may involve applications for non-molestation or occupation orders.¹⁰
- Divorce or civil partnership dissolution proceedings.

ONS statistics indicate that in England and Wales in 2012 there were 118,140 divorces. In 57,139 of these the divorcing couple had one or more children under 16 and a total of 99,822 children were involved (ONS, 2014).

⁸ Formerly known as 'residence' and 'contact'. As of April 2014, under the Children and Families Act 2014 residence orders and contact orders have been replaced with 'child arrangements orders'.

⁹ A prohibited steps order is an order prohibiting certain actions in respect of a child without the consent of the court. A specific issue order is an order to decide what should happen in respect of a specific aspect of a child's upbringing.

¹⁰ A non-molestation order is an order designed to prevent a partner or ex-partner from molesting the applicant and/or children. This may include use or threats of violence, intimidation, harassment or pestering. An occupation order regulates who may live in the family home, and may also exclude a party from a defined area around the home.

Court statistics indicate that in England and Wales, during 2012–13 there were 52,961 new private law children cases started, and that these cases involved 118,098 children. The court statistics also show 41,967 new financial remedy cases and 17,575 new domestic violence cases started during the same period (MoJ, 2014, Tables 2.1 and 2.2).

Available data suggest that most children who are the subject of private law children cases will be aged under 10 (Cassidy and Davey, 2011).

Pre- and post-LASPO position

Prior to LASPO, all of the matters outlined above were within the scope of Legal Aid (although certain issues, particularly divorce or civil partnership dissolution, would only be dealt with under Legal Help). Legal Aid was also available for family mediation.

The main effect of LASPO in this area was to remove most private family law matters from scope. In particular, this applied to divorce and civil partnership dissolution, most private law children cases, and most financial remedy cases. Legal Aid remains potentially available to children under 18 who are applicants or respondents, or who are otherwise made parties in private family law proceedings. Exceptions were also made for divorce, private law children and financial cases where the applicant can evidence a history or risk of domestic violence, and for private law children cases where the applicant can evidence a risk of child abuse. In addition, domestic violence cases (applications for non-molestation and occupation orders) remain within scope.

The requirements in respect of evidence regarding domestic violence or child abuse are prescribed by regulation. Guidance and templates for obtaining the necessary evidence have been produced but many concerns have been expressed that these requirements are too onerous (LAA, 2014).

The MoJ estimated early on that approximately 247,000 private family law cases would be removed from scope, including approximately 34,600 for clients aged 18–24 (Just Rights, 2011). This estimate was later revised downwards to 232,500 cases (MoJ, 2012a).

Changes resulting from reforms of Legal Aid in education law

Education is an area in which children and young people are most likely to be impacted indirectly as dependents of parties and potential parties to litigation, rather than directly as parties themselves.¹¹ However, in the context of Legal Aid and litigation or potential litigation, it is also an area in which the central issues most often relate to children and is therefore of key importance.

¹¹ In England, rights to appeal in respect of admissions and exclusions vest in parents (or those with parental responsibility) until children are 16 and 18 respectively. Rights to appeal in respect of SEN provision also currently vest in parents/those with parental responsibility, regardless of the age of the children or young persons involved.

Issues that were most commonly dealt with under Legal Aid prior to April 2013 were school admissions, exclusions, and special educational needs (SEN). By way of background, latest available statistics which relate to England indicate that:

- in 2010–11, parents lodged 83,470 appeals against non-admission of their children to their preferred school (DfE, 2012)
- in 2011–12, there were 5,170 permanent exclusions and 304,370 fixed period exclusions (DfE, 2013a)
- in January 2013, there were 229,390 pupils across all schools with statements of SEN and 1,316,220 with SEN but without statements (DfE, 2013b).

Legal Aid for education cases pre-April 2013

Prior to LASPO, the scope of Legal Aid in education cases included matters such as:

- school admissions
- exclusions
- out of school provision
- bullying
- school and nursery reorganisation proposals
- student disputes with universities and further education institutions
- special educational needs (SEN) and disability discrimination, including advice on appealing to the First-tier SEND Tribunal and the Special Educational Needs Tribunals for Wales
- advocacy on appeals from the First-tier SEND Tribunal, to the Upper Tribunal and higher courts
- advice and advocacy to bring civil law actions for issues such as damages for negligence and actions for breach of contract in provision of education services
- judicial review.

The MoJ estimated early on that in respect of face to face advice, 960 education cases a year would be removed from scope of the Legal Aid scheme, 110 of which were pursued by young people under the age of 18 in their own right (Just Rights, 2011). Children and young people would have been adversely affected by the loss of funding for their parents and carers for the majority of the remaining cases that were removed from scope. However,

when telephone advice was added into the figures, the estimated reduction in volume for education cases rose to 2,870 (MoJ, 2011b).

Education was already a relatively low-volume area in terms of Legal Aid prior to April 2013 and in practice, most provision in this category was by way of Legal Help. Most education cases involved admissions, exclusions and SEN (MoJ, 2010, para 4.180–4).

Legal Aid for education cases post-April 2013

The initial proposals for reform included removing education cases from scope completely (except those which could also be brought as disability discrimination claims). However, in light of concerns raised in responses to the consultation, the Government decided that SEN cases should be covered as before. During the passage of the Bill through Parliament, SEN cases for children and young people aged 16–24 were also brought within scope. Post-April 2013 (and at the time of writing) Legal Aid is potentially available for the following types of education cases¹²:

- SEN cases under Part 4 of the Education Act 1996 (typically challenges relating to a local education authority's assessment of a child's special educational needs)
- assessments relating to learning difficulties under the Learning and Skills Act 2000 (this covers 16–24 year olds)
- disability discrimination claims under the Equality Act 2010.

As before, the scope includes advice on appealing to the First-tier (Special Educational Needs and Disability (SEND)) Tribunal and the Special Educational Needs Tribunals for Wales, but not advocacy before that Tribunal. Advocacy may however be covered in appeals in the Upper Tribunal on a point of law from decisions made by the First-tier Tribunal or the Special Educational Needs Tribunal for Wales. As before, Legal Aid is also potentially available for judicial review cases involving SEN.

Prior to April 2013, education was one of the categories for which advice could be sought via either the Community Legal Advice telephone helpline (as it then was) or face-to-face. Under LASPO, SEN cases and discrimination cases are among those for which, subject to certain exceptions, Legal Aid must now in the first instance be sought via the telephone gateway. Education cases that remain in scope are subject to the withdrawal of representation for cases with borderline prospects of success as of January 2014, and also the residence test, if it is introduced.

Changes resulting from reforms of Legal Aid in prison law/criminal law

In respect of those in the criminal justice system, LASPO and TLA have made

¹² The Children and Families Act 2014 introduces a new framework for these cases as from September 2014. New cases involving SEN and learning difficulties for children and young people aged up to 25 will involve Education, Health and Care Assessments and Plans.

a number of changes to the scope of criminal Legal Aid and prison law (it should be noted that this review only covers changes to prison law). As a result, advice and assistance is no longer available for:

- all matters related to an individual's treatment in a prison, YOI or STC, including prison conditions, treatment by staff; visits, mother and baby issues and access to rehabilitation courses
- certain sentencing matters, including categorisation, resettlement, sentence planning and licence conditions
- all disciplinary matters unless referred to an independent adjudicator.¹³

Legal Aid will largely only remain where the length of time a prisoner spends in prison is raised. The implementation of legal reforms has made no allowances for the vulnerability of children and young people. Many therefore argued that young people would be released from custody without being offered necessary resettlement support, such as having a suitable home to go to (Association of Prison Lawyers, 2013).

Concerns have been expressed about the removal of fixed fee cases which provide representation for prisoners in matters such as access to mother and baby units, access to offending behaviour intervention in custody and resettlement provision on release, and the potential costs savings of these changes queried.¹⁴

The Government's rationale for removing these issues from the scope of Legal Aid is that, in its view, they can be resolved through other means (such as internal complaints systems) and do not require input from a lawyer. The Government's view is that the existing internal complaints procedures as well external mechanisms, such as the PPO and IMB, are able to resolve many of the issues prisoners raise.

However these changes have been met with criticism and concern by a number of organisations (Prison Reform Trust, 2013). Without legal assistance, a prisoner is limited in his or her abilities to express their concerns and ensure appropriate and timely responses are given (JUSTICE, 2013).

The fact that many young people in custody will be mistrustful of the system or lack the skills and ability to present their grievances effectively further impedes their access to support and advice required.¹⁵

...the prisoner outcomes from alternative dispute resolutions are

¹³ Application of 'Tarrant' criteria – where a prisoner requests legal advice or representation at disciplinary hearings, if granted by the governor then the hearing will be adjourned to allow the prisoner to contact a solicitor.

¹⁴ For further details see:

<http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10006.htm>

<http://www.lawgazette.co.uk/law/prison-law-legal-aid-appeal-granted/5041984.article>

¹⁵ See HM Chief Inspector of Prisons, Nick Hardwick, oral evidence to Joint Committee on Human Rights, 23 October, 2013.

uncertain. There is uncertainty in estimating the impact of prison law policy on the volume of cases (MoJ, 2013d).

Many organisations, such as the Howard League and Prison Reform Trust, question the Government's belief that existing internal and external complaints systems and advocacy services are appropriate means of addressing many of the issues raised by offenders in custody. Children in the youth justice system often distrust the complaints process and there is a lack of staff to assist them in dealing with their complaint, with internal requests and complaints sometimes ignored (OCC, 2012).

A recent survey of boys aged 15–18 in prison by Her Majesty's Inspectorate of Prisons (HMIP) found that 55% said it was easy to make a complaint and of those who had made a complaint, 39% felt it was dealt with fairly and 41% felt that their issues were resolved quickly (although there is variation across establishments). The survey found that Muslim boys had more negative perceptions of the complaints system, with only 43% reporting that it was easy to make a complaint. Black and minority ethnic boys were less likely to report that they knew who to go to for help with resettlement needs. Similar distinctions were also evident amongst the 15–17 year olds surveyed in the Secure Training Centres. Overall 95% said they knew how to make a complaint and for those who had made a complaint, over half thought it had been dealt with fairly. Yet, Black and minority ethnic children were less likely to report any victimisation they were experiencing to a member of staff (45% compared with 63% of white children). 27% of Gypsy, Romany or Traveller children said that they felt too scared or intimidated to make a complaint (compared to 7% of other children). Of the small proportion of girls aged 15–18 spoken with, most were more positive towards the ability to progress concerns to internal complaints systems and the Independent Monitoring Board (HMIP, 2013).

Exceptional case funding

The previous Legal Aid regime included provision for exceptional funding to be granted in individual cases excluded from scope.¹⁶ The main criteria¹⁷ were that:¹⁸

- there was a 'significant wider public interest' in the resolution of the case and funded representation would contribute to it
- the case was of 'overwhelming importance to the client' because the case had exceptional importance beyond the monetary value (if any) of the claim, because the case concerned the life, liberty or physical safety of the client or his or her family, or a roof over their heads

¹⁶ As per Section 6(8)(b) Access to Justice Act 1999.

¹⁷ According to The Funding Code, 2010, Chapter 27.

¹⁸ These criteria were further defined in the Funding Code. Different criteria applied to exceptional funding for advocacy before coroners' courts. These were that: there was a significant wider public interest in the applicant being legally represented at the inquest; or funded representation for the family of the deceased was likely to be necessary to enable the coroner to carry out an effective investigation into the death, as required by Article 2 of the ECHR.

- there was convincing evidence that there were other exceptional circumstances such that without public funding for representation it would be practically impossible for the client to bring or defend the proceedings, or the lack of public funding would lead to obvious unfairness in the proceedings.

Few grants of Legal Aid were made under this previous regime. The statistics also indicate that it was utilised mainly in respect of inquests. In 2012–13, there were 174 applications, of which 53 were granted. Of these, 143 applications and 51 grants of Legal Aid were for inquests.¹⁹ The predominance of inquest cases here was not surprising, as at the time there were far fewer cases in other categories of law which would usually be out of scope but in respect of which exceptional funding might be applied for.

Section 10 of LASPO introduced a narrower scheme for exceptional funding to be granted, in cases where failure to do so would be a breach of individual ECHR rights (under the Human Rights Act 1998) or individual rights to the provision of legal services that are enforceable EU rights, or where it is appropriate to grant Legal Aid in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach. The new scheme also includes provision for exceptional funding for advocacy at inquests, where the wider public interest requires it (defined as such advocacy being likely to produce significant benefits for a class of person, other than the applicant and members of the applicant's family).

Prior to LASPO, the MoJ stated that the new scheme would not compensate for the withdrawal of funding for the types of cases and proceedings to be removed from scope:

Given the need to reduce public spending and target available resources effectively, we propose to draw the scheme narrowly while ensuring that cases which require legal aid are able to secure it (MoJ, 2010, para 4.5).

Nevertheless, the MoJ anticipated that there would be between 5,000 and 7,000 applications for exceptional funding in 2013–14²⁰ and that it was expected that some 3,700 would be granted.²¹ Published statistics²² however show that in 2013–14, only 1,519 applications for exceptional funding were submitted.²³ Of the 1,468, which were determined, 57 were granted.²⁴ Applications have most often been in respect of family cases (821, 54%), immigration (235, 15%), inquests (199, 13%), housing/land law (81, 5%) and

¹⁹ Legal Aid Statistics in England and Wales 2012–13, Statistical Tables, Table 17 which also shows that 64 applications were refused and 57 were awaiting a decision.

²⁰ See: Joint Committee on Human Rights (2013c: 42), citing written evidence from the Public Law Project.

²¹ See: HL Debates 11 February 2014, oral answer column 530.

²² See: <https://www.gov.uk/government/publications/exceptional-case-funding-statistics-april-2013-march-2014>

²³ Of these, 1,186 were new applications and 333 requests to review an earlier determination, indicating that the number of unique cases involved was substantially lower than the headline figure which has been widely reported

²⁴ 1,018 were refused, 379 were rejected, and 14 had other outcomes. 51 were awaiting a decision.

personal injury/clinical negligence (66, 4%). Most grants of exceptional funding have however been for inquests (42 cases, 74%). Of the other 15, eight have been for family cases, four for immigration, and one for housing. No grants have been made in respect of personal injury/clinical negligence; welfare benefits; debt/consumer/contract; education or discrimination; and apart from personal injury/clinical negligence cases, the numbers of applications in these other categories have been tiny.

The extent to which any of the figures outlined above include cases in which children or young people within the OCC's remit were directly or indirectly impacted is not clear. The MoJ has stated that a typical family application is in private family law proceedings, and *'in particular these concern the right of contact with and residence of the applicant's child or the division of matrimonial assets'*²⁵ therefore it is reasonable to suppose that a substantial proportion of the applications in family cases at least would have involved children. The same may or may not be true in respect of immigration and other categories. However, as exceptional funding was only granted in 15 non-inquest cases during 2013–14, it seems clear that the regime can at best have provided a safety net in only a tiny number of relevant cases.

The Government, in seeking the views of relevant organisations to the changes proposed through LASPO and TLA, has come under continued criticism on the likely negative impact that will result from the Legal Aid reforms.²⁶ The direct impact that will be experienced by children and young people is deemed to be significant, with concerns raised that many will be unable to successfully resolve many of the legal matters they may face.

²⁵ See: <https://www.gov.uk/government/publications/exceptional-case-funding-statistics-april-2013-march-2014>

²⁶ See for example the summary of responses to the consultation pre-LASPO (MoJ, 2011) and the evidence reviewed in the next chapter.

3. Direct and indirect impact of changes on children and young people

As noted in the introduction, the Government estimated that the changes to the scope of Legal Aid under LASPO alone would involve a reduction in volume of 6,000 cases on behalf of clients aged under 18 and 69,000 cases on behalf of those aged 18–24. This was based on numbers of cases closed in 2009–10 and combined figures for Legal Help and representation but excluded telephone advice. This was against a backdrop of an estimated overall reduction of approximately 562,000 such cases, for clients of all ages. In terms of volume, the areas most affected overall were expected to be private family law (247,000 cases); immigration (54,000 cases); debt (80,000 cases); housing (41,000 cases) and welfare benefits (110,000 cases) (Just Rights, 2011b).

One estimate put forward prior to LASPO, was that in addition to the figures of 6,000 and 69,000 for children and young people aged 18–24 respectively who would be directly affected, approximately 140,000 children would be indirectly affected by their parents no longer being eligible for Legal Aid in private law family and in civil cases (Just Rights, 2011a). However, whilst perhaps indicating the potential scale of the impacts, this estimate was based on a number of assumptions regarding previous eligibility, which cannot be verified as data on the numbers of clients with dependent children are not available.

It is also evident from the availability of data and research that exists post-April 2013, that it is still too early to establish a good understanding of the quantifiable impacts on children and young people. This was reflected in the response of a range of organisations to the Justice Select Committee's recent call for evidence on the changes, with few being able to quantify impacts in numerical terms, and assumptions still being made in light of pre-LASPO figures.²⁷ Forthcoming research which will explore further the impact is expected to be available towards the end of 2014 and early 2015.²⁸ However, the extent to which this will shed light on direct and indirect impacts on children and young people specifically is not yet clear.

²⁷ In December 2013 the Justice Committee announced a new inquiry into the impact of changes under LASPO with a deadline for written submissions of 20 April 2014. This was some time before annual Legal Aid statistics for 2013–14 were released in June 2014. At the time of writing, 64 submissions had been made but many of these respondents were only able to draw on partial releases of statistical information from earlier in 2013–14. The Inquiry is currently ongoing:
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/new-inquiry-laspo/>

²⁸ Since LASPO was implemented, the MoJ has commissioned several research studies which ought to shed light on the impacts of Legal Aid changes generally. These include a review of the Telephone Gateway; a general population survey exploring experiences of civil, family and administrative justice problems; and a survey of not for profit advice providers. The Legal Action Group has also announced a study of the impact of the Legal Aid changes on legal advice providers; a report on the impact of the withdrawal of non-asylum immigration cases from scope; and research to measure the impact of the availability of legal advice to members of the public before and after LASPO (Legal Action Group, 2014).

Private family law

The Government estimated that compared to 2009–10 volumes, the changes to scope would result in approximately 200,000 fewer private law family cases being funded under Legal Help, and a reduction of approximately 32,500 in the number of certificates for legal representation. For representation, it was estimated that this would equate to a reduction of 64% for financial cases, and 53% for private law children cases (MoJ, 2012a).

As in other areas, the full impacts of LASPO are still emerging. However, there has been a significant reduction in the numbers of new private family law cases funded by Legal Aid. Statistics indicate that in terms of Legal Help, the number of new matters started in 2013–14 was 42,798. This represents a reduction of 79% compared to the 205,617 started in 2012–13 (Legal Aid Agency, 2014).

The statistics also show that the number of new certificates for representation in private law children cases has reduced by 66%, from 49,218 in 2012–13 to 16,662 in 2013–14. The number of new certificates for representation in financial proceedings has reduced by 38%, from 6,201 in 2012–13 to 3,815 in 2013–14. There has also been a small reduction, of 3%, in new certificates for representation in domestic violence cases, from 15,720 in 2012–13 to 15,231 in 2013–14. Overall therefore, the number of new certificates in these three categories of private family law cases has reduced by 50%, from 71,139 in 2012–13 to 35,708 in 2013–14 (Legal Aid Agency, 2014).

Exceptional funding is not being used to grant Legal Aid in family cases. Although there were 821 applications in family cases, only eight had been granted at the end of 2013–14.

Court proceedings

Prior to the reforms, there were two linked main concerns regarding the potential impact of LASPO on private family law cases in the courts. These were that there would be an increase in the numbers of litigants in person, with knock-on effects on the children, parties and administration of the courts; and that the reforms would leave children and women particularly vulnerable due to the restrictive nature of the domestic violence and child abuse criteria for Legal Aid to be granted (MoJ, 2011).

Some data is emerging regarding the apparent impact on the numbers of private law children cases in the courts. The latest court statistics show that if looking at complete years, the number of new cases started has risen very slightly, from 52,961 in 2012–13 to 53,386 in 2013–14. However, the figures also suggest that this was due to more cases being started in April–June 2013, the first quarter after LASPO came into force, compared to the same period in 2012. The last two quarters of 2013–14 show fewer cases issued compared to the same quarters in 2012–13 (MoJ, 2014a).

Cafcass has reported that:

- Between April 2013 and March 2014 they received a total of 46,495 new private law cases – an increase of 2% from the 45,605 cases received in the previous financial year. However, they also stated that, '*It has been a year of two halves*'.²⁹
- New cases received during the first six months of 2013–14 were 15% higher than the same period for 2012–13. During the first quarter (April–June 2013), demand was 26% higher than the same period in the previous year.
- Case demand in April, May, June, July and August 2013 was the highest ever recorded by Cafcass in those individual months.
- The rise in demand slowed down during the latter part of the year.
- Demand for all months from October 2013 onwards was lower than the same months in the previous financial year.³⁰

These statistics suggest it is likely that the first quarter of 2013–14 saw a spike in the number of new private law children cases started in the courts, due to cases coming through in which parties had obtained Legal Aid in the run up to LASPO coming into effect in April 2013. They also suggest that the post-LASPO landscape is starting to settle, but that comparisons based on the first two quarters of 2013–14 (April–June and July–September 2013) are perhaps most likely to capture short term behavioural responses to the implementation of LASPO, rather than provide reliable indications of medium to long term impacts.

Litigants in person

The MoJ has noted that, '*litigants in person have always been a feature of the justice system*' (MoJ, 2014c). Interpreting the available statistics on litigants in person (LiPs) is somewhat problematic, partly because a party's representation status may change during the course of a case, and published statistics tend to focus on whether parties are represented or not when cases are disposed of rather than when they start. However, it is clear that the proportion of cases in which one or more parties is unrepresented at some point is increasing.

For example, if figures for October–December 2012 (the period starting six months prior to LASPO) are compared with October–December 2013 (the period starting six months after LASPO), they indicate that in private family law cases, the proportion of cases in which:

- both parties were represented fell from 46% to 30%

²⁹ Cafcass receives details of most, but not all, private law children cases. Their figures tend to be somewhat lower than those in the Court Statistics, but follow a similar pattern: see MoJ, 2014b.

³⁰ See figures at: <http://www.cafcass.gov.uk/news/2014/april/march-2014-private-law-demand-statistics.aspx>

- neither party was represented rose from 12% to 22%
- one party was unrepresented rose from 42% to 48%.³¹

The same statistics indicate that in domestic violence proceedings, the proportion of cases in which both parties were represented fell from 15% to 8%, and in which only the applicant was represented rose from 69% to 76%.

The MoJ has recently released some data on representation status at the start of proceedings in private law Children Act cases in response to a Freedom of Information request.³² These indicate that in cases started in the last quarter of 2013, 63% of parties were unrepresented, up from 41% in the last quarter of 2012. These figures for 2013 need to be viewed with a degree of caution, as due to potential time lags in courts being notified of whether respondents have obtained representation, they may under-estimate the numbers of represented parties. Subject to that same caveat, the figures also indicate some gender-based developments. The number of female unrepresented parties in the last quarter of 2013 was 50% higher than in the last quarter of 2012, whereas the number of male unrepresented parties rose by 29%. The effect of this is that the previous position, whereby male parties were more likely to be unrepresented than females, appears to have been reversed: 64% of females and 61% of males were unrepresented in the last quarter of 2013 compared to 39% and 43% respectively in the last quarter of 2012.

Mediation

As noted earlier, one of the main drivers for the Legal Aid changes was to divert more cases away from the courts. The continued availability of Legal Aid for mediation was cited as a key factor in the decision to remove representation in private family law cases from scope, and an additional £25 million was earmarked for funding mediation in anticipation of increased demand.

Again, there are several ways in which the statistics here can be interpreted. However, it is clear that mediation in family cases is not growing in the way that the Government intended. During 2013–14, there were 8,400 Legal Aid funded mediation starts representing a 38% decrease on the 13,609 starts in 2012–13. The number of Legal Aid-funded Mediation Information and Assessment Meetings (MIAMs) was also down by 56%, from 30,662 in 2012–13, to 13,354 in 2013–14.³³ However, of those mediations started, the proportion which resulted in full or partial settlement rose from 67% to 79%.

Evidencing domestic violence

A number of organisations have voiced concerns regarding the ability of women affected by domestic violence to meet the evidential requirements on

³¹ See figures in MoJ (2014a), main tables, Table 2.4. These data relate to disposals.

³² For details, see: <http://lawyersupportedmediation.com/blog-posts/low-income-mums-bear-brunt-legal-aid-cuts>

³³ See Legal Aid Agency (2014). A MIAM is a meeting at which a mediator explains about mediation, assesses whether a case is suitable for mediation, and also assesses eligibility for Legal Aid funding.

potential applicants in private law cases (Association of Lawyers for Children, 2014; Family Justice Council, 2014; The Law Society, 2014; Refuge, 2014; Resolution, 2014; Rights of Women, 2014; Women's Aid: 2014). Rights of Women and Women's Aid have reported on a small-scale survey which indicated that 43% of respondents who had experienced domestic violence did not have the required evidence to obtain Legal Aid. They also reported that of those unable to apply for Legal Aid, 47% took no action in relation to their family law problem, 32% paid a solicitor privately, and 25% represented themselves at court (Rights of Women and Women's Aid, 2014). The types of evidence which can be used to meet the requirements in respect of domestic violence have recently been expanded. Nevertheless, it has recently been announced that the Public Law Project is launching an application on behalf of Rights of Women, which is supported by the Law Society for a judicial review of the domestic violence evidence requirements (Rights of Women and Women's Aid, 2014).

Asylum and immigration

The direct and indirect effects of reforms to Legal Aid for asylum and immigration cases will include both immediate effects (namely the inability of a child or young person to access services) and also the downstream effects on a child's welfare and development. Decisions about citizenship, leave to remain and deportation all have profound implications for the future of a child.

Data from the Legal Aid Agency on Controlled Work New Matter Starts (NMS) show a decline in the use of NMS even in those matters which remain in scope. In the category of immigration and asylum, there has been a decline of nearly 50% in the number of new cases being opened, falling from 52,710 new matters in 2012–13 to 28,038 cases in 2013–14 (Legal Aid Agency, 2014). Possible explanations for the reduction in new case starts offered by many organisations³⁴ include: an inability of lawyers to assess whether a matter is in or out of scope (because lawyers cannot afford to provide pro bono assistance to carry out the necessary assessments); perception amongst the public that Legal Aid is no longer available; that information about Legal Aid is difficult to find; that a reduction in number of providers means clients can't locate services; and the closure of a number of not-for-profit organisations who might have previously referred or signposted clients to services.

It is worth noting in this context that the Government's impact assessment of the scope cuts anticipated no reduction in asylum cases. Nevertheless, there were concerns expressed prior to the introduction of LASPO that the removal of immigration matters from scope would have a knock-on effect on provision of asylum advice, as organisations relied on 'cross-subsidising' asylum work with immigration matters.³⁵ It is not possible to determine the extent to which

³⁴ See written evidence from the Law Society on the Justice Select Committee Inquiry: *Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012* (April 2014).

³⁵ See Joint Committee on Human Rights (2013b: 60), citing evidence to the committee provided by Immigration Law Practitioners' Association and the Refugee Children's Consortium.

the reduction in new matters opened under Legal Aid have resulted from a reduction in asylum cases, as the data provided by the Legal Aid Agency conflate the two categories under one heading. Nevertheless, it is interesting to note that the potential demand for assistance from asylum seekers is likely to have risen as the data for the numbers of people seeking asylum in the third quarter of 2013 were 5% higher than the same quarter in 2012 (Institute for Public Policy Research, 2014).

There is emerging evidence that the not-for-profit sector is experiencing a significant increase in people seeking advice and legal assistance. The Law Centres Network reports that Hackney Law Centre experienced a 200% increase in the number of people looking for immigration law advice over the winter of 2013 and a 500% increase in the number of calls to their telephone helpline (Law Centres Network, 2014). The British Red Cross also reports an increase in requests for assistance since LASPO (British Red Cross, 2014).

Outside the not-for-profit sector, an increase in demand for assistance has also been experienced in the pro bono sector. The Bar Pro Bono Unit experienced a 47% increase in applications in the period April 2013 to February 2014, compared to the same 11 month period in the previous year. The category of immigration was one of the four main areas of law in which help was being requested, along with family, employment and welfare benefits (Bar Council, 2014). Given that figures show the Unit provided help in only 27 cases in the immigration and asylum category in 2012, much of this increased demand is likely to be unmet (Bar Pro Bono Unit, 2013).

Similarly, Liverpool Law Society reports that a recently established Law Clinic at Liverpool University set up to advise those persons who are considered to be 'stateless' have been inundated with callers from all over the country seeking help (Liverpool Law Society, 2014). Again, much of this demand is likely to be unmet as the project anticipated being able to assist only a small number of individuals and it was time limited.³⁶ Many of the matters that these individuals require assistance with would have been within scope of the Legal Aid scheme. For example, Rights of Women (2014) reported that in the three months to January 2014, between one third and one half of the women they advised on asylum and immigration matters would have previously been eligible for Legal Aid-funded advice. Similarly, the Migrant Children's Project at Coram Children's Legal Centre (2014) determined that of the 101 queries received in March 2014, 37 concerned a matter of immigration law in which the financial eligibility criteria would be met and there was a need for legal representation but the matter was now an out of scope issue.

Indirect effects

An inability to correctly identify a child's asylum/immigration case and adverse decisions on leave to remain, deportation, or citizenship will profoundly affect the future of any child. Evidence given to the JCHR illustrates the effect on children's welfare of having insecure immigration status.³⁷ This impacts on

³⁶ See further information at: <http://www.liv.ac.uk/law/liverpool-law-clinic/disclaimer>

³⁷ See for example Joint Committee on Human Rights (2013a), Written Evidence from the Refugee Children's Consortium, The Children's Society, NSPCC, The Refugee Council and Coram.

their mental and emotional wellbeing and fundamentally affects their ability to plan for a future because of its implications for access to education and employment.

Barnardo's have raised concerns about young people:

[who are left]...feeling anxious and de-motivated as they approach 18, when they may lose their leave to remain and many of their rights, as well as potentially being required to return to their country of origin (JCHR, 2013a).

If the child's protection claim³⁸ remains unidentified the child or young person's life may be placed in jeopardy as the young person may be returned to a country where they are in danger. Similarly, there are significant welfare effects on children of being separated from their parents or carers. Research carried out into the cases of 111 parents who were separated from 200 children by immigration detention illustrates the emotional distress it causes children (Campbell et al, 2013).

The children reported:

...losing weight, having nightmares, suffering from insomnia, crying frequently, and becoming deeply unhappy, socially isolated and withdrawn. Some children were aware that their parent could be deported, and were extremely anxious about this.

A substantial minority of these children (85) were in fostering arrangements or local authority care during their parents' detention. In 92 of the 111 cases, the parents were eventually released, and in 15 cases, the parents were deported or removed from the UK without their children. The loss of Legal Aid to challenge deportation on Article 8 grounds means that more children will potentially experience separation from their parents as there will be no mechanism to ensure that consideration is given to the best interests of those children in determining whether deportation is proportionate.

Prison law and criminal Legal Aid

The average population of children and young people in custody in England and Wales during 2012–13 is put at 1,544(Ibid.).³⁹ The general decline in the number of young people coming to the attention of the youth justice system is also reflected in the numbers being given custodial sentences. The assumption would be that such reductions would have a knock on effect on the number requiring legal support in light of smaller numbers progressing through the criminal justice system. Initial indications support this as discussed below. However, the reduction in scope of prison law and criminal Legal Aid will mean young prisoners will not be able to receive the support they need in dealing with many of the serious and complex issues they face:

³⁸ For grounds related to asylum, humanitarian protection and trafficking.

³⁹ 'Custody' includes secure children's homes, secure training centres, and young offender institutions.

...the issues concerning young people may involve matters of housing law, social care law and public law of such complexity that they require access to legal advice and assistance in order to investigate or formulate their case (JCHR, 2013c).

This in turn is likely to impact on effective rehabilitation as well as wider issues of safety for the community. It is argued that the Government has not acknowledged such impacts:

...disregard for procedural fairness may decrease offenders' levels of mental well-being, engagement in their management, motivation to forge new lives and respect for authorities and the civic values they represent. It may inhibit the maintenance of an effective probation/client relationship and increase resistance (Digard, 2010).

In considering the direct and indirect impact of the Legal Aid reforms on young people in custody it is important to set in context the numbers and characteristics of those serving prison sentences, both for children and those young adults (aged 18–24). This clarifies the range of issues of need these young people face and the likely support and advice they require in addressing these.

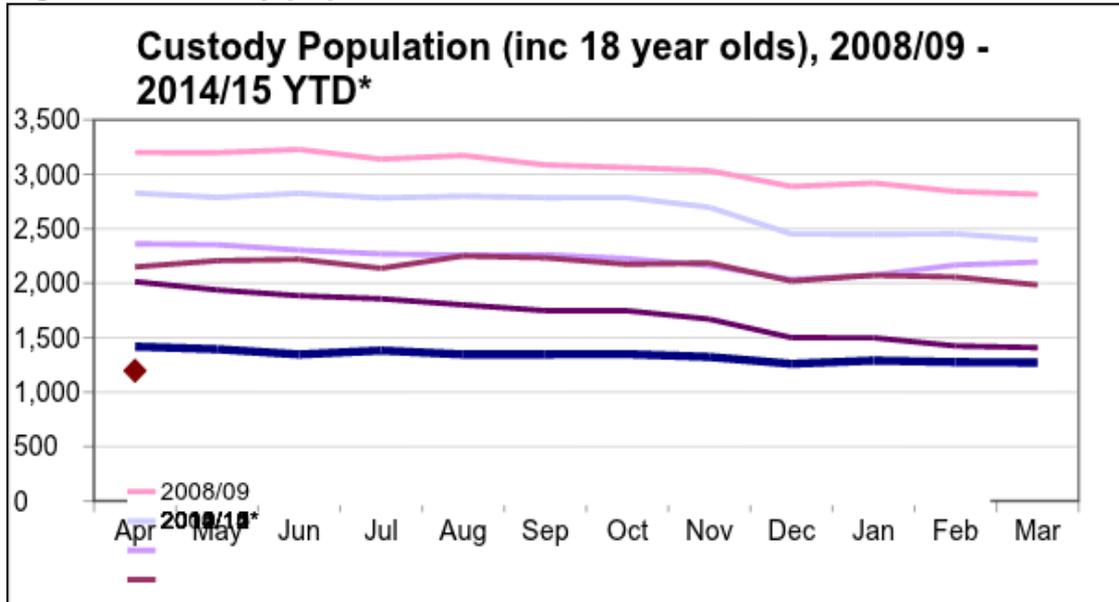
It is well known from both Government statistics and the wide number of research studies undertaken, particularly on young people serving custodial sentences, that this group presents a range of needs. Many of the issues they face have influenced their involvement in offending behaviour and therefore require addressing if further offending is to be prevented. Often the issues faced strongly impinge on the quality of the young person's lifestyle and the wider behaviours they present:

...children in custody are amongst some of the most vulnerable and socially disadvantaged and that they have specific needs which may not be common to the wider population of young people (Just Rights, 2013).

The overall prison population for under-18s has been in steady decline over the last decade. In the last year, the numbers in custody have fallen from 1,707 (June 2012–13) to 1,237 (June 2013–14).⁴⁰ There has also been a fall in the number of 18–20 year olds in custody. Between 2008–12, the number of young adults (18-20) sentenced to custody has reduced by 16% (Ministry of Justice, 2013c).

⁴⁰ See the Youth Justice Board's Monthly Youth Custody report from June 2014 for details.

Figure 1: Custody population



YJB Monthly Youth Custody Report, April 2014 (* - includes provisional data for April 2014).

Characteristics of young people in custody

It is well-evidenced that the majority of young people in custody present multiple levels of need. This can range from accommodation issues, family problems, school exclusions, learning disabilities and mental health issues. Only a minority of young people in custody know where to seek help in continuing their education when they leave prison (Nacro, 2014).

In a survey of young men aged 15–18, HMIP (2013) found that:

- a third had been in care
- 86% had been excluded from school
- 11% had children of their own
- one in five had emotional and/or mental health problems.

There is also strong evidence to show that addressing these issues will greatly reduce the likelihood of reoffending for these young people. However, this requires the effective identification of these needs and the provision of appropriate advice and intervention. Young people in custody will rarely possess the skills or confidence to seek this support; whether this be legal assistance or through specific agency practitioners (e.g. Youth Offending Teams, local authorities).

A quarter of boys and young men aged 15–18 who were surveyed said they had no one to turn to if they had a problem. Many voiced poor knowledge of where to get help in dealing with resettlement issues, such as finding accommodation (28%); getting back into education; training and employment (27%) and getting a job (34%).

Young adults aged 18–24 years old

The Surveying Prisoner Crime Reduction survey included a cohort of adult prisoners of all ages but the findings are still relevant to the 18–24 year olds as well as those under-18. In following the cohort over a number of time periods pre- and post-release from custody, the key factors associated with reoffending became evident. Insecure accommodation, employment needs and substance misuse were all identified as good predictors. Those who were homeless or living in temporary accommodation were more likely to reoffend than those with stable accommodation (Bruton-Smith and Hopkins, 2013). For those in need of accommodation and support on release from prison, many had experienced a lack of support from statutory services.

The range of legal assistance and advice required by young adults in custody has been evidenced by a review of the 286 calls, emails and letters made to the Howard League's legal advice service during October 2008 and July 2010 (Howard League, 2010). It was clear that a disproportionately high number of young adult Black and minority ethnic prisoners were making the calls (80%) and 9% were from young adult women. Of the advice sought:

- a third of calls related to resettlement needs and a failure of statutory services to comply with their legal duties
- 33% said they had nowhere to live on release and for 30% the accommodation planned was not suitable. Of those with leaving care rights from social services, 24% had nowhere to live on release
- 43% related to recall but prisoners not having the information on what to do next
- 22% related to inadequate contact with family and distance from home
- 26% concerned calls about treatment and conditions related to inadequate health care provision, failure to continue medical treatment and over a fifth of calls related to unmet mental health needs
- for those with parole issues, 53% of calls indicated no or inadequate legal representation had been received

Despite evident need existing amongst this age group, there is a common view that policy interests are focused more on those under-18 rather than young adults.

...it would be wrong to ignore the particular needs of those aged 18–21 by regarding them as adult prisoners. For many the process of maturation will still be taking place beyond the age of 18 and they still require help and direction to become adults (Allen, 2013).

Support for specific issues

Many children in prison are children in need. But they have often “fallen through the net” and not received help and support from social services. Children often contact us where they have been unable to get social services to help them, especially where they need safe accommodation on release from prison. Sometimes, children spend extra time in prison unnecessarily because they have nowhere safe to go (UR BOSS, 2014).

Greater acknowledgement is needed of the direct impact prison law changes will have on young people with specific issues requiring support and advice. This includes children and young people with disabilities who often need legal assistance to help them secure suitable accommodation on release as well as accessing services to assist them both in custody and in the community (Nacro, 2010).

The same applies to those with mental health issues, who require legal representation in liaising with public authorities in securing the necessary assessments determining the level and type of support they need. This is particularly of concern to those in custody, when the consequences of not being appropriately assessed and supported can result in prison staff viewing children and young people with mental health issues as presenting difficult or challenging behaviours which can met with a strong disciplinary response (Swift et al, 2013). Such a response can limit the types of interventions that they receive, result in sanctions and the use of segregation and have implications for release dates (Howard League, 2010). Without legal assistance and advice, children and young people are unable to challenge such responses whilst their specific treatment needs are not met (Association of Prison Lawyers, 2013).

Too early to determine impact?

It is evident from the responses given to the recent Justice Select Committee’s inquiry into the impact of LASPO changes that it is still too early to determine impact. Interestingly, the anecdotal feedback from a number of organisations such as Barnardo’s and Howard League for Penal Reform is that despite preparing themselves for increased levels of demand, they are not experiencing the level of impact they assumed.⁴¹

Previous research has shown that when young people manage to get the legal advice they require the outcomes are positive. An evaluation of a Youth Advice Outcomes Pilot found that for those receiving legal assistance, 70% reported improved levels of stress; a third reported improvements in their ability to engage in education, training or employment; and nearly half positive changes in their behaviour (Evaluation Trust, 2010).

Impacts of changes to Legal Aid for education cases

Prior to LASPO, education was already a relatively low volume area in terms of Legal Aid and was in decline prior to April 2013. The latest statistical

⁴¹ Anecdotal accounts from interviews with organisations.

release indicates that in 2012–13 there were 2,956 new matter starts under Legal Help and just 137 certificates granted for representation, making for 3,093 cases overall. In terms of Legal Help, this equated to a reduction of 45% compared with 2009–10 (Legal Aid Agency, 2014).

For 2013–14, the figures were 1,167 for Legal Help and 43 for representation totalling 1,210. This appears to indicate further reductions of 61% for Legal Help and 69% for representation, compared to 2012–13. This does not take account of the possibility that some education cases may have been dealt with under the category of discrimination. The statistics indicate a total of 2,384 discrimination cases started under Legal Help in 2013–14 and four under certificates for representation. However, no breakdowns are given for these cases according to the circumstances in which discrimination was involved (Legal Aid Agency, 2014).

The statistical release for 2012–13 indicated that approximately 68% of Legal Help matters were via the Community Legal Advice telephone advice service, approximately 26% by solicitors firms, and approximately 6% by not-for-profit providers (168 cases).⁴² The 2013–14 statistical release does not provide a breakdown for new matters started by type of provider. However, separately released data for the period April 2013–January 2014 showed just six face-to-face education new matter starts by solicitors and none by not-for-profit agencies.⁴³ This suggests that the vast majority of Legal Help in education cases is now being provided via the telephone gateway.

Impacts on availability of providers

At the end of 2013–14, there were 1,720 Legal Aid contracts for family law compared to 1,956 in 2012–13, a 12% reduction (Legal Aid Agency, 2014).⁴⁴ There were 1,241 civil non-family law contracts, compared to 2,607 in 2012–13, a 52% reduction overall. This included a 33% reduction in the number of such contracts held by solicitors firms, from 1,724 to 1,154 and a reduction of 90% in the number held by not-for-profit providers, from 859 to 87. Note that these figures relate to the number of contracts, rather than the number of providers with contracts; as providers may hold contracts to deal with more than one area of law, the number of providers involved will be smaller than the number of contracts.

The number of immigration contracts fell by 59% from 212 to 86, of which 76 were solicitors and 10 not-for-profit agencies. The number of providers with contracts for education law fell from 26 (18 solicitors and 5 not-for-profit agencies) to one (a solicitor's firm).

⁴² See Legal Services Commission (2013) Tables 8 and 9. These figures did not include telephone triage cases, which would include people who contacted the telephone advice service but were not provided with advice and assistance under Legal Help. In 2012–2013, there were a total of 154,945 telephone triage cases. No breakdowns appear to be available for the categories of problems involved here and we therefore cannot say how many of these cases involved education matters.

⁴³ For further details, see Civil Contracts Consultative Group (CCCG) papers for March 2014, https://www.whatdotheyknow.com/request/minutes_and_papers_from_civil_co#incoming-514253

⁴⁴ All but seven of these family contracts in 2012–13, and eight in 2013–14, were held by solicitors firms.

Alternative means of support and assistance have been developed in light of the changes enforced by LASPO. Relevant organisations have sought to provide other means of supporting young people where legal matters arise.

The next chapter discusses the response of organisations and the development of alternative provision.

4. Response of organisations and sectors to LASPO

Many voluntary and pro bono services work with children and young people needing legal advice and representation. In an attempt to mitigate against the negative impact the reforms will have on children and young people, such organisations have enhanced or developed processes to provide the support and assistance required. This support is vital, with the evident effect of the reforms resulting in the closure of Legal Aid organisations, many of which offered specialist advice.

Closure of Legal Aid organisations

Legal Aid is not the only means by which children and young people (and where relevant their parents or carers) may obtain advice and representation. In certain subject areas (for example debt and welfare benefits) organisations in the not-for-profit advice sector have traditionally been more significant providers than the mainstream legal profession. There are also a number of organisations that specialise in working with children and young people and various pro bono services that are available more generally. It is important that an assessment of the impact of changes to Legal Aid includes examination of the ability of such organisations to cater for demand that can no longer be met by Legal Aid.

Since 2007–8 there has been a 30% fall in the number of civil providers and a 12% reduction in criminal providers under contract. There has been a small increase in the total number of contract categories in community care and public law (Legal Services Commission, 2013).

Since 1 April 2013, all Legal Aid providers have been subject to new or amended contracts. Face-to-face provision for family, immigration and asylum, housing and debt will be governed by the 2013 standard civil contract. Providers of Legal Aid not affected by LASPO and who do not require new contracts will be subject to the amended 2010 civil and crime contracts.⁴⁵

The Government has suggested that young people with problems that have been removed from the scope of Legal Aid will be able to seek advice from voluntary sector providers. But local authority funding cuts mean that availability of advice to young people from the voluntary sector has been drastically reduced (National Children's Bureau, 2013).

There was an expectation that the number of not-for-profit advice agencies undertaking Legal Aid work would fall from 270 to a few dozen as a result of

⁴⁵ See more at: <http://www.lawsociety.org.uk/advice/articles/legal-aid-changes-key-information-and-advice/#sthash.zeUazUh4.dpuf>

the LASPO changes, making it harder for children and young people to access advice and representation (CRAE, 2013). With declining numbers evident, the impact of the closure of services on the quality of support that remains is not being assessed (JUSTICE, 2013).

Reduction in number of specialist firms

The reduction in the number of Legal Aid organisations, particularly those providing specialist advice services, has prompted concern from a number of organisations.

The significant role of specialist services for children and young people presenting specific issues is evident. Research has shown that children and young people with learning disabilities are often unclear of how legal services can help them (Swift et al, 2013). More generally children and young people complain of not being able to understand lawyers or that solicitors seem disinterested in their case or are not able to signpost them to the right specialist support. Specialist firms are able to offer legal assistance through solicitors that are skilled in working with learning disabilities and experienced and flexible in adapting their practice to meet the needs of children and young people (University of Bristol, 2013).

The impact of this loss of expertise within firms is particularly great for vulnerable groups such as children and young people in custody. With little understanding of the needs and characteristics of children and young people in prison and the likely influence their issues will have on their behaviour, it is considered that non-specialist services will not be able to provide the response required in appropriately responding to and resolving the legal issues being raised (Young Legal Aid Lawyers, 2013). A need for understanding and being responsive to the mistrust of children and young people who offend to public services such as local authorities and criminal justice agencies is required in securing their engagement and participation. This applies not only to specialist practitioners seeking to address their offending behaviour but also legal representatives. Both rely on establishing relationships of trust and knowledge of the complexity of the issues faced, as well as an ability to deal with children and young people in a sensitive way. These skills and expertise will be lost with the decline in the number of specialist firms (National Association for Youth Justice, 2013).

Specific responses to Legal Aid changes

Asylum and immigration

There are essentially five possible routes for individuals unable to access Legal Aid in immigration matters: i) represent oneself without legal assistance; ii) pay privately for legal advice; iii) obtain help on a pro bono basis; vi) obtain funding from another body such as a charity or an organisation in the statutory sector; or, v) do nothing which may mean children and young people simply disappear off the radar.

Self help

Self-help and self-representation poses enormous challenges to individuals trying to resolve immigration matters. The law in this area is extremely complex and has become even more so following a string of changes to legislation, policy and guidance in the last few years (Sigona and Hughes, 2012). Children and young people face particular challenges in trying to represent themselves in courts and tribunals. They may not have the language skills needed, they may struggle with understanding their legal and/or protection needs; many may be unable to address the complexity and sensitive nature of the issues they face; they may be unable to navigate the procedures and the implications of the decision which will be taken about their future; and may be highly vulnerable due to reasons leading to their entry into the care system, or as a result of learning disabilities or mental health issues.

In addition, they may find it difficult to talk about and provide evidence to substantiate their experiences of loss or separation. By their very nature, decisions by UK Visas and Immigration involve complex rules and regulations and many involve human rights, especially in relation to what may amount to a breach of a child's Article 3 ECHR rights and their Article 8 ECHR rights to a family and private life. Indeed, this is something recognised by UK Border Agency in correspondence with applicants involved with Article 8 cases:

Your application raises issues relating to the European Convention on Human Rights which are complex in nature. As such it falls outside our normal service standards for deciding leave to remain applications. Please be assured we will make a decision on your case as soon as possible (Young Legal Aid Lawyers, 2014).

Children and young people are among those least able to navigate this complexity.

Pay privately

Paying privately requires that individuals understand that they have a legal problem, that they have the funds to purchase the service and that there are reputable providers of services whom they are able to identify. These problems pose particular issues for children and young people.

Generally families requiring asylum and immigration advice are of limited financial means and therefore are unable to pay privately for legal advice and representation. Children and young people are even more unlikely to be able to access funds to pay for legal advice, particularly if they are unaccompanied or separated children. People are put in the position of trying to find the funds to pay privately for assistance, putting them at risk of exploitation (Dorling, 2013).

In one stark case, a destitute young mother was forced to take on illegal work as a cleaner just two weeks after having given birth in order to try and get together the funds to pay for legal advice and representation (Ibid. p.37).

There is some existing research that suggests the quality of legal advice for children and young people is highly varied and there is a shortage of legal representatives able to provide a good standard of advice and representation (Brownlees and Smith, 2011). There is evidence that unaccompanied migrant children have already experienced difficulties in accessing legal advice and representation prior to the introduction to the reforms, especially outside London (JCHR, 2013b:5). Some not-for-profit providers have established fee charging entities for the first time, particularly in the category of immigration, for example, services are available at Rochdale Law Centre, Islington Law Centre, and Community Advice Law Service in Leicester (Civil Justice Council, 2014). For those unable to pay, especially children and young people, these services cannot compensate for the loss of Legal Aid.

Islington Law Centre has several specialist units which service asylum needs including the Migrants Law Project and the Migrant and Refugee Children's Legal Unit (MiCLU). However, the MiCLU is unable to represent children and young people in immigration matters. A breakdown of weekly data from the reception services shows that 18% of enquiries relate to immigration and asylum. They also highlight the disproportionate impact of the reforms on clients in need of interpreters as where it may be possible to get pro bono advice there is no funding to cover the cost of interpreter services. Other funding gaps affect representation, as where there are services offering advice, there may be no onward service able to submit applications on behalf of individuals or represent them at appeals:

Our ability to assist our clients has been severely tested where they evidently need legal representation in their immigration cases but so few onward referral paths exist for them (Coram Children's Legal Centre, 2014:11).

The challenges posed by this failure to find representation are highlighted by Southwark Law Centre. While the Centre has continued to provide a casework service in immigration through alternative funding streams it reports a large unmet need for assistance with appeals. They note further that there has been a significant impact on individuals of the Home Office's decision to be represented at appeals stating:

That was not routinely the case prior to LASPO and the increase in Home Office representation (mainly through instructing counsel) has coincided with LASPO coming into force, thus increasing the inequality of litigants before the tribunal (Southwark Law Centre, 2014).

Alternative provision from the charitable sector

There are barriers to children and young people accessing immigration advice, assistance and representation because the provision of legal advice in immigration matters is subject to a regulatory framework which does not apply to other areas of civil law. Anyone providing legal advice is required under the Immigration and Asylum Act 1999 to be regulated by a designated professional body or by the Office of the Immigration Services Commissioner (OISC). The OISC scheme is structured into three levels – level 1 (basic),

level 2 (casework) and level 3 (tribunal advocacy). The level at which providers are registered limits the assistance they can provide. Level 1 permits only basic advice, while level 2 is required to do work on removals and deportations, claims outside the rules (such as Article 8 cases), and the cases of visa overstayers and illegal entrants. Level 3 is required to represent at a tribunal appeal hearing.

The regulations mean that only authorised advisors can lawfully provide legal advice on immigration matters. Consequently, the ability of other organisations in the voluntary and community sectors to fill the gap created by the loss of Legal Aid is severely curtailed. While Citizens Advice Bureau has a general exemption at level 1, there are relatively few level 2 providers.⁴⁶ Given the general reduction in discretionary funding to voluntary organisations, they are unlikely to be able to fund the costs of training and regulation required to provide immigration advice at higher levels. Therefore, the sector will not be able to mitigate the reduction in Legal Aid for immigration cases.

There is one source of advice that is not constrained by the regulation of immigration advice and services, and that is the constituency MP. A survey of MPs for the Low Commission showed a significant increase (86%) in demand for help with cases that reflects the scope cuts in Legal Aid (Young Legal Aid Lawyers, 2013). Approximately 28% of MPs reported an increase in requests for assistance with immigration matters. It is worth noting that this figure is likely to have increased more recently as the survey was carried out just four months after the introduction of the scope changes. Many MPs already have a substantial immigration caseload and it is likely that such caseloads will increase. Whilst MPs may be able to intervene in particular cases, they are unable to represent clients and therefore cannot compensate for the loss of help through Legal Aid.

Alternative funding

A concern has been raised that as local authorities support unaccompanied migrant children, separated children, care leavers and children in migrant families, they may find their duties to meet the needs of these children will extend to paying for legal services to enable the immigration status issues of these children to be resolved. This could potentially shift a significant financial burden from the Legal Aid fund to local authority budgets, especially as the purchase of these services is likely to be at private client rates. As noted by the Joint Committee on Human Rights:

Withdrawing legally-aided support may simply shift spending from the legal aid budget to already stretched local budgets; indeed, the LGA projected that it could cost local authorities as much as £10m annually (JCHR, 2013b).

⁴⁶ Data from the OISC show that in the financial year ending March 2014, there were 1330 level 1 registered organisations, but only 143 registered to level 2 – See Office of the Immigration Services Commissioner, Annual Report and Accounts 1 April 2013 to March 2014, HC 570.

This raises serious questions over the extent to which authorities are able or willing to subsidise the shortfall of funding for immigration advice.

Responses to private family law changes

As in other areas, there are various possible behavioural responses by potential parties to litigation that are no longer able to obtain Legal Aid. If they can, they may opt to fund legal advice and/or representation in another way and if they cannot, they may turn to sources of free advice. They may opt for an alternative dispute resolution process – in this area primarily mediation, for which Legal Aid is still potentially available. They may start (or respond to) court proceedings as litigants in person, using available self-help resources. Alternatively, they may attempt to resolve problems informally, perhaps with the use of self-help resources. Finally, they may allow problems to go unresolved.

The extent to which parties are able to pursue these options as a matter of choice is influenced by the responses of other actors in the system. A number of measures have been put in place – many pre-LASPO in anticipation of the changes, which are designed to mitigate the impacts.

From the Government, these include further publicity encouraging the use of mediation. Section 10(1) of the Children and Families Act 2014 has made it a statutory requirement to consider mediation in private family law cases prior to embarking on court proceedings, unless certain exceptions apply.

There have been a number of initiatives designed to improve the information resources available to litigants in person. These include guides produced by the judiciary and others, and MoJ and HM Courts and Tribunal Service have also been reviewing their information resources.⁴⁷ The Department for Work and Pensions (DWP) has also been involved in this area. It launched a sorting out separation web app in November 2012.⁴⁸ DWP funding has also been made available for a number of projects (some small scale) to help separating couples resolve differences over children and finances.⁴⁹ These include the Family Matters project, aimed at low-income clients. This involves resolution, supporting a pilot scheme in three areas under which lawyers and mediators work with both parties.⁵⁰

Family law has traditionally been an area in which, except for a small number of niche providers, the not-for-profit sector has not been able to provide specialist advice. These organisations include Rights of Women, Women's Aid, Gingerbread, and the Coram Children's Legal Centre. Written evidence to the Justice Select Committee from most of these organisations did not quantify impacts on demand for their services. However, the Coram Children's Legal Centre report that the number of calls to their Child Law Advice Line has increased from approximately 23,000 unique callers in 2012–13 to

⁴⁷ See details at: A Handbook for litigants in person www.judiciary.gov.uk/publications/handbook-litigants-person-civil-221013/ and A guide to representing yourself in court www.barcouncil.org.uk/media/203/09/sr1_guide_final_for_online_use.pdf

⁴⁸ Available at: <http://www.sortingoutseparation.org.uk>

⁴⁹ See <https://www.gov.uk/government/news/government-funds-new-innovative-support-for-separated-parents> and <https://www.gov.uk/government/news/ten-new-projects-help-thousands-of-separated-couples-co-operate-on-parenting>

⁵⁰ See <http://www.resolution.org.uk/familymatters/>

approximately 40,200 in 2013–14. A sample of callers in March 2014 indicated that two thirds of calls from people who appeared to be financially eligible for Legal Aid but who were calling in respect of a problem that is no longer in scope (Coram, 2014:2–4).

Response to prison law changes

Use of existing complaints procedures

As discussed in chapter 2, the Government proposes that there will be limited impact resulting from the changing scope of prison law and criminal Legal Aid. This is based on the belief that many of the issues raised by children and young people in prison can be resolved effectively through internal complaint procedures or through the PPO or IMB. However, the suitability of these systems to the range of issues raised by those in custody has been questioned (HM Inspectorate of Prisons, 2013). Staff delivering the internal prison complaints process are not legal experts and do not have the necessary experience and expertise to effectively address questions of law and legal standing:

...there is no evidence to support the use of the complaints system as a viable alternative to legal advice and representation and there is significant evidence to suggest that it is not (Association of Prison Lawyers, 2013).

Due to the vulnerability of children and young people in custody many find it difficult to understand and navigate the complaints processes (Kennedy, 2013). Likewise, the Prisoner Advice Service has also raised concerns for mother and baby cases and the inability of internal systems to deal effectively with such issues.⁵¹ The need to involve and get agreements from outside agencies, such as social services, hinders the power the prison complaints system has in being able to effectively resolve issues for such young women. Many such cases also require immediate or fast action that the complaint system is not set up to deliver.

The PPO has also raised concerns as to their capacity to respond to the potential increase in the number of complaints they will receive as a result of the changes.⁵² Whilst not specific to children and young people, they recorded a 2% increase in complaints and an 8% increase in eligible complaints in 2012–13. This has coincided with a 7% reduction in resources, an overall reduction of 14% over 2010–15. It is important to note that only 1.8% of cases in 2012–13 were from children and young people (under 21). Of the complaints received from children and young people, over a quarter were about adjudications (compared to 14% of all complaints) and a significant number related to use of force.

⁵¹ For further details, see: <http://prisonersadvice.org.uk/news> and <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/1006.htm>

⁵² See <http://www.ppo.gov.uk/docs/Response-of-the-PPO-to-the-MoJ-consultation-paper-CP14-2013-Transforming-Legal-Aid.pdf>
https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-next-steps/user_uploads/annex-b-response-to-consultation.pdf

With declining resources, the PPO has to target efforts and focus on responding to more serious complaints such as assaults by staff/prisoners, bullying or racism.⁵³ However this means there is less resource for other cases, with the PPO increasingly declining to investigate cases where it is seen there will be a limited chance of a successful outcome. The National Offender Management Service (NOMS) will ask HMIP to conduct a thematic inspection of the complaints process towards the end of 2014/early 2015 (allowing time for the changes to bed in and the impact on the complaints system to take effect).

The cost of the PPO being involved far outweighs that of the previous fixed fee amount for a solicitor doing the same work under Legal Aid arrangements (£830 vs £220).⁵⁴ The fact that many complaints are effectively and speedily resolved by a solicitor's letter has been overlooked and a more costly and cumbersome system has replaced these arrangements. Anecdotal feedback from Barnardo's also implies that children and young people will be less likely to progress a concern or issue when they realise the process and time involved in taking it through the complaints process, whether internally or externally. However this discontinuance does not mean that many of the issues faced by children and young people who would benefit from legal advice no longer exist. Ongoing accommodation problems or access to education, training or employment opportunities will remain and will inevitably influence the likelihood that the child or young person will offend again:

*...for those leaving custody, successful resettlement is key to achieving long term sustainable outcomes for young people.*⁵⁵

Alternative voluntary provision

There are a number of charities working with offenders who have set up dedicated legal support provision to assist those in custody. All were in existence before the Legal Aid changes came into effect, providing advice on the range of disputes being raised. Nacro provides a national helpline and online service offering advice on resettlement issues such as help finding suitable housing on release, getting back into education or employment.

The Howard League for Penal Reform provides support that focuses more on legal rights and entitlements of children and young people through a national legal team (established in 2002). The legal team can advise or refer children and young people to other support or legal services, such as NACRO and Barnardo's do. They can also represent children and young people and provide legal advice to professionals who work with them. For instance, they can represent children and young people at parole boards or in judicial review or criminal appeal cases and also make representations to organisations such as social services or the prison service. Alongside this service, the Howard League launched the U R Boss project (a free, confidential legal advice helpline for children and young people under 21 in custody and following release into the community) in 2009. Young people can ring the advice line to

⁵³ See: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10006.htm>

⁵⁴ According to the Prison Reform Trust's response to Transforming Legal Aid consultation, available on their website.

⁵⁵ Mentioned in House of Commons debate, 22 October 2013.

get help with treatment and conditions in custody, criminal appeals, and discrimination, resettlement, health and wellbeing and sentencing issues. They have also published a comprehensive guide on resettlement law for practitioners, providing legal reference material and practical advice.

The following case study from the Howard League's website illustrates the impact of alternative specialist provision.

L, 14 years old, contacted the Howard League for Penal Reform while on remand in an STC awaiting sentence for a serious sexual offence committed in a children's home. Although the judge has indicated that he would consider a community sentence provided the appropriate accommodation and support could be found and funded, the local authority refused to identify appropriate accommodation and support: social services considered they had assisted L enough. They were able to write to them, setting out the legal reasons why they needed to assess L, and identify and provide him with accommodation, threatening judicial review if necessary. The local authority conceded and provided L with a therapeutic placement where he remained for over a year with great success.

Advocacy services

To assist young people in custody in accessing the advice and legal representation they require, a number of voluntary agencies provide support through an advocacy service. Organisations such as Barnardo's, Howard League for Penal Reform and the Prisoners Advice Service offer those in custody legal advice and information on a range of issues, such as accessing services, parole, mother and baby units, sentence calculation and recall. Advice is offered face to face or through helplines, letters or emails:

...young people need effective advocacy in order to navigate through a range of legislation which affects the way they are dealt with. They can't challenge a LA on release as to whether they are entitled to support as care leavers or eligible for accommodation (Beyond Youth Custody, 2013).

Barnardo's has been awarded a three year contract (started in July 2013) by the Youth Justice Board to provide advocacy services for young people in YOIs and Secure Training Centres. The research team met with staff from Barnardo's delivering advocacy services who provided an overview of the support they provide. The advocacy service provided by Barnardo's across STCs and YOIs offers an independent voice to children and young people to assist them in resolving welfare, care and treatment issues whilst in custody. Many of the concerns raised by children and young people relate to immigration and housing issues, with resettlement and standard of care in custody also evident. They develop and maintain effective links between the prison and child or young person and community services, such as the local authority or healthcare sector.

Requests do not always come directly from the child or young person. Workers within resettlement teams, for instance, will ask advocates to help them when they are finding it difficult to get advice or support for young people. Advocates will also work closely with prison staff, such as social work safeguarding teams, in developing more proactive ways of helping to resolve problems children and young people face. Support is also provided to children and young people progressing their complaint through internal or external complaint processes. Links with local law firms have been developed, with relations in some areas being so strong that a lot of solicitors are willing to offer free advice over the phone, either to advocates or directly with the child or young person. This helps establish with children and young people what their rights are in seeking to resolve their concerns and provides further means of signposting to other relevant support services.

There was an assumption by the advocacy service that there would be a backlash to the changes enforced through LASPO and TLA. So far this has yet to materialise for a number of reasons:

- in the main children and young people tend not to legally challenge as much as adults do
- greater use being made of internal systems
- there is an apathy to progressing a complaint which will be time consuming
- establishments are taking on the role of resolving resettlement issues, benefiting from the support of services such as Howard League and specialist law firms
- there have been improved links and resolution of problems achieved with local authorities now that social workers are representing them in establishments
- children and young people are using alternative sources of support.

Whilst the significant role played by advocacy services is acknowledged, particularly in relation to resettlement issues, they cannot provide advice on the legality of Local Authority decisions nor provide representation or bring proceedings against such public authorities.⁵⁶

Mitigating impact through civil Legal Aid

The assistance of lawyers can greatly aid children and young people in custody in resolving problems with resettlement arrangements prior to being released. However the Government does not think that resettlement issues require legal input, with the responsibility sitting firmly with local authorities,

⁵⁶ Human Rights Joint Committee. *The implications for access to justice of the government's proposals to reform legal Aid*. Human Rights Joint Committee Seventh Report (11 Dec 2013) <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm>

YOTs and probation services to ensure effective resettlement packages are put in place. However, complex issues involving housing law and social care law, for instance, often require young people to seek legal advice and assistance. Despite such issues relating to children and young people in custody, many do not neatly fall under the remit of prison law, with complaints made by prisoners sitting in the realm of civil law (particularly for judicial review cases).

Anecdotally, from a number of charities supporting children and young people in custody, one of the possible explanations being given to why the impact of the changes is not as great as first assumed is that some firms are blurring the lines between prison law and civil cases. In order for legal advice and representation to be given, solicitors are taking on cases, such as housing and community care issues, under the remit of civil law.

Conclusions

This review has enabled a number of factors to be identified in exploring the impact of the Legal Aid reforms on children and young people, both at a general level and upon individual areas of law affected by the changes. Early indications show that the impact of some of the reforms is not as great as expected, whilst in other areas the level of demand has increased. The latter point relates specifically to the increase in the number of litigant in person cases (particularly in private family law) and individuals requiring advice for immigration issues.

The impact of the changes cuts across a range of legal categories which affect children and young people directly (such as immigration, welfare, benefits, prison law, education and private family law) and indirectly, through issues more likely to be experienced by parents/carers (housing, debt, welfare benefits, and deportation).

Children and young people may have the skills and ability to identify and access alternative means of support. Where there is minimal family support, the reliance is on children and young people themselves to seek out the advice they require. Greater efforts to assist children and young people in this process have been established, through the use of advocacy services and free helplines.

With the removal of Legal Aid funding, children and young people (and parents/carers in most education and private family law matters) are required to seek alternative routes of assistance. These are:

- Resolving the problem oneself – both in accessing advice and self-representation in court. For children and young people this requires skills to navigate very complex areas of law or complaints processes, which many do not have. The same is true for families seeking assistance, with children often indirectly affected as a result. Language and literacy issues will often hinder parents' and carers' ability to locate and approach the necessary services for advice.
- Alternative dispute resolution methods – the Government's justification for the reforms is based on the belief that many of the issues previously coming to the attention of the court could be resolved more efficiently (both in time and cost) through alternative means such as mediation and complaint processes. The concern raised by many is that such methods are not always an effective means of resolution and are difficult for children and young people to engage with.
- Privately funded legal support – for many of the children and young people requiring legal assistance, the ability to fund legal help themselves is not an achievable option. Assistance with funding may come through other means, such as local authorities, although this is again restricted due to the budget constraints evident at a local level.

- Alternative provision – children and young people are able to access the advice and assistance of a number of not for profit and pro bono services. Whilst there has been a clear increase in the use of these services since April 2013, many of these organisations are struggling to meet the demand in light of funding cuts more generally (local authority budgets). This is limiting the availability of specialist services which are often fundamental to working effectively with children and young people. There are also a number of barriers to young people accessing these services. In particular those in custody or asylum seekers will inevitably require assistance in being signposted to the most appropriate service. If this level of support does not exist then the likelihood of them accessing these services is limited based on the skills and knowledge they would have.

The use of alternative provision and evident willingness of many legal firms to offer free legal advice to ensure children and young people receive the support they need has ensured for some effective resolution of the issues they face. However the expected increases in demand being placed on these services may hinder the extent to which this level of service can be maintained. Longer-term understanding of the full impact of the reforms is required before conclusive claims on the effect of the reforms can be made.

Too early to know the true impact?

The limitations of the data available mean that it is not possible to establish a full picture of how many people are adopting these alternative pathways. The data does show increasing numbers of those previously eligible for Legal Aid are turning to not for profit and pro bono services for assistance, but it is currently unclear how many are using private fee services or using internal and external prison complaint services.

It is important to again reiterate that despite a full year passing since LASPO was implemented, many of the changes enforced have been staggered over 2013, with further amendments and consultation exercises reshaping some of the Government's initial proposals. This has enabled little time to pass on which an initial measurement of impact can be made. In the case of prison law, for instance, changes enforced only came into effect at the beginning of December 2013.

A further caveat to interpreting much of the statistics and literary evidence available is the lack of differentiation given to different age bands. This makes it difficult, for the purposes of this review, to identify children and young people clearly (those under 18), as well as young adults up to the age of 25; limiting some of the conclusions that can be drawn for these age groups. It therefore became apparent in searching for relevant data and research in responding to the aims of the review that in many respects it is still too early to fully understand the impact made on children and young people.

The review has acknowledged the number of research studies and statistical reviews that are to be published towards the end of 2014 and into 2015 which

will provide more conclusive evidence on the effect of the reforms. However initial indications of impact are evident from the data available, supported by anecdotal evidence from a number of legal and non-legal organisations. In the absence of any conclusive evidence, hypothetical assertions can be based on data and research that was conducted before the reforms came into effect, providing a useful understanding on the numbers and characteristics of children and young people who were previously supported by Legal Aid.

Whilst it is not possible to provide conclusive evidence on the impact made by the reforms, there is clear evidence prior to April 2013 that indicates that significant numbers of children and young people will still have problems that require resolution and which are no longer in scope for funding, and in respect of which alternative help is limited. Therefore the initial assumption must be that, although unclear as to what degree, there are considerable numbers who are failing to be supported in resolving legal issues and as a result this will have a negative impact on them and their families.

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Appendix A: Cases and Matters In and Out of Scope of the Legal Aid Scheme following LASPO

	In scope	Out of scope
Actions against the Police	Where the defendant is a public authority with the power to detain, imprison or prosecute: <ul style="list-style-type: none"> • abuse of a child or vulnerable adult • significant breach of human rights advice to victims of sexual offences 	
Clinical negligence	Neurological injury to infants causing severe disablement and which happened in the womb, during birth or up to eight weeks after birth	All other clinical negligence
Community care	The provision of community care services and of facilities for disabled persons or others due to age or illness	
Consumer and General Contract		All matters out of scope
Debt	<ul style="list-style-type: none"> • Mortgage arrears and possession • Orders for sale of the home • Involuntary bankruptcy where the home is included in the estate 	All other debt and money cases such as council tax, utilities, credit card debts, fines, unsecured personal loans, overdrafts, bankruptcy and IVAs
Discrimination	Contravention of the Equality Act 2010 or a previous discrimination statute (a prescribed list is	

	given at LASPO Act Schedule 1 para 43(3))	
Education	Special Educational Needs	All other education matters such as admissions, exclusions, negligence
Employment		All cases including redundancy, dismissal, terms and conditions etc
Family	<ul style="list-style-type: none"> • Public law children • Forced marriage protection • Domestic abuse and protection from harassment • Enforcement of international child maintenance • Private law children work and financial provision on relationship breakdown, but only where there is documentary evidence of domestic abuse 	All private law family where domestic violence is not present
Housing	<ul style="list-style-type: none"> • Possession of a rented home (including counterclaims in possession proceedings even if they would be out of scope as a stand-alone claim) • Unlawful eviction: both injunction and damages • Homelessness • Allocations where the client is homeless, or threatened with 	All other housing cases such as disrepair, enforcing a right to buy

	<ul style="list-style-type: none"> homelessness • Provision of accommodation by way of community care services (overlap with the community care category (see above)) • Disrepair, but only to require carrying out of repairs (solely damages claims are out of scope) and only where the disrepair causes a serious risk of harm • Where the repairs are carried out, any remaining damages claim drops out of scope and funding will end • Anti-social behaviour • Protection from harassment • Accommodation and support for asylum-seekers 	
Immigration and Asylum	<ul style="list-style-type: none"> • Asylum • Detention (but only advice on the detention and bail, not on the substantive issue unless independently in scope) and residence restrictions pending deportation • Applications for leave to remain under the domestic violence rule • Applications for leave by victims of trafficking • Terrorism prevention and investigation measures 	<p>All other immigrations cases such as:</p> <ul style="list-style-type: none"> • Grant/variation of leave to remain • Entry clearance applications; such as for 'family reunion' • European applications • Citizenship and travel documents • Applications under concessions or policy outside of the Immigration Rules

	<ul style="list-style-type: none"> • Proceedings before the Special Immigration Appeals Commission • Judicial review, but not: <ul style="list-style-type: none"> ○ where the same issue has been the subject of a previous judicial review or appeal within the last year ○ of removal directions where the substantive decision or appeal was made in the last year ○ of a negative decision on an asylum application where there is no right of appeal to the tribunal 	
Mental health	Services in relation to the Mental Health Act 1983, the <i>Mental Capacity Act 2005</i> and para 5(2) of the Schedule to the <i>Repatriation of Prisoners Act 1984</i>	
Public law	Human rights and public law challenges	
Welfare benefits	Upper Tribunal cases, cases in the Court of Appeal, Supreme Court and judicial review only	Legal advice on appeals to the First-tier (Social Security) Tribunal in relation to the award of: <ul style="list-style-type: none"> • Disability Living Allowance • Disability Attendance Allowance • Incapacity Benefit • Income Support

		<ul style="list-style-type: none"> • Housing Benefit • Social Fund payments • Jobseekers' Allowance • other benefits.
Miscellaneous	<ul style="list-style-type: none"> • Working with children and vulnerable adults • Protection from harassment where not arising from a family or housing relationship • Proceeds of crime • Environmental pollution • Advice to victims of sexual offences • Abuse of child or vulnerable adult except where in the actions against the police, etc category • Damages claims by victims of trafficking • Gang-related violence injunctions 	<ul style="list-style-type: none"> • Cash forfeiture • Criminal Injuries Compensation Authority cases • Probate • Wills • Name changes • Actions concerning personal data • Tort and other general claims

Appendix B: Methodology

This project applied the use of a Rapid Evidence Assessment approach to assess the available evidence on the Legal Aid changes since April 2013 and its impact on children and young people. This involved examining the review of relevant official statistics and academic and 'grey' literature. The Rapid Evidence Assessment acted as a very suitable strategy for this project due to the ability to efficiently and fully review a wide topic area with a large scope of sources. This approach was employed in the following steps:

- development of a threshold criteria for inclusion of data in the review
- evidence search and gathering: Use of search terms for general searches and a search of specific databases
- search of specific websites and/or organisations to be targeted with an email request for data
- compiled list organisations/individuals to be contacted for interview
- evidence assessment for relevance of each source documented on a bibliographic database followed by a full assessment. Including interrogation of statistics and survey data and a review of grey literature.

The criteria for inclusion of data in the review

Before conducting any searches it was necessary to clarify the parameters of the study in terms of the age group of interest, which included:⁵⁷

- Children in England under 18
- Children in the youth justice system in England and Wales
- Migrant children in the UK
- Young people in England aged 18–20 inclusive who:
 - are care leavers
 - have a learning disability

Nine specific research questions were developed that covered all the main parameters of the project and were adopted in order to gather and analyse sources:

⁵⁷ This reflects the remit of OCC up to 1 April 2014, when the Children and Families Act came into force.

- How many children have been/are likely to be affected (a) directly (b) indirectly by the changes to civil, family, public and prison law Legal Aid since 1 April 2013 and specific changes proposed in *Transforming Legal Aid*, on an annual basis? To include consideration of methods of delivery, e.g. the Telephone Gateway.
- What is the availability of other forms of legal advice and assistance to children and in the non-legal advice and assistance sector that might mitigate these changes? This may include alternative methods of funding, such as conditional fees, legal expenses insurance and trade union support.
- What have been/are likely to be the behavioural responses of (a) children and (b) other actors impacting children (e.g. adult parties to a case involving children) to the changes to Legal Aid?
- In circumstances where litigation is no longer/is likely no longer to be taking place as a result of the changes, what have been/are likely to be the impacts on children?
- Where alternatives to legal advice and litigation (e.g. non-legal advice services; mediation; informal resolution; complaints mechanisms; ombudsmen) are pursued, what have been/are likely to be the differential impacts on children?
- What are the characteristics of children particularly affected by these changes (e.g. socio-economic circumstances; protected characteristics under the Equality Act 2010; children in detention; looked after children; children living with domestic violence; children subject to immigration control; children in new section 8A Children Act 2004)
- Have litigants in person become more frequent in cases involving children? What is the impact of this on children?
- Have (a) the courts/tribunals (b) other agencies (e.g. Cafcass, local authority social services) (c) the charity sector/civil society organisations) made efforts to mitigate the impacts of the changes on children? How effective have these been?
- What is the attitudinal/behavioural response of those exercising public functions to the changes to Legal Aid, for example detaining authorities; local authorities; immigration authorities? What have been/are the likely impact on children?

Key priorities were set out for the review process. The aim was to highlight the impact on children and young people in respect of specific context and subject matter. There were some areas, which related exclusively to children such as education and private law children. However there are other areas that may impact children indirectly as dependents of parents/carers experiencing legal problems with issues such as debt and employment. These included:

- parties and potential parties to litigation
- dependent children of parties and potential parties to litigation
- victims and witnesses in relevant proceedings.

Evidence search and gathering

The following search strategies were employed to gather sources to be reviewed:

- statistics and survey data interrogated (see Figure 1)
- specific databases searched (see Figure 2)
- sample of organisations/individuals interviewed (see Figure 3)
 - A database of search terms was developed for general searches which was strategically employed (see Figure 4)
 - Grey literature reviewed (see Figure 5)
 - A database of specific websites searched/browsed strategically and/or specific organisations targeted with an email request for data (see Figure 6).

Figure 1: Statistics and Survey data interrogated

- ONS population data
- ONS divorce statistics
- Legal Services Commission statistical data (to 31 March 2013)
- Legal Aid Agency statistical data (from 1 April 2013)
- Court Statistics Quarterly (includes civil, family and criminal courts)
- Tribunal Statistics Quarterly
- Annual Tribunal Statistics (historical)
- Employment Tribunal and Employment Appeal Tribunal Statistics (historical)
- Social Security and Child Support Statistics (historical)
- English and Welsh Civil and Social Justice Panel Survey
- Legal Services Consumer Panel

Figure 2: Specific databases searched

- Applied Social Sciences Index and Abstracts (ASSIA)
- International Bibliography of the Social Sciences (IBSS)
- LexisNexis

Figure 3: Organisations interviewed

Interviews with seven organisations, which included a mix of those providing services to children, young people and their families, and organisations representing those which do so.

Figure 4: Search terms used for general searches

LASPO + children
LASPO + young people
LASPO + parents
Legal Aid + children
Legal Aid + young people
Legal Aid + parents
Solicitors + children
Solicitors + young people
Solicitors + parents
Lawyers + children
Lawyers + young people
Lawyers + parents
Courts + children
Courts + young people
Courts + parents
Tribunals + children
Tribunals + young people
Tribunals + parents
Legal problems + children
Legal problems + young people
Legal problems + parents
Legal advice + children
Legal advice + young people
Legal advice + parents
children+ legal aid
legal aid+ survey
legal aid changes+ data+ characteristics
legal aid+ children affected
2014 legal aid changes+ response
legal aid changes + consultation
legal aid + consultation
responses to legal aid changes
legal aid+ data

legal aid
responses to legal aid changes+ children
children + court data+ UK
children + legal+ data
youth + court + statistics
legal aid + statistics + children
youth + justice + statistics
youth + tribunal
'Problem type' + population group - to cover prison law, welfare etc. e.g.
Education problems + children
Education problems + young people
Education problems + parents
Impact of advice
Impact of advice + children
Impact of advice + young people
Impact of advice + parents
Impact of representation
Impact of representation + children
Impact of representation + young people
Impact of representation + parents
Litigants in person
McKenzie friend
Mediation + impact on children
Litigation friend
Homelessness + children
Special Educational needs + advice
Immigration advice + children
Deportation + children
Immigration removal + children
Prison treatment + children ***etc.***

Figure 5: Grey literature reviewed

<p>Responses to consultations:</p> <ul style="list-style-type: none">• Proposals for the reform of Legal Aid in England and Wales (pre-LASPO)• Transforming Legal Aid <p>Evidence and submissions to/reports of Parliamentary committees:</p> <ul style="list-style-type: none">• The Justice Committee (pre-LASPO and Transforming Legal Aid)• Joint Committee on Human Rights (LASPO, Transforming Legal Aid, Human rights of Unaccompanied Asylum Seeking Children) <p>Annual reports/reviews and research, policy papers, briefings, factsheets etc. produced by advice/legal services providers/their membership organisations/and statutory bodies.</p>

Figure 6: Examples of websites and organisations

Association of Lawyers for Children
Association of Personal Injury Lawyers
Association of Prison Lawyers
Bar Council
Bar Pro Bono Unit
Barnardo's
Children & Young People Now
Children's Rights Alliance for England
Children's Society
Citizens Advice
Civil Justice Council
communitycare.co.uk
Coram Children's Legal Centre
Department for Education
DWP
Education Law Association
Employment Lawyers Association
Equality & Human Rights Commission
Family Justice Board
Family Justice Council
Family Law
Family Law Bar Association
Family Mediation Council (and member organisations)
Family Rights Group
Gingerbread
HM Courts & Tribunals Service
HM Inspectorate of Prisons
Home Office
Housing Law Practitioners' Association
Howard League for Penal Reform
Immigration Law Practitioners' Association

Joint Committee on Human Rights
Joint Council for the Welfare of Immigrants
Journal of Social Welfare and Family Law
Judiciary.gov.uk
Justice
Justice Alliance
Justice Committee
JustRights
Law SociLawWorks
legalaidthandbook.com
Legal Action Group
Legal Aid Agency
Legal Aid Practitioners Group
Legal Services Board
Legal Services Commission (legacy site)
Legal Services Research Centre (legacy site)
Local Government Association
Low Commission
Mencap
Migrants' Rights Network
Ministry of Justice
MIND
Money Advice Service
Money Advice Trust/Information Hub
Ministry of Justice
NAGALRO (professional association for Family Court Advisers, Children's Guardians and Independent Social Workers)
NACRO
NSPCC
National Association for Youth Justice
National Family Mediation
National Children's Bureau
Refugee Action
Refugee Children's Consortium
Refugee Council
Resolution
Rightsnet
Shelter
Women's Aid
Young Legal Aid Lawyers
Youth Access
Youth Justice Board

Evidence assessment for relevance and final analysis of sources

A threshold for the inclusion of sources was applied to research reports and data other than official statistics. Relevant sources were selected and added to a bibliographic database for full review in the report.

The Maryland Scientific Methods Scale was observed to assess quality of

quantitative research data. It is often advised that quantitative studies scoring less than three on the Maryland Scale (see Figure 7 below) should be excluded – on the basis of poor quality and reliability, but in the main such studies are likely to be included in the review (with caveats stated) due to the lack of level 4 and 5 studies.

The emphasis will be to include data, which focus on the period post reform and the years immediately preceding reform, although general population surveys from 2000-2010 are also likely to be informative. The scope of the studies included in the review will concentrate on the England and Wales jurisdiction. However, where research conducted in related (e.g. Scotland) or similar (e.g. Australia) jurisdictions is informative, such studies will be included.

Figure 7: The Maryland Scientific Methods Scale

Level 1	A relationship between intervention and outcome measure at 1 point in time
Level 2	Includes pre and post intervention measures (i.e. measures at 2 points in time) but with no control group
Level 3	Pre and post intervention measures (i.e. measures at 2 points in time) and also treatment and control group
Level 4	Pre and post intervention measures (i.e. measures at 2 points in time) and treatment and control group and also control for other factors that influence outcome
Level 5	RCT i.e. pre and post intervention measures (i.e. measures at 2 points in time) and treatment and control.

Office of the Children's Commissioner
Sanctuary Buildings
20 Great Smith Street
London
SW1P 3BT
E info.request@childrenscommissioner.gsi.gov.uk

