



Justice Committee

Oral evidence: [Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offences Act 2012](#), HC 311

Tuesday 2 September 2014

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Written evidence from witnesses:

Panel One

- **Dave Emmerson**, Co-Chair, Legal Aid Committee, Resolution([LAS0037](#))
- **Jane Robey**, Director, National Family Mediation([LAS0016](#))
- **Susan Jacklin QC**, Chair, Family Law Bar Association([LAS0069](#))
- **Nicola Jones-King**, Co-Chair, Association of Lawyers for Children ([LAS0062](#))

Panel Two

- **Clare Laxton**, Public Policy Officer, Women's Aid ([LAS0031](#))
- **Emma Scott**, Director, Rights of Women([LAS0081](#))
- **Philippa Newis**, Policy Officer, Gingerbread([LAS0022](#))

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Members present: Sir Alan Beith (Chair); Jeremy Corbyn; Nick de Bois; Andy McDonald; and John McDonnell

Questions 62–118

Witnesses: **Jane Robey**, Director, National Family Mediation, **Susan Jacklin QC**, Chair, Family Law Bar Association, **Nicola Jones-King**, Co-Chair, Association of Lawyers for Children, and **Dave Emmerson**, Co-Chair, Legal Aid Committee, Resolution, gave evidence.

Chair: Good morning and welcome. I will introduce you all in a moment but, first, I must ask if any members have any interests to declare.

Andy McDonald: Sir Alan, I should declare that in the last century I was a legal aid practitioner and I have had the benefit of one case of exceptional funding in the last 15 years, but none for a long, long time.

Chair: Thank you for that. There are no others. In this part of the session we are very glad to have Dave Emmerson, Co-Chair of the Legal Aid Committee of Resolution; Jane Robey, Director of National Family Mediation; Susan Jacklin QC, Chair of the Family Law Bar Association; and Nicola Jones-King, Co-Chair of the Association of Lawyers for Children. As I say, I welcome you all. I am going to invite Nick de Bois to start the questioning.

Q62 Nick de Bois: Thank you, Chair. Good morning, everyone. Aside from the obvious economic considerations, the Government's objectives for LASPO were clearly to focus on the most serious cases and the most vulnerable. That was their aim. It is quite clear, from evidence, that you clearly do not agree they have achieved that. Can each of you briefly tell us why you think that?

Dave Emmerson: In relation to family law, the biggest problem is in the area of private family law because people are just not having their disputes relating to children and finances resolved. The hope that mediation would be the panacea just has not happened because we have seen a very dramatic drop in the number of referrals to mediation. The courts are being clogged up with litigants in person. There has been a 19,000 increase in litigants in person in just the last year.

Q63 Nick de Bois: Are you putting that in the context of the most serious and the most vulnerable then, because that was the argument?

Dave Emmerson: Families in crisis, where fathers cannot see children, are the types of cases that are serious as far as family justice is concerned.

Q64 Nick de Bois: Shall we work our way down the table, if you wish to contribute?

Nicola Jones-King: If you put it in the context of the vulnerable and the needy, the gateway approach was supposed to address that. But for many who still have complicated cases who are victims of violence—whether that is physical violence, emotional violence or they are children—it is still a huge challenge to get through that gateway. Obtaining the evidence, satisfying the Legal Aid Agency—

Q65 Nick de Bois: You are talking about the financial gateway.

Nicola Jones-King: No, it is not. The financial part is something that all legal aid lawyers have been used to for many years. It is more obtaining the evidence to satisfy the domestic violence requirement or the significant harm requirement.

Q66 Nick de Bois: Which we will come on to later, I believe.

Nicola Jones-King: Even if you say that that was supposed to protect the vulnerable and the most needy, it is not doing it, and people are still not getting the funding that they need.

Susan Jacklin: I agree with everything that David said about the major focus of problems being private law applications. The difficulty is that litigants go to court

without the benefit of having had any advice whatsoever and so they don't understand what the effective issues are, they don't understand what the necessary evidence is, and so judges have to spend far too long trying to understand what the case is about. Orders are then made after hearings that take at least twice as long as they should do, and, sadly, many litigants in person—I am not talking necessarily about vulnerable people in the extreme sense, but people who are stressed by the whole process—simply don't register what they have been required to do. I have had my own personal experience of this when I have done pro bono cases. They come to court on the next occasion and they still have not provided the evidence that is needed by the court in order to properly appraise what their case is about, and so it goes off to another hearing; and so it goes on.

Q67 Nick de Bois: This is a slight aside, but you are basically saying it is a false economy.

Susan Jacklin: Quite.

Q68 Nick de Bois: Has any actual statistical work been done to quantify that false economy?

Susan Jacklin: I am not aware that HMCTS is monitoring these cases in any way in order to achieve that sort of assessment. I think they ought to be doing it.

Q69 Nick de Bois: Should it be them or should it be a body like yourself perhaps?

Susan Jacklin: We do not have the resources to be doing that. It is HMCTS which receives all of the applications.

Q70 Nick de Bois: Okay. I simply asked the question because, if you are making a case, it might be something to help support a case. That is why I am asking if the work has been done.

Jane Robey: I would just like to say that it is a complete lack of the availability of early information and early services that is causing the problems later down the line in the court. What starts out initially as a fairly straightforward private law application, because of the lack of information it escalates into becoming a vulnerable and complicated case as people's expectations are not managed through the court process because they don't know what they are supposed to be doing.

Q71 Nick de Bois: You have all quite clearly identified, effectively, that there is a decrease in access to justice, with the corresponding possible extra costs further down the line. So I suppose it would be logical to ask, aside from a return to, if you like, the pre-LASPO levels of legal aid funding, if there is a single thing any of you would like to see the Government do to ensure that vulnerable people particularly can access legal advice. It might be, for example, relaxing the financial eligibility criteria or dealing with the early part—the problems that arise early. Can you think of a single thing that you would like the Government to do, if you had a wish list and I was able to grant your wish?

Dave Emmerson: I am going to cheat and say two things. The first is the payment for initial legal advice, where an analysis of the problem can be given, detailed advice given on how the law particularly applies to that person's case, information about how

they could take litigation themselves, but, more importantly, out-of-court solutions such as mediation or collaborative law can be explained. One of the difficulties that mediation has suffered from is that there is no one able to spend the time to explain to somebody what is quite a difficult concept—mediation—to explain how it works and how it can enable them to resolve their problems. The other one is to relax the domestic abuse gateway requirements so that there is a catch-all clause, where representations can be made where it is evident that someone is suffering from domestic abuse but it is not evidenced in the existing gateway requirements.

Q72 Nick de Bois: We will touch on that in more detail later, as I said.

Nicola Jones-King: I completely agree with that. Those are the same two comments that we would make as the Association.

Q73 Nick de Bois: He has used your one comment, really.

Nicola Jones-King: If you want to put it that way, yes.

Susan Jacklin: I agree as well. In your question, though, you did say particularly the vulnerable. I think we have a definition problem about “vulnerable” because, in one sense, everybody who embarks on a dispute in a family context is vulnerable because of the emotional overload, and they simply do not function as well as they might do, for example, in their job. They do need extra assistance, albeit ordinarily they are perfectly well balanced, well-rounded, intelligent people. In regard to the extremely vulnerable—the more obviously vulnerable—those cases should be dealt with under section 10. We are going to come to that, aren’t we?

Q74 Nick de Bois: Okay. Ms Robey?

Jane Robey: I agree with what Susan has said about what happens to people when they separate, but if there was some comprehensive information that was available about what to do when you separate that is practical, helps people to move on and progress their case, a lot of people could manage. I don’t think it has to be couched in exclusively legal terms.

Q75 Nick de Bois: You would ask for a simplification—that it passes the English test, if you like, that you all understand.

Jane Robey: Definitely that; most definitely. When people separate, their first priorities are, “Where am I going to live and how am I going to pay the bills?”, because you still have your existing life and you are trying to separate that out. Those are not necessarily legal questions; they are just part of the problem.

Q76 Nick de Bois: A more holistic approach.

Jane Robey: Yes.

Q77 Nick de Bois: I will just move on a bit, if I may, Chair. I hope I am right in suggesting that, Ms Nicola Jones-King, this might be better directed to you, but correct me if I am

wrong. My understanding is that grandparents seeking to care for grandchildren, whose parents are basically struggling to cope, cannot obtain legal aid in private law proceedings. What was the situation pre-LASPO and what recommendations would you have for solving that issue now? Presumably, exceptional funding may spring to mind on that. Obviously, if anyone else wants to comment, please do.

Nicola Jones-King: Certainly, pre-LASPO, that was a means and merits tested legal aid application, so if they were financially on a low income and there was a legal merits test to meet that the proceedings were justified, then they would have been granted a funding certificate. Of course, the key is that they would also have been able to access that initial legal advice that we were just talking about, to point them in the right direction.

Post-LASPO, that is more difficult, because, even if they are on a low income, you need to satisfy effectively that the child is at significant harm—at risk in some way. In some cases you can do that, if social services have been actively involved and you can produce some evidence of that; in other cases you can't. It is also quite significant in that many local authorities, quite rightly, will explore whether a child can be placed with a family member rather than starting formal public law care proceedings, but very often that can happen without the family member having legal advice around the financial implications and their entitlements to financial support, which can be quite key to whether they can manage the care of that child and, also, what legal steps they then need to take to regularise that—what type of order is the right order for that particular family.

Q78 Nick de Bois: Have the numbers of cases like this dropped significantly or is it too early to tell?

Nicola Jones-King: I do not think it is easy to quantify that—

Nick de Bois: No, I wouldn't have thought so.

Nicola Jones-King: —because the statistics do not really separate out who is the applicant—just how many applications there are for a private law order. It is quite difficult to quantify the number of cases where they were effectively embryo care proceedings, which then became diverted into a private law route, so it is quite difficult to see what the numbers would be.

Q79 Nick de Bois: Did you want to come in, Mr Emmerson?

Dave Emmerson: No; I completely agree.

Q80 Nick de Bois: Finally, we were told by the MOJ, when they came before this Committee, that “Access to justice should not simply be equated to access to Government funded legal advice.” This is just a summary question for you all, really. Is there a danger that access to justice is being defined in this way in criticism of the impact of LASPO? Is there merit to that argument?

Dave Emmerson: No, I don't think there is. The fact is that people are not having their family problems resolved.

Q81 Chair: By the courts.

Dave Emmerson: By the courts and resolutions in organisations which promote out-of-court settlement of disputes. We have over 1,000 collaborative lawyers and we have almost 1,000 mediators, so we are very keen on out-of-court dispute resolution, but the difficulty is promoting it. Resources need to be put into promoting out-of-court settlements. You would find the legal profession very keen. Both the Bar and solicitors are very keen on out-of-court settlements.

Nick de Bois: I suppose I should add, Chair, a declaration that I have been through this process and have views on mediation. I did not mention that at the beginning, but thank you very much.

Q82 Andy McDonald: Similarly, Chair, I have personal knowledge of some of these elements.

I want to return to this issue of funding of grandparents and members of the extended family. We talked about the pre-LASPO position, where that was means tested—and quite modestly. There will be an awful lot of grandparents and other extended members of the families who will not be eligible even under the pre-LASPO considerations. Can it ever be right that members of the extended family who come to the rescue in lots of situations have to be out of pocket and pay for their own legal representation? I do not know if you have a view on that, but it seems to me that the state is getting off the hook somewhat in turning to grandparents and others to help out in these situations. Should they be paying for their significant legal costs?

Dave Emmerson: When social services are involved, yes, they should pay. They should.

Q83 Andy McDonald: Grandparents should pay.

Dave Emmerson: No; the local authority should support them.

Nicola Jones-King: Some local authorities do pay for that, but, of course, as a family member you only know that if you have access to advice from a lawyer to say to you, “Hang on a minute, you are not being offered here what you should be offered.” That is the whole point about access to justice. It is not simply access to court process—it is access to understanding the rights you have and how to apply them.

Dave Emmerson: It is a false economy, because supporting a grandparent in looking after a child can save a local authority huge sums of money, not just in legal fees.

Susan Jacklin: Can I just mention a spin-off problem though, in so far as some local authorities do provide the funding for grandparents? Because it is in the context of a private law dispute—say, for example, they are applying for a special guardianship order—then the parents will not be eligible for public funding, and so their views, in

so far as they have objections and concerns about this plan to place in the wider family, are not put before the court in any effective way, and so we do rather go round in circles because of the lack of funding.

Q84 Andy McDonald: Can I turn your attention to the issue of litigants in person? I would ask for your experience as to whether the outcomes for litigants in person are in any way different from those litigants who are represented. Could you perhaps give us some information and detail of your experience of the outcomes in those respective cases?

Dave Emmerson: The key point is that there has been no research at all done in relation to this and there certainly should be. It is very difficult to quantify what the result of a case would be if there had been representation as opposed to one where there is not representation, but we do know that the number of litigants in person is increasing dramatically in the courts and it is putting a great strain on the courts. As Susan alluded to earlier, litigants in person do not know how to present their case. Sometimes they over-prepare and put in too much information, and sometimes they simply do not marshal the information, the facts and the points that they want to make. Though judges are trained to deal with litigants in person, it is still unbelievably difficult to extract the relevant information and points from litigants in person when time is of the essence in a court case.

Susan Jacklin: This is a core issue that many non-lawyers do not understand. Representing clients is not simply about going into court and putting forward their case. It is about talking to them and establishing what the real issues are and what the evidence is that is required to put forward those issues to the court. There is a great deal of work that has to go in beforehand in order to reduce it down to a manageable parcel for the court.

The other thing, picking up on the question about the difference that representation makes as against litigants in person, is that many of the young barristers to whom I have spoken—indeed, some of them submitted evidence which is attached to our response—have said how, representing somebody in court, they have really felt that the outcome was not fair for the non-represented parent. They were very conscious of the fact that they were able to put forward their own client's case in a very focused and effective way. No matter how good the judge is, sometimes, especially with a long list, you will be beguiled by the best argument and the most focused case.

Q85 Andy McDonald: How does facing a litigant in person impact upon the lawyer for the represented party in particular, but also the judge, because it is a whole different skill set now, whereas previously one assumes you had representatives who could put salient points in a concise way? How has that impacted upon the role of the judge and the lawyer representing the represented party?

Nicola Jones-King: It is a huge challenge for both judge and lawyer. When you are there for the person who is instructing you to be there, obviously you need to explain to them that the other party is a litigant in person and you are there to be fair and to

support them, which can of course cause the client you are there to represent some frustration. But for the judge, who has to do justice and be seen to be fair, accessing the information that is necessary to make a decision with two people who can feel, understandably, very emotional and distressed is a real challenge. It takes time, and this is why we are seeing court lists getting further and further behind and cases taking much longer than they used to.

Jane Robey: Can I just say something? In a former life I was a Cafcass officer. One of the impacts of having litigants in person in court today, whereas previously people were represented, was that in private law applications there was an awful lot of work that went on outside of court, just outside the court doors, between the lawyers, the barristers and the clients and the negotiations that went on before they were waiting to see the judge. Of course, that can't happen now when you have two litigants in person who can't talk to each other, who are only going to go and talk to the judge. Teasing out the issues, teasing out the problems, getting to a place where you can probably agree something, cannot happen if you have two litigants in person and no lawyers or barristers present.

Susan Jacklin: Even if there is one represented party, it is just as difficult because of the mistrust.

Jane Robey: Yes.

Susan Jacklin: The unrepresented party generally finds it very difficult to engage with the representative of the other side, and I can totally sympathise with that.

Q86 Chair: I am bound to say that some of the things you have described, though, are things that were often brought to our notice prior to LASPO under the old system, because we are dealing with people who have been unable to reach agreement and have been prepared to get as far as the courts of the land in their determination that a particular solution is not the right one. This sense of frustration and extra vulnerability did not start with the changes in legal aid, did it?

Susan Jacklin: No, it did not, but I think it has been very much exaggerated because the people who were still eligible for legal aid before LASPO were the people who did not have jobs or very low paid jobs and are the least articulate people. They are the ones who are the most vulnerable because of this.

Q87 Andy McDonald: There will be situations with litigants in person where they are cross-examining somebody who is alleging that they have abused them. It could be a child or an adult. That is a terrible experience for somebody who is being asked those questions. How can that experience be mitigated in any way? What are your observations?

Susan Jacklin: You can't.

Q88 Andy McDonald: You just simply can't do it.

Susan Jacklin: You can't. It should not happen. It is a disgrace, really.

Q89 Andy McDonald: Leading on from that, do you think litigants in person could be supported better by the courts, and, if so, have you any thoughts as to how that might happen, given the very things that we have discussed about a failure to marshal their thoughts and their approach to a case? Could they be supported in a better way?

Nicola Jones-King: It is sticking plasters, isn't it? Lots of courts offer pro bono schemes. There are certainly schemes in London where lawyers are involved in providing advice at court simply for that purpose, to try and assist a person to get their case in order before they see the judge, but that is very limited and it can only be a short period of time. The burden then falls on other free sources of advice, such as law centres and citizens advice bureaux and other areas where people go when they need that support, but it cannot support them through a case in the sort of strategic way that it would if they were being fully advised.

Jane Robey: You could also increase the role of Cafcass, but I do not think they would be very grateful for that thought, to be more present in court to support people in the way that Victim Support do in crime.

Susan Jacklin: Judges are receiving more and more training in how to deal with litigants in person and I am sure there is more training in the pipeline. The trouble is that the judge is then put in the position of being adviser to both and crossing over the line. That really does dilute the whole justice process. Also, of course, it adds to the time involved in court. This is what we come back to all the time. We are simply shifting costs to other areas. What is really needed is advice in order to focus the case at an early stage, as David described earlier.

Q90 Andy McDonald: Could I finally turn your attention to the issue of McKenzie friends? I do not know what your experience of McKenzie friends is in the family courts and whether you are aware of their numbers increasing or staying the same. What is your view?

Dave Emmerson: They are certainly increasing, and in the vast majority of cases judges welcome them. In family cases, it is very good to have a friend or a family member who is supportive because they can often be a calming influence, but, also, they can be the opposite of that as well in certain circumstances. There is a worrying trend of commercial McKenzie friends. Sometimes they have agendas of their own. There is no professional responsibility on them in the way that barristers and solicitors have towards the courts and the other side in the case. We see that as a bit of a worrying development.

Q91 Andy McDonald: Have you any particular body in mind? I am aware that Fathers4Justice are getting involved in these sorts of cases.

Dave Emmerson: That was not the organisation I was particularly thinking of at all.

Andy McDonald: Okay.

Q92 John McDonnell: Can we move on to exceptional cases funding? Let me just give you the figures that we had previously in our briefing. The Legal Aid Agency figures showed that

57 of the 1,468 applications for exceptional funding made between April 2013 and March 2014 were granted, but 42 of those 57 applications were family representation at an inquest—so extremely low level.

In the latest figures we have been given today, 270 ECF applications were received by the Legal Aid Agency between 1 April 2014 and 30 June; 211 ECF applications were determined, with a further 59 waiting to be assessed as at 30 June. There were only 21 of those ECF applications granted. It is an extremely low level and extremely low in comparison with what was told to us generally in advance of the legislation itself.

I would like to run these three questions together, if that is okay, because it might help you to give a more rounded response. In your view, does the Lord Chancellor's guidance on the granting of exceptional funding meet the test laid down by Parliament in section 10 of LASPO? If yes, why? If not, why not? Could you give us examples of litigants who, in your view, should be eligible for exceptional cases funding and explain what rights you think could be breached if it is not granted? We have already had the example of grandparents raised. Also, have you undertaken any applications for exceptional funding or assisted clients to apply, because we have been told how tortuous that could be? If yes, what was your experience, and, if no, why not?

Dave Emmerson: The exceptional funding provision was used as a means of ensuring that lots of amendments to the Bill as it was going through, particularly in the Lords, were bought off. The Legal Aid Agency itself had a team in excess of 20 people who were ready to deal with the expected tens of thousands of applications that were going to come in and the thousands of grants of certificates. It just has not happened. Ten family grants in 15 months is ridiculous.

I was sitting as a judge yesterday in a family case, in a London family court, where a young woman came before me. She was physically disabled. She had to come into court with crutches so it was not easy for her to carry her papers. Attached to her application was her refusal of exceptional funding from the Legal Aid Agency. She had modest learning difficulties and her father with her. She was making an application to see her child who was in care. There was an order that she sees her child three times a year and she was looking to increase that. The special guardian who was in court, who was ironically funded by the local authority, was there with a social worker, and they were seeking to decrease the amount of contact she had. She started by making representations that she had written down, so she was able to explain what her case was. But it was abundantly clear, once the lawyer from the other side had started making representations, that she could not deal with them at all. She did not understand the nuances of the case against her and could not adjust to deal with it. It is absolutely appalling that this woman, who now faces possibly not seeing her child again, should not get representation.

The form itself is almost 30 pages long and you need a doctorate in law to complete it. In informal discussions—Resolution and the Legal Aid Agency—they have almost agreed that, if a litigant in person is able to complete that form, they are almost able to show that they are able to represent themselves, so it is self-defeating. In the statistics,

you will see that there is only a handful of applications from people themselves rather than through lawyers. There is no funding to make the application.

Does it meet the test? No, it clearly does not. They have set the bar too high. It is a simple question: can this person reasonably represent themselves and deal with the other side's case? If not, then they should receive funding. As I said earlier, in domestic abuse, they need to have better understanding of the effects of non-violent domestic abuse—coercive behaviour—in understanding how difficult it is for litigants in person.

Q93 Chair: We are going to turn to that issue in the subsequent session with other witnesses.

Nicola Jones-King: I would wholeheartedly agree with that. In my limited experience of even attempting to make exceptional funding applications, which is fairly equal to most of our members—and many of the members of Resolution have said the same thing—it is a very cumbersome form; to get the information you need from someone who is vulnerable and troubled is difficult. On one occasion I got part-way through it; there was no way I could get the information together for this very vulnerable young man, who could not manage his own affairs. His finances and things were dealt with by the local authority. To defend an application for a non-molestation order was what he was facing in court. He could not articulate what he needed to articulate to deal with that. He was a very vulnerable individual, and, in the end, the process was just too slow for the time frame that the court had imposed to deal with an application for a non-molestation order. In the end, I just went to court and dealt with it, which is not really an ideal solution but it was what he needed at that time. The form process is offputting and impossible. Many solicitors have just said that it is not a process to which they can devote that amount of time when it is so uncertain that the application will be granted.

Susan Jacklin: I totally agree with everything that David and Nicola have said. It fits with all of my experience from people I have spoken with. You are obviously aware of the decision of Mr Justice Collins in the Gudaviciene case. Paragraphs 44 and 50 really encapsulate it. It comes down to this. The test is wrong, because the real test should be, “Can there be a fair and effective process?” All the examples we think of come down to that. Can this person really put their case? Is the process fair? It simply cannot be for the most vulnerable.

Q94 Chair: Just to be clear, you are not arguing, I take it, that there are no cases in which it could be reasonable to refuse, but there are a large number of cases in which the conclusion should be reached that it would not be fair to deny this person representation.

Susan Jacklin: Yes, and the Government's own projections were in the thousands.

Q95 John McDonnell: We have had from Lord Faulks a statement that section 10 of LASPO is working as intended.

Susan Jacklin: It is not; we simply cannot avoid that.

Nicola Jones-King: And it is not consistent with the discussions we had prior to the Act being passed, so I am not sure how you can make that statement.

Jane Robey: This area does not really affect me, but, clearly, accessing any kind of support seems to be out of reach for most people.

Q96 Chair: I am going to turn to another area. We have two areas here where the Government's mitigation measures do not seem to be operating in the way they intended and the money that has been allocated is not being spent at all. The other, of course, is mediation. We have had some indication earlier of some of the reasons why mediation has fallen so short of what was anticipated and desired by Ministers. Can you tell us a little more about that?

Dave Emmerson: The Ministers met with a number of professional groups. One of the key areas is that, before, there was funding for legal advice on relationship breakdown. Although lawyers are often blamed too much in relation to relationship breakdown, in actual fact they did an awful lot of selling of out-of-court solutions and were better able to explain how mediation works, which is a very difficult concept. With that funding not available, then the publicity around mediation just isn't there.

Q97 Chair: What does the experience of the requirement of a meeting about mediation, which was introduced as a passport to court proceedings without which you could not proceed to court with public funding, tell us about mediation?

Dave Emmerson: That you are catching those people sometimes too late, because if they have already gone to the court to want to issue the proceedings then that can be viewed as too late. With the strengthening of the MIAMs, making it a statutory requirement, we have seen an increase in the number of referrals to mediation. That is what our mediators are reporting, but there is still more that judges can do as the cases go through the court process. You don't just look at referring to mediation at the start of a case. As a case develops, mediation can be sold to the parties as a possible solution.

Susan Jacklin: But particularly after there has been a hearing about disputed facts. Once the judge has decided, "I accept these facts and not those," you can go off and mediate on that basis. That is very constructive.

Jane Robey: Can I just say that pre-LASPO, coming to see a mediator, having a Mediation Information and Assessment Meeting, was the gateway to getting your legal advice. Post-LASPO, there was a vacuum of a year. There was the pre-application protocol, which said that people should come or that judges should advise people to come to a MIAM, but it was a protocol. There was a gap of a year between the implementation of LASPO and the implementation of the Children and Families Act where legal aid had been withdrawn, judges and courts were not under any obligation to make any kind of referral, and that is one of the fundamental reasons that the collapse in mediation numbers has taken place.

Q98 Chair: What about the recommendations of the Family Mediation Task Force under Sir David Norgrove? Did they address this problem sufficiently?

Jane Robey: We welcome the thought that legally aided people can have one free mediation session, but better than that would be to provide a free Mediation Information and Assessment Meeting to all.

If you think that the eligibility rates have been cut and so fewer people are eligible for legal aid anyway, you are trying to divert people from the court process to resolve their own disputes. If you were to provide for a limited period, to anybody applying to court, a Mediation Information and Assessment Meeting for free, we, the mediation providers, would be able to convert people or tell people what mediation is and start to drive the culture change that makes people think about resolving their disputes without going to litigation.

Q99 Chair: You think it would be cost-effective expenditure.

Jane Robey: And very short term. My concern about the task force recommendations is that the success of it will be reviewed at six-monthly intervals. Of course, in six months you are not going to be able to tell anything very much. Since LASPO, we have been absolutely swamped with calls from people not knowing where to go or what to do about their separation. We take about 1,400 calls a month from people, which is a huge increase. We had half a million hits on the website in just the first six months.

Q100 Chair: Can I go back for a moment to the Government's general objectives when they introduced this change because, as Mr de Bois explained, it was not simply about the cost saving, although that was very significant? There was clearly a view, in relation to family law, that more cases were going in front of the courts than was in the general public interest; that the courts were being asked to do a job which was in some respects almost impossible to do—to reconcile the irreconcilable; and that, to the extent that people insisted on going to court with family disputes, there should be some limit on the extent to which they were subsidised by the taxpayer in general to do so. It almost provided an incentive to go to the courts. Do you believe that the problems you have described can be mitigated while still recognising that there is maybe merit in those arguments?

Jane Robey: It comes back to what I said right at the beginning. There is an overemphasis on couching separation and divorce in legal terms. It is so much more than that. It is an emotional, practical, financial and legal conundrum that takes place for a family. Legally is just one part of it. Combined with this is also the work of the DWP, who have spent, so far, something like £420,000 on their Sorting out Separation app, which was supposed to help with all of this, whereas family justice, family law, the Family Justice Review was a really minor part when they considered setting up the Sorting out Separation app and it could have been centre stage in that. It could provide so much more reasonable, accessible information to the average person.

Dave Emmerson: It is very difficult to disagree with what you are saying. All of our organisations would welcome family disputes being resolved out of court. I am both a mediator and a collaborative lawyer, and it is very exciting watching the dynamics of those processes, where you have people who are opposite in their beliefs slowly coming together and working out arrangements for their children or their finances. It is far better that they do it themselves rather than a judge, who does not know them, imposing it upon them. In a sense it is a no brainer, but it is a very difficult solution to sell. That is what the Government have found difficult and that is what a lot of our organisations have found difficult.

Jane Robey: I do think that the Government have some responsibility. They knew that they were going to cut legal aid. The information that is out there currently is really poor to help people sort out their own separations. If you look at the MOJ website, immediately after LASPO it said there is no legal aid available. That was what it said. Legal aid was available for mediation, so it wasn't even promoting its own policy. Now it has a basic calculator. Basically, you are eligible for legal aid if you are on some passportable benefits, but it is more complicated than that. You could be eligible for legal aid if you take into account all sorts of other factors. So they need to provide much better information rather than this bald, "You're either in or you're out."

Q101 Chair: Am I right in thinking that the process of change and the public and political arguments which take place tend to leave people with the impression that something has been abolished completely when it has not?

Jane Robey: Yes.

Q102 Chair: The Government therefore have a responsibility to get the right information to the people who need it.

Jane Robey: Yes. Given the amount of money that the DWP has spent on that website, which is supposed to be about sorting out separation, you would have thought that the MOJ could have accessed some of that support to drive forward its own policy agenda.

Q103 Chair: You have all had examples of on-costs which can arise from the way the system is currently working—additional costs elsewhere in the public sector—and Ms Jacklin gave an example of one. There are others, such as cases moving from the private law to the public law route.

Jane Robey: Yes, escalation.

Q104 Chair: Are there any more you want to add?

Dave Emmerson: Didn't the Prime Minister say that in relation to family breakdown it was costing something like £50 billion a year across all Government Departments? So better family solutions will save money all round.

Jane Robey: Even in that discussion the Government find it difficult to consider working on the problems of relationship breakdown. They then convert that discussion into, “How are we going to make people stay together?” The reality is that relationships break down and they need to be managed effectively so that people can move on.

Chair: Thank you very much indeed. We are very grateful to all of you for the evidence you have given this morning. Thank you very much.

Witnesses: **Clare Laxton**, Public Policy Officer, Women’s Aid, **Emma Scott**, Director, Rights of Women, and **Philippa Newis**, Policy Officer, Gingerbread, gave evidence.

Chair: Good morning and welcome. We are very grateful to have you with us this morning Clare Laxton, Public Policy Officer for Women’s Aid, Emma Scott, Director of Rights of Women, and Philippa Newis, Policy Officer for Gingerbread. As you know, we are looking at the LASPO changes and, in this case, their impact on women. I am going to ask Andy McDonald to begin.

Q105 Andy McDonald: Thank you, Sir Alan. Good morning. Could I ask you some questions about legal advice in cases of domestic violence? What has been the impact of the April 2014 expansion of the types of evidence which can now be submitted to qualify for legal aid, and, with a thought on the UN committee’s report on the elimination of discrimination against women and the comments made therein, are we discharging our international obligations in this area? Can I ask you to comment—anybody who would like to start?

Emma Scott: Shall I start with that because, as you may be aware from our evidence, Rights of Women has been monitoring the impact of the domestic violence gateways for family law and legal aid since they were implemented in April 2013? Since 1 April 2014 we have been running an amended survey to monitor those changes to the domestic violence gateways and we have found that there has been a slight increase in the number of women who have been able to successfully apply for family law legal aid using those new forms of evidence. The survey, as of yesterday, showed that 39% of women still had none of the forms of evidence, which is a slight reduction from the 43% in our previous research, which looked at the year from April 2013. So there is still a very significant proportion of women who are unable to provide the required evidence to apply for family law legal aid.

The new forms of evidence that were included in April are proving to be useful. Particularly, our survey is showing that evidence of referral to a domestic violence support service by health professionals is now one of the most popular forms of evidence—the most frequently used form of evidence—by the women who responded to the survey, at 16%. Evidence that their abuser is on police bail and refusal of admission to a women’s refuge are also there now as important forms of evidence. It

is fair to say that we have welcomed those additions to the forms of evidence in the regulations, but we are still incredibly concerned that there are still about 40% of women who simply do not have any of the forms of evidence and that the evidence criteria is still very restrictive. Particularly, our concerns are around the two-year time limit on the forms of evidence, which excludes women who may have had those forms of evidence but some time ago.

Q106 Chair: Excludes women who may?

Emma Scott: If the form of evidence is from two years ago or more, then she can't use that as a form of evidence. We know from our experience, our telephone advice lines and also from the experience of our volunteer solicitors with whom we work, that, very often, family proceedings come at some time; they may take place immediately after a relationship breakdown, but then there are proceedings later on many years later and the evidence will be out of date by the time those proceedings come back. Also, we are concerned about the non-physical forms of evidence. Women are telling us that it is incredibly difficult for them to evidence the kinds of abuse that do not result necessarily in police action, criminal prosecution and then getting a non-molestation order, and those kinds of forms of abuse. We are still incredibly concerned that the list is really restrictive.

Clare Laxton: Following on from that, in a survey that we did last year of over 1,000 survivors of domestic violence, 80% of them experienced emotional and psychological abuse and over 50% experienced financial abuse. It is those sorts of abuses that Emma was talking about that are very difficult to evidence but represent the majority of experiences for survivors of domestic violence. We really welcome the expansion of the evidence criteria in 2014, and we are really pleased to work with the Ministry of Justice to make sure that they are including things such as being refused access to a refuge that do reflect women's experiences. In one day in 2013, 155 women were refused access to the first refuge that they approached because they were unable to accommodate them, so it is a huge problem for women. We would still argue that some of our obligations under CEDAW particularly are not being met because some of the concluding observations of the Committee were around the conditions on proof, and those conditions still exist. As Emma was saying, 40% of survivors who are trying to access legal aid still are not able to.

I just wanted to talk about Rashida Manjoo, who is the UN special rapporteur on violence against women and girls. She did a state visit to the UK in April 2014. In her concluding remarks, she specifically talked about legal aid and said: "While legal aid is technically still available to women survivors of violence, these changes following the adoption of LASPO have in practice led to a higher threshold of evidence that needs to be presented to be able to access legal aid. I have received information indicating that women who have experienced or are experiencing domestic violence often do not have the necessary forms of evidence to qualify for legal aid, thus they

take no action in relation to their family law problems.” So I think there still is an issue around our obligations internationally.

Philippa Newis: I would totally concur with my colleagues on the panel on all of the things that they have said. Just to raise another couple of points, a point that came out of the Rights of Women survey regarding a minority of women was that they have to pay to get letters from their doctor or other professional in order to access the gateway, sometimes paying over £50 to receive a letter. If you are a single parent receiving income support and your income support is about £71 per week, forking out £50 for a letter is near impossible when you have a very small amount of money to live on in that week. So there is an issue around unnecessary hurdles to access the evidence that they need to pass through the gateway. Also, to make a very brief comparison with the new Child Maintenance Service, if a single parent is approaching the service and she has experienced domestic violence, she just has to say that she has experienced domestic violence and she does not have to pay the upfront fee to access the service. So there are very different standards and rules going on across the statutory provision for support.

Q107 Andy McDonald: Could I just move you on? Your report Evidencing Domestic Violence: A Year On concluded that knowledge among professionals in their role in evidencing domestic violence is poor. Why is that and how can that be effectively tackled?

Emma Scott: As you say, our research found that health and social care professionals are key as the gatekeepers of the legal aid scheme. I am not sure what the answer is in terms of why that is. The Ministry of Justice has some very useful guidance on its website and some very useful precedent letters that can be used. Certainly, women who have responded to our surveys over the last year have frequently reported problems with health professionals simply saying, “I am not doing it,” or doing a letter but not quite getting the wording right, or, as Philippa says, there is a real issue around charging. The guidance is there on the Ministry of Justice website. It is perhaps not as accessible as it could be and there is perhaps an issue around making sure that it is disseminated effectively among the kind of professionals that are going to be asked for this evidence, so the front-line health professionals and social care professionals.

Clare Laxton: With the new forms of evidence that came in in 2014, a lot of them were talking about health professionals, and, as Emma said, they represent quite a big gateway to justice for women survivors of domestic violence; 80% of survivors will visit a health professional at one point in their time when they are experiencing domestic violence. It is therefore so important that they are able not only to recognise violence but also to understand how to best support women and what their roles are in terms of supporting them access legal aid. There was some NICE guidance released earlier on this year around domestic violence and health professionals, which did recommend that there needed to be improvements in their training, knowledge and experience. Now we see that they are representing such a gateway for women into

justice, and that needs to be looked at and how that is going to be implemented as well.

Q108 Andy McDonald: Could I just move you on to the issue of false claims? I was a practitioner in the 1980s and I cannot remember being inundated with thousands of false claims, but do you think the forms of evidence now required from litigants are effective at screening out false claims?

Clare Laxton: We should remember that domestic violence is an under-reported crime anyway. I am not aware of evidence of false allegations or if there have been false claims and where that evidence is. What is important is that survivors of domestic violence are being able to access justice, and if there is evidence of false claims and how they are being done or how they are being evidenced then we can look at that, but I am not aware of any at the moment.

Emma Scott: I would be very concerned as well about the message that is being sent to women by continued talk about this assumption that women are going to make false allegations of domestic violence. It sends out a message and compounds the message that women are not believed when they report domestic violence, and discourages them from coming forward and getting the support that they need. There is also a contradiction in terms of both law and Government policy around evidencing domestic violence that I would perhaps like to point out here. For the Department for Work and Pensions Child Maintenance Scheme, if you are a victim of domestic violence, you saying so is sufficient for you to waive the fee for child maintenance.

In immigration law, in the immigration rules where women apply for indefinite leave to remain under the domestic violence rule, there is an extensive list of evidence criteria which is inclusive, we say, of potentially all the routes that women take to safety, which is not as restrictive as the legal aid regulations and which would allow women to evidence the violence they have experienced and the routes they have taken to address it.

Q109 Andy McDonald: I don't know if anybody else wants to comment on that. Do you have any examples from your own knowledge and experience of people who have suffered domestic violence but have been unable to access legal aid because of these evidential requirements? Are you able to say anything about that?

Philippa Newis: Gingerbread runs a national telephone helpline and we have certainly had calls from single parents who are struggling to meet the criteria. We have certainly had a call from a single parent whose ex-partner had been arrested for domestic violence but had not been charged or cautioned on that; therefore, she was unable to access the gateway even though there had been an arrest. Then there are issues around the two-year time limit. In an example where a single parent had experienced domestic violence in the past, her partner had not been on the scene for a number of years and then came back and wanted to go to court around a contact order,

but she could not access legal aid through the domestic violence gateway because her domestic violence experience had been over two years.

Emma Scott: If I may, I have perhaps three examples, two that relate to family law and one that relates to immigration law, which is another area of concern that we have at Rights of Women in terms of the changes to legal aid restricting the ability to get legal advice and representation on immigration law cases. The first two are family law cases, one of a very young teenage mum whose baby was taken without her permission by its father. The police took no action because he had parental responsibility. She very urgently needed a residence order and a prohibited steps order to ensure the child was returned to her. There had been a history of domestic violence but she had not made any formal reports, so she had none of the forms of evidence that she needed to apply for legal aid. She was incredibly vulnerable and incredibly distressed when she presented to the solicitor, but the solicitor was simply unable to provide her with the advice and support that she needed to take those proceedings. She was left, effectively, with a very stark choice either to do nothing or to represent herself in those proceedings.

The second—I have mentioned this earlier—is a case where there have been previous court proceedings. A court order had been made previously, but several years later problems arose, the father becomes abusive and evidence of domestic violence from the time is now out of date. This particular woman had English as a second language, so she was at a significant disadvantage in terms of representing herself, again unable to be eligible for family law legal aid.

Finally, there is an example of an immigration law case that came up on our telephone advice line. A caller had been in the UK; she had been brought here as a child at the age of 10 and was now 22 years old. She was living with her father and her brother, who were being abusive towards her. She had significant health problems. She had epilepsy and a learning disability. Her family had told her that her immigration status had been sorted out. It hadn't. She was arrested at a stop and search at a tube station. Immigration law legal aid is not available for those kinds of cases that she would be bringing; it is not available outside the domestic violence rule and European equivalents. So she is not eligible for immigration law advice and representation to resolve her case.

Chair: Thank you for those examples.

Q110 John McDonnell: Can I just turn to exceptional cases funding? We have been surprised at the disparity between the predicted numbers by the Government when the legislation was coming through of applications and approvals, and what has actually happened. It is quite staggering the low number of applications and the low number of approvals overall. Could I ask you a couple of questions on that? Why do you think there are so few exceptional funding applications that are granted? Is the fault with the Legal Aid Agency, is it with the individuals who fill in the form or is it the process itself? Could you say

how the exceptional funding scheme could be amended to fulfil the role that it was originally intended to?

Emma Scott: I am at a slight disadvantage in that at Rights of Women we do not undertake case work, so we are not directly involved in making applications under the exceptional cases funding scheme. Anecdotally, we hear from solicitors that we work with that it is not necessarily a problem at their end. There is a real lack of clarity about what the criteria is that their applications are being judged against. A particular concern that we have, perhaps highlighted by the cases that I have just run through, is where applicants have a particular vulnerability. It is not only the facts of the case and the complexities of cases but, also, there seems to be a lack of clarity around how cases are dealt with where applicants have particular vulnerabilities, such as mental health issues or English as a second language; perhaps they are very young or very old. We would like to see a much greater level of clarity for those making the applications, to ensure that—

Q111 Chair: Do you mean clarity in the sense of the process being intelligible to people, because, clearly, the vulnerable applicant is not going to know the history of low take-up and all that sort of thing? They are not going to be influenced by factors that the professional might be influenced by, but if they cannot understand the form or do not even know that there is a possibility, then that lack of clarity—

Emma Scott: Yes. One would hope that the solicitor who is supporting them would be supporting them with the application itself, but there is a lack of clarity among those professionals who are completing the applications, as to how those applications are being judged and processed. I don't know whether the Public Law Project has submitted evidence to you, but they are currently operating an exceptional case funding project and, I understand, have current judicial review proceedings against the scheme. It may therefore be that they would have some useful evidence and more detail about the scheme.

Q112 Chair: Does anybody else want to say anything on this?

Clare Laxton: No. Like Emma, we do not have the experience with the ECF, but it is probably something that the Committee could raise with the Minister or the Ministry of Justice.

Q113 Nick de Bois: This is a question for Gingerbread and Philippa Newis, if I may, specifically. You have expressed concern that the standard model of mediation was not necessarily suitable for some cases. I am interested in what other forms of alternative dispute resolution could be, in your opinion, available for couples when there is no domestic violence—so take that out—but mediation has clearly not resolved the dispute. Could you expand on that?

Philippa Newis: Yes, I can. For Gingerbread, we have consistently argued that, where mediation is not suitable at the point of assessment or where mediation has failed, legal aid should be made ideally for representation. We also see that there is a

spectrum of interventions that could happen alongside mediation or prior to a court application. We look to things like the initiative by Resolution around collaborative law, where the mediation takes place between two lawyers and it is a bit more legally and technically robust perhaps, but then also looking toward things like therapeutic interventions, so the sort of things that Liz Trinder from Exeter university has explored as well.

Q114 Nick de Bois: Can you expand on a little, for my benefit, on the sorts of things that they have in mind?

Philippa Newis: I can come back to you with more information about that, but I probably cannot expand on it now at the moment.

Q115 Nick de Bois: I am in the dark on that. Perhaps I should not be, but it would be helpful.

Philippa Newis: Ultimately, our broader point is that these are families and separating parents, often in very complicated circumstances. Rather than simply providing one alternative with legal aid that is traditional mediation, inasmuch as it works very well and very successfully for some parents who are able to co-operate within that intervention, we need a spectrum of interventions that are potentially funded by legal aid that can support separated parents under different sorts of circumstances. Mediation will not work where there is a power imbalance, where perhaps there is a learning difficulty or issues around mental health. There could be other things that perhaps the Ministry of Justice could work on piloting that also might make suitable interventions but would still avoid court. Ultimately, there will be some families, whether they have domestic violence or not, that do need to go to court to help resolve their difficulties.

Q116 Nick de Bois: I note that last point. Just going back, your general premise is quite sound and I see where you are coming from, but somewhere in a process—it sounds like it is going to be a Government process—someone has to make the decision as to when therapeutic or alternative would be done. Have you given any thought or modelled how that may be done, because we have been taking evidence today of how complex forms are and how complex our system is. It does not strike me that Government processes would cope with that very well. Have you modelled how it might work, how you may identify these issues and then allow them to proceed to getting assistance other than the formal mediation?

Philippa Newis: No, we have not done any modelling on that. As I say, our concern is that we just feel there are a proportion of separated parents who, having gone through the Government process, know that mediation is not suitable for them for various reasons, but then they are between a rock and a hard place because they have a certificate that says that mediation is not suitable for them but, also, they have no recourse to legal aid either. In those sorts of situations the alternatives are pretty unpalatable.

Nick de Bois: I identify the gap and I see the gap, and I see what you are trying to do. I just say it might be worth giving some thought as to how that is actually dealt with because I wouldn't necessarily trust the Government to be able to come up with a workable scheme—any Government I hasten to add.

Q117 Jeremy Corbyn: Just very briefly, following the last question, what would you see as the next process after unsuccessful inappropriate mediation but before you go to court? Would this be a compulsory intervention by a state authority or what?

Philippa Newis: I do not feel able to comment on that kind of level of detail, but, as I say, in our previous submissions to this Committee and also to the Ministry of Justice we have consistently argued that, where mediation has failed or is unsuitable, then those parents, if they meet the financial and merits criteria, should be able to have access to legal aid to be able to go to court to try and resolve those disputes. Ultimately, if there is a protracted dispute or a dispute where perhaps then parents have to go to court as litigants in person, you have to think about it in the round, in the context of whether we are getting the result that is in the best interests of the children.

Q118 Jeremy Corbyn: I agree with you on the legal aid point, but once the separating parents get into court things can get very heated and very nasty, and both sides have lawyers that are pushing their clients' cause. That is what they are there for. You seem to be envisaging something in between, which would be less than the legal process but would be slightly more robust than a consensual coming together earlier on for mediation.

Philippa Newis: Yes; I am suggesting something in between, but I don't feel comfortable about commenting about whether that should be mandatory or not.

Jeremy Corbyn: Okay, fine; thank you. That is helpful.

Chair: Thank you very much indeed. We are very grateful to the three of you for the help you have given us this morning. Thank you.