



Justice Committee

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

Tuesday 21 October 2014

Ordered by the House of Commons to be published on 21 October 2014.

Written evidence from witnesses:

Panel one

- John Gallagher, Shelter [LAS0066](#)
- Connor Johnston, Garden Court Housing Chambers Team [LAS0049](#)
- Sara Stephens, Housing Law Practitioners Association [LAS0052](#)

Panel two

- Carita Thomas, Immigration Law Practitioners Association [LAS0045](#)
- Denise McDowell, Greater Manchester Immigration Aid Unit [LAS0017](#)
- Sarah Campbell, Bail for Immigration Detainees [LAS0056](#)

Panel three

- Ruth Hayes, Islington Law Centre [LAS0071](#)
- Catherine Evans, Southwark Law Centre [LAS0061](#)
- Anita Hurrell, Coram Children's Legal Centre [LAS0034](#)
- Paula Twigg, Mary Ward Legal Centre [LAS0028](#)

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Members present: Sir Alan Beith (Chair); Rehman Chishti; Jeremy Corbyn; Christopher Chope; Nick de Bois; and Andy McDonald

Questions 119-202

Witnesses: **John Gallagher**, Shelter, **Sara Stephens**, Housing Law Practitioners Association, and **Connor Johnston**, Garden Court Chambers Housing Team, gave evidence.

Q119 Chair: Good morning and welcome, Mr Gallagher from Shelter, Ms Stephens from the Housing Law Practitioners Association, and Mr Johnston from Garden Court Chambers housing team. We are very glad to have your help in our inquiry into the working of LASPO.

I have, first, to ask if anyone has any interests to declare around the table. There are none. In that case I turn to the questioning. In this first group, all of you have particular experience in the housing area. How is matter start allocation affecting providers and access to justice? Do you have any initial solution to the problems you have identified in the written evidence we have had?

Sara Stephens: Matter start allocation has been a problem for many years. The idea that a finite amount of people can get assistance is a problem and does go against the supposed aims of LASPO, which is to help the most serious and vulnerable clients—the most serious cases—because it effectively means that the first, say, 100 people through the door get the help and anyone who arrives after that does not. There has been a bigger problem since LASPO because there has been a serious reduction in the amount of matter starts that are allocated, and I know John has some examples of how that has affected the not-for-profit sector in particular.

John Gallagher: Yes. It has affected our advice centres particularly because we have had to close 10 Shelter advice centres with the advent of LASPO, simply because at the level of payment of £157 per legal help form, subject to what is called an escape fee if you do a certain amount of additional work, it simply isn't viable. That has led to the loss of a great deal of local advice in certain communities. It also means that other providers who are anxious to do preventative work to prevent cases becoming litigated cases in the first place are not able to do that work if they do not have the matter starts.

Q120 Chair: Short of going back to pre-LASPO levels of legal aid funding, what would be your highest priority for something that would improve the situation?

Sara Stephens: For me, reinstating housing benefit or being able to deal with housing benefit issues within possession proceedings. That makes a big difference because you can deal with things much more effectively, quickly and cheaply if you can deal with the cause of the rent arrears rather than just waiting for things to get to court and having to deal with them at that point.

Q121 Chair: Are you simply talking about somebody who, if they had had housing benefit advice, would not be facing possession proceedings?

Sara Stephens: Yes, which would save landlords money, court time and be a lot less stressful for the clients.

Q122 Nick de Bois: Do you mean legal advice on housing benefit?

Sara Stephens: Yes.

Connor Johnston: If I can speak to that same point from a barrister's perspective, I deal with a lot of possession cases in the county court—people are being evicted for rent arrears. In the vast majority of those, there will be some kind of housing benefit issue underlying it. The position when we get to court is that I will ask the judge if we can have an adjournment. Judges understand the situation and they are generally amenable to adjourning at least once. The client then goes off for several weeks and they try and sort out this problem. They can't get an appointment at their local citizens advice bureau because of capacity; they can't get help from their solicitor because legal aid is no longer available.

So we come back to court and I am in the unpalatable situation of having to explain to the judge that we are no further on. In that situation, particularly in view of the Jackson reforms with an increased eye from the courts on proportionality of court costs, judges may well take the view, "No. Enough is enough. I am going to make a decision today," and that decision will often be a possession order. We have had wasted legal aid because I have not achieved anything and wasted court time because we have had more court hearings than were necessary or they were unproductive, and at that point my advice to the client is to apply as homeless, which is putting the burden on the local authority. If they have been evicted for rent arrears, there is a very good chance they will be found to be intentionally homeless and so they will only be owed a limited duty.

At that point, if the client has children, my advice is, "Go to your local social services department and they will have to assist you under section 17 or, at the very least, assist your child under section 20." So there are escalating costs all the way along but for some fairly early intervention.

Q123 Chair: Should the intervention really be from distinguished chambers like yours—whose advice, I imagine, can't be cheap, although I am sure of very good quality—if you are to deal with quite large numbers of cases which are arising because people do not have information and advice of a fairly basic kind, not particularly legal?

Connor Johnston: The advice is not going to be from me. I should say, if I am doing legal aid work, I do them on the same legal aid rates as everybody else; there is no increased premium for that. The advice would not be from me anyway; it would be help from a solicitor. I have to say it would not really bother me if that advice comes from my solicitor or if they have ready access to that advice from a local advice centre, but it needs to be from somewhere, and whoever is doing that needs to have some funding to pay for it. Having said that, it is easier if you have one person who is able to deal with all of these issues at once, and that person would be a solicitor.

Q124 Chair: An issue that has been raised is claims for damages not being available in a disrepair claim. If your objective is to get the repair fixed, why is damages an issue?

Sara Stephens: Your objective, of course, is to get the repairs carried out, but, also, the tenant has been paying rent to live in substandard accommodation to a landlord who has

not carried out repairs. Why should that landlord not be made to compensate that tenant for the inconvenience caused? In addition, the tenant may well have belongings that have been damaged. If there are leaks to a roof on to a bed and their bed has been damaged, they need to replace the bed. If these are tenants who are on low income, which if they qualify for legal aid they obviously are, they cannot afford to replace those belongings and, therefore, they need a damages claim to be able to get the money to buy those belongings back.

Q125 Chair: Is that something that they could have dealt with through the small claims court?

Sara Stephens: These cases are incredibly complicated. I would be surprised if many tenants could navigate the small claims court on their own. We are talking about cases with expert evidence required for the most part, detailed disclosure, and evidence being submitted by both sides. The landlord is likely to be represented, which means there will be a great inequality of arms, so I do not think that that is a solution unfortunately.

Q126 Chair: But equality of arms in the small claims court is not something that is always achieved anyway, and judges in the small claims court are used to dealing with it in a way that is not disadvantageous to the claimant.

Sara Stephens: I appreciate what you are saying. Most of these cases won't be in the small claims court because if there is a damages claim and a disrepair claim then it will automatically be a fast-track case. It would only be a small claim if all the works were carried out and it became a damages claim only, and the damages were worth less than £10,000. Most of these cases would be fast-track. The other side would be legally represented and that tenant needs expert assistance.

Q127 Nick de Bois: We touched on an area I was going to go on to that is implicit about costs-shifting, and you, Mr Johnston particularly, were talking about this. Have you thought about what the impact would be of extending legal aid cover to cover housing benefit issues in possession cases? Would you not agree that this is simply extending legal aid, effectively, to cover housing benefit cases by the back door, which it is probably fairly obvious would be the case? I would also like to throw in another dimension on that. Are all housing benefit case arrears, which is generally what you are seeing in these circumstances, as a result of an inadequacy, error or failure to deliver what a person is entitled to, or is it because they have got into housing arrears because they have spent their money, obviously, on other things—I am not suggesting it is feckless or anything; I am just saying that is where it has come from—because I am not sure legal advice would apply in those latter cases? That is a question to Mr Johnston or Ms Stephens, whichever you wish.

Connor Johnston: In answer to the first question, “Is it legal aid for housing benefit by the back door?”, possibly. It would depend how you framed it in the legislation. If you were to amend paragraph 33 of part 1, schedule 1 to LASPO and just preserved housing benefit where the home is at risk, then, no, it would not be legal aid housing benefit by the back door because there are many housing benefit problems that individuals suffer where they are not at risk of losing their home. We see very many bedroom tax—as it is called—

appeals going through the first-tier tribunal at the moment. In not all of those cases, fortunately, is the individual at risk of losing their home—so not necessarily. Even if it is, I do not think that is important if it is costing more in the long run by removing the funding. If it is shifting costs elsewhere, and my anecdotal experience is that it is, then it is worth bringing that back into scope.

Q128 Nick de Bois: Your argument is that, because the court will often adjourn a case and so on and so on, time is wasted in these cases.

Connor Johnston: Yes, that is an element of the argument, but it is rather more than that. The court time that is wasted is considerable, but there is a burden on a local authority as a family is evicted and has to be accommodated by social services, who have no housing stock of their own and who will have to put a family in bed and breakfast. Not only is there an obvious human cost, but that economic cost will be unbearable for local authorities. They are overstretched as it is.

Q129 Nick de Bois: But what you are saying is that that is a case for not evicting someone, is it not?

Connor Johnston: It is a case for providing early assistance.

Q130 Nick de Bois: Where, for example, does the local council come in, the environmental agencies, when people's houses are unfit for purpose? Are they doing a good job?

Connor Johnston: That is a separate issue. I can answer that now if you want but, coming back to the other point you asked, you asked about the factors behind housing benefit problems and rent arrears. Is it people spending their money wrongly or is it an official error? You are not going to know until you look into it. It will be a little of column A, and a little of column B, but very frequently there will be a problem with benefits, which is the result of an official error.

John Gallagher: The assumption behind LASPO is that benefits problems are just an administrative thing which people can sort out themselves on a visit to the council office, if they are fortunate enough to see someone at the council office. The fact is you only have to look at a compendium of benefits legislation to see how complex the legislation is. But, of course, it is more than that. In many cases people need the assistance in what is needed to enable the authority to assess their benefits entitlement in the first place. Some people just do need the advice in order to present their financial circumstances in such a way that they get a correct decision. The cases that Connor and Sarah were speaking about are cases that have actually come to court and it turns out that there is probably an underlying, backdated entitlement to housing benefit that nobody has discovered because the information has not been presented. One may say, is that a legal issue or is it not? It is true maybe that it is not entirely a legal issue in so many cases, but the legal issue is that it cannot be reasonable to make a possession order in those cases and the purpose of defending a possession case is to preserve the home.

Q131 Nick de Bois: We see an awful lot of those cases in constituency offices. I have never once had to resort to, or advise someone to resort to, the law on that. I accept that people do clearly need advice. Are they not the alternatives we should be looking at? Were not the aims of the LASPO reforms to focus on the most challenging and the most difficult cases, and should we not be exploring more advice centres and more advice that does not involve expensive legal costs and ultimately litigation, if it can be avoided?

Sara Stephens: We are not talking about expensive legal costs; we are talking about fixed fee legal advice. It is about £150 a case to deal with these issues. You have that £150 initial advice to be able to resolve a welfare benefit issue, which prevents thousands of pounds and time being spent by the landlord, the court and legal aid defending possession proceedings. It is shifting costs unnecessarily.

Q132 Nick de Bois: If we started to cover the housing benefit claims that you want—if it was extended to do that—how much extra would it cost the state?

Sara Stephens: I do not have figures on that.

Q133 Nick de Bois: Doesn't this work need to be done?

Sara Stephens: Yes.

Connor Johnston: The impact assessments that preceded LASPO estimated that the cost of removal of welfare benefits in its entirety from scope was between £22 million and £25 million a year. Housing benefit problems will be a proportion of that; housing benefit problems where the home is at risk will be a smaller proportion of that. I cannot be more precise than that. Yes, the work does need to be done, but it is something that I would think needs to be investigated by the Government. I do not see that any other body is in a position to collate that information.

Q134 Nick de Bois: But the Government do not necessarily agree with your premise, so I am suggesting it might help your case if someone else did the work.

Connor Johnston: Undoubtedly. You have referred to the aim of LASPO in that context, which is to preserve legal aid for the most important cases. There was a primary aim; there was an aim that preceded that, which was to save money. It was only necessary to refocus legal aid in order to save £358 million from the budget. If that aim is not being achieved, then I do think a responsible Government should reconsider.

Q135 Rehman Chishti: Coming back on that very point, having been counsel, not in this area of law, the advantage you are saying by having solicitors give that advice is that, if you have solicitors who are expert in an area, who know that area, they can identify the issue at the very early onset and can deal with it swiftly, which otherwise may take a lengthy period of time and be a cost burden to all concerned. Is that right?

Sara Stephens: Yes.

John Gallagher: Exactly. It is the emphasis on preventative work, which I want to make, which unfortunately has been taken away by LASPO. If I may interject at that point, the restriction on scope with LASPO means that people now cannot get legal advice on a range of landlord and tenant and housing issues, such as tenancy deposit schemes, rent increases, joint tenancies, relationship breakdown. All that area of advice is now missing, which was there before. It is that preventative element that has now gone.

Q136 Rehman Chishti: On that very point, do you have figures on this? Do you have a rough estimate of how many of those cases that end up in the system now—if we had this system where there was early intervention legal advice—may not have ended up in the courts at a later stage? Do you see where I am going with that? Do you have an estimate of how many cases there are that could have been avoided going into court at an earlier stage—so how many you have altogether? A large number have ended up in the courts and, therefore, your issue about cost and burden is in the long term. How many of those could have been avoided if there was specific advice given at the early outset? Is there any research on that or not?

Sara Stephens: There has been very little research post-LASPO and there certainly, as Connor says, needs to be—

Chair: Could you just speak up a little? The acoustics are not very good in here.

Sara Stephens: I am sorry. There does need to be some further research—quite a bit of further research—into the impact of LASPO, the financial figures and the costs-shifting, and whether money is being saved or whether more money is being spent.

Q137 Rehman Chishti: But how many people are you getting now? The point you made earlier was in relation to the onset, the courts, the costs, the delay and everything else, but if there was that early specific intervention—I know you cannot always do it because every case is different, but you have an idea—that level of research would be very helpful.

John Gallagher: Our experience in Shelter of our helpline is that we have many inquiries which we have to try and deal with on the phone which really need face-to-face advice, because not all inquiries can be resolved with a phone call. There is also our experience on duty possession days in the county court, whereby sometimes the majority of cases are adjourned because of housing benefit problems.

Q138 Mr Chope: Can I go back to the issue raised by Mr de Bois about Members of Parliament? We receive people from our constituencies who have these issues. They come to us, and we write to the housing association or the local authority and resolve these issues for our constituents without any additional cost on the public purse. Why are you not recommending that people go down that route? Why don't you recommend that they should go and see their local Members of Parliament?

Sara Stephens: That is great. If you can resolve things quickly, that is brilliant. I deal largely with disrepair cases. I have a number of clients who come and see me. They bring letters from their MPs; they bring the response from the landlord that says, “Okay. Yes, we will look into this. We will deal with it.” Two years later it still has not been dealt with, so, unfortunately, it does not always resolve things. If it can resolve things quickly, that is brilliant.

In terms of the housing benefit issues that we were discussing, on the duty scheme that I am part of, which is the Lambeth county court duty scheme, I ask people in their experience—or for actual figures—how many cases have been adjourned because of unresolved housing benefit issues. On average, half of the cases each session are adjourned on that basis. We do advise people to go and seek advice from local advice centres that offer free legal advice, not legally aidable. Unfortunately, you cannot help everybody. If you had every one of your constituents with a housing benefit issue come and see you, you would find that you would struggle to cope with the numbers that are coming to see you.

Q139 Mr Chope: What would happen, surely, is that, if I had very large numbers of people coming to see me about housing benefit, I would say to my councillors and the local authority, “There is something wrong with your housing benefit administration. Sort it, because the consequence of not sorting it is that you are causing a lot of unnecessary distress; you are creating all these delays in the system and the additional costs”—of which you have given evidence.

Sara Stephens: I have been referred cases by local councillors who have been unable to get their own council that they are members of to carry out works. Unfortunately, it does not always work like that. Often, people at the top of these organisations are not there on the floor dealing with the claims that come in. I can appreciate that, for the local council, dealing with whether someone is entitled to housing benefit is quite complicated, and sometimes you need someone, as we explained before, to put that evidence to them and explain why they fall within some obscure part of the regulations that means they do qualify for housing benefit.

Q140 Mr Chope: You are describing shortcomings in public administration and saying that the way to sort it out is to throw more money into the legal aid side of it, rather than put the pressure on the people responsible for this maladministration to put their house in order.

Connor Johnston: I do not think we are suggesting that. I think everybody at this table would agree that if public bodies and local authorities did not make any mistakes that would be wonderful—we would all be unemployed and we would be happy—but the reality is that that is not going to happen. That does not happen. If you can put pressure on your local authority to improve their decision making please do, but they are still going to make mistakes. I would be delighted if every MP in this room could deal with all of their constituents’ housing benefit problems, but I would be surprised if that were true. Some are simple; some are obscenely complex and involve analysing lever arch files and voluminous documents. It is just not reasonable or feasible to expect MPs’ caseworkers to do that. If it is, if you think I am wrong about that, then how are you going to pay for it? Somewhere along the line the work that people do to solve these problems has to be paid for.

Q141 John McDonnell: We just live in different worlds at times. Obviously, the issue is that most MPs, particularly London MPs, are swamped with housing benefit cases. The point is that you are the point of last resort largely, are you not?

Connor Johnston: Yes.

Chair: Was that a question?

John McDonnell: It was a question stating the blindingly obvious.

Q142 Jeremy Corbyn: If I may, Chair, I agree with the point that Mr McDonnell just made. How many of your clients come referred by MPs to advice services or to legal advice because the MP's office cannot cope with the intricacies of it or, in the case of myself as a London MP, the sheer volume? If I did every housing issue that Mr Chope has just mentioned, I would be dealing with about 500 people a week. I couldn't do it.

John Gallagher: Quite a number come to us that way. This is at the heart of the issue, because it is in the nature of things that there are some systematic difficulties with the administration of housing benefit, but there are also individual frailties. People cannot always get their information together in such a form as the authority expects; they need an element of help in doing that. Whether that should be a professional service or not—it can be a voluntary service, although it has to be supervised by professionals—is another matter. The fact is that most authorities will only respond when they have a piece of headed notepaper, where somebody has given some thought to putting forward the problem and they can then deal with it. To be fair to the officials and local authorities, they need that assistance as well to deal with the particular case.

Q143 Mr Chope: Can I turn to exceptional cases funding? Very few exceptional cases are being funded in respect of housing. Can you give us an example of a case where you think such exceptional funding should be available—a housing case?

Connor Johnston: I would have chosen disrepair. Sara, in answer to your second question, has already touched on the reasons why you are dealing with cases which are factually very complex. In order to establish a disrepair claim, you may need to analyse up to six years of local authority or a landlord's documents to establish whether notice has been given. They will inevitably involve expert evidence from one or more surveyors or environmental health experts commenting on whether the given problem in a property is disrepair. There may well be a conflict between those experts which needs to be explored in cross-examination at court. They are of significant importance to the tenant; that is the basis of this. This is somebody who is living in a home which is not really fit for habitation in any normal sense of the phrase and there will be an inequality of arms.

Sara mentioned that, and your response to that was, “Won’t many of these cases be allocated to the small claims track?” Some will, but that does not mean that a landlord cannot still assemble a large legal team. If you are dealing with a social landlord or a local authority, they will inevitably be very well equipped with lawyers and they are going to run rings round a tenant who is in person. For that reason, I would have said that there is a real likelihood of a breach of article 6 in those cases. I do not see how a tenant can effectively participate in the proceedings, and it astonishes me that we have only seen two successful applications in the housing arena.

Q144 Chair: Have any of these cases involved small landlords, perhaps, who have not been very efficient at maintaining their properties but also have difficulty in funding legal representation?

Sara Stephens: The majority of the cases that I take on that get referred to me, on inquiries that come in, are against social landlords who have such a large amount of stock that they struggle to maintain that stock adequately, unfortunately. There are not so many cases against private landlords.

Q145 Mr Chope: That is a very interesting answer and I do not doubt the veracity of it, but doesn’t that just show that social landlords that are being funded by the taxpayer are not up to the job, and now we are saying because they are not up to the job we need to throw more taxpayers’ money at the legal aid system in order to hold them to account? Isn’t this madness? Should we not be ensuring that the social landlords, if they are irresponsible and incapable of doing what they are required to, hand over their stock to somebody who can look after it properly?

Sara Stephens: First, there is very little expenditure in terms of disrepair, because in the vast majority of cases you will get costs from the other side because you will win your cases or you settle your cases; you get the costs, and the actual legal aid costs are repaid to the taxpayer. In terms of legal aid costs, it is almost cost neutral to have disrepair within scope because in the vast majority of cases there is cost recovery.

Q146 Mr Chope: But surely it is not, because the social landlords themselves are having to pay these costs and they would not have had to pay the costs if they had got their act together in the first place and maintained the properties for which they are given responsibility?

Sara Stephens: Of course. If they can maintain their stock better that would be brilliant, but, as we have touched on before, it is simply not going to happen that if they are told to raise their game they are suddenly, overnight, going to be able to do so. I do not see that transferring their stock to another provider is going to make any difference. That has already happened; a large amount of local authority stock has been transferred out to housing associations, and, unfortunately, they are still not managed brilliantly. Unfortunately, the reality of managing such a large amount of properties is going to cause problems.

Q147 Mr Chope: This is a sort of political thing in a sense, but if you are saying that the existing social landlords, publicly funded, are inadequate in parts of the country where you operate, then surely we should be working out a system of trying to resolve that, should we not?

Sara Stephens: I am worried about what you are getting at because the provision for social accommodation is incredibly important and I do not want to say anything that is going to make you think that that needs to be taken away.

John Gallagher: That is not to say that the problems do not exist with private landlord rented accommodation as well. In the nature of things, there is going to be reluctance to take on disrepair cases, whether on legal aid or on a conditional fee agreement, particularly against private landlords, because of the difficulty of recovering costs at the end. The kind of landlord that allows his or her property to fall into disrepair is not going to pay an order for costs without having been taken further, at the end of the day. That is not an economic model that many practices can follow.

Q148 Chair: Could I just clarify something you said earlier? You said that disrepair cases were cost neutral as far as the legal aid fund was concerned because you usually won them and got costs. Leaving aside the landlord point which Mr Chope made, is that a description of how the system worked prior to LASPO, and is there evidence that it was in fact cost neutral for the legal aid fund?

Sara Stephens: I have not seen the figures, but in my experience I would assume it to be cost neutral because costs are recovered from the other side. Any costs that are not recovered from the other side can be recovered from the damages that the clients get by way of a statutory charge, which means that the cost to the fund is, if not neutral, very little.

Q149 Chair: What is happening now? Are you taking cases because you are confident that you will get costs?

Sara Stephens: I am not taking cases under legal aid because the legal aid rules in relation to disrepair mean that most cases do not fall within scope. You cannot get damages; so you cannot pursue a damages claim.

Q150 Chair: Let us assume they are not in scope. You will be dealing with the person already because it is a possession case, but you are wanting to pursue the disrepair issue.

Sara Stephens: If you are pursuing a free-standing disrepair claim, most cases being funded by way of conditional fee agreement, that is problematic and is not a solution. The reason it is problematic is that many providers cannot afford to run conditional fee agreements. You have a large amount of expenditure while the case is running, which can be up to around two years, and many small providers—in particular, the not-for-profit sector—cannot afford to fund disbursements while the case is running. To not have any interim payments on account while the case is running, in the hope that at the end they get paid and they recover those costs, is not a solution, but that is how most cases are being run.

The other issue is that they make people—providers—risk averse. You are unlikely to take a client who is not giving clear instructions, who may be particularly vulnerable and may have capacity issues—the exact kind of clients that should be protected. The aim of LASPO is to protect the most vulnerable clients, supposedly. They are the people who are not going to get the assistance that is vitally needed.

John Gallagher: Counterclaims for disrepair are still within the legal aid scheme, but so many of the queries we get on our helpline or advice line are from people not necessarily involved in possession proceedings. They want a remedy for disrepair.

Q151 Chair: Can you speak a little more slowly because of the acoustics?

John Gallagher: Sorry. So many of the queries we get on our advice line are from people not necessarily involved in possession proceedings but they want a remedy for disrepair. We can tell them how to do that by themselves, how to go to the small claims court, but we cannot tell them how to pay for the disbursement because the judge will need to have an expert's report showing what the nature of the repair is and what caused it. We cannot tell them how to represent themselves. We can give them some guidance on that, obviously, but they are on their own. Of course, the other problem is the £10,000 small claims limit, which again pits people against possible opposition from landlords with representation.

Chair: Thank you very much indeed. We need to turn to immigration cases. We are very grateful to you.

Examination of Witnesses

Witnesses: **Carita Thomas**, co-convenor of Legal Aid Subcommittee, Immigration Law Practitioners Association, **Denise McDowell**, Director, Greater Manchester Immigration Aid Unit, and **Sarah Campbell**, Bail for Immigration Detainees, gave evidence.

Chair: Welcome, Ms Thomas, from the Immigration Law Practitioners Association, Ms McDowell from the Greater Manchester Immigration Unit and Ms Campbell from the Bail for Immigration Detainees organisation. We are very grateful to you for coming in to help us this morning as we seek to analyse what has been happening under the Legal Aid, Sentencing and Punishment of Offenders Act. At this point we want to look at it in regard to immigration cases. I am going to ask Mr Chishti to start.

Q152 Rehman Chishti: On the point about access to legal advice on immigration, I have a few questions for you. First, apart from a return to pre-LASPO levels of funding, what one change would you like to see to the current legal aid landscape for immigration cases to assist with access to justice? I will start with Sarah Campbell.

Sarah Campbell: What I would like to focus on is the exceptional case funding scheme. Obviously, there has been some discussion already about that. During the passage of LASPO, Parliament was told that the exceptional case funding scheme would provide a safeguard to people where there is a risk of their rights being violated if they could not access legal aid. Our experience in practice is that it is not accessible for the vast majority of detainees and that the system is not functioning—it is not fit for purpose. That is the key thing that we would like to see changed.

As you are probably aware, very many people in immigration essentially are now no longer able to access legal aid to challenge their removal or deportation. Our experience is that, even when their cases are very compelling, they are also not able to access exceptional case funding. For example, we deal with cases including single parents who have lived in the UK for very long periods, sometimes since they were children themselves. They have children here, for example, who may be British citizens. They are not able to access legal aid to challenge their deportation. The application process is complex. When we speak to detainees, often they do not know what the exceptional case funding scheme is, never mind how they go about applying for it. In some cases we deal with people who have mental health problems and who are illiterate. In any case, even if they are quite capable, they very often do not have the legal knowledge to know what the legal tests are that they would need to pass to show that their case has merit. They need legal representation. They cannot access it very often.

For example, we deal with over 3,000 cases a year. In the last 18 months we have only been able to successfully refer two people to solicitors to make exceptional case funding applications for them. The main reason for this is that solicitors know that they are very unlikely to see any money as a result of making applications, so payment is only made if the applications are successful. The vast majority of applications are being refused by the Legal Aid Agency. It simply is not financially viable. Providers might be able to make one or two applications, but they cannot keep doing this. It is not viable for them to do that. That is a huge problem. Also, as you may be aware, there are massive concerns about the quality of decision making if people are able to access the scheme, but our experience is that people cannot access the scheme in the first place most often.

Q153 Chair: I am going to ask you some further questions about the exceptional cases later.

Carita Thomas: If I may, I would like to mention two on the wish list, just coming from our diverse membership. No. 1 is something that ILPA has advocated for a long time—introducing some sort of polluter-pays mechanism whereby the Home Office would have to feel the pain in their pocket of making poor decisions. Obviously, the idea is to incentivise good decision making, get things right the first time and therefore increase access to justice by ensuring people do not have to go through a long court process and obviously rack up costs in the public domain, and get their decisions correctly at the very beginning.

Q154 Chair: That is, incidentally, a view which this Committee has put forward in previous reports.

Carita Thomas: Yes, but also the Low Commission have recommended it recently as well in relation to immigration, which is encouraging to see. The second thing on the wish list would be—

Chair: You are going to have to speak up again and a little more slowly.

Carita Thomas: The second wish list recommendation that we would have is payment in immigration cases up front as opposed to at the end of a case. This is just to recognise the particular nature of immigration work, which can be very long and drawn out. One of our members recently said to me that 80% of the applications that he had made, or the firm had made, had taken over a year to resolve. Personally, I know from my experience of cases that, if you are applying for extensions of leave to remain, it can take up to two years or more to get a decision—initial claims for asylum can take a year or more, and fresh claims more than a year. In this particular legal environment, where the Home Office also have no investment in their staff to make decisions quickly, providers may not simply be around in two years or more because we are seeing more and more leaving the profession. There is already a precedent from the Community Legal Advice Centre scheme for payments to be made at the beginning of a case as opposed to the end. That might help the sustainability of good providers and, therefore, access to justice by keeping them in business.

Q155 Rehman Chishti: Do you have anything to add to that?

Denise McDowell: I would add another one on to my wish list, which was about article 8, and specifically article 8 in relation to children. We see extremes now of distress from families who are separated, or who are facing a very uncertain future and have no legal right to represent themselves before the courts because there is no funding for that case. They are families, they are individuals and they are children, who have a right under the European Convention, but they have no right to representation because they are too poor to afford it.

Rehman Chishti: I was going to ask about article 8 later on. Do you want to come in on that?

Q156 Nick de Bois: I would not mind following up a specific point. I would just like to pick up your last point, which sounds an understandable position that you are making, but I am an outer London seat with a considerably high number of immigration cases. Time after time after time I have people come in to see me with cases going back as far as 10 years, where they have, first, overstayed their legitimate visa, they have then left the country, illegally re-entered the country and sometimes done this two or three times. They get married and have children, all in the knowledge that they have no right to be here. My question is this. If this is their behaviour, whatever motivated it, is it fair that a taxpayer should pick up their case when eventually they try and do it under article 8 of the Human Rights Act?

Denise McDowell: You have given an extreme example.

Q157 Nick de Bois: No, I have not. It is a common example, I am afraid.

Denise McDowell: Okay, but the issue often in those cases is not about the parents and what the parents may have done, wrongly or rightly, but it is about the children. Those children have established a private life and a family life within the UK, and the courts have to recognise that those children have a right in and of themselves, and that is where the attention should be, rather than on the parents and what they may or may not have done.

Q158 Nick de Bois: I accept that, but the question I am asking is, is that something you think the British taxpayer should reasonably be expected to do?

Denise McDowell: Yes.

Q159 John McDonnell: Aren't you simply arguing that the child's voice should be heard and represented?

Denise McDowell: Absolutely. It is about the right to be heard. That is the argument.

Q160 Nick de Bois: I am well aware that that is the point and I accept the point, but I would like to finish my line if I could, please. At the end of the day, choices have to be made because of the situation in which the country found itself in 2010 and I am just saying, are there not alternatives? Are there not decisions, first of all, that the parents should have made? Are there not alternatives—advice centres, pro bono—out there that might help these cases? I am not convinced that the burden should fall on the taxpayer and I am just asking you to explain why you think it should.

Denise McDowell: It is almost impossible to be able to find pro bono advice to be able to represent people in those situations. There are very few advice centres left. The MOJ's own statistics show that the number of legal aid providers in 2012-13 was about 870, and in 2013-14 there were less than 90. So advice provision—

Q161 Chair: There were less than—what was the figure?

Denise McDowell: Less than 90. Advice provision has been decimated in the last 18 months, so there are far fewer places that anyone can go to. We have already heard that pro bono advice is under extreme pressure anyway and there is a limitation to what can be provided there, but these are people who have a human right—an arguable right.

Q162 Nick de Bois: Fair enough; you have made that point well. Your ultimate argument is that it is a burden for the taxpayer to pick up or a responsibility for the taxpayer.

Denise McDowell: I think it is a responsibility. If a child has rights under the European Convention, then it is a right and the state should be able to provide that child with the right to at least representation in decisions that will affect them for the rest of their lives.

Q163 Rehman Chishti: Just moving away from our state for a moment, why has the number of immigration cases in the first-tier tribunal remained steady, when the number of matter starts has significantly declined?

Carita Thomas: I would like to answer that, if I may. Speaking from my personal experience, as I have already mentioned, immigration cases take a long time to resolve. I have cases that began before April 2013 that are in the first-tier and upper tribunal at the moment. That longevity of cases is masking the true impact of the cuts, in a sense. Also, the importance of the issues at stake does mean that, even if somebody is unrepresented, then they will still seek to go to the tribunal. One of our members who supports applicants to make claims and go through the appeals process, who is not providing legal advice, has said that people who come to them for help when they cannot get legal assistance, if legal aid has been refused, for example, in an asylum case, will all go to the tribunal because the issue is so vital to them.

Q164 Jeremy Corbyn: I have a brief supplementary. Do you have any estimates of the amount of time, energy and money on legal aid or non-legal aid that is spent in pursuing the Home Office not replying to letters, lost files, lost information and inability to simply answer normal letters within a timely period? I have cases that have gone on for 18 years, where the Home Office has systematically lost files after files after files.

Carita Thomas: The worst case examples I have are of people who had made claims in 1999 and were only resolved last year.

Chair: I am going to have to ask you to speak up.

Carita Thomas: I am sorry. I was just agreeing with Mr Corbyn that I have had cases that began in 1999 and were only resolved last year. The issue of legal aid cases is that we work on a fixed fee, so, with regard to the amount of money in pursuing the Home Office, you would be unlikely to get to three times the level of a fixed fee by simply writing chasing letters. You have to wait until you come to a point where the delay is so extreme that you may need to take court action in order to get some decisions out of them. Obviously then, if you are successful, you could claim the costs back from the Home Office, which in most cases we manage to do.

Q165 Nick de Bois: Ms Thomas from the ILPA, you have referred, in your experience, to local authorities paying legal fees. I think that was in your submission. Can you tell me, if you like, in what type of case that happens? I must confess, in my what seems vast experience of immigration cases, I have not come across that in my constituency, so I would be curious to know what type of case.

Carita Thomas: There is no specific actual duty on the local authority to—

Q166 Nick de Bois: I appreciate that.

Carita Thomas: Under the Children Act, obviously they need to make sure that they see that the identified needs of children and young people are met. Immigration advice can be a part of that.

Nick de Bois: They have done something to your sound. It is echoing around the room, or is it just me?

Chair: The sound engineer is trying to make sure we can hear.

Carita Thomas: The feedback that we have had from one of our colleagues, Anita Hurrell, who is from Coram Children's Legal Centre, is that local authorities are more inclined to provide funding for immigration advice when somebody is under a care order. The legal team from the Howard League for Penal Reform have said that their experience when assisting young people who are in custody or in detention—care leavers—is that they have found it very difficult to get local authorities to pay, so the experience is highly variable. They have often had to take pre-court steps in order to try and force local authorities to live up to their duties. So there is at the moment highly variable experience in getting local authorities to pay.

Q167 Nick de Bois: Perhaps we could follow that up because that is the sort of example of a knock-on cost that you have been talking about to the public purse in immigration cases following these changes. Could you just give me some other examples of areas where knock-on costs are, if you like, the hidden costs that you have identified?

Denise McDowell: I can give an example of one of ours. We have had one recently where the father was facing removal and we were appealing a decision to remove the father, where in the judgment the judge commented that, because of the father's relationship with the child, and the way that the child had responded to the father and how his behaviour had improved dramatically, it was in the interests of the public purse that the father remained in the UK in order to look after the child, in order to save money in the future that was likely to occur from the child's behaviour and likelihood to be involved in problems at school and further on in life.

Q168 Nick de Bois: I appreciate that. I am not quite sure that that is as a direct result of the legal aid cuts. I was trying to see where the hidden costs might be. I take the point you are making; somebody is looking ahead there.

Denise McDowell: This was a case that was not funded by legal aid.

Q169 Nick de Bois: Okay. I suppose where I am going is, have you seen the knock-on costs being picked up somewhere else because legal aid is not funding it? That is what I was driving at.

Sarah Campbell: The point, in a sense, is that this person has been very fortunate. They have accessed pro bono assistance. The vast majority of people will not access that. We deal with a lot of separated family cases, where parents are in immigration detention, they are facing removal or deportation and they cannot access legal aid. But in a lot of the cases that we deal with their children have been born and brought up in the UK; they may be British citizens. It is very unlikely they will be removed, and there will be costs as a consequence of the parents' removal. For example, if the children are left in care there will be direct costs, but there will also be indirect costs, including where there is another parent outside detention.

This is what Denise was alluding to. We know from psychological studies that where parents are separated from children for other reasons—for example, where parents go to prison or children are taken into care—then there are far worse outcomes very often for children in terms of education, health and their likelihood of offending. There have not been those kinds of longitudinal studies in an immigration context.

Q170 Nick de Bois: I was going to ask, is there any quantitative analysis put on that? Has any been done as to what is the hidden cost? It is a perfectly legitimate question and I take your point. Or is it too early, because we have heard from Mr Corbyn that there are cases going back 19 years that have not been resolved? I have cases going back 10 or 11 years that have not been resolved. Is it too early to tell?

Sarah Campbell: Those types of studies have not been done, to my knowledge. We did our own study, which we published last year, which looked at the cases of 111 parents who were separated from 200 children by immigration detention. Quite a small proportion of those parents were removed, but at that time there was legal aid available. There is no longer, so it is reasonable to suspect that more parents will be being removed. There are very serious consequences for children already when parents are in detention, in terms of children having nightmares and not being able to perform well in school; there are very serious emotional impacts. Obviously, that is not a peer-reviewed psychological study, but from the available evidence it is at least fair to say it is likely that there will be costs to the state.

The other point I just wanted to make as well in relation to this was the cost of detention. Very many people we see in detention now cannot access legal aid to resolve their immigration matter. They are being held in detention as a result of that. If they could access legal aid, two things could happen. One is that if they access competent legal representation and they did not have merits to their case, legal representative could advise them of that. If they did have merits to their case it could be pursued, but neither of those things can happen for very many people. We are seeing people in long-term detention, their case cannot be resolved and there may be other barriers to removing them—for example, lack of travel documents. That is another issue in terms of cost.

Denise McDowell: Can I give you another example that we have? We have it where in the family courts there may well be a custody battle or children facing going into care where one parent, who is potentially a long-term carer, has unresolved immigration status and the family court judge will direct that the immigration status of the parent is resolved quickly, in order to be able to make decisions about the long-term custody and care of that child. Those are the types of cases that social services or children's services will then come to us with, in order for us to resolve.

Nick de Bois: Although I think that is more systemic failure within the Home Office than anywhere else that drives that problem.

Q171 Chair: Will they fund that? If it is their view that the child should be taken into care, then somebody else is going to have to fund the other side of that case, are they not?

Denise McDowell: That is right, yes. It depends. If the judge has taken the view that the parent may well be the best custodian of the child, then they are more likely to pay for the legal advice. If they do not, then they will not pay.

Q172 Chair: Could I just ask this question? In this area of decision making and law, is there an effect which flows from the fact that the client may have a secondary interest in protracting the case? The primary interest is to get an early decision to be allowed to remain, but, failing that, the secondary interest is in not having an adverse decision to throw you out of the country. Is that an effect that has to be counteracted in some way if you are trying to decide how far the taxpayer should be involved?

Carita Thomas: In my experience, all clients want their cases decided as soon as possible.

Q173 Chair: They do not what, sorry?

Carita Thomas: In my experience, all clients want their cases decided as soon as possible, so they do not wish to protract things—protract any proceedings.

Q174 Chair: You mean a client would prefer an unfavourable decision that they cannot remain to the case going further for another year or two.

Carita Thomas: They would prefer a favourable decision, but at least if you get a decision then you can act on it, and hopefully there may be a remedy through judicial review or an appeal. Then you might get in front of a decision maker who is more reasonable than the Home Office.

Q175 Jeremy Corbyn: It is an interesting point because I see the stress levels of people just not knowing, particularly asylum cases where I have people wandering the streets of London for years on end with lost letters, lost files, and they just want a decision. They need to know what they can do. They are frightened of being deported but they are frightened, also, of just not knowing what their future is. Do you give counselling to people in this sort of situation or do you refer them for that?

Denise McDowell: We do not give counselling, but what we are aware of is that we are often trying to maintain people's mental health. People are in a situation which is unbearable; they are neither moving forward nor being removed, and a decision, in one sense, would be better because they would at least know where they stand. We know that our ability to communicate, to get decisions from the Home Office, is so difficult it is almost unimaginable. If you have not dealt with the Home Office to the extent that we have, it is almost impossible to understand how difficult an organisation they are to work with, and how they do not make decisions or they make wrong decisions constantly that need to be appealed and need to be challenged.

Q176 John McDonnell: On the issue of the protracted nature of the cases, if you are one of those 1,000 people whom I claim as my constituents in Harmondsworth and Colnbrook, in detention, you will want a decision at the first opportunity either way, will you not? Isn't that what you find?

Sarah Campbell: Yes. The other point to make is that, with regard to the exceptional case funding scheme, as I said, our experience is that most detainees cannot access the scheme, but if they do, and they are fortunate to find a legal representative, their case has merit and he is going to challenge a refusal, that is an extremely protracted process. We do know people who have been in immigration detention. One young man I know of has been in immigration detention for 19 months and he is awaiting a decision on a challenge to refusal for exceptional case funding, so he is not even getting to the point where the actual immigration matter is being addressed; but that is another concern.

Q177 Chair: I did say earlier we would ask you something further about exceptional case funding. On that point, is there some way in which the exceptional case funding scheme could be made more accessible and less creative of costs for the solicitor making the application?

Sarah Campbell: Yes, there is. One of the changes which we would like to see is that at the moment there is a merits assessment and a means assessment, so the solicitor is looking at whether there is merit to the case but they are also looking at a detailed assessment of the client's means. What we would suggest is that, initially, in the application process, it is just merit which is assessed and then, if there is merit to the case, the means are sorted out later. That is one of the issues. Another issue which we were discussing in terms of making the process more streamlined would be looking at the quality of decision making and making more specialised teams at the Legal Aid Agency to deal with the cases, because that is something which would make the application process much easier. There have been a lot of problems with the quality of decision making.

Carita Thomas: I would just come in on that and agree with Sarah. My limited experience of making exceptional funding applications is that I found I had to explain a large amount of immigration law in order to try and put my point across. If I contrast that to the experience of applying for public funding for court work to the Legal Aid Agency specialised team, I do not have to go through all the arguments about what article 8 is and what this immigration rule means, because those lawyers know it all inside out. So the process is far quicker.

Q178 Chair: Where is the lack of knowledge?

Carita Thomas: I would respectfully submit that my experience of the exceptional funding decision-making team has not been very positive in how they understand immigration law and immigration clients. I would think that they need to have more specialised training in dealing with those or have an immigration team within that department who knows all about this. Just to pick up on your question again, I also think that it would very helpful to have some initial funding of any kind to help solicitors to mitigate the risk of taking on these cases so that they are more inclined to assist people to make the applications

at the first instance, rather than having to wait to the end to see if you are going to be successful and get paid.

Chair: Thank you very much indeed. We are very grateful to you for your help. We have another team of witnesses.

Examination of Witnesses

Witnesses: **Ruth Hayes**, Islington Law Centre, **Catherine Evans**, Southwark Law Centre, **Anita Hurrell**, Coram Children's Legal Centre, and **Paula Twigg**, Mary Ward Legal Centre, gave evidence.

Chair: Welcome to our third group of witnesses this morning, a multi-skilled group of witnesses—in other words, covering several different areas. We have Ruth Hayes from the Islington Law Centre, Paula Twigg from the Mary Ward Legal Centre, Catherine Evans from the Southwark Law Centre and Anita Hurrell from the Coram Children's Legal Centre. I am going to ask Mr Chope to open this part of the questioning.

Q179 Mr Chope: I have been taken by surprise about that. Would making limited funding available for expert reports at the beginning of a case, without access to funding for legal advice, improve access to justice?

Paula Twigg: Without a doubt, in our experience. One of the big losses since the legal aid cuts has been exactly that, in particular with welfare benefit cases concerning sickness and disability benefit appeals. The lack of access to a report from a GP or a consultant has quite a considerable degree of bearing on the outcome of a case. On average, a GP will want to charge about £80 for the said report, and, in our experience, most GPs will want to charge something. What we are finding is that, because we can no longer help people with claiming back that matter as a disbursement, clients have to go off and request that information themselves and they find they cannot afford to pay the fee. So what they are getting offered is basically a copy of their medical records, which is just a long list of all the things that they have come in about since way back, and it just is not helpful to present that as an argument within your case. A tribunal is not going to trawl through pages and pages of medical reports to see how that might apply to particular criteria within that benefit that they are claiming. That is certainly the case, and it is the same for disrepair cases with expert reports and surveyors' reports or cases in support of homelessness applications where someone has ill health.

Q180 Mr Chope: Would you put this at the top of your shopping list for changes to the current legal aid landscape to assist access to justice?

Paula Twigg: In terms of the small amount that that would cost, that would go some way to helping people. In regard to wanting to bring other things back, there is a strong case to be made for welfare benefits coming back into scope—at the very least housing benefit for possession cases, but there is an argument to make for welfare benefits coming back into scope. The reason for that is that it is a very complicated area of law. There are five Sweet & Maxwell volumes covering social security law. It is extremely complicated. It is not simply a case of making a claim. I agree with what you said about it being madness, in the sense that there is still a high degree of poor decision making, but until that decision-making quality is improved it is highly unjust to deny people the access in order to challenge those decisions. I have been doing this for a long time now and poor decision making has been a feature of the benefits system for many, many years. Until that is rectified, people need to be given those means. We find that round about 75% of the clients we help with welfare benefits have a disability or ill health and a long-term ill health condition, and so we are having to turn away people who are very vulnerable.

Also, the fact is that it is interlinked with other areas. We did a little snapshot of our county court duty scheme, where they list possession cases for rented accommodation and mortgaged properties. These were all people who were facing repossession or eviction, and every single sixth defendant had housing benefit or another benefit issue that needed to be looked at. Had that been addressed, there is a very strong argument that they would not have been before the courts in that case. The issues vary between someone having large rent arrears caused by a housing benefit overpayment that had never been looked at to see whether it could be challenged. We find that, when you look at it, there is often underlying entitlement that reverses the housing benefit overpayment just because of miscalculations. I appreciate that the housing benefit calculations are not always straightforward because people have complicated lives or they go in and out of employment and their wages fluctuate. Other cases concerned people who have made a claim for personal independence payment and not received anything at all months and months later, and no decision has been made because there are problems with delays in decision making. Another person had their JSA and housing benefit suspended but did not understand why because they had severe mental health problems. In our experience, welfare benefits coming out of scope, especially at a time of major welfare reform, is a particular concern.

Catherine Evans: Also, in immigration cases, one of the problems that we have is where clients have severe mental health problems and they have a possible article 3 claim, but what we are concerned about is the risk of paying for an expensive psychiatric report and only finding the Legal Services Commission will say it is not an article 3 case but an article 8 case. I have no doubt that they would recoup that money from us, so we are quite reluctant to obtain reports in those cases for clients who are very vulnerable, and some of those clients are street homeless. It is very difficult to get funding from other sources to cover those disbursements.

Ruth Hayes: Could I also add that the point was raised earlier about the availability of pro bono services? Often, what undermines effective pro bono provision is a lack of funding for reports, particularly when you would say that often there is a need for some funding stream for complex casework, but often you need to establish the entitlement of the client or the situation accurately. Access to funding in those circumstances would make a significant difference.

Catherine Evans: When you make a funding application it is very difficult to assess what disbursements you need. I would also include interpreters' fees as well because clients obviously have language barriers and need interpreters' fees.

Q181 Mr Chope: All your organisations are publicly funded, to a lesser or greater extent. Why don't you decide, using your own resources, on those cases where £80 or £40 on a report is going to make the difference between access to justice and not getting it? Why don't you spend your own money?

Catherine Evans: We do and we turn people away. We have to turn a number of people away. At the moment we are working with street homeless organisations, advising street migrants. We can only take very few of those cases on. It is not sustainable for a law centre to take on all of those cases. As I say, we do use some of our money and we have raised some money from private sources for disbursements for interpreters' fees, but that is not sustainable because the need is too great. Every week we turn away 30 immigration cases.

Q182 Mr Chope: Just as an example, how much money does Southwark Law Centre get from public funds?

Catherine Evans: Our funding is £600,000; £300,000 of that comes from the Legal Aid Agency and other funding is from contracts with Southwark council. We are limited to what we can use the funding on. We get other funding from charitable funds and charitable trusts.

Ruth Hayes: If I could say, it is really very rare to get public funding which is not specifically targeted for specific services. For example, we get funding from our local authority to provide an outreach service to their tenants, but we could not choose to use that money on reports for clients of another part of our work. It is very, very unusual to receive any sizeable sums which are unrestricted and could be used for any purpose the organisation chose.

Q183 Mr Chope: Do you think that the funding you get from local authorities can sometimes cause you to be inhibited in naming and shaming those local authority housing benefit administration departments for their incompetence?

Ruth Hayes: I do not think our local authority would say that. I can see the issue and there is a need. Certainly, for clients it is very important that services are seen to be independent. Where the relationship is a good one and we get to meet with senior management in the local authority quarterly, and they ask for examples of where their own policy and procedures are not being followed properly because that is very valuable learning—it sometimes identifies a training need for their staff—it is a waste of public money to be attempting to evict tenants, for example, over a resolvable issue. Where it works well, there are real opportunities to improve standards at a local level and that is very valuable.

Q184 Mr Chope: Can I ask one specific question? Does the issue of legal aid funding for children need to be addressed separately from the main scheme?

Ruth Hayes: Yes.

Anita Hurrell: Maybe I can answer that question. Certainly something needs to be done about children and young people's access to justice. This has come up not just from specialist children's organisations but across the board, and has been highlighted in particular by the Office of the Children's Commissioner and the recent child rights impact assessment that was done. Something definitely needs to be done for children and young people, and we can talk a little bit more about what that might look like. We have to think about those cases where a child is bringing the proceedings themselves—children and young people's own cases where, clearly, they cannot represent themselves; they cannot be without legal aid; they cannot be without legal representation. We are seeing a few cases where local authorities are having to step in and pay the bill.

We should also look more widely at all of the cases that we are talking about today because pretty much all of the cases that we are talking about can impact on children. A housing disrepair case has an impact on a child's well-being. An employment law case has an impact on the family's income and on the child's welfare. A private law family case is obviously about the welfare arrangements of children, so it is about looking both at those cases where a child is the party but also more broadly at what can be done about the impact of the legal aid cuts on children.

Q185 Chair: You are making it sound as if there being a child in a family is a reason for bringing every case into scope.

Anita Hurrell: Not necessarily. I just wanted to highlight the danger of thinking that something could be done for a particular group of children and then the child rights issue being over. We do not see that that would be the case. We see that something most definitely needs to be done for children's cases, but we have to look more broadly at all of the legal aid cases and see all of the kinds of impacts on children and on children's rights.

Chair: I am going to turn to Mr McDonnell, but with an apology to both Mr Chope and Mr McDonnell for taking them in a different order from the one they anticipated.

Q186 John McDonnell: You have answered most of the questions. I just want to raise this point. You raised the issue about housing benefits and welfare benefits coming back into scope generally. What impact are you finding the huge increase in the sanctions regime has had?

Paula Twigg: We are seeing a lot of that. You would not know this, but we only have funding from Camden council now because we lost our legal aid contract. We are a pan-London provider and we were able to help round about 1,200 people a year to resolve the welfare benefits legal issue. Now we can only help about 300 people a year. That is purely Camden funding and our Camden funding is restricted to help people who live, work or study

in Camden. We are turning one in four people away who present from other boroughs, and some of those issues are sanctions issues.

We are finding a lot of people we see have mental health problems. I dealt with a man on reception who had a decision on employment support allowance. I know it is slightly off what you are saying. He did not know what to do; he did not understand. He kept focusing on the wrong bit in the letter, but he needed desperately to get a mandatory revision in against the decision and he just did not understand what to do. He did not live in Camden and we could not help him. I advised him to go to a CAB. He had already been to a CAB. They had said they had no capacity to deal with it and, anyway, he needed to see a specialist adviser. I am not sure what happened to him. I had nowhere else to refer him to.

Ruth Hayes: We have had two examples recently of people collapsing in local agencies as a result of having no income. In one case the man had not eaten for six days, and there is obviously not only a human cost to that but in terms of the cost to the health service that is significant. In another very troubling case, a woman collapsed who had two small children. She had been sanctioned for three months and was simply unable to feed the family. So there are very acute costs being felt by individuals because of a lack of access to specialist help, but also that will be presenting; those children cannot be doing well in school.

Q187 Jeremy Corbyn: I have a very brief supplementary back to Mr Chope's earlier question because it is a fairly fundamental one. All law centres receive some degree of public funding, either through local authorities or legal aid or whatever else it is. Does that in any way ever inhibit you from taking legal action against public authorities, be they local government, DWP or anybody else, so that you can act as independent lawyers just in the same way that any other independent lawyer would act?

Paula Twigg: Absolutely no way. It can't. We would not enter into that funding room. It is very much understood. With our Camden contract, for instance, it is very much understood that we will be taking action against the local authority, and we do. Where Camden are turning people away and saying they are not in priority need for a homeless application, we will be challenging them. We do take them to court. It is the same with the housing benefit department. As Ruth has said, what is quite good about those arrangements is that you can feed in social policy issues and get to the issues that you were mentioning about systemic failures.

Q188 Jeremy Corbyn: I understand that and that, in a sense, is understood and is a slightly separate issue, but I want to be absolutely clear for the record that there is no inhibition, because of the funding source, on you taking legal action on behalf of vulnerable clients.

Catherine Evans: If you look at the law reports, you will see there are a number of actions taken by law centres against their own local authority. There is one in the Court of Appeal at the moment. There is another law centre in Southwark—Cambridge Law Centre—and they are taking an action against Southwark. They are funded by Southwark and they have a case in the Court of Appeal against the London borough of Southwark regarding a

housing decision. Because we are lawyers, we fully understand our independence and the local authorities understand our position.

Ruth Hayes: Because law centres employ practising solicitors, they would be under a professional obligation to act in the best interests of their clients and therefore could not be fettered in their judgment in that way.

Q189 Nick de Bois: I just want to talk briefly about costs-shifting and other impacts, which is a theme developing. A number of practices have said that significant costs-shifting is occurring because advice can only be accessed when it becomes serious or requires court time to resolve. Apart from, obviously, more money, have you thought about how this can be tackled? For example, I notice in some evidence—I think it was from the Mary Ward Centre—they were talking about the false economy of the large narrowing of the huge number of cases that are now falling within the scope, which has meant that people can only access legal aid at a very urgent stage. You talk about a vast amount of debt work focused on early intervention to avoid emergency action and costs associated with going to court. Although it is obviously coming from a legal centre, is that advice that can be dispensed elsewhere? I have noticed in constituency cases that we are having to signpost people or try and offer advice elsewhere. Is that something that needs to be developed further if it is not going to go back into a legal process, and can it avoid a legal process?

Paula Twigg: We have a contract with Money Advice Service via a tool where we can provide debt advice, which is fantastic, but we are not able to do as much detailed casework as we would have done when we had a legal aid contract. We had 400 matter starts for debt, and we now have four under our housing and debt matters.

Q190 Nick de Bois: Because they have gone elsewhere or they are not being dealt with?

Paula Twigg: I have never understood why we only have four debt matters. It seems to be a nominal amount. Every contract holder in the housing and debt contract has a nominal amount, partly because the assumption is that it is going to go through the gateway and get dealt with through the telephone gateway. There are issues that, if you do not nip them in the bud at the early stage, will go all the way through the court system, and so if you are looking at things like bankruptcy, or even with debt, where a charge is being applied to a property, at the moment an order for sale is in scope but the charging order element is not in scope. That is the bit that precedes the order for sale, but once you get to the order for sale stage there is often very little argument, legally, you can make. These are quite complex matters.

Q191 Nick de Bois: I agree with that. I am not a lawyer and I am surrounded by them, so I find it rather difficult. I get that stage. I am trying to compare. When were you normally getting involved pre-LASPO, and was there an element that, really, perhaps you should not have been involved in it, or could it have been sourced elsewhere, and does that need beefing up? I am trying to understand at what stage a lawyer would get involved to help. Where were you getting involved to help at that stage?

Paula Twigg: Those sorts of figures are the complex bankruptcy cases.

Q192 Nick de Bois: It is at that stage they come to you? You are not working with them early on?

Paula Twigg: They may come to us a bit earlier on. It may be they have come to us with council tax arrears and have bailiffs knocking at their door. It may only be a little bit later that the local authority is trying to apply for a charging order. The first thing that we do when we see someone with a debt is to say, “Are they liable for that debt?”

Q193 Nick de Bois: Have they seen anyone else before coming to you? I suppose that is what I am exploring, because there is an element of personal responsibility here but a lot of people, I understand, bury their head until it gets too late and then they turn to a lawyer. Should we be doing more to make people go elsewhere?

Paula Twigg: In our experience we find that people often try and resolve things. I would say about 80% of clients try to resolve it themselves. They have done all sorts of things. Some have gone to debt agencies where you can pay and have got themselves into an awful mess. Last time, when we did our evaluation and spoke to a number of clients, it was surprising how many people said, “I tried to resolve these issues myself.” Some people, as I say, get into an awful mess if they try to go down the legal process route. They get it all wrong and they have messed it all up for themselves, and that is quite common.

Q194 Nick de Bois: The Southwark Law Centre submitted a comment on employment law, saying that the removal of employment law from scope had led to an increase in exploitative behaviour by employers unlawfully deducting wages—pretty outrageous stuff. I have to ask this: what evidence do you have or is that anecdotal evidence? What is there to support this increase in that behaviour directly linking it to, if you like, an increase in the changes in the laws?

Catherine Evans: We are a law centre so we can only give anecdotal evidence. I can only give evidence within the scope of a law centre. We do not have money to do research. That is for other organisations to answer.

Q195 Nick de Bois: Are you aware of any other research?

Catherine Evans: No, I am not. As I say, I manage a law centre. We are not a research organisation. Yes, it is anecdotal evidence from our employment lawyer, who goes to the local citizens advice bureau to give advice by appointment. We have a partnership arrangement with the local citizens advice bureau, and they refer cases to us that are complex and need a lawyer. He has noticed a considerable increase in the number of unlawful deductions from wages by large multinational companies. At the law centre we deal with people and we advise people who are on low incomes and zero contracts—cleaners and security guards. He has referred some clients to the advice line, and in several cases it is very difficult for the clients to deal with those advice lines. One is that they are not advertised, so people do not know about the advice lines. If you have people who have difficulty managing

their papers or communication, it is very difficult for them to access advice and people give up. Also, at the same time, the fees are putting people off. Although there are fee remissions, the fee form is 54 pages long. Even our employment lawyer was a bit aghast about having to complete a form that is 54 pages.

Q196 Nick de Bois: Did you say there is a form they have to submit that is 54 pages long and that is what anyone seeking to take action at a tribunal—

Catherine Evans: That is my understanding from the employment lawyer.

Q197 Nick de Bois: It is 54 pages long. Okay, I hate that. It could be done in about two when I was an employer, so I am with you there.

Catherine Evans: Then with Acas. He is saying that these large companies are acting with impunity because they know that there is no penalty for them.

Q198 Nick de Bois: What I am trying to do is get some context because I do not doubt that these actions have been happening, but are you able to give me any context even in Southwark Law Centre's experience of how many cases we are talking about?

Catherine Evans: No, I cannot.

Q199 Rehman Chishti: Coming on to the point about the Ministry of Justice and the Legal Aid Agency, how could the Legal Aid Agency be reformed to reduce bureaucracy while ensuring legal aid applications are properly determined?

Paula Twigg: It is interesting thinking about this. The money that we get from the local authority is for exactly the same work that we would have done under legal aid and is vastly different in terms of the reporting requirement. Pre the cuts to legal aid, we employed someone full time to administer the contract. That is purely submitting the fixed fee and what were then the exceptional cases funding—now escape fee funding—cases. There was one full-time person to submit those cases and now it is a part-time person. I do not think it is necessary for every single escape fee case to be assessed by looking through all the papers. We have been getting many rejections which we are successfully appealing. We had a very large housing case which was reduced by £30 because the assessor had decided that a 60-minute initial attendance for the client was felt to be too much. We appealed, showing that the evidence was all there anyway in the first place of why a 60-minute initial interview was not too little. It was a very complicated urgent homelessness case. I could go on. There are lots more examples.

Ruth Hayes: I did bring something along. This is 151 pages. This is just the guidance on codes for reporting under the legal aid contract, so we would—

Q200 Chair: The guidance for what?

Ruth Hayes: It is the guidance for reporting; it is the guidance for codes. It is Guidance for Reporting Controlled Work and Controlled Work Matters. You will see the scope, because the reporting framework is so very, very complicated. Every time there is an error there are significant delays, which I imagine are due to backlogs at the Legal Aid Agency. Changing one field on one spreadsheet can take four months and we do not get paid until that has happened. We had a recent case where the client's immigration status meant we had incorrectly, in error, suggested that VAT should be applied when it should not. So what should have been fairly straightforward—this client should not have had VAT applied—has been a very complex process with a fair amount of time at our end and the Legal Aid Agency's time.

The other issue that we feel quite strongly about is a return to devolved powers for certificated work, where it used to be that we were able to make that decision ourselves. That work is at risk, so if the Legal Aid Agency felt that in fact we had inappropriately devolved powers they are not obligated to pay us, so it is not like a blank cheque to providers. Now there are significant delays, which is adding to the stress on the court's time because we are sometimes having to provide a witness statement to explain why we have not been able to comply with their requirements. A return to that would save significant time and also costs at both ends.

Anita Hurrell: We would just echo that the bureaucratic burden has become extremely onerous. This has even been pointed out in court judgments. For example, with cost limitations, you have to apply three or even seven times to have a cost limitation extended. That, in theory, allows the Legal Aid Agency to do some kind of projecting of its overall costs, but we would say that the administrative burden, both on us as providers and on the Legal Aid Agency processing those applications, is disproportionate to that aim.

Q201 Rehman Chishti: Let me move on to the second point. Why do you think so few exceptional funding applications are granted in the first place?

Catherine Evans: To your first question, I would say that it does not appear to me that access to justice is paramount to the Legal Aid Agency. Unfortunately, it seems to be a processing costs and processing claims bureaucracy, to the detriment of the providers, with poor decision making and inconsistent decision making. There is a recent case in the courts of judicial review where Collins looked at the decision making in exceptional cases and said the decisions made were unreasonable or Wednesbury unreasonable, which is a very high test for a local authority or for a public body.

Q202 Rehman Chishti: Does anybody else want to say anything on exceptional funding? Let me move on. We have heard evidence that the telephone gateway is not working as it should. How can it be improved to fulfil the role for which it was developed in the first place?

Anita Hurrell: We are one of the three education law providers of legal aid nationally. As you know, education law now goes through the telephone gateway for those areas that were protected under LASPO—those areas that remain in scope. The problems that we are seeing really fall into two categories—the problems of those who cannot get through,

which obviously we do not see through that route but we do see through another service that we provide, which is the Department for Education-funded Child Law Advice line, which is a national line providing free advice. We are finding that people just do not know about civil legal advice; they do not know about the number that they need to call; and they are not being told by all those agencies by which they probably should be told.

We also find that people are being put off if English is not their first language and that it is just an incredibly complicated system to explain to clients. For example, when somebody contacts us about immigration advice and they have an education-related issue that could potentially be in scope, and I explain to them that they have to call back to a different number called CLA and then they might be put through to us as an education law provider, it is just very difficult for people to understand, so there are a whole host of problems related to people not getting through. Then what we are finding is that when people do get through there are some problems about the operator service saying that an issue is out of scope, but they might be wrong and if, eventually, it does get through to us, that problem transpires. We just think that they would benefit from better training on eligibility. For example, judicial reviews in education law are quite difficult to identify, when an admissions appeal can become a judicial review or exclusion cases can become judicial reviews. It is getting a little bit better in our experience, but there need to be some improvements in recognising the legal matters.

Ruth Hayes: Could I say we have had some experience? Like Southwark, we also do employment law. We have seen a real rise in discrimination cases coming to the law centre. A number of those people have attempted to access the discrimination gateway phone line. We have spent two and a half hours with one client, trying to get the case taken on, even though in our opinion it had significant merit. The client had a disability which affected both her neck and her concentration, and, without our support, which is funded through the local authority, she would never have been able to make that case. She then received four or five different letters in the space of about three days. She found it very difficult to submit paperwork by post. She was anxious about papers going astray so she paid for recorded delivery on what was a very low income.

Most of the clients we have seen, interestingly, relate to areas like pregnancy and emergency parental leave, for example. People do not even think that they have a discrimination case. It wouldn't occur to them to call, but many of our clients simply do not have a phone line with credit that would enable them to stay on the phone for very long. Many have issues with literacy and would require someone to look at their papers. It is not a very cost-efficient system for some people. Shelter do quite a lot of work on looking at channel shifting from face-to-face. It was interesting earlier to hear their comments. What they found was that, although there is a real benefit to telephone advice, it meets the needs of a different group of clients from those people who have accessed face-to-face help.

Catherine Evans: Going back to the exceptional, I have just remembered that we did have one. We made an application for exceptional funding and it took a very experienced caseworker six hours to make the application—a case that she was very familiar with—and it was refused. In our view, it was an unreasonable refusal. We do not get paid for that. After that, we took the decision not to make any exceptional funding applications because it was not in the interests of the client and it was not in the interests of the charity to expend charitable funds on making exceptional funding applications.

Chair: Thank you very much. We are very grateful to the four of you. We much appreciate your help.