



Briefing for Justice Committee Evidence session on Monday 4 May examining the impact of the COVID-19 pandemic on the Courts and legal professions.

Background

LAPG is a membership body representing legal aid practitioners across England and Wales. Our Members are private practice and not-for-profit (NfP) organisations, Law Centres, barristers and costs lawyers. Constituted in 1984, we are one of four bodies officially appointed to formally consult with Government on all legal aid contracting issues. Members are given the opportunity to directly input into our policy work, consultations, surveys and other work to improve the legal aid scheme and receive regular updates about important legal aid issues, operational matters, news and events.

As an organisation, we have been in constant communication with members throughout the sector since the lockdown began about the impact of the crisis on the civil and criminal justice system. These organisations express serious concerns about their ability to provide advice for existing clients, to respond to the needs of new clients who will need help over the coming months, and about their own viability in the face of sudden and expected reductions in casework and therefore income.

This briefing will touch upon some of the financial concerns of these providers and how further support from the Government will be needed to prevent the imminent collapse of a worrying proportion of legal aid providers and members of the third sector.

Financial issues

Many of our members have expressed concerns about how their firms and organisations will survive both during the lockdown period and the months that follow. They have spoken of an immediate disruption to cash flow, a loss in income and a huge reduction in the work available. In housing work, for example, all new possession cases were suspended in April for three months and all housing court duty schemes cancelled. Mental health lawyers and prison lawyers are unable to visit clients in mental health institutions and prisons and the use of video-link technology has been patchy and problematic. Court of Protection lawyers have seen new cases cease due to the vulnerable nature and location of their client base. For criminal firms, low end police station/magistrates court work continues, albeit at a much reduced rate, but these cases are generally either loss-making, or at best allow the firm to break even on costs. The larger cases, by contrast (those that may result in 2-3 week trials), which is where crime firms generally make their money, simply cannot go ahead in the current environment.

The LAA has responded to operational concerns raised by the sector in the initial weeks of the crisis. To that end, the LAA relaxed elements of the contracting regime that became impossible for providers to comply with, or comply with in all circumstances following lockdown measures and the move to remote court hearings. These included wet client signatures, office opening hours, obtaining evidence of means, maintaining duty solicitor slots, face-to-face supervision etc. What these measures cannot and will not do is to change the numbers of clients seeking legal advice in the middle of a global pandemic, either through the legal aid system or through private funding. This, at a time when providers remain liable for building rents, rates, utility bills and other costs on top of salaries. These will be problems faced by the entire legal sector. But unlike their City counterparts, many legal aid providers were on a financial knife-edge prior to this crisis, and the disruption to client access and court proceedings are hastening an economic collapse. Some members have reported having sufficient reserves to meet current costs for as little as 6 weeks, despite taking advantage of government measures such as furlough and rate relief. Combined with the already unenviable position of many legal aid providers prior to the crisis, the idea of incurring further loans and debt just to get things back to the previous status quo will not make financial sense for many in the sector.



Accordingly, there is a very real prospect that, without state support that goes above and beyond what is currently on offer through government relief schemes, a significant number of providers will collapse in the months ahead. The introduction of LASPO has already resulted in a significant deficit between client demand and the capacity of the legal aid sector to respond, and well-documented legal aid deserts across England and Wales. There will be a surge in client demand as soon as the lockdown is lifted, the courts re-open, embargoes on issuing possession claims are lifted, debt collection resumes, and criminal trials and police activity returns to something approaching normal. The scale of that surge is up for debate, with some commentators predicting a tsunami of demand. What remains true regardless, is that the government has a responsibility (we would argue a legal obligation) to ensure there is a sufficient supply of legal aid and other specialist advice providers to respond.

With that in mind, we would add that there can be no one size fits all response from the Ministry of Justice to the issue of financial sustainability. As an organisation, we have had a number of detailed conversations with providers indicating that the crisis is affecting them all in different ways. This reflects the diversity of business models, case mixes and client profiles in the legal aid sector, and the impact in terms of new and existing work differing across the various contract areas.

Questions

The Committee has kindly asked for suggestions as to possible questions that can be asked of the Ministers. Over the past few weeks, we (together with other representative bodies from the sector) have asked for greater transparency about the forms of financial relief being considered by the Ministry so that representative bodies can help to develop the thinking and ensure relief is targeted and will be effective. To date, while there has been an encouraging amount of engagement on the part of the LAA and MoJ, we have received little clarity as to any financial measures currently being considered.

We would also welcome access to LAA, MOJ and HMCTS data. In order to formulate a coherent plan for the providers, it would be useful to see how many new cases are being opened in each contract area. It would greatly assist our thinking if we were able to compare current figures with earlier months and the same period last year. We are conscious that some providers are feeling the pinch now, but others will feel the financial brunt in months to come as they are currently surviving by making the most of a system for claiming interim payments for work carried out on cases that commenced pre-lockdown.

Perhaps, as an organisation, our fundamental ask would be for a response from the Ministry of Justice that takes into account the wealth of evidence that has been provided to them as part of the LASPO consultation, the post-implementation Review and by representative bodies in response to the COVID-19 crisis over the past few weeks and that anticipates rather than reacts to the likely consequence that providers will collapse without financial support.