

Second Report of the Law Commission on the future of advice and legal support

GETTING IT RIGHT IN SOCIAL WELFARE LAW

The Law Commission's follow-up report

The Low
Commission

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Foreword by Lord Low of Dalston

It has been a little over a year since the Law Commission reported on its year-long inquiry. I am pleased to report that our ideas and recommendations have been well received by policymakers and across the political spectrum. I have heard no dissenting voices from our central proposition that there needs to be a cross-governmental long term strategy for supporting social welfare advice and legal support, especially through the non-profit sector. We are pleased to see the government acting on some of our concerns, by, for example, providing additional support for litigants-in-person, and undertaking new research on unmet legal needs and the capabilities of the advice sector.

However the situation for frontline advice has continued to deteriorate, and with it the options for citizens to resolve problems or obtain redress on social welfare law matters. Legal Aid provision appears to have been reduced further than the government originally intended. Demand has increased in some areas and costs have been displaced elsewhere. The non-profit Advice Sector's fragility is underlined by the fact that lifeline funding offered through the Big Lottery Advice Services Transition Fund (ASTF) ends in 2015, and the most recent local government spending settlement will impose further cuts to local government support.

The Commission's broad focus on social welfare law covers both advice and redress – including the prevention of disputes arising in the first place, getting decisions right first time, and public information and education on how our systems of civil and administrative justice work. As we have stressed to policymakers, we see support for social welfare law as a spectrum or continuum including public legal education, informal and formal information, general advice, specialist advice, legal help and legal representation. The more preventive work we can do at the beginning of this continuum, the less we should have to do at the end.

So it is in this vein that we are publishing a follow-up report which takes access to redress as its starting point. It contains new research and data, and builds on our earlier recommendations. As with our earlier report, we put 'systems thinking' at the heart of our approach to explore how services can become better focused on the needs of users and deliver efficiency gains by anticipating and preventing avoidable problems.

I am grateful to my fellow Commissioners and to the Legal Action Group for continuing to support our work. Too often Commissions publish reports, but there is no follow-up, so since publishing our report last year we have embarked on extensive advocacy around it, including attending the main Party Conferences. This has been made possible by the continued generosity of our funders

for which we are most grateful. So as we approach the General Election period in an unparalleled climate of citizen disengagement, I hope the Low Commission's work can be a catalyst for thinking and learning in the next Parliament about how to address unmet advice needs and the consequent disempowerment of citizens.

Colin Low

Executive summary

A great deal has happened since the Low Commission published its report on *Tackling the Advice Deficit*. New evidence is now emerging not just about the impact of civil legal aid reforms, but also on other changes to public services delivery and redress in the social welfare field. So the Commission is publishing this follow-up report to reflect on new research findings and drive our agenda forwards. Whilst it is possible to report some positives, such as the Ministry of Justice’s new scheme to support litigants in person, and that the Low Commission’s ideas have garnered much cross-party support from policymakers, the situation for frontline advice has continued to deteriorate, and with it the options of citizens to resolve or obtain redress on social welfare law matters. This follow-up report looks at developments since last year and the strategic challenges these raise both for the next government and the advice sector.

The landscape: advice and redress

Chapter 1 looks at the overall landscape for advice and redress, and what the overall data suggests, both for the accessibility of redress, and for incentivising better decision-making in government and other agencies taking decisions which involve social welfare law issues. Our ‘systems thinking’ starting point is that redress helps government and public bodies get things right while also helping citizens to access their rights, but the precondition for this is a well functioning system of information advice – both real and virtual – which starts with citizens capability (i.e. public legal education) and build on this with specialist casework and advice tools to deal with more complex matters and avert further escalation of social costs.

While it is difficult to draw ‘big picture’ conclusions from current data trends, some of the current statistics cause us concern such as:–

- the sudden collapse of welfare appeal volumes after consistent year on year rises, combined with additional complications over mandatory reconsideration and medical assessment backlogs;
- the rise in arrears, eviction and possession proceedings and enforcements the decline in judicial review volumes in the context of ongoing reforms in this area which may restrict access to public law claims;
- the rise in litigant in person volumes in the Family Courts;
- the decline in the number of people able to access specialist advice through CABx and other non-profit providers.

Welfare reform

Chapter 2 is devoted to welfare reform issues, taking a survey we conducted of 436 welfare rights advisers as an evidence baseline, combined with other evidence from independent review and analysis. We found huge issues around decision-making and redress procedures for Employment and Support Allowance (ESA) and other key disability benefits that provide a lifeline to the most vulnerable in society. In particular the mandatory reconsideration process – the new Department of Work and Pensions (DWP) internal review mechanism – looks increasingly dysfunctional. This dysfunction is further compounded by flawed medical assessments, the bar on benefits claims during reassessment, inadequate quality of information and guidance from the DWP and the Jobcentre Plus frontline, and the contraction of the advice sector’s specialist level welfare rights advice and support services.

LASPO impacts and Advice in Transition

The impact of LASPO on advice sector capacity is now becoming clearer, and it is profound. In what remains of the civil legal aid system, the evidence suggests that what is delivered is even less than the Government envisaged when LASPO was passed and that this is having wider damaging effects including passing on unintended costs to other parts of the public sector. The gateways for accessing legal aid are just too narrow and restrictive for clients. Both the NAO and the Public Accounts Committee have now criticised the design of civil legal aid reforms which they both say failed to consider the underlying evidence base or likely consequences. The Justice Select Committee is also investigating the impact of the reforms.

For the non-profit advice sector there has been a multiplier impact combined with additional cuts to local government funding, and uncertainty over the future of significant Big Lottery funding (i.e. the Advice Services Transition Fund). While the sector has responded positively to the changes by adapting service models and developing new partnerships, frontline agencies are increasingly ‘running out of road’. We are concerned that the current shifting funding patterns are incompatible with sustainable services, equality of access to the best possible advice, quality assurance, cooperation across the sector, making best use of information technology and delivering effective feedback to the public sector. Our strategy aims to address these issues and provide for a stable and sustainable future for advice.

Advice and health

One direction of travel which merits greater consideration is the further integration of advice with health and social care services, which are themselves coming closer together in light of the Care Act 2014. The Care Act duty around information and advice could potentially be a positive development for the

advice sector, but there is much work that needs to be done to embed advice in how services are delivered, and there are complex policy dynamics around public health, mental health, and preventative services - all areas which social welfare law issues and advice touch on. Our research from polling GPs on the incidence of social welfare problems presenting in primary care settings suggests a strong case for an advice-health link up.

In the UK, some commissioners of local health and care services have pioneered the provision of advice services as part of community and primary care, as well as in some in mental health settings. These advice initiatives have been funded in the expectation that such social interventions can positively improve recipients' health. Overall the research evidence – from the British Medical Journal to Sir Michael Marmot's work on public health – supports this reasoning, indicating clearly that poverty and social welfare law problems are routinely associated with ill-health, especially mental ill-health. However, such provision is patchy across the country and there is a need for a more systemic link between health and advice commissioning. Wellbeing is the overarching framing principle for NHS and social care policy; social welfare law work and its outcomes could also link to wellbeing advice and wellbeing outcomes.

Conclusions

The Low Commission's follow-up report is packed with evidence, and is agenda setting, developing our original recommendations around building a strategy for social welfare law advice that is realistic, deliverable, focused on prevention and systemic change. We also make follow-up recommendations around access to redress, reform of DWP processes, the case for extending transitional funding and how advice sector feedback and priorities could be better embedded in government.

It is a systems thinking package with a systems thinking message for government, placing prevention, information and advice at the heart of citizens' interactions with public services and learning the lessons from recent reforms of legal aid.

Recommendations

The recommendations in our 2014 report are carried over into this report, in particular our core proposals that there should be a National Strategy for Advice and Legal Support, supported by a ten-year National Advice and Legal Support Fund to be administered by the Big Lottery Fund. These will now be issues for the next Parliament to consider. However, we also make some new and refined recommendations taking into account developments over the last year. Our key recommendations are that:–

- **The Ministry of Justice should bring forward the post-implementation review of LASPO, drawing on all the evidence, sense-check**

excluded areas of law, gateway approaches, and look to widen the remit of housing advice to support preventative interventions.

- **The Cabinet Office should work with the Advice Sector in taking forward any of the Public Administration Select Committee’s recommendations on streamlined redress.**
- **The Ministry of Justice should undertake a cost-benefit analysis of funding independent duty specialist advice schemes along the lines of housing possession court duty schemes at busy tribunal centres, and should evaluate how ADR schemes are working within HMTCS with a view to further roll out.**
- **The DWP should reform the “mandatory reconsideration” process for challenging welfare decisions to make it fit for purpose as outlined in proposals in this report.**
- **The Department for Work and Pensions should be required to make a strategic contribution to the National Advice and Legal Support Fund.**
- **The Advice Services Transition Funding (ASTF) programme should be continued for another year.**
- **Health and social care commissioners should always ensure that their plans include social welfare advice and legal support provision.**
- **The next UK Government should develop a National Strategy for Advice and Legal Support, supported by a ten-year National Advice and Legal Support Fund to be administered by the Big Lottery Fund.**
- **Local authorities should work with their local advice sector to co-produce ten-year local advice and legal support plans, to ensure the provision of a basic level of information and advice, including some face-to-face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund.**
- **Each Government Department with major responsibilities for the delivery of public services involving social welfare matters should consider appointing an “Advice Champion” with shared responsibility for the advice and legal support strategy.**
- **The next Comprehensive Spending Review (CSR) should consider how Government Departments’ funding for advice could be consolidated into a National Advice and Legal Support Fund.**

Introduction

The problems of everyday life come in many shapes and sizes. Surveys on social welfare law problems – which we take to include welfare benefits issues, community care, debt, employment, housing, immigration and asylum, and education (such as special educational needs) – have consistently shown high levels of advice need following findings that around third of the population experience civil legal problems.¹ Often several problems come at once, one triggering another, becoming particularly prevalent in a time of economic instability. Support comes from a diverse economy of advice providers, but it is not enough and is suffering from public funding cuts.

The Low Commission emerged out of a need to take an independent look at the issues facing social welfare advice, in light of the massive changes and challenges ushered in by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and cuts in local government funding. So the Commission's brief was to develop a strategy for the future provision of Social Welfare Law services, which:–

- meets the need for the public, particularly the poor and marginalised, to have access to good quality independent legal advice;
- is informed by an analysis of the impact of funding changes and by an assessment of what can realistically be delivered and supported in the future;
- influences the thinking, programmes and manifestos of the political parties in the run up to the 2015 election and beyond;
- looks at ways of reducing demand for advice and legal support, as well as investigating new approaches to delivery and funding.

The Low Commission published its report *Tackling the Advice Deficit* in January 2014.² The Commission's key recommendations were that:–

- The next UK government should develop a National Strategy for Advice and Legal Support, with a focus on prevention and Public Legal Education (PLE).
- The next UK government should establish a ten-year National Advice and Legal Support Fund to be administered by the Big Lottery Fund.
- Local authorities, or groups of local authorities, should co-produce or commission local advice and legal support plans with local not-for-profit and commercial advice agencies.

1 *Civil and Social Justice Survey* LSRC 2006–2009

2 <http://www.lowcommission.org.uk/dyn/1389221772932/Low-Commission-Report-FINAL-VERSION.pdf>

- Central and local government should act to reduce preventable demand, require DWP to pay for upheld appeals, and adapt Courts and Tribunals' operating models to meet the needs of litigants with little or no support.

In this subsequent report we highlight the continuing deficit or gaps in advice provision, and how social welfare law issues intersect with public services, redress, welfare reform and our health and social care system. We assess the emerging evidence and take welfare decision-making as a case study, drawing on frontline evidence from welfare rights advisers from a survey to which over 430 advisers responded. We argue that there are lessons to be learnt from LASPO that are applicable to other areas, and wider there are implications from the shifting funding landscape in local authorities and other public bodies. Our key concerns are:–

- Despite initiatives from Government to improve customer experience of public services there is a growing “redress gap” which makes it harder to challenge and access basic rights or services.
- That lack of timely, early quality advice and information feeds this redress gap and makes services less accountable to their users.
- The welfare system is a case in point, vulnerable claimants are not always getting access to basic support due to blockages and poor system design.
- The effects of LASPO have gone beyond what was intended and are impacting adversely on access, and on the advice economy, with a multiplier of other cuts, and with knock-on consequences and costs elsewhere in the system.
- Opportunities to address these issues, such as joined up advice and wellbeing plans, are being missed due to the lack of any joined up strategic approach.

There is no more important time to be thinking about social welfare law and how it contributes to service improvement and redress. Our systems for reviewing, challenging or correcting individual state, agency and corporate decisions on individuals' entitlement, for example welfare benefit claims, are going through profound change. Reforms to judicial review, legal aid scope, tribunal procedures and internal reviews, alongside developments in public services and online technologies are changing the landscape of how citizens can access services and obtain redress when dealing with public authorities. The range of legal and non-legal redress procedures are sometimes referred as the “administrative justice system”, but for the purposes of this report we just refer to redress – or to put it more simply getting it right and putting it right.

Redress is a hugely important principle in any large service delivery organisation whether public or private – it is about ensuring that customers receive what they're entitled to and get a good service, but it is also about accountability and feedback when things go wrong. In the private sector, the best companies take complaints, including those progressed through Ombudsmen, arbitrators or the

What is Administrative Justice?

The overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including:

- (a) the procedures for making such decisions
- (b) the law under which such decisions are made, and
- (c) the systems for resolving disputes and airing grievances in relation to such decisions

Tribunals, Courts and Enforcement Act 2007 (Schedule 7, 13(4))

courts as a valuable source of market intelligence and customer feedback, and are sensitive to reputational impact. Yet public sector leaders all too often fail to learn how to treat complaints and appeals as valuable sources of intelligence and learning about what is really happening on the front line. And in an increasingly mixed economy of contracted out or privately operated public services, it can be difficult to know where exactly accountability lies, and what checks and balances operate over millions of decisions that affect peoples' lives.

No Government or public body, of course, wants to deal with litigation against it, and nor is the legal process necessarily the most appropriate way to deliver redress as legal procedures are complex, costly and often prolonged. Resolving disputes need not always be a contentious process, although it is necessary to maintain the strong 'backstop' of legal challenge and remedies so that it is clear to public bodies that all decision-making must operate under the rule of law, and that citizens must be treated fairly under the rules in all their interactions with the state.

For any system of redress to work, citizens need a roadmap provided through networks or hubs of information, advice and legal support to help people navigate through redress processes. The Low Commission spent a year looking at access to advice and legal support on social welfare law issues and fully recognises that a litigation or compensation culture approach is not the way forwards. The Commission concluded that:–

- the support needs to start with public legal education (PLE), information and guidance, preventative measures and early intervention and action rather than allowing problems to escalate;
- further work needs to be undertaken on both incentivising a "right first time" culture and fair, accurate decision-making, and on simplifying legal and appeals systems to make them more user-friendly;
- different service offerings need to be developed to meet different types of need, built around a basic level of provision of information and advice and

embedding advice in settings where people regularly go, such as GP surgeries and community centres, and within the redress system itself.

There is no single path to redress. Increasingly however, government is placing confidence in ‘internal review’ processes, rather than extrinsic and independent review and appeal procedures. The most obvious example of this approach in practice is the introduction of ‘mandatory reconsideration’ in welfare decisions. But just how robust are such internal review procedures, how can we ensure they are conducted thoroughly at arms length from decision-makers, and what information and advice do claimants need to get a fair hearing? And how accessible are second stage appeal procedures, as a result of these changes?

Whilst in many sectors complaints and redress procedures have been simplified with more streamlined platforms through which redress can be sought, as far as social welfare law and administration goes our research suggests that there is a long way to go. This report also reviews the trends and statistics from the last two years since major legislative changes were brought into effect, and looks at what has happened in the courts and tribunal system. Most importantly this report looks at access to advice and support in the context of obtaining redress for social welfare issues, improving decision-making, and understanding the adverse impacts of changes in the advice and legal support funding landscape such as the implementation of LASPO and the squeeze on local government support. Increasingly Select Committees and audit bodies are repeating our concerns about the design of the Government’s civil legal aid reforms, and that the knock-on consequences of withdrawing advice provision also has knock-on costs. Furthermore the consequences are long-term, which short-term transition funding initiatives alone cannot address.

A key earlier recommendation from the Low Commission was that advice should be located in familiar settings such as health services, so we have undertaken further work on this and included a further chapter on developing the links between advice, health, and social care and support sectors. The health benefits of advice is a complex area which has spurred significant research, especially in the context of public health, managing long-term conditions, reducing health inequalities and addressing the stress and mental wellbeing issues for those experiencing social welfare law problems. It is made even more complex but structural reforms in local NHS, care and public health bodies. However, by identifying good practice around what works we see that there could be potential ‘win-win’ opportunities for collaborative models and joined up frameworks for health, wellbeing and advice,

This report therefore follows on from the Low Commission’s report on tackling the advice deficit, drawing together threads of research on what sort of advice and support citizens may need to ensure that public bodies maintain high standards of customer services – standards that are inevitably paced under strain by budget constraints and inflexibilities. One year on from the Low Com-

mission's report we are beginning to get a more rounded picture of the impact of different reforms, from legal aid to welfare appeals. When the Low Commission's report was launched in January 2014 its analysis of the impact of legal aid reform was necessarily incomplete, as the new system had only been operational for six months. So in this second report we aim to fill the gaps and refresh our recommendations.

Our primary objective remains the same; a strategy for social welfare advice. The Low Commission believes that government needs to develop a strategy for the longer term for social welfare advice and legal support, encourage all Departments to buy into this strategy, and to use this strategy to set a sustainable framework within which local authorities can take the lead in commissioning advice services in a way that adds value to citizens experience of public services.

CHAPTER 1

The Landscape: Redress and Advice

The multiple strands of administrative justice

- 1.1 There is no single corrective mechanism for citizens to use when the state fails to deliver for its citizens. Given the diversity of public services, and the fact that individual interactions with public bodies take place within a contested and changing policy space, there are inevitably multiple channels through which citizens access their rights. So while administrative justice can appear to be fragmented, it is underpinned by what Professor Genn has called multiple “paths to justice.”³ However, as extensive reforms to public services start to bed in it is fundamental that the redress system evolves to match new service provision and ensure that service users have accessible and appropriate routes to redress.
- 1.2 The National Audit Office (NAO) has described public redress in the following terms:⁴

“The various systems of public redress allow citizens to seek remedies for what they perceive to be poor treatment, mistakes, faults or injustices in their dealings with departments or agencies. They are the arrangements for getting things put right, remedying grievances, securing a second view or appealing a disputed decision and, where compensation is appropriate, the means through which this can be sought. Even where no fault is found, people should benefit from the assurance that they have been fairly treated and that decisions have been correctly made under the relevant rules.”

The current government has now adopted a strategic work-programme for Administrative Justice and Tribunals.⁵ This strategy recognises that:–

“The administrative justice system encompasses a broad group of bodies, functions and processes which enable people to raise grievances challenge and resolve disputes against administrative or executive decisions made by or on behalf of the state. The system is also concerned with the quality of original decision making and the routes for challenging maladministration.”

In a 2010 report on Administrative Redress,⁶ the Law Commission defined pillars of redress as follows:–

3 Genn H, *Paths to Justice*, Hart (1999)

4 *Citizen Redress: What citizens can do if things go wrong with public services* NAO (2005)

5 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217315/admin-justice-tribs-strategic-work-programme.pdf

6 *Administrative Redress: Public Bodies and the Citizen*, Law Commission (2010)

- 1 Internal mechanisms for redress, such as formal complaint procedures.
2. External, non-court, avenues of redress, such as public inquiries and tribunals
3. Public sector ombudsmen.
4. Court action.

It is not the purpose of our report to examine relationships between the different redress channels or suggest a hierarchy for redress; the Public Law Project (PLP) in their report on the design of redress systems has conceptually explored the functions of, and relationships between, different redress mechanisms.⁷ The PLP's study points to different models of accountability which underpin the progression of redress systems – for example how complaints “filter” through redress processes, and how one redress mechanism may function to provide oversight of another. The landscape however continues to be evolutionary. In this context there is a hugely important role for independent information and advice to help citizens keep abreast of the changing landscape and different ways to resolve problems. We come on to the role of advice later in this chapter.

What is clear, however, is that the trend towards discouraging court-based dispute resolution is now well-set and that simultaneously efforts to encourage and enhance other methods of dispute resolution are becoming increasingly embedded. This direction of travel can be seen as an ongoing one since the last Government's 2004 White Paper *Transforming Public Services: Complaints, Redress and Tribunals* set out the idea of ‘proportionate dispute resolution’ (PDR) as a strategy for preventing disputes between citizens and public bodies, and encouraging non-judicial resolution.

The practical key distinction that needs to be understood from a policy-making perspective is the difference between extrinsic **legal adjudication redress and appeal** procedures provided by tribunals and courts, and **administrative redress and complaint handling** channels provided for either within agencies and/or with recourse to independent Ombudsman services or other independent complaint handlers with specific jurisdictions and powers to make (usually) non-binding recommendations. But while the distinction between binding legal remedies, and voluntary resolution should not be fudged, we also agree with the AJTC that it is simplistic to categorise all grievances as only one of two: an appeal against a decision or a complaint about service with separate paths to redress.⁸ Users are more interested in outcomes than process, and all redress and support systems need to be designed to ensure that users do not get lost in a maze.

7 Bondy V, and Le Seuer A, *Designing redress: a study about grievances against public bodies* Public Law Project (2012) <http://www.publiclawproject.org.uk/resources/123/designing-redress-a-study-about-grievances-against-public-bodies>

8 *Putting it Right* AJTC (2012) <http://ajtc.justice.gov.uk/docs/putting-it-right.pdf>

The effective processing of redress, through whichever channel, can act to improve the efficiency and quality of public administration. The Public Administration Select Committee (PASC) in its 2013–2014 inquiry has challenged Government to up its game in the way that Government Departments and public bodies deal with complaints, and called on the Cabinet Office to introduce a single point of contact for citizens to make complaints about Government departments and agencies and that “This single point of contact should be active rather than passive in helping complainants navigate the systems and also to frame their complaints.”⁹ The PASC has also called for a single Public Sector Ombudsman for England and for a Minister for government policy on complaints handling.

However, it could be argued that any complaints mechanism is only as good as the system it supports, which is why feedback from the frontline and the advice sector is so important. On one level all complaints throughput can be seen as ‘failure demand’. As the PASC has said in an earlier report, it “regards the high level of successful appeals and complaints against decisions by government departments as an indication of widespread administrative failure. Government should aim to produce decisions which are right first time and command a high degree of confidence. The scale of the injustice and the cost to the taxpayer caused by this poor decision-making are wholly unacceptable.”¹⁰

But institutional and organisational learning from the evidence base of grievances, complaints, adjudication and redress also offers opportunities for reshaping public services and provides important insights into the needs and vulnerabilities of public services users. This requires that policymakers to look beyond redress actions as individual one-off events. Many users of public services, who are often the most vulnerable in society, do not have the information, support, skills or resources to pursue their case even when decisions are incorrect or a complaint or appeal would be justified. Therefore the appropriate view of redress is that it needs to make a difference for all service users. Identifying systemic problems with original decision-making or assessment processes is the important first step. For example Professor Harrington in his first Independent Review of the Work Capability Assessment (used for Employment Support Allowance determinations) concluded that “Jobcentre Plus Decision Makers do not in practice make decisions, but instead they typically ‘rubber stamp’ the advice provided through the Atos assessment.”¹¹

9 Complaints and Ombudsman, Public Administration Select Committee, (2012) <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-administration-select-committee/news/complaints-and-ombudsman-joint-special-report/>

10 *Future oversight of administrative justice*, PASC Session 2012/12, HC 1621

11 Harrington, *Work Capability Assessment independent review – year 1* DWP (2010) <https://www.gov.uk/government/publications/work-capability-assessment-independent-review-year-1>

Since 2011 Her Majesty’s Courts and Tribunals Service (HMCTS) has had responsibility for the administration of a unified courts and tribunals system. The agency now has an objective to ‘work with government departments and agencies, as appropriate, to improve the quality and timeliness of their decision-making in order to reduce the number of cases coming before courts and tribunals’.¹² One significant feedback scheme that has now been introduced is the “summary reasons project” in social security appeals through which the Department for Work and Pensions (DWP) can work with HMCTS to improve feedback from the tribunal. The tribunal produces summary reasons in a number of allowed appeals and a sample of summary reasons is then been analysed by the Department. According to the DWP, the project has demonstrated the value of collecting and analysing tribunal feedback, and has resulted in training for decision-makers, reviewing the guidance for decision-makers, looking to identify trends, and pulling out useful case studies. In July 2014, the Work and Pensions Select Committee welcomed greater feedback from appeals through the provision of summary reasons by tribunal judges, but noted that the feedback was not being used effectively by the DWP to improve the initial decision-making process.¹³ We explore issues in social security redress in more detail in chapter 2.

The trends concerning redress actions, both for internal reviews and complaints, and those that enter the legal jurisdiction and appeal options need to be regularly analysed. They should also be used to inform policy. However, aggregating such data will require a more streamlined approach to complaint handling in Government. We support the recommendations of PASC that the Cabinet Office should lead on complaints handling policy, analysis, a single portal design and feedback processes, and potentially one wider public sector Ombudsman jurisdiction. But the Government should go further and engage the advice sector in the design of portals and redress systems, both to ensure that new redress channels are road tested for accessibility and to ensure that the advice sector is equipped with the necessary tools to help complainants navigate the system. **We recommend that the Cabinet Office, in taking forward any of the PASC’s recommendations, should involve advice sector umbrella bodies in the co-production of new redress schemes.**

While some parts of government understand the importance of using redress claims and data for institutional learning, we believe that there is still some way to go and recent debates about the role of judicial review (JR), including the possibility of restricting JR to only those claims that are ‘highly likely’ to

12 HMCTS https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386436/hmcts-business-plan-2013-14.pdf

13 *Employment and Support Allowance and Work Capability Assessments*, Work and Pensions Select Committee – First Report (2014) <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/302/30202.htm>

substantially change decisions, reveals a deep hostility within Whitehall to taking account of legal redress procedures.¹⁴ Redress should be central to the context of the government's ambitious public services reform project to deliver 'Open Public Services' in which levers of power, information and choice are shifted away from Whitehall to communities and consumers. The government's public services White Paper sees redress as the key antidote to restricted choice and the 'take-it-or-leave' it cultures that permeate public service delivery.¹⁵ The White Paper goes on to assert that where new policy frameworks for choice afford new rights for public service users new redress powers should follow. An obvious example of this is the reform to community care options, legal regulatory framework and assessments under the Care Act 2014; the Local Government Ombudsman (LGO) now has an extended complaints handling jurisdiction over both public and private social care provision and now hears complaints from those who have arranged their own adult social care; and new rights and duties in relation to local authority's responsibilities for the social care system may be subject to testing in the courts.

Below we look more closely at both the administrative and legal channels of redress more closely and the current data trends.

Complaints, reviews and ombudsmen

Citizen redress procedures have an importance for the overall quality of public services that goes far beyond their direct costs. Complaints are an important source of feedback to central departments and agencies about where things are perceived by citizens as going wrong.

Citizen Redress: What citizens can do if things go wrong with public services NAO 2005

There is no central data collation or analysis of first level complaints within departments and agencies, although specific schemes hold their own data. Past estimates and data collation by the NAO suggest that every year there around 1.4 million complaints about public services are made through various redress systems. These complaints are processed at around an annual cost of £510 million. Most complaints systems have to a two-tier model with a complainant's first port of call to front-line staff at a local level and thereafter grievances may be pursued to a customer services unit or a line manager. Some departments and agencies have an independent complaints tier at the apex of their complaints

14 See *Hansard* Debates on the Criminal Justice and Courts Bill

15 *Open Public Services*, Cabinet Office (2011) <https://www.gov.uk/government/publications/open-public-services-white-paper>

structure or an externally appointed official,¹⁶ but usually the next external tier is an Ombudsman service

The Parliamentary Ombudsman now publishes data on the number of complaints that it received relating to every UK government department. The published data from 2012 to 2014 and analysis reveals big variations between departments, with three departments showing high numbers of complaints received following year-on-year increases. In 2012 these were:¹⁷

- Home Office (1,417 complaints) – an 845 increase in complaints overall. Over 80% of Home Office complaints related to the UK Border Agency – a 97% year-on-year increase.
- Department for Work and Pensions (2,695 complaints) – a 135 increase in complaints overall. The Independent Case Examiner saw a 32% increase and Jobcentre Plus saw a 20% per cent increase.
- Ministry of Justice (1,109 complaints) – a 10% increase in complaints overall, including a 27% increase in complaints about HM Courts and Tribunals Service.

The 2013 data shows a slight decrease in complaint volumes.¹⁸ This does not show the full picture though as the Parliamentary Ombudsman is not the only public body complaint handler at second tier level; the LGO and the Housing Ombudsman for example also have significant jurisdictions. The PASC considers that at second tier complainants have to navigate a bewildering “maze”, is and is recommending radical simplification.¹⁹

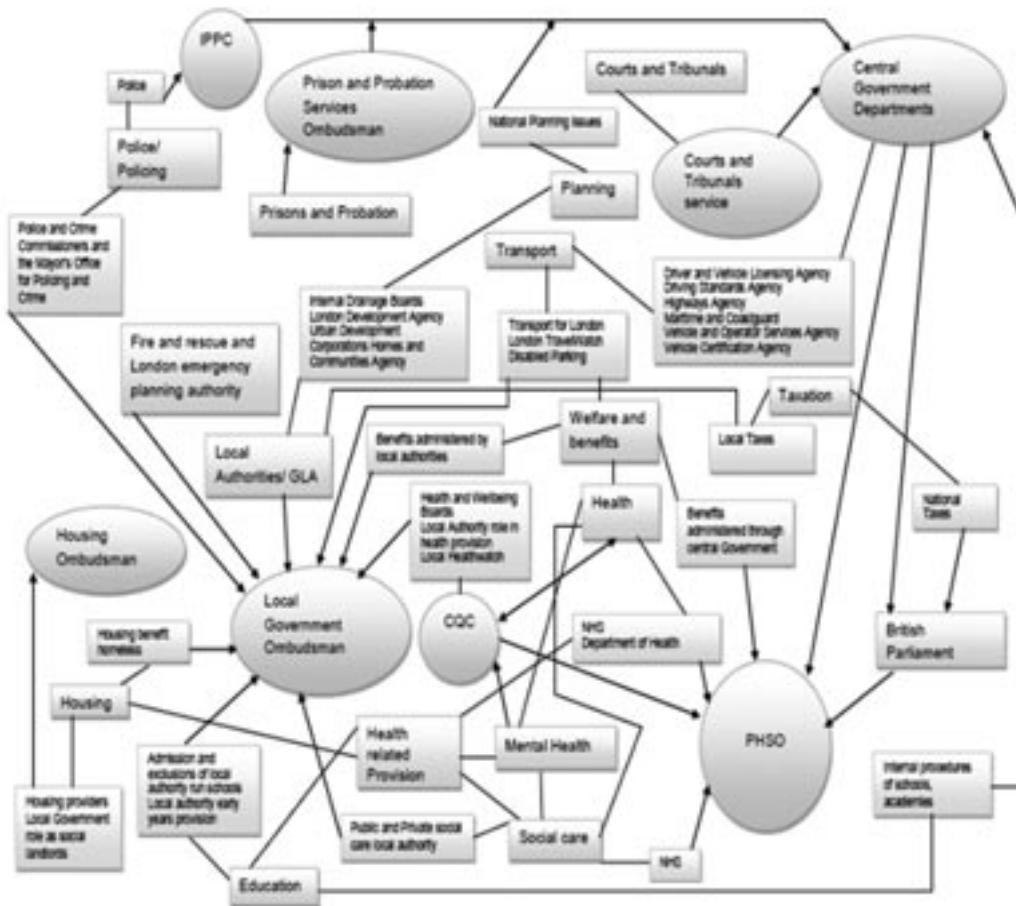
Internal review is another redress mechanism that is increasingly recommended good practice for services managers. Internal review has always been a feature of social security decision-making in some form, and also in other areas such as criminal injuries compensation and indirect taxation. It is important to note, however, that an internal review does not constitute an independent and impartial tribunal for the purposes of Article 6(1) of the European Convention on Human Rights (ECHR). Nonetheless we would argue that for internal review to be effective, or indeed operate as triage process which can resolve issues satisfactorily so that only the more complex problems need to proceed to external adjudication, then the process has to operate on the basis of high

16 For example, the Adjudicator Office acts as referee looking into complaints about HM Revenue & Customs (HMRC), the Valuation Office Agency (VOA) and The Insolvency Service, across the United Kingdom.

17 <http://www.ombudsman.org.uk/about-us/news-centre/press-releases/2013/new-analysis-of-complaints-by-ombudsman-shows-government-departments-need-to-raise-their-game>

18 Complaints Handling Report: Parliamentary Ombudsman (2013) http://www.ombudsman.org.uk/_data/assets/pdf_file/0005/25259/FINAL_Government_Complaint_Handling_report_2013.pdf

19 *More Complaints please*, Public Administration Select Committee, 12th Report (2013) <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/229/22902.htm>



The Complaints Maze (Source, Local Government Ombudsman)

standards of impartiality taking a genuinely more considered and independent view than the initial decision-maker.

We consider the way that the welfare system works is a case in point. The Welfare Reform Act 2012 introduced a number of changes to the way that reconsiderations (internal reviews) and appeals are handled so that claimants disputing a decision must follow an escalating process of ‘mandatory reconsideration’ and formal appeal. But there are profound problems with the mandatory reconsideration process which can have adverse effects for claimants. We discuss these in further detail in the next chapter.

Private redress

Debates about the future of non-court based redress systems in the public sector, are mirrored by debates about private sector redress especially around financial and consumer issues. StepChange Debt Charity are campaigning for wide-ranging reforms to how debt issues are resolved, with far greater emphasis on non-court processes, including easier methods of debt right-off and cooling off with creditors. But StepChange also stresses that for these solutions to work there also needs to be a scaling up of free debt advice, whether funded through

regulatory levies or other mechanisms.²⁰ We support StepChange’s proposals on these issues and note the risks that absence of free advice on money matters opens the door to a range of private market of intermediary advice or credit suppliers whose costs to the consumer may compound debtors’ problems. A recent example has been the issues around fee charging claims management companies offering PPI redress. Frequently, commercial services such as debt management companies have presented regulatory problems and costs for government to deal with; we are concerned that dealing with these problems may come at the expense of supporting more quality assured free advice from the non-profit sector.

The multiplicity of Ombudsman schemes with different powers covering private sector and consumer markets reflects a similar fragmentary pattern to that of the public sector, and there have been calls for reform to streamline redress systems across linked sectors and markets so that problems are less likely to fall between the redress ‘stools’. Both Which? and the Co-operative Party for example have called for the establishment of a single ‘Consumer Champion Ombudsman’, so that consumers who feel ripped off by energy firms, high-street stores, letting-agents and mobile phone companies would be able to direct their complaints at a single, all-powerful watchdog rather than battling with as many as 17 different Ombudsmen as they do now.²¹ There are also long running debates about whether statutory Ombudsman schemes covering financial, legal, private property transactions and other professional services might be joined up more effectively.

The Labour Party’s policy review has looked at joining up enforcement mechanisms and suggested that regulator levied fines against corporations could be used to establish a ‘fighting fund’ to support consumer advice, advocacy and enforcement activity.²² This policy thinking is also echoed by the Centre for Social Justice, a centre for think-tank, which recommends that debt advice should be funded by a range of regulatory bodies using regulatory powers to levy sectors that cause problem consumer debt.²³ The Commission on financial inclusion is also looking at how the financial sector could be reformed to support debt and money advice, and to improve consumer rights and redress in financial services.²⁴ It is beyond the scope of the Low Commission’s remit to make recommendations on regulatory policy issues, however we do see a case for Government investigating ‘single portal’ approaches for regulators’ redress schemes, with strong links between any single portal and the advice sector, in

20 *Action Plan on Problem Debt* StepChange 2014 https://www.stepchange.org/Portals/0/documents/media/reports/additionalreports/StepChange_Action_Plan_on_Problem_Debt_2015.pdf

21 <http://party.coop/2013/12/19/consumers-need-a-single-consumer-champion/>

22 Mayo, E., *Confidence and Competitiveness* Labour Party (2012) <http://www.labouremail.org.uk/files/uploads/ccb0b557-a836-3b44-d55d-e7b5848a942d.pdf?tmtid=41386-9699-2-2128-510329>

23 *Maxed Out* CSJ (2014) <http://www.centreforsocialjustice.org.uk/publications/maxed-out>

24 <http://www.financialinclusioncommission.org.uk/>

much the same way as PASC has recommended for the public sector and administrative justice. We also see potential for a greater role for market regulators in supporting debt advice and have previously argued that the FCA should be raising its levy against high-cost credit providers to support the Money Advice Service and its partners in the non-profit advice sector.

Appeals, Court and Tribunal jurisdictions

The availability of appeals and tribunals options is intended to provide an effective incentive for officials to make considered decisions which are right first time. Providing a range of administrative procedures for citizens to seek remedies or redress is also a key area of civil rights, providing vital safeguards against arbitrary or ill-founded decision-making by government organisations.

Citizen Redress: What citizens can do if things go wrong with public services NAO 2005

In most jurisdictions the data shows a decline in volumes of cases and through-put over the past two years, coinciding with the introduction of legal aid and tribunal reforms. Over the longer term however, the number of cases going to appeal or judicial review have been increasing.

Tribunals

The caseload for tribunals has generally been increasing in recent years; it rose by over 50% in the five years between 2006–2007 and 2010–2011, but fell back by 11% in 2011–2012 to a little under 740,000 receipts. More recent data, however, has shown a subsequent peak and trough with both receipts and disposals falling to an all-time low (see Figure 1).

As social security is the largest jurisdiction, this tends to drive the overall trend as demonstrated below (see Figure 2).

It would be an oversimplification to ascribe these trends to any single factor such as a reduction in legal aid advice through legal aid scope changes, or the introduction of fees and procedural reforms in some jurisdictions. It is more likely that there are multiple factors at play. We particularly note that:–

- The Social Entitlement Chamber has the largest increases followed by decreases particularly in Employment and Support Allowance appeals; we explore this trend in more detail, and the drivers behind it, in the next chapter
- In the immigration tribunal case volumes may be affected by statutory and immigration policy reforms.
- In the Employment Tribunal the new fee regime has had an impact, but so too has the ACAS early conciliation scheme which requires that potential

Figure 1. Receipts and disposals for all Tribunals, 2008/09 to 2014/15

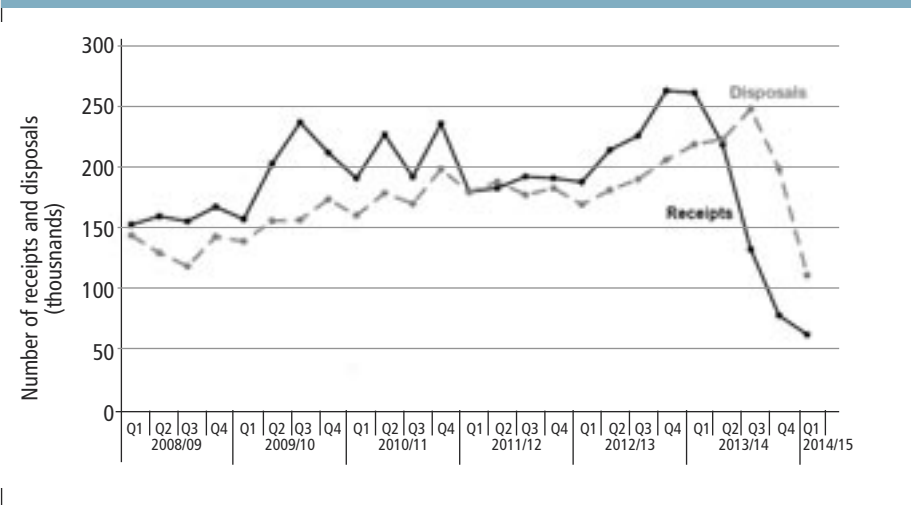
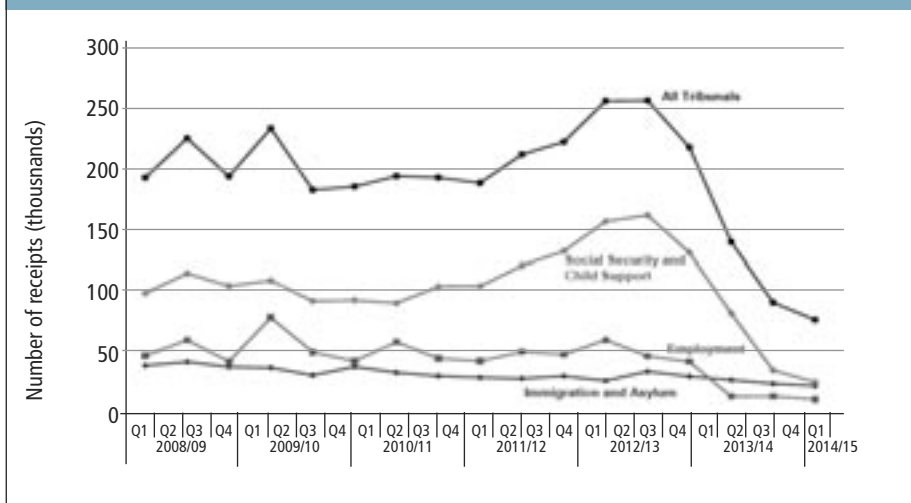


Figure 2. Tribunal receipts by jurisdiction, 2008/09 to 2014/15



Tribunal Statistics, Ministry of Justice 2014

claimants must notify ACAS of a potential claim before making a claim to the tribunal.

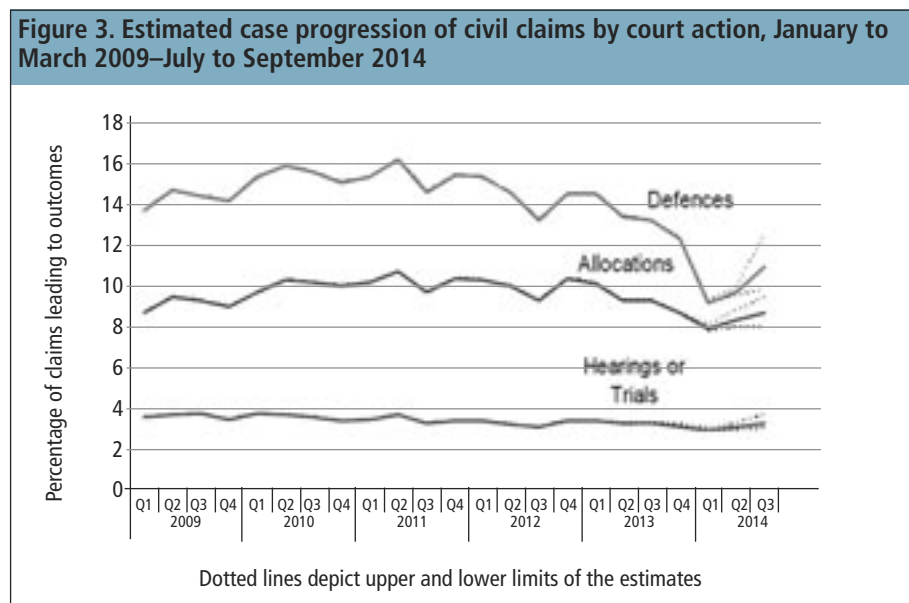
We continue to be concerned that not enough is done to feed back tribunal decisions to decision-makers and policymakers in a manner that can have an impact or drive systemic change. For example in 2013, the Home Affairs Committee noted that the substandard quality of asylum decision making is compounded by the inability of case workers to learn from their mistakes.²⁵ The Independent Chief Inspector of Immigration recommended in 2009 that the Home Office analyse the reasons why it was losing appeals in order to improve

²⁵ Home Affairs Committee – 15th Report: *The work of the Immigration Directorates* (April-September 2013) <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/820/82006.htm#a26>

the decision-making standards, but this recommendation has not been fully implemented. The Committee recommended that decision-makers should view every successful appeal as a learning opportunity, recognising that not all successful appeals are the result of poor decision-making or administrative failure. When appeals are upheld, decision-makers should, as a matter of course, have this drawn to their attention and be given the chance to discuss the reasons for appellate decisions with more experienced peers or senior colleagues.

Civil courts

By contrast to the corresponding period for tribunals, the number of cases going through the civil courts has been rising, a departure in general downward trends over recent years (the number of claims between 2006 and 2012 went from 2.1 million to a low of 1.4 million). In July to September 2014, courts dealt with 407,000 claims (12% higher than the same quarter last year). The number of judgements reached its highest figure since 2009 at 224,000 and in addition, the number of warrants also showed an increase of 12% to 64,000 compared with the same period in 2013. In contrast, the number of defences stands at 45,000, a 21% decrease compared to the same period in 2013 which does suggest less capability to contest proceedings following on from legal aid cuts. The data also shows up an increasing number of enforcement orders being issued. (See Figure 3.)



Court Statistics, Ministry of Justice 2014

A particularly worrying trend in civil justice has been the large increase in the number of rented housing eviction claims. The number of landlord possession claims in County Courts had been falling from 194,645 in 2002 to 134,961 in 2010, but has since increased by 26% to 170,451 in 2013. This increase has been in stark contrast to the 29% decline in the number of mortgage possession claims over the same period.

A number of changes to Council Tax and Housing Benefit combined with rising rents and rising numbers of renters may be factors in this, and there is growing evidence that ‘retaliatory eviction’ is also becoming a bigger problem. Shelter estimates that this issue affects up to a quarter of a million renters.²⁶ So it is essential that tenants are able to access early advice and specialist advice, and it is interesting that Citizens Advice’s data records a recent increase in debt inquiries concerning social landlord rent arrears.²⁷ While some legal aid remains available for housing or debt issues, it is limited to persons at risk of repossession or eviction, and to a few other limited circumstances. This is a counterintuitive approach and creates a perverse incentive to wait until things reach a crisis point before they can get any advice. As a result, the situation often escalates to a point where nothing can be done, often because rent arrears have reached a level where it is unrealistic to clear them, when early advice would have produced an effective action plan.

We therefore repeat and adapt our recommendations from our initial report that:

- **The scope of housing legal aid should be widened so that it is not just those faced with immediate loss of their home who can get legal assistance, but also to assist those who could potentially lose their home, including cases involving housing disrepair and the right to quiet enjoyment (protection from harassment and unlawful eviction), and provision for disbursements in order to support housing benefit advice work.**
- **The government should revisit the Law Commission’s proposals on housing dispute resolution, including their proposals on moving cases to a specialist tribunal**

Judicial Review

As regards judicial review (JR) cases there has been a sharp decrease in the total number of JR applications lodged, due in part to the transfer of immigration and asylum Judicial Reviews to the Upper Tribunal for Immigration and Asylum Cases (UTIAC). From January to September 2014, 3,000 applications were lodged, compared with around 15,500 in the whole of 2013. Prior to this, the number of applications had been rising over a 10 year period. Since the Law Commission reported there have also been changes to the way legal aid can fund Judicial Reviews including limitations on work that can be undertaken prior to securing court permission for JRs to progress. Given the low volumes we do not think that now is the time to consider introducing any further restrictions to judicial review.

²⁶ APPG for the Private Rented Sector <http://www.rla.org.uk/documents/download.shtml?pid=2372>

²⁷ *Advice Trends*, Citizens Advice (2014) https://www.citizensadvice.org.uk/index/aboutus/publications/advice_trends.htm

Family courts

Family justice is not the focus of the Low Commission's work. However we cannot ignore the fact that the most pressing problems following on from legal aid reforms have occurred in the family justice system with increased flows of litigants-in-person, and that there is often a significant overlap between family breakdown and social welfare law issues. In the year following the reforms, there has been a 30% year-on-year increase in family court cases in which neither party had legal representation. What research there is suggests that such cases increase costs to HMTCS. Based on the increase in self representation, the NAO estimate the additional cost to HMTCS at £3 million per year, plus direct costs to the Ministry of Justice of approximately £400,000 per year. The Ministry of Justice has now committed to approximately £2 million for additional support for litigants in person for the next 2 years.

A significant knock-on effect has also been that fewer individuals are using mediation for family law proceedings as an alternative to the courts, principally because legal advice feeds mediation. The Ministry of Justice continues to fund some mediation through civil legal aid; they expected 9,000 more mediation assessments and 10,000 more mediations to start in 2013–2014. However, mediation assessments fell by more than 17,000 and there were over 5,000 fewer mediations starting in 2013–2014 than there were in 2012–2013.

Operational reform across Courts and Tribunals

The Low Commission's 2014 report outlined measures needed to assist courts and tribunals to adapt to dealing with the increase in unrepresented or inadequately advised litigants, and also make their processes more efficient and effective, adapting their model of dispute resolution at every stage. Active case management changes such as telephoning claimants to ensure documents are in order, and developing the role of Registrars in the case management process are both key as has been identified in the Senior President of Tribunals' most recent report.²⁸ Registrars should be able to adopt a more proactive approach enabling the tribunal system to use more of its non judicial resources and provide a service which better meets people's needs; this approach might also costs less than the present service which involves intensive use of the tribunal's time. Other tribunal initiatives have included early neutral evaluation schemes and approaches that are more akin to ADR; we would like to encourage greater roll out of ADR, case evaluation and active case management processes within HMCTS. **We recommend that the Ministry of Justice undertake an evaluation of all innovative schemes developed by Tribunal Chambers to support users, and consider how they might be rolled out for the benefit of all tribunal users.**

28 *Senior President of Tribunals – Annual Report 2014* <http://www.judiciary.gov.uk/publications/senior-president-of-tribunals-annual-report-2014-2/>

Even before the LASPO reforms, recognising that publicly funded representation is becoming a scarce resource, there have been a number of initiatives to address the issues of managing legal proceedings or problem resolution for users of the legal system who are unassisted by lawyers. For example the Civil Justice Council's (CJC) working group on self-represented litigants has made far-reaching recommendations including the redesign court forms to make them simpler, and developing web-based materials.²⁹ Judicial leaders have been taking the CJC's ideas further and exploring how inquisitorial approaches might be an option.³⁰ Pro-bono is also taking on a bigger and more strategic role.³¹ There is now active policy and judicial interest in virtual courts and online dispute resolution systems, and the Civil Justice Council is now actively investigating how to establish an online jurisdiction (www.judiciary.gov.uk/reviews/online-dispute-resolution/). All these initiatives though have pointed to the importance of providing high quality information, advice and resources to assist people to take their cases forward themselves, as litigants in person or self represented litigants. We support these initiatives, but also recognise that there can be categories of cases with additional complexity that would benefit from specialist legal input and support which we believe could be provided through court based advice schemes.

The Ministry of Justice's recent initiative to improve support for litigants-in-person in the family justice system indicates a new willingness and direction of travel in Government to explore the potential of court based advice and support schemes.³² We believe there is a case for *court and tribunal duty advice schemes* where there is sufficient volume of cases to justify this investment to ensure that individuals have the benefit of legal advice on complex issues or procedure, thus focusing a claimant or respondent's case on the key issues and saving the time of the judiciary (e.g. based on the model of housing duty solicitor schemes). **We therefore recommend that the Ministry of Justice undertake a cost-benefit analysis of funding independent duty specialist advice schemes along the lines of housing possession court duty schemes at busy tribunal centres.**

The widening advice deficit

We believe that redress and advice operate as a two-way street; independent advice improves decision-making, enhances understanding and provides accessible routes into redress systems to remedy situations when they go wrong. Government both nationally and locally has historically understood this, from

29 Civil Justice Council <http://www.judiciary.gov.uk/related-offices-and-bodies/advisory-bodies/cjc/litigants-in-person/>

30 Judicial Working Group on Litigants in Person <http://www.judiciary.gov.uk/publications/judicial-working-group-lip-report/>

31 Both the Bar Pro-bono unit and Laworks clinics report large increases (25-50%) in workloads

32 <https://www.gov.uk/government/news/more-support-for-separating-couples-and-parents>

The Government has supported the provision of free, independent social welfare advice since the 1930s when it facilitated the establishment of the first Citizens Advice Bureaux. The provision of timely and high quality advice helps people to resolve problems and take more control of their lives; improves access to justice particularly for vulnerable groups; and helps to meet public demand for independent advice, both on social welfare issues and wider issues such as consumer welfare. It is also recognised that independent advice, at both national and local levels, can help people engage more effectively with the state by helping them to understand their rights and entitlements.

Cabinet Office – Not-for-Profit Advice Services in England (2012)

the development of the statutory Legal Aid Scheme, to the government's support for the Citizens Advice service. In a sense, advice services sit at a partnership juncture between government and civil society. We believe that that partnership still exists, but it is a partnership sorely in need of renewal.

Since the publication of the Low Commission's report, however, we know that the advice deficit has widened significantly. In the first year since the implementation of LASPO, nine Law Centres have closed, comprising a sixth of the Law Centres Network's membership. Citizens Advice's statistics for the first three quarters of 2013–2014 showed an 8% drop in the number of clients helped by Citizens Advice Bureaux (approx. 85,500 people) compared with the same period from the previous year and a 15% drop in the number of issues dealt with. Whilst changes to the way data is recorded may account for some of the differences, Citizens Advice's own analysis suggests that these reductions are in large part due to loss of legal aid contracts meaning fewer people seen and more enquiries finishing at an early stage without proceeding to full casework.³³ We explore the specific impacts of LASPO in more detail in chapter 4.

Over the longer term it is possible to point to ongoing contraction in the supply base for independent advice. Twenty years ago over 10,000 solicitors' offices offered publicly funded legal advice through the civil legal aid (green form) scheme across most areas of law, working alongside a Citizens Advice network that ran 721 CABx operating from multiple access points, and a growing Law Centres movement.³⁴ Today less than 2,000 firms offer any civil legal aid at all with many fewer firms than that providing social welfare advice; there are now 338 CABx but only 21 bureaux now offer specialist civil legal aid advice com-

³³ *Advice Trends*, Citizens Advice (2014)

https://www.citizensadvice.org.uk/index/aboutus/publications/advice_trends.htm

³⁴ Sandbach, J, *Geography of Advice*, Citizens Advice (2004) <https://www.citizensadvice.org.uk/geography-of-advice.pdf>

pared to over 200 just five years ago. While some of this can be accounted for by consolidation within the supply base and mergers of management units rather than actual downscaling of services (CABx for example now deliver services from 3,300 locations, many being community outreaches) overall it is impossible to come to any other conclusion that key services are being eroded over time.

We analyse on advice funding trends and the impact of funding reforms, especially legal aid changes, in more detail in chapter 3. However, we also have anecdotal evidence of further and deeper cuts coming on stream in the near future, for example:–

- Manchester City Council announced its proposed budget cuts for 2015/2016 towards the end of last year. Their proposals outlined major funding cuts of between 50–75% to advice services and the voluntary and community sector. They include ceasing all funding for the city-wide Universal Advice Service currently delivered by Manchester CAB and Cheetham Hill Advice Centre which helps over 30,000 people per year. It would also mean the closure of three CABx located in Moston, Moss Side and Wythenshawe, the city-wide Telephone Advice Service which currently deals with over 3,500 calls per month, and the face-to-face outreach service which provides advice to vulnerable groups and individuals at 32 venues in their local community such as GP surgeries, libraries and Children’s Centres.
- Milton Keynes 2015-2016 budget is looking to find £22 million in cuts, and is proposing to withdraw its £260,000 funding to Milton Keynes CAB which would inevitably lead to its closure.
- Herefordshire Council announced in December that when its CAB grant comes up for review in March, it will be recommended (as we understand) that this is not to be renewed. This funding, which includes a grant of £117,460 and accommodation costing £75,000 a year, forms the backbone of the service’s budget.
- The National Association for Child Contact Centres (NACCC) say that 40 centres have closed in the last 18 months across England and Wales – and the pace of closures is accelerating because they can no longer obtain legal aid.
- The closure of Redditch CAB in February 2015 following loss of contracts and cuts in local government funding.

Assertions, however, that either short or long term trends are evidence of an ‘advice deficit’ are meaningless unless placed within the context of demand. The issue is not the size of the sector but whether it has the capability and delivery mechanisms to meet demand. Within social welfare law alarming evidence is emerging of critical unmet needs.

- Demand for Trussell Trust foodbanks services has increased by a factor of over two-and a-half, with an estimated 330,000 children and 583,000 adults

using food banks in 2013–2014. Inquiries into food bank usage have consistently found failures, delays and sanctions in the benefits system, often combined with chronic debt problems related to high-cost credit (i.e. payday loans) issues, to be the overwhelming drivers of demand.

- StepChange debt charity saw an 82% year-on-year increase in the number of people seeking its help with payday loan debts;
- Legal needs studies have continued to suggest that around a third of the population experience civil law related problems;
- Shelter has seen a 40% increase in the numbers of helpline callers in seeking help with housing costs, arrears and other debt issues;
- Research from the Money Advice Service shows the over-indebted population reporting that their debts are having a negative impact on their lives; only 17% of over-indebted people are currently receiving advice to get help dealing with their debts.

Technological and delivery innovations have been offered as the solution to the problem of reduced access to face to face advice. It is certainly part of the solution to the challenges of ‘demand management’. Multi-channel delivery can also widen public engagement with advice services. Studies have shown that remote contact via phone, web or email can often be just as effective and more economical than face-to-face provision.³⁵ But this must involve redesigning advice services to reflect the challenges and opportunities of the digital age rather than simply attempting to digitise or provide remote access to existing services. Effective exploitation of telephone and digital tools presents opportunities for combining economies of scale offered by national networks with the possibility of implementing outreach strategies tailored to specific local needs with a ‘local by default’ delivery pattern. We have made detailed recommendations on technological innovations in advice in our original report.

Advice providers though also need to address issues of digital exclusion, so our strategy is to embed advice in the places, both real and virtual, where people already feel that their needs are met and where they naturally turn when they need help. The model of provision that we propose comprises the following elements:–

- a *public legal education system*, making full use of the internet and embedding information about social welfare law issues in community settings locally;
- *national helpline and website services*, providing information and advice on all aspects of social welfare law, developing current services and also bringing online new web-based dispute resolution tools;
- *local advice networks of generalist and some specialist advisers* for each local authority area, providing face-to-face information, advice and legal support;

35 Smith, R and Patterson, A., *Face-to-face services and their alternatives*, Nuffield (2014)
<http://www.nuffieldfoundation.org/face-face-legal-services-and-their-alternatives-global-lessons>

- *access to specialist national support* providing information and advice for frontline agencies.

Our proposals on how to achieve this model and therefore narrow the advice deficit, whilst recognising the ongoing constraints on public funding, can be found in the Low Commission's 2014 report and we believe that these proposals are both realistic and achievable. Quite apart from any moral or political case in social policy for alleviating the distress of those who need help, there is an economic case for narrowing the advice deficit because unmet demand for advice costs the state money in other ways. Last year the Low Commission commissioned and published an evidence review on the cost-benefit of social welfare advice.³⁶ The review covered all of the published 'Cost Benefits Analyses' (CBA) or 'Social Return on Investment' (SROI) data and concluded that social welfare legal aid not only pays for itself, but it also makes a significant contribution to families/households, to local area economics, and also contributes to significant public savings.

Citizens Advice have also produced evidence which suggests that, as a service, CABx are worth at least £750 million to society, plus another £300 million or so in terms of debts written off and rescheduled.³⁷ Some of those costs are savings to public services – in particular from working directly with Jobcentre Plus and HMRC, by not having to go through a whole round of administrative complexity in assessing benefit claims, benefit rates and benefit decisions, and the same on tax credits. Also with local government and housing decisions, where CABx help claimants to identify and secure the right housing solution for them in collaboration with whichever local authority or housing association it might be. Not accessing the right benefits and therefore moving into poverty, can also bring with it wider social costs in terms of peoples' diminished health, and a potential route into crime. So for an income of around £200 million a year, this analysis suggests the Citizens Advice service is worth about 5:1 in terms of a cost-benefit ratio.

Finally, StepChanges's recent report on '*The social cost of problem debt*' includes an SROI (social return on investment) review by Baker Tilly of the impact of their debt and money advice for UK individuals and families.³⁸ It highlights benefits to creditors and the state, and more importantly to indebted people and their families, of the provision of debt and money advice which hugely outweigh the costs of StepChange's services. The benefits delivered to just a sample (47%) of clients in the research amounted to £196 million, so assuming other clients

36 Cookson, G., and Mould, F., *The business case for social welfare advice services*, Low Commission, <http://www.lowcommission.org.uk/dyn/1405934416401/Social-Welfare-Advice-Services-Final-Report-20140603-Main-Text.pdf>

37 *Making the case: The value to society of the Citizens Advice service*, Citizens Advice (2014) www.citizensadvice.org.uk/making_the_case_web.pdf

38 *The social cost of problem debt* StepChange (2014) <http://www.stepchange.org/Mediacentre/Researchandreports/Socialcostofdebt.aspx>

follow similar journeys in getting into trouble and seeking help, this gives a total benefit of over £400 million compared to StepChange's total funding of £33.6 million.

It is in this context that we argue that investment in advice to tackle the advice deficit is not an optional extra, and that making the case for such investment is not an unrealistic or irresponsible call for extra spending, but rather an essential piece of 'systems thinking'. Insights from systems thinking have often been missing in debates about redress and public services reform, and as we illustrate in chapters 3 and 4 some of the policy strands in both welfare reform and legal aid reform have failed to take into account wider systemic factors which influence behaviours and outcomes, often leading to extra costs or complexities elsewhere in the system.

Systems thinking – the missing piece

Advice helps to get things right for individuals, but it also helps to get administrative justice right at a more systemic level. And there is plenty of available evidence that strategic improvements in the quality, responsiveness and proportionality of administrative justice lead to significant reductions in government waste and corresponding savings in public spending. But redress systems are failing where they leave the underlying issues unresolved, or where lack of frontline information and advice presents a barrier to obtaining redress.

The Advice Sector has increasingly turned to *systems thinking* as the best approach to redesigning services, planning delivery and working with public authorities and service commissioners. The approach is described more fully in a recent report from Vanguard Consulting.³⁹ From an advice sector perspective, systems thinking involves the following:–

- addressing the issues of users in the round and not just tackling problems in silos;
- looking not just at the presenting problem but also at the background issues of poverty, unemployment, homelessness or poor health, especially mental health, drug and alcohol addiction, etc;
- bearing down on inefficiencies in the system that give rise to delay and bureaucratic mistakes and working with public services providers to improve their delivery.

Intervening early and taking action to prevent problems from turning into crises should be the essential starting points, and the NAO report on early action approaches has demonstrated just how important early action is to achieving value for money.⁴⁰ The Barings report on '*Social welfare legal advice and early*

³⁹ *Saving money by doing the right thing*, Locality (2014) <http://locality.org.uk/wp-content/uploads/Locality-Report-Diseconomies-web-version.pdf>

⁴⁰ *Early Landscape Review* NAO, (2012) <http://www.nao.org.uk/report/early-action-landscape-review/>

action’ sets out how early action works in context of social welfare law and redress and describes the four key components of early action as follows:–⁴¹

- Citizen capability: helping individuals to develop the skills and confidence necessary to recognise and address a problem with a legal solution.
- Intervening at the right time: e.g. advice agencies needing to act ‘one step sooner’ to stop problems becoming more serious, and consider whether an intervention is at the ‘right time’ to help the individual.
- Delivering advice differently – for example improving referral facilities between advice agencies so that users do not fall between the gaps, and developing direct access links with public and private redress providers.
- Better feedback and learning processes, which encourages advice agencies to be outward looking and to work with a range of partners in efforts to act on the drivers of demand.

Responding to users’ needs by enabling them to talk to specialists as early as possible in the process, rather than having to go through too many gateways, has also been shown to be effective. The lessons both for public service delivery and redress is that getting it ‘right first time’ frees up capacity in the system. Some examples of systems thinking working well in practice are:–

- Under the ‘Systems Thinking Programme’ in Nottingham, Nottingham City Council has saved more than £700,000 since February 2009 on its benefits service, and is now implementing additional projects.
- Coventry Law Centre project has integrated a specialist advice worker within the Children and Families First team, leading on Coventry City Council’s engagement in the government’s ‘Troubled Families’ initiative. This gives the Law Centre a new channel for undertaking outreach work, and facilitates much earlier interventions and ongoing contact with vulnerable families, especially during pivotal events such as a family member losing employment or entering hospital.
- In Portsmouth, where advice services were retendered following the collapse of one of the early Community Legal Advice Centres (CLACS), a new service model was developed for local advice services which changed from an abandon rate of 33% (approximately 20 people a day) to fewer than 2% leaving before they could be seen in the new service. Rather than being told to come back first thing in the morning to get in the queue, clients were offered a range of options, including a set time to see an adviser that was convenient for them.

We are not suggesting that ‘systems thinking’ offers an easy off-the-peg formula, and many of the examples referred to are contextual, but improving services and getting decisions right first time has been demonstrated time and again to deliver

⁴¹ <http://www.baringfoundation.org.uk/wp-content/uploads/2013/09/STVSEA9.pdf>

real benefits and bear down on wasted costs. System thinking is therefore integral to our proposals that the next UK government needs to set out and publish a National Strategy for Advice and Legal Support in England and Wales for the five-year term of the next parliament (2015–2020), which should be cross-cutting across all Departments and preferably have all-Party support. As part of the process of planning future advice and legal support in different areas, locally led plans should identify the resources required to develop ‘systems thinking’ approaches and explore how advice services and their partners in the statutory sector can become better focused on the needs of their users. Finally, systems thinking is also integral to our proposals to give higher priority to public legal education, and central and local government needing to do more to reduce preventable demand and deliver early action programmes. We therefore restate the Low Commission’s earlier recommendations which reflect the systems thinking elements of our approach.

- **The next UK government should set out and publish a National Strategy for Advice and Legal Support in England and Wales, and place responsibility with the Ministry of Justice for national policy on access to advice and legal support.**
- **The Ministry of Justice should consider introducing innovative elements of alternative dispute resolution such as expert assessors, inquisitorial fact-finding, and telephone contact whenever large blocks of social welfare law work are log-jammed in the courts, tribunals or administrative processes.**
- **The Ministry of Justice and the Cabinet Office should identify areas for innovative law-making where legislation removes the need for disputes to be resolved in courts.**
- **The Ministry of Justice should work with the GOV.UK team, Advice Now and other national advice agencies to develop an information strategy for other departments whose decisions are appealed to tribunals so that their decision letters set out all the relevant information about the decision and how to challenge it.**
- **The Ministry of Justice should work with the Department for Education to integrate information about legal rights and responsibilities into the national curriculum programmes of study for citizenship**

In the next chapters we look at the impacts that welfare reform and legal aid reform have had on the ecology of advice, access and redress, and draw out some of lessons to which systems thinking which may be applied on a sector-by-sector basis.

CHAPTER 2

What's happening in welfare reform?

The previous chapter explored how social welfare advice and legal support helps public service users navigate through periods of systemic and procedural change and to obtain redress where appropriate. This is especially true of the welfare benefits system which is undergoing the biggest overhaul since William Beveridge's time. There are a number of changes to benefit entitlement under the government's welfare reform measures, including far reaching changes to the structure of disability benefit awards, consolidation of different benefit streams into Universal Credit, intensification of 'welfare-to-work' initiatives, and a policy of 'digital by default' access to the benefits system.

Whilst one driver of the reforms has been the government's policy to seek substantial savings from the DWP budget for working-age benefits and drive forwards a 'welfare to work' agenda, another driver has been a wider cross-party objective to achieve simplification and streamlining of both entitlement and processes. The Welfare Reform Act 2012 has adapted the previous model for disability benefit assessments, including Employment and Support Allowance (ESA) and replacing Disability Living Allowance (DLA) with Personal Independence Payments (PiP). The Government's welfare reform programme overall involves a staggered approach to implementation and the migration of claimants into the new system. With significant and often more restrictive changes to entitlement criteria, however, the importance of 'right first time' in decision-making, and advice and information to claimants could not be more important.

From April 2013, DWP began to introduce changes under Welfare Reform Act to the system of redress, the three main changes being:–

- reform of the DWP's reconsideration process so that all decisions must be reviewed before an appeal can be lodged, under a process known as "mandatory reconsideration" (MR) extended to all benefits grievances as from October 2013 (see section on MR below);
- appeals must then be sent directly to HMCTS, known as "direct lodgement";
- introduction of new time limits for DWP to return responses to HMCTS.

The Low Commission conducted an online survey of Welfare Rights Advisers (running from October-December 2014) in order to assess both decision-making quality and the experience of advisers' and their clients of interacting with DWP and Jobcentre Plus, the user friendliness of redress procedures, and the impact of funding changes on advice agencies capability to support claimants through the process. We received 436 responses from advisers across the sector, including from CABx, Law Centres and other independent charities providing quality-assured welfare rights advice. When set against the data on assessments,

decision-making and redress the survey results point to a greater need for independent advice to support the best ‘getting it right’ outcomes for claimants.

Over the five years since the first independent review the proportion of advisors time taken up by ESA issues has increased until it has become the single biggest issue that we have faced. We feel that this indicates that recommendation to improve the process have not had a significant impact on claimant experience.

Citizens Advice submission to Independent ESA review

Right first time

Getting decisions right first time has long been a problem for the benefits system which has undergone many statutory reforms in recent years, especially in relation to decision-making and adjudication work at the frontline.⁴² Disability Assessments have been also outsourced to private contractors. But the system has been characterised by high appeal rates and high rates of decisions being overturned. With ESA for example, the replacement system for Incapacity Benefit (IB) awarded on the basis of new ‘work capability assessments’, was introduced in October 2008 and has demonstrated growing error rates. In the first 20 months of its operation (to February 2010) 335,900 applicants were found fit for work at their initial assessment. 122,500 (36%) of these claimants appealed and had their appeal heard by February 2011. In 48,000 (39%) of these appeals, the original decision was overturned in favour of the claimant.⁴³ The intention of the current Government’s welfare reform programme has been to migrate all IB claimants to ESA and speed up the process.

However over 2010–2014, appeals especially for ESA claims, continued to rise as did their success rate. The annual figures for 2012–2013 show figures for all SSCS appeals at 507,131 compared to 339,213 in 2009–2010, the figure inherited from the previous government. That is an increase of 167,918 or 50% to March 2013. The 2013 data also showed a success rate on appeal of 42%. The DWP Select Committee, drawing on the Professor Harrington’s Independent review of the Work Capability Assessment process, ascribe the historically high level of ESA appeals to decision-makers ‘rubber-stamping’ advice from medical assessments.⁴⁴ Citizens Advice argues on the basis of the significant

42 *Getting it right, putting it right – Improving decision-making and appeals in social security benefits* NAO (2003) <http://www.nao.org.uk/report/getting-it-right-putting-it-right-improving-decision-making-and-appeals-in-social-security-benefits/>

43 *Right first time*. Citizens Advice (2012) www.citizensadvice.org.uk/right_first_time.pdf

44 Work and Pensions Committee – Sixth Report The role of incapacity benefit reassessment in helping claimants into employment <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmworpen/1015/101502.htm>

differential scoring rates for work capability assessments in ESA claims before and appeal that there is a fundamental dysfunction in the assessment's reliability and the way that it is conducted, as appeals should be about borderline cases only.⁴⁵

As part of a wider quality improvement programme, a Quality Assurance Framework (QAF) has been introduced in DWP to monitor and improve standards of decision-making, providing detailed feedback to decision-makers to ensure that they give due consideration to all of the available evidence. However, there is no measurable error rate or tracking of error rates, and thus no effective process for taking corrective action at a systemic level. The most recent review of ESA recommended that the DWP should monitor decision-maker 'overturn rates' on an individual basis and investigate particularly high or low rates as part of performance management.⁴⁶ The key problem that the Independent Reviewers have consistently identified over five separate independent reviews as a structural issue within DWP is that the workflow for decision-makers follows a binary 'yes' or 'no' response to processing claims based on eligibility recommendations from assessors. What the reviewers have suggested is that there needs to be a re-engineering of the case-mix between different levels of decision-maker so that more senior staff get to consider all cases with potentially borderline or complex issues, and that sufficient time and care is taken in evaluating the information provided in all claims.

In response the government has partially accepted the case-mix recommendation from the fourth independent review, subject to further feasibility work. Specifically they have recognised that "there may be value in reviewing how work is allocated between different grades and the types of cases they (decision-makers) are required to make decisions on."⁴⁷ However, it is not clear whether any further measures have actually been taken within DWP to change their processes accordingly.

Advisers' views drawn from the Low Commission's survey, however, paint a negative picture as to how first level decision-making is working under the welfare reform programmes, despite the many statements from DWP that the Department is aiming to get more decisions right first time. The survey asked advisers based on their experience of working with their clients how often were DWP able to achieve 'right first time' decisions? (see Figure 4).

45 *Right first time*. Citizens Advice (2012) www.citizensadvice.org.uk/right_first_time.pdf

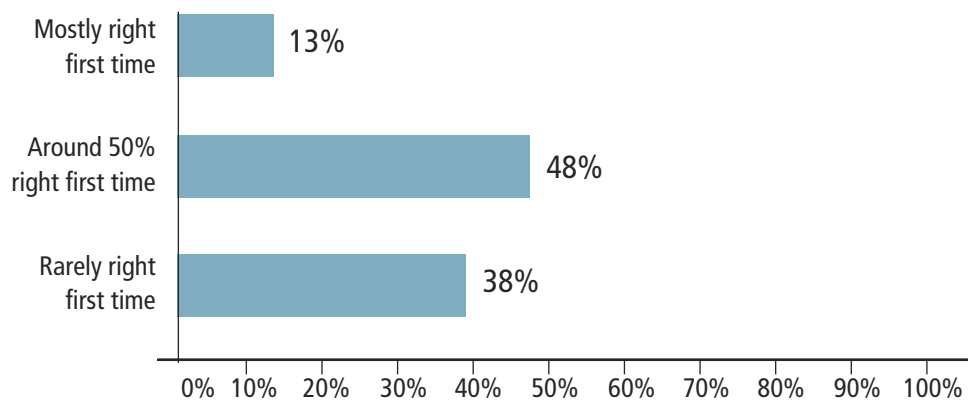
46 Litchfield, *Final Review of Work Capability Assessment* DWP (2014) <https://www.gov.uk/government/publications/work-capability-assessment-independent-review-year-5>

47 Response to the Independent Review of the Work Capability Assessment, DWP (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/296328/wca-review-year-4-response.pdf

Figure 4.

Q2 DWP are aiming to get more decisions right first time, from working with your clients, how often do DWP achieve this?

Answered: 421 Skipped: 15



When we asked advisers to comment on the quality of decision-making, most comments from survey respondents were fairly negative, however, many respondents recognised that as specialist advisers to claimants their perceptions may be skewed as much of their caseload and client outcomes comprised the bad decisions. The quality of medical assessments was raised by advisers as a key issue, as was the over-reliance of decision-makers on flawed assessments, and problems about getting accurate information presented to decision-makers given the structure of the claims forms and process. Many advisers also felt that they were having to do decision-makers' jobs and the collation of evidence for them. Below is a sample of comments:–

The DWP ought to get simple claims to JSA, pension credit etc right - it's hardly rocket science – but they routinely fail on any claim that is slightly out of the ordinary.

Actually, less than 50%, perhaps 35%. When clients have help navigating the system the rate is much better than that, but without help, due to the dishonest and obscure way the forms and letters are written, it's rarely right first time.

I find that by providing as much evidence as possible, sending a covering letter outlining the regulations and generally doing their work for them, they get the right decision first time. Where clients complete a claim form the results are far more mixed, sometimes it

is clearly due to omission on the clients part (not providing a MED3 Fit note/Bank details) but many times it is down to DWP error, egg Ignoring evidence in favour of ATOS, or taking a monthly income figure as a weekly income etc.

Very poor decisions reliant on medical assessors who do not listen to what their clients are actually saying. A great many assumptions are made based on the little information they are given.

Correct decisions on ESA are rarely made without clients having to go to mandatory reconsideration and appeal. The ATOS medical process is deeply flawed. JCP makes random and unfair benefit sanction decisions in relation to JSA, and places vulnerable clients in great stress and often without any money, depending on food bank provision.

Decisions appear to be taken using Guidance or government policy intention rather than the law and regulations. Failure to apply either balance of probabilities, or sometimes common sense, especially re ESA Regulations 29/35.

There is little to no indication that any more rigorous methods are used to increase the quality of decisions. Mandatory reconsideration notices include more information than previously and telephone calls are made to reassure claimants, but the MRNs are often copies of the decisions that appear in appeal papers, just produced earlier and the telephone calls are made once the decision has effectively been taken. The change has increased the amount of bureaucracy but this does not appear to improve decision making quality.

There is significant lack of good-decision making and there is no way to question it; often there could be a simple way of dealing with an issue that a welfare benefits advisor has identified but because they are unable to pass this info on it creates a long and unwieldy chain of reconsiderations and appeals. Much of the information can be lost in translation, as well as in transit. The information provided regarding decisions is confusing and the often wrong, however, because of the complexity an individual is unable to challenge the decision effectively and often either gives up or takes an easier benefit that may not be suitable. On the phone there is no responsibility, or sufficient access to escalation routes, taken by those who answer initial calls. There is also a lack of urgency as most of those claiming benefit have little or no access to alternative funds.

Redress in freefall

Recent statistics from HMCTS for 2014 show – by contrast to the rising appeals pattern identified above up to 2013 – a massive decrease in appeal volumes over the past year. In the period April to June 2014 there were 22,699 SSCS tribunal appeal receipts; a decrease of 86% compared with the same period of 2013. Breaking this down further, there were decreases of 92% in receipts of appeals made against decisions made about claims for Employment Support Allowance (ESA) comprising 58% of all claims to the tribunal, and 93 per cent decreases in Jobseeker’s Allowance (JSA) appeals since April to June 2013.⁴⁸ This is a huge cliff-edge decrease and must therefore raise questions both about the accessibility of redress and advice, and whether there have been improvements in frontline decision-making.

Two contextual issues are also important. Firstly, the decline is set against an historical high from 2012–2013 as the DWP and SSCS tribunal tried to clear backlogs in anticipation of new statutory time-limits coming into effect in 2014. Under the 2012 backlog, appeals were taking 24.7 weeks on average weeks in England.⁴⁹ Secondly, there have been huge backlogs in both assessment and decision-making processes. When pressed by the Work and Pensions Select Committee in 2014, the Minister for Disabled People revealed that over 700,000 disabled people were still waiting for their claims for ESA to be processed.⁵⁰ Of the 700,000 people waiting for assessments, almost 400,000 were new claimants who felt they had now become too unwell to work, but this needed to be established via the assessment process before they could get the higher level of benefit. Staggeringly high waiting times also were revealed in a recent Freedom of Information Request.⁵¹

The blockage in the system may partly be accounted for by the government’s decision to terminate the ATOS contract early, following repeated warnings of poor performance by the DWP and audit authorities, and to put a different contract for assessments into place. However, there was already a significant backlog built up before this with claimants regularly reporting waiting times of six to eight months for an assessment. With delays occurring at this early stage, a knock on effect has been that fewer cases are reaching the tribunal stage over the claims cycle. There have also been significant delays in rolling out Personal Independent Payments (migration from Disability Living Allowance), and finally

48 *Tribunal Statistics*, Ministry of Justice (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352914/tribunal-statistics-quarterly-april-june-2014.pdf

49 *Assessing Capacity to work*, Parliament Postnote www.parliament.uk/briefing-papers/POST-PN-413.pdf

50 Work and Pensions Select Committee Evidence session <http://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news/pinning2/>

51 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343806/foi-1200-2014.pdf

with the implementation of the Universal Credit programme. It is therefore unclear at the current time whether the drop-off in appeals is a long-term or short-term trend, and it might also be expected to rise again when more benefits transition into Universal Credit.

Impact of mandatory reconsideration

A key question hovers over the impact of mandatory reconsideration (MR), the DWP's internal review mechanism introduced last year as a process that has to have been gone through pre-appeal. Prior to October 2013, decisions would have been informally reconsidered by DWP as a matter of course but the process for this was less formal as clients did not have to directly request this to happen, and the usual process was to include this request in the appeals process.

There is considerable debate about whether the introduction of the mandatory reconsideration (MR) mechanism acts either to improve decisions or deter challenges. Critics of the new system point to the fact that under the MR process sick and disabled claimants have their assessment rate benefits withdrawn while their claim is reconsidered which can leave many unable to pay vital bills, cover their medical costs or even afford to stay fed without recourse to foodbanks. Currently DWP will not pay the 'assessment rate' of the benefit that has been claimed until a new decision has been reached, and there is no time limit within which the DWP must carry the reconsideration out. Once a decision has been made, and assuming it is favourable, there is no guarantee that the benefit will be backdated to cover the whole period since the original claim. Then only if the claimant is still unhappy about the decision, can they take it to appeal, but for some claimants having been forced to live without any means of support for an extended period of time and possibly having other benefits such as Housing Benefit denied to them because of the DWP's adverse decision, it is likely that they may just give up.

Some involved in the process such as recent Social Entitlement Chamber President Robert Martin argue that 'mandatory reconsideration' does not actually add anything as an internal review mechanism as it has always been DWP practice and policy to review appeals before they proceed to tribunal, as the notice of appeal would always be routed to the DWP first.⁵² It is difficult to judge its effectiveness of the twin reforms of mandatory reconsideration and direct lodgement as the DWP do not produce disaggregated data on reconsiderations. However figures for reconsideration success were given by Judge Martin in the April edition of the *Judicial Information Bulletin*, which goes out to all tribunal members.⁵³ According to this, by 21st February 2014 the

⁵² Robert Martin, Evidence to Select Committee <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/302/30202.htm>

⁵³ *Judicial Information Bulletin* Issue 67, (2014)

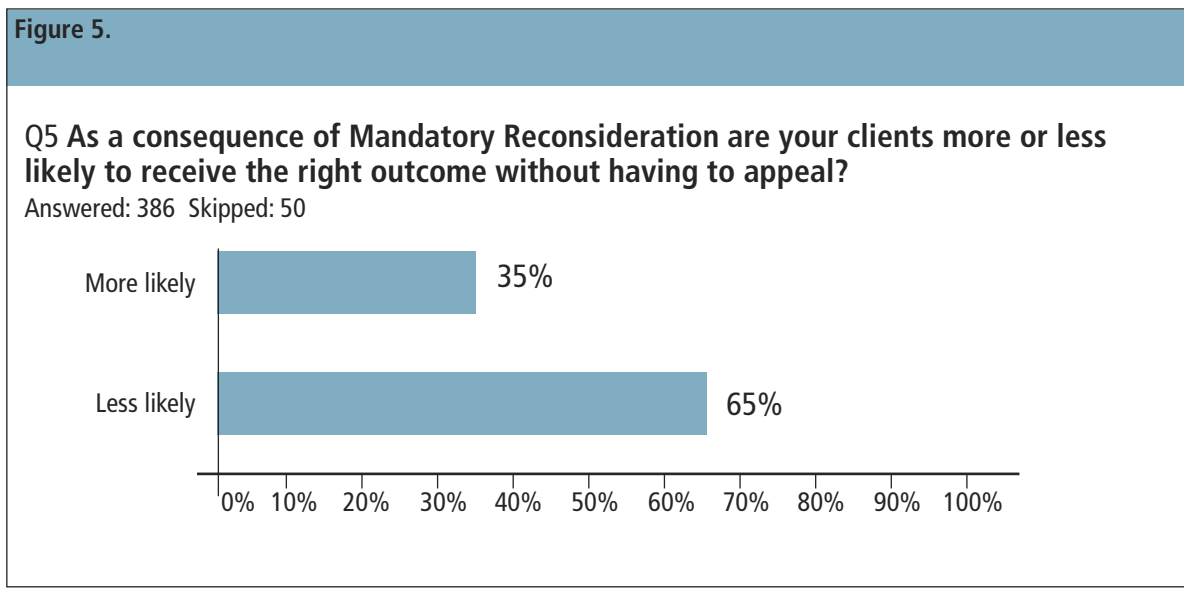
DWP had received 82,798 MR requests and made a decision in 70% of cases, with decisions taking on average 13 days from the date they were received. The suggested overturn rates were:–

- 55.9% were overturned for DLA decisions
- 23% overturned for ESA decisions
- 30.1% overturned for JSA decisions
- 13.9% overturned for PIP decisions
- 71.1% overturned for UC decisions

Based on this data, it is possible to conclude that a well-designed time sensitive internal review mechanism can help in improving decision-making quality and outcomes. However, this data also reveals teething problems with new system, most especially with decision-makers’ treatment of new Universal Credit claims. It is imperative that reconsideration does not serve simply to prolong the end-to-end process for the individual, or increase pressure to abandon justifiable claims. In addition, internal reconsideration processes must be designed to provide a fresh and as far as possible unbiased approach to evidence and decisions. For internal reviews to work there needs to be clear communication about the process, with high standards for the treatment of claimants throughout.

The perception of advisers who completed our survey is that mandatory reconsideration is failing to deliver the right outcomes as an alternative to the appeals process, especially in ESA cases. We asked whether their clients were more or less likely to receive the right outcome without having to appeal (see Figure 5).

We further asked advisers to comment on the usefulness of the process and received generally critical comments in response.



MR is an unnecessary construct used to deter claimants from appealing. Prior to its introduction a decision maker was required to reconsider the matter when an appeal was made. The effect of MR is to add another layer of decision making.

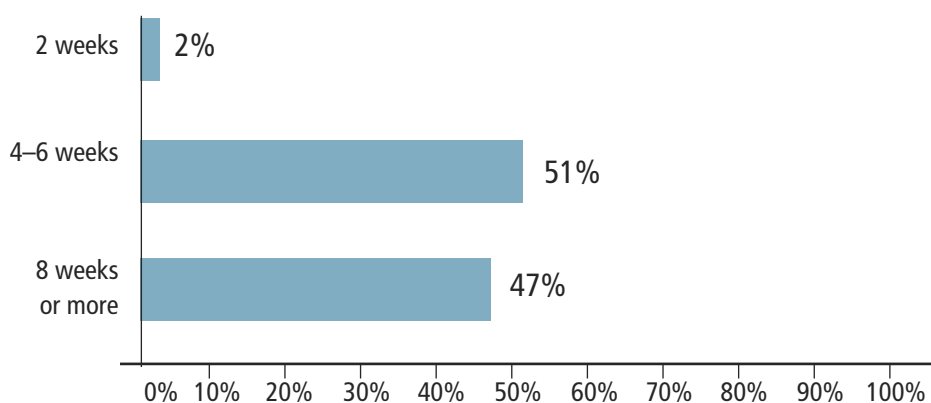
Numbers have dropped. DWP letters no longer advise clients to seek advice from their local CAB. Many clients who have gone through MR report being given the strong impression by DWP staff that there is no point appealing further

Our research has also suggested that timescales for the completion of MR is a major issue, and there is currently no set time-limit (however, government are now looking to set a 'time target'.) In principle there is no reason why the average reconsideration of facts, including any new evidence submitted, should much exceed two weeks. However, our survey suggests that it routinely takes much longer, with only 2% of welfare rights advisers reporting that reconsiderations were completed within two weeks. Our findings are strikingly similar to Citizens Advice's research which reported that no one in their research sample received a decision within the two week period that straightforward cases should take, the quickest decision was five weeks after a request, the average being 8 to 10 weeks and the longest decision took in excess of 12 weeks.⁵⁴ We specifically asked advisers what they thought the average waiting time has been for a decision following MR (see Figure 6).

Figure 6.

Q11 What has been the average waiting time for a decision following mandatory reconsideration?

Answered: 412 Skipped: 24



⁵⁴ *The cost of a second opinion*, Citizens Advice (2014) http://www.citizensadvice.org.uk/the_cost_of_a_second_opinion_report_july_2014final2.pdf.

Again we also asked advisers to comment on their impressions of the time taken to complete MRs and received the following comments.

PIP running about 4–6 weeks, ESA can be much longer that 8 wks, depends on the complexity of the issue

Most MR decisions have come through within 4–6 weeks. A significant proportion (maybe around 30%) are much longer – 12 weeks plus. For these decisions DWP offer no expected timescale or any explanation for the delay. There does not seem to be any way to escalate a concern. DWP staff seem powerless to expedite a decision if they wanted to

Majority of cases waiting several months due to backlog with DWP

I think that it was quicker than this when MR first came in and we were told that a straight forward WCA MR should be done in 14 days. It's definitely slowed down now and DWP now say that their internal target is 8 weeks.

Child DLA mandatory reconsiderations are taking at least 26 weeks! Longer than making a decision on the original claim. ESA are around 6–8 weeks. PIP over 12 weeks in most cases.

For ESA, the delay causes real financial hardship when clients have no income and rely on charitable handouts.

Have seen cases of 9 months where clients with mental health and memory problems have had to re-submit MR request and evidence several times as paperwork gone missing.

It is clear that there are major problems with the process. The policy of refusing to pay any benefit until the review process is complete for example is a major design flaw. While it may be possible to claim JSA while undergoing reconsideration for ESA, claimants can often be deemed ineligible either because they had a fit note or because of their health condition or disability. Citizens Advice's data so far shows that of around 1600 people who asked for advice about MR each month, around one in three clients reported having no money during the reconsideration stage.⁵⁵ We believe that it is wholly unacceptable that claimants are left with no income at all while they await the internal review process outcome, or until an appeal is lodged.

⁵⁵ *The cost of a second opinion*, Citizens Advice (2014) http://www.citizensadvice.org.uk/the_cost_of_a_second_opinion_report_july_2014final2.pdf.

Another issue is around the quality, accuracy and consistency of communications from DWP/Jobcentre Plus to claimants about MR both in respect of information about applying for reconsideration, communication of the outcome of reconsideration, and information about what to next. Our research findings from advisers suggests that little is provided to claimants by way of information and guidance about the about the reconsideration process or the importance of submitting new evidence; this seems inadequate and sometimes misleading. We asked advisers 'since the introduction of mandatory reconsideration, how has clients' understanding of challenging a DWP decision changed?' 70% of respondents said that their clients' understanding was 'less clear' than before.

Our findings appear to chime with Citizens Advice's research published in July last year which involved tracking the experience of a small sample of CAB clients who agreed to participate in a detailed research exercise.⁵⁶ The research found that:–

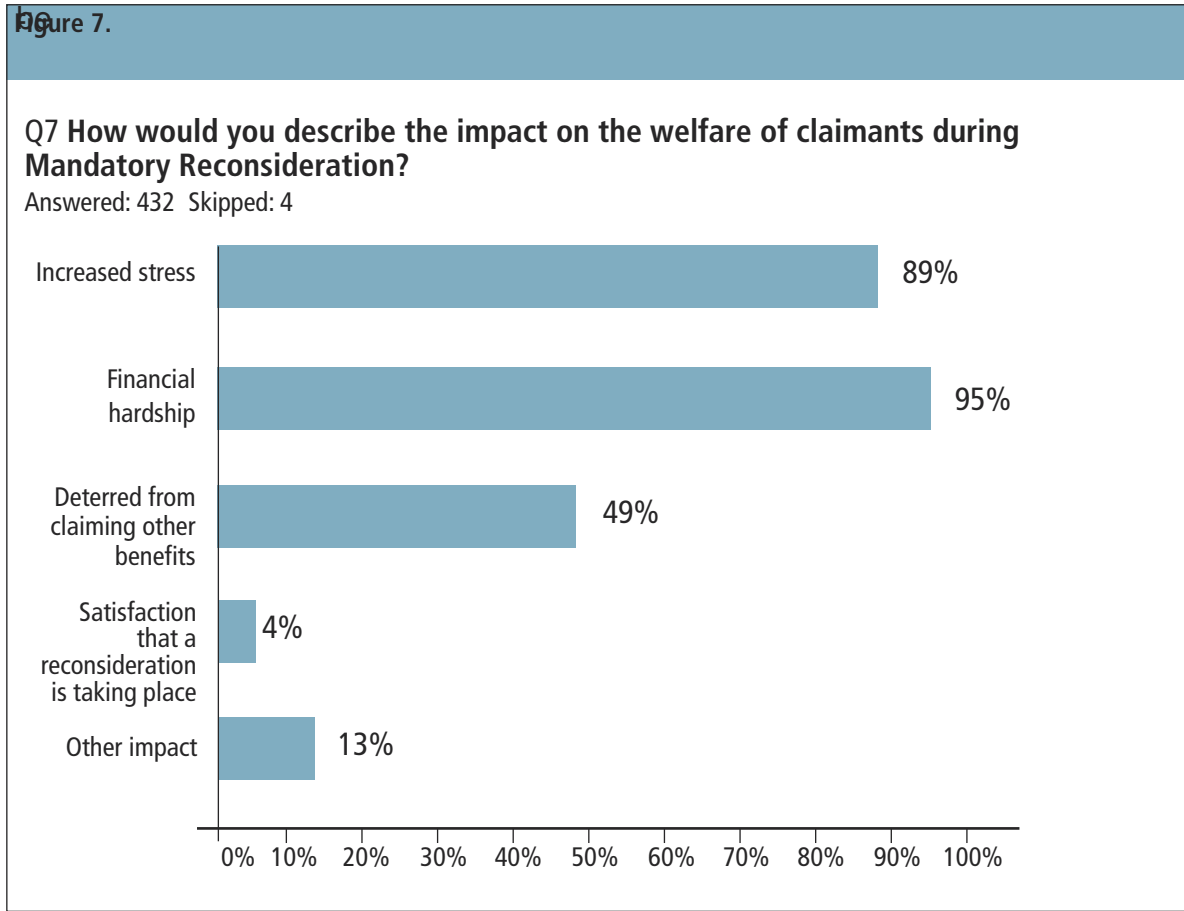
“some participants received information by letter, some by letter and by telephone, and some by telephone. Some received no communication at all. Those who did receive some form of communication reported varying levels of quality and content and many were left confused as to what to do next. This was particularly problematic for those who had mental health conditions – a common theme was heightened anxiety due to not knowing what to do next.”⁵⁷

A particularly concerning finding from Citizens Advice's research is that most of the phone calls from the DWP communicating adverse benefit decisions to claimants did not even mention MR as a potential 'next step' and some calls suggested that the claimant should make an appointment at a JobcentrePlus to sign on for JSA. Although this research sample was clearly selective, another strong finding was that it would have been impossible for those claimants to get to the MR stage without Citizens Advice Bureau staff or volunteers drafting letters asking for reconsideration and directing inquiries to the right people in DWP.

We therefore conclude that the DWP needs to give more thought to the 'customer journey' and ensuring that claimants are not disadvantaged by requesting reconsideration. It is the impact on the welfare of claimants which must be considered first and foremost. When we asked advisers to describe the impact of MR on their clients' welfare the majority reported increased stress and financial hardship, with only 4% reporting satisfactory outcomes (see Figure 7).

56 *The cost of a second opinion*, Citizens Advice (2014) http://www.citizensadvice.org.uk/the_cost_of_a_second_opinion_report_july_2014final2.pdf.

57 *The cost of a second opinion*, Citizens Advice (2014) http://www.citizensadvice.org.uk/the_cost_of_a_second_opinion_report_july_2014final2.pdf.



Again these findings are illustrated by advisers' comments.

Clients often lose HB if there is an unfavourable WCA or sanction and are then at risk of homelessness. This is often the factor that leads to their being referred to us. The failure to pay assessment phase ESA during the MR process has a huge impact on their wellbeing and the threat of eviction compounds this. The situation is worse for private sector tenants, who have been issued notice to quit as an indirect result of the loss of ESA. A client became so distraught following several weeks with no JSA that he was detained by the police because he was suicidal on a cliff-top. He is now on ESA (WRAG) and the sanction was overturned on appeal without going to tribunal. Total cost to taxpayer: loads!

Clients who are unfit for work do not want to claim job seekers, as to do so they must be actively seeking work and are unable to do so. Clients are beaten down by the system, accepting their fate. To claim JSA whilst requesting MR creates additional hurdles and burdens on someone who is already facing a difficult period in their life.

If declared 'fit for work', many people reject that notion and refuse to claim JSA as that is seen as an admission that the DWP are right. Others reluctantly claim JSA but, due to real and on-going health problems, fail their claimant commitment (which rarely recognises reasonable health limitations). They therefore lose JSA as well as ESA.

Clients are confused and frustrated. The fact there is no set time-period for mandatory reconsideration means they feel in limbo and completely at the mercy of the DWP.

I cannot stress enough that the fact that there is no time-limit for the reconsideration and the clients are no longer entitled to interim payments of ESA while the process is ongoing is disastrous. Most of these clients are vulnerable and in some cases seriously ill. Several clients with no previous history of mental illness have reported that they have been referred for counselling or prescribed anti-depressants because of the stress caused by their benefits situation. Where mental illnesses are pre-existing, psychiatrists will often report deterioration as a direct result of having their benefits cut.

The longer a reconsideration/appeal takes, the more likely it is that the claimant will simply give up with their appeal as it is too stressful.

Given all the evidence on this issue, the reconsideration process should be significantly reformed so that it acts a genuine corrective complaints channel without disadvantaging claimants or dis-incentivising onward appeals. **We therefore make the following recommendations for reform of mandatory reconsideration:**

- **All DWP and Jobcentre Plus communications about mandatory reconsideration should be reviewed jointly with the advice sector with a view to improving clarity, and should include a simple page of guidance about how to appeal at the end of the reconsideration outcome if the claimant feels the outcome to be unfair.**
- **DWP should publish all data about how mandatory reconsideration is operating, including completion timescales and overturn rates.**
- **That claimants should be able to claim the assessment rate while a reconsideration is taking place, as recommended by the Department of Work and Pensions Select Committee**
- **A time target of two weeks should be introduced also as recommended by the Select Committee – the government has said that it is now looking to do this.**

- **DWP jointly with MoJ should investigate introducing a mechanism whereby if a time target is exceeded by 3 weeks, thus implying additional issues of complexity, the case file can be passed over directly to the tribunal.**

The appeals process

While the above paragraphs address how to remove barriers to redress and especially MR, there is still more that needs to be done to make the onward appeals process accessible, fair, efficient and user-friendly. We welcome the efforts to streamline and speed up the appeals process by increasing the capacity of the Tribunals Service, and introducing direct lodgement and a target time for DWP to submit its case to the tribunal. However, documentation continues to be exchanged between DWP and HMCTS in hard copy through the post, as at present the systems in place do not enable the efficient transfer and receipt of documents electronically. This is just one improvement that needs to take place, and the DWP Select Committee have identified “further scope for increasing efficiency and improving the service for claimants making an appeal by introducing an online appeal application form and enabling electronic transfer of documents between DWP and the HMCTS.”⁵⁸

Both this government and the previous government have often drawn on the conclusions of the Leggat Report to suggest the ideal model for a tribunal should be informality and a process that should not require legal representation or expertise.⁵⁹ However, the reality is that tribunals especially in social welfare law have often become more legalistic, have become operationally closer to the court system, and have had to deal with increasing levels of legal complexity as legislation and case-law have changed and developed. The new ‘dual process’ of separate and consecutive applications for reconsideration then appeal also makes things more administratively complex from the claimant’s perspective as we have seen above.

There are a number of factors that can make a big difference to an appellant’s chances of success at appeal. We asked advisers about what the most important factors were and received the following responses.

⁵⁸ *Employment and Support Allowance and Work Capability Assessments*, Work and Pensions Committee – First Report (2014) <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmworpen/302/30209.htm#a38>

⁵⁹ Leggat: *Tribunals for Users* Lord Chancellor’s Department (2001) <http://webarchive.nationalarchives.gov.uk/+http://www.tribunals-review.org.uk/leggathtm/leg-00.htm>

<i>Answer Choices–</i>	<i>Responses</i>	
Being accompanied to the Appeal	58%	242
Being informally represented at appeal by an adviser	67%	277
Being formally represented at appeal by a lawyer	17%	70
Obtaining supporting evidence from a health/social care professional	89%	368
Effective facilitation and probing by the Tribunal Chair and members	62%	256
Total Respondents:		414

Obtaining supporting evidence from a health/social care professionals scored the highest, and obtaining the appropriate evidence from professionals is often the staple work of welfare rights agencies who understand the statutory descriptors and evidential requirements. Being accompanied or being represented by an adviser, in contrast to representation by a lawyer, also scored highly. We made this distinction between the two types of “representation” as we have often found that policymakers and politicians dealing with public funding issues have failed to understand the difference, or how welfare rights representation works in practice. Social Security Tribunals do not require the same rights of audience to speak on an appellant’s behalf, and tribunal judges routinely accept advisers’ representations as a type of formal representation even though they may technically only be acting as the equivalent of Mackenzie friends. So we distinguished formal and informal representation on this basis.

However, much of the advice sectors’ representational and advice work in welfare tribunals has, until LASPO (which removed welfare benefits advice from the scope of legal aid funding), been delivered under legal aid contracts, but typically using the expertise of knowledgeable employed specialist advisers rather than qualified lawyers. This has led to frequent misunderstandings that the legal aid system has been used to send adversarial lawyers into the tribunal process unnecessarily, as the default assumptions of policymakers has been that representation only refers to the regulated ‘reserved legal activity’ of advocacy carried out exclusively by qualified lawyers. In fact, formal representation by legally qualified advocates has never been funded by Legal Help under the civil scheme. Our findings above suggest that whilst sending lawyers into the appeal tribunal is indeed unnecessary, the role of trained and highly specialist welfare rights advisers, especially when present at the tribunal and looking out for the appellant’s interests, is helpful and often essential. Again this came across strongly in comments from advisers:

Lack of supporting evidence and lack of funding for effective representation significantly disadvantages clients. The arguments made about the informality of tribunals to justify legal aid withdrawal were/are specious. The lack of representation and the evidence gathering that accompanies it has not been addressed by tribunals exercising their powers to investigate and probe the circumstances of cases.

I think all of these help. I don't think it is necessary for lawyers to be involved and from my experience they often lack the necessary knowledge to effectively represent at appeals. Advisors can help to put people at their ease and prepare written or verbal submissions and also prepare the client and put these arguments forward at the appeal. They can raise case law and ensure that the claimant gets a fair hearing. Without some form of personal representation most claimants are overwhelmed and find themselves unable to participate and put their case across

It is crucial that the appellant properly understands the criteria for the benefit they are claiming, and gathers relevant evidence. A representative (whether they attend the actual hearing or not) can be vitally important in this regard.

For appeals involving legal issues and complex matters of fact, I think that it is very important for the client to have a representative at the hearing. Although tribunals can be effective facilitators, this really does vary and there is a very real risk, in my view, that a client will not receive justice if they are unrepresented. In some cases, a written submission is sufficient but it depends on the issues and the client. In medical cases, supporting evidence is important but not necessarily essential. It can be difficult and expensive to obtain.

Having help to prepare the case, obtain evidence, identify the errors in the decisions and make the correct legal argument is essential

We would suggest our representation is not 'informal' although we are not qualified lawyers. Obtaining relevant evidence from the client and medical evidence in WCA/DLA/PIP etc is essential. A brief written submission addressing the relevant issues and evidence submissions is also important. At the hearing it is usually the facilitation and probing by the tribunal that is key, although legal argument by a representative can be crucial in more technical issues like over-payments. The different conduct of hearings by some judges who do not appear used to having an experienced representatives attending hearings is apparent.

In our earlier report we outlined the case that the DWP could be incentivised by the Ministry of Justice to get things right first time and improve their decision-making and dispute resolution processes through a tribunal costs regime for those cases which it loses on appeal. We proposed that at the end of a tribunal case in which an applicant has been represented, the representative should be able to apply, on the basis of a fixed scale, for the costs of preparing the case and representing at the hearing by submitting a short schedule of costs at the end of the tribunal hearing. We would envisage the fixed scale to be between a minimum of £100 and a maximum of £500.

While we recognise that the DWP already makes a transfer of resources to HMCTS and that this has risen in recent years, but this does not in itself incentivise better decision-making or discourage mandatory reconsideration from operating as a rubber stamping exercise. **We propose that the Ministry of Justice explore the potential of introducing a system that places a levy on appeals which the DWP loses into a budget to fund advice services.**

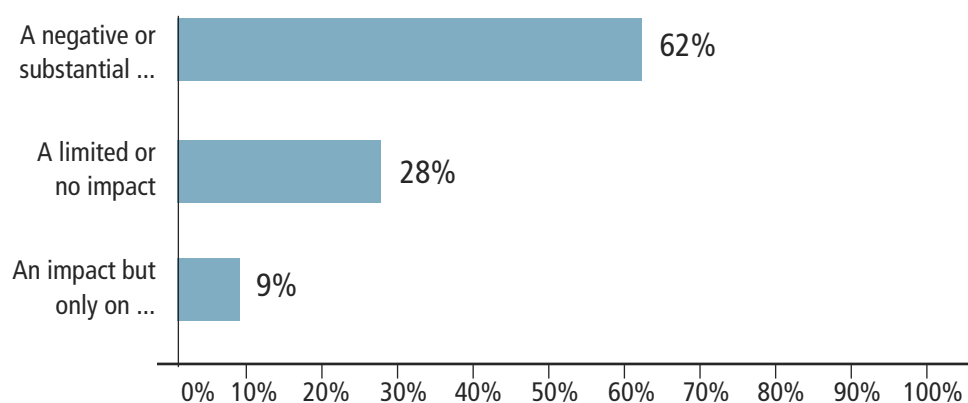
Advice capacity in welfare rights

The question now however is whether agencies still have the capacity to do high quality welfare rights advice work, including accompanying appellants and representing their case, following the changes to legal aid funding which has only left upper tribunal work within scope. We asked respondents what impact they thought that legal aid changes had on their agency's capacity and 62 per cent said it had a negative impact (see Figure 8).

Figure 8.

Q14 What has been the impact of recent legal aid reforms on you and your agency's capacity to support clients through the appeals process?

Answered: 411 Skipped: 25



The comments we received from advisers on this, while reflecting different local circumstances, were also helpful in understanding the impact.

On changes to legal aid for appeals, clients used to get their bundles prepared even if a solicitor didn't accompany them to the tribunal. CAB/other agencies are unable to provide even this basic level of support; we are only able to write the initial appeal letter and advise clients on what evidence they will need, the client is then left to gather all this together and submit to the tribunal – this is too much for a lot of clients. Mandatory reconsideration also causes delay, we lose clients during this time, and they get discouraged by a negative decision and give up, or miss the deadline.

We have lost LSC funding for our welfare support worker. We are no longer able to offer to accompany clients to tribunal, or have any specialist advisers to check paperwork and advise on merits of the case.

Claimants are not able to pay for medical or other evidence which can be vital for appeals not being able to claim legal aid for welfare benefits appeals means not as many works to provide representation

Since losing our funding from LSC we have had to reduce the number of cases we can take on and as a Caseworker am under extreme pressure as there is nowhere else for our Clients to go.

There have been some attempts at measuring the loss of welfare rights advisers as a result of legal aid changes, however, this is not comprehensive and there are often many different factors (e.g. redeployment and other funding changes) influencing both redundancy and retention levels in the welfare rights sector.⁶⁰ We explore the wider impact of funding changes in the next chapter. However, we would suggest that it is self-evidently clear from the research presented in this chapter that there is a clear linkage between the 'redress gap' signified by collapsed appeal volumes with the drastically reduced capacity of the advice sector to undertake specialist welfare rights work.

60 Byrom, N., *The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients A report by the Centre for Human Rights in Practice*, University of Warwick (2013) http://www2.warwick.ac.uk/fac/soc/law/research/centres/chrp/projects/legalaidcuts/153064_statesector_report-final.pdf

Welfare in transition

The capacity of the welfare rights advice sector will continue to be a key issue in the welfare reform agenda while the welfare system remains in a transitional state. The implementation of Universal Credit (UC) is progressing far more slowly than was originally forecast. The government have invested local authorities with a key role in the transition process through the Universal Credit Local Support Services Framework. Developed by DWP in collaboration with local authorities, this aims to plan for “holistic and integrated localised claimant support” for people who need extra help to make or maintain a claim for UC to support their journey towards self-sufficiency and independence.⁶¹ Whilst this framework highlights the importance of advice to claimants to help manage their money under UC’s monthly payment arrangements and ensure that rent and cash flow is well managed, it tends to discount the advice sector’s role in supporting activity designed to help people navigate the benefits system and understand their entitlement.

By contrast we see a strong case for the frontloading of advice, especially in dealing with housing benefit issues. Housing benefit (HB) will eventually be incorporated into UC, but implementation delays mean that local authorities will now continue to administer HB for longer than previously anticipated. The current intention is that UC will become fully available during 2016 with the majority of the remaining HB caseload moving to UC during 2016–2017. Moreover it is intended that with some exceptions UC claimants will be paid directly rather than HB elements being paid directly to landlords, and claimants will receive calendar monthly payments, in arrears, administered centrally by the DWP.

We note that the DWP has published research into the results from the first 12 months of its ‘direct payment demonstration project’ initiated to identify potential impacts from direct payment of Universal Credit. The DWP report published in May 2014 revealed that, where tenants were paying their rent, the contact, advice and collection was a resource-intensive exercise, sometimes resulting in other landlord services being compromised.⁶² A further publication in July highlighted that there was an overall increase in rent arrears in terms of the number of tenants in arrears and the overall level of arrears, with much of those arrears accruing in the early stages of the programme though showing

61 Universal Credit local support framework, DWP (2013) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181395/uc-local-service-support-framework.pdf

62 Direct Payment Demonstration Project: learning and payment figures from payments 18 and 16, DWP (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325389/direct-payment-demo-figures-may-2014.pdf

subsequent improvements by the end of the 12 month period.⁶³ The reasons tenants got into arrears remained unclear as the assessment processes that were trialled to identify those ready for direct payments and those unlikely to manage without support were not effective. There was also some evidence to suggest that direct payment was impacting on tenants' attitudes and behaviour, and evidence to suggest a change in landlords' behaviour by changing the way they operated, including introducing new ways of working.

Further complexity with the situation of housing benefit also arises as a result of the under-occupation deduction policy, introduced to encourage downsizing in social housing. The DWP has published an interim report on the impact of the removal of the "spare room subsidy" that shows that nationally just 4.5% of affected claimants have downsized, and that overall rent arrears have risen by 16%.⁶⁴ Local Authorities have also received some Discretionary Housing Payments (DHP's) to be used to reduce or mitigate the effect of the welfare reforms for some claimants. At the same time, however, there is also considerable uncertainty about the future of localised welfare schemes, and the replacement of Council Tax Benefit with local Council Tax Reduction schemes also continues to have an impact on tenant finances and local advice needs.

In view of this, we continue to advocate that there is a good basis for the DWP to contribute to the funding of advice agencies to reflect the essential work that agencies undertake in helping individuals to understand and respond to government policy, and in recognition of the fact that its policies may be driving demand for advice services. Often new processes introduced by the DWP will require the support of advice agencies to ensure successful implementation. **We therefore restate our previous recommendations that:**

- **The Department for Work and Pensions should be required to make a strategic contribution to the National Advice and Legal Support Fund, in recognition of the fact that its policies create demand for advice services**
- **The Ministry of Justice and the Department for Work and Pensions should conduct a cost-benefit analysis of funding independent duty specialist advice schemes along the lines of housing possession court duty schemes at busy tribunal centres during the roll-out of universal credit.**

63 *Direct Payment Demonstration Projects: Rent underpayment*, DWP (2014)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333073/dpdp-rent-underpayment.pdf

64 *Evaluation of Removal of the Spare Room Subsidy Interim report*, DWP (2014)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329948/rr882-evaluation-of-removal-of-the-spare-room-subsidy.pdf

- **The Ministry of Justice and the Department for Work and Pensions should consider the lessons that might be learned from over two decades of dispute resolution by the Social Fund Commissioner (now abolished) and consider whether there are additional areas within the benefit appeals system where such an integrated model might be helpful in the efficient handling of appeals.**
- **Her Majesty's Courts and Tribunals Service should review the welfare benefits appeal process to identify areas that might be suitable for a more inquisitorial, possibly telephone-based, approach to establishing all the relevant facts and reaching a decision, building on the flexible approach to hearings already developed by the Traffic Penalty Tribunal and others**
- **The Ministry of Justice should develop further protocols with the Department for Work and Pensions, (as well as other departments and agencies), about taking steps to improve the quality of decision-making so that fewer assessments are overturned on appeal. The Ministry of Justice should report annually on progress to the Public Accounts Committee and the Justice Select Committee.**

CHAPTER 3

Advice in transition – lessons from LASPO

The Low Commission was established with the specific remit to look at the future of social welfare law and advice in the context of the civil legal aid reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) which came into effect in April 2013. Our analysis in our 2014 report of the impacts was necessarily incomplete as the new system for civil legal aid just was beginning to bed in, and we expected the impacts on the advice sector to be felt over the longer term. A related issue has been the role of the Big Lottery supported Advice Services Transition Fund (ASTF), announced during the passage of the LASPO Act, at least in part as a response to the many concerns expressed by Parliamentarians from all Parties that the LASPO reforms would have a disproportionate impact on non-profit advice agencies which would lose much of their legal aid income for specialist social welfare law work.

It is now possible to provide greater analysis of both of these. It has become clear both from a recent National Audit Office (NAO) report and evidence provided to the Public Accounts Committee (PAC) and the Justice Select Committee that many of the decisions taken in designing the civil legal aid reforms were hasty ones which were insufficiently grounded on evidence. The overriding objective was to deliver target savings in the legal aid budget quickly. In her evidence to the Public Accounts Committee, Ursula Brennan, Permanent Secretary at the Ministry of Justice said “The government was explicit it needed to make these changes swiftly. It was not possible to do research about the current regime. The piece of evidence that was overwhelming was the level of spending. The evidence required was that government said we wish to cut the legal aid bill.”⁶⁵ The PAC then went on to look at some of the impacts, for example on the non-profit sector.

65 Public Accounts Committee, *Minutes of Evidence*, HC 1946-i (2014)

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubacc/c1946i/1946i.htm>

66 *Implementing reforms to civil legal aid*, NAO (2014) <http://www.nao.org.uk/report/implementing-reforms-to-civil-legal-aid/>

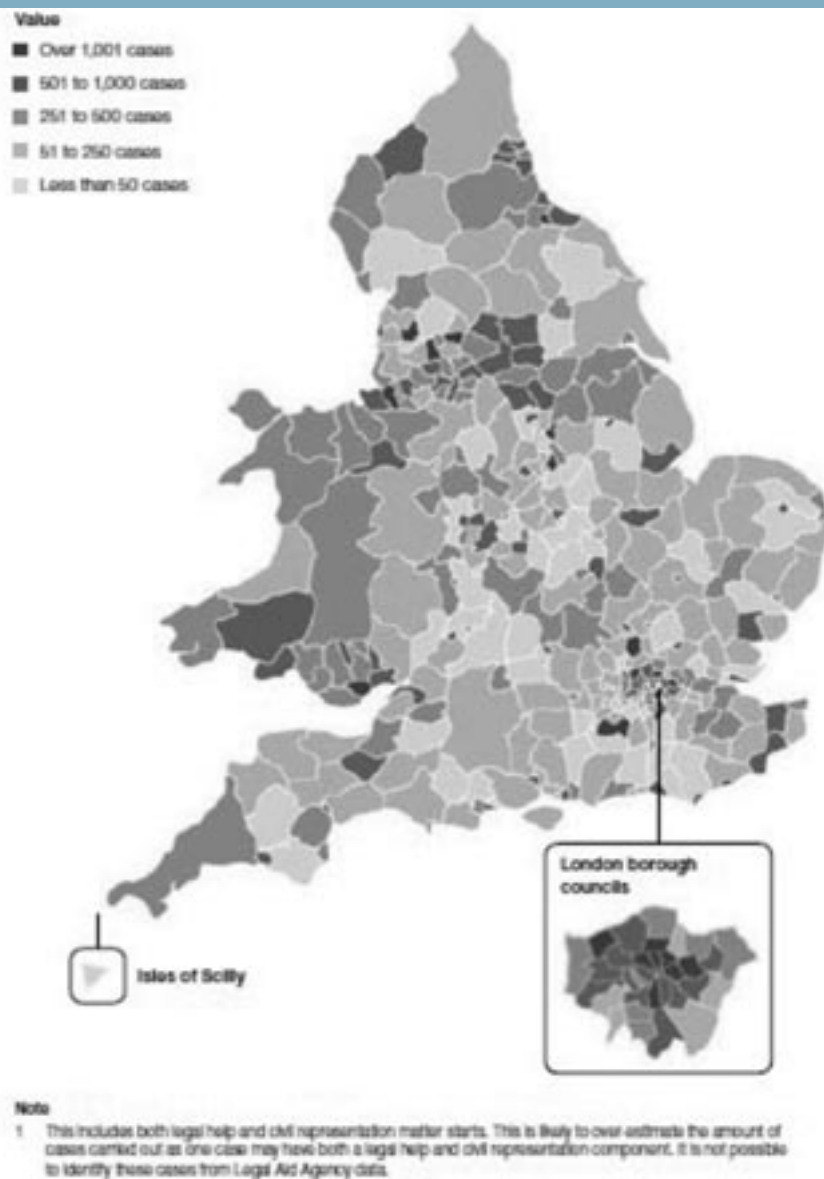
Because the majority of our legal aid budgets were around civil welfare law, civil debt law and civil housing, and a small amount for family law as well. We have maintained a small element of housing contracts and a small element of family and relationship contracts, but the majority of our legal aid budgets have gone. That has really impacted the bureaux in a number of ways. First of all, we have lost the specialist advisers that the bureaux were able to employ to give detailed case work advice – ongoing, in-depth advice – to clients with complex cases that need a legal aid contract to cover some of the additional costs. The bureaux really have seen the impact of losing those advisers. It means that we cannot see as many people – especially people with complex cases – through the bureaux network. We have estimated that we see around 120,000 fewer people through our bureaux that would have otherwise accessed our help through legal aid budgets. In addition to that, where bureaux did not hold legal aid contracts, they were still able to refer people to other organisations that would have helped through legal aid money as well. Our survey of bureaux that we did last year found that 92% of them now struggle to find anywhere to refer people, with complex cases whom they cannot help, on to other organisations that would be able to help them. In summary, it has had quite a startling impact on the bureaux network. We see 120,000 fewer people than we otherwise would have done, and those people tend to have the most complex cases that would have been applicable under the legal aid schemes. *Hugh Strickland, Chief Economist of Citizens Advice in evidence to the Public Accounts Committee*

Predictions and restrictions

The aim of LASPO in reducing the scope of civil legal, alongside other legal aid reforms, was to save around £350 million but without specific year-on-year targets.⁶⁶ The NAO Report's analysis has confirmed that the LASPO reforms will reduce spending on legal aid by £300 million a year, however, the reforms are still working their way through the system. In fact the NAO suggest that spending reduction forecasts may actually be exceeded, not in any way due to declining demand but due to the declining supply. The number of providers conducting work and the number of cases varies widely across the country and in 14 local authority areas no face-to-face civil legal aid work was started in 2013-2014. Ten years ago there was much debate about the risks of 'Advice Deserts'.⁶⁷ Today this can be seen to be a reality as illustrated by the NAO analysis (see Figure 9).

⁶⁷ Sandbach, J., *Geography of Advice*, Citizens Advice (2004) <https://www.citizensadvice.org.uk/geography-of-advice.pdf>

Figure 9. Number of face-to-face matter starts per 100,000 people in each authority area in 2013–14

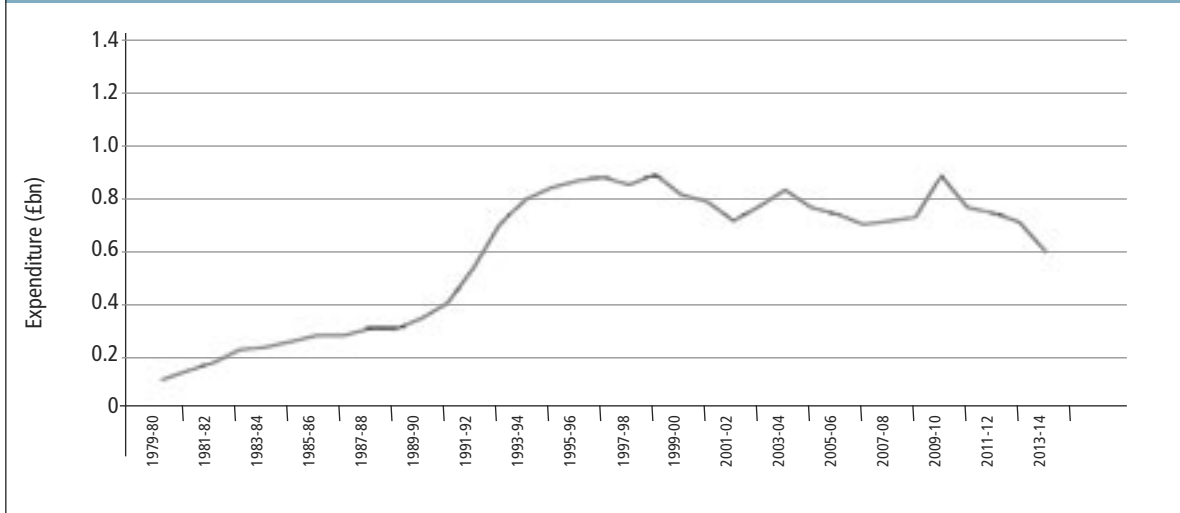


Source: National Audit Office (2014)

The NAO report also points out that while spending on legal aid rose between 1979–1980, and 1996–1997, it fluctuated for several years before falling in 2009–2010, before the implementation of the reforms (see Figure 10). It concluded that the Ministry of Justice has little understanding of what has caused the fluctuations or the drop in spending before the reforms. However, the NAO’s study stops short of reviewing the history of the civil scheme which has gone through significant reform over this period, especially over the past 15 years from replacement of the ‘Green Form’ system with franchised or contracted supply, the piloting and development of legal aid services in the non-profit

sector, and the adoption of a fixed fee and unified contract model first recommended by Lord Carter’s report on legal aid procurement.⁶⁸

Figure 10. Spending on civil legal aid between 1979/80 and 2013/14



Source: National Audit Office (2014)

What is clear however from the NAO report is that the way in which the Ministry of Justice has gone about cutting legal aid expenditure has not aligned with the Ministry’s wider policy objectives, and that as a result many of the MoJ’s predictions have gone astray. The reform’s policy objectives included discouraging unnecessary and adversarial litigation, targeting legal aid at those most in need, and delivering better overall value for money. However, the NAO suggest that reforms have been creating additional unforeseen costs, both to the Ministry and wider government. The additional cost to HMCTS and the MoJ are estimated at £3.4 million a year mostly from managing litigants-in-person.⁶⁹ Beyond this there are less easily quantifiable costs for Government indicated by the 2010 English and Welsh Civil and Social Justice Panel Survey (CSJS) which found that 50% of respondents who were eligible for legal aid reported that their civil legal problem had a negative effects on their health and wellbeing, and previous analysis by the CSJS has identified some of the direct knock on costs

68 The history of the civil legal aid scheme is covered in detail in Hynes, S., and Robins, J., *The Justice Gap* Legal Action Group (2009), and its follow up work *Austerity Justice*, Legal Action Group (2014).

69 *Implementing reforms to civil legal aid*, NAO (2014) <http://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>

to public services.⁷⁰ These analyses have been further researched by Professor Graham Cookson and others to the extent that it is now well established that significant on-costs are occurring, even though it is possible to dispute the scale of this problem and the proxy measurements used.⁷¹

In respect of reducing litigation and encouraging alternative routes to resolve disputes the NAO report also calls this into question, and as we have identified in chapter 1 some areas of litigation, particularly in creditor claims against debtors and landlord claims against tenants and their enforcement, the use of courts appears to be increasing but with those on the ‘other side’ of proceedings having even less access or entitlement to publicly funded advice. Publicly funded litigation overall though has reduced but without the corresponding shift into alternative channels, and as the NAO report observes “The Ministry did not realise that by reducing the scope of legal aid and therefore consultations with solicitors it would also reduce referrals to mediation.”⁷²

The Ministry of Justice is on track to make a significant and rapid reduction to the amount that it spends on civil legal aid. However, it introduced major changes on the basis of no evidence in many areas, and without making good use of the evidence that it did have in other areas. It has been slow to fill the considerable gaps in its understanding, and has not properly assessed the full impact of the reforms. Almost two years after the reforms, the Ministry is still playing catch up: it does not know if those still eligible are able to access legal aid; and it does not understand the link between the price it pays for legal aid and the quality of advice being given. Perhaps most worryingly of all, it does not understand, and has shown little interest in, the knock-on costs of its reforms across the public sector. It therefore does not know whether the projected £300 million spending reduction in its own budget is outweighed by additional costs elsewhere. The Department therefore does not know whether the savings in the civil legal aid budget represent value for money.

Summary of Public Accounts Committee Report on implementing reforms to civil legal aid, 4 February 2015

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubacc/808/80803.htm>

⁷⁰ *Civil and Social Justice Panel Survey*, LSRC (2010). Also see Pleasence, P., Balmer, N.J., Buck, A., Smith, M., and Patel, A., ‘Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems’, in *Transforming Lives: Law and Social Process*, ed. by Pleasence, P. *et al* (Norwich: TSO, 2007).

⁷¹ Cookson, G., and Mould, F., *The business case for social welfare advice services*, Low Commission, (2014) <http://www.lowcommission.org.uk/dyn/1405934416401/Social-Welfare-Advice-Services-Final-Report-20140603-Main-Text.pdf>

⁷² *Implementing reforms to civil legal aid*, NAO (2014) <http://www.nao.org.uk/wp-content/uploads/2014/11/Implementing-reforms-to-civil-legal-aid1.pdf>

The NAO also observe that the Ministry implemented the reforms without any real understanding of behavioural dynamics and why people go to court to resolve disputes, having only recently started commissioning work in this area. The alternative support strategies are called into question by the NAO, noting first that while there is significant website traffic on MoJ/Gov web pages on legal information and support, users were progressing through multiple pages, and secondly that non-legal aid funded third sector advice providers, already affected by funding losses, have been unable to meet extra demand generated by the reforms.⁷³ Other research reports have also published findings that suggest the public are increasingly confused about where to go for help in the new landscape. For example a Bar Council Survey of barristers, not usually the first point of contact with lay clients, showed that since April 2013 barristers have seen an increase in the number of lay clients expressing difficulty in accessing legal advice and representation, as well as an increase in the number of lay clients requesting free advice and representation, or information about where or how they could access free advice and representation.⁷⁴

Since the reforms were implemented a number of ‘gateway’ issues have also arisen. The first of these is the ‘Mandatory Telephone Gateway’; a recent Ministry of Justice analysis found that low awareness and the restricted service it offers has led to significantly fewer telephone enquiries to the service than had been estimated by both the service and the Legal Aid Agency prior to its implementation.⁷⁵ The second is the gateway to specialist family law support for victims of domestic violence with reference to higher required levels of evidence which genuine domestic violence victims often lack in practice; there is considerable evidence that this presents insurmountable barriers.⁷⁶ The domestic violence evidence regulations had to be subsequently reviewed and amended, although there is still evidence of problems.⁷⁷ The third is the gateway to ‘exceptional funding’ for serious issues (under section 10 of the LASPO Act); the Ministry of Justice’s data shows that only 113 cases have obtained exceptional funding so far, whilst it was anticipated that around 1,600 applications would be approved annually. These gateway problems illustrate the central insight from systems thinking that overly restrictive intake systems that fail to deal with problems at the point at which they present to service providers and can have perverse outcomes.

⁷³ NAO *ibid*

⁷⁴ LASPO: *One Year On* Bar Council (2014) [http://www.barcouncil.org.uk/media-centre/publications/2014/september/the-legal-aid,-sentencing-and-punishment-of-offenders-act-2012-\(laspo\)-one-year-on/](http://www.barcouncil.org.uk/media-centre/publications/2014/september/the-legal-aid,-sentencing-and-punishment-of-offenders-act-2012-(laspo)-one-year-on/)

⁷⁵ *Civil Legal Advice mandatory Gateway Findings from interviews with service providers*, MoJ (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384310/cla-provider-research.pdf

⁷⁶ *Evidencing domestic violence: a year on*, Rights of Women (2014) <http://rightsofwomen.org.uk/wp-content/uploads/2014/10/Evidencing-DV-a-year-on-2014.pdf>

⁷⁷ <http://rightsofwomen.org.uk/wp-content/uploads/2014/12/Evidencing-domestic-violence-IV.pdf>

Thus the reforms pursued lacked the strategic elements of systems thinking, and this has been evidenced by for example by the additional costs and complexities of managing increased volumes of litigants-in-person as identified in a recent Ministry of Justice analysis.⁷⁸ It also explains why the Ministry of Justice's recent published financial data reveals there to be very significant discrepancies between legal aid costs, and the case volumes originally predicted in the Ministry's impact assessments. When the government first published its consultation on civil legal aid reform it estimated that 'matter starts' in civil work would fall by 68% for legal help (i.e. advice work) and 44% for representation.⁷⁹ Whilst these estimates have been close, the reality is that especially for legal help work the figures have in fact fallen much more sharply than that. On the basis of the latest Ministry of Justice published data volumes of new matters started for legal help have fallen by over 80% between 2009–2010 and 2013–2014. The number of certificates granted for civil representation has fallen by 30% between 2010–2011 and 2013–2014.⁸⁰ The MoJ data also reports that since 2008 the number of civil providers has nearly halved.

The Justice Committee Inquiry

The Justice Select Committee have also been conducting over a year long inquiry into the impact of LASPO.⁸¹ At the time of publication for this report we are unable to report on the Committee's findings which are due to be published very shortly. However, in the process of the inquiry the Justice Committee has collected substantial material on the impacts of LASPO, including impacts on the non-profit advice sector and impacts on access for clients. The Legal Action Group have summarised some of the written evidence submission for their (June 2014) *Legal Action* magazine,⁸² and the Low Commission have also provided oral and written evidence. A range of stakeholders provided evidence as witnesses over six public sessions, from the judiciary to advice provider and client groups, and public bodies involved in the justice system; a common theme which emerged from these sessions was the extent to which the exclusion of preventative work and early legal advice interventions may be having unintended consequences. Here are just a few case study examples taken from evidence to the Justice Select Committee which highlight

78 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380479/litigants-in-person-in-private-family-law-cases.pdf

79 LASPO Impact Assessments, Ministry of Justice (2011) <http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/downloads/consultations/annex-a-scope.pdf>

80 Legal Aid Statistics, Ministry of Justice (2014) <https://www.gov.uk/government/collections/legal-aid-statistics>

81 <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/laspo/>

82 <http://www.lag.org.uk/magazine/2014/06/review-of-evidence-to-laspo-act-impact-inquiry.aspx>

the points made by many witnesses that longer term value for money for civil legal aid is unlikely to be achieved from the reforms, because the system has been redesigned inappropriately and can only offer a dysfunctional service:–

- Client was single parent to 10 year-old son. She had received a bailiff's notice with an eviction date within 10 days when she approached our firm for help. Her local authority landlord was seeking to evict her for rent arrears of over £4,000. Half of these arrears had accrued over the last 6 months (post-1 April 2013) following a Housing Benefit (HB) decision to apply a maximum Non-Dependant Deduction for another adult living in her home. The client had also received a negative decision from Child Tax Credits (CTC) who had stopped her tax credits on the basis that they believed she was in a relationship when, in fact, she was not. Without CTC the client received a minimal income of Employment and Support Allowance (ESA) and Child Benefit to pay for her and her 10 year-old son's living costs. This made it impossible for her to pay anything towards her rent – she had no spare money at all. I was able to advise and assist the client in making an application to suspend her eviction and the court agreed to adjourn the application to allow the client time to resolve the benefit problems. But there was no legal aid available for me to help her do so. I ended up making written representations, pro bono, to assist the client with her benefit problems anyway. In the meantime the client sought assistance from the CAB but their opening hours were very limited. Whilst she did this I opened a new file to refer her case to social services for a request for help with housing costs under s17 Children Act 1989. Social services agreed to provide food bank vouchers to the client to help her manage her limited income. This will mean that the client will be able to pay the shortfall between HB and her rent for the next four to six weeks at least, but if her CTC appeal is not resolved shortly then she will be back struggling to afford her rent and, when the matter comes back before the court, at great risk of being evicted from her home with her (now) 11 year-old son. If my firm had been able to open a CTC appeal file and HB file for the client right at the beginning of the case (as I would have been able to do before 1 April 2013) I believe that the CTC appeal could have been resolved by now and she would at least be receiving a new claim for CTC and she would be at less risk of eviction because she would be able to afford to pay her rent and something towards her arrears. (*Practitioner from YLAG network*)
- Harry, in his 50s and in receipt of ESA, was called for a medical assessment but was too ill to attend. He had a sick note from his doctor as proof of this, but his benefit was stopped anyway so he came to the CAB. The bureau commented that prior to 1 April 2013, he would have been able to access

a specialist caseworker to assist but this option was no longer available. Harry was left without any means of financial support and has had to turn to charity to survive. (*Citizens Advice*)

- I saw a woman yesterday whose partner applied for a non-molestation order and residence order last year. She was not represented and has no order for contact for her three children, for reasons that are not clear. She obviously has some learning issues and so needs help and support through the procedure. I referred her back to Children's services and Mediation and did not charge although she was willing to pay as I felt it was so unfair, she is on JSA and obviously needs all the money she has. Her children should be having a relationship with their Mother, she will now need to apply on her own for a Child Arrangements order for contact and complete the horrendously complicated new Form C100 which is now 24 pages long. She is one of the many clients we see for free, often to assess if they can qualify through the DV gateway or sending them away to obtain the evidence. (*Practitioner, LAPG network*)
- Mr C was born in 1996 and is a national of Bangladesh. He arrived in the UK in 2007 as an 11 year old child. He claimed asylum a year later. This was refused as was discretionary leave. His appeal failed. He remained in the UK. Social services placed him with his current foster carer and continued to support him through his education. He has achieved awards recognising his academic achievements and has had to turn down job offers from leading media because of his lack of immigration status. An application for leave to remain outside of the rules based on his family and private life in the UK was made in 2011. That application remained outstanding and judicial review proceedings were issued in January 2014. Outside of those proceedings the Secretary of State finally determined his application in March 2014, refusing him leave to remain. He has a right of appeal. His asylum case does not meet the merits test for public funding. He continues in education, continues to be supported by social services and remains with the same foster carer with whom he has established family life. Social Services are paying the costs of his legal advice with Mr C paying a contribution. (*Case study from IPLA network*)
- Ms S was the unmarried partner of a British citizen exercising rights of free movement under European Union law (in line with the case of *R v IAT and Surinder Singh, ex parte the Home Secretary*, [1992]). She has three British children. She is a survivor of domestic violence. She does not qualify under the Legal Aid Sentencing and Punishment of Offenders Act 2012 domestic violence provisions because there was no marriage. She cannot afford to pay for advice on how to apply for residence card to show has retained a

right of residence under European Union law. *(Case study from IPLA network)*

- The caller (telephone inquiry to CLAL helpline), a father, had a Residence Order for his daughters, sought advice in relation to ongoing proceedings in which the mother had applied for full residence of his daughters. The mother had contact under a Contact Order, and the father was concerned about his children’s reports of abuse by the mother during contact. The caller reported that there had been a history of domestic abuse in his relationship with the mother, including her sexually abusing him and exerting extreme financial control over him (including holding his immigration documents, preventing him from working). However, no reports had been made to the police. The caller had had a fact-finding hearing one month before, and the judge ruled that he would not consider the financial aspect of the domestic abuse allegations. The caller also believed that the judge made a mistake of fact in attributing evidence from a GP to him, when the evidence concerned the mother. The father suffered an emotional breakdown during the proceedings, finding the process extremely stressful. The adviser could provide information about the court process, including which forms to lodge, and general information about which matters can be the subject of an appeal. However, the matter was too complex for the adviser to give adequate advice over the telephone on grounds of appeal. The caller has no access to legal aid unless he can provide evidence of domestic violence that meets the Legal Aid Agency’s requirements, which, in the absence of reporting of the abuse in this case, is unlikely. He cannot afford to pay privately for a family lawyer. *(Coram Children’s Legal Centre)*

All these cases illustrate in different ways the difficulties that people with legal problems have in accessing advice at an early stage of their difficulties. We expect that the Justice Committee’s report will be an invaluable source of policy and impact analysis when the Ministry of Justice comes to undertake a post-implementation review of LASPO.⁸³ The Justice Committee’s report as well as finding by the NAO and Public Accounts Committee should be considered alongside the outcomes of three new three new research projects that the Ministry of Justice has recently commissioned:–

⁸³ Explanatory Memoranda to LASPO regulations state “The Ministry of Justice will conduct a post-implementation review of LASPO between three to five years after implementation.”

- A “Justice Problem Resolution survey”: this survey will provide statistical data on the prevalence of civil, family and administrative justice problems in the general population, the strategies people use to resolve these problems, problem outcomes, and how these vary for different types of justice problems and for different groups of people.
- A “Varying Paths to Justice”: this in-depth qualitative research study will identify the critical points where people make a decision about whether to go to court or choose to resolve their family or civil justice problems through another route. The research will identify the factors that influence their decisions and map the range of pathways people use to resolve their problems, their experience of these pathways and how effective they perceive them to be. The work will highlight how the LASPO reforms have changed the pathway to justice for those now out of scope for legal aid and complement the justice resolution survey above.
- A “Survey of Not-for-Profit providers”: this is a survey of non-profit advice providers who provide information and guidance around resolving civil and social justice problems. The research will provide statistical evidence on their organisational structure; the volume and needs of the clients they help; the range of advice and other services they provide; their perceptions and response to changes in the legal and advice sector (in particular the legal aid reforms) and an assessment of the future sustainability of the service.

We welcome the fact that the Ministry of Justice is now undertaking research on these issues. In our earlier report we recommended that the Ministry of Justice should put in place quarterly and annual mechanisms for monitoring the full impact of the LASPO Act changes over time, and should publish data on the uptake of the remaining aspects of legal aid on quarterly basis with a more detailed impact review each year. While the Ministry of Justice’s research commissioned research programme is not intended specifically to monitor the impact of the LASPO Act, the projects will nevertheless provide evidence on the prevalence of civil, administrative and family justice problems and the strategies people employ to resolve these problems within the post-LASPO landscape.

We recommend that the Ministry of Justice should use this research, alongside the evidence gathered by the Justice Committee and the National Audit Office, as well as other evidence when approaching the post-implementation review of the LASPO Act.

We also recommend that the post-implementation review should be brought forward to commence in Autumn 2014 and should consider the range of impacts that the Act has had including on advice providers and their clients, HMCTS and related services, and those seeking to resolve justiciable problems.

We would however like to see the Ministry of Justice address the issues of under supply and under-spend on civil legal aid, as against its target budget, more urgently. The Public Accounts Committee has recommended that the Legal Aid Agency should, as promised in its 2012 impact assessment, should establish a robust mechanism to identify and address any shortfalls in provision, building on the NAO's analysis, so that it can be confident that those persons still eligible are able to access legal aid. We support this recommendation. We would also like to see one further key recommendation taken forward from our earlier report in light of the above evidence that that the civil legal aid system may be missing its own targets for those it seeks to help. **The Ministry of Justice should conduct a 'sense check' review of the matters excluded from the scope of the LASPO Act and consider reinstatement of some provisions to ensure that there are no inconsistencies between its stated aims and practice.**

Should the Ministry of Justice continue to run a notional under-spend on the civil legal aid budget in 2015–2016, we would urge that all policy options should be reviewed, including investigating alternative ways to fill the advice gap using the under-spend on the civil budget. If there is more flexibility in the budgets than may have been previously anticipated or modelled for, it should be possible to make progress on implementing some of our recommendations that would only require small amounts of funding, such as Public Legal Education initiatives.

The local context

The significant reductions in legal aid support for the advice sector needs to be seen within the wider local funding context, in particular the role of local government support. Local authority funding for CABx declined from 2009 to 2013, with a sharp drop in 2011, however it has now been restored to 2010 levels of around £72 million.⁸⁴ However, there is no definitive aggregated data tracked over time to estimate either how much funding local authorities provide the wider not-for-profit advice sector, or what the impacts have been of recent local government spending settlements on the overall spending of local authorities on advice services. The Law Centres Network estimate that local government support for Law Centres has reduced by almost a quarter since 2010–2011. Our report last year, based on the Cabinet Office's review data, estimated probable cuts in local authority funding of £40 million a year.

This needs to be seen within its context of local government finances. The Local Government Association (LGA) estimates that central funding for councils has shrunk by 40% overall since 2010, and this decrease has come at a time when

84 http://www.citizensadvice.org.uk/citizens_advice_introduction_to_the_service_2012-13.pdf

demand for core statutory services such as child protection and social care of older people is rapidly increasing.⁸⁵ Although the government's most recent spending settlement highlights that reductions in Revenue Spending Power will be limited to 1.8% in 2015–2016, if the contribution from council tax and the element of the Better Care Fund (see next chapter) which will not be spent on social care or commissioned by local authorities were to be removed (i.e. passed to NHS bodies), the reduction is 8.8%.

Last year's illustrative settlement also announced that the Welfare Support Grant of £172 million would come to an end. The provisional settlement for 2015–2016 does not reinstate this cut of £172 million; instead the government has separately identified £129.6 million in the Settlement Funding Assessment (SFA) in 2015–2016. This is at the expense of other elements in the SFA; separately identifying funding for local welfare from within the existing SFA and reducing it by £42.5 million effectively represents a significant cut on all funding for local welfare assistance which will put additional pressure on both existing council services and the advice services they work with in delivering localised support. As a result, many councils may be unable to continue to run their local welfare schemes.

Councils' spending on advice services is highly discretionary, and is resourced from different budgets at different tiers of local government. LGA analysis show while local government spending on adult and children's social care, waste management and local public transport have all been level pegging or reduced only slightly – all having some degree of statutory protection – spending on all other unprotected areas is in freefall. Furthermore there is a growing gap between projected income and spending, a gap growing by £2.1 billion a year adding up to £12.4 billion by the end of the decade and likely to cause large budget deficits in local authorities in the future.⁸⁶ The Independent Commission on Local Government Finance confirms this trajectory, but suggests that the gap could be closed through reform of structures and local taxation, greater devolution of functions and resources from central government, and being able to call on specific Whitehall 'early intervention' funds (the Better Care Fund, the Homelessness Prevention Fund and the Troubled Families Programme are all cited as examples).⁸⁷

Given these enormous pressures on local authorities, the Low Commission have resisted calls to recommend the imposition of any further duties on local

85 *Future Funding*, Local Government Association (2014) <http://www.local.gov.uk/documents/10180/5854661/L14-340+Future+funding+-+initial+draft.pdf/1854420d-1ce0-49c5-8515-062dcca2c70>

86 *Future Funding*, Local Government Association (2014)

87 The Independent Commission on Local Government Finance <http://www.cipfa.org/iclgf-home>

government in respect of advice funding. Such a call would also fly in the face of movements towards localism widely supported across the political spectrum. There is increasing momentum towards stronger integrated ‘place-based’ approaches to local public service delivery – an ongoing trend from community strategies and local strategic partnerships through local area agreements, ‘total place’ pilots to community budget pilots. At the same time, much of the old ‘top-down’ performance management framework to which local authorities had been subject has been dismantled and the emphasis shifted back to local accountability.

Another development has been the Social Value Act 2012 which requires local authority public bodies to consider securing added economic, social or environmental benefits for their local area in their procurement policies. There has been no systemic study on how this may affect the commissioning of advice services, or how it could promote the integration of advice with other services. One example though is the tender documentation for Croydon Council’s Money Advice Services which required bidders to demonstrate how they would add social value to the contract – this section carried a maximum 105 of the total contract scoring.⁸⁸ We see significant potential for local authorities using this Act to tap into the added value of the advice and voluntary sectors when commissioning services.

Against this background the Commission that believe that it will be necessary for local authorities to draw on a central funding stream in order to be able to continue supporting the advice sector. Our approach though is for the funding priorities to be determined locally, and our proposed mechanism is that local authorities or groups of local authorities should co-produce or commission local advice and legal support plans with local not-for-profit and commercial advice agencies. The plans would draw down on funding from a National advice and legal support fund, and use local leverage to draw in funding from elsewhere. **We therefore restate the Low Commission’s recommendation on local planning of advice services:**

- **In England, unitary authorities and county councils should work with their local advice sector to co-produce ten-year local advice and legal support plans, to ensure the provision of a basic level of information and advice, including some face-to-face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund.**
- **In Wales, local authorities should work with their local advice sector to co-produce ten-year local advice and legal support plans, to ensure the provision of a basic level of information and advice, including**

88 <http://www.croydon.gov.uk/contents/departments/business/pdf/socialvalue.pdf>

some face-to-face and some legal support, through a combination of local funding and support from the National Advice and Legal Support Fund as recommended in the Welsh Government's Advice Services Review, through a combination of local funding and support from the National Advice and Legal Support Fund.

- **The English and Welsh Local Government Associations should support and encourage their members to engage with the local planning process**
- **Local advice and legal support plans should make clear how the area's allocation from the National Advice and Legal Support Fund will be used to help implement this plan.**
- **Each local authority should publish a progress report on the implementation of the local advice and legal support plan every three years.**

The ASTF Challenge

I understand that it takes time, money and the right skills to transform organisations. This is why the Government is providing new funding to help not-for-profit advice providers to continue helping their clients whilst redesigning their services to reflect the new financial realities.

Nick Hurd, foreword to *Not-for-Profit Advice Services in England*, Cabinet Office (2012)

During the later stages of the passage of the LASPO Act, it was announced that the Advice Services Transition Fund (ASTF), a Big Lottery Fund programme, would provide funding in 2013–2014 and 2014–2015 to help not-for-profit advice organisations in England to adapt and develop new ways to meet local needs. It was established on the basis of a match funding formula agreed between the Lottery and the Cabinet Office. To be eligible for funding, not-for-profit advice providers would need to come together as partnerships with plans for collaborative ways of working to address local needs; the fund opened for applications in October 2012.⁸⁹

The ASTF has supported 228 partnerships with between 3 and 15 partners in each, at a cost of £68 million over three years, only 25% of which can be spent on direct service delivery. Although the fund has had a three year life cycle, the funded projects are only for two years because ASTF came together in two

⁸⁹ Office of Civil Society, 2012 <https://www.gov.uk/government/news/65-million-for-free-advice-services-to-help-the-vulnerable>

tranches – an initial £20m followed by a two-year extension in the subsequent budget, with six months or so work on the allocation to partnerships. The partnerships cover nearly every local authority area in the country, usually with a CAB acting as the lead agency, and represents a major investment in the sector. The ASTF was specifically for non-profit advice providers covering Debt, Welfare Benefits, Housing and Employment issues – the areas of work specifically removed from the scope of legal aid. The programme expires in 2015.

The ASTF as a funding stream was designed to be ‘transformational’ to support collaborative and innovative working models, and service transformation in order to adapt to a new funding environment following LASPO and local government budget cuts. Despite the time limited approach, we believe that the programme, and the Partnerships it supports, has provided some real tangible benefits:-

- The ASTF Partnerships have often been able provide vehicle for the advice sector to pitch to local government in commissioning rounds (including social care and health integration) and can support local advice sectors to bid for extra funds – especially where local commissioners prefer to deal with one organisation rather than several different organisations.
- The partnerships have improved engagement with local government overall, enabling local government to work collaboratively with the sector to deal with national policy changes – e.g. how Universal Credit rolls out in a local authority area.
- Where the Partnerships work well they provide fantastic “hubs” for the advice sector and draw in the wider voluntary and community sector – they have facilitated new infrastructure, including in some areas where there formerly has been none.
- The best partnerships have tended to build successfully on the Lottery Funded ‘Advice Plus’ or ‘Working together for Advice’ programmes – or other similar partnership structures (e.g. the Advice for Tenants and Residents [AFTAR] Project which received around £540,000 through a partnership between Wishaw and District Housing Association, Motherwell and Wishaw CABx and four other local social landlords).

However, given the time-limited structure of the ASTF programme, it has not been able to address issues of sustainability or enable new partnership models to become sufficiently embedded within and across the advice sector with any expectation of continuity or longevity. Particular factors have emerged which suggest that the two-year cycle may be too short to achieve ambitious objectives set out by the Cabinet Office:-

- The apportionment between service provision (25%) and transition (75%) has not always been particularly helpful for those organisations whose most pressing challenge has been keeping core services running.

- Many partnerships are predicated on expanding the use of volunteers – however the nature of volunteering is changing, and there are challenges in recruiting and training volunteers, which takes at least six months, and then placing and retaining volunteers appropriately with partner agencies.
- The new suggested innovation approaches from the ASTF programme such as developing alternative ‘income generation’ schemes are often limited in what they can practically achieve because advice charities cannot exceed their charitable objectives. So advice charities may have limited scope to move from community models towards more commercial or social enterprise models. Crucially however, enterprise models may be unlikely to get off the ground because their core client groups do not have the money to pay for services.
- Weaknesses or even insolvency amongst the makeup of some partnerships can undermine the whole partnership initiative – lead agencies need both the space and support to address this, otherwise the partnerships can only be as strong as their weakest link.
- Partnerships are fragile because with public funding becoming increasingly scarce, the same partners are also competitors for the same public funds
- Partnerships are extremely management intensive, especially in negotiation and establishment of partnership agreement and structures.
- Each partnership tends to work through the appointment of one dedicated project manager drawing different advice strands, organisations and projects together across ASTF partnership areas and organising relevant partnership meetings and fora. Their role is essential if the partnerships are to continue, and the loss of ASTF project staff could present a big challenge for the sector.

Some examples of ASTF Partnerships include:

Manchester

The ASTF project and funding in Manchester (£338k over 2 years) has been extremely valuable in providing the resource for Manchester’s advice sector, and has achieved a great deal to achieve in two years, as Manchester CAB (the lead agency) seeks to transition the sector both operationally and commercially. They are seeking to develop the Manchester Advice Alliance, an operational network of advice and information providers who can share best practice, referrals and training, supporting partners to deliver digital advice sessions to reduce the need for, and cost of, expensive face-to-face advice, and are also seeking to develop a strategic partnership capable of working together on joint bids, generating income, and influencing commissioners and key stakeholders. The strategic element needs careful consideration and sensitivity to get the ‘right’ partners, the risk is that once

the funding ends and there is no team in place to ‘glue’ the partnership together it will crumble because it has not had sufficient time to bed-in. Manchester CAB is looking to secure funding to maintain an Alliance team to maintain this function so hopefully that risk is reduced, but it can be difficult to secure funding for this kind of activity as many funding streams are directed at front line delivery. The CAB hears from local commissioners that they value the Alliance in being the focal point for the sector and ensuring that the voices of a range of organisations and service users can be heard so we know there is value in this model. Locally, Manchester CAB and their partners are facing further cuts to advice funding, making effective partnerships more essential than ever, but with resources within many advice agencies so scarce there is often simply not the capacity for an external focus.

Wandsworth

Wandsworth CAB leads an ASTF project (Wandsworth Advice) – funded to £342,000 with 6 partner organisation including South West London Law Centre. It now runs a regular forum in which all council departments and local voluntary agencies are engaged. It is only in Year 2 that sustainability opportunities have started to arise, e.g. co-location of services, digital integration between agencies, and social prescribing options. It would be difficult to continue this work next year.

Hampshire

The advice sector in Hampshire have developed a ‘2020 Vision for Advice’ project with Hampshire and Havant CABx working together under ASTF funding to adapt to the new environment of less public funding and increasing demand, and achieve more through collaboration with early intervention and remote channels, and to deliver high quality services that are sustainable in an environment of reduced funding. The transformation is seeing the trial of a new style advice service with a high quality back office advice function (phone, webchat and email advice), light touch co-located, community based advice services, and intensive multi agency casework advice. The aim is to create a seamless, client-centric, multi-agency service ensuring that advice is timely, high quality and leads to sustainable outcomes for service users.

Northumberland

Northumberland’s Advice has 3 delivery partners and 143 members of the network broken down as follows: benefit advice providers – 36, support and information providers – 93 and general supporters – 14. By being a member of the network, individuals and organisations have access to free networking events and training, advocacy opportunities, access to a members’ only

website section which includes an extensive directory of services, timely and informative information updates, and the opportunity to be part of a stronger, more inclusive advice sector. In such a large rural area this has increased opportunities for members of the public to access advice and support, and strengthened the sector as a whole through change management initiatives. However just as momentum is building, network managers are having to think about sustainability and exit strategies for the project, having started the partnership from scratch. They feel there is still more to achieve what the funding was intended for, but see now way that the momentum and partnership work can continue without coordination and funding to do so, as coordination functions cannot be absorbed into managers, trustees or advisers day jobs..

There has been no formal evaluation of the ASTF programme, and the Big Lottery were not originally intending to conduct their own evaluation of ASTF as they had no specific funding set aside to do this. However the Big Lottery has now agreed to undertake a short evaluation. There is also learning project run by Advice Services Alliance and so far the general outcomes of the learning project have suggested that partnerships are still taking time to embed, often dependent on prior experience of partnership working. It is important that the evaluation is delivered, as this will enable conclusions to be drawn over the provision/transition (25/75 % split) apportionment and also whether any of the funding could have been more effectively targeted in areas where partnership working is new and agencies are still developing the sort of relationships that need to continue.

With the programme coming to an end in 2015, as things stand there is nothing planned to specifically to replace ASTF, although the Cabinet Office have started a new £40 million Lottery funded Voluntary and Community Sector (VCS) sustainability fund.⁹⁰ However advice is not a priority funding area for this Lottery stream. Given that the sector is still in a state of transition, and that it may take six months-to-a-year for any new government to determine its priorities as to how it might use the Lottery to support the VCS, we believe there is a strong case in the short term for continuation of the ASTF programme and funding into 2016. The Low Commission consulted on this with advice sector bodies at a recent roundtable event organised by the Advice Services Alliance and Access to Justice Foundation. Although there were a variety of opinions from sector representatives about the efficacy and efficiency of the project, it was agreed that the funding had been pivotal in supporting the sector through

⁹⁰ Office of Civil Society, 2014 <https://www.gov.uk/government/consultations/new-fund-to-help-vcse-organisations-become-more-sustainable>

this initial difficult period following drastic funding cuts, and that the end of the ASTF programme now represents a significant threat to the advice sector.

The Low Commission therefore strongly recommends to the Cabinet Office and the Big Lottery that the ASTF programme and funding should be extended for a further year.

We also hope that the Big Lottery might consider developing further funding interventions which support advice, built into future Lottery projects designed to tackle the multiple and complex needs of the increasing numbers of people experiencing hardship and disadvantage, including those related to the benefits system, rising costs, debt and low income. Any new programme though that might involve advice services needs to draw on the learning from ASTF. A particular lesson that we would draw out is that any strategic funding intervention should not only support greater partnership working across the VCSE sector and preventative interventions, but should also work to engage local authorities buy in at an early stage. Our overall objective though is that all national funding for advice should be consolidated into a National Advice and Legal Support Fund for England and Wales, and that this should be administered by the Big Lottery Fund allocating a 90% share of the National Fund to local authority areas, based on indicators of need drawn from joint strategic needs assessments and Health and Wellbeing Strategies.

The political context

Our engagement with MPs has convinced us that the majority of MPs are well aware of the challenges faced by the social welfare advice sector, not least because they work closely with advice bodies on their own casework matters. Legal aid and other reforms have generated an additional burden on MPs' constituency surgeries – not all of which are as well-placed to deal effectively with advice. In December 2014 and January 2015 the Low Commission undertook a quick survey of MPs' casework loads and types. From the responses we received we found that:–

- the average casework volume for 2014 was 3234 pieces of casework; nearly all respondent MPs said this was an increase from both from 2013 and 2012
- the highest average casework topics were 20% for welfare benefits and 18% on housing issues; other high scoring issues were immigration and asylum problems and community care issues. However, the figures reflected quite a range (from 2% to over 50%) depending very much on the type of constituency.
- MPs referred on average approximately 10% of casework to social welfare law non-profit advice providers, 5% to specialist, and 2.5% to the Parliamentary Ombudsman. However, again this reflected quite a range, and it is important for us to qualify from the feedback that there was a lack of any

consistent approach as to how case work was recorded and dealt with, and we as we received a low response rate our sample may prove to be skewed.

Ours is not the first survey of Parliamentarians to have drawn a link between MPs' surgery work and demand-and-supply issues for social welfare advice. A survey undertaken by DG Legal in 2011 revealed uncertainty amongst MPs about the civil legal aid changes prior to their enactment, and about the impact on their social welfare law casework. The survey, which was completed by 51 MPs, found that:–

- 77% of respondents said that they believed that the reforms could lead to a substantial increase in the workload of a typical MP
- 82% of respondents thought that the reforms could lead to the closure of advice agencies many Citizens Advice Bureaux, Law Centres and other advice agencies
- 61% of respondents said that such closures happened they would be having to provide the advice and assistance themselves.

In 2013 the Young Legal Aid Lawyers (YLAL) conducted a snapshot study supplemented by a more detailed audit looking at how the changes to civil legal aid funding would affect the ability of MPs to help their constituents. The research involved a survey of MPs and caseworkers in 45 constituencies from across the political spectrum in both urban and rural settings across England and Wales and of constituents attending surgeries with their MPs in 30 constituencies. The resulting report, *Nowhere else to turn* found that the issues and problems that are to be removed from the scope of legal aid corresponded closely with the issues constituents are habitually turning to their MPs with for assistance.⁹¹

Overall, the survey found that 56.2% of the issues that constituents wanted to raise with their MP would not receive legal aid funding post LASPO, and that 38.4% of MPs' casework had involved legal issues. Other findings of the YLAL report included that:–

- the most frequent issues that MPs had to deal in their casework with were welfare benefits, asylum and immigration issues, and housing
- before going to their MP, 80.5% of constituents had already tried to resolve these issues elsewhere;
- the vast majority (86.5%) of constituents expected their MP to take action to resolve these issues following the surgery.
- MPs were dedicating significant time and resources to assisting their constituents in resolving their problems. 20% of MPs estimated they dealt

⁹¹ *Nowhere else to turn*, YLAL (2012) http://www.younglegalaidlawyers.org/sites/default/files/YLAL_Nowhere_else_to_turn.pdf

with 200-500 constituent inquiries per month. However there was also a limit to the assistance that MPs were able to provide their constituents, their casework services often lacking the resources and expertise to assist with complex legal problems.

- In order to assist their constituents, MPs relied on publicly funded sources of advice such as legal aid solicitor firms, Law Centres and Citizens Advice Bureaux (CABx). During the six months preceding the study, 71.1% of MPs said they had needed to refer constituents to a legal adviser. Breaking this down, 66.7% of MPs had referred constituents to CABx for generalist advice; 64.4% had referred constituents for specialist advice from a dedicated not-for-profit organisation such as a Law Centre, and 60% of MPs had referred constituents to legal aid solicitor firms. However MPs reported that pressures on local suppliers were adversely impacting on their ability to help their constituents.

In 2013, following the implementation of LASPO, YLAL then conducted follow up research.⁹² Of the MPs and caseworkers who took part in the original study, 29 agreed to respond to a further survey. The main findings of the new report were that:

- Many MPs (86% of respondents) had noticed an increase in demand for advice in those areas where legal aid had been removed since 1 April 2013.
- Over 50% of respondents indicated that they had experienced difficulties in locating advice services to which they could refer constituents since our 2011 research. Respondents noted an increase in waiting times at Citizens Advice Bureaux (CABx), specifically for welfare benefits and debt advice. Overall, respondents reported reduced levels of assistance at CABx, law centres, and other advice services. These service providers were described as overstretched with high workloads and scaled down resources and funding; some advice centres having closed down as a result of funding pressures. Respondents reported that they were running out of options for constituents who are unable to pay privately for legal advice.
- MPs were concerned about the future. A significant proportion of respondents expressed concern about the changes to legal aid and how they might affect their constituents and the work of MPs and caseworkers. These comments are revealing even just relating to the impact faced by their offices, for example.

We hope that the common challenges and issues faced by MPs in dealing with constituency casework should be a catalyst for cross-Party work by Parliamentarians to find solutions for the funding of social welfare advice and legal support

⁹² *Nowhere else to turn – one year on*, YLAL (2013) http://www.younglegalaidlawyers.org/sites/default/files/Nowhere%20else%20to%20turn_one%20year%20on.pdf

services. With the current position of the political parties goes, as far as we can tell and in advance of any published release of Election Manifestos or Programmes for the next Parliament or prospective Government, the summary position is as follows:–

- The **Labour Party** has committed to immediately review criminal defence services, but have not committed to reversing civil legal aid scope cuts. They have said they will look at how the system is working, especially issues around exceptional funding, the domestic violence gateway and the new residence test. There are also relevant proposals from Labour’s recent policy reviews on decentralisation of public services, making more use of the third sector and addressing ‘root causes’ of demand in the welfare system.
- The **Liberal Democrats** have at successive Conferences (the Federal Party Conference being their policy-making body) passed a number of relevant motions concerning legal aid, welfare reform and advice, calling for policy reviews and significant changes in these areas. One of these motions has specifically called for the implementation of the Low Commission’s recommendations and strategy.
- The **Conservative Party** have made no specific commitments on the future legal aid policy beyond reforms already enacted, but there have been commitments to change the UK’s human rights regime which could have knock on consequences for legal advice systems. We expect that the recently commissioned review by Justice Ministers on the affordability of legal services may influence future thinking.

At the time of publication of this report we are approaching the 2015 General Election and the political landscape remains highly volatile and uncertain, so we have one simple recommendation. This recommendation would apply regardless of the General Election outcome, whether this be a majority government, a minority government, a coalition government or a ‘confidence and supply’ government.

Any discussions between different Parliamentary Parties following an indeterminate General Election result, should include consideration of the Low Commission’s core recommendation that the next UK Government should set out a cross departmental National Strategy for Advice and Legal Support in England and Wales for the five year term of the next Parliament.

We have not undertaken any analysis of the position of other Parties, and nor have we looked at the political position in Scotland in which Justice and Local Government are entirely devolved matters and the law operates under a separate jurisdiction. There are however distinctive issues in Wales, and the Low Commission has been running an engagement programme with the Welsh Government based on the Commission’s recommendations from our 2014 report. We look at developments in Wales below.

Money Advice

At the time of writing and publication of this report, the Money Advice Service (MAS) which has taken up much of slack in funding debt advice since LASPO took most consumer debt issues out of the scope of the legal aid system, is under review and its future is unclear.⁹³ MAS is funded through a statutory levy by the Financial Conduct Authority on financial services. We support the development of statutory levy funding as a positive innovation and good example of applying a “polluter pays” principle. However MAS has also been subjected to sharp criticism by the Treasury Select Committee and in our earlier report, we concluded that “an increase in the levy should be accompanied by a review of how MAS operates, including looking at how money is divided between financial capability and debt advice work”. We also recommended in that the FCA should increase its levy on financial institutions from £80 million to £100 million per annum to reflect the high incidence of debt and the demand for advice this produces, and should also use its powers under to impose a higher levy on payday loan companies to reflect the greater consumer detriment that occurs in the high cost credit market.

We have repeated our recommendations to the Treasury’s independent review and also emphasised our view that the market for debt advice work should not be treated in a silo but as part of a wider advice strategy. For example, advice on dealing with debt and money management, also involve income maximisation strategies, savings, employment rights and benefit or pension entitlements, as well as dealing with housing costs and other social welfare law issues. The link between problem debt, enforcement and wider civil and social welfare law issues needs to be clearly understood by policy-makers.⁹⁴ As the review of MAS has not formally reported we are not in a position to make further recommendations about money advice services but we would like to see money advice strategy linked to the wider landscape of social welfare advice and legal support, with planning and delivery operating through our proposed model of local advice and legal support plans.

Advice in Wales

Following the Wales Advice Services review⁹⁵ and the Law Commission's work with the Welsh government and advice sector, the Welsh Government announced that they would establish a National Advice Network in Wales. The Welsh Government have taken the first steps to establishing this initiative by recruiting a Chair, and a Manager, for the National Advice Network. The Network of

93 <https://www.gov.uk/government/news/independent-review-of-money-advice-service-launched>

94 This has been extensively evidenced in several studies by the Legal Services Research Centre <http://webarchive.nationalarchives.gov.uk/20130315183909/http://www.justice.gov.uk/publications/research-and-analysis/lsrc>

95 <http://wales.gov.uk/statistics-and-research/advice-services-review/?lang=en>

fifteen members (providers, funders and others) met for the first time in March 2015 to start the work of identifying gaps, coordinating funding, encouraging collaboration and the sharing of good practice. Work is already underway to introduce Quality Assurance and Standards for Information and Advice Providers in Wales.

To support this initiative, £2 million in additional grant based funding has been awarded by the Welsh government to be shared between five organisations providing advice on welfare benefits, debt and financial capability, housing and discrimination, with the aim of helping to tackle poverty and inequality across Wales. The Network aims to encourage a more strategic and coordinated approach to the way advice services are planned and delivered, and also to develop of a Strategy for Information and Advice in Wales, including commissioning research projects and initiatives to improve overall quality of information and advice in Wales and to achieve greater consistency in measuring outcomes across Wales' advice sector. Shelter Cymru and Citizens Advice have formed a new partnership to advise on specialist housing, debt and benefits.

Another development longer running development in Wales has been the *Better Advice, Better Lives* partnership between Citizens Advice Cymru and the National Assembly, to provide local and co-ordinated provision of generalist and welfare rights advice by CABx in co-operation with Primary lives Care teams across Wales. The project has recently been extended with additional funding.⁹⁶ The model is for each local authority area in Wales to have at least one specialist advice worker employed by *Better Advice, Better Lives* but based at a CAB. The project operates differently in different areas according to local need but may include regular CAB advice sessions at GP surgeries or health centres, home visits to patients following health practitioner referrals, or advice sessions at community hospitals and mental health services. We deal with health and advice links in greater detail in the next chapter. Overall though are greatly heartened by developments in Wales, despite how small the advice sector in Wales is, and we believe that there is potential to scale up these models for policy across England and Wales.

⁹⁶ <http://wales.gov.uk/newsroom/people-and-communities/2014/141217-citizens-advice-cymru/?lang=en>

CHAPTER 4

Wellbeing – a new agenda for advice

It has been acknowledged across the political spectrum that one of the biggest challenge facing public services is how to provide for health and social care and support services that promote the wellbeing of an increasingly ageing population. Since the publication of the Low Commission’s report in early in 2014, Parliament has passed the Care 2014 which aims to place the concept of ‘wellbeing’ at the heart of the intersection between social and healthcare services. New structures are also falling into place to guide this agenda, for example Health and Wellbeing boards which steer local government public health priorities and through which local leaders from the health and care system can work together to improve the health and wellbeing of their local population and reduce health inequalities.⁹⁷

In the UK, some commissioners of local health services have pioneered the provision of advice services as part of community and primary care. These advice initiatives have been funded in the expectation that such social interventions might be expected to improve recipients’ health. Overall the research literature supports this reasoning, with a significant research body clearly indicating that poverty and social welfare law problems are routinely associated with ill-health.⁹⁸ Not only is there mounting evidence of both the adverse health impacts of social welfare legal problems and the beneficial health impact of receiving good advice, but many people presenting to health services are key target client groups for advice services.

Sir Michael Marmot’s report commissioned by the UK government amassed evidence of a ‘social gradient’ in health, with those with the lowest socioeconomic status having poorest health and a gradient rising to those with the highest socioeconomic status having the best health.⁹⁹ So there is a compelling case to look at how advice can engage strategically with health services for the benefit of health service users and to improve health outcomes in the most cost efficient way. Policy makers are becoming interested in solutions for improving the health and well-being of people from marginalised and disadvantaged groups that place greater emphasis on preventative interventions

97 http://www.local.gov.uk/health/-/journal_content/56/10180/3510973/ARTICLE

98 The Low Commission and the Advice Services Alliance are currently leading a project to collate all the health research literature on social welfare advice in a health context.

99 Marmot, M., *Fair Society, Health Lives*, UCL (2009)

<http://www.instituteofhealthequity.org/projects/fair-society-healthy-lives-the-marmot-review>

such as “social prescribing”.¹⁰⁰ The social prescribing approach commissions services that prevent worsening health for people with existing long-term conditions and reduce costly interventions in specialist care. It links patients in primary care and their carers with non-medical sources of support within the community, and with access to Voluntary and Community Sector (VCS) led interventions.

Health practitioners however, particularly General Practitioners (GPs) have a limited range of options for dealing with patients presenting social and legal issues given the complexities of NHS structures, and the diagnostic focus of primary care on clinically evidenced physical health needs. Building stronger relationships between health services and advice therefore presents an important opportunity to assist clients in need at the point they most require help and in doing so, improve health outcomes. We believe that such timely intervention may also reduce future reliance on health services. There are many advice services across the country which have recognised the opportunities and are currently working in partnership with health services and/or operating in health settings, such as GP surgeries and hospitals. Indeed, some of these have built up many years of experience. However, provision is patchy across the country with each project feeling as if it is starting from scratch, often dependent on personal relationships rather than established clinical or advice need.

The evidence

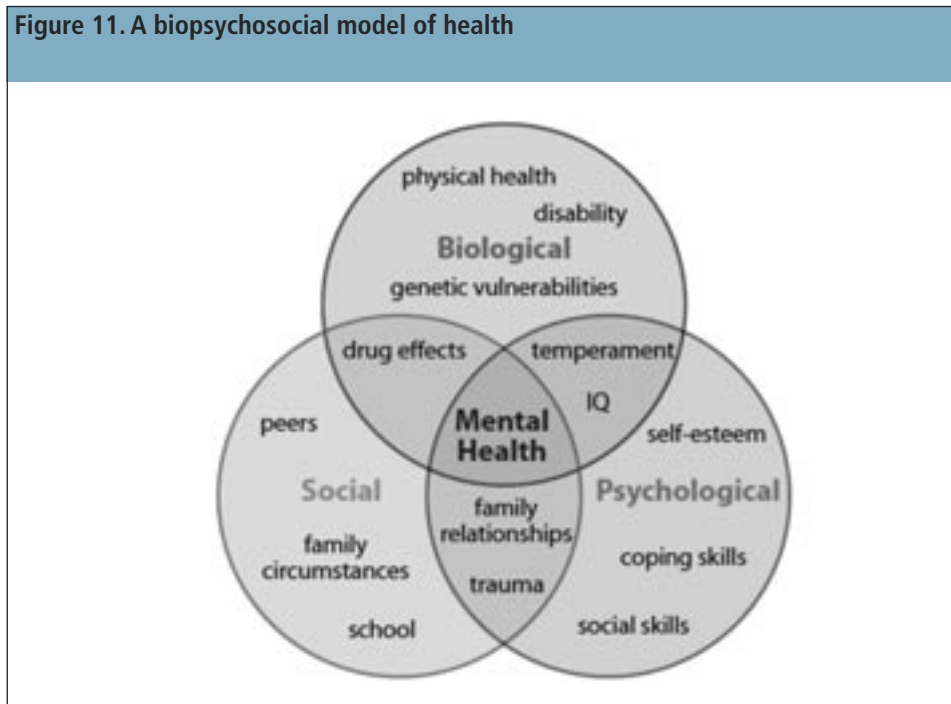
The evidence base for the intersection between social welfare law and health issues starts from a ‘biopsychosocial’ approach to health as recommended by Royal College of General Practitioners (see Figure 11).

The Law Commission has been running an ongoing project with the Advice Services Alliance to review all the evidence suggesting that timely legal or other specialist advice can lead to better health outcomes, with references to known possible links between primary healthcare and social welfare advice needs. Not all of this evidence is particularly original; articles published across several decades of the *British Medical Journals* have pointed to the benefits of the linkage between GP surgeries and CAB services.¹⁰¹ There is also much established evidence on the health aspects of legal needs; the *English and Welsh Civil and Social Justice Survey*, spanning 2006–2009, was an extensive research project looking at people’s experience of civil justice problems with over 10,000 adults responding to the survey. It found that over half (50.3%) of respondents who had experienced a legal problem suffered an adverse consequence, including physical health and stress-related illness. Of those people suffering from the

100 *From dependence to independence: emerging lessons from the Rotherham Social Prescribing Pilot* (2013) <http://www.shu.ac.uk/research/crest/ouexpertise/evaluation-rotherham-social-prescribing-pilot>

101 e.g. Jarman, B., ‘Giving Advice about Welfare Benefits in General Practice’, *British Medical Journal*, Clinical Research (1985), 290(6467): 522–4, Feb 16. Veitch, T. and Terry, A., ‘Citizens’ Advice in General Practice. Patients Benefit from Advice’, *British Medical Journal* (1993),

Figure 11. A biopsychosocial model of health



health-related consequence of a legal problem, over 80% visited their GP or other health service as a result. These findings were consistent with those of an earlier survey undertaken in 2004.

Citizens Advice has led the arguments for a linkage between obtaining advice on civil legal matters and achieving better health outcomes. A longitudinal study undertaken by Bangor University in association with Citizens Advice Cymru, five years ago, showed significant improvements taking place at that time in health outcomes for bureau clients.¹⁰² In a tangible demonstration of the linkage between health and advice, local bureaux now operate 640 advice surgeries at GP surgeries with overall advice outreach services or projects in 904 health settings. Citizens Advice cite evidence to indicate that a large percentage of medical professionals believe that advice from CABx leads to better health outcomes, and actively encourage bureaux to make evidence-based links with health bodies.¹⁰³ The link between health and welfare rights is also recognised by other charities working in the health sector such as MacMillan which provides dedicated resources and benefits advice for cancer patients.

Perhaps the most significant social indicator for which the greatest amount of empirical evidence has been collected to date is the relationship between indebtedness and poor mental health.¹⁰⁴ This reinforces the importance of health

102 Jones, K., *Outcomes of a Longitudinal Study of Citizens Advice Service Clients in Wales*, University of Bangor (2009) www.citizensadvice.org.uk/print/outcomes_of_cab_advice-2.pdf

103 *An overview of possible links between advice and health*, Citizens Advice (March 2012)

104 Fitch, C., S. Hamilton, P. Bassett, R. Davey, 'The relationship between personal debt and mental health: a systematic review', *Mental Health Review Journal* (2011),

professionals, mental health services and primary care providers being able to work with debt and welfare benefit advisers to help address patients' financial situations. Mental ill health is the largest single cause of disability in the UK, contributing almost 23% of the overall burden of disease (compared for example to about 16% each for cancer and cardiovascular disease). The economic and social costs of mental health problems in England are estimated at around £105 billion each year. We look at further issues and evidence around mental health and social welfare issues in the next section of this chapter.

General Practitioners' (GP) surgeries are often the gateway to the NHS with just short of 11,000 GP surgeries serving local communities in the UK. At the frontline of the NHS and primary care provision, local surgeries can offer invaluable insight into the medical and related problems their patients face. As part of the Law Commission's research in conjunction with Legal Action Group to quantify the impact of LASPO and other cuts in social welfare law services, we commissioned an opinion poll of GPs, seeking their views on whether the incidence of patients who needed advice was increasing, and whether not being able to obtain advice would negatively impact their health.¹⁰⁵ The polling and research company ComRes who undertook the research assisted us in formulating two questions to put to GPs:–

- Q1. Over the past year, do you think that the number of your patients who would have benefited from legal or specialist advice on each of the following social welfare issues listed has increased, stayed the same or decreased?
- Q2. To what extent, if at all, do you think that a patient not having access to legal or specialist advice on social welfare issues can have a negative effect on their health (e.g. causing stress, anxiety, hospitalisation or other medical intervention)?

For a week in October 2014 ComRes interviewed a sample of 1,001 GPs representing the UK regions as part of the GP Omnibus survey.¹⁰⁶ The findings show that most GPs are aware of problems their patients are facing in the area of social benefits. The GP responses reflect a feeling that patient enquiries had increased across most areas; in particular, 67% of GPs believed the number of their patients that would have benefited from legal or specialist advice about benefits had increased in the last year. This was followed closely by worries about debts/financial problems and issues at work (65% of GPs believed there had been an increase in patients who would have benefited from legal advice in this area since last year). 54% of GPs reported the numbers of patients who would have benefited from legal advice on housing problems had increased and a 55% said the same regarding community care. The area of least concern among GPs appears to be immigration law (with 30% of GPs reporting the number of patients who would have benefited from advice in this area had increased).

105 We are grateful to the Law Society who funded this research

106 The full data is published at www.Comres.co.uk

A total of 88% of the GPs questioned believed that patients not being able to access legal or specialist advice about their problems would have a negative impact on their health either to a great extent (48%) or to some extent (40%). Higher numbers of GPs in urban areas reported that the number of their patients who would benefit from legal or specialist advice on the following issues has increased over the past year:

Figure 12.

Option	Increased	Stayed the same	Decreased	Don't know
Benefits (e.g. unemployment benefits, disability benefits, child benefits, housing benefits)	67%	24%	4%	5%
Debts and financial problems	65%	25%	3%	7%
Issues at work	65%	27%	3%	5%
Accessing community care	55%	34%	4%	6%
Housing problems (e.g. disputes with landlords, issues with tenants, mortgage difficulties)	54%	36%	3%	7%

To a great extent	To some extent	To a small extent	To no extent	Don't know
48%	40%	7%	2%	4%

Base: all GPs (n=1,001)

The research provides some compelling evidence that the reductions in public funding for social welfare law services has contributed to the increase in the number of people GPs are seeing who would benefit have benefitted from either legal or other specialist social welfare law advice and support. GPs also clearly believe that not obtaining advice on social welfare law problems can have a negative effect on a person's health, with 48% believing that this is true 'to a great extent'. As no questions were put to the GPs on the impact of LASPO it would be impossible to conclude that GPs necessarily attribute the increase in numbers of patients needing advice directly to the changes in funding regimes for social welfare advice. However, it is worth noting that the government's

impact assessments undertaken before LASPO entered into effect did conclude that sick and disabled people would be more adversely affected by the cuts compared with the general population. The pre-legislative impact assessment prepared by the Ministry of Justice estimated that 54% of the client group hit by the removal of benefits advice from scope would be ill and/or disabled.¹⁰⁷ It is estimated that 24% of the client group needing advice on housing law would fall into this category (of the general population, 19% are defined as sick/disabled). It would therefore seem reasonable to conclude that the findings of the opinion poll are a reflection of the government's own prediction of the disproportionate impact the reductions in civil legal aid and social welfare advice would have on sick and disabled people.

However, the findings from our survey work with GPs though needs to be seen within the wider context of evidence on social health. Sir Michael Marmot's report sets a useful framework based on key socio-economic indicators and their associated health risks demonstrated by a summary the report's key conclusions below.

Employment

- Insecure and poor quality employment is associated with an increased deterioration in physical and/or mental health
- The relationship between employment and health is close, enduring and multi-dimensional
- Unemployment has short-term and long-term effects on health

Fuel Poverty

- Cold housing is a health risk. Being able to afford to keep a warm home is clearly a key factor
- Fuel poverty rates fluctuate with the price of fuel.

Income

- The relationship between low income and poor health is well established
- Particular social groups are at higher risk of having being on a low income
- Increase in income leads to an increase in psychological well-being and a decrease in anxiety and depression
- The more debts people have, the more likely they are to have a mental disorder
- The welfare system is difficult to access for several disadvantaged groups and take-up can be low, for reasons including lack of information and awareness of the system

107 *Reform of Legal Aid – Equalities Impact Assessment*, Ministry of Justice (21 June 2011)

Housing

- Bad housing conditions – including homelessness, temporary accommodation, overcrowding, insecurity, and housing in poor condition – constitute a risk to health
- Reduced supply has led to a ‘residualisation’ effect in the make-up of social housing tenants, with higher rates of unemployment, ill health and disability than the rest of the population
- Children in bad housing conditions are more likely to have mental health problems, to contract meningitis, have respiratory problems, experience long-term ill health and disability, experience slow physical growth and have delayed cognitive development

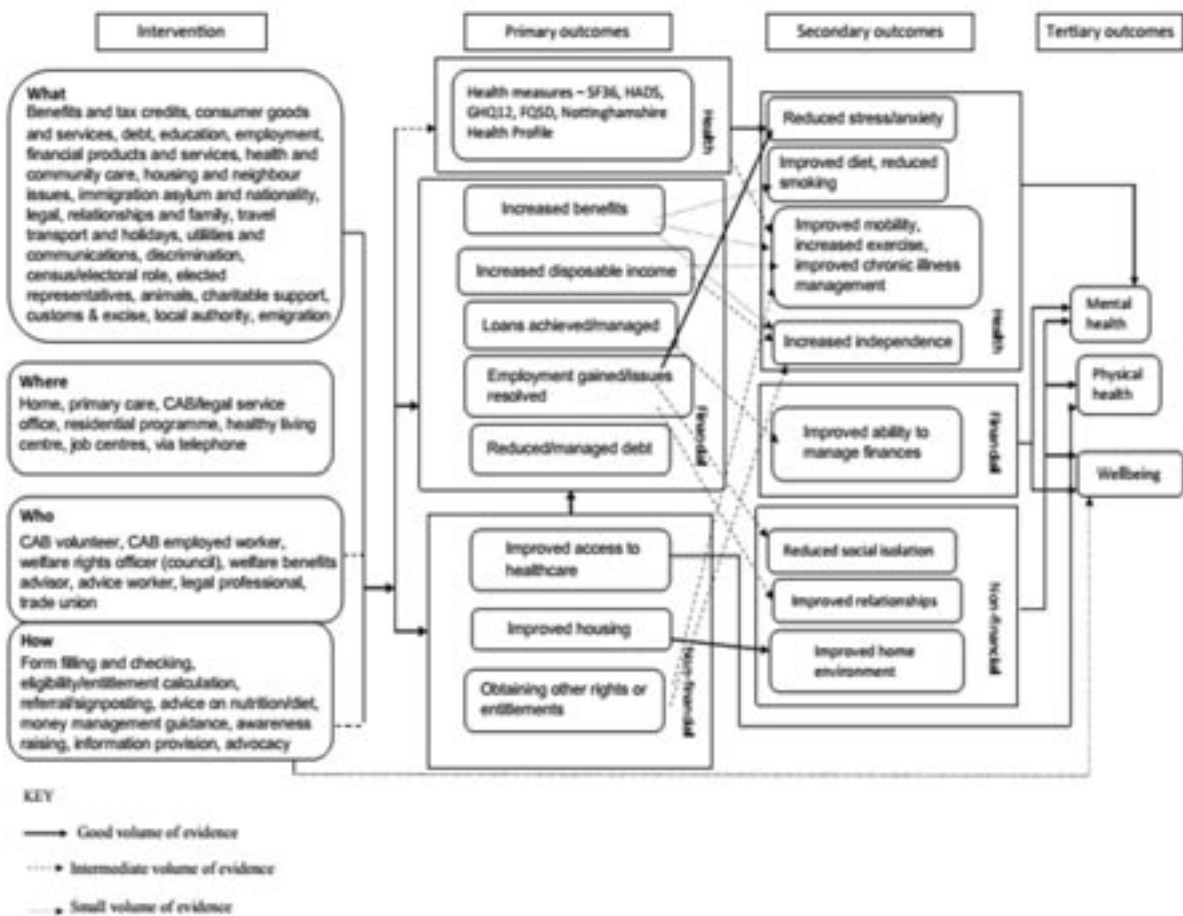
Marmot, *Better Lives Better Health*

The evidence base on social health and its implications for delivery of services and health interventions is still developing. The research literature referencing the role of advice within the context of social health encompasses a broad range of research methodologies varying from qualitative evidence to more scientifically based approaches such as randomised control trials (RCT). Many studies, however, reporting on the health impact of welfare advice are predominantly ‘grey literature’ (i.e. not published in peer-reviewed journals and therefore considered to be of limited scientific quality). However, what strikes us is both the volume of literature and the consistency of conclusions about the demonstrable health benefits of advice. The Low Commission and Advice Services Alliance project on assessing the evidence has so far collated 123 items of evidence/publications and will continue this work.

One recent piece of research has presented what we consider to be an extremely useful typology (represented below) of potential links between advice interventions and health outcomes (see Figure 13).¹⁰⁸

108 Allmark, P et al, ‘Assessing the health benefits of advice services: using research evidence and logic model methods to explore complex pathways’ *Health and Social Care in the Community* (2012) 21(1)

Figure 13.



Mental health

As noted above people using mental health services have dramatically higher rates of unemployment, housing insecurity and personal debt than the general population and these difficulties can worsen their health. Research undertaken by the Centre for Mental Health (CMH) has highlighted the links between poor mental health and frequent experience of welfare problems such as unmanageable debt and difficulties with housing and benefits.¹⁰⁹ This research has specifically found good evidence that specialist welfare advice is likely to save mental health services money by improving people's health and reducing hospital admissions. The CMH report looks at the experience of Sheffield Mental Health CAB (SMHCAB), which offers a real world example of how specialist welfare advice can cut the cost of mental healthcare in three main ways:

- Reductions in inpatient lengths of stay through resolving complex housing problems such as possible eviction or repossession.

109 http://www.centreformentalhealth.org.uk/publications/welfare_advice_mh_services.aspx?ID=689

- Prevention of homelessness: as people with mental health issues are at a much higher risk of homelessness than average, a specialist advice service can help to prevent this, for example by negotiating directly with landlords and creditors in case of rent arrears.
- Prevention of relapse into severe mental illnesses or episodes

Crucially the research shows how demonstrable savings can be achieved for the NHS. The average cost of an inpatient stay is £330 per day nationally. Specialist advice located in a mental health service can help patients to resolve complex problems, including issues around housing such as eviction or repossession, which may enable them to be discharged from hospital more quickly than would otherwise be possible. This also means that the risk of homeless can be diminished, as those with severe mental illness are at much higher risk of homelessness than average. Homelessness costs the public sector, including the NHS, up to £30,000 a year as well as causing great distress to the person affected. Welfare advice can also help to prevent relapse of mental illness; a relapse of schizophrenia for example costs the NHS over £18,000. Specialist welfare advice can act directly on an immediate cause of acute stress which threatens to trigger relapse.

The Sheffield Citizens Advice mental health service is one of only two services dedicated to the advice needs of people with severe mental illness. Based on hospital grounds, it supports around 600 people with severe mental illness throughout Sheffield. Just under half of these people are seen as inpatients, with the remainder living in community settings. The service focuses on resolving complex welfare problems involving legal or other issues. By building advice into aftercare and therapeutic support, the Sheffield Citizens Advice mental health service provides an intervention and savings pathway for Sheffield Mental Health which we believe could be replicated elsewhere.

Figure 14. A biopsychosocial model of health



It is not just acute mental health service settings where the link between social welfare law and mental health needs to be considered. Youth Access have published research, in conjunction with the Legal Services Research Centre (LSRC), examining the relationship between social welfare problems, mental health and youth, using data from the English and Welsh Civil and Social Justice Survey. This research found that young people with mental health problems were far more likely to report social welfare problems than other young people, and that social welfare problems tend to impact adversely on young people's mental health.¹¹⁰ Youth Access have been developing an integrative model of advice known as YIACS – young people's information, advice, counselling and support services. A Taskforce has been recently established by the Department of Health to review children's and adolescent mental health services (CAMHS), and its Terms of Reference include a focus on achieving integrative models including information and advice.¹¹¹ We hope that this Taskforce will come up with some practical ways in which advice can be used to tackle the common social welfare law problems experienced by young people, can be embedded in youth mental health services, and delivered in a way that is accessible and appropriate to young people's needs.

Our review of the evidence has shown up a particular relationship between debt and mental health; in fact debt and financial insecurity, as well as housing, homelessness and unemployment can be both a cause and a consequence of mental health problems.¹¹² Individuals who initially have no mental health problems, but find themselves sinking into unmanageable debts, show within a 12 month period a 33% higher risk of developing depression and anxiety-related problems.¹¹³ In their paper, *Debt and mental health – What do we know? What should we know?*, Chris Fitch et al from the Royal College of Psychiatrists conclude that a renewed emphasis by policymakers and commissioners on co-ordinated 'debt care pathways' between local health and advice services – that is, the routes by which individuals with debt and mental health problems gain access to the support they need and regain financial control also, may be key to addressing problems.¹¹⁴ Under a 'social prescribing' model we would wish to

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- 110 *The Legal Problems and Mental Health Needs of Youth Advice Service Users: The Case for Advice*. Youth Access (2012) <http://baringfoundation.org.uk/wp-content/uploads/2014/09/YAdviceMHealth.pdf>
- 111 Children and Young People's Mental Health and Wellbeing Taskforce, Department of Health https://www.gov.uk/government/.../Taskforce_Terms_of_reference.pdf
- 112 *In the Red: Debt and Mental Health* Mind (2008) <http://www.mind.org.uk/media/273469/in-the-red.pdf>
- 113 Skapinakis P, Weich S, et al (2006) Socio-economic position and common mental disorders. Longitudinal study in the general population in the UK. *British Journal of Psychiatry* 189:109–117.
- 114 Fitch, C et al, *Debt and mental health*, Royal College of Psychiatrists (2009) http://www.rcpsych.ac.uk/pdf/Debt%20and%20mental%20health%20%28lit%20review%20-%2009_10_18%29.pdf

see a system whereby GPs and other frontline health care staff ensure that patients experiencing low level mental health problems as a result of worries stemming from debt or the impact of welfare reform can immediately access assistance from CAB and its advice partners. So in respect of mental health, we have the following recommendations for the Department of Health:–

The Department of Health should undertake research on the role and impact of advice agencies on mental health service users’ issues and recovery routes, within the context of the provision of timely social welfare advice and interventions.

Every mental health service should secure specialist welfare advice to help to support recovery and to intervene early when difficulties emerge.

NHS and social care structures

Both the Health and Social Care Act 2012 and the Care Act 2014 have introduced large scale structural changes around how health, care and support services are commissioned and delivered, as well as the public health and information roles of local authorities. As the landscape is still evolving it is likely that there will be further changes in the future, in particular the balance between public sector, non profit and private providers is an issue that is highly contested. It is not possible to describe in detail all of structural reforms to the health and care landscape here; the King’s Fund have produced a diagrammatic summary.¹¹⁵ The relevant issues for the links between advice and health are:

- That Clinical Commissioning Groups (CCGs), which have taken over commissioning responsibilities from NHS trusts, have a duty to tackle health inequalities within the context of evidence based commissioning.
- Local Authorities now have responsibilities for many public health functions and outcomes; local Health and Wellbeing Boards lead this work and bring together local leaders from both the health and care sectors – including a third sector representative, to jointly to plan how best to meet local health and care needs. Their duties are to assess the needs of their local population through a “Joint Strategic Needs Assessment”, set out how these needs will be addressed through a joint health and wellbeing strategy that will offer a strategic framework in which CCGs, local authorities and NHS England can make their own commissioning decisions, and thirdly to promote greater integration and partnership. However, Health and Wellbeing Boards have no formal management or budgetary control.
- The Care Act places duties on Local Authorities to commission information and advice, including financial information and advice, about adult care

115 <http://www.kingsfund.org.uk/sites/files/kf/media/structure-of-the-new-nhs-animation.pdf>

systems and options for those in need of care and support, including older persons benefits, carers benefits and disability benefits.¹¹⁶

- Whilst tensions continue to exist between health (NHS) and social care (local authority) services, the Government is trying to incentivise greater integration, especially through the Better Care Fund which funds integrative health and care projects with a preventative focus.

National bodies also have a role, for example the UK National Institute for Clinical Excellence (NICE) guidance on cancer services includes a recommendation around welfare advice.¹¹⁷ In its first strategic paper on health equalities and inequalities, NHS England – a new body that acts as monopoly purchaser of primary care and holds responsibility for allocating NHS resources – has adopted some potentially important commitments including: incentivising and prioritising improvements in primary care towards groups and people, including homeless people, with the worst health outcomes; and embedding tackling inequalities in the CCG assurance and support regimes.¹¹⁸

We consider that it will be necessary to align our proposals around local advice and legal support plans with health and wellbeing strategies, and for advice services to work with the new structures for commissioning and delivering community based care and support services. The formula we have proposed is that a National Fund, administered by the National Lottery should allocate 90% of available national funding for advice to local authority areas, based on indicators of need which draw on joint strategic needs assessments (JSNA) and Health and Wellbeing Strategies. It may be in some areas some areas that local authorities would wish to use the Health and Wellbeing Boards as a forum for discussing and developing local advice plans. Part of the process of co-producing local advice and legal support plans in their areas, could also involve local advice agencies showing how they can help their local authority comply with its duties under the Care Act 2014 to provide information and advice.

Advice landscape in health and care settings

The landscape of social welfare law information and advice delivery within the health and social care economy is both patchy and varied. There are various models that operate from information, signposting and advice referral ‘gateways’ in health settings with different levels of formality or protocol, to different types of health and welfare rights partnership arrangements driven by commissioning policies, through to co-location and embedding advice within clinical delivery

116 Care Act Guidance. Department of Health (2014)
<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

117 <http://www.nice.org.uk/guidance/csgcyp/evidence/improving-outcomes-in-children-and-young-people-with-cancer-manual-update-2>

118 <http://www.england.nhs.uk/wp-content/uploads/2013/12/brd-dec-1.pdf>

arrangements and contexts. The fact that 460 CABx now provide services in over 900 health settings or health related projects suggests that advice working within a health context is becoming more mainstreamed, and Citizens Advice publish a range of resources and toolkits to assist bureaux both in making a business case to health commissioners and developing the operating framework for these services.¹¹⁹

However, from our research on what works on the ground we have found that advice and health projects are often vulnerable to the slightest change in funding and structural arrangements within local authority and health bodies. So at a time of major systemic change, there is a great deal that can de-stabilise the value added services that social welfare law advice brings to the health sector. With the stability of the sector already shaken to its foundations by the LASPO reforms, the need for a more strategic approach offered by the Low Commission's proposals on local advice plans could not be more important in a health and care context. Below are some interesting examples of initiatives, projects and good practice models that we have come across.

Case studies

Nottingham Law Centre

Nottingham Law Centre provides free legal advice relating to debts, housing and welfare benefits in the City of Nottingham. In 2010, the Law Centre conducted an evaluation of its work to determine how legal problems affect their clients and what effect the service that they provide has on the health, wellbeing, relationships and confidence. Twelve clients were given a survey to fill out before and after seeing a lawyer and then interviewed; the evaluation showed that “all clients reported that their health had worsened since the problem started. This was a particular issue for the 8 clients who reported that their health was poor prior to the problem”. The evaluation also found that that “the entire sample reported that the problem had contributed to a change in their mental and physical health to some degree” with some respondents reporting improved health as a result of the legal intervention.

Nottingham Law Centre then ran a one-year pilot project with a consortium of local General Practitioners, enabling doctors with patients presenting with depression, anxiety and other health issues to refer to the Law Centre. Clients would be contacted within 48 hours of a referral being made and in the majority of cases, an advisor would provide a home-visit

119 Citizens Advice Health and Advice Toolkit

http://www.citizensadvice.org.uk/index/professionals/health_and_advice_toolkit.htm

to the client to assist with their legal needs and if specialist assistance was required, clients would be referred back to the Law Centre. The project had several aims including the promotion of “patient self-care and management”. An overview of the project explains that “it has been estimated that 15% of GP consultations involve welfare rights issues, and that in approximately 70% of these there is also a mental health element to the consultation” and that “there is evidence that a general practice setting is an acceptable venue for the provision of welfare advice”.

Camden

To address the overwhelming evidence linking poverty to poor health and wellbeing and following identification of unmet need by existing family support services, Great Ormond Street Hospital (GOSH) in partnership with Camden Citizens Advice Bureau developed an on-site social welfare law advice service for parents and carers of children attending the hospital. The PALS service, the Chaplaincy and the Family Support staff and others often recommended families visit their local CAB service for help with complex debt counselling, employment and welfare benefit appeals, but access to external services was recognised as difficult for many families who might well need to stay with their child at the hospital long distances from home. GOSH recognised that skilled advice and advocacy were required on site so GOSH CAB first opened in June 2008, specialising in welfare benefits, debt, housing and community care law; the project has increased income and reduced stress caused by money worries so allowing families to better care for their child and improve their wellbeing, and provides a resource of expertise to other family support services at GOSH. The establishment of an on-site CAB service for families and carers gives GOSH an effective way to help tackle health inequalities and improve the health and wellbeing of the communities it serves. Research has shown that locating advice within a healthcare setting improves access for traditionally ‘hard to reach’ groups, helps health care workers develop a better understanding of welfare benefits and other issues, and improves health and quality of life which can lead to a reduction in use of NHS resources. The project has been of real benefit to families with children at GOSH and for existing family support staff integrating seamlessly with existing services and delivering on health and wellbeing outcomes

Teesside

The study of the impact of welfare advice in primary care in Teesside. The project involved collaboration between the researchers, Citizen's Advice Bureaux (CAB) and primary health care teams and took place in three general practices in Teesside, serving communities in electoral wards among the most deprived in the Northern Region of England. The impetus for extending welfare advice into selected general practices came from local CAB management who recognised that ill-health, lack of transport or lack of knowledge were potential barriers to accessing services. Funding was raised from two different sources – Health Authority and Single Regeneration Budget – and provided as a potential means of addressing social and health inequalities. The Health Authority and CAB wished to evaluate the service provision and previous work on health inequalities in the area led to the involvement of the research team. For a limited period each practice had a welfare advice service provided by the local CAB. A welfare advice worker offered dedicated sessions, weekly in two practices (funded by the Health Authority for 15 months) and fortnightly in the other practice (funded by the Local Authority Single Regeneration Budget for 12 months). All members of the primary health care team could refer patients or patients could self-refer, as the scheme was advertised in the surgeries. A standard social and financial assessment was made during each initial welfare advice consultation, followed by further consultations as appropriate to provide individually tailored help and advice with specific problems.

Haringey

Following a successful business case for primary care monies, Haringey is piloting Welfare Advice Hubs in 4 GP Surgeries across Haringey, placing benefit advisers in primary care settings to help maximise income for the most deprived residents and this helping to reduce health inequalities. As part of the Business Case, GPs were consulted on whether they would welcome the provision of welfare advice in primary care – most said they would, especially as they felt unable to keep up with changes in the benefits system. The advice was targeted towards more deprived areas and vulnerable people, especially those affected by changes in the benefit system and often managing chronic conditions and disabilities, as well as those with learning difficulties or other difficulties in understanding complex information, eg Asylum Seekers. The objectives of the pilot were based around Haringey's Health and Wellbeing and Primary Strategy's aim to reduce health inequalities.

Tyneside

Partly funded through the Advice Services Transition Funds, Citizens Advice Bureau South Tyneside, Age UK South Tyneside, and South Tyneside Council Welfare Rights have launched an advice in health settings project. Still at pilot stage advice is being delivered in three GP surgeries with plans to extend into 75% of surgeries in the borough (currently 28 practices in South Tyneside) after the pilot phase. As part of the governance arrangements for the project the partners have established a project board which drives the strategic vision for the project and consists of the chair of South Tyneside CCG, South Tyneside Council officers, Chief/Deputy Executives of each advice agency, representation from South Of Tyne Talking Therapies plus a local GP with a particular interest and experience of social prescribing.

Salford

Salford Council have developed a model whereby the Salford Primary Care Group (East) agreed to advice being conducted in three Health locations, delivered by 1 Welfare Rights Officer from the Council 1 CAB Adviser from CAB - so two workers 3 sites 2 sessions a week in each. Originally funded for 3 years by the Single Regeneration Budget, the 3 sites were 2 large Health Centres (1 owned by the Primary Care Group, another owned by the GPs) and one other GP practice. Towards the end of SRB funding there was some extension funding for a period, but for different locations. The Primary Care Group was able to agree some funding with the short lived Health Action Zone (a temporary phenomenon) to maintain some advice in the original locations. The projects however suffered from lack of strategic leadership and buy-in for the project across the Primary Care Group especially as it transitioned to new CCG structure, and subsequent cuts to core CAB funding as the Council moved towards a new model of commissioning "health and well being advice." This resulted in withdrawal of some of the more specialist advice sessions provided by CAB; however the Council were able to secure some ongoing funding with the CCG for health setting based advice work.

Derbyshire

Derbyshire's NHS commissioners have worked with Derbyshire CABB since 1995 to provide welfare advice in GP surgeries. It now covers 98 of the 102 practices in the county with a 3-hour advice session per week in each practice, staffed by paid members of staff. The project puts free advice at

the heart of a largely rural community; it gives GPs and practice staff another referral option to a service based within their own practice. The service is currently funded by Derbyshire Council as part of its public health role.

Great Chapel Street, Westminster

Great Chapel Street is a walk-in medical centre provided by the NHS for homeless people in Westminster. It has a holistic approach to tackling health issues. The team includes GPs, and a practice nurse, substance misuse/mental health specialist, counsellor, dentist, psychiatrist, benefits advice worker, and an advocacy/legal advice worker.

Norfolk

Norfolk Community Advice Network (NCAN) have been making with strategic links with local health commissioners. NCAN are led by MAP – Norfolk’s first Youth Information, Advice and Counselling centre, and are represented on the Health and Wellbeing Board. NCAN have put together a specialist partnership led by AgeUK to deliver a project supported Norfolk County Council, working with NHS Norfolk and Waveney, to develop a comprehensive, specialist information, advice and advocacy service across the County. The NHS Integrated Commissioning Team in Norfolk are now carrying out a review of commissioned and grant funded Information, Advice and Advocacy services and are seeking views from organisations and health and social care colleagues to feed into this review.

Liverpool

Liverpool Clinical Commissioning Group plans to invest over £1m in the Advice on Prescription Programme over the next three years as part of its mental health strategy. The CCG has begun rolling this programme out across Liverpool’s 95 GP practices with the aim that every GP practice in Liverpool should have access to dedicated Citizens Advice advisers to whom patients with non-medical problems can be referred. These include concerns relating to debt, evictions, job loss and the suspension of benefits. The model was piloted in 2012, the original idea having come from GPs who noticed an increase in patients coming to them with non-medical concerns. Ninety-five per cent of the 600 patients referred to Citizens Advice advisers during the pilot were classified as being from vulnerable groups. The majority had mental health problems and just over 30% had an average monthly household income under £400.

From our review of the research literature, we have found that much of the discussion to date has focused on relatively small scale pilot activity including advisors providing an outreach services in GP surgeries or the establishment of a referral systems and/or training to boost capacity and quality of advice services locally. Usually outreach services operate on an appointment system rather than drop-in and often there is a mix of appointments being made by GP reception staff or via a central telephone line. In terms of the latter the health settings have been used as the location for providing advice for patients who are signed up to other surgeries, potentially overcoming barriers to accessing advice from unfamiliar settings.

Our overall impression from our research review is that projects with match funding from, or stronger links with, public health appear to achieve better buy-in from the GPs, practice staff and CCGs and had a clearer long-term vision of how advice could support their practice in terms of reduced dependency and the value of prevention activity. Other stand alone projects have tended to report a lack of or variations in support from CCGs, and insufficient dissemination routes to engage with GPs. Long-term planning in terms of continuation or forward funding arrangements has also been an issue given the organisational uncertainty generated by changes in local government and local NHS structures.

We recommend that health and social care commissioners should always ensure that their plans include social welfare advice and legal support provision.

Delivering on health and wellbeing outcomes

Evidence and outcomes are the watchwords for today's commissioners in health and social care, especially for community based services and interventions. The NHS is moving rapidly towards outcomes based commissioning systems. So where interventions have demonstrable health benefits which can be evidenced using valid health outcomes data, they are far more likely to be of interest to commissioners, especially where these outcomes can be offset against the known unit costs of healthcare.¹²⁰ However across the advice sector there is insufficient consistency of outcome measurement tools. There is only limited evidence of NHS commissioned advice projects putting in place systems to measure health impacts in a way that is statistically robust, but where projects have measured health impacts the results have been significant. For example, the study funded by the *Better Advice, Better Health* project in Wales which followed up with clients six months after advice interventions found statistically significant improvements from clients in the 'Short Form 36 health questionnaire' (SF36) domains of

120 *Unit Costs of Health and Social Care* Curtis, PSSRU (2013) <http://www.pssru.ac.uk/project-pages/unit-costs/2013/>

social functioning, emotional and mental health, and in the anxiety and depression scales of the ‘Hospital Anxiety and Depression Scale’ (HADS) – both well known health outcome measures.¹²¹

Often though monitoring and evaluation work has focused on simple outputs such as the number of sessions and areas of advice, alongside non-health outcome work linked to increased benefit take-up or income maximisations for example. There are challenges to address around how health outcomes could be assessed across the sector but positive examples of progress from individual projects in terms of assessing health outcomes to date have been based on the Warwick Edinburgh mental wellbeing scale (WEMWBS) or related ‘star’ outcomes. The WEMWBS was funded by the Scottish Executive National Programme for improving mental health and well-being, commissioned by NHS Health Scotland, developed by the Universities of Warwick and Edinburgh, and is jointly owned by NHS Health Scotland, the University of Warwick and the University of Edinburgh. The scale can be used to provide a snapshot of client mental well-being after advice, and is also widely accepted by health policy-makers as an accurate way of measuring both subjective and objective wellbeing.¹²²

Citizens Advice now publishes a toolkit for bureaux encouraging survey techniques using the WEMWBS,¹²³ and we would encourage other advice networks to produce similar tools for their members. Within the primary care system though the key tool for recording outcomes and performance management is Quality and Outcomes Framework (QOF), around which many of the incentives for primary care contracts are built; this system principally identifies clinical outcomes rather than wider public health or social determinant outcomes. The indicators used in this framework have been developed by NICE.

We recommend that the government should consider including welfare advice in its outcomes frameworks for the NHS, social care and public health.

Wellbeing: The implications for commissioning and delivery structures

Whilst there are opportunities for advice services working more closely with health and care settings, including mutually beneficial funding and added value gains in delivering health and wellbeing improvement outcomes, there are also

121 Jones, K., *Outcomes of a Longitudinal Study of Citizens Advice Service Clients in Wales* (2009) www.citizensadvice.org.uk/print/outcomes_of_cab_advice-2.pdf

122 *Wellbeing – Why it matters to health policy*, Department of Health (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/277566/Narrative_January_2014_.pdf

123 Citizens Advice Health and Advice Toolkit http://www.citizensadvice.org.uk/index/professionals/health_and_advice_toolkit.htm

clearly very real barriers. Furthermore the NHS is experiencing the longest period of funding restraint in its history. There is very little or no growth, against increasing supply-side cost pressures of technological change, rising and ageing populations, and the challenges of treating and managing long-term conditions. The number of long-term conditions and their burden falls disproportionately on people with poor health literacy and those in lower socio-economic groups.

However, it is precisely because of the challenges facing the NHS that new thinking is opening in health policy about how to shift the emphasis of healthcare to prevention. Thinking outlined by the King's Fund suggests self-management support and the development of collaborative relationships between patients and professionals needing to be at the heart of service delivery. This shifts the focus onto the roles and responsibilities of patients as well as professionals, and the systems and ancillary services that are needed to support them to fulfil these roles. The ultimate aim of the wellbeing approach is that people should have the knowledge, skills and confidence to manage their health, disability or condition at whatever stage more effectively within the context of their everyday lives, and draw on a range of community based support services across integrated care pathways.

The scale of change required in local health and care systems to deliver on this agenda demands effective system leadership, and it is not altogether clear where this leadership will come from under the new arrangements and structures. The King's Fund have argued that wider engagement by the NHS with other public services and civil society is key to leading changes in how healthcare is delivered.¹²⁴ Health and wellbeing boards support this to some degree, but there is a danger that the complexity of the JSNA process led by experts can disenfranchise citizens and end-users. We have noted the growing importance of initiatives like the Low Commissions, but operating at a local level, which can bring together expertise and community advocacy to develop forward looking visions and strategy for community services to complement the technical processes of needs assessment and wellbeing policies.

Local "Fairness Commissions" operate in spirit of the Localism Act; driven by general powers of competence and local authority partnerships with the voluntary sector. Their agendas are place-based, but tend to be built around a broader notion of fairness and equity. As one example, Liverpool's 'Health Commission' established by the City Council has recently reported.¹²⁵ In Liverpool, the NHS is regarded as a core partner in an inclusive and integrated approach to health and wellbeing shared across the city. This goes beyond a vision for integrated health and care services and draws together many of the

124 http://www.kingsfund.org.uk/sites/files/kf/field/field_publication_file/tackling-poverty-research-paper-jrf-kingsfund-nov14.pdf

125 Liverpool Fairness Commission <https://liverpool.gov.uk/mayor/mayoral-commissions/liverpool-fairness-commission/>

strands outlined above into a neighbourhood-based model of care provision uniting all relevant health, social care and other resources in a single unifying strategic plan based on the Joint Strategic Needs Assessment (JSNA). At the heart of this is a preventive approach, bringing multiple services – such as housing, benefits, Citizens Advice, and debt management – to common neighbourhood sites and the development of the NHS as a hub for work, including apprenticeships and local back-to-work schemes that target people from disadvantaged communities.

However leadership ‘from below’ needs to be complemented by leadership ‘from above’ through national bodies and policymakers providing clear ‘strategic steers’ and toolkits to ensure that local commissioners understand the contribution that advice services can make to health and well-being. In the Low Commission’s original report we recommended that the national advice services umbrella bodies should be engaging and building relationships with key NHS (reflecting different health systems in England and Wales) stakeholders at a national level – such as NHS England, Public Health England, Healthwatch, NHS Confederation, the Department of Health and others. In particular good relationships with bodies responsible for producing guidance for local commissioners would assist understanding around advice interventions and their role within care pathways. For example UK National Institute for Clinical Excellence (NICE) guidance on cancer services includes recommendation on welfare advice.¹²⁶

It is action at the policy level though which can make a difference to local commissioning practice. For example, the Care Act statutory guidance for local authorities on implementing the duty to establish and maintain information and advice services relating to care and support for all people in its area, is comprehensive as far as it goes and includes significant detail on the kind of services envisaged and the type of advice needed including advice on disability benefits.¹²⁷ However, it contains surprisingly little about how local authorities can best engage with the Advice Sector; i.e. Citizens Advice Bureaux, local advice agencies, non profit organisations and other specialist charities that provide information and advice services on a range of social, financial and legal issues that interact with the care system. The importance of Government providing a strong steer on how Commissioners might best engage with the sector is well illustrated by the King’s Fund’s who have been arguing since 2011 that there is a need for training for commissioners on they how can work with

126 <http://www.nice.org.uk/guidance/csgcyp/evidence/improving-outcomes-in-children-and-young-people-with-cancer-manual-update-2>

127 Care Act Guidance. Department of Health (2014)
<https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation>

voluntary and community organisations, as few have a good understanding of the sector.¹²⁸

We recommend that Health Ministers should request a review of all guidance dealing with how NHS and social care structures work with or commission from the voluntary and community sectors to ensure that the role of welfare advice is reflected and understood.

128 *The voluntary and community sector in health*, King's Fund (2011)
<http://www.kingsfund.org.uk/publications/voluntary-and-community-sector-health>

Conclusion – One year on

There is still an advice deficit, and it is growing. The impact of LASPO, combined with local government spending cuts and other funding changes, has – we estimate – taken over some £100 million annually out of the advice economy, and that fewer people are able to access advice and support as a result. At the same time advice demand is growing, and public services reforms are struggling to deliver redress systems and decision-making processes that empower citizens or help people to access their rights. This is well demonstrated by problems that we have evidenced in the reconsideration and appeals system for welfare benefit claimants. Our survey of welfare rights advisers provides compelling evidence that poor design of decision-making and review processes in respect of key benefits such as ESA is disadvantaging claimants and dis-incentivising onward appeals.

However, there are solutions where policy-makers are able to embrace systems thinking approaches. This involves taking a long term view, incorporating a strategic role for social welfare law information and advice services embedded and delivered within settings where people regularly go such as community centres and GP surgeries. The key principle underpinning this approach is early intervention and action rather than allowing problems to escalate, a principle that we have tried to apply consistently to public services which engage social welfare law issues. In order to upstream information and advice though, Government needs a clear strategy that seeks to provide a stable framework. It needs to be led at Ministerial level within the Ministry of Justice and worked across Government Departments and silos, as we recommended in our initial report. But in order to embed advice considerations across Departments we make a further recommendation.

Each Government Department with major responsibilities for the delivery of public services involving social welfare matters should consider appointing an “Advice Champion” with shared responsibility for the strategy.

We recognise also that public funding will remain scarce for sometime to come. We have not called for the simple re-instatement or reversal of the legal aid budgetary and scope cuts, as we do not believe that is a realistic solution. Nor would it be possible to recreate the previous system of social welfare law provision that has been abandoned under the LASPO reforms, and as many advice providers know the commissioning structures for legal advice services under the previous regime had many associated problems of audit, compliance,

bureaucratic paper trails and top down prescriptions. There is no point holding out for a better yesterday. We need to be able to deliver more with less.

However, it is necessary to keep the civil legal aid system under review and work for its improvement. Much of the emerging evidence suggests that the LASPO reforms are not delivering on their policy intention of encouraging alternative dispute resolution and redress routes, or directing the more resource intensive legal advice and advocacy interventions to those most in need. We recommend in this report that the Ministry of Justice should bring forward its proposed post-implementation review drawing on the evidence that we have identified. In particular we would like the Government to consider including early specialist advice within the civil legal aid scheme where, for example with housing issues, there is evidence that this would divert, prevent, or mitigate the progression of court actions.

There is nevertheless an undersupply of specialist advice in particular and a limited range of funding sources. In order to support a long term strategy for advice, we have recommended that different Government Departments should commit to supporting a ten-year National Advice and Legal Support Fund ('National Fund') for England and Wales of £50 million per annum, to be administered by the Big Lottery Fund, to help develop provision and learning from the best outcomes of the Advice Services Transition Fund. We would hope that this recommendation should be up for consideration in the next Spending Review (CSR) round in the 2015–20 Parliament, and that the £50 million per annum target will be achieved by the end of the next Parliament. To deliver on the strategy on the ground we see it as being important to establish frameworks through which local authority and NHS funding can jointly support advice work, drawing on health and wellbeing strategies. However, for local advice plans to work it is important that that they are genuinely co-produced with the advice sector as under this model there are real opportunities to achieve match funding from other sources such as the Money Advice Service. Although the final review of the Money Advice Service has yet to be published, we support the principle of statutory levy funding for debt and money advice and we hope that Treasury Ministers would look favourably on any recommendations of this review which might improve how funding from the statutory levy system is transferred to front line local agencies.

We recommend that the potential for consolidating advice funding into a National Advice and Legal Support Fund should be considered in the next Comprehensive Spending Review (CSR).

In this report we have presented a balanced and realistic package for the future of social welfare law advice and legal support, and an investment strategy that government can work with. The next UK government will continue to be faced by the challenges of austerity and deficit management, and we expect there to be further reforms in public services and welfare benefits. However, Government

has a responsibility to ensure that vulnerable members of society who are least able to protect themselves are provided with the assistance that they require to cope with the challenges with which they are inevitably faced. There is also a responsibility to support the rule of law during a period of sustained economic and social change. We believe that our proposals will help to achieve this.

APPENDIX 1

About the Low Commission

The Low Commission on the Future of Advice and Legal Support was established in November 2012 to develop a strategy for access to advice and support on social welfare law in England and Wales. It was chaired by Lord Low of Dalston and was made up of eight other Commissioners with expertise in this area. For the purposes of its inquiry, the Low Commission considers social welfare law to include: asylum, benefits, community care, debt, education (including special educational needs), employment, housing and immigration.

The Low Commission is independent of Government, political parties and advice providers. It is funded by the Baring Foundation, Lankelly Chase Foundation, Barrow Cadbury Trust, Esmée Fairbairn Foundation, the Legal Education Foundation, the Trust for London, Freshfields and Clifford Chance LLPs. The Low Commission was chaired by Lord Colin Low and was made up of eight other Commissioners with expertise in this area. The Low Commission is independent of Government, political parties and advice providers. The Commission's Secretariat, Research and Advocacy functions are based at the Legal Action Group (LAG).

The Low Commission emerged out of a need to take a fresh look at the issues facing social welfare advice, in light of the massive changes and challenges ushered in by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and cuts in local government funding. So the Commission's brief was to develop a strategy for the future provision of social welfare law services, which:

- meets the need for the public, particularly the poor and marginalised, to have access to good quality independent legal advice;
- is informed by an analysis of the impact of funding changes and by an assessment of what can realistically be delivered and supported in the future;
- influences the thinking and manifestos of the political parties in the run up to the 2015 election.
- looks at ways of reducing demand for advice and legal support, as well as investigating new approaches to delivery and funding.

The Low Commission published its report *Tackling the Advice Deficit* in January 2014 and has been undertaking subsequent follow up work. This can be accessed at the Commission's website on www.lowcommission.org.uk along with supporting documents.

APPENDIX 2

Executive Summary of the Low Commission's original report *Tackling the Advice Deficit* as published in January 2014

- A young couple are unable to get their landlord to undertake essential repairs.
- A nurse who has worked in the NHS for 20 years cannot rent a new house because her immigration status has not been regularised.
- A person in debt has started suffering from severe anxiety and depression and is in danger of losing his house and his job.
- A person has been unfairly dismissed.
- A disabled person loses her benefits after having been wrongly assessed as fit for work.
- An older person living in a cold house is not able to get advice on income maximisation to enable her to heat the house properly.

When people get into difficulty in their daily lives, as in the examples above, they need to be able to get the right information and advice as early as possible. If this information and advice is not available, they could become unemployed, homeless or in debt – and, not only will they suffer distress, but the state will incur increased costs. Where legal support, whether in the form of legal help or legal representation, is also not available, the number of people who then try to represent themselves will increase, and the courts and tribunals will have to adapt to deal with this increase in unadvised and unrepresented litigants.

Likewise, when systems that are supposed to support people fail to function effectively, those individuals require extensive help, often including specialist and legal skills, to have their needs met. These are the consequences, intended or unintended, of the government's civil legal aid changes in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, involving a cut of £89m pa in legal aid on social welfare law, as well as the reductions in local authority funding of advice and legal support, estimated to be at least £40m pa by 2015. These cutbacks have destabilised and reduced the advice and legal support sector at a time of increased need. As a result, instead of saving money, the cutbacks are very likely to end up costing more elsewhere in the system.

The Low Commission was established in late 2012 by the Legal Action Group (LAG) and funded by a group of major trusts and foundations, as well as some corporate support, to develop a strategy for addressing these problems. Widespread concern about the impact of the changes and the lack of a strategy for addressing their consequences means our work has attracted extensive

interest from a wide spectrum of organisations and individuals. Over the past 12 months, we have heard from more than 250 organisations and individuals – in person and in writing – about their views on the future of social welfare law advice and legal support and their comments on our draft report. We have also met a further 400 people at wider meetings. Our report has been greatly assisted by all the comments and suggestions we have received during its preparation.

The Commission recognises that these are changing times and the drive for austerity means that there are currently fewer resources than in the past. We are therefore seeking to develop a fresh approach, which involves measures to reduce the need for advice and legal support in the first place, while developing more cost-effective approaches to service provision, both centrally and locally, and drawing on a wider range of funding sources than hitherto. Some of the key principles underpinning our approach are:

- early intervention and action rather than allowing problems to escalate;
- investment for prevention to avoid the wasted costs generated by the failure of public services;
- simplifying the legal system;
- developing different service offerings to meet different types of need;
- investing in a basic level of provision of information and advice; and
- embedding advice in settings where people regularly go, such as GP surgeries and community centres.

Although this report is written in a time of austerity, it is also a time of innovation and rapid change in the provision of advice and legal services and of dispute resolution. New providers are moving into the legal services market as a result of the Legal Services Act 2007, and new technology is changing the way that many people seek information and interact with service providers. It is important that our strategy maximises the opportunities that these developments offer for those who have the resources, both financial and practical, to interact with them, so that the most resource-intensive, face-to-face, help can be concentrated on those who need it most.

Our aim is to develop a strategy for the next UK government and Welsh government to implement in 2015. Our 100 recommendations are highlighted in bold throughout the text and grouped by audience. In summary, the main components of our strategy are as follows:

- People with pressing problems need a simple and effective way of accessing good advice, without hurdles or confusion. Much basic provision can be developed using a combination of public legal education, national telephone helplines and websites, local advice networks and specialist support for frontline advice agencies.
- Greater use needs to be made of new technology and helplines for those who can manage to access these forms of communication and are not digitally

excluded. We believe that, in addition to the current range of specialist helplines, there should be a one-stop national helpline and website, providing a comprehensive advice service for the general public, which can act as a safety net for those who have nowhere else to go or whose needs cannot be met by other providers. This will free up resources to ensure that more face-to-face, in-depth and intensive support can be targeted at those most in need.

- There is a continuum including public legal education, informal and formal information, general advice, specialist advice, legal help and legal representation. Legal aid should be viewed as part of this continuum, rather than as a stand-alone funding mechanism; the more we can do at the beginning of this spectrum, the less we should have to do at the end.
- Public legal education should be given higher priority, both in the school alongside financial literacy, and in education for life, so that people know their rights and know where to go for help.
- The Ministry of Justice (MoJ) should conduct a ‘sense check’ review of the matters excluded from the scope of the LASPO Act and consider reinstatement of some provisions – including, in particular, housing cases involving disrepair and the right to quiet enjoyment – to ensure that there are no inconsistencies between its stated aims and practice.
- By reducing preventable demand, taking early action and simplifying the legal system, it will be possible to reduce some of the need for advice and legal support. This should include a stronger focus on getting decisions about individuals right first time (for example, by requiring the Department for Work and Pensions (DWP) to pay costs on upheld appeals), on developing good law and on taking steps to make courts and tribunals more efficient and effective (for example, through adapting their model of dispute resolution at every stage to meet the needs of litigants with little or no support).
- For those who can afford to pay, affordable advice and legal support should be more accessible and the routes into it much better communicated.
- Ensuring the quality of all levels of service provision must be a high priority.
- We would like to see a more open and collaborative advice sector. There is considerable scope for local advice agencies to work more closely together and in some cases even to merge. We would also like to see the national advice services umbrella bodies work more closely together and share their resources and experience more widely.
- The importance of advice and legal support on social welfare law to people’s lives, coupled with challenges to its continued provision and additional costs to government that are likely to result if no action is taken, makes it imperative that the next UK government develops a National Strategy for Advice and Legal Support in England for 2015–20, preferably with all party support, and that the Welsh Government develops a similar strategy for

Wales. There should be a Minister for Advice and Legal Support, within the MoJ, with a cross-departmental brief, who should lead the development of this strategy.

- Local authorities or groups of local authorities should co-produce or commission local advice and legal support plans with local not-for-profit and commercial advice agencies. These plans should review the services available, including helplines and websites, while targeting face-to-face provision so that it reaches the most vulnerable. They should also ensure that some resources are available for legal help and representation where it is most needed, to supplement the reduced scope of legal aid.
- We estimate that by 2015, post the implementation of the LASPO Act, there will be about £400m pa available to fund advice and legal support services – mainly coming from local authorities, the Money Advice Service (MAS), the Big Lottery Fund and the legal aid that remains for social welfare law.
- We estimate at least a further £100m pa is required in order to ensure a basic level of provision of information, advice and legal support on social welfare law.
- We are calling on the next UK government to provide half of this extra funding by establishing a ten-year National Advice and Legal Support Fund (‘National Fund’) for England and Wales of £50m pa, to be administered by the Big Lottery Fund, to help develop provision.
- We propose that this National Fund should be financed by the MoJ, the Cabinet Office and the DWP (as the main creator of the need for advice and legal support). Of the Fund, 90 per cent should be used to fund local provision, with ten per cent for national initiatives; further details of the expenditure to be met by the Fund are given in Annex 10.
- The Big Lottery Fund should allocate the 90% share of the National Fund to local authority areas, based on indicators of need which draw on joint strategic needs assessments and Health and Wellbeing Strategies. These funds should be used to help implement local advice and legal support plans, which should be co-produced by local authorities and the local advice sector.
- We have also identified other national and local statutory, voluntary and commercial funders, which we believe could contribute the other £50m pa required and thereby match the National Fund. These should include NHS clinical commissioning groups, housing associations and additional MAS funding (for example, by increasing the Financial Conduct Authority’s levy on financial institutions, and introducing a levy on payday loan companies).
- Trusts and foundations, the Big Lottery Fund and lawyer fund generation schemes, such as the Interest on Lawyer Trust Accounts (IOLTA) and dormant funds held by solicitors (for example, for clients who can no longer be traced or for companies that have dissolved) should also contribute to this second £50m.

- Most of our recommendations apply equally to Wales, but it will be important to build on the momentum resulting from the Welsh Government's Advice Services Review, the final report of which was published in March 2013. The Welsh Government will also need to decide on the most appropriate management arrangements for the National Advice and Legal Support Fund in Wales, and some of the recommendations will also need to take account of the different arrangements for local government and the local NHS in Wales.

Our six overarching recommendations are:

- Public legal education should be given higher priority, both in the school alongside financial literacy, and in education for life, so that people know their rights and know where to go for help.
- Central and local government should do more to reduce preventable demand (for example, by requiring the DWP to pay costs on upheld appeals).
- Courts and tribunals should review how they can operate more efficiently and effectively (for example, through adapting their model of dispute resolution at every stage to meet the needs of litigants with little or no support).
- The next UK government should develop a National Strategy for Advice and Legal Support in England for 2015–20, preferably with all-party support, and the Welsh Government should develop a similar strategy for Wales. There should be a Minister for Advice and Legal Support, within the MoJ, with a cross-departmental brief for leading the development of this strategy.
- Local authorities, or groups of local authorities, should co-produce or commission local advice and legal support plans with local not-for-profit and commercial advice agencies.
- The next UK government should establish a ten-year National Advice and Legal Support Fund of £50m pa, to be administered by the Big Lottery Fund, to help develop provision of information, advice and legal support on social welfare law in line with local plans.

Urgent action is also required to address the application and funding problems arising with section 10 of the LASPO Act on exceptional funding arrangements.

These were intended to act as a safety net to guarantee the funding of cases that would ordinarily be out of scope for legal aid funding, but where either human rights or EU law require the provision of legal aid. The evidence to date is that these arrangements are not working. We believe that by investing in a wider range of information and advice, with some legal help and representation, many of the undesirable consequences of the LASPO Act can be avoided and we will end up saving money.