

THE NATIONAL LEGAL SERVICE

A New Vision for Access to Civil Justice

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The legal aid scheme was one of the great post-war reforms of the Attlee government. The National Health Service sought to ensure that no one was without good medical care. The legal aid scheme sought to ensure that no one was without good legal advice or representation.

At its best, it was transformational, helping to shift the balance of power within society and providing justice for the many, not the few. It enabled women who had been abused to gain injunctions against violent men; tenants to prevent eviction and harassment by rogue landlords; workers to gain compensation from their employers for injuries suffered at work; and consumers to gain redress for faulty goods and dodgy services.

Now, though, it is broken beyond repair. Over the past 13 years, it has been destroyed. It has been eviscerated by legislative changes, starved of resources and ruined by poor management.

It is time to start again with a new vision.

This paper sets out how a new government could implement that vision by creating a National Legal Service that would put the interests of people with legal problems first – in the same way that the National Health Service puts the interests of people with health problems first.

Executive summary

The rule of law is fundamental to any civilised society. Without the rule of law, there is violence, chaos and inequality. However, the rule of law cannot function without access to justice.

Now, there is an urgent need for a national debate about the way in which legal aid is provided. The forthcoming general election provides the context. That debate must incorporate the voice of all interested parties and extend discussion beyond the representative bodies of the legal profession. This paper sets out, in outline form, proposals that could be incorporated into the manifesto of any political party seeking to form the next government.

Current levels of remuneration, scope and eligibility will no longer support what was, until a decade ago, the best legal aid provision in the world.

Due to the lack of legal advice and representation, many people are excluded from their democratic right to justice.

This paper explores what might be done with only limited increases in government expenditure. Clearly, this must involve radical change. The most significant will be a change of mindset. To carry this through will require strategic leadership from the Ministry of Justice,

Any new provision must focus on the needs of the people who will use it, remembering that they will include the most disadvantaged and vulnerable members of society.

Any reformulation of legal aid in the next Parliament will only succeed if it has the active support of the lord chancellor; an energetic and committed legal aid minister; engaged senior officials at the Ministry of Justice; the senior judiciary; and practitioners. They need to provide the necessary collective leadership. Access to Justice for all must be a political priority.

The coalition and Conservative governments have destroyed civil legal aid as it was. It is broken beyond repair. It is time to start again with a new vision.

The new mission of legal aid should be to improve the ability of people to enforce rights, resolve legal problems and settle disputes.

For there to be effective access to justice for all, there must be a comprehensive network of integrated levels of assistance – each potentially separate but commonly branded as part of a new National Legal Service – that progressively assist people to enforce rights, resolve problems and settle disputes. That will range from the basic provision of information through access to self-help tools where appropriate to individualised legal advice and representation.

The new mission and vision require four preconditions:

1. strategic leadership;
2. a new National Legal Service to provide comprehensive advice and representation;
3. investment in innovation and technology; and
4. a sustainable financial basis.

The immediate challenge for legal aid and access to justice is, therefore, to provide a new sense of overall direction and purpose.

In England and Wales, the government should establish, by Act of Parliament, a new National Legal Service. That National Legal Service should incorporate through common branding a fresh mix of new and old providers of legal aid to form one integrated service that would provide legal help for all those who cannot afford it.

The name National Legal Service would invite comparisons with the National Health Service. It would demonstrate a new, dynamic, all-inclusive, comprehensive approach and a break from the failings of the current legal aid scheme. The use of the word 'Service' would make it clear that its fundamental purpose would be to meet the needs of its consumers.

The interests of the consumers – the people with legal problems – must come first. The new National Legal Service must be designed to meet their needs. It must focus on the needs of the people who will use the service, remembering that they will include the most disadvantaged and vulnerable members of society.

The mission of the new National Legal Service should be to:

1. deliver a mixed model of provision deploying private practitioners, salaried lawyers, Law Centres, national charities, advice agencies and others as required and available - devolving the detail on a regional basis;
2. manage and coordinate a national service providing access to justice that would commonly badge all those providing services as part of the National Legal Service, whether or not they are directly funded by the service;
3. ensure that it provides an integrated and seamless service to its users, putting their needs first;
4. explore innovation of delivery and new uses of technology – fostering in particular the development of self-help *Digital Plus* tools and the integration of in-person and automated provision;
5. manage an annual challenge fund for projects giving innovative delivery and other technological advances;
6. monitor performance and conduct national and international benchmarking;
7. develop policy for presentation to the Ministry of Justice for the development of the service;
8. foster the coordination of a strong and dynamic legal assistance sector – including the educational development and training support for its employees and volunteers;
9. work with partners to create fairer and more effective laws and procedures.

The work of the National Legal Service would require collaboration with the Ministry of Justice, other government departments, HM Courts and Tribunal Service, the judiciary and academic institutions.

The nature of the services provided by the National Legal Service should be determined by function, not by the type of provider.

All early or initial advice services should be branded as part of the National Legal Service.

The National Legal Service's functions should be divided into three tiers:

- Initial early information and advice.
- *Digital Plus*.
- Legal representation, both in negotiations and in litigation.

Flexibility of provision is vital and it is for this reason that a mixed model is likely to be most effective. Existing private practitioners can be contracted to provide services in areas where they have specialised knowledge. However, the best service requires a range of providers.

Existing Law Centres perform a crucially important role, but they are severely hampered by lack of adequate funding. The National Legal Service would provide the opportunity to put Law Centre finances onto a proper, sustainable, long-term footing. Some funding would be provided nationally, directly via the National Legal Service. Additional funding could be provided locally.

Existing national charities that provide legal advice and representation, such as Shelter and the Child Poverty Action Group, should be brought within the National Legal Service brand. Their services would be funded from a mix of sources, eg charitable donations, grants and directly via the National Legal Service.

If private practitioners, Law Centres or national charities are unable to provide necessary services, the National Legal Service should have power to employ directly salaried lawyers to provide those services.

In time, lawyers would be attracted to a new dynamic National Legal Service, but in the short term, a shortage of lawyers would require innovative solutions, eg publicly sponsored retraining of existing lawyers and increased provision of social welfare law course options in academic institutions.

The approach of the National Legal Service would be very different from the old legal aid system. In addition to a different structure, there would be two new elements that would both enhance the service provided and save money: self-help and digitalisation.

The development of artificial intelligence is still in its early days. Services such as ChatGPT and Google Bard are at present insufficiently reliable to provide significant assistance without additional checks to ensure their reliability. However, their future potential could play a significant role in providing legal services in appropriate situations, especially if combined with existing legal digital services such as Thomson Reuters and LexisNexis. Artificial intelligence is likely to have the capability in the medium-term future to assist in the provision of legal assistance with costs savings, but some vulnerable people will always require face-to-face assistance.

The National Legal Service and those who contract with it should explore the digital frontier in legal information, advice and representation. To encourage this, one per cent of its annual budget should be allocated to a similar challenge fund, specifically aimed at developing *Digital Plus* tools.

There is no doubt that the existing legal aid scheme is badly under-resourced. The National Legal Service would require a sustainable basis for funding. Given the economic situation, money from the Treasury will always be tight. It is unlikely that any government will provide significant additional funding, but:

1. the government should recognise the need to reverse the 2012 cuts and to raise expenditure on legal aid to the maximum level possible;
2. there should be a levy on the better paid members of the legal profession;

3. there should be a levy on court and hearing fees in the High Court and above;
4. there should be consideration of ways of recovering the costs of people represented through the National Legal Service payable by losing parties in litigation; and
5. ways should be found by which improvements in technology can increase the services delivered without additional cost.

Introduction

The rule of law is fundamental to any civilised society. Without it, there is violence, chaos and inequality. However, the rule of law cannot function without access to justice. The rich always have access to justice. They can afford to pay solicitors and barristers to advise and represent them in legal disputes. Those who are disadvantaged cannot do that. In England and Wales, for the past 75 years, to a greater or lesser extent, they have secured access to justice via the legal aid scheme. **Now, there is an urgent need for a national debate about the way in which legal aid is provided. The forthcoming general election provides the context. That debate must incorporate the voices of all interested parties and extend discussion beyond the representative bodies of the legal profession. This paper sets out, in outline form, proposals that could be incorporated into the manifesto of any political party seeking to form the next government.**

‘When it comes to [legal aid], hard truths are currently in short supply. Well-meaning reverence for the ideals it represents and the care it can deliver has supplanted reality. And that reality is simple: if we don’t get real about reform, [legal aid] will die.’ Those are the words of Sir Keir Starmer MP in the *Daily Telegraph* about the National Health Service transposed to apply to legal aid.

The Law Society and the Bar Council, representing the legal profession, have been very clear. Current levels of remuneration, scope and eligibility will no longer support what was, until a decade ago, the best legal aid provision in the world. Everyone accepts that there were problems: eligibility was low; geographical coverage was patchy; remuneration was always a source of contention. However, England and Wales had a national legal aid system that could genuinely claim that it was the envy of the world. The problem was that England and Wales did it at a price, paying private practitioners working on a case-by-case basis at rates that were designed to sustain them economically. That no longer happens. The legal profession states that, without large increases in remuneration, legal aid practice is unprofitable. The Bar Council’s 2021 study of civil legal aid was entitled *Running on Empty*. For potential users, gaping holes now exist in provision, particularly in relation to legal advice and civil legal aid.

The problems of legal aid providers are insignificant when compared with those of potential users. There is a massive need for assistance and dire consequences when it is lacking. **Due to the lack of legal advice and representation, many people are excluded from their democratic right to justice.** Approximately one-third of people have legal needs that they feel are not met. More than 10 per cent who are unable to obtain legal assistance feel that the outcome of their case is unfair. There is a clear emotional and health cost. Almost one-third of those with legal problems in the UK report that they developed a stress-related or physical illness as a result of their experience.

The government has dramatically cut the resources that it makes available for the provision of civil legal aid. There was criticism of the available resources before 2012, but even a reversal of that year’s cuts would not now provide adequate resources. However, the government finances are stretched and **this paper explores what might be done with only limited increases in government expenditure. Clearly, this must involve radical change. The most significant will be a change of mindset. To carry this through will require strategic leadership from the Ministry of Justice,** not just passive administration. The provision of legal advice and representation must become an area for active government policy with innovative ways being found to deliver better results with improved value for money. In a country where poverty is so bad that over 10 per cent of households were using food banks in October 2021, a government of any persuasion is likely to prioritise other areas of expenditure. Government should provide sufficient resources, but they may be less than

many users and providers would like. That will require innovative ways to increase contributions from others and necessitate a change to the structure of the legal aid scheme.

Reform is necessary. More importantly, there must be a change of approach. The current system can be criticised as being defensive, inward-looking, focused on the legal profession and overly concerned with preserving existing ways of delivery. The new vision should look outwards, encourage international benchmarking, and be ruthlessly outcome- and user-focused. The fundamental focus of legal aid – and the reason for its funding – must be the needs of its prospective users and the social and democratic consequences of its absence. At times in the past, the legal aid scheme has been criticised for being centred on the interests of the providers. The Law Society and the Bar Council, in their capacity as trade unions for their members, have been right to argue for the interests of the profession. No scheme that aims to provide access to justice can survive without the solicitors and barristers who provide legal services. They require proper remuneration. However, it would be wrong to plan for the future only having regard to the needs of the profession. **Any new provision must focus on the needs of the people who will use it, remembering that they will include the most disadvantaged and vulnerable members of society.**

This paper is primarily concerned with the problems of access to advice and representation in non-family civil matters. It may be that any new structure could be used to develop similar approaches in the areas of family and crime.

The legal aid scheme was one of the great post-war reforms of the Attlee government. The National Health Service sought to ensure that no one was without good medical care. The legal aid scheme sought to ensure that no one was without good legal advice or representation. Its original aim, as proposed to parliament in 1949 by the then attorney general, was to be a ‘charter of the little man to the British courts of justice ... without regard to the question of their wealth or ability to pay’. That, insofar as anyone thought about the fundamental purpose of legal aid, is much how it has remained except for the addition of women.

At its best, it was transformational, helping to shift the balance of power within society and providing justice for the many, not the few. It enabled women who had been abused to gain injunctions against violent men; tenants to prevent eviction and harassment by rogue landlords; workers to gain compensation from their employers for injuries suffered at work; and consumers to gain redress for faulty goods and dodgy services

The impact of the 2012 cuts

One of the key problems for civil legal aid is that the drastic cuts in eligibility and scope led to a collapse of the pre-2012 delivery system. Since the post-war reforms, a structure for civil legal aid had been developed around the nationwide network of private practice solicitors. In the 1950s and 1960s, this was built up by legally aided matrimonial work. Initially, eligibility for legal aid included 80 per cent of the population, although by 1973 the figure had fallen to 40 per cent. On the other hand, the network of solicitors provided the base for the progressive extension of legal aid into new areas of work, including personal injury (subsequently and controversially removed to be funded by a modified version of contingency fees), housing, other ‘poverty law’ areas and general advice, funded through a comprehensive national means-tested scheme that provided advice on and assistance with any matter of English and Welsh law (the Green Form Scheme).

By 2010, there was a national network of solicitors providing legal advice and assistance that was undoubtedly the best in the world – albeit the most expensive because of its use of private practitioners. Most other equivalent countries, like the USA., Canada and Australia, deployed at least

some specialist salaried lawyers at a cheaper cost, either in Law Centre-type organisations (such as Ontario's community legal clinics) or directly employed lawyers in legal aid administrations (as in Australia). In England and Wales, the network of solicitors' firms was buttressed by advice agencies (Citizens Advice and others), Law Centres and national specialist providers like Shelter in housing and Child Poverty Action Group in social security. However, the core providers were solicitors and barristers in private practice.

That network has been destroyed. The Ministry of Justice's own statistics show that the number of 'provider offices completing civil legal aid work' fell by approximately a half from 2013–14 to 2020–21 – from just under 3,000 to just under 1,500. Cuts at similar levels have been experienced by the not-for-profit sector – as Legal Action Group research has documented.

The decline in providers mirrored the decline in assistance provided. For example, almost 100,000 fewer people receive legal help in non-family matters and 50,000 fewer in family matters as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 cuts. Routine assistance in matrimonial cases was removed from scope. Legal help was eviscerated. Civil legal aid was severely restricted. The consequences can be seen in the Ministry of Justice's civil legal aid expenditure. It fell from £1,282m in 2010–11 to £835m in 2020–21. That resulted in a reduction of one-third in the income of legal aid practitioners. This is what has killed off the former network of legal aid providers.

It is worth noting that Scotland, a neighbouring jurisdiction that, prior to devolution, had an almost identical legal aid scheme, has already developed a new approach employing a much more mixed delivery model – making more use of Law Centres and salaried lawyers than England and Wales. This has been the subject of the excellent *Legal Aid Review* in Scotland by Martyn Evans, which has influenced our thinking.

In the face of innovative approaches in other jurisdictions, the English and Welsh Ministry of Justice has set up a *Civil Legal Aid Review* that 'will explore options for improving the long-term sustainability of the civil legal aid system'. The practical effect of this is that it will halt all policy formulation until it reports in 2024 – by which time there may well be a general election. The stated aim of the review is to 'commission an external economic analysis of the civil legal aid market to better understand how people access funding and support. It will encompass all categories of civil legal aid provision, with in-depth analysis into areas including family, housing, mental health, education, discrimination and immigration. It will also consider value for taxpayers' money of future policy options and take into account wider budgetary restraints on the department. As well as an assessment of how such systems work in other comparable countries, the review will also include publication of further data on how civil legal aid is accessed and delivered across England and Wales to help inform future decisions. ... Once complete, the government can consider options from the review for moving to a more effective, more efficient and more sustainable system for legal providers and the people who rely on legal aid.' The result is delay when immediate action is needed.

The review is an abdication of political responsibility. Around the edges, better management might make a difference, but, manifestly, as the Law Society points out, the fundamental problem is that the government has removed a large amount of finance from legal aid practice – probably around £500m.

Asked for his priorities recently by the House of Commons Justice Committee, the lord chancellor, Dominic Raab MP, offered three. None of them related to legal aid. Yet, legal aid is a major part of his ministry's budget. This ministerial indifference must be reversed. The Law Society, though clearly

vulnerable to claims of special pleading, is surely right in its conclusion: ‘Without immediate cash investment, civil legal aid providers are facing an existential crisis. Law Society analysis suggests that the number of providers starting legal aid work could drop by a third by 2025, leaving many without access to a lawyer when they desperately need one.’

One manifestation of ministerial indifference is the section of the government website (gov.uk) that purports to help people obtain legal advice. It is not focused on the needs of real users in that:

- It pays no heed to the information on the law that potential users might need – at its minimum, that is access to free information on a range of websites produced by not-for-profit bodies.
- It shows no interest in how a potential user should actually access assistance. No one constructing the site seems to have been concerned to be sufficiently user-centric to ask what someone should actually do. They need more than a name on a list. They need to search for specialists. They need to look at the websites of providers. They need to ask around to see who is helpful. It might be a good idea to go to a local advice agency, even if it cannot take on the case, to get an opinion on the best sources of local assistance.
- It does not indicate any of the integration that should exist between different sources of assistance.

Any reformulation of legal aid in the next parliament will only succeed if it has the active support of: the lord chancellor; an energetic and committed legal aid minister; engaged senior officials at the Ministry of Justice; the senior judiciary; and practitioners. They need to provide the necessary collective leadership. Access to justice for all must be a political priority.

Footsteps in the sand: previous studies

There is no doubt as to the continuing need for legal aid. The latest survey in England and Wales was conducted for the Law Society and Legal Services Board by YouGov. It claimed to be the ‘largest ever’. It found that:

- 64 per cent of adults had experienced a legal problem in the previous four years, including 53 per cent who faced contentious problems;
- 31 per cent of those who had a contentious legal problem that was resolved and did not get help, wanted more help or their issue took longer than two years to resolve;
- respondents who received professional help were more likely to feel they had a fair outcome (66 per cent compared with 53 per cent who did not receive professional help);
- people were more likely to seek professional help if they understood their issue was legal in nature – just 16 per cent of people described their contentious legal issue as ‘legal’, with 28 per cent describing it as ‘economic’ or ‘financial’; and
- people with low legal confidence have a lower understanding of their rights, find it less easy to deal with their legal issues, are less likely to get professional help, are less satisfied with the service they receive and are less likely to think they had a fair outcome.

The dire state of legal aid over the last decade has given rise to three reports – all of which involved considerable engagement by interested parties and all of which contain detailed recommendations that should be fed into any debate on the future of legal aid. They were:

- the Low Commission on the future of advice and support set up by Legal Action Group, but independent of it – its report was published in 2014;
- a commission chaired by Lord Bach – its report was published by the Fabian Society in 2017 as *The Right to Justice*; and
- *The Future of Legal Aid* from the all-party House of Commons Justice Committee.

These reports had different emphases but there is striking overlap both between them and with the proposals in this paper. For example, the Justice Committee recommended five themes, all of which are derived from the principle of access to justice, that should characterise the government's approach to reforming legal aid:

- the legal aid system should be designed around the needs of those who use it;
- the regulation of the legal aid system should prioritise the quality of the work provided and ensure that the public are supplied with the right legal work at the right time;
- the legal aid framework should enable the government to act strategically and to target support in areas where it is needed most and where it can improve the effectiveness of the courts and the justice system;
- legal aid should be regarded as a public service that benefits all of society; and
- legal aid is critical to the fairness of the justice system, enabling those without sufficient financial means to participate on equal terms with those who can afford representation.

The Bach report proposed a new Right to Justice Act that would codify existing rights to justice, enact principles 'to guide interpretation', and establish a Justice Commission 'whose function is to advise on, monitor and enforce the right to justice'. It set out a list of detailed reforms required to the scope, eligibility, administration and professional remuneration of legal aid.

The Low Commission report recommended a 'more open and collaborative' advice sector. It stressed that 'people with pressing problems need a simple and effective way of accessing good advice, without hurdles or confusion'. It called for 'a National Strategy for Advice and Legal Support in England ... preferably with all-party support, and that the Welsh government develop[s] a similar strategy for Wales. There should be a Minister for Advice and Legal Support, within the [Ministry of Justice], with a cross-departmental brief, who should lead the development of this strategy.'

An effective system providing access to justice for all would build on some of the common themes in these reports and, in particular, the importance of:

- a strategic approach by government;
- early legal advice, information and intervention;
- the user as central to provision; and
- improved use of technology.

However, the recommendations of Low Commission report and the Bach report need to be updated to reflect the savagery of the cuts to legal aid since they were published and the destruction of the legal aid network of providers. The recommendations of the Justice Committee need to be given some institutional teeth.

Lord Bach entitled his preliminary report, published in 2016, *The Crisis in the Justice System in England and Wales*, but the current state of legal aid is now much worse. The legal aid scheme is in a parlous state in its coverage of crime but it is, as argued above, in meltdown in relation to civil advice and representation. The national network of practitioners that provided a wide range of civil legal aid to poor people by way of legal aid – and particularly legal advice – has been shattered.

One manifestation of the current failure of legal aid is the increasing number of ‘advice deserts’, areas with no access to legal advice or representation for those on low incomes. The most recent study of advice deserts was published by commercial publisher LexisNexis last year. This looked at provision in three areas of law: housing, family and crime. Overall, it found seven largely rural areas where the national network of solicitors did not support effective legal aid assistance: North Norfolk, Derbyshire Dales, Isles of Scilly, Ribble Valley, East Cambridgeshire, West Devon and Rutland. Law Society research shows that:

- 52m people (88 per cent) do not have access to a local education provider;
- 40m (67 per cent) do not have access to a local community care legal aid provider; and
- 40 per cent of the population do not have access to a local legal aid provider for housing advice.

This has not just been harmful for those who lack legal advice and representation. It has also had an adverse effect upon the justice system itself. Judges in courts and tribunals complain that there are increasing numbers of people representing themselves. That does not just have an adverse impact on the outcome of cases; it also slows down the court process and hampers the efficient use of court resources. Delay increases cost both to the court service and other parties.

The source of the problem is clear: ‘legal aid has been consistently cut for some time, to the point where very few people in very few types of cases now qualify as being able to receive it.’ The conclusion of LexisNexis’s director of global Law was that ‘[t]he answer cannot sit just with lawyers giving up time pro bono – pro bono cannot be a replacement for a properly funded legal aid system. It might be a start but, in order for our economy to flourish, for our society to prosper, and for the rule of law to be protected, respected and advanced, far more needs to be done. We need to address the systemic challenges which means access to justice is often denied to people across the country, almost always at the darkest moment of their lives.’

The coalition and Conservative governments have destroyed civil legal aid as it was. It is broken beyond repair. It is time to start again with a new vision.

Wales

In Wales, the Welsh Commission on Justice reviewed the operation of the justice system and set a long-term vision for its future. Its report, *Justice in Wales for the People of Wales*, concluded that the people of Wales are being let down by the system in its current state. Major reform is needed to the justice system and to the current scheme of devolution in order to deliver justice in Wales for the people of Wales. Its executive summary states:

Justice should be at the heart of government. Policy and spending on justice should be aligned with other policies, particularly those which are devolved to Wales, such as health, education and social welfare. Under the current scheme of devolution there is no properly joined up or integrated approach, as justice remains controlled by the Westminster government.

Consequently, the people of Wales do not have the benefit which the people of Scotland, Northern Ireland and England enjoy by justice being an integral part of overall policy making.

The reductions in the justice budget made by the Westminster government since 2010 have been amongst the most severe of all departmental budget cuts. The impact on Wales has been significant as the interests of Wales have not been at the forefront of the Westminster government's policy decisions. The Welsh government has used its own money, in addition to permitting rises in council tax, to try and mitigate the damaging effects of these policies. The result is that almost 40 per cent of the total funding is actually contributed in Wales. This is above other tax revenue that is raised from Wales and then allocated by the Westminster government to Wales. This position is unsustainable when the Welsh government has so little say in justice policy and overall spending.

Justice should be determined and delivered in Wales so that it aligns with its distinct and developing social, health and education policy and services and the growing body of Welsh law. Policy would be developed and funding allocated to meet the needs of and provide greater benefit for the people of Wales.

The report continues: 'The significant cuts to legal aid made in 2012 have hit Wales hard. Proper access to justice is not available with the consequent threat to the rule of law.'

It proposes full legislative devolution for Wales, combined with executive powers, with 'proper alignment of justice policy and spending with social, health, education and economic development policies in Wales to underpin practical long-term solutions'. It suggests 'integrating legal aid and third-sector advice, bringing health and justice resources together to tackle drug abuse, and providing better means of dispute resolution through ombudsmen services'. It considers that for full legislative devolution to succeed, a full transfer of the funding for the justice system is necessary, and that it must be accompanied by the development in Wales of capacity, capability and leadership.

While recognising the force of the commission's recommendations on devolution of justice, it is beyond the scope of this paper to decide whether or not to endorse them. They have, though, to be taken into account when proposing the reform of means of access to justice.

Even without implementation of the commission's recommendations, it is clear that reforms already implemented by the devolved governments in Wales and Scotland mean that access to justice is now significantly worse in England than in those countries.

Legal aid: new mission; new vision; new strategic aims

The new mission of legal aid should be: to improve the ability of people to enforce rights, resolve legal problems and settle disputes.

Radical improvements should be made so that all citizens have access to justice. For some, that can be done by ensuring that they have the right legal tools to resolve their own problems. Any legal aid system must include the provision of basic information and advice. Currently, this function is often provided by agencies such as Citizens Advice. This is particularly important for those hindered by low incomes or other disadvantages who need the kind of help for which those better off would pay.

For there to be effective access to justice for all, there must be a comprehensive network of integrated levels of assistance – each potentially separate but commonly branded as part of a new National Legal Service – that progressively assist people to enforce rights, resolve problems and

settle disputes. That will range from the basic provision of information through access to self-help tools, where appropriate, to individualised legal advice and representation.

The new mission and vision require four preconditions:

- 1. strategic leadership;**
- 2. a new National Legal Service to provide comprehensive advice and representation;**
- 3. investment in innovation and technology; and**
- 4. a sustainable financial basis.**

Strategic leadership

In contrast to Scotland, where legal aid has been closely managed by a combination of the Scottish government and the Scottish Legal Aid Board, England and Wales has lacked any effective ministerial leadership since 2010. The apparent sole ministerial interest has been in implementing cuts and then making minor adjustments to mitigate those that prove the most egregious.

Legal aid currently accounts for around £1.5bn annual government expenditure. Ministerial interest since the 2012 cuts has not been assisted by rapid turnover. The Thatcher/Major and Blair/Brown governments each had three lord chancellors during their tenures. Since 2010, coalition and Conservative administrations have had nine (10 if you count Dominic Raab twice). Four lasted less than a year – Liz Truss, David Lidington, Dominic Raab (in incarnation 1) and Brandon Lewis. Unsurprisingly, there has been little appetite among such short-term appointees to develop a long-term interest in legal aid and lead on its policy.

A new government taking office after the next election has the opportunity to make a decisive break with this story of decline – albeit that there will clearly be a considerable squeeze on resources as other areas of neglect, like child hunger and health, are literally matters literally of life and death.

The immediate challenge for legal aid and access to justice is, therefore, to provide a new sense of overall direction and purpose.

A new National Legal Service

The management of a comprehensive network of agencies and lawyers providing legal advice and representation requires a lead body independent of the Ministry of Justice. That was the function of the Legal Services Commission introduced by the Labour government in 2000. Most jurisdictions with effective legal aid have a body charged with overall responsibility for managing legal aid. For example, the Scottish Legal Aid Board was formed in 1987, with its mission ‘to fund and deliver services that enable people to enforce and protect their rights, defend themselves and manage their personal affairs and relationships’.

As a further example, Victoria Legal Aid in Australia has the following purpose: ‘To make a difference for clients and the community by helping to effectively address legal problems, supporting the coordination of a strong and dynamic legal assistance sector and working with partners to create fairer laws and systems.’

In England and Wales, the government should establish, by Act of Parliament, a new National Legal Service. That National Legal Service should incorporate, through common branding, a fresh mix of new and old providers of legal aid to form one integrated service that would provide legal help for all those who cannot afford it.

The title of the new service is important. **The name National Legal Service** would invite comparisons with the National Health Service. It **would demonstrate a new, dynamic, all-inclusive, comprehensive approach** and a break from the failings of the current legal aid scheme described in the first half of this paper. **The use of the word ‘Service’ would make it clear that its fundamental purpose would be to meet the needs of its consumers.**

The interests of the consumers – the people with legal problems – must come first. The new National Legal Service must be designed to meet their needs. At times in the past, the legal aid scheme has centred on the interests of the providers. The Law Society, the Bar Council and the profession have a vital role to play in any proposal for reform, but it would be wrong to plan the new National Legal Service around the needs of the profession. **It must focus on the needs of the people who using the service, remembering that they would include the most disadvantaged and vulnerable members of society.**

The mission of the new National Legal Service should be to:

1. **deliver a mixed model of provision, deploying private practitioners, salaried lawyers, Law Centres, national charities, advice agencies and others as required and available, devolving the detail on a regional basis;**
2. **manage and coordinate a national service providing access to justice that would commonly badge all those providing services as part of the National Legal Service, whether or not they are directly funded by the service;**
3. **ensure that it provides an integrated and seamless service to its users, putting their needs first;**
4. **explore innovation of delivery and new uses of technology – fostering, in particular, the development of self-help *Digital Plus* tools (see below) and the integration of in-person and automated provision;**
5. **manage an annual challenge fund for projects giving innovative delivery and other technological advances;**
6. **monitor performance and conduct national and international benchmarking;**
7. **develop policy for presentation to the Ministry of Justice for the development of the service;**
8. **foster the coordination of a strong and dynamic legal assistance sector – including the educational development and training support for its employees and volunteers;**
9. **work with partners to create fairer and more effective laws and procedures.**

Needs vary from place to place. The ability of providers to meet those needs differs from region to region. For that reason, detailed implementation of the National Legal Services functions should be devolved on a regional basis.

The work of the National Legal Service would require collaboration with the Ministry of Justice, other government departments, HM Courts and Tribunal Service, the judiciary and academic institutions.

The nature of the services provided by the National Legal Service should be determined by function, not by the type of provider.

In planning for this, it is necessary to rethink the legal advice pyramid. For users, the first tier of assistance begins with early information and advice. In the past, initial advice was provided either by solicitors or advice agencies. Now, it is more frequently provided by Citizens Advice or other advice agencies such as the AdviceNow website. These have traditionally been seen as outside the legal aid network. Good, early legal advice is vital. Often, it can prevent more costly litigation. Whatever its source of funding, **all early or initial advice services should be branded as part of the National Legal Service.**

The National Legal Service's functions should be divided into three tiers:

- 1. Initial early information and advice.** Much of this could be provided digitally (eg via the Citizens Advice website). Where that information and advice is not sufficient to resolve issues, it would lead to referral and some assistance provided digitally but supplemented by face-to-face provision. It must be recognised that although many people can successfully access digital provision, significant numbers of the most disadvantaged are unable to do so, as a result of poor literary or linguistic skills, lack of digital knowledge or mental health difficulties. It is vitally important that all National Legal Service provision should be equally available to all.
- 2. *Digital Plus*** – a range of self-help provision overwhelmingly provided digitally with personal assistance for those unable to use it. *Digital Plus* would encourage users to resolve their own problems with no, or minimal, additional assistance (as, for example, available from Law for Life for PIP claims). Innovative forms of assistance could be explored, eg public librarians trained to give assistance to those seeking digital assistance and referral. It is important that in appropriate cases, *Digital Plus* should be able to direct people with legal issues to mediation services and other forms of Alternative Dispute Resolution.
- 3. Legal representation, both in negotiations and in litigation.** One of the strengths of the National Legal Service would be that people with legal problems that cannot be resolved via its first two tiers would be directed to the lawyers best able to assist with specialised knowledge.

Flexibility of provision is vital and it is for this reason that a mixed model is likely to be most effective. Existing private practitioners can be contracted to provide services in areas where they have specialised knowledge. However, the best service requires a range of providers.

Existing Law Centres perform a crucially important role, but they are severely hampered by a lack of adequate funding. The National Legal Service would provide the opportunity to put Law Centre finances onto a proper, sustainable, long-term footing. Some funding would be provided nationally, directly via the National Legal Service. Additional funding could be provided locally. In addition, new contracted 'regional Law Centres' should be established. They could be new or existing bodies that successfully bid for contracts. They would provide assistance in the 'poverty law' areas removed from legal help and aid by the 2012 cuts. The aim should be for as many as possible, but with a minimum of at least 20 throughout the country. They could be based on existing Law Centre models, but might have to serve wider catchment areas and, realistically, use video and other digital communication techniques to communicate within those areas.

Existing national charities that provide legal advice and representation, such as Shelter and the Child Poverty Action Group, should be offered the opportunity of coming within the National Legal

Service brand. Their services would be funded from a mix of sources, eg charitable donations, grants and directly via the National Legal Service.

If private practitioners, Law Centres or national charities are unable to provide necessary services, the National Legal Service should have power to employ directly salaried lawyers to provide those services.

Given the huge reduction in the number of solicitors and barristers now providing legal aid services, the National Legal Service would inevitably face problems in attracting practitioners, both to private practice and the other providers within its brand. There is currently a shortage of suitably qualified lawyers applying for the limited number of jobs within the rump of the existing legal aid system. On the other hand, large numbers of would-be solicitors and barristers complete legal practice and vocational courses but fail to find training contracts or pupillage and so never qualify. **In time, lawyers would be attracted to a new, dynamic National Legal Service, but in the short term, this lack of lawyers would require innovative solutions, eg publicly sponsored retraining of existing lawyers and increased provision of social welfare law course options in academic institutions.** There may also be wider implications, eg following the US model of loan forgiveness for those in public service roles.

Investment in innovation and technology

The approach of the National Legal Service would be very different from the old legal aid system. In addition to the different structure detailed in the preceding paragraphs, there would be two new elements that would both enhance the service provided and save money: self-help and digitalisation.

The National Legal Service would encourage those able to help themselves to do so as much as they can. Some would see this as self-empowerment and, by itself, a good thing. It could be related to an agenda of increasing civil participation and democracy. Some would be able to assist themselves in this way, but others would not. Recourse to mediation and other forms of alternative dispute resolution are vital. The National Legal Service would have an important role in encouraging this.

The second element is digitalisation. The internet allows possibilities for dynamic development of the old idea of 'unbundling', whereby a case is broken down into the parts that really require a lawyer or, at any rate, a paralegal of some kind, and those that can be handled without them.

The development of artificial intelligence is still in its early days. Services such as ChatGPT and Google Bard are at present insufficiently accurate to provide significant assistance, without additional checks to ensure their reliability. However, their future potential could play a significant role in providing legal services in appropriate situations, especially if combined with existing legal digital services such as Thomson Reuters and LexisNexis. Artificial intelligence is likely to have the capability in the medium-term future to assist in the provision of legal assistance with costs savings, but some vulnerable people will always require face-to-face assistance. There is a fundamental inequality of arms between a major company with state-of-the-art digital resources and a single parent in receipt of welfare benefits who speaks English as a second language and who is restricted to one-hour sessions on a shared computer in a public library. Although digital technology can be of great assistance to many, it is vital that there are alternative services provided by real, live human beings for those who either cannot access digital services or can only access them with difficulty. A proper safety net is essential, as is a flexible approach.

The extent to which people can help themselves and use digital means to do so is still open to debate. This was demonstrated recently when Richard Susskind argued to a parliamentary committee that almost everyone – 95 per cent of the UK population – had access to the internet either directly or through someone who could assist them. The Labour chair of the committee, David Hanson MP, responded with scepticism: ‘You should come to some of the council estates in my constituency, where there’s lack of access and people haven’t got computers.’ There is compelling and relevant research from Legal Aid BC’s (British Columbia, Canada) major Achieving Digital Equity in Access to Justice project. Its conclusion was that, overall, digital legal resources can be very effective for some, but not all, people. They are most effective ‘when used in combination with knowledgeable, trauma-informed, one-to-one legal help. ... [D]igital access and exclusion is best understood as a gradient rather than as binary division’ with three levels: access to devices and connectivity; personal skills and motivation; and that people tend to have ‘repertoires of activity’ with which they are comfortable. Most can use email. Fewer use internet banking or shopping.

Remote video communication provides a way of increasing the range of existing organisations. Many people use video apps on their smartphones to communicate and it has been common for several years in court for witnesses to give evidence and advocates to make submissions by video link. The importance of this was demonstrated during the COVID-19 pandemic. Many university legal clinics already use remote video communication when interviewing clients. The People’s Law School of British Columbia has demonstrated how effectively Zoom meetings can be in legal outreach. That technology has the potential to reach the remote areas that show up most often as advice deserts

One of the dynamic areas of technology-derived assistance is the growth of programmes that can interact with users to provide individualised letters and other elements of case management. This is much more advanced in the USA than in England and Wales, but an example can be seen in the growing use of automated letters where content can be generated reflecting the detail of individual cases. An English example is the development by AdviceNow of its Work Capacity Assessment Mandatory Reconsideration Tool. This takes users through the questions that need to be addressed, in particular social security claims. It is an example of what might be termed the dynamic unbundling of information. Instead of information being provided in a static form, it is deployed dynamically to assist users to complete tasks. So, seen analytically, the user encounters three elements:

- the addressing of a specific task rather than the simple provision of information, which might simply be the completion of a statement outlining a position or, more usefully, the completion of a relevant document;
- the automated identification for the user by the system of specific and relevant information that assists in the completion of the task; and
- the incorporation of this information from the user in a final document that advances their position.

The USA provides the best illustration of a strategic approach to building on basic provision. Since 2000, the US Congress has granted the Legal Services Corporation – the federal funding body for civil legal aid services – an additional sum of money that has tended to be roughly one per cent of the corporation’s budget. The programme has spent a total of \$77m to date on a total of 826 projects. The overall purpose is to ‘encourage organizations to use technology in innovative ways to:

- Effectively and efficiently provide high-quality legal assistance to low-income persons and to promote access to the judicial system through legal information, advice, and representation.

- Improve service delivery, quality of legal work, and management and administration of grantees.
- Develop, test, and replicate innovative strategies that can enable grantees and state justice communities to improve clients' access to high-quality legal assistance.'

The National Legal Service and those who contract with it should explore the digital frontier in legal information, advice and representation. To encourage this, one per cent of its annual budget should be allocated to a similar challenge fund, specifically aimed at developing *Digital Plus* tools.

A sustainable financial basis

There is no doubt that the existing legal aid scheme is badly under-resourced. The National Legal Service would require a sustainable basis for funding. Given the economic situation, money from the Treasury will always be tight. It is unlikely that any government will provide significant additional funding. Even more basic needs such as hunger, education and health will take priority.

There are no easy answers, but:

- **The government should recognise the need to reverse the 2012 cuts and to raise expenditure on legal aid to the maximum level possible.**
- **There should be a levy on the better paid members of the legal profession.** While many legal aid practitioners struggle to make ends meet, the profits of larger solicitors' firms and the earnings of many successful barristers, especially those who practise in commercial and international fields, are substantial. The levy could be collected by a supplement to insurance premiums, based on the taxable profits of solicitors' firms and barristers' earnings for the previous year, with a threshold that would mean that only higher earners would pay.
- **There should be a levy on court and hearing fees in the High Court and above.** This is a mechanism used in a number of US states. It is particularly important for a jurisdiction such as England and Wales, which welcomes litigation by wealthy litigants from overseas. In many of those cases, the court fee is minimal compared to the sums at stake in the litigation (for example, the hearing fee for a multi-million pound claim is only £1,175).
- **There should be consideration of ways of recovering the costs of people represented through the National Legal Service payable by losing parties in litigation.**
- **Ways should be found by which improvements in technology can increase the services delivered without additional cost.**

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Roger and Nic both qualified as solicitors and worked in London Law Centres in the late 1970s. Roger then became solicitor at the Child Poverty Action Group. Nic became a partner at human rights firm Bindman and Partners. Their careers then took very different paths. Roger was successively director of Legal Action Group, director of legal education and training at the Law Society and director of JUSTICE. Nic became a full-time district and then circuit judge. Both have taught part-time at universities and other institutions, and both have written extensively on a wide variety of legal issues. Roger and Nic both have considerable international experience.

Legal Action Group is an independent charity, promoting equal access to justice for all members of society who are socially or economically disadvantaged.

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