



# Library Note

## Future of Legal Aid

This Library Note has been written in advance of the forthcoming debate in the House of Lords on 10 December 2015 on the future of legal aid. It provides a summary of the implementation of the reforms to legal aid following the passing of the [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#). It also summarises further proposals for reforms to criminal and civil legal aid outlined by the Coalition Government, including with regard to the award of legal aid contracts. It outlines the scrutiny of the implementation of these reforms by parliamentary committees and other bodies, and the statements made so far by the current Government on this issue.

### Measures to Reduce the Cost of Legal Aid during the 2010–15 Parliament

The Coalition Government introduced legislation intended to reduce the cost of legal aid to the Exchequer. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 reversed the position of the Access to Justice Act 1999, taking some types of case out of scope for legal aid funding. The Legal Aid Agency reported in its [Annual Report and Accounts 2014–15](#) (June 2015) that net expenditure on legal aid in 2014–15 was £1.6 billion. This compares to a net expenditure of £2.2 billion in 2010–11.

[The House of Commons Justice Committee argued](#) that, while significant savings in the cost of legal aid had been achieved by the Ministry of Justice, the changes to legal aid had harmed access to justice for some litigants. The [National Audit Office also criticised the Government](#) for not taking an evidence-based approach to the implementation of the policy and failing to recognise unintended costs to the Exchequer, including the impact of an increase in the number of litigants in person.

### Measures to be implemented in the 2015–20 Parliament

Some further proposals for reforms following the passing of the 2012 Act have been proposed. For example, a [new dual contracting model for criminal legal aid lawyers](#) is scheduled to be implemented on 31 March 2016. Following his appointment as Lord Chancellor and Secretary of State for Justice, [Michael Gove told the House of Commons in September 2015](#) that he had been in “intense talks” with representatives of the bar and the solicitors’ profession in regard to legal aid contracts. [The Government announced a reduction in litigators’ fees](#) by 8.75 percent; a measure that had been proposed by the Coalition Government. This would follow a reduction of 8.75 percent in the previous year. However, [Mr Gove has also cancelled the criminal courts charge](#) (also introduced under the Coalition Government) that was paid by convicted criminals towards the cost of their case.

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## 1. Introduction

This Library Note examines the provision of legal aid and recent reforms. It provides a summary of the parliamentary scrutiny of the implementation of the reforms to legal aid, following the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. It also summarises further proposals for reforms to criminal and civil legal aid outlined by the Coalition Government, including with regard to the award of legal aid contracts, and outlines the statements made so far by the new Conservative Government elected in 2015.

## 2. Legal Aid, Sentencing and Punishment of Offenders Act 2012

The size of the legal aid budget has been identified as in need of reform by previous governments before 2010. The cost of legal aid to the Exchequer increased from £1.5 billion to £2.1 billion between 1997 and 2007.<sup>1</sup> In 2005, Lord Carter of Coles (Labour) was commissioned to conduct a review of civil and criminal legal aid procurement. In his report, Lord Carter recommended a new legal aid procurement system for England and Wales that should be driven by what he described as “best value competition”, based on quality, price and capacity.<sup>2</sup> However, while some changes proposed in the Carter review were implemented, other proposals—including changes to the tendering of legal aid services—were not implemented following opposition from the legal profession. Further details on the Carter review can be found in House of Commons Library Note, [Legal Aid: Controversy Surrounding the Government’s Plans for Reform](#).<sup>3</sup>

Following the 2010 general election, in [The Coalition: Our Programme for Government](#), the Coalition Government stated its intention to reform legal aid to “make it work more efficiently”.<sup>4</sup> During the first session of the 2010–15 Parliament, and following a number of government defeats on the Bill in the House of Lords, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 received royal assent on 1 May 2012. This Act reversed the position of the Access to Justice Act 1999, taking some types of case out of scope for legal aid funding.<sup>5</sup>

Government proposals regarding the implementation of the Act were also challenged in the House of Lords, with Members declining to approve the draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2012 in December 2012, following the passing of a fatal motion.<sup>6</sup> This statutory instrument included a provision to amend Schedule 1 of the 2012 Act to allow for legal aid to be provided in first-tier tribunal appeals relating to welfare benefits, where the appeal was on a point of law. The then Shadow Attorney General, Lord Bach, who tabled the fatal motion, argued that the provision did not go far enough to ensure that legal aid was going to be available to everyone in first-tier tribunals on welfare.<sup>7</sup> Another statutory instrument, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013, was subsequently passed.<sup>8</sup> The

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<sup>1</sup> Department for Constitutional Affairs/Legal Services Commission, [Legal Aid: A Sustainable Future](#), July 2006, CP 13/06, p 3.

<sup>2</sup> Lord Carter, [Legal Aid: A Market-Based Approach to Reform](#), July 2006, p 3.

<sup>3</sup> House of Commons Library, [Legal Aid: Controversy Surrounding the Government’s Plans for Reform](#), 26 January 2011, SN/HA/5840.

<sup>4</sup> HM Government, [The Coalition: Our Programme for Government](#), May 2010, p 23.

<sup>5</sup> House of Commons Library, [Legal Aid, Sentencing and Punishment of Offenders Bill: Bill No 205 of 2010–12](#), July 2011, RPI 1/53, p 1.

<sup>6</sup> HL *Hansard*, 3 December 2012, [cols 464–94](#).

<sup>7</sup> *ibid*, [col 489](#).

<sup>8</sup> HL *Hansard*, 27 March 2013, [cols 1083–99](#).

Order did not provide for legal aid to be made available for first-tier welfare tribunals, and a non-fatal motion criticising this omission was passed by the House of Lords.<sup>9</sup>

### 3. Current Legal Aid System

Legal aid is currently provided by the Legal Aid Agency (LAA), an executive agency of the Ministry of Justice (MOJ), which was established by the Lord Chancellor under provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The LAA replaced the body formerly responsible for administering the legal aid system, the Legal Services Commission, in 2013. The LAA provides legal aid to help claimants meet the cost of legal advice, family mediation and representation in a court or tribunal.<sup>10</sup> As part of this provision, the LAA officiates the Advocates' Graduated Fee Scheme and Litigators' Graduated Fee Scheme, the means by which criminal lawyers are paid.<sup>11</sup>

In most cases in England, to be eligible for legal aid, the person claiming must:

- Have a case that is eligible for legal aid.
- Be able to prove that the problem is serious.
- Be able to prove that they are unable to pay for legal costs.<sup>12</sup>

Where the person requesting legal aid is a child, the parents' or guardians' income is considered. Someone's financial situation is not taken into account for cases about mental health tribunals, children in care and child abduction. In criminal cases, individuals have the right to free legal advice if they are questioned at a police station.

The Ministry of Justice provide the following examples of where someone can receive legal aid:

- You or your family are at risk of abuse or serious harm, eg domestic violence or forced marriage.
- You're at risk of homelessness or losing your home.
- You've been accused of a crime, face prison or detention.
- You're being discriminated against.
- You need family mediation.
- You're adding legal arguments or bringing a case under the Human Rights Act.<sup>13</sup>

Claimants can also receive legal aid in certain exceptional cases, such as when the refusal of legal aid would infringe their rights under the European Convention on Human Rights or their rights to legal representation under EU law.<sup>14</sup>

#### Contributions to the Cost of a Case in Civil Cases

People claiming legal aid can be charged some of the cost of the case in civil cases. The Legal Aid Agency state that, following a review of someone's financial circumstances, it can require those claiming legal aid to contribute to the cost of their case through payment of a lump sum

<sup>9</sup> HL *Hansard*, 27 March 2013, [col 1086](#).

<sup>10</sup> GOV.UK, '[Legal Aid](#)', accessed 20 November 2015.

<sup>11</sup> Legal Aid Agency, [Crown Court Fee Guidance](#), August 2015, p 6

<sup>12</sup> *ibid.*

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

from their assets or through monthly payments from their income.<sup>15</sup> The Legal Aid Agency can make a charge or claim—known as the ‘statutory charge’—on any money or property someone wins or retains following a case.<sup>16</sup>

## 4. Legal Aid Statistics

### 4.1 Legal Aid Agency Net Expenditure

The Legal Aid Agency’s (LAA) net expenditure on legal aid in 2014–15 was £1.6 billion.<sup>17</sup> This compares to a net expenditure of £2.2 billion in 2010–11. The largest part of the LAA’s net expenditure on legal aid is on criminal legal aid. In 2014–15, spending on criminal legal aid was £919 million, while spending on civil legal aid was £622 million.<sup>18</sup>

### 4.2 Number of Legal Aid Providers

Statistics on number of legal aid providers in England and Wales are provided by the LAA. The LAA’s [Annual Report and Accounts 2013–14](#) stated that, as at 31 March 2014, the LAA held 1,435 civil and 1,519 crime contracts.<sup>19</sup> This compared to 1,899 civil and 1,599 crime contracts in March 2013. New client and duty contracts for legal aid are to be introduced in April 2016.<sup>20</sup>

### 4.3 Legal Aid Workload and Expenditure, April to June 2015

The Ministry of Justice (MOJ) and the LAA publish [statistics](#) on legal aid workload and expenditure on a quarterly basis.<sup>21</sup> These statistics include figures for both the volume of the legal aid workload and the expenditure of legal aid. The basis on which workload volumes are measured varies between different types of legal aid. However, these measures are combined to produce an overall figure. Expenditure is based on completed pieces of work or cases.

#### Criminal Legal Aid

The MOJ divides criminal legal aid into ‘crime lower’ and ‘crime higher’ workloads: crime higher is legal representation in the Crown Court and above, while crime lower covers work police stations and in magistrates’ courts, and also includes prison law work.<sup>22</sup> In the period from April to June 2015, the MOJ reported a seven percent fall in the volume of completed crime lower work compared to the same period in the previous year. The MOJ identified reduction in crime lower workloads over the period as the continuation of a gradual decline over recent years.<sup>23</sup> In the same period, expenditure on crime lower fell by 10 percent compared to the previous year. In regard to crime higher, workloads were reduced at a slower rate of 1 percent, in the period April to June 2015 compared to the same quarter of the previous year.<sup>24</sup> Crime higher expenditure had increase 3 percent compared to the previous year.<sup>25</sup>

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<sup>15</sup> Legal Aid Agency, [Paying for your Civil Legal Aid: Information for Legal Aid Applicants](#), undated, p 3.

<sup>16</sup> GOV.UK, ‘[Legal Aid](#)’, accessed 20 November 2015.

<sup>17</sup> National Audit Office, [A Short Guide to the Ministry of Justice](#), June 2014, p 16.

<sup>18</sup> *ibid.*

<sup>19</sup> Legal Aid Agency, [Annual Report and Accounts 2013–14](#), June 2014, HC 141 of session 2014–15, p 19.

<sup>20</sup> See pages 5–6 of this House of Lords Library Note.

<sup>21</sup> Ministry of Justice, [Legal Aid Statistics in England and Wales: April to June 2015](#), 24 September 2015.

<sup>22</sup> *ibid.*, p 6.

<sup>23</sup> *ibid.*

<sup>24</sup> *ibid.*, p 5.

<sup>25</sup> *ibid.*

## Civil Legal Aid

The quarterly statistics on civil legal aid provided by the MOJ and the LAA provide indicators of the volume of legal help workload; civil representation workload; and the number of mediation assessments. Civil representation workload—representation by the solicitors and barristers for civil cases—fell following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The MOJ and the LAA state that, in April to June 2015, the civil representation workload was around two-thirds of what it was prior to the Act.<sup>26</sup>

## Exceptional Case Funding

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides for cases to receive exceptional case funding in certain circumstances, as set out in sections 10(2) and (3) of the Act.<sup>27</sup> This funding would be provided following a successful application to the LAA. The period April to June 2015 saw an increase in the number of applications for exceptional case funding, with the number of applications received increasing by 29 percent on the same period of the previous year.<sup>28</sup> Of these applications—excluding those awaiting a decision—more than a third were granted. This was the highest proportion granted since the introduction of the exceptional case funding scheme in April 2013.<sup>29</sup>

## 5. Government Proposals and the Implementation of Changes to Legal Aid since 2013

### 5.1 Transforming Legal Aid Consultations

Following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the Coalition Government proposed a number of further changes to the legal aid system in the UK. The Coalition Government's consultation paper [Transforming Legal Aid: Delivering a More Credible and Efficient System](#), published April 2013, included proposals which, taken as a whole, were intended to deliver an estimated savings in legal aid spending of £220 million per year by 2018/19.<sup>30</sup> The proposals included:

- The introduction of a residence test for civil legal aid claimants.
- Reducing legal aid use in judicial review cases.
- Reducing legal aid fees for criminal cases.
- The introduction of price competitive tendering into the criminal legal aid market.
- Reducing the fees paid to experts in legal aid cases by 20 percent.<sup>31</sup>

Proposals for competitive tendering for criminal legal aid faced opposition from the legal profession—principally in the form of action including demonstrations and court staff strikes.<sup>32</sup> In September 2013, following discussions with the Law Society, the MOJ published a further

<sup>26</sup> Ministry of Justice, [Legal Aid Statistics in England and Wales: April to June 2015](#), 24 September 2015, p 19.

<sup>27</sup> Legal Aid, Sentencing and Punishment of Offenders Act 2012, [s 10](#).

<sup>28</sup> Ministry of Justice, [Legal Aid Statistics in England and Wales: April to June 2015](#), 24 September 2015, p 5.

<sup>29</sup> *ibid*.

<sup>30</sup> Ministry of Justice, [Transforming Legal Aid: Delivering a More Credible and Efficient System](#), 9 April 2013, p 5.

<sup>31</sup> House of Lords Library, [Debate on 11 July: Effect of Cuts in Legal Aid Funding on the Justice System](#), July 2013, LLN 2013/019.

<sup>32</sup> *Law Society Gazette*, '[Hundreds Attend Legal Aid Protest Rally](#)', 22 May 2013; *Guardian*, '[Ministry of Justice Plans to Cut Court Services Trigger Strikes](#)', 13 June 2013; and *New Law Journal*, '[A Call to Arms](#)', 21 June 2013.



consultation entitled [Transforming Legal Aid: Next Steps](#).<sup>33</sup> This stated that further consultation work would take place before the changes to legal aid for judicial review were introduced.<sup>34</sup> It also did not include proposals for price-competitive tendering, but instead proposed a tendering process that would take account of provider capacity and quality.<sup>35</sup> The MOJ published its response to the consultation in February 2014, stating that it would implement proposals based on those set out in *Transforming Legal Aid: Next Steps*.<sup>36</sup> These proposals included the introduction of a dual contracting model, whereby criminal legal aid lawyers would receive some legal aid through contracts for Duty Provider Work and would be allowed qualified providers to take on an unlimited amount of Own Client Work. A summary of the reaction to the proposals set out in these two consultation papers on legal aid reform is provided in the House of Commons Library Note [Criminal Legal Aid Contracting, Residence Test and Other Ministry of Justice Proposals for Transforming Legal Aid](#).<sup>37</sup>

Following the *Transforming Legal Aid* consultation, and discussions with representatives of the legal profession, the Coalition Government announced in March 2014 that changes to the duty solicitor contracts would be introduced in the summer of 2015.<sup>38</sup> However, following a High Court judgment in September 2014, the MOJ was required to conduct a further consultation because independent research from KMPG and Otterburn Consulting had not been made public before the end of the previous consultation.<sup>39</sup>

## 5.2 Legal Challenge to the Residency Test

The proposed residency test, set out in [Transforming Legal Aid: Delivering a More Credible and Efficient System](#), required applicants for civil legal aid to provide evidence that they were lawfully resident in the UK, the Crown Dependencies or the British Overseas Territories in order to receive such assistance.<sup>40</sup> It also required that applicants were lawfully resident for a continuous period of twelve months, either immediately prior to the application or at any point in the past.<sup>41</sup> Following scrutiny by the Joint Committee on Human Rights, these proposals were altered to include further exemptions for children, and exemptions for some refugee and successful asylum claimants.<sup>42</sup>

The introduction of the residence test for civil legal aid was successfully challenged in the High Court, which handed down its judgment on 15 July 2014, on grounds including that it was

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<sup>33</sup> Ministry of Justice, [Transforming Legal Aid: Next Steps](#), September 2013.

<sup>34</sup> *ibid*, p 13.

<sup>35</sup> *ibid*, p 7.

<sup>36</sup> Ministry of Justice, [Transforming Legal Aid: Next Steps—Government Response](#), 27 February 2014.

<sup>37</sup> House of Commons Library, [Criminal Legal Aid Contracting, Residence Test and Other Ministry of Justice Proposals for Transforming Legal Aid](#), December 2014, SN6628.

<sup>38</sup> Ministry of Justice, [Transforming Legal Aid: Next Steps](#), accessed 1 December 2015.

<sup>39</sup> BBC News website, [Legal Aid Reforms: Judge Overturns Duty Lawyer Contracts Cut](#), 19 September 2014; and Catherine Baksi, [High Court Slaps Down Legal Aid Reform](#), *Law Gazette*, 19 September 2014.

<sup>40</sup> Ministry of Justice, [Transforming Legal Aid: Delivering a More Credible and Efficient System](#), April 2013, pp 27–8.

<sup>41</sup> *ibid*, pp 27–30.

<sup>42</sup> Joint Committee on Human Rights, [The Implications For Access to Justice of the Government's Proposals to Reform Legal Aid](#), 13 December 2013, HL Paper 100 of session 2013–14; Joint Committee on Human Rights, [Legal Aid: Children and the Residence Test](#), 25 June 2015, HL Paper 14 of session 2014–15; and [Government Response to the Joint Committee on Human Rights: The Implications for Access to Justice of the Government's Proposals to Reform Legal Aid](#), February 2014, Cm 8821, pp 4–5.

discriminatory and unlawful.<sup>43</sup> However, in November 2015, the Court of Appeal overturned the High Court ruling of July 2014 on the residence test.<sup>44</sup>

## 6. Government Announcements since the 2015 General Election

The 2015 Conservative Party manifesto included the following on the subject of legal aid:

[The Conservative Party] will continue to review our legal aid systems, so they can continue to provide access to justice in an efficient way.<sup>45</sup>

Following his appointment as Lord Chancellor and Secretary of State for Justice following the 2015 general election, Michael Gove gave a speech to the Legatum Institute in which he said that, once changes to criminal legal aid introduced by the previous Government had been implemented, their implementation would be monitored with regard to whether they supported the principles of “justice and fairness”.<sup>46</sup> The Government had previously stated that it would conduct a post-implementation review of the changes to legal aid introduced in Legal Aid, Sentencing and Punishment of Offenders Act 2012, five years after the implementation of these changes.<sup>47</sup>

Mr Gove also said in his speech that he had taken measures to ensure that the criminal bar would be protected from further cuts.<sup>48</sup> Mr Gove told the House of Commons in September 2015 that he had been in “intense talks” with representatives of the bar and the solicitors’ profession to ensure that access to justice could be maintained, and the quality of advocacy in courts enhanced.<sup>49</sup> However, Mr Gove also said that he was “going to ask the very richest in the justice system to do a little bit more” in regard to reducing the cost to the Exchequer of legal aid, arguing:

One thing that struck me is that there are people in senior solicitors’ firms and in our best chambers who are not doing enough, given how well they have done out of the legal system, to support the very poorest—they need to do more.<sup>50</sup>

In October 2015, the Ministry of Justice and the Legal Aid Agency launched a consultation entitled *Preserving and Enhancing the Quality of Criminal Advocacy*.<sup>51</sup> This consultation included a proposal for the introduction of a panel scheme, whereby advocates undertaking publicly funded criminal defence advocacy in the Crown Court and above would be required to be members. The consultation closed on 27 November 2015.<sup>52</sup> At the time of writing, the Government had yet to publish its response to the consultation.

<sup>43</sup> Owen Bowcott, ‘[Legal Aid Residence Test ‘Discriminatory and Unlawful’, High Court Rules](#)’, *Guardian*, 15 July 2015.

<sup>44</sup> Law Society, ‘[Court of Appeal Overturns High Court Ruling on Civil Legal Aid Residence Test](#)’, 26 November 2015.

<sup>45</sup> Conservative Party, *Conservative Party Manifesto 2015*, 2015, p 60.

<sup>46</sup> Ministry of Justice, ‘[What Does a One Nation Justice Policy Look Like?](#)’, 23 June 2015.

<sup>47</sup> HL *Hansard*, 10 June 2015, [col 789](#).

<sup>48</sup> Ministry of Justice, ‘[What Does a One Nation Justice Policy Look Like?](#)’, 23 June 2015.

<sup>49</sup> HC *Hansard*, 8 September 2015, [col 222](#).

<sup>50</sup> HC *Hansard*, 23 June 2015, [col 746](#).

<sup>51</sup> Ministry of Justice and Legal Aid Agency, *Preserving and Enhancing the Quality of Criminal Advocacy*, October 2015.

<sup>52</sup> Ministry of Justice and Legal Aid Agency, ‘[Enhancing the Quality of Criminal Advocacy](#)’, accessed 6 December 2015.

## Changes to the Criminal Legal Aid Market

On 10 June 2015, the Parliamentary Under Secretary of State for Courts and Legal Aid, Shailesh Vara, issued a statement on the criminal legal aid market.<sup>53</sup> Mr Vara stated that the Government would be implementing a reduction in litigators' fees by 8.75 percent, which had been proposed by the previous Coalition Government. This follows a reduction of 8.75 percent in the previous year. However, unlike this previous reduction, it was the Government's intention that the reduction would not affect fees paid to the criminal bar. Mr Vara also stated that the Government would commission an independent review of changes to litigators' fees and the dual contracting model, which would start work from July 2016. In November 2015, the Government announced that the introduction of new contracts for legal aid work would be postponed from January 2016 until April 2016.<sup>54</sup>

In September 2015, the House of Lords debated a motion of regret regarding the Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015.<sup>55</sup> This statutory instrument provided for the implementation of the 8.75 percent reduction in legal fees. The regret motion was tabled by Lord Beecham, the Labour Party Shadow Spokesperson for Justice, who cited a report from the House of Lords Secondary Legislation Scrutiny Committee that had identified a lack of evidence to establish what effect the fee reduction would have.<sup>56</sup> This motion of regret was withdrawn following the debate.

The Criminal Law Solicitors Association has criticised the process by which criminal legal aid contracts have been awarded. In October 2015, the *Law Society Gazette* reported that "around 100" firms intended to file claims against the Government regarding the process.<sup>57</sup> The Justice Secretary, Michael Gove, has stated his disagreement with the Criminal Law Solicitors Association's assessment of the process, and defended the Legal Aid Agency's handling of the system.<sup>58</sup>

### 6.1 Courts and Tribunals Fees and Charges

The previous Coalition Government's policy of reducing the cost of Her Majesty's Courts and Tribunals Service to the Exchequer included not only making reductions in spending on legal aid but also the introduction of various other fees and charges in court and tribunals. In April 2015, new charges were introduced, to be paid by convicted criminals towards the cost of their case.

The House of Commons Justice Select Committee launched an inquiry into the impact of these fees and charges in July 2015.<sup>59</sup> In September 2015, the scope of this inquiry was expanded to take account of the publication of the Government response to its consultation [Court and Tribunal Fees](#) in July 2015 and proposals to introduce or increase the fees charged.<sup>60</sup> In

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<sup>53</sup> House of Commons, written statement: Legal Aid, 10 June 2015, [HCWS22](#).

<sup>54</sup> Ministry of Justice, '[Crime News: Provision of Criminal Legal Aid Services from 1 January 2016](#)', 13 November 2015.

<sup>55</sup> HL *Hansard*, 7 September 2015, [cols 1287–306](#).

<sup>56</sup> House of Lords Secondary Legislation Scrutiny Committee, [Universal Credit \(Waiting Days\) \(Amendment\) Regulations 2015; Criminal Legal Aid \(Remuneration etc.\) \(Amendment\) Regulations 2015](#), 25 June 2015, HL Paper 10 of session 2014–15.

<sup>57</sup> Chloe Smith, '[100 Firms Planning Legal Aid Contract Challenges](#)', *Law Society Gazette*, 19 October 2015.

<sup>58</sup> HC *Hansard*, 3 November 2015, [col 869](#).

<sup>59</sup> House of Commons Justice Committee, '[Courts and Tribunals Fees and Charges Inquiry Announced](#)', 21 July 2015.

<sup>60</sup> House of Commons Justice Committee, '[Courts and Tribunals Fees and Charges: Terms of Reference Extended](#)', 11 September 2015

November 2015, the Justice Committee published a report on one element of this inquiry recommending the abolition of court charges.<sup>61</sup> At the time of writing, the Committee had yet to publish its report on the remaining elements of the inquiry.

Following the publication of Justice Committee's report on court charges, the *Guardian* reported comments from a Ministry of Justice spokesperson noting the concerns which were expressed in the report and stating that the Government was "keeping the operation of the charge under review".<sup>62</sup> In December 2015, the Justice Secretary, Michael Gove, announced that the court charge would be stopped from 24 December 2015 onward, stating that "while the intention behind the policy was honourable in reality that intent [had] fallen short".<sup>63</sup>

## 7. Reports on Legal Aid

### 7.1 National Audit Office and Public Accounts Committee Reports: *Implementing Reforms to Civil Legal Aid*

In November 2014, the National Audit Office (NAO), published a report on the implementation of reforms to legal aid following the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.<sup>64</sup> The NAO estimated that the expected annual spending reduction from the reforms was £268 million per year in the long term, with the Legal Aid Agency funding significantly fewer cases.<sup>65</sup> The NAO's estimate for the additional cost to the HM Courts and Tribunals Service of the reforms was £3 million in 2013–14.<sup>66</sup> There would also be direct extra costs to the Ministry of Justice (MOJ) of approximately £400,000 in the same year the NAO suggesting that one cause of this increase was a 30 percent year-on-year rise in the year after the reforms in cases where both parties were litigants in person in the family courts.<sup>67</sup>

The NAO was also critical the MOJ's approach to implementing the reforms:

The Ministry is on track to meet its main objective of significantly reducing spending on civil legal aid in a short timeframe. The extent to which it has met its wider objectives is, however, less clear. Although the Agency now funds fewer cases, litigation has only just started to decrease in the areas of family law removed from civil legal aid. In addition, the increase in people representing themselves is likely to create extra costs for the Ministry.

In implementing the reforms, the Ministry did not think through the impact of the changes on the wider system early enough. It is only now taking steps to understand how and why people who are eligible access civil legal aid. The Ministry needs to improve its understanding of the impact of the reforms on the ability of providers to meet demand for services. Without this, implementation of the reforms to civil legal aid cannot be said to have delivered better overall value for money for the taxpayer.<sup>68</sup>

<sup>61</sup> House of Commons Justice Committee, [Criminal Courts Charge](#), 20 November 2015, HC 586 of session 2015–16.

<sup>62</sup> Owen Bowcott, [Criminal Courts Charge Must Be Abolished 'As Soon As Possible'](#), *Guardian*, 20 November 2015.

<sup>63</sup> BBC News website, [Criminal Courts Charge to be Scrapped by Government](#), 3 December 2015.

<sup>64</sup> National Audit Office, [Implementing Reforms to Civil Legal Aid](#), 20 November 2014, HC 784 of Session 2014–15.

<sup>65</sup> *ibid*, p 6.

<sup>66</sup> *ibid*.

<sup>67</sup> *ibid*.

<sup>68</sup> *ibid*, p 8.

In February 2015, following the NAO's report, the House of Commons Public Accounts Committee publish a report entitled *Implementing Reforms to Civil Legal Aid*.<sup>69</sup> The Committee argued that the MOJ was still “playing catch up” following what the Committee identified as the failure by the MOJ to take an evidence-based approach to implementing the reforms.<sup>70</sup> The Committee also criticised the failure of the MOJ to attempt to measure the knock-on costs of its reforms across the public sector, meaning that it was not possible to judge whether the savings in the civil legal aid budget represented value for money to the taxpayer overall.<sup>71</sup>

The Committee argued that one of the major problems with the implementation of the reforms was a failure by the MOJ to estimate the take up of mediation as a means of alternative dispute resolution. Indeed, the Committee noted that, while the MOJ had anticipated a 74 percent rise in mediation in the year after the reforms, there was in fact a 38 percent reduction in mediation cases.<sup>72</sup> The Committee also criticised the MOJ for failing to anticipate that the removal of legal aid funding for solicitors would reduce the number of referrals to family mediation.<sup>73</sup>

In its [response](#) to the Public Accounts Committee's report, the Government agreed with many of the Committee's recommendations, including that the implementation of reforms to the legal aid system should be founded on a robust evidence base.<sup>74</sup> The Government stated that a “comprehensive research programme” on the impact of legal aid reform had been established. However, the Government disagreed with the Committee's recommendation that the MOJ should seek to identify the wider costs to the public sector of reforms to civil legal aid, arguing that it would be difficult to meaningfully estimate wider costs across the different departments.<sup>75</sup>

## 7.2 House of Commons Justice Committee Report: *Impact of Changes to Civil Legal Aid*

During the 2014–15 session, House of Commons Justice Committee held an [inquiry on the impact of changes to civil legal aid](#) under the Legal Aid, Sentencing and Punishment of Offenders Act 2012. In December 2014, the Master of the Rolls, Lord Dyson, told the Justice Committee that the civil courts had been impacted significantly by a rise in litigants in person following the passing of the 2012 Act.<sup>76</sup> He added:

I'm sure there will be cases where a party has lost a case because he or she doesn't have representation. It's impossible to prove, but it would be extraordinary if there had not been some cases which were decided adversely that would have been decided the other way had the litigant been represented by a competent lawyer, it's inevitable.<sup>77</sup>

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<sup>69</sup> House of Commons Public Accounts Committee, [Implementing Reforms to Civil Legal Aid](#), 4 February 2015, HC 808 of session 2014–15.

<sup>70</sup> *ibid.*, p 3.

<sup>71</sup> *ibid.*

<sup>72</sup> *ibid.*, p 5.

<sup>73</sup> *ibid.*

<sup>74</sup> HM Treasury, [Treasury Minutes: Government responses on the Twenty Fifth to the Twenty Ninth, the Thirty First to the Thirty Second, the Thirty Fourth, the Thirty Sixth, and the Thirty Eighth to the Fortieth reports from the Committee of Public Accounts: Session 2014–15](#), March 2015, Cm 9033, p 36.

<sup>75</sup> *ibid.*, p 39.

<sup>76</sup> House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15, p 36.

<sup>77</sup> *ibid.*

In March 2015, House of Commons Justice Committee published its report on the civil legal aid changes.<sup>78</sup> The Committee echoed the findings of the Public Accounts Committee's report of February 2015, arguing that, while the MOJ had achieved its objective of significant savings in the cost of the legal aid, it had harmed access to justice for some litigants.<sup>79</sup> The Committee concluded that the MOJ had failed in the three of the four objectives it had set itself for the reforms: discouraging the use of public money for unnecessary and adversarial litigation; targeting legal aid at those most in need; and delivering value for money for the taxpayer.<sup>80</sup>

The Committee's recommendations included that:

- The MOJ should carry out research into the geographical distribution of legal aid providers, a recommendation the Committee had previously made in 2011.
- The MOJ conduct a post-hoc cost-benefit analysis of the legal aid reforms.
- The Government provide better information on remaining eligibility for legal aid.
- The exceptional cases funding scheme be properly managed.<sup>81</sup>

### 7.3 Low Commission on Advice and Support on Social Welfare Law

In January 2014, the Low Commission on the future of advice and legal support on social welfare law, chaired by Lord Low of Dalston (Crossbench), published its report, [Tackling the Advice Deficit: A Strategy For Access To Advice And Legal Support On Social Welfare Law In England And Wales](#).<sup>82</sup> The Commission looked at the funding and availability of advice and legal redress, following changes to legal aid funding and reductions in local government funding for legal advice services. It reported that, in the year 2012/13, the numbers of social welfare law cases had fallen to 293,319, compared to 485,664 cases for the year 2009/10, and argued that this reduction had been as a result of reduced expenditure to the legal aid.<sup>83</sup> In response to the reduced availability of funding, the Commission recommended the creation of national strategy for advice and legal support, funded by a national advice and legal support fund administered by the Big Lottery Fund.<sup>84</sup>

A follow up report was published by the Low Commission in March 2015, entitled [Getting It Right in Social Welfare Law](#).<sup>85</sup> The report stated the Commission's support for some of the actions taken by the MOJ since the Commission's 2014 report, including the creation of a new two year scheme to support litigants in person, announced by the Government in October 2014.<sup>86</sup> However, the Commission argued that the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on the legal advice sector had been profound, and that a national strategy to improve the availability of advice was necessary to maintain a sustainable services.<sup>87</sup>

<sup>78</sup> House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15, p 36.

<sup>79</sup> *ibid.*

<sup>80</sup> *ibid.*, p 3.

<sup>81</sup> *ibid.*, pp 68–76

<sup>82</sup> Low Commission, [Tackling the Advice Deficit: A Strategy For Access To Advice And Legal Support On Social Welfare Law In England And Wales](#), January 2014.

<sup>83</sup> *ibid.*, p 5.

<sup>84</sup> *ibid.*, p ix.

<sup>85</sup> Low Commission, [Getting It Right in Social Welfare Law](#), March 2015.

<sup>86</sup> *ibid.*, p 18; for further information, see Ministry of Justice, ['More Support For Separating Couples and Parents'](#), October 2014.

<sup>87</sup> Low Commission, [Getting It Right in Social Welfare Law](#), March 2015, p vi.



## 8. Comment from Opposition Political Parties

Prior to his appointment as Shadow Lord Chancellor and Shadow Secretary of State for Justice, Lord Falconer of Thoroton, speaking during debate following the May 2015 Queen's Speech, criticised the new Government for not proposing to reform the legal aid system in the wake of the changes made during the previous parliament:

There are no proposals to deal with the damage done in the last five years in the area of justice—for example, the decision to take the overwhelming majority of social welfare law out of the scope of legal aid. Now it is no longer possible to obtain legal aid in the areas of welfare benefit law; employment law; housing law, except possession cases; debt law; and much of immigration law—relevant to all but particularly to the poor, the marginalised, the vulnerable and the disabled.<sup>88</sup>

In September 2015, the Labour Party announced that Lord Bach (Labour) would conduct a review into legal aid.<sup>89</sup> The *Law Gazette* reported that a draft report will be published in April 2016, and that the final report would be presented at the Labour Party's 2016 party conference.<sup>90</sup>

The Liberal Democrat spokesperson for Justice, Lord Marks of Henley-on-Thames, during the House of Lords debate on the Criminal Legal Aid (Remuneration etc.) (Amendment) Regulations 2015, argued for the need for a more consensual approach by the Government and the legal profession.<sup>91</sup> Lord Marks argued that “Governments of all complexions” had failed to achieve such a consensus, and that the “constant war of attrition” over the previous decades had damaged both sides.<sup>92</sup>

## 9. Comment from the Legal Profession

In October 2013, the President of the Supreme Court, Lord Neuberger, gave a speech in which he argued that the impact of the changes to legal aid provision would result in a people being denied access to justice and would constitute “a blot on the rule of law”.<sup>93</sup> In May 2015, prior to the general election, the *Guardian* published an open letter calling for any new government to abandon proposed changes to criminal defence and to improve access to justice.<sup>94</sup> This letter included over 100 signatories, including judges and the following Members of the House of Lords: Lord Carlile of Berriew, Baroness Kennedy of The Shaws, Baroness Lister of Burtersett and Lord Ramsbotham. It recommended the establishment of a royal commission to review access to justice and the creation of an independent body to review legal aid rates.<sup>95</sup>

In its evidence to the Justice Committee's inquiry during the 2014–15 session on the impact of changes to civil legal aid, the Law Society characterised the mood amongst legal aid practitioners as being “very demoralised”.<sup>96</sup> The Law Society argued that the overall effect of all

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<sup>88</sup> HL *Hansard*, 1 June 2015, [col 168](#).

<sup>89</sup> Labour Party, ‘[Lord Bach to Lead Review into Legal Aid](#)’, 22 September 2015.

<sup>90</sup> Monidipa Fouzder, ‘[Labour to Set Up Legal Aid Commission](#)’, *Law Gazette*, 4 November 2015.

<sup>91</sup> HL *Hansard*, 7 September 2015, [cols 1291–2](#).

<sup>92</sup> *ibid.*

<sup>93</sup> Supreme Court, ‘[Tom Sargant Memorial Lecture 2013: Justice in an Age of Austerity](#)’, 15 October 2013.

<sup>94</sup> *Guardian*, ‘[Letters: Legal Aid Cuts Threaten our Very Democracy](#)’, 1 May 2015.

<sup>95</sup> *ibid.*

<sup>96</sup> House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15, pp 30–1.

the changes made to legal aid up to that point was that “the future sustainability of legal aid practice [was] in significant doubt”.<sup>97</sup>

In December 2014, the Law Society’s Junior Lawyers Division published its [Early Career Work Experience Survey](#).<sup>98</sup> This found that only 4 percent of respondents said that they were working, or interested in working, in the field of legal aid work.<sup>99</sup> A similar figure was found in this organisation’s 2013 survey. Commenting on the results of the survey, Law Society Junior Lawyers Division chair, Sophia Dirir, said that reductions in legal aid spending, alongside increases in university tuition fees, were having an effect on the future of the legal profession and the justice system.<sup>100</sup>

The House of Lords held a debate in July 2013 on the effect of cuts in legal aid funding on the justice system in England and Wales.<sup>101</sup> The debate was tabled by Baroness Deech (Crossbench), the then Chairman of the Bar Standards Board. In her speech, Baroness Deech argued that the “notion of greedy lawyers and litigants drunk on public money” using the legal aid system to their advantage was a distraction from the basic principle in the British legal system that every citizen should be able to legally challenge “officialdom”.<sup>102</sup> She argued that restrictions on legal aid could be used to obscure levels of satisfaction with the impact of government policies.<sup>103</sup>

In July 2015, the members of the Criminal Bar Association voted to take direct action against criminal legal aid reforms.<sup>104</sup> In October 2015, the Bar Council published a briefing to MPs in which it argued that the changes made to legal aid by the previous Government had resulted in the creation of barriers to people of low and moderate means to seeking justice.<sup>105</sup> The recommendations to the new Government set out in this briefing included that advice and representation should be provided to those areas of law where there was no legal aid provision.<sup>106</sup>

Writing in the *New Law Journal*, the editor of the *UK Register of Expert Witnesses*, Dr Chris Pamplin, argued that the Legal Aid Agency had acted to restrict the use of expert witnesses:

Even for those cases for which legal aid is still, in theory, obtainable, the Legal Aid Agency (LAA) is under pressure to minimise costs to the Exchequer. Indeed, in some cases the LAA has refused to pay expert witness costs or has ruled that they be shared between the party in receipt of public funds and other parties who are not. In other instances, the LAA has declined to make interim payments of expert witness fees or has delayed payment until long after conclusion of the proceedings. It appears that the budgetary pressure had reached a point where the LAA had felt itself entitled to override the implied, or indeed ex-pressed, wishes of the court or the strict interpretation of the court’s orders.<sup>107</sup>

<sup>97</sup> House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15, p 31.

<sup>98</sup> Law Society’s Junior Lawyers Division, [Early Career Work Experience Survey](#), December 2015.

<sup>99</sup> *ibid*, p 6.

<sup>100</sup> Law Society, [Legal Aid Lawyers ‘A Dying Breed’](#), 1 December 2014.

<sup>101</sup> HL *Hansard*, 11 July 2013, [cols 444–84](#).

<sup>102</sup> *ibid*, [col 445](#).

<sup>103</sup> *ibid*.

<sup>104</sup> *Law Society Gazette*, [‘Action Day 15: Bar Backs Direct Action’](#), 15 July 2015.

<sup>105</sup> Bar Council, [Bar Council Briefing for the Westminster Hall Debate: 15 October 2015](#), October 2015, p 3.

<sup>106</sup> *ibid*, p 4.

<sup>107</sup> Dr Chris Pamplin, [‘A Costly Clash’](#), *New Law Journal* (£), 20 November 2015.



## **JUSTICE Proposals for reform: *Delivering Justice in an Age of Austerity***

In April 2015, a committee formed by the campaign group JUSTICE, and chaired by retired Court of Appeal judge, Sir Stanley Burnton, published a report entitled [Delivering Justice in an Age of Austerity](#).<sup>108</sup> This report recommended that, to combat the “advice deficit” in the justice system following reductions to legal aid and local council funding, there should be fundamental change to the way in which disputes are resolved in the courts.<sup>109</sup> These proposals included the creation of primary dispute resolution officers who would proactively manage a case and refer it to a judge once it was determined that no alternative resolution was either effective or appropriate.<sup>110</sup> JUSTICE argued that this would both increase access to justice, and save resources. JUSTICE also proposed the use of modern technology to deliver better access to legal information, advice and assistance, and the development of an integrated online and telephone service for legal advice.<sup>111</sup>

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<sup>108</sup> JUSTICE, [Delivering Justice in an Age of Austerity](#), April 2015.

<sup>109</sup> *ibid*, p 1.

<sup>110</sup> *ibid* pp 16–17.

<sup>111</sup> *ibid*, p 34.