



## **Bach Commission Report: *The Right to Justice* Debate on 14 December 2017**

### **Summary**

On 14 December 2017, the House of Lords is scheduled to debate a motion moved by Lord Bach (Labour) on the “report of the Bach Commission, *The Right to Justice*, published in September”.

Legal aid is a system of government-funded legal support for people who are unable to pay for legal advice or representation. It has undergone changes since it was first introduced in its modern form following the Second World War. Most recently, the system was amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012—known as LASPO. This legislation reduced the range of issues for which civil legal aid was available and changed the financial eligibility criteria for receiving legal aid. It also replaced the Legal Services Commission, an executive non-departmental body that had previously held operational responsibility for legal aid, with the Legal Aid Agency, an executive agency of the Ministry of Justice.

Following criticism that LASPO was restricting individuals’ right to access the justice system if they did not meet the new eligibility requirements for legal aid and could not afford to engage the services of a lawyer themselves, Lord Bach (Labour) proposed a Labour-led review into the legal aid system in England and Wales. Following approval from the leadership of the Labour Party, he formed a Commission to investigate the issue of access to justice. Sir Henry Brooke, a former Vice-President of the Court of Appeal, agreed to serve as vice-chair. The Fabian Society supported the Commission’s work, though the Commission has stated that it retained full editorial control of its reports and conclusions.

The Commission published its final report in September 2017. The primary recommendation of its report was for a new statutory right to justice set out in a Right to Justice Act. This would codify and supplement existing rights, for example those set out in Magna Carta and the Human Rights Act 1998. The Act would also establish a new right for individuals to receive reasonable legal assistance, without costs they could not afford. A new Justice Commission would promote, develop and enforce that right. Alongside these proposals, the report suggested a number of policy changes that would need to be implemented in order to comply with the suggested Act. The Government has since launched a post-implementation review of LASPO.

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## 1. Legal Aid

Legal aid is government-funded legal support for people who are unable to pay for legal advice or representation, subject to certain eligibility criteria. It is made up of criminal legal aid for criminal cases and civil legal aid for non-criminal cases.<sup>1</sup>

### 1.1 Brief History of Reform

Legal aid has undergone changes since its introduction in the middle of the twentieth century. In its modern form, legal aid was established by the Legal Aid and Advice Act 1949 as part of measures taken by the post-war Labour Government to extend the scope of the welfare state.<sup>2</sup> This built on recommendations made by a committee chaired by Lord Rushcliffe, a former Conservative MP, which had reported on the subject in 1945.<sup>3</sup> The Act created a publicly-funded system through which people of small or moderate means could more readily access legal aid and legal advice.<sup>4</sup>

The legislation providing for legal aid was replaced and updated over time until, most recently, provisions relating to legal aid in the Legal Aid, Sentencing and Punishment of Offenders Act 2012—known as LASPO—came into force in April 2013. LASPO introduced significant changes to the legal aid regime in England and Wales aimed at fulfilling the Coalition Government’s intention to make the legal aid system “work more efficiently”.<sup>5</sup> During the second reading debate in the House of Lords on the then LASPO Bill, Lord McNally (Liberal Democrat), then a Minister of State at the Ministry of Justice, elaborated on the proposed legislation’s aims. He stated that LASPO aimed to “reform our criminal justice system”, facilitate the “renewal of our system of civil justice” and “make a contribution to unavoidable and necessary reductions in public spending”.<sup>6</sup>

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<sup>1</sup> National Audit Office, [Ministry of Justice and Legal Aid Agency: Implementing Reforms to Civil Legal Aid](#), 20 November 2014, HC 784 of session 2014–15, pp 5 and 9.

<sup>2</sup> *ibid*, p 9.

<sup>3</sup> For further information see: Bach Commission and Sir Henry Brooke, [Appendix 6: The History of Legal Aid: 1945–2010](#), September 2017, p 5; Michael Cross, ‘[Legal Aid’s Founding Text Turns 70](#)’, *Law Society Gazette*, 28 May 2015; and HM Government, *Report of the [Rushcliffe] Committee on Legal Aid and Legal Advice in England and Wales*, May 1945, Cm 6641.

<sup>4</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, p 1. This new system went further than previous methods of supporting persons of small means in the justice system.

<sup>5</sup> HM Government, [The Coalition: Our Programme for Government](#), May 2010, p 23; and Ministry of Justice, [Legal Aid, Sentencing and Punishment of Offenders Act 2012: Explanatory Notes](#), 1 May 2012, p 1.

<sup>6</sup> [HL Hansard, 21 November 2011, cols 820–1](#); and Ministry of Justice, [Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum](#), October 2017, Cm 9486, p 3.

Part I of the Act provided for a reduction in the range of issues for which civil legal aid was available, reversing the position where legal aid had been available for all civil cases except those specifically excluded by the Access to Justice Act 1999.<sup>7</sup> It also tightened the financial eligibility criteria for receiving legal aid, limiting access for certain claimants when compared with the previous regime.<sup>8</sup> In addition, the Act replaced the Legal Services Commission, an executive non-departmental body that had previously held operational responsibility for legal aid, with the Legal Aid Agency (LAA), an executive agency of the Ministry of Justice. Speaking recently in a debate in the House of Commons, Dominic Raab, Minister of State at the Ministry of Justice, described the changes introduced by LASPO as having been “contentious”.<sup>9</sup>

In the years following the introduction of the changes initiated by LASPO, the House of Commons Justice Committee, the House of Commons Public Accounts Committee, the Joint Committee on Human Rights and the National Audit Office all reported on the reforms to the legal aid regime. These reports acknowledged that the changes had delivered reductions in the sums spent on legal aid in England and Wales, thereby contributing to the lowering of the Government’s spending deficit. However, the Public Accounts Committee’s contention that the Ministry of Justice had not “properly assessed the full impact of the reforms” and the Justice Committee’s assertion that access to justice for some litigants had been harmed by the changes were illustrative of the criticisms made.<sup>10</sup>

In addition, other bodies such as the Law Society and Amnesty International have published reports which concluded that the changes instituted by LASPO had not been positive.<sup>11</sup> In its report, [Access Denied? LASPO Four Years On: A Law Society Review](#), the Law Society contended that LASPO had undermined access to justice; created strain on the wider justice system; and

<sup>7</sup> National Audit Office, [Ministry of Justice and Legal Aid Agency: Implementing Reforms to Civil Legal Aid](#), 20 November 2014, HC 784 of session 2014–15, p 5; and BBC News, ‘Q&A: Legal Aid Changes’, 20 March 2013.

<sup>8</sup> House of Commons Public Accounts Committee, [Implementing Reforms to Civil Legal Aid](#), 4 February 2015, HC 808 of session 2014–15, p 4.

<sup>9</sup> [HC Hansard, 29 November 2017, 169WH](#).

<sup>10</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; National Audit Office, [Ministry of Justice and Legal Aid Agency: Implementing Reforms to Civil Legal Aid](#), 20 November 2014, HC 784 of session 2014–15; House of Commons Public Accounts Committee, [Implementing Reforms to Civil Legal Aid](#), 4 February 2015, HC 808 of session 2014–15, p 3; and House of Commons Justice Committee, [Impact of Changes to Civil Legal Aid Under Part I of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), 12 March 2015, HC 311 of session 2014–15, p 3.

<sup>11</sup> Law Society, [Access Denied? LASPO Four Years On: A Law Society Review](#), June 2017; and Amnesty International, [Cuts That Hurt: The Impact of Legal Aid Cuts in England on Access to Justice](#), October 2016.

resulted in knock on costs elsewhere in the state.<sup>12</sup> Amnesty International, meanwhile, had earlier called for the Government to:

- Immediately review the impact of reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 on access to justice and protection of human rights, particularly for vulnerable and disadvantaged groups, including children and young people, people with mental health problems, people with disabilities and migrants.
- Ensure better provision of public legal education to ensure people understand and can effectively claim their rights, and provide parallel education to practitioners.<sup>13</sup>

## 1.2 Current Eligibility Criteria

In order to be eligible for civil legal aid under LASPO, an applicant must pass three basic tests:

1. The first test is that the case must be **within the scope of the legal aid scheme**. This means it must be of a type listed in schedule 1 to LASPO. The Bar Council's guidance [Civil Legal Aid: Practical Guidance for the Bar](#) provides a useful technical summary of the matters covered.
2. The second test is a **financial means** test. This is a complicated procedure and the calculations are usually conducted by a legal aid solicitor on the applicant's behalf. (Legal Aid Agency, '[Civil Legal Aid: Means Testing](#)', accessed 6 December 2017, provides for further details).
3. The third test is a **merits test**. This involves looking at (among other things) the applicant's prospects of success in bringing the case, and a cost benefit analysis of providing legal aid funding. Detailed guidance on the merits test is set out in section 4 of the [Lord Chancellor's Guidance under Section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012](#) (July 2016).<sup>14</sup>

Civil legal aid for matters not listed in schedule 1 may be obtained through a successful application to the Legal Aid Agency for an 'exceptional case determination' under section 10 of LASPO. Guidance is available for applicants for such exceptional funding.<sup>15</sup>

<sup>12</sup> Law Society, [Access Denied? LASPO Four Years On: A Law Society Review](#), June 2017, p 30.

<sup>13</sup> Amnesty International, [Cuts That Hurt: The Impact of Legal Aid Cuts in England on Access to Justice](#), October 2016, p 47.

<sup>14</sup> House of Commons Library, [Provision of Legal Aid](#), 28 November 2017, p 3.

<sup>15</sup> *ibid*, p 4. See also Legal Aid Agency, [Lord Chancellor's Exceptional Funding Guidance \(Non-Inquests\)](#), June 2015; and [Lord Chancellor's Exceptional Funding Guidance \(Inquests\)](#), August 2015.

### 1.3 Statistics

The Ministry of Justice and the Legal Aid Agency publish legal aid statistics on a quarterly basis.<sup>16</sup> Detailed commentary is provided in annual releases, the most recent of which was published in June 2017.<sup>17</sup> The most recent of the quarterly releases, published in September 2017, was accompanied by a table showing a decline in overall annual expenditure on legal aid over the last decade. A section of this table, detailing overall spending on legal aid measured according to the budgeting measure of expenditure is reproduced below:

	<b>Budgeting measure of expenditure (RDEL): Real Terms (2016/17 prices) (£m)</b>			
<b>Financial Year</b>	<b>Criminal Legal Aid</b>	<b>Civil Legal Aid</b>	<b>Central Funds</b>	<b>Total Legal Aid</b>
2005/06	1,472	1,034	85	<b>2,591</b>
2006/07	1,417	926	63	<b>2,405</b>
2007/08	1,399	958	76	<b>2,433</b>
2008/09	1,326	1,022	83	<b>2,431</b>
2009/10	1,229	1,072	99	<b>2,400</b>
2010/11	1,289	1,125	86	<b>2,499</b>
2011/12	1,206	1,044	109	<b>2,359</b>
2012/13	1,054	1,002	104	<b>2,159</b>
2013/14	1,007	859	85	<b>1,951</b>
2014/15	913	703	65	<b>1,681</b>
2015/16	878	612	50	<b>1,541</b>
2016/17	863	646	45	<b>1,554</b>

#### Notes:

- 'Real terms' means adjusted for inflation to make expenditure for previous years directly comparable with that for the latest (or other specified) year.
- The budgeting measure of expenditure, RDEL (Resource Departmental Expenditure Limit), is used in the Ministry of Justice and Legal Aid Agency Annual Report and Accounts. It aims to measure the value of all work carried out in each period, regardless of whether it is on cases that have finished.
- RDEL is current expenditure from within the annual Departmental Expenditure Limits that are set by the Treasury for each government department. RDEL excludes AME (Annually-Managed Expenditure) (hence

<sup>16</sup> Ministry of Justice and Legal Aid Agency, '[Legal Aid Statistics](#)', accessed 6 December 2017.

<sup>17</sup> Ministry of Justice and Legal Aid Agency, '[Legal Aid Statistics in England and Wales: January to March 2017](#)', 29 June 2017.

so do the budgeting measures shown in the table). AME broadly covers unpredictable or uncontrollable expenditure. In legal aid terms this is work in progress where the payment date is unknown. It can be negative for individual years.

- In 2013/14, responsibility for Central Funds spending transferred from the Ministry of Justice to the Legal Aid Agency. From October 2014 a new administrative system has enabled these statistics to be based on data prior to accounting adjustments, and therefore from 2015/16 they are no longer identical to the RDEL figures.

(Source: Ministry of Justice and Legal Aid Agency, [Legal Aid Statistics Tables: April to June 2017—Table 1: Overall Annual Legal Aid Expenditure Since 2005/06 \(£ million\)](#), 28 September 2017)

## 2. Establishing the Bach Commission

It is in the context of the changes to legal aid made by LASPO that in September 2015, following Jeremy Corbyn's election as the leader of the Labour Party, Lord Bach proposed a Labour-led review into legal aid.<sup>18</sup> Mr Corbyn accepted Lord Bach's proposal and appointed him to lead the review. At the time, Mr Corbyn outlined his reasons for authorising the proposal:

I have asked Willy Bach, the former Shadow Attorney General, to undertake an immediate review of the assault on legal aid by the Government over the last five years [2010–15]. This has resulted in many of our fellow citizens, often the poor and marginalised not being able to get advice or representation when they are faced with legal problems such as housing, welfare benefits, debt and employment. Many vital advice services, including law centres, have had to close.

Even though it is clear that the consequences of part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) are disastrous, the Government refuses to review the way in which the Act is working. Willy Bach, who is a member of the Shadow Justice Team, will also as a part of the review look at policy choices for Labour so that Britain can once again have the prospect of a legal aid system worthy of our country and our legal tradition.<sup>19</sup>

Lord Bach had served as a Parliamentary Under Secretary at the Ministry of Justice between 2008 and 2010 under the last Labour Government, in which capacity he had responsibility for legal aid, and had spoken for the Opposition during LASPO's passage through the House of Lords in the first

<sup>18</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 5.

<sup>19</sup> Labour Party, [Lord Bach to Lead Review into Legal Aid](#), 22 September 2015.



years of the Coalition Government.<sup>20</sup> At the same time as his appointment to lead the Labour-supported review into legal aid, Lord Bach was reappointed as the Party's spokesperson in the House of Lords on justice matters and served in this capacity until his election as the Police and Crime Commissioner for Leicestershire in May 2016.<sup>21</sup>

The Commission on Access to Justice, chaired by Lord Bach, was founded towards the end of 2015, with Sir Henry Brooke, a former chair of the Law Commission and Vice-President of the Court of Appeal, serving as vice-chair. In addition to Lord Bach and Sir Henry, the Commission comprised several other legal practitioners and experts, including Raju Bhatt, one of the founders of Bhatt Murphy Solicitors and a member of the Hillsborough Independent Panel, and Andrea Davies, a specialist children's lawyer.<sup>22</sup> Lord Bach has stressed that the Commission consisted of individuals who were selected for their expertise rather than any affiliation to the Labour Party.<sup>23</sup>

The secretariat to the Commission was provided by the Fabian Society, a centre-left think tank affiliated with Labour.<sup>24</sup> The Commission maintains that although it was hosted by the Fabian Society and received a small grant from the Labour Party, it was "entirely independent" from Labour and retained full editorial control of its reports and conclusions.<sup>25</sup>

The Commission met for the first time in January 2016. At its outset, the Commission contended that the changes introduced by LASPO had had a significant impact on access to justice. It tasked itself with taking evidence from interested parties and providing "evidence-based proposals for how to restore access to legal information, advice and representation".<sup>26</sup> It later added that it had begun work with the aim of developing "realistic but radical proposals with cross-party appeal for re-establishing the right to justice as a fundamental public entitlement, equivalent to that of education or healthcare".<sup>27</sup> This work was undertaken in the acknowledged context of an "ever greater strain on public finances" and the issue of guaranteeing

<sup>20</sup> House of Lords, '[Lord Bach](#)', accessed 4 December 2017; Steve Hynes, '[The Right to Justice and an Agenda for Change](#)', *New Law Journal*, 6 October 2017; and [HL Hansard, 21 November 2011, col 929](#).

<sup>21</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 4.

<sup>22</sup> *ibid*, p 2; and Hillsborough Independent Panel, '[The Independent Panel](#)', accessed 5 December 2017. A full list of members of the Commission can be found in Appendix I of this briefing.

<sup>23</sup> Steve Hynes, '[The Right to Justice and an Agenda for Change](#)', *New Law Journal*, 6 October 2017.

<sup>24</sup> Fabian Society, '[About](#)', accessed 5 December 2017.

<sup>25</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 3.

<sup>26</sup> Fabian Society, '[Access to Justice: The Bach Commission](#)', accessed 5 December 2017.

<sup>27</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 4.



access to justice for those in need would be “considered alongside the question of how the provision of advice and the justice system can become more efficient and be made to work for the twenty-first century”.<sup>28</sup>

After taking evidence throughout 2016 from individuals and bodies including the Law Society and the Bar Council, the Commission published an interim report in November of that year in which it argued that there was a crisis in the justice system in England and Wales.<sup>29</sup> The report was split into two sections—the first analysing what the Commission viewed as “wrong” with the justice system, and the second considering what would be needed to make “access to justice a reality”.<sup>30</sup>

In the first section of its report, the Commission identified “six key features of the justice system which undermine its ability to provide justice for all”. These were set out as follows:

**1. Fewer people can access financial support for a legal case**

There has been a huge decrease in the numbers of people who are eligible for legal aid. Most cases involving housing, welfare, debt, immigration, medical negligence and family law have been removed from scope.

**2. Exceptional case funding has failed to deliver for those in need**

The Exceptional Case Funding (ECF) scheme, designed to mitigate the effects of LASPO cuts to legal aid, has failed. The Government suggested around 847 children and 4,888 young adults would be granted ECF each year. Yet between October 2013 and June 2015 only 8 children and 28 young adults were granted legal aid under the scheme.

**3. Public legal education and legal advice are inadequate and disjointed**

Levels of legal aid support are falling and public legal education continues to be ineffective. For example, the number of not-for-profit legal advice centres fell from around 3,226 in 2005 to 1,462 by 2015. The services that do exist are not effectively integrated.

**4. High court and tribunal fees are preventing people pursuing legal claims**

Employment tribunal fees were introduced in 2013, and in the months between October 2013 and June 2014 alone, the number of single cases fell by 67 percent.

<sup>28</sup> Fabian Society, ‘[Access to Justice: The Bach Commission](#)’, accessed 5 December 2017.

<sup>29</sup> Bach Commission and Fabian Society, [The Crisis in the Justice System in England and Wales](#), November 2016.

<sup>30</sup> *ibid*, pp 5–6.

**5. Bureaucracy in the Legal Aid Agency is costly and time-consuming**

There is excessive bureaucracy in the Legal Aid Agency which is adversely affecting the efficiency of the legal aid system generally. While the overall budget of the Legal Aid Agency was cut by 25 percent, the administration budget saw no cuts whatsoever and in the last year has increased by £2.1 million. The complexity of the legal aid scheme needs addressing urgently and any unnecessary bureaucracy removed.

**6. Out of date technologies keep the justice system wedded to the past**

The British justice system has failed to effectively utilise technological innovation. While Canada, the Netherlands and the United States are using new technologies to great effect, Britain is lagging behind.<sup>31</sup>

The Commission argued that the solution to these issues could not “simply be to reverse the LASPO cuts in their entirety and expand the legal aid budget indefinitely”.<sup>32</sup> Rather, the Commission stated that it “hope[d] to devise plans to simplify the legal system, use new technologies, focus on the journey of the user through the system and build public support—as well as looking at reversing some of the deepest and least cost-effective LASPO cuts”. The Commission set out its intentions to make “access to justice a reality” by developing proposals relating to five key areas. In the second part of its report, the Commission outlined its intention to:

- **Establish a minimum standard for access to justice in Britain**, considering: how to enshrine that standard in law, and ways to best enforce it.
- **Reform legal aid** by considering: the reform or replacement of the LAA; reform of legal aid eligibility criteria; simplification of the legal aid scheme; and, a ‘polluter pays’ scheme to fund lower fees; and, reform or removal of the legal aid gateway.
- **Transform legal education** for the public, considering: how to embed legal education in the school curriculum, as well as exploring options for lifelong learning in communities.
- **Increase the availability of legal advice** by considering: policies to ensure integration of advice across public services; ways to increase financial support to legal advice centres and develop and support existing legal aid specialists; and, how to standardise and audit provision of legal advice across the country.

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<sup>31</sup> Bach Commission and Fabian Society, [The Crisis in the Justice System in England and Wales](#), November 2016, p 5.

<sup>32</sup> *ibid*, p 6.

- **Increase technological innovation** by considering: a new central online portal; an innovation fund to encourage experimentation with technology; and options for alternative dispute resolution.

The interim report was received with interest by many stakeholders. For example, the Bar Council’s Chairman-Elect Andrew Langdon QC said at the time that the “report’s recommendations and assessment of the current state of affairs make an important contribution to the debate about how to improve access to justice”.<sup>33</sup> He added that the Bar Council would support “constructive proposals to make legal advice more readily available to those currently unable to obtain it”, and that the Council would contribute to the Commission before publication of its final report.

Labour’s Shadow Secretary of State for Justice, Richard Burgon, stated at the time that he was “particularly excited by the idea of enshrining in law a minimum standard for access to justice”.<sup>34</sup> Mr Burgon added that a “basic threshold for access to justice” had the potential to be a “historic advance in our law which could improve the lives of thousands”.

### 3. Final Report of the Bach Commission

#### 3.1 Overview

Following the submission and consideration of further evidence, the final report of the Bach Commission, [The Right to Justice](#), was published in September 2017. The main report was accompanied by a number of appendices published separately on the Fabian Society website, including a timeline of legal aid in England and Wales and copies of the evidence submitted to the Commission.<sup>35</sup>

The report was split into two parts—the first concentrating on the Commission’s proposals relating to a statutory right to justice, and the second on policy changes which the Commission viewed as being urgently

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<sup>33</sup> Bar Council, [‘Bach Commission Interim Report: Bar Council Response’](#), 25 November 2016.

<sup>34</sup> Tom Peck, [‘Legal Aid Cuts Have Created a ‘Two-tier Justice System’ Benefiting the Wealthy, Damning Report Finds’](#), *Independent*, 25 November 2016.

<sup>35</sup> Fabian Society, [‘Right to Justice: Appendices and Evidence’](#), accessed 5 December 2017. Audio recordings of witness evidence sessions have also been made available online: Fabian Society, [‘The Bach Commission on Access to Justice: Witness Sessions’](#), accessed 5 December 2017.

required in order to make such a right to justice a reality.<sup>36</sup> Summarising the report's principal recommendation, Lord Bach stated:

The Supreme Court has recently and authoritatively restated our existing rights to justice, and the importance they hold. But the crisis in our justice system shows that the rights we have now are insufficient. We believe that a new statute is needed to codify our existing entitlements, and to establish a new right to reasonable legal assistance that people can afford. That is why we call for a new Right to Justice Act, which we believe should be monitored and enforced by a new, independent commission. We hope that this new act will help lift the provision of justice above the political fray.<sup>37</sup>

Regarding territorial applicability, the report emphasised that its proposals related to the justice system in England and Wales. However, the report did note that some of the Commission's proposals, notably that relating to a statutory right to justice (examined below) could be implemented on a UK-wide basis with the consent of the devolved legislatures in Scotland and Northern Ireland.<sup>38</sup>

### 3.2 Proposed Right to Justice Act

The primary recommendation of the Commission's report was for a new statutory right to justice set out in a Right to Justice Act that would codify and supplement existing rights, for example those set out in Magna Carta and the Human Rights Act 1998, and "establish a new right for individuals to receive reasonable legal assistance, without costs they cannot afford".<sup>39</sup> The Act would also establish a new, independent body to "promote, develop and enforce that right". In summary, the Commission stated that its proposed Right to Justice Act would establish:

- A new individual right to reasonable legal assistance, without costs individuals cannot afford.
- The basis for this new right to be enforceable through the courts.
- A set of guiding principles to sit behind the new right, including the importance of early legal help, public legal education, and the smooth operation of the system.

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<sup>36</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 7.

<sup>37</sup> Fabian Society, ['Lord Bach: The Final Report of the Bach Commission'](#), 22 September 2017.

<sup>38</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 4.

<sup>39</sup> *ibid*, p 7.

- A new, independent body called the Justice Commission, whose function is to advise on, monitor and enforce the right to justice.<sup>40</sup>

The report went on to outline that the proposed responsibilities and powers of this Justice Commission should include the requirement or power to:

- Prepare statutory guidance with respect to the implementation of the right to justice.
- Monitor compliance with the new right to justice, issuing regular reports and recommendations to Parliament.
- Challenge perceived infringements of the right to justice through the courts.
- Intervene in, and assist with, individual court proceedings that will enforce and define the right to justice in practice.<sup>41</sup>

### 3.3 Urgent Policy Changes

The Commission contended at the time of the report's publication that there was an "urgent need to bring some areas of civil law back in to the scope of legal aid", with a focus on early legal help to mitigate against problems developing at a later date.<sup>42</sup> The Commission also argued that there were "huge administrative problems" with the operation of the legal aid system, and that levels of public legal capability were "dangerously low". For these reasons, the Commission's report suggested a number of policy changes that would be required in order to comply with the proposed Right to Justice Act. These were presented as an "action plan" for government, and included 25 separate recommendations. These are reproduced in full in Appendix II of this briefing, but were summarised in the report as follows:

- **Legal aid eligibility rules** must be reformed, so that the people currently unable either to access legal aid or to pay for private legal help can exercise their right to justice. This includes establishing a simpler and more generous assessment scheme for civil legal aid; ensuring all benefit recipients automatically qualify for legal aid; and making the contributions to legal aid more affordable.
- **The scope of civil legal aid**, which has been radically reduced, must be reviewed and extended. The priority should be to bring early legal help back into the scope of legal aid—across a broad

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<sup>40</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 7.

<sup>41</sup> *ibid.*

<sup>42</sup> Fabian Society, '[Lord Bach: The Final Report of the Bach Commission](#)', 22 September 2017.

range of legal issues—in order to encourage early dispute resolution and prevent further distress and cost downstream. All matters concerning children should be brought back into the scope of legal aid. With respect to representation at court, some areas of family and immigration law should also be brought back into scope.

- **The operation of the legal aid system needs reform.** The legal aid system is creaking at the seams, and practice as a legal aid lawyer is becoming increasingly unsustainable. An independent body that operates the legal aid system at arm's length from government should replace the Legal Aid Agency and action must be taken to address the administrative burdens that plague both the public and providers.
- **Public legal capability must be improved.** At present, most people's ability to understand a legal problem or to know where to turn for information and support is poor. We call for a national public legal education and advice strategy that improves the provision of information, education and advice in schools and in the community.<sup>43</sup>

The report added that the Coalition Government had originally estimated that LASPO would lead to savings of £450 million a year, but that in 2016 legal aid spending was “actually £950 million less than in 2010”. It noted that the Fabian Society had estimated that the cost of the proposals contained in the report would “initially total less than this underspend, at an estimated cost of around £400 million per year”.<sup>44</sup>

### 3.4 Reaction

The Commission's final report was welcomed by the Labour Party. On the same day as the report was published, Labour's Shadow Secretary of State for Justice, Richard Burgon, published a comment piece in which he reiterated that he was “excited by the right to justice advocated by the Bach Commission”.<sup>45</sup> Mr Burgon noted government figures that showed the number of legal aid providers across England and Wales had fallen 20 percent over the past five years, arguing that this had led to a rise in litigants in person which was putting pressure on court resources.<sup>46</sup> Mr Burgon then contended that “advice deserts” were emerging where there are no legal aid providers to give advice on particular issues. He

<sup>43</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 6.

<sup>44</sup> *ibid.*

<sup>45</sup> Richard Burgon, ‘[The Fightback Against the Conservatives’ Legal Aid Desert Begins Today](#)’, *Guardian*, 22 September 2017.

<sup>46</sup> *ibid.* See also Anushka Asthana, ‘[Number of Legal Aid Providers Falls 20 percent in Five Years, Figures Show](#)’, *Guardian*, 19 September 2017.

continued by praising the report, in particular the recommendation suggesting that investment in the system would lead to overall efficiencies:

[...] the report's suggestion that investment in early legal advice and assistance could actually save the state resources by preventing the need for more costly legal representation and the escalation of disputes into court cases merits serious consideration. This pioneering report will certainly play an important role in informing the debates around Labour's next manifesto process and our vision of a fairer justice system.<sup>47</sup>

Mr Burgon concluded by stating that there was "much in Lord Bach's report that the Government could get on with implementing ahead of the next election, if it is serious about restoring access to justice".<sup>48</sup>

Writing for the Fabian Society a few days later, Gloria De Piero, Labour's Shadow Minister of State for Justice, commented that Labour would be "coming forward with detailed plans on how we will take forward Lord Bach's recommendations, which will provide vital evidence for the Labour party's policymaking process".<sup>49</sup>

The report was also welcomed by many in the legal profession. For example, Christina Blacklaws, Vice-President of the Law Society, welcomed the report on behalf of her institution. She contended that it added weight to the central message in the Law Society's earlier report [Access Denied? LASPO Four Years On: A Law Society Review](#)—that "cuts to legal aid have had a massive impact on people's ability to enforce and defend their rights".<sup>50</sup> Ms Blacklaws added:

The Commission's proposals to enshrine the right to justice in statute through the introduction of a Right to Justice Act, to be monitored and enforced by a 'Justice Commission', are interesting ideas that merit further consideration.<sup>51</sup>

Other legal professionals such as Sir Geoffrey Bindman, a Visiting Professor of Law at University College London and London South Bank University and a former chair of the Board of Trustees of the British Institute of Human Rights, welcomed the report and its proposals.<sup>52</sup> Sir Henry Brooke also

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<sup>47</sup> Richard Burgon, '[The Fightback Against the Conservatives' Legal Aid Desert Begins Today](#)', *Guardian*, 22 September 2017.

<sup>48</sup> *ibid.*

<sup>49</sup> Fabian Society, '[Gloria De Piero MP: A Fair Access to Justice](#)', 25 September 2017.

<sup>50</sup> Law Society, '[Bach Adds Bite to Calls for Urgent Review of Struggling Legal Aid System](#)', 22 September 2017.

<sup>51</sup> *ibid.*

<sup>52</sup> Bindmans LLP, '[Insight: Bach Gets it Right](#)', 27 October 2017.



reported that he received a standing ovation when he outlined the Commission's proposals to the Bar Conference.<sup>53</sup> However, others offered more nuanced positions. For example, Lord Pannick (Crossbench), writing in *The Times*, welcomed the Commission's proposals for many areas of civil law to be restored within the scope of legal aid and for schools to have a responsibility to educate students about the legal system.<sup>54</sup> However, he argued that the Commission's proposal for Parliament to enact a Right to Justice Act was "less convincing". He contended that the problem with this suggestion was that there was already a constitutional right of access to justice, as confirmed in a recent ruling of the Supreme Court, and that "detailed questions about eligibility and scope are surely matters for Parliament, not for a Justice Commission".<sup>55</sup> He continued:

It is, I fear, idealistic to think, as Lord Bach contends, that enacting a statutory right "will help re-establish a consensus that is above the political fray". Money spent on a Justice Commission would be better spent on the provision of legal aid.<sup>56</sup>

The questioning of the propriety of a Right to Justice Act appeared elsewhere. For example, David Burrows, a columnist for the *New Law Journal*, had earlier argued that a 'right to justice' was a "slogan" that should be "discarded immediately".<sup>57</sup> He added that a Right to Justice Act was a "very silly idea indeed". Mr Burrows contended that justice should be left to judges rather than politicians, and that a Justice Commission would be an unnecessary quango. He suggested that the report should have argued for a new Legal Aid Act instead. However, he was more positive about proposals made in the second part of the report, including that relating to widening the scope of legal aid to areas of civil law largely excluded under the current regime. Mr Burrows also argued for clearer laws and more straightforward legal procedures in general to assist individuals in understanding their rights.<sup>58</sup>

Others, such as Lucie Wibberley, a member of Garden Court Chambers, argued that the Commission's report provided an opportunity for legal aid to "break free from party political discourse", calling it a "breath of fresh air

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<sup>53</sup> Sir Henry Brooke, '[The LASPO Review: \(2\) My Address to the Bar Conference](#)', 4 November 2017. For further information on Sir Henry's position on the proposals, see Sir Henry Brooke, '[Justice is too Precious for Political Football](#)', *Law Society Gazette*, 25 September 2017.

<sup>54</sup> Lord Pannick, '[Legal Aid Reforms Must be Reversed to Restore Public Access to Justice](#)', *The Times* (£), 5 October 2017.

<sup>55</sup> *ibid.* See also [R \(Unison\) v Lord Chancellor, \[2017\] UKSC 51](#).

<sup>56</sup> Lord Pannick, '[Legal Aid Reforms Must be Reversed to Restore Public Access to Justice](#)', *The Times* (£), 5 October 2017.

<sup>57</sup> David Burrows, '[Right to Justice: A Political Slogan?](#)', *New Law Journal*, 27 October 2017.

<sup>58</sup> *ibid.*

for the political debate about how we fund and develop our legal aid system”.<sup>59</sup>

Dominic Raab, Minister of State at the Ministry of Justice, defended the Government’s approach to legal aid on the same day as the report was published. He is reported to have stated:

We spent £1.6 billion in legal aid last year, a quarter of the Ministry of Justice’s budget, to maintain access to justice. We will continue to focus legal aid on those who most need help, recognising the cost of this support is met by the taxpayer, even as Labour produce yet more unfunded proposals.<sup>60</sup>

#### 4. Government Review

On 30 October 2017, the Lord Chancellor, David Lidington, announced the publication of the Government’s post-legislative memorandum for LASPO.<sup>61</sup> In his statement, he reiterated the percentage of the Ministry of Justice’s budget dedicated to legal aid and restated the Government’s reasons for having brought forward LASPO:

Our legal aid system is a fundamental pillar of access to justice, accounting for more than a fifth of the Ministry of Justice’s budget. The reforms within the Act were founded on delivering better value for money for taxpayers by reducing the cost of the scheme and discouraging unnecessary and adversarial litigation, while ensuring that legal aid continues to be available for the highest priority cases, for example where life or liberty is at stake, where someone faces the loss of their home, in domestic violence cases, or where their children may be taken into care.<sup>62</sup>

The Lord Chancellor added that a review of part I of LASPO—relating to legal aid—would be undertaken by Ministry of Justice officials. This review would conclude before the start of the summer recess 2018 and would cover a number of areas, including:

- the changes made to the scope of legal aid for family, civil and criminal cases, and the introduction of the Exceptional Case Funding scheme;

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<sup>59</sup> Lucie Wibberley, ‘[Bach to the Future](#)’, *Counsel*, November 2017.

<sup>60</sup> Monidipa Fouzder, ‘[Bach Calls for Human Right to Legal Aid](#)’, *Law Society Gazette*, 22 September 2017.

<sup>61</sup> [HC Hansard, 30 October 2017, col 14WS](#); and Ministry of Justice, [Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum](#), October 2017, Cm 9486.

<sup>62</sup> [HC Hansard, 30 October 2017, col 14WS](#).

- the changes made to fees for various types of legal aid work;
- the procedural changes the Act made, including the introduction of the mandatory telephone gateway and the introduction of evidence requirements for victims of domestic violence and child abuse;
- changes to the rules on financial eligibility, including the application of the capital eligibility test to all legal aid applicants, increasing income contributions for those eligible to contribute, and capping the subject matter of dispute disregard;
- changes to the application of the merits test; and
- the abolition of the Legal Services Commission and its replacement with the Legal Aid Agency.<sup>63</sup>

The Lord Chancellor added that he would “shortly be inviting individuals and organisations to join consultative panels and contribute to this review work”.<sup>64</sup>

Joe Egan, President of the Law Society, was reported to have welcomed news of the review, though he stressed that it should be comprehensive.<sup>65</sup> In addition, Andrew Langdon, chair of the Bar Council, was reported to have stated:

This long-awaited review offers the Government an important opportunity to take stock of the damage caused by the unprecedented cuts to legal aid that LASPO introduced and to reassess the value of justice to citizens. This review comes not a moment too soon; society has become increasingly aware of the importance of access to justice in underpinning the rule of law and our democratic constitutional arrangements.<sup>66</sup>

Responding to criticism in the House of Commons the following day regarding the time it had taken for a post-legislative review to be launched and the impact this perceived delay would have on individuals’ right to justice, Dominic Raab, Minister of State at the Ministry of Justice, restated that the Government spent £1.6 billion on legal aid in the most recent period for which data were available. He added:

International comparisons are not exact, but according to the Council of Europe’s review last year, the UK spent more per capita [on legal aid] than any other Council of Europe member.<sup>67</sup>

<sup>63</sup> [HC Hansard, 30 October 2017, col. 14WS.](#)

<sup>64</sup> *ibid.*

<sup>65</sup> LexisNexis and JP Family Law, ‘[Government to Review LASPO](#)’, 31 October 2017.

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

<sup>67</sup> [HC Hansard, 31 October 2017, cols 687–8.](#)

In November 2017, the Government stated in response to a written parliamentary question that the Ministry of Justice's projected departmental spending limit would be £5.6 billion in 2019/20, a cumulative real terms reduction of 40 percent on the £9.3 billion limit in 2010/11.<sup>68</sup>

On 29 November 2017, the House of Commons debated the legal aid system.<sup>69</sup> Responding to the debate on behalf of the Government, Dominic Raab repeated the reasons for the Coalition Government having brought forward LASPO and commented on the recently announced review:

I appreciate that the changes in LASPO were contentious. They were subjected to a significant amount of rigorous scrutiny at the time, as the honourable Member for Hammersmith (Andy Slaughter) said. They were debated extensively and amendments were made before the legislation was approved by Parliament. It has been several years since the implementation of those landmark reforms, so it is absolutely right to take stock. That is why we recently laid before the House a detailed, post-legislative memorandum summarising how LASPO was implemented and making a preliminary assessment of its impact. In addition, my predecessors made a commitment to the House to conduct a detailed post-implementation review of the changes to establish to what degree the reforms had achieved their objectives. It is right that we are now fulfilling that pledge.<sup>70</sup>

Earlier this year, the Scottish Government announced a review of legal aid in Scotland. This review is expected to report next year.<sup>71</sup>

## 5. Further Information

The reports and associated documentation produced by the Bach Commission were published by the Fabian Society:

- Bach Commission and Fabian Society, [The Crisis in the Justice System in England and Wales](#), November 2016
- Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017
- Bach Commission and Fabian Society, [Right to Justice: Appendices and Evidence](#) September 2017

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<sup>68</sup> House of Commons, [Written Question: Ministry of Justice: Finance](#), 16 November 2017, 112641; and John Hyde and Monidipa Fouzder, [MoJ Reveals Massive Budget Cut as New Advice Deserts Open](#), *Law Society Gazette*, 20 November 2017.

<sup>69</sup> [HC Hansard, 29 November 2017, 148–74WH](#).

<sup>70</sup> [HC Hansard, 29 November 2017, 169WH](#).

<sup>71</sup> Scottish Government, [Independent Review of Legal Aid](#), 1 February 2017.

The following reports and briefings provide further information on the effects of the changes introduced by LASPO on the legal aid regime in England and Wales:

- 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
- National Audit Office, [Ministry of Justice and Legal Aid Agency: Implementing Reforms to Civil Legal Aid](#), 20 November 2014, HC 784 of session 2014–15
- House of Commons Public Accounts Committee, [Implementing Reforms to Civil Legal Aid](#), 4 February 2015, HC 808 of session 2014–15
- 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
- Law Society, [Access Denied? LASPO Four Years On: A Law Society Review](#), June 2017; and [Analysis of the Potential Effects of Early Legal Advice/Intervention](#), November 2017
- Amnesty International, [Cuts That Hurt: The Impact of Legal Aid Cuts in England on Access to Justice](#), October 2016
- Ministry of Justice and Legal Aid Agency, '[Legal Aid Statistics](#)', 28 September 2017
- Ministry of Justice, [Legal Aid, Sentencing and Punishment of Offenders Act 2012: Post-Legislative Memorandum](#), October 2017, Cm 9486
- House of Commons Library, [Provision of Legal Aid](#), 28 November 2017
- House of Commons Library, [Civil Legal Aid: England and Wales, Scotland and Northern Ireland Compared](#), 10 June 2016
- House of Commons Library, [Changes to Criminal Legal Aid](#), 12 May 2016
- House of Commons Library, [Litigants in Person: The Rise of the Self-Represented Litigant in Civil and Family Cases in England and Wales](#), 14 January 2016
- House of Commons Library, [Civil Legal Aid Changes Since 2013: The Impact on People Seeking Help with Legal Problems](#), 14 January 2016
- House of Commons Library, [House of Commons Library, Have Changes to Legal Aid in England and Wales Since 2013 Created More 'Advice Deserts'?](#), 11 December 2015
- House of Lords Library, [Future of Legal Aid](#), 7 December 2015

## Appendix I

### Bach Commission on Access to Justice: Commissioners

The Commission was chaired by Lord Bach, with the support of Sir Henry Brooke as Vice-chair. The Commission's final report lists the members of the Commission as follows:

- **Lord Willy Bach** is a Labour Peer and the elected Police and Crime Commissioner for Leicestershire. Lord Bach was a Parliamentary Under Secretary of State in the Ministry of Justice from 2008 to 2010, and before entering politics worked as a barrister.
- **Sir Henry Brooke CMG** is a retired Lord Justice of Appeal. He is an active patron of a number of legal NGOs, including Law for Life, the Harrow Law Centre and the Public Law Project. He has more than 50 years' experience of legal aid issues.
- **Raju Bhatt** is one of the founders of Bhatt Murphy Solicitors, with some 30 years' experience in civil legal aid practice, with a particular focus upon the treatment of individuals by the police service and the wider criminal justice system.
- **Julie Bishop** is Director of the UK Law Centres Network, a post that she has held for eight years. Julie was previously director of the National Association of Community Legal Centres in Australia for more than five years.
- **Joanne Cecil** is a barrister practising at Garden Court Chambers specialising in criminal and public law. She is an executive member of the Criminal Bar Association and the Bar Human Rights Committee.
- **Andrea Davies** is a specialist children lawyer with more than 20 years of legal experience. She serves on the Law Society's Children Panel.
- **David Gilmore** is founder and Managing Director of DG Legal and has worked with a wide variety of legal organisations in the private, public and third sector.
- **Nick Hanning** is a consultant at Dutton Gregory LLP who specialise in commercial litigation and employment law. He is a past President of the Chartered Institute of Legal Executives and chair of CILEx Pro Bono Trust.
- **Dr Laura Janes** is a consultant solicitor advocate specialising in youth justice.
- **Andrew Keogh** is a barrister and head of content for CrimeLine.
- **Nicola Mackintosh QC (Hon)** is the sole principal at Mackintosh Law. She has a track record of undertaking complex casework for the most vulnerable people in society, and creating

- precedents for the benefit of people living with disabilities.
- **Carol Storer OBE** has been the Director of Legal Aid Practitioners Group (LAPG) since 2008. She has worked in private practice, in the third sector and in the public sector.
  - **Bill Waddington** is Director of Williamsons Solicitors. He has more than 30 years' experience in dealing with all nature of cases within the criminal justice system.

### **Special Advisors**

- **John Cooper QC** is a leading barrister practising at 25 Bedford Row, as well as an honorary visiting Professor of Law at the University of Cardiff.
- **James Sandbach** is Director of Policy and External Affairs at LawWorks.<sup>72</sup>

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<sup>72</sup> Bach Commission and Fabian Society, [The Right to Justice: The Final Report of the Bach Commission](#), September 2017, p 2.



## Appendix II

### Urgent Policy Changes: List of 25 Recommendations

#### ***Reform of the Legal Aid Assessment***

1. The Government should introduce a significantly simpler and more generous scheme for legal aid. The means tests should be based on a simple assessment of gross household income, following an adjustment for family size, with the eventual aim of significantly increasing the number of households eligible for legal aid. As an interim measure these more universal criteria could apply to early legal help.
2. Everyone who receives a means tested benefit should be automatically eligible for legal aid, without further assessment. The roll-out of universal credit provides an opportunity to introduce this reform.
3. The Government should scrap separate capital assessments for legal aid and adopt the same capital provisions as for means tested benefits. In particular, owner-occupied housing should be exempt from the capital assessment for legal aid.
4. If the Government chooses to retain the existing means test for civil legal aid, it should be made more generous and consistent with other means tests. The 'disposable income' the Government assumes is available to pay for legal expenses should exclude the basic living costs of the first adult in a household and council tax payments. The maximum amount that can be set aside for employment-related costs and for rent should also be increased, on the basis of evidence of reasonable costs.
5. In order to allow flexibility and realise the right to justice, the Government should extend the discretion to disregard capital and/or income as part of the means test where it is reasonable to do so.

#### ***Reform of Legal Aid Contributions***

6. We want to see many more people qualify for legal aid, including people who are in a position to pay part of their legal costs. Legal aid contributions should therefore continue but be reformed, with rules on user payments adjusted to reflect our proposals for a more generous calculation of disposable income and capital so that contribution requirements are no longer an unaffordable barrier to justice.
7. Existing capital contributions are particularly punitive, so the more generous capital thresholds and exemptions used for means tested benefits should be applied to ensure consistency;

and people should only have to pay a percentage of capital over these limits, rather than having to contribute 100 percent of their savings.

8. The Government should consider how to simplify and clarify the means testing process in criminal courts, and review the level of contributions made. This should focus on reducing the number of litigants in person; and ensuring that the level of monthly contributions is affordable and significantly below the costs of the case.

### ***Reform of Legal Aid Means Test and Other Evidence Requirements***

9. The evidence requirements for applications for civil and criminal legal aid should be simplified and relaxed, in order to prevent people being forced to abandon their legal aid applications.
10. There should be further liberalising reforms to the domestic violence gateway, and solicitors, legal advisers approved under a legal aid contract, and frontline domestic violence support organisations should be able to confirm that an individual is a victim of domestic violence.

### ***A Wider Scope for Legal Aid***

11. We recommend that the Government restores legal aid for early legal help (support prior to representation in courts and tribunals) to pre-LASPO levels for all social welfare law (which includes debt, employment, welfare benefits, immigration and housing), for family law, and for prisoners in appropriate cases.
12. **Children:** All matters concerning legal support for children should be brought back into the scope of civil legal aid.
13. **Family:** Family law cases with the following characteristics should be brought back into the scope of civil legal aid, with respect to representation in court:
  - a) representation in particularly sensitive areas of private family law (such as cases in which the primary care of a child is in dispute)
  - b) cases involving an application to remove a child from the jurisdiction
  - c) cases where there is local authority involvement in private law children proceedings
  - d) cases in which an allegation is made which is so serious it would be unjust not to provide legal representation to defend it
  - e) cases where the question of whether a child should have any contact with a parent or grandparent is in dispute

- f) cases where a court determines expertise is necessary to decide a family case in the best interests of the child, but where the non-legally aided party is not in a position to pay a contribution towards that expertise.
14. **Immigration:** There should be a full investigation into which areas of immigration law should be within the scope of legal aid funded representation. This should be conducted with recognition of the importance of translation services, and should include reviewing the fees that clients in immigration cases are charged. In the short term, cases involving stateless persons and cases involving family reunion in which vulnerability is involved should be brought back into scope.
  15. **Inquests:** Where the state is funding one or more of the other parties at an inquest, it should also provide legal aid for representation of the family of the deceased.
  16. **Judicial Review:** Judicial review cases have formally remained within the scope of legal aid, but new regulations have dissuaded providers from issuing proceedings. These regulations, which limit the remuneration of legal aid providers for judicial review cases, should be repealed.

### ***Reform of Exceptional Case Funding***

17. The exceptional case funding scheme has manifestly failed, and needs urgent review and reform.

### ***The Replacement of the Legal Aid Agency***

18. The Legal Aid Agency should be replaced by an independent body that operates the legal aid system at arm's length from government.

### ***Reduce Administrative Burdens for Providers***

19. Immediate action should be taken to fix the Legal Aid Agency's client and cost management system. This should be done by working with a group of users to identify, develop and implement solutions so that it is fit for purpose.
20. There should be a new legal aid composite audit, in place of today's numerous, overlapping and burdensome assessments, which should be conducted with a short notice period.

### ***Reduce Administrative Burdens for the Public***

21. The mandatory requirement for mortgage debt, special educational needs and discrimination law to be accessed via the

civil legal aid gateway telephone service should be removed, and face-to-face help should be available for those who need it. Additionally, the service should be better resourced with legally trained staff.

### ***Action to Ensure the Continued Viability of the Legal Aid Profession***

22. The Government should commission an independent review of the state of the legal aid profession and its continued viability. This review should focus on the impact any decline in size or quality has on the ability of the public to access justice, and consider the effects of the decision to cut the bursary scheme for aspiring legal aid lawyers.

### ***Better Public Legal Education in Schools***

23. There should be a new responsibility on Ofsted to assess in greater depth how well schools prepare children for the opportunities, responsibilities and experiences of later life. Government should also better support and facilitate the development of relationships between schools and organisations who are working to improve legal capability.

### ***Universally Accessible Advice***

24. The Government should support the introduction and maintenance of a centrally branded and easily navigable portal for online information and advice. The Government should share the details of this central portal in communications about other matters such as health and education.
25. The Government should create a new, ring-fenced fund for advice providers who are able to evidence the effectiveness of their approach to delivering advice to people within their communities.<sup>73</sup>

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<sup>73</sup> Bach Commission and Fabian Society, [\*The Right to Justice: The Final Report of the Bach Commission\*](#), September 2017, pp 7–9.