



BRIEFING PAPER

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Have changes to legal aid in England and Wales since 2013 created more "advice deserts"?

By Gabrielle Garton
Grimwood

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Summary

In introducing the changes to civil legal aid enacted through the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (the 2012 Act), the previous Government argued (in very broad terms) that it had to make savings from the legal aid budget. Although it was focusing on those it considered to be in greatest need and keeping the most pressing cases in scope, it wished too to discourage cases from coming to court when they might better be resolved by other means, such as other forms of advice or mediation. Critics of the changes, on the other hand, argued that they would have a disproportionate effect on the poor and the vulnerable, who might have nowhere else to turn.

Concerns about "advice deserts" — that is, areas where people cannot access certain legal aid services — are not new; they were articulated, for example, in a report from Citizens Advice in 2004 on the geography of advice. Such concerns were revived by the planned reforms and the subsequent 2012 Act which (its critics claimed) would have an adverse impact on providers of legal aid and especially, but not exclusively, the not-for-profit sector, thus leaving people with legal problems with fewer sources of help.

In March 2015, the Justice Committee in its report on the impact of the reforms argued that the number of providers was a "comparatively meaningless" measure in assessing the state of the market. Although neither the Committee nor the Ministry of Justice knew for certain whether there are advice deserts in England and Wales, data reported by the National Audit Office indicated that there might be a substantial number.

The Ministry of Justice, though, has argued that, to reduce the deficit, tough decisions had to be made. It has accepted that there have been "challenges" but argues that the reforms have yet to reach "steady state". It has also set out how it is addressing concerns about the uneven spread of service provision.

Particular issues surrounding the availability of legal aid for victims of domestic abuse, the 2012 Act's impact on clients seeking help with legal problems and the rise in the number of self-represented litigants (litigants in person) observed since the 2012 Act came into force are discussed in other Commons Library briefings, available on Parliament's [topic page for legal aid](#).

1. Concerns about advice deserts: a brief history

Concerns about advice deserts — that is, areas where people cannot access certain legal aid services — are not new. They were articulated, for example, in the 2004 report from Citizens Advice, *Geography of Advice: An overview of the challenges facing the Community Legal Service*.

A media briefing by the campaign group Access to Justice Alliance offers a definition of an advice desert:

Advice deserts are distinct geographical areas where there is non-existent or insufficient supply of free specialist legal advice in one or more areas of social welfare law, due to local solicitors pulling out of legal aid. This means no access to justice, as where clients are eligible for legal aid it is because they are on low incomes, and often cannot afford even small amounts of money on travelling to get legal help. Often clients need help urgently and cannot wait months for an appointment.¹

More than a decade ago, in its [report on the adequacy of provision of civil legal aid](#), the Constitutional Affairs Committee² examined the evidence for the existence of advice deserts.³ It noted the view of the Law Society that there were gaps in some areas of law and some parts of the country, a view which (it suggested) was borne out by data from the Legal Services Commission (LSC).⁴ The Committee concluded:

We are in no doubt that the term “advice deserts” reflects the concerns which exist in some geographical areas and in some fields of law where advice is not readily accessible.⁵

New contracts in 2010 for family and social welfare work (which resulted in a significant drop in the number of firms awarded such contracts) revived concerns about whether gaps in provision would exacerbate the problem of advice deserts. In an interview, the then chief executive of the LSC, Carolyn Downs, spoke at some length about the relationship between the criteria set for quality and the number of contracts awarded, arguing that higher quality meant fewer providers:

Now the one set of contracts that did have a higher level of quality criteria in the tender process was family, and the outcome of that has been to reduce the provider base.

(...)

You need to be very careful about becoming anti-competitive, and we need to abide absolutely by procurement law. Many of

¹ Access to Justice Alliance, *Media briefing: Too many citizens are 'lost to law'* (undated)

² Policy in this area is now scrutinised by the Justice Committee.

³ Constitutional Affairs Committee, *Civil legal aid: adequacy of provision*, 16 July 2004, HC 391 2003-04: page 3

⁴ Since replaced by the Legal Aid Agency (LAA)

⁵ Constitutional Affairs Committee, *Civil legal aid: adequacy of provision*, 16 July 2004, HC 391 2003-04: pages 18-20

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the things I've heard people say to me in the last couple of months have verged on the anti-competitive. So I would like us to really think carefully about the quality criteria we might apply in the future and the scoring we give to experience.

She also suggested that service users could not always expect to have a provider nearby and might have to travel, as they would for other services, or use telephone services.⁶

⁶ Catherine Baksi, ["Interview with LSC chief executive Carolyn Downs"](#), *Law Society Gazette*, 5 August 2010

2. How has legal aid changed? A brief history

2.1 Labour's reforms of legal aid

Alarmed by the escalating cost of legal aid, the Labour government oversaw a huge number of reviews, the most significant being the [Carter review of legal aid procurement](#).⁷ Lord Carter argued for fundamental change and recommended a new system for England and Wales, driven by best value competition based on quality, capacity and price. This should (he argued) produce greater efficiency in the criminal defence service and so allow proportionately more of the legal aid budget to go to civil and family work.

Various changes were made in response to the Carter review, including:

- In civil legal aid, a move from hourly rates to fixed and graduated fees.
- A general "standard fixed fee" scheme for legal aid relating to matters such as consumer law, debt, employment, housing, public law and welfare benefits, with specialised fixed and graduated schemes for family law, care proceedings, mental health and immigration.
- In criminal legal aid, the Unified Contract (Crime) came into force in July 2008 (since superseded).
- Fixed and graduated fee schemes were implemented for matters such as legal advice provided in police stations, work done at the magistrates' court in certain urban areas, advocacy and litigation.

The Labour government's reforms to legal aid are discussed at more length in the Commons Library briefing [Legal aid: controversy surrounding the government's plans for reform](#) (which also discusses the content of, and reaction to, the consultation paper published in November 2010).⁸

2.2 *The Legal Aid, Sentencing and Punishment of Offenders Act 2012*

The legal aid provisions of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (the 2012 Act) came into effect on 1 April 2013.

2.3 Civil legal aid since 1 April 2013: the basics

The 2012 Act made significant changes to civil legal aid, not only by amending some of the financial eligibility criteria but also (and even more controversially) by taking many areas of civil and family law out of scope.

To be eligible for legal aid in a civil case, an applicant must pass three tests:

⁷ Lord Carter of Coles, *Legal Aid A market-based approach to reform*, July 2006

⁸ SN 05840, 27 January 2011

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- the case must be within scope for legal aid
- with certain exceptions, the applicant must have a 50:50 (or thereabouts) prospect of winning the case (this is the merits test) and
- the applicant must fulfil the financial eligibility criteria.

The 2012 Act reversed the position under the *Access to Justice Act 1999*, whereby civil legal aid was available for any matter not specifically excluded. Now, to receive civil legal aid, the case must be of a type specified in the Act. The current scope of civil and family legal aid is set out on page 6 of the Commons Library briefing [Changes to civil legal aid in England and Wales since 2013: the impact on clients](#).⁹

2.4 Why did the previous Government make these changes?

In putting forward its proposals for the reform of legal aid, the Ministry of Justice (MoJ) consistently argued the need to re-examine the nature and scope of legal aid funding. It argued that expenditure in England and Wales was higher than that in most other countries; that, at a time of financial constraint, people ought to be discouraged from taking matters to court when there might be simpler and cheaper methods of resolving their disputes; legal aid should be targeted at those who needed it most; and there should be better overall value for the taxpayer.¹⁰

2.5 Further reading: changes to legal aid and advice deserts

Further briefing about recent developments in legal aid is available in the Lords Library briefing note prepared for the 10 December 2015 debate on [the future of legal aid](#).¹¹

The [Commons Library briefing on the controversy in 2010-11 surrounding the government's plans for reform](#) also discusses the question of what would become of welfare advice services provided by Citizens' Advice Bureaux and other voluntary sector providers.¹²

[Library Research Paper 11/70](#) (the Committee Stage Report) has some discussion of the impact of the legal aid changes on Citizens Advice Bureaux and other advice services.¹³

⁹ CBP 06645, 11 December 2015

¹⁰ For a fuller description of the Government's position and the reaction to it, see section 2 of [Library Research Paper 11/53](#).

¹¹ LLN 2015/048, 7 December 2015

¹² SN 05840, 27 January 2011: pages 20-1. Library Research Paper 11/53, [Legal Aid, Sentencing and Punishment of Offenders Bill](#) (27 June 2011), prepared for the second reading of the Bill, also mentions advice deserts.

¹³ Research Paper 11/70, [Legal Aid, Sentencing and Punishment Of Offenders Bill: Committee Stage Report](#), 20 October 2011: pages 4 and 9

3. Have the changes to civil legal aid created more advice deserts?

Statistics on the 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, it held 1,435 civil and 1,519 crime contracts.¹⁴ 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.

In its [report on changes to civil legal aid](#) in November 2014, the National Audit Office (NAO) found that the MoJ did not know whether all those eligible for legal aid were able to access it and provision varied across the country, with some areas having no recent face-to-face provision:

The number of providers conducting work and the number of cases varies widely across the country and in 14 local authority areas no face-to-face civil legal aid work was started in 2013-14.¹⁵

The LAA did not (it went on) know whether the market was meeting demand:

From our analysis it appears that there are areas of the country that do not have any active providers. There is a wide variation in the amount of legal aid-funded work being started across England and Wales. (...) While people may travel outside their local authority area to get legal aid – and it is not possible to tell from the Agency's data whether this is happening – in 14 local authorities no face-to-face providers based in the area started any legal aid-funded work during 2013-14. Legal aid providers in a further 39 local authorities started fewer than 49 pieces of legal aid work per 100,000 people.¹⁶

Research by the University of Warwick, based on a survey of 674 individuals currently working in legal aid funded civil law (mostly but not exclusively in the not-for-profit sector), recorded practitioners' concerns about the uneven effect of the reforms, with particular problems in some parts of the country, and the creation of advice deserts:

- The impact of reductions in service would not be felt across the country equally. Particular problems were identified in the north of England, South West and Midlands.
- A number of respondents raised concerns about the creation of advice deserts in areas of the UK where services were already scarce.
- Respondents also highlighted particularly severe impacts on certain groups of clients including those in rural areas, children,

¹⁴ LAA, [Annual Report and Accounts 2013–14](#), June 2014, HC 141 of session 2014–15: page 19

¹⁵ NAO, [Implementing Reforms To Civil Legal Aid](#), 20 November 2014, HC 784 2014–15: page 7

¹⁶ *Ibid.* page 35

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those with disabilities and those who were otherwise vulnerable or disadvantaged.¹⁷

3.1 Report from the Commons Justice Committee

In its report on the impact of the 2012 Act's legal aid provisions, the Justice Committee said that it was not impressed by the response of the then minister, Shailesh Vara, who had argued that there were "enough providers". The NAO's findings might (the Committee continued) be indicative of a substantial number of advice deserts, as neither the Committee nor the MoJ knew for certain if there were advice deserts in England and Wales.¹⁸ The Committee recommended urgent remedial work:

We were told by both the for-profit and not-for-profit sectors that the reforms have led to the cutting and significant downsizing of departments and centres dealing with such work, leading to concerns about the sustainability of legal aid practice in future. We are troubled by National Audit Office findings which indicate that there may already be 'advice deserts', geographical areas where these services are not available, and think that work to assess and rectify this must be carried out immediately.¹⁹

3.2 Government response to the Justice Committee

Replying to the Justice Committee, the MoJ argued that, to reduce the deficit, tough decisions had had to be made:

Very difficult decisions needed to be made rapidly. As the Committee recognises, the legal aid reforms ... made a considerable contribution to the Ministry of Justice programme to reduce its spending and that we were on course to achieve our planned savings. The continued focus of this Government on reducing the deficit and on-going budgetary responsibility mean pressure to limited public spending on those areas where it is truly justified will remain.

The MoJ accepted that there had been "challenges" but argued that the reforms had yet to reach "steady state":

The Committee acknowledges that it is early to be assessing the impact of reforms. The reforms have not fully reached steady state as cases that started prior to the reforms remain in the system, legal aid and wider advice sector providers have not had sufficient time to fully adjust to new funding realities. The Government will continue to closely monitor for impacts of reform as they emerge.²⁰

¹⁷ Natalie Byrom, [*The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients: A report by the Centre for Human Rights in Practice, University of Warwick in association with illegal*](#), April 2013, Executive summary

¹⁸ 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 2014-5: pages 34-5

¹⁹ *Ibid*: Summary

²⁰ MoJ, [*Government Response to Justice Committee's Eighth Report of Session 2014-15: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*](#), Cm 9096, July 2015: Introduction

The MoJ went on to set out how it was addressing concerns about the uneven spread of service provision:

The Legal Aid Agency advertises contracts for civil legal aid provision on the basis of procurement areas that are designed to establish a balance between sustainable contracts and geographic access for clients.

The Legal Aid Agency's procurement areas vary by category of law and are designed with each category in mind, including the expected volume of legal aid work and population demographics in that area.

The LAA was (the MoJ said) working to plug any gaps:

In the vast majority of procurement areas we have active contracts in line with the intentions set out when they were tendered. Where this is not the case, for example where a provider has withdrawn from a contract, the Legal Aid Agency has taken action to find alternative provision either as an emergency measure or by inviting bids to undertake the work.

The Legal Aid Agency undertakes regular capacity reviews of supply. These reviews continue to show sufficient capacity in all categories of civil law in the majority of procurement areas.

The Ministry of Justice recognises it could do more and will continue to investigate geographical variations in the take up of legal aid.²¹

²¹ MoJ, [*Government Response to Justice Committee's Eighth Report of Session 2014–15: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012*](#), Cm 9096, July 2015: page 12

4. What other impacts have the changes had on provision of civil legal aid?

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](#) state that, as at 31 March 2014, the LAA held 1,435 civil and 1,519 crime contracts. This compared to 1,899 civil and 1,599 crime contracts in March 2013.²² New client and duty contracts for legal aid are to be introduced in April 2016.

The NAO found that

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.²³

4.1 The sustainability of market-based provision of civil legal aid

The NAO report on the legal aid reforms observed that legal aid was provided through a market of law firms and third sector providers and commented on some of the potential benefits and pitfalls of a market-based approach:

In Delivering public services through markets: principles for achieving value for money we found that private markets can promote efficiency, but may not naturally provide universal services or equity of provision. Also, they will not offer services if the cost of doing so is uneconomic, unless financial incentives are provided.

The MoJ did not know (it went on) whether the legal aid market was sustainable at the reduced level of fees:

The Ministry has reduced the fees it pays for legal aid, but does not know if the market is sustainable at the current level of fees. (...) It thought enough providers would continue to work for fees at that level, but did not carry out an assessment of the costs of providing legal aid or model the impact of the changes. In addition, fees paid for legal aid have not been increased for inflation since 1998-99, which equates to a 34% real-terms reduction.²⁴

4.2 Effects on providers of civil legal aid

The research by the University of Warwick cited earlier also drew attention to the reforms' impact on providers and particularly the risk of redundancy and consequent loss of expertise:

²² LAA, [Annual Report and Accounts 2013–14](#), June 2015

²³ NAO, [Implementing Reforms To Civil Legal Aid](#), 20 November 2014, HC 784 2014-15: page 8

²⁴ *Ibid.* page 33

- Almost one third of respondents reported that they were at risk of redundancy as a result of the funding cuts, amounting to a potential loss of 1,479 years of experience from the sector.
- Large numbers of respondents also reported greater job insecurity, reduced paid hours and reductions in the legal services provided.
- It was the most experienced and qualified advisors whose jobs were most at risk.
- Advisors in the areas of housing, debt and welfare benefits, where the recession and spending cuts had led to increased demand for legal advice, were also at greater risk of redundancy than those who advised in other areas of law.
- Highly qualified women who had worked for more than 8 years in the profession were disproportionately likely to report being at risk of redundancy. This (the authors argued) raised issues about the future diversity of the profession.²⁵

The University of Warwick's research also suggested that the nature of some advice services might be changing, as some agencies would be introducing charges for services that had previously been free to users:

[A] significant number of respondents reported that their agency will be charging for advice in some form to fill the funding gap left by legal aid cuts, marking a significant departure for both the sector and the clients it has traditionally served.²⁶

The NAO report highlighted too the financial pressures that respondents to its consultation had reported, with many saying that the fees paid for providing legal aid did not cover their costs:

A clear majority of civil legal aid providers who responded to our consultation said that their financial position had deteriorated since April 2013. A negative response was more common among third-sector organisations (73%) than legal firms or advocates (68%). Among those who said that their financial position had become worse, 95% identified changes to legal aid income as a reason for this. While providers may have an incentive to over-report financial difficulties, the Ministry needs to understand the effect on providers' willingness to undertake civil legal aid work.²⁷

In their effort to "do more with less" respondents to the NAO consultation had (amongst other things) reduced the number of paid staff:

The most commonly selected options were reducing overheads, reducing the number of paid staff, finding alternative sources of income and reducing or reorganising services. Relatively few respondents said that they had made more fundamental business changes such as merging or co-locating with other.²⁸

This, the NAO remarked, might have an impact on the quality and quantity of provision of civil legal aid.

²⁵ Natalie Byrom, *The State of the Sector: The impact of cuts to civil legal aid on practitioners and their clients: A report by the Centre for Human Rights in Practice, University of Warwick in association with illegal*, April 2013: Executive Summary

²⁶ *Ibid*

²⁷ NAO, *Implementing Reforms To Civil Legal Aid*, 20 November 2014, HC 784 2014-15: page 33

²⁸ *Ibid*: page 35

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In its report in March 2015 on the 2012 Act's impact on civil legal aid, the Justice Committee argued that the number of providers was a "comparatively meaningless" measure in assessing the state of the market, given the complexity of how providers of legal aid had responded to the legal aid and other reforms. The Committee remarked that the Law Society and the Family Justice Council had drawn attention to closures and downsizing of departments reliant on legal aid, with consequent staff redundancies and loss of provision; even solicitors with legal aid contracts might be reluctant or unable to take on eligible work.²⁹ The Committee noted that advice centres (including nine law centres and 10 run by Shelter) had closed, although the relatively small number of closures hid the fact that the surviving centres had had to reduce their capacity.³⁰

4.3 Effects on Citizens' Advice Bureaux and the not-for-profit sector

In its [summary of advice trends for January to March 2014 in England and Wales](#), Citizens Advice included a summary of annual statistics, drawing attention to the drop in the number of interactions with clients and problems dealt with:

- Bureaux helped 2 million clients – 5% fewer than in 2012/13. The main reason was the loss of LSC funded specialist contracts. We estimate that this accounts for most of 111,000 drop in clients. Bureaux transferring to our new client database also affected the number issues being recorded due to changes in how issues are recorded in the new system.
- Bureaux advisers had 4.8 million interactions with clients via all channels ('client contacts') – a drop of 13% from 2012/13.
- Bureaux dealt with 5.5 million client problems ('advice issues') – 15% down. The decrease was spread across the year but increased in Q3 and Q4.³¹

In response to a Written Question in the Lords in September 2015, the minister, Lord Faulks, said that the report of a survey of how the not for profit sector was responding to the legal aid changes would be published by the end of the year:

We have commissioned a survey examining how the not-for-profit sector is responding to these changes, which we plan to publish by the end of 2015.

Furthermore, we have committed to reviewing the legal aid reforms set out in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 within 3-5 years of implementation.³²

²⁹ 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 2014-5: pages 30-1

³⁰ *Ibid.* page 32

³¹ Citizens Advice Bureau *Advice Trends: Quarterly client statistics of the Citizens Advice service (England and Wales)*, 2013/14 Quarter 4 (January – March 2014)

³² [HL 2262, 30 September 2015](#)

5. What impact did the MoJ and commentators expect the changes to have on legal aid providers?

Pages 15 to 16 of the [Library briefing on the controversy in 2010-11 surrounding the government's plans for reform](#) examine the MoJ's assessment of the impact of the legal aid reforms on the legal profession, according to the Ministry's competition assessment and its small firms impact test. Reaction from the Law Society and Bar Council is discussed at pages 23 to 24.

The [cumulative impact assessment](#) published by the MoJ during the consultation in 2010 suggested that the effect for legal aid providers would be

- between £144m and £154m less income from the legal aid budget per year
- a reduction in legal aid business, with the net cost to providers depending on how they adjust to this changing pattern of demand, e.g. in terms of reducing costs or moving into other business areas.³³

The cumulative impact assessment also offered a competition assessment and small firms impact assessment. The competition assessment recognised that the reforms might reduce the number and range of legal aid providers, with some harm to competition.

5.1 Forecast effects on future provision of civil legal aid: more advice deserts?

In an evidence session before the Justice Committee, the then Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, replied to a question from Robert Buckland on the viability of law centres (and the risk of advice deserts if they were to close). He suggested that representations from good law centres would be listened to, although they could not necessarily be protected:

Assuming it is a good law centre that is delivering efficiently — in my limited experience of them they are a bit variable in quality — we will listen to their representations. Obviously, what we cannot do is start altering the scope to make sure that particularly law centres are protected if it undermines our intention of concentrating the reduced amount we intend to continue to spend on legal aid on the more serious cases.³⁴

Campbell Robb, the chief executive of housing and homelessness charity Shelter, spoke of their efforts not to leave gaps in provision:

Shelter definitely tries not to leave any deserts ... [yet] not just us but a number of providers are now the sole providers in one area. For example, in Cornwall and in Kent, we are effectively the monopoly supplier of advice. (...) If we were then to be forced out

³³ MoJ, [Cumulative Legal Aid proposals](#), MoJ 036, 15 November 2010: page 2

³⁴ Justice Committee, [Government's proposed reform of legal aid](#), 30 March 2011, HC681-ii 2010-11: Ev 5

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of business in those areas, you begin to create deserts and that is one of our fears about these proposals.³⁵

Steve Hynes, director of the Legal Action Group, argued that legal aid had never been evenly spread across the country. Even where there was identified need, there was not always provision to meet it and there was a particular problem outside large towns and cities:

[L]egal aid has never been particularly good at catering for need outside the larger urban conurbations where there are pockets of need.³⁶

Christina Blacklaws (at the time chair of the Law Society's legal affairs and policy board) agreed that there could be a role for internet and telephone-based services and it would be important to think creatively about how services were delivered. Nevertheless, remote service provision was not a panacea and face to face services would still be needed:

What we know about our legal aid demographic is that a lot of these people will not, for many and varied reasons, be able to access services in anything but a face-to-face way.³⁷

In its [report](#), the Justice Committee drew attention to the risk that the reforms could lead to under-supply and advice deserts, if not to the end of legal aid as a national public service:

We note the fears expressed by some providers that the Government's proposals could result in the end of legal aid as a national public service. We are not convinced that this will necessarily be the case but we think that, for several reasons, there could be significant under-supply of providers in some areas of the country, or indeed some 'advice deserts'.³⁸

In its response to the Committee, the MoJ said that, although the overall level of provision would change, it would monitor the legal aid market to ensure that provision was sufficient and the LSC would respond "promptly, effectively and appropriately" to any shortfall.³⁹

This issue came to the fore again in an adjournment debate in March 2012, when Karl Turner remarked that it was not only not-for-profit providers of legally-aided services who would feel the adverse impact of the Bill's provisions. Neither the not-for-profit sector nor the telephone advice service would be able to fill the gap, he suggested; bodies such as the Child Poverty Action Group and Age UK did not have the resources to provide advice to all those who might potentially need it and, besides, some would need face-to-face advice.⁴⁰ He argued too that the loss of income to law firms (as identified in the Government's

³⁵ Justice Committee, [Government's proposed reform of legal aid](#), 30 March 2011, HC681-ii 2010-11: Ev 38

³⁶ *Ibid.* Ev 50

³⁷ *Ibid.* Ev 50

³⁸ Justice Committee, [Government's proposed reform of legal aid](#), 30 March 2011, HC 681-I 2010-11: page 61

³⁹ MoJ, [Government Response to Justice Committee's Third Report of Session 2010-11: the Government's proposed reform of legal aid](#), Cm 8111 June 2011: page 32

⁴⁰ The reduction in fees paid to lawyers is discussed on page 16 of the [Library briefing on the controversy in 2010-11 surrounding the government's plans for reform](#).

own impact assessment) might threaten their financial viability and so create advice deserts:

The Legal Action Group believes that legal aid will cease to be viable as a nationwide public service, with an overall decrease in civil legal aid to 900 firms, down from 2,000. My concern is about the potential for advice deserts to emerge as a result of those reductions. (...) If no service is available, our constituents will be left to paddle their own canoe.⁴¹

In reply, the then junior minister, Jonathan Djanogly, said that the impact assessments had their limitations, as they could not take account of how (for example) providers of legal aid might restructure their firms or the areas of law they covered in response to the changes, but he did not recognise the depiction of a “failing environment”. The legal market had (he said) proved willing to work at the new, lower rates of remuneration. The Government on its own could not ensure that the legal aid provider base was sustainable; legal aid providers would have to be flexible and adaptable. They might diversify or increase their market share. The market would contract but this would not, he went on, create widespread advice deserts:

A contraction in the range of services funded under legal aid will most probably mean a contraction in the number of firms providing such services, as well as a reduction in the numbers of lawyers practising in legal aid. I disagree, however, that this will translate into widespread advice deserts; it is certainly not the case at the moment.⁴²

5.2 Forecast effects on providers of civil legal aid

The MoJ’s final [cumulative impact assessment](#) of the proposals for reform identified the potential loss in fees to legal aid providers, if the proposals were to be fully implemented:

- Legal aid providers: In relation to legal services which continue to be funded by legal aid, it is estimated legal aid providers would receive between £144m and £154m less income from the legal aid budget per year.
- Legal aid providers: Would experience a reduction in legal aid business. The net costs to providers would depend upon how they adjust to this changing pattern of demand, e.g. in terms of reducing costs or moving into other business areas.⁴³

It described at more length what the cost implications might be for legal aid providers, in loss of income and business. Its estimates and observations included:

- Between 460,000 and 512,000 people might be affected, of whom between 455,000 and 505,000 might no longer receive legal aid and around 5,000 to 7,000 might make increased contributions towards their legal aid.

⁴¹ [HC Deb 15 March 2012 cc486-8](#)

⁴² [HC Deb 15 March 2012 cc490-1](#)

⁴³ MoJ, [Cumulative legal aid reform proposals](#), MoJ090, 21 June 2011: page 2

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- Legal aid service providers would no longer provide between £247m and £275m worth of current services.
- For those services still provided, legal services providers would receive between £144m and £154m less income.
- Impact on providers was difficult to predict, but might take the form of loss of business for some legal services providers contracted with the LSC to provide legally aided services and increase in business for other service providers, including perhaps alternative resolution service providers or services which support self-resolution.
- The overall impact on providers would also depend upon individual providers' reliance on income from legally aided clients and how they adjusted to changing patterns of demand.⁴⁴

In its 2011 report into the Government's planned reforms, the Justice Committee acknowledged the need to make savings as part of the drive to reduce public spending, but pointed to the difficulty some providers of legal aid might face, in the reduction both in fees paid and in the volume of work. The MoJ should (it said) be alert to the risk of supply of legal aid dropping to a critical level:

[G]iven the extent of savings which the Ministry of Justice is having to make, we think in principle that it is correct that fees are reduced rather than, for example, further changes made to scope. We expect the Department to monitor closely the impact this change, combined with others, has on the supply of legal aid providers. It should be prepared to respond quickly — and potentially explore whether the pool of providers can be expanded, particularly by allowing smaller firms to provide services — if supply threatens to diminish to a critical level.⁴⁵

A report published in 2012 by the Law Society, Legal Services Board and MoJ – *A Time of Change: Solicitors' Firms in England and Wales* – examined the possibility of firms withdrawing from legal aid work:

- 31% of current legal aid firms were considering withdrawing from one or more areas of legal aid work in the next 3 years. This was most significant in the case of firms undertaking family legal aid.
- Of firms intending to withdraw from legal aid work, almost one-third indicated they had already started to do so. Again, this was most notable in the case of family legal aid.
- Firms undertaking civil legal aid were more likely than those undertaking criminal legal aid to be considering withdrawing from legal aid.
- The lower the proportion of legal aid clients within a firm, the higher the likelihood it was considering withdrawing from legal aid.

⁴⁴ MoJ, [Cumulative legal aid reform proposals](#), MoJ090, 21 June 2011: pages 10-11

⁴⁵ Justice Committee, [Government's proposed reform of legal aid](#), 30 March 2011, HC 681-I 2010-11, page 24

- There was some evidence that firms with fewer fee earners were more likely to be considering withdrawing from legal aid.⁴⁶

5.3 Forecast effects on Citizens Advice Bureaux and other not-for-profit providers

Citizens Advice Bureaux receive funding through several sources – as well as funding for legal aid work, there is funding from central and local government.

The MoJ's [cumulative impact assessment](#) identified not-for-profit organisations contracted with the LSC for publicly-funded work as one of the main affected groups⁴⁷ and later said that, although the wider social and economic costs could not be measured, the MoJ would seek to keep such impacts to a minimum:

[The] proposals attempt to minimise any such adverse [impact] as the Government recognises that Not for Profit advice centres play an integral role in many communities. Many are becoming increasingly innovative and developing new ways in which significant local demand can be met. We recognise the important contribution they make and we will therefore be reviewing the impact of recent Government proposals on the sector.⁴⁸

On the day of the *Legal Aid, Sentencing and Punishment of Offenders Bill's* second reading in the Commons, another exchange in the Lords encapsulated the arguments for and against the changes. The role of Citizens Advice Bureaux and other not-for-profit sources of advice and assistance – and the concern that they might lose funding at a time when demand for their services was increasing – was again raised. Lord Phillips described the reforms as “penny wise, pound foolish”:

The citizens advice bureaux, which deliver help to 2.1 million people a year and are mainly volunteer manned, reckon that for every £1 of government subsidy they save the Exchequer £8 in welfare advice. How can it conceivably make sense, therefore, to go ahead with cutting their subsidy from £27 million this year to £7 million next year?

The minister at the time, Lord McNally, outlined the Government's commitment to the not-for-profit advice sector and citizens advice bureaux:

We are working with the sector, and across Government, to ensure that the implementation of government reforms helps to improve the efficiency and effectiveness of advice services available to the public. My right honourable friend the Lord Chancellor will by now, I hope, have announced in another place that we will be providing additional funds of about £20 million in this financial year to help achieve this. We will continue

⁴⁶ Pascoe Pleasance, Nigel J. Ballmer and Richard Moorhead *A Time of Change: Solicitors' Firms in England and Wales*, July 2012: page 46 (available through a link on the Law Society webpage [Baseline survey of solicitor firms 2012](#))

⁴⁷ MoJ, [Cumulative legal aid reform proposals](#), MoJ090, 21 June 2011: page 8

⁴⁸ MoJ, [Cumulative legal aid reform proposals](#), MoJ090, 21 June 2011: page 11

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discussions with CABs and not-for-profit organisations about future funding.⁴⁹

In a feature in the journal *Legal Action*, the chief executive of Citizens Advice, Gillian Guy, argued that the withdrawal of legal aid from swathes of social welfare law would create an advice desert:

The decimation of legal aid for [social welfare law] will create a legal 'advice desert' with many people left to interpret complex law and, in extreme cases, represent themselves in court. This requires an in-depth knowledge of the law which very few people without formal legal training have, and in some cases would mean clients arguing with qualified lawyers alone, at a time when they are already under an enormous amount of pressure.⁵⁰

The [Unintended Consequences report by King's College London](#) sought to quantify the costs of providing advice through Citizens Advice Bureaux and the potential costs and impact of the changes:

5.4.5 While alternative advice is usually free at the point of use, it is rarely free of cost to the providing organisations, which are often funded via the state. Therefore, while an increase in the use of alternative advice may not directly cost the MoJ through legal aid expenditure it may lead to an increase in funding from other Government sources. For example, the Government announced in early 2011 that the Financial Inclusion Fund, that provides around 500 specialist advisors to people with debt problems, will be funded for another year. The service costs around £27 million to run and helps 100,000 people each year, at a per-client cost of £270. For instance, in 2010, Citizens Advice received almost 80 percent of its income from Government sources.

It observed, though, that estimating the cost of alternative advice was not straightforward and "not all advice [was] equal":

5.4.7 It is difficult to ascertain the true cost of alternative advice because most advice agencies do more than simply offer advice (e.g. campaigning or offering grants themselves), and because they receive huge levels of volunteer time which is difficult to account for correctly. For example, CAB calculates that it receives £86 million of 'volunteer hours' each year.

(...)

5.4.11 Finally, not all advice is equal. (...) In the absence of legal aid help through CAB or law firms, many will be forced to use other, less satisfactory, sources of advice and risk giving up or receiving an unfair outcome as a result.⁵¹

As *Unintended Consequences* mentioned, the MoJ made available up to £20 million in the 2011/12 financial year for community legal advice agencies. At the Bill's second reading, Kenneth Clarke announced the additional funding and described work going on across government to boost the efficiency and effectiveness of advice services.⁵²

⁴⁹ [HL Deb 29 June 2011 cc1754-5](#)

⁵⁰ Gillian Guy, "Legal aid cuts will create a justice gap", *Legal Action*, April 2013

⁵¹ Dr Graham Cookson, KCL, [Unintended Consequences: the cost of the Government's Legal Aid Reforms: A Report for The Law Society of England & Wales](#), November 2011: pages 34-6

⁵² [HC Deb 29 June 2011 c994](#)

On 6 March 2012, in a Westminster Hall debate on the not-for-profit advice sector tabled by Yvonne Fovargue, Jonathan Djanogly confirmed the government's support for the sector, although (he said) the legal aid market would have to adapt. Although legal aid constituted only 15 per cent of Citizens Advice Bureaux' income, the legal aid reforms would, he said, be particularly challenging for the not-for-profit sector. He also referred to further additional funding through the spending review period.⁵³

Speaking to the adjournment debate on legal aid on 15 March 2012, Jonathan Djanogly accepted that the legal aid changes would have an impact on the not-for-profit sector; the Government wanted to support the sector, but would not necessarily do so through legal aid. Again, he said that the not-for-profit sector would have to adapt.⁵⁴

⁵³ [HC Deb 6 March 2012 cc258-62WH](#)

⁵⁴ [HC Deb 15 March 2012 c492](#)

6. Further reading: *Legal Aid, Sentencing and Punishment of Offenders Bill*

There is a great deal of briefing and background material on the Act and the preceding Bill, including:

- The Government's [Explanatory Notes](#) for the Bill.
- [House of Lords Library Note LLN 2011/035](#), prepared for the Bill's second reading in the Lords on 21 November 2011, which summarised the report stage and third reading debate in the House of Commons.
- [All-Party Parliamentary Group on Legal Aid](#)
- [Joint Committee on Human Rights report on the Bill](#)⁵⁵

⁵⁵ 19 December 2011, HL Paper 237/HC 1717 2010-12

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