

Report to:	Overview and Scrutiny Committee	Date of Meeting:	11 th of September, 2018
Subject:	Access to Justice		
Report of:	Head of Regulation and Compliance	Wards Affected:	(All Wards);
Cabinet Portfolio:	Cabinet Member - Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	No	Included in Forward Plan:	No
Exempt / Confidential Report:	No		

Summary:

To report on the impact of the reductions in legal aid on access to justice with a focus on its affect within family justice.

Recommendation(s):

(1) To note the contents of the report and recommend what action, if any, the committee should take on the subject matter.

Reasons for the Recommendation(s):

To brief Members of the implications of The Legal Aid Sentencing and Punishment of Offenders Act 2012 on access to justice.

Alternative Options Considered and Rejected: (including any Risk Implications)

N/A

What will it cost and how will it be financed?

(A) Revenue Costs

No direct costs associated with the report.

(B) Capital Costs

No direct costs associated with the report.

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets): No implications
Legal Implications: No implications
Equality Implications: No implications

Contribution to the Council's Core Purpose:

Protect the most vulnerable: <i>Raise the profile and the issue of access to justice among the most vulnerable members of the community</i>
Facilitate confident and resilient communities: N/A
Commission, broker and provide core services: N/A
Place – leadership and influencer: N/A
Drivers of change and reform: N/A
Facilitate sustainable economic prosperity: N/A
Greater income for social investment: N/A
Cleaner Greener: N/A

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Head of Corporate Resources (FD 5275/18) has been consulted and any comments have been incorporated into the report

Head of Regulation and Compliance (LD 4499/18) has been consulted and any comments have been incorporated into the report

(B) External Consultations

Not applicable

Implementation Date for the Decision

Immediately following the Committee / Council meeting.

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Appendices:

There are no appendices to this report

Background Papers:

There are no background papers available for inspection.

1. Introduction/Background

- 1.1 The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) revoked its predecessor, the Access to Justice Act 1999, and introduced unprecedented cuts in legal aid.
- 1.2 Up until the passing of LASPO, legal aid was available for almost all areas of law, subject to specified exceptions.
- 1.3 As a result of LASPO; legal aid was cut across both criminal and civil law matters. Legal aid ceased to be available in the following areas of law
 - Clinical negligence cases (except certain cases involving neurological injury to infants)
 - Employment cases (except those under the Equality Act 2010 or in relation to victims of human trafficking)
 - Private family law cases, such as divorce and child contact (except cases involving domestic violence, child abuse or abduction)
 - Housing disputes (except where there is serious disrepair, homelessness or anti-social behaviour)
 - Debt (except where there is a risk of homelessness)
 - Immigration (except cases involving detention and refugee claims)
 - Education (except special needs cases)
 - Welfare benefits claims (except appeals to the Upper Tribunal or higher courts)

1.4 This report will focus primarily on the impact that LAPSO has had in respect of private family law cases.

2 Access to legal aid in respect of private family law cases

2.1 In relation to all private (not public, i.e. Sefton children's services case matters) family law matters legal aid has been removed in its entirety, save for those individuals who have specific, recent, evidence of domestic violence or child abuse. Without the necessary evidence proving that an individual is a victim of domestic abuse any application for legal aid will not be considered,

2.2 The options available to those wanting to access private family law legal services are therefore limited to:

- self-funding;
- utilising the means tested legal aid programme (provided the individual meets the stringent merit conditions on domestic violence/child abuse which are assessed by the Legal Aid Agency); or
- becoming their own legal representative.

2.3 As noted above, where an individual meets the merit aspect of the test, they must also then satisfy the means test; the key requirements for eligibility of which are as follows:

- An individual's gross income must not exceed £2,657 each month (although a high gross income cap applies to those with more than four child dependents) and his disposable income must not exceed £733 each month.
- The following welfare benefits automatically satisfy the income test, although practitioners must still assess the applicant's capital resources:
 - income support;
 - income-based job-seeker's allowance;
 - income-related employment and support allowance;
 - guarantee credit; and
 - universal credit.
- An individual's disposable capital must not exceed £8,000

2.4 Legal aid in private family law matters is not available to parties simply because they: lack capacity; have mental health issues; have limited communication ability; have learning difficulties etc.

2.5 There is the option to apply for Exceptional Case Funding (ECF) in cases where a lack of access to legal assistance would be a breach of the individual's Convention and HRA rights. The Ministry of Justice's latest legal aid statistics, covering January to March 2018, show that the Legal Aid Agency received 745 ECF applications - the highest number of applications received in a quarter since the scheme

began. The agency determined 658 applications by May: it granted 390, refused 143 and rejected 108

3. The effect that these cuts have had on the legal system

- 3.1 In legal areas that are now no longer in scope, people now have a stark choice: to pay for their own legal advice, represent themselves, or be excluded from the justice system altogether.
- 3.2 The increased number of Litigants in Person, particularly in the family and civil courts, is placing unprecedented pressures on courts and voluntary services. Nearly 90% of respondents who work with family courts reported an increase in self-representation. This results in cases not being properly presented, which can lead to extra delays, pressures and costs on the court system, as well as litigants not making points or speaking up when they should, so damaging their case.
- 3.3 The government stated that under this new system, legal aid would be targeted at those most in need. In reality, it has been argued that the government's reforms have resulted in vulnerable groups finding themselves excluded from free legal advice. Often, this is because the level of need arises from the nature of the client, rather than the category of law involved. Those now excluded include children, those with mental health issues, and people with low levels of literacy and numeracy. As a result of changes to the means test, there are now many people on low incomes who find they are not financially eligible for legal aid or cannot afford to pay the required contributions.
- 3.4 The effects of LASPO on access to civil justice led to calls for urgent reviews of its effects almost as soon as it came into force.
- 3.5 A report published by The Commons Justice Committee on the 4th March 2015 commented:-
 - *“while it had made significant savings in the cost of the [legal aid] scheme, the Ministry had harmed access to justice for some litigants and had not achieved the other three out of four of its stated objectives for the reforms.”* and
 - *“It was clear to us that the urgency attached by the Government to the programme of savings militated against having a research-based and well-structured programme of change to the provision of civil legal aid.”*
- 3.6 The Ministry of Justice is in the process of undertaking a Post-Implementation Review of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). A report will be prepared later in 2018 drawing on the views of stakeholders and available data.