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Jon Robins finds some flickers of hope amid unpromising rhetoric, while Geoffrey Bindman laments a missed opportunity for change



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The long awaited LASPO review was finally published at the end of last week. Not that anyone in the demoralised world of legal aid was actually looking forward to a report that the government was expected (but failed) to deliver within five years of the 2013 cuts coming in. Probably the best that beleaguered legal aid lawyers could have hoped for in these dark times would be a sense of mild disappointment.

And so it has come to pass. The review looks set to deliver only the most meagre injection of funds into a system that is widely perceived as close to collapse: £5m for IT aimed at 'making sure that people can access the right help'; plus another £3m for litigants in person.

The Law Centres Network offered the following context: the government has cut nearly a third of the legal aid budget, about £751m, as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. 'The help lost – tens of thousands of cases – could have mitigated against massive welfare reforms, or helped uphold workers' rights, or prevented the Windrush scandal,' commented Nimrod Ben-Cnaan, the group's head of policy. The promise of 'just 1% of what was lost' (ie, £8m) to non-legal support, tech development or innovation offers 'precious little to bridge the immediate, yawning justice gap'.

'A drop in the ocean' was the view of the Bar Council. 'We fully understand that the

MoJ is constrained by budgetary limits, but this review provides clear evidence that the Treasury must find a way to properly fund the justice system and reverse a decade of cuts,' commented chair Richard Atkins QC.

In his foreword, the Lord Chancellor David Gauke blithely asserted that legal aid continued to play 'an important role in enabling access to justice'. Before making it clear that that role wasn't quite as 'important' as it was in the pre-LASPO-arian past.

While legal aid remained 'a core element' of 'how we help people resolve their legal problems', Gauke explained, the review team had heard over the course of its one-year review that it was 'one part of a bigger picture'. 'Publicly funded legal aid and representation is the right support in some circumstances, but not all,' he said.

So, legal aid remains a 'core' element although just not quite as 'core' as it was. It's not quite the ringing endorsement of publicly funded legal advice that the sector might have hoped for and that government ministers usually play lip service to.

The Lord Chancellor went on to say: 'The review has highlighted that for too long legal support has been focused solely on funding court disputes, with less emphasis on how problems can be resolved earlier and avoid them escalating into more problematic issues that require a court visit.'

There are flickers of hope amidst the unpromising rhetoric. As the

Lord Chancellor indicated, there is acknowledgement of the value of early intervention. The Ministry of Justice has committed to reinstating access to face-to-face advice in relation to debt, discrimination and special educational needs by removing the mandatory telephone gateway for these areas. There is also a proposed expansion of the scope of legal aid to include certain immigration matters such as for separated migrant children. As well as plans to broaden eligibility under the means test and to simplify the Exceptional Case Funding 'safety net' scheme.

Despite the LASPO review kicking off in October 2017 and arriving late, the promise of yet more research indicates a lack of urgency. A measured response from the Conservative chair of the Justice Committee, Bob Neill MP, who acknowledges a number of 'positive proposals', suggested that the MoJ was 'kicking the can down the road'. 'The pressures across the whole justice system - and the risk elements of LASPO continue to pose to access to justice - are real and immediate,' the barrister commented.

The Law Centres Network's Nimrod Ben-Cnaan said it was 'unfortunate' that MoJ rather belatedly came to the realisation that it needed to commission further research six years after the LASPO cuts came in. 'It shows lack of interest in improving a system that, from what we do know, is clearly in crisis.'

Bob Neill also wanted to know 'urgently' what ministers meant by 'legal support' in the review – which suggested to him 'a hand-holding approach rather than providing actual legal advice'. He added: 'There is no substitute for early qualified legal advice in some cases – just as in medical matters you often need a doctor or a nurse rather than just an online guide.'

There was righteous and justified anger from the director of INQUEST, Deborah Coles who damned the review 'dishonest' and 'a betrayal of those who invested in this review in the hope of securing meaningful change'. It was an opportunity to address the inequality of arms between the state and the families of the bereaved. As NLJ readers will know, generally speaking, legal aid is not available at an inquest because, to quote the disingenuous words of the Legal Aid Agency press office, an inquest is 'a relatively informal inquisitorial process, rather than an adversarial one'. 'The Ministry of Justice have failed to confront the reality of the uneven playing field faced by bereaved families, and the considered recommendations of all those who have looked at this issue,' commented Deborah Coles, director of INQUEST.

The LASPO review: an abdication of responsibility



To call this review disappointing would be an understatement; it is an abdication of responsibility. As Steve Hynes, director of LAG, pointed out last week ('Birthday wishes', *NLJ* 8 February 2019, p7), the legal aid budget has been cut by more than 40% in the last 10 years, yet the review proposes a pathetic increase of £8m – about 0.5% of the reduction. The Legal Aid and Advice Act 1949 was the twin pillar of Labour's post-war welfare state. As Steve Hynes also reminds us, the other twin, the NHS, is pledged to receive an additional £394 million per week by 2023-4 while the Ministry of Justice is due to suffer a further reduction in its budget. "The legal aid budget" he says, "at around £1.6bn a year is minuscule (it costs more to keep the NHS running for a week)".

The review accepts some recommendations made by the Law Society, including changes in the legal aid means test, exceptional case funding, and early legal advice but the chair of the House of Commons justice select committee, Bob Neill MP, points out that proposals for further reviews and pilot evaluations "risk being seen as kicking the can down the road".

The Legal Aid and Advice Act is about to reach its 70th anniversary. Looking back at its genesis tells us much about what is wrong today. In 1949 a vigorous government had the determination to make a serious challenge to the age-old imbalance between rich and poor in the legal system. It had a convincing blueprint in the report of the Rushcliffe committee of 1945. To-day we have a weak government with other pressing concerns and the LASPO review has been left without effective political leadership. Instead of the bold revitalisation of what was and should be a source of national pride, the review offers a few minor cosmetic changes and vague promises of pie in the sky. Yet, as



in 1949, expert help is at hand – this time from two admirable reports, those of the commissions led by Lords Low and Bach, published respectively in 2014 and 2017. The LASPO review has failed to implement, or even recommend, the proposals of these specialist bodies, each composed of people with real practical understanding of the problems the government seems content to leave unsolved.

“There is no excuse for allowing the starvation of legal aid & advice services to continue”

Underlying the review is the cult of austerity which has been the government's excuse for cuts in all public services. In the case of legal aid it may be especially misguided because there is growing evidence that legal aid and advice, especially at an early stage, save more taxpayers' money than they cost (see my article "A False Economy" in *NLJ*, 25 January 2019, p.7). This will become clearer when the International Bar Association and the World Bank publish their study of the evidence later this year. There is no excuse for allowing the starvation of legal aid and advice services to continue.

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