

Government proposals to cut legal aid come at a time when the benefits system is being reconfigured from the ground up. Vulnerable people will pay the price as legal aid funding and free expert advice disappears.

Nov 16 2011

*The new Legal Aid Sentencing and Punishment of Offenders Bill has troubling implications, according to [Alice Forbess](#), who argues that the bill eliminates legal aid cover for areas of the law that disproportionately affect vulnerable people, including social welfare, clinical negligence, employment tribunals, special education needs and much of immigration and asylum. Particularly worrying is the fact that these drastic cuts are to be implemented alongside the Welfare Reform Bill, which will restructure the benefits system from the ground up and is expected to temporarily heighten the need for essential legal advice.*



The [Legal Aid Sentencing and Punishment of Offenders \(LASPO\)](#) Bill has entered the House of Lords, where the cross-party group of Peers sponsoring the debate are extremely concerned over its unprecedented erosion of civil legal aid which may seriously undermine the rule of law. The government's justification for the cuts to scope is that these types of cases are more administrative than 'legal' and should be handled in the future by paralegals employed by charities, without recourse to costly legal experts. The problem is that this voluntary sector legal advice will largely dry up if legal aid funding, which accounts for up to 70% of law centre budgets, is withdrawn. If the LASPO Bill is implemented as it stands, front line advice in these complex areas of the law is expected to be reduced by half, and free expert advice to become nearly extinct.

[Professor Deborah James](#) and I have been carrying out qualitative research which charts the progress of selected civil legal aid cases from two London legal advice agencies. We found that much of the work currently carried out by legal advisers aims to correct a structural effect of the benefits system – the 'cascading' of problems which occurs when the suspension of one means-tested benefit triggers further suspensions and repayment demands creating rapidly mounting debt. By acting within the limited appeal time-frames, advisers reverse this effect, preventing higher costs to the public purse.

The case of Mr. Katende, a young naturalised Ugandan raised in UK foster care and about to be evicted from his 'leaving care' flat, is a good illustration. Ironically, the chain of events leading up to his eviction was initiated by an attempt to get off benefits. Whilst temporarily employed, Katende stopped drawing the Job Seeker's Allowance, but did not realise that unless he informed Housing Benefits his rent subsidy would be suspended, producing rent arrears. He tried and failed to resolve the problem, and was eventually served with eviction papers. At this late stage he discovered he was eligible for legal advice, but the only course of action still open is to await the eviction warrant and challenge it.

The LASPO Bill retains legal aid cover for people threatened with impending homelessness, but this will create the perverse incentive to wait until problems compound and eligibility conditions are fulfilled before seeking advice, resulting in situations like Katende's. This type of case, where the 'problem cluster' arises from a benefits suspension, is resolved by addressing the benefits problem first, to restore access to an income needed to tackle the debts and eviction. Yet with benefits advice being withdrawn from legal aid, advisers will now only be able to tackle the immediate symptom, homelessness, without addressing the causes to prevent recurrence – a highly ineffectual use of public funds.

Another type of case we frequently encountered involves rectifying errors of public administration and holding government agencies responsible for their legal obligations. The 'symbolic capital' of the law centre (grounded in the professional authority of expert staff) ensures that cases are judged on their merit rather than the plaintiffs' ability to speak for themselves. Advisers often negotiate directly on behalf of vulnerable clients who are unable competently to represent themselves, and sometimes promote the implementation of new laws.

For instance I witnessed an adviser negotiate with HMRC on behalf of a client who, following marital breakdown, had been fined for failing to inform of his changed domestic circumstances. When the adviser requested to offset the fine against tax credits to which the client was entitled, effectively cancelling it, it

transpired the HMRC officer had never heard of this option, introduced in early 2010. When a professional adviser had such difficulty in actualising this right, what chance would a client with very little use of English have stood?

The government is aware of these systemic problems and is tackling them through the Welfare Reform Bill, which will introduce a ground breaking benefits model, the Universal Credit. The Universal Credit (UC) is a single benefit which will be available to people on low incomes or out of work. It will be administered by the Department of Work and Pensions (DWP) via a highly sophisticated database intended to allow people to work flexibly and pay tax proportionally without losing entitlement to top up benefits.

Whilst the LASPO Bill is being furiously debated, surprisingly little attention has been paid to its intersection with the Welfare Reform Bill. Advice charities are enthusiastic about the new system's prospects for reducing legal problems, but point to several issues which will need to be ironed out. First, there is a significant timing problem. People in the current benefits system will be transferred to the UC last, some as late as 2017, whilst under LASPO they lose access to legal advice next year, leaving them to cope unassisted with the vagaries of the current benefits system for up to five years.

Additionally, the implementation of such novel and ambitious reforms will inevitably result in human error and unintended consequences, driving up the need for legal advice just as it is withdrawn. One issue that will generate problems is the reliance on employers' PAYE contributions to establish eligibility for the UC. Who will tackle dishonest employers if legal aid no longer covers employment cases? Institutional coordination may also become an issue at the faultline between the DWP administered work-related benefits and funds like council tax, devolved to local authorities.

Finally, the UC system concentrates a worrying amount of power in the hands of DWP officials who will assess applicants' fitness for work and impose stiffer penalties of up to two years' suspension of benefits. The appeals procedure is also problematic, consisting of only internal review in the first instance, and access to independent arbitration as a last resort. People with disabilities trying to live normal lives are particularly likely to suffer if assessed by officials who are not medically trained, nor required to consult their care practitioners.

A case I recently witnessed highlights the likely pitfalls. Ms. Smith a schizophrenic with fairly severe symptoms (hearing voices, confused thinking, and exhaustion) sought legal advice fearing that a trivial debt might lead to her losing her flat. When she tried to negotiate a payment schedule on her own she was treated as competent and subjected to intolerable pressure to comply with unrealistic payment demands, exacerbating her illness and forcing her to consider starving or cross subsidizing the debt with money from her care in the community budget. There is a poor understanding of mental illness in public services, such that mentally ill people who appear bright and competent are often perceived as insincere and suspected of exaggerating their predicament.

We live in a 'legally thick' environment, where every aspect of life is increasingly impacted by a complex framework of law coupled with a notoriously adversarial bureaucratic culture. But we are not all affected by this in the same way. As UCL's Professor [Pascoe Pleasance](#) points out, vulnerable people – those on benefits, the disabled and single parents especially – experience a far higher incidence of serious justiciable problems than the population average. The government is trying to stamp out 'litigation culture', but research shows that these categories are far more reticent to consult a lawyer than their affluent peers, and indeed this contributes to the severity of their problems. Civil legal aid is in place to ensure that they too can have access to the law to actualise their rights, and it is a necessity, not a luxury.