



The impact of legal aid cuts on Family Justice

A report by the Family Court Unions Parliamentary Group – April 2014

Introduction

CONTENTS

P2 INTRODUCTION

P3 FORWARD

P4 NAPO

P6 PCS

P9 SIMPSON MILLAR LLP

The Family Court Unions Parliamentary Group was formed in 2006 to support the work of those employed in the Family Justice system. It meets every two months whilst Parliament is sitting with officers from NAPO – the Probation and Family Court Union – PCS – the union representing court staff – and Simpson Millar Solicitors – a law practice specialising in family justice. The Group is chaired by Elfyn Llwyd MP and comprises over 20 MPs and Peers on a cross-party basis. The current focus of the Group’s campaigns within Parliament are:

- Cuts to Legal Aid
- Impact of Court Closures
- The Closure of Children’s Contact Centres
- A Single Family Court
- The Future for Cafcass.

Membership of the Group is open to all parliamentarians. If you require further information or would like to be included in future mailings please contact the Group’s coordinator: **Simeon Andrews, Union Services, 160 Falcon Road, London SW11 2LN** / andrewss@parliament.uk / 020 7801 2732 ■



PHOTO: ANDREW ATCHISON

Forward

On 1 April 2013, a host of civil and family matters were removed from the scope of legal aid, including debt advice where an individual is not at immediate risk of homelessness; education matters unrelated to special needs education; welfare benefits; and private family law matters where no domestic violence can be proven to have taken place in the past two years.

Access to justice is now only available to those who can afford it.

This has resulted in entrenched and drawn-out court cases, as people are left with no alternative but to represent themselves as litigants in person.

Devastatingly, 68,000 children a year will be affected by the government's ill-conceived changes to private family law. We cannot overestimate the damaging effect which will be had on children caught up in these untidy disputes.

Across the country, Child Contact Centres are closing as a result of budget cuts – meaning thousands of children will lose access to a parent. These centres are a lifeline for troubled families, but at present, there is no statutory obligation to keep them open.

One in four people who were previously eligible for legal aid have been left without fair and equal access to justice. It is clear to us that these reforms have everything to do with saving money – yet the cost to society is overwhelming.

On 1 April, the Family Court Unions Parliamentary Group will hold a rally in parliament to protest these reforms. I urge you to join us – and to hear first-hand about the impact these changes are having on people's lives.

Rt Hon Eifyn Llwyd MP

Chair, Family Court Unions Parliamentary Group ■



PHOTO: ANDREW AITCHISON

Rt Hon Eifyn Llwyd MP

**One in four people who
were previously eligible
for legal aid have been
left without fair and
equal access to justice**

Money saved on legal aid is bei

Dramatic increase in cases registered where one or both parties are not represented by a solicitor and representing themselves

Napo is the professional body and largest trade union for staff in Cafcass, supporting thousands of children and families during terribly distressing times in their lives.

When legal aid cuts were announced we warned of probable impacts on people seeking justice, the efficiency of the court system and workloads of staff. A recent Napo survey of members within private law areas highlights how quickly our fears are becoming a reality.

These members report a dramatic increase in cases registered where one or both parties are not represented by a solicitor and representing themselves, known as litigants-in-person (LIPs). Cafcass figures show that before legal aid cuts 18% of cases began with neither party represented. 82% of cases began with one party (60%) or both parties (22%) legally represented. It was more likely that both parents would have representation than neither.

However, almost immediately the cuts took effect this position was reversed. By December 2013 only 4% of cases started with both parties represented by a solicitor. 42% of cases started with neither party represented, i.e. we're 10 times more likely to see



PHOTO: IESS HURD/REPORTDIGITAL.CO.UK

ng spent on more court time

two parents start fighting for residence/contact without legal representation than we are to see both of them start by appointing a solicitor!

Other impacts also surface. Parties can pay for experts to carry out tests or provide additional information to prove or disprove allegations, e.g. regarding alleged heavy alcohol or drug misuse; or where threats of domestic violence are alleged supporting police information can be bought. Without legal aid members say this is already happening less.

Members also report cases are taking longer. As one member said, “Money saved on legal aid is being spent on more court time.”

Four out of five members responding who work in Early Intervention Teams (EIT) said they spend longer clarifying expectations, identifying legal baselines or explaining the court process. Almost two in three said they spend more time on court duties and in longer first hearings. 92% of respondents within Work After First Hearing (WAFH) teams indicate increased workloads. 36% report spending longer clarifying roles and process. 36% say they’re spending more time on phone calls and interviews and 19% report spending longer or having more interviews with parties. Parents with low literacy levels are least likely to be able to afford a solicitor but find it harder to cope with being a LIP.

Napo believe these problems are only beginning to emerge and will be monitoring these areas periodically, whilst aiming to work in partnership with Cafcass to manage the problems and minimise their impacts. **However, until access to justice is again recognised as a legitimate equal right for everyone then these challenges are likely to grow. ■**



PHOTO: SHUTTERSTOCK

We're 10 times more likely to see two parents start fighting for custody/access without legal representation

Legal aid cuts disrupting family

Disputes between parents distress children. Cuts have resulted in more aggression and distress in court

PCS, the Public and Commercial Services union, represent members who work in the family courts as ushers, greeting and reassuring the public; administrators receiving and processing applications, preparing case files and orders dealing with enquiries; Legal Advisers managing cases and advising and supporting the magistracy and judiciary and managers trying to ensure the system runs smoothly in spite of the drastic cuts.

The rise in unrepresented parties since the civil legal aid cuts came in, as identified by Napo, is causing massive disruption. Lawyers save court time and money. Before the funding cuts in family cases they were more likely to be available to encourage clients to seek mediation and agree arrangements, resolving some cases whilst the court hears others.

Disputes between parents distress children. Cuts have resulted in more contested cases which take up more time and caused more aggression and distress in court.

Cuts were implemented without provision for litigants in person to access scientific tests to monitor drug and alcohol abuse or refute false allegations.



PHOTO: ANDREW AITCHISON

courts



PHOTO: SHUTTERSTOCK

A DAY IN THE LIFE OF A FAMILY COURT

The following case study is given as an example of how a rise in unrepresented parties has led to disruption in the family justice process.

Usher “the applicant in case no.6 is unrepresented, he is asking when the case will go on.”

Legal Adviser “that is listed ‘at risk’ so we cannot say, until we know if the ‘all day’ at number 3 is effective. Cases 2 and 4 are Care applications for directions. Is the CAFCASS officer here? We have three first time listings and no safeguarding reports.”

Usher “No, the respondent in case 1 is getting agitated, the applicant does not want to talk to him, neither have solicitors.”

Legal Adviser “There are sensitive issues in that case. It may help if I speak to him.”

Usher brings Mr Smith into court.

Mr Smith “ I want the court to give me contact now. This case is a waste of time. She took the children and she must let me see them every weekend and have them ready on time.” ▶

The rise in unrepresented parties since the civil legal aid cuts came in is causing massive disruption

She isn't mixing with the right crowd, she needs to concentrate on her studies not go to parties

Legal Adviser “the application says your daughter wants you to be more flexible so she can go out with her friends sometimes.”

Mr Smith “She isn't mixing with the right crowd, she needs to concentrate on her studies not go to parties.”

Legal Adviser “There is a Children and Families' Adviser at court today you should talk to them. They may be able to help.”

Mr Smith “I have already spoken to them over the phone. They don't understand. My wife doesn't keep enough structure in the children's lives, she lets them spend too much time with their friends.”

Legal Adviser “It is better for your children if you agree contact without a contested hearing. Your daughter is nearly 14. The Magistrates will want to know about her wishes and feelings. It would be best if you talk to CAFCASS.”

Usher comes in “Mr Smith please wait outside I need to tell the Legal Adviser about the other cases.”

If funding for a lawyer had been available through legal aid, then the Smiths' case would have more likely been dealt with through mediation, freeing up the courts to deal with other cases. In this instance case 6 had to be adjourned until another day because the court ran out of time.

Case 5 also had to be adjourned for two weeks because the unrepresented parties had not had a Safeguarding Report completed by CAFCASS where cuts mean staff are struggling to meet workload demand. ■



PHOTO: SHUTTERSTOCK

Post LASPO – what are ‘front line’ lawyers experiencing?

We are sending parents of children away simply because they are not victims of domestic violence...

Many parents are looking to secure legal advice and representation to address serious problems in a relationship or with their children but find that whilst they qualify for legal aid on an income and capital basis, they are not victims of domestic abuse and as such, post LASPO (Legal Aid, Sentencing and Punishment of Offenders Act 2012), are no longer eligible for legal aid help and advice and representation from a Solicitor.

Our records at Simpson Millar show that in February 2014 we have received a similar number of new enquiries from members of the public whose financial resources make them eligible for legal aid, compared to February 2013. However, in February 2013 we opened 42 Legal Aid case files and in February 2014 we have opened only 19 Legal Aid case files. Post LASPO we are turning away, on a month to month basis, more than 50% of all enquirers who would previously have been eligible for legal aid. Most of those we turn away are mothers or fathers trying to secure contact with children, regulate contact or secure financial support or assistance for themselves and their children post separation. Half of all marriages end in divorce and one in three children lives with only one biological parent. Failure to access legal advice on family breakdown will almost certainly have an adverse affect for this generation of children.

Even in cases where there has been Domestic violence, potential new clients struggle to meet the Domestic Violence Criteria to secure eligibility for legal aid...

Many genuine victims of domestic abuse are unable to meet the restrictive criteria set by the Legal Aid ►



Emma Pearmaine –
Partner, Head of Family



Emma Hopkins-Jones
– Associate

Most of those we turn away are mothers or fathers trying to secure contact with children

Agency meaning we cannot offer them legal advice and representation. Often this will mean a parent staying in an abusive relationship. Children living with domestic abuse are affected as a result, and this could stay with them for their whole life.

What about exceptional cases?

LASPO provided for a Legal Aid exceptional case category of applicants. All our applications made under the exceptional case category have been refused, even in one case where a Judge made a recommendation that a client (for whom we were acting pro bono at his first hearing) should have legal aid because whilst he had capacity, illness meant he would not be able to conduct his proceedings himself and without legal representation his case could not continue, to the detriment of the child subject of the proceedings.

Potential new clients who cannot afford legal representation become litigants in person

There has been a huge increase in numbers of people who are unable to afford a solicitor deciding to represent themselves (litigants in person).

Court applications are being made by litigants in person in circumstances where a Solicitor would have negotiated to resolve the dispute or referred to mediation and thereby litigation would have been avoided.

Simpson Millar LLP has found that there has been a 27% increase in private law applications under the Children Act 1989 relating to contact and residence (access and custody) and a 60% drop in publicly funded mediations. We now have 20% more cases where our opponent is a litigant in person, against this time last year. This slows the court process down as there are more applications, hearings take much longer as cases are ill prepared and fewer cases settle as parties have

There has been a huge increase in numbers of people who are unable to afford a solicitor deciding to represent themselves

unrealistic and unmanaged expectations so more hearings are necessary.

The affect on the children of these proceedings is terrible. Private law proceedings are taking longer to resolve (we are finding on average six months) and this is a long time in a child's life.

Mediation is still publicly funded...

But only the Solicitors are referring. There are very few self referrals by parents, in part because they don't understand what mediation is all about, and also because in many instances they don't know about it being available.

We offer legally aided mediation, and all our current referrals are made by local solicitors who are representing one party, the other often being a litigant in person. We publicise our mediation service on our website and in other materials, but this does not attract self referrals and our peers at other firms all report the same. The courts require an applicant to have considered mediation before proceedings are issued in all family cases – however this is not consistently applied, and once the case comes before a Judge – feelings are entrenched and mediation is a no go! We are embarking on a solicitor led pilot to offer a mediation assessment to litigants in person when they attend court for their hearing. Is it too late in the court waiting room to persuade parents in Children Act Proceedings to take a conciliatory approach to their problems when they have already paid a court fee of £215? We suspect it is!

So what is happening post LASPO?

As a result of the legal aid reforms a whole generation of children will lose out on a relationship with the parent they do not live with, and in the meantime the courts will combust! ■

**Many genuine victims
of domestic abuse
are unable to meet
the restrictive criteria**



PHOTO: SHUTTERSTOCK

The impact of legal aid cuts on Family Justice

A report by the Family Court Unions Parliamentary Group – April 2014



Simpson Millar^{LLP}
Solicitors

