

Executive summary

- A young couple are unable to get their landlord to undertake essential repairs.
- A nurse who has worked in the NHS for 20 years cannot rent a new house because her immigration status has not been regularised.
- A person in debt has started suffering from severe anxiety and depression and is in danger of losing his house and his job.
- A person has been unfairly dismissed.
- A disabled person loses her benefits after having been wrongly assessed as fit for work.
- An older person living in a cold house is not able to get advice on income maximisation to enable her to heat the house properly.

When people get into difficulty in their daily lives, as in the examples above, they need to be able to get the right information and advice as early as possible. If this information and advice is not available, they could become unemployed, homeless or in debt – and, not only will they suffer distress, but the state will incur increased costs. Where legal support, whether in the form of legal help or legal representation, is also not available, the number of people who then try to represent themselves will increase, and the courts and tribunals will have to adapt to deal with this increase in unadvised and unrepresented litigants. Likewise, when systems that are supposed to support people fail to function effectively, those individuals require extensive help, often including specialist and legal skills, to have their needs met.

These are the consequences, intended or unintended, of the government's civil legal aid changes in the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, involving a cut of £89m pa in legal aid on social welfare law, as well as the reductions in local authority funding of advice and legal support, estimated to be at least £40m pa by 2015. These cutbacks have destabilised and reduced the advice and legal support sector at a time of increased need. As a result, instead of saving money, the cutbacks are very likely to end up costing more elsewhere in the system.

The Low Commission was established in late 2012 by the Legal Action Group (LAG) (see Appendix 1 for terms of reference and membership) and funded by a group of major trusts and foundations, as well as some corporate support, to develop a strategy for addressing these problems. Widespread concern about the impact of the changes and the lack of a strategy for addressing their consequences means our work has attracted extensive interest from a wide spectrum of organisations and individuals. Over the past 12 months, we have heard from more than 250 organisations and individuals – in person and in writing – about their views on the future of social welfare law advice and legal support and their

comments on our draft report (see Appendix 2 for list of contributors and consultees). We have also met a further 400 people at wider meetings. Our report has been greatly assisted by all the comments and suggestions we have received during its preparation.

The Commission recognises that these are changing times and the drive for austerity means that there are currently fewer resources than in the past. We are therefore seeking to develop a fresh approach, which involves measures to reduce the need for advice and legal support in the first place, while developing more cost-effective approaches to service provision, both centrally and locally, and drawing on a wider range of funding sources than hitherto. Some of the key principles underpinning our approach are:

- early intervention and action rather than allowing problems to escalate;
- investment for prevention to avoid the wasted costs generated by the failure of public services;
- simplifying the legal system;
- developing different service offerings to meet different types of need;
- investing in a basic level of provision of information and advice; and
- embedding advice in settings where people regularly go, such as GP surgeries and community centres.

Although this report is written in a time of austerity, it is also a time of innovation and rapid change in the provision of advice and legal services and of dispute resolution. New providers are moving into the legal services market as a result of the Legal Services Act 2007, and new technology is changing the way that many people seek information and interact with service providers. It is important that our strategy maximises the opportunities that these developments offer for those who have the resources, both financial and practical, to interact with them, so that the most resource-intensive, face-to-face, help can be concentrated on those who need it most.

Our aim is to develop a strategy for the next UK government and Welsh government to implement in 2015. Our 100 recommendations are highlighted in bold throughout the text and grouped by audience in Appendix 3. Further background to the report is available online in our 18 Annexes – see www.lowcommission.org.uk.

In summary, the main components of our strategy are as follows:

- People with pressing problems need a simple and effective way of accessing good advice, without hurdles or confusion. Much basic provision can be developed using a combination of public legal education, national telephone helplines and websites, local advice networks and specialist support for frontline advice agencies.
- Greater use needs to be made of new technology and helplines for those who can manage to access these forms of communication and are not digitally

excluded. We believe that, in addition to the current range of specialist helplines, there should be a one-stop national helpline and website, providing a comprehensive advice service for the general public, which can act as a safety net for those who have nowhere else to go or whose needs cannot be met by other providers. This will free up resources to ensure that more face-to-face, in-depth and intensive support can be targeted at those most in need.

- There is a continuum including public legal education, informal and formal information, general advice, specialist advice, legal help and legal representation. Legal aid should be viewed as part of this continuum, rather than as a stand-alone funding mechanism; the more we can do at the beginning of this spectrum, the less we should have to do at the end.
- **Public legal education** should be given higher priority, both in the school alongside financial literacy, and in education for life, so that people know their rights and know where to go for help.
- The Ministry of Justice (MoJ) should conduct a ‘sense check’ review of the matters excluded from the scope of the LASPO Act and consider reinstatement of some provisions – including, in particular, housing cases involving disrepair and the right to quiet enjoyment – to ensure that there are no inconsistencies between its stated aims and practice.
- By **reducing preventable demand**, taking early action and simplifying the legal system, it will be possible to reduce some of the need for advice and legal support. This should include a stronger focus on getting decisions about individuals right first time (for example, by requiring the Department for Work and Pensions (DWP) to pay costs on upheld appeals), on developing good law and on taking steps to make **courts and tribunals more efficient** and effective (for example, through adapting their model of dispute resolution at every stage to meet the needs of litigants with little or no support).
- For those who can afford to pay, affordable advice and legal support should be more accessible and the routes into it much better communicated.
- Ensuring the quality of all levels of service provision must be a high priority.
- We would like to see a more open and collaborative advice sector. There is considerable scope for local advice agencies to work more closely together and in some cases even to merge. We would also like to see the national advice services umbrella bodies work more closely together and share their resources and experience more widely.
- The importance of advice and legal support on social welfare law to people’s lives, coupled with challenges to its continued provision and additional costs to government that are likely to result if no action is taken, makes it imperative that the next UK government develops a **National Strategy for Advice and Legal Support** in England for 2015–20, preferably with all-party support, and that the Welsh Government develops a similar strategy for Wales. There should be a **Minister for Advice and Legal Support**, within the MoJ, with a cross-departmental brief, who should lead the development of this strategy.

- Local authorities or groups of local authorities should co-produce or commission **local advice and legal support plans** with local not-for-profit and commercial advice agencies. These plans should review the services available, including helplines and websites, while targeting face-to-face provision so that it reaches the most vulnerable. They should also ensure that some resources are available for legal help and representation where it is most needed, to supplement the reduced scope of legal aid.
- We estimate that by 2015, post the implementation of the LASPO Act, there will be about £400m pa available to fund advice and legal support services – mainly coming from local authorities, the Money Advice Service (MAS), the Big Lottery Fund and the legal aid that remains for social welfare law.
- We estimate at least a further £100m pa is required in order to ensure a basic level of provision of information, advice and legal support on social welfare law.
- We are calling on the next UK government to provide half of this extra funding by establishing a ten-year **National Advice and Legal Support Fund** (‘National Fund’) for England and Wales of £50m pa, to be administered by the Big Lottery Fund, to help develop provision.
- We propose that this National Fund should be financed by the MoJ, the Cabinet Office and the DWP (as the main creator of the need for advice and legal support). Of the Fund, 90 per cent should be used to fund local provision, with ten per cent for national initiatives; further details of the expenditure to be met by the Fund are given in Annex 10.
- The Big Lottery Fund should allocate the 90 per cent share of the National Fund to local authority areas, based on indicators of need which draw on joint strategic needs assessments and Health and Wellbeing Strategies. These funds should be used to help implement local advice and legal support plans, which should be co-produced by local authorities and the local advice sector.
- We have also identified other national and local statutory, voluntary and commercial funders, which we believe could contribute the other £50m pa required and thereby match the National Fund. These should include NHS clinical commissioning groups, housing associations and additional MAS funding (for example, by increasing the Financial Conduct Authority’s levy on financial institutions, and introducing a levy on payday loan companies).
- Trusts and foundations, the Big Lottery Fund and lawyer fund generation schemes, such as the Interest on Lawyer Trust Accounts (IOLTA) and dormant funds held by solicitors (for example, for clients who can no longer be traced or for companies that have dissolved) should also contribute to this second £50m.
- Most of our recommendations apply equally to Wales, but it will be important to build on the momentum resulting from the Welsh Government’s Advice Services Review, the final report of which was published in March 2013. The Welsh Government will also need to decide on the most appropriate

management arrangements for the National Advice and Legal Support Fund in Wales, and some of the recommendations will also need to take account of the different arrangements for local government and the local NHS in Wales.

Our six overarching recommendations are:

- **Public legal education** should be given higher priority, both in the school alongside financial literacy, and in education for life, so that people know their rights and know where to go for help.
- Central and local government should do more to **reduce preventable demand** (for example, by requiring the DWP to pay costs on upheld appeals).
- **Courts and tribunals** should review how they can operate more efficiently and effectively (for example, through adapting their model of dispute resolution at every stage to meet the needs of litigants with little or no support).
- The next UK government should develop a **National Strategy for Advice and Legal Support** in England for 2015–20, preferably with all-party support, and the Welsh Government should develop a similar strategy for Wales. There should be a **Minister for Advice and Legal Support**, within the MoJ, with a cross-departmental brief for leading the development of this strategy.
- Local authorities, or groups of local authorities, should co-produce or commission **local advice and legal support plans** with local not-for-profit and commercial advice agencies.
- The next UK government should establish a ten-year **National Advice and Legal Support Fund** of £50m pa, to be administered by the Big Lottery Fund, to help develop provision of information, advice and legal support on social welfare law in line with local plans.

Urgent action is also required to address the application and funding problems arising with section 10 of the LASPO Act on exceptional funding arrangements. These were intended to act as a safety net to guarantee the funding of cases that would ordinarily be out of scope for legal aid funding, but where either human rights or EU law require the provision of legal aid. The evidence to date is that these arrangements are not working.

We believe that by investing in a wider range of information and advice, with some legal help and representation, many of the undesirable consequences of the LASPO Act can be avoided and we will end up saving money.