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# The impact of LASPO on routes to justice

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# The impact of LASPO on routes to justice

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University of Liverpool

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## Co-authors

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# Executive summary

This research underlines the emotional, social, financial and mental health impacts for individuals who have attempted to resolve their legal problems without legal aid, following the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in 2013.

LASPO introduced funding cuts to legal aid and narrowed the scope and financial eligibility criteria, with the result that fewer people could access legal advice and representation for problems in areas such as family, employment and welfare benefits law. We interviewed over 100 people in the Liverpool City Region, with problems in at least one of these areas of law, to understand how LASPO had affected their options for resolving those issues. We also interviewed a number of advice providers and legal aid practitioners, and analysed national data from Citizens Advice.

Many participants reported significant financial deprivation as a result of trying but not being able to resolve their legal issues. Some were unable to afford food, adequate housing or other essentials. A lack of preventive legal help led to delays in resolution, which often made problems worse. There was also evidence that costs were passed to other parts of the public sector, including an increased reliance on welfare benefits as a result of unresolved employment issues.

## Family law

- The high cost of legal fees is a key barrier to justice. Some participants who paid for legal advice or representation reported going into debt as a result.
- People's inability to pay for expert or specialist evidence without legal aid may have led to courts making decisions on the basis of insufficient information.
- Cuts to legal aid have had a negative impact on children's lives, especially in relation to child contact cases.

## Employment law

- The main barriers to justice are the high cost of legal representation, the difficulty of navigating the tribunal process without support and a low level of knowledge about employment rights.
- Many participants reported that the costs of bringing their claims to tribunal were disproportionate to the value of the claims. This deterred them from bringing claims and made it harder to find a solicitor willing to take their case.
- Participants had fewer options for accessing third-sector specialist advice and representation. Those participants who went to tribunal had to represent themselves as a result, and in general they lacked the skills or experience to do this competently.

### **Welfare benefits law**

- LASPO has significantly reduced the capacity of voluntary sector organisations to provide welfare law advice. There is almost no specialist advice left to provide support to appeal benefits decisions.
- The removal of welfare benefits law from the scope of legal aid has exacerbated the impact of recent welfare reforms, which is likely to have affected disabled people disproportionately.

Most participants tried multiple routes to resolve a single issue: attempting to resolve problems on their own, trying to access free advice and taking steps to get paid advice or representation before courts or tribunals. But without legal aid, almost all the participants struggled to solve their problems.



# 1 | Introduction

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force in 2013. It had a dramatic impact on the provision of civil legal aid in England and Wales, and has meant that legal aid is no longer available for a wide range of civil legal issues. This report examines how individuals who can no longer access legal aid have tried to resolve their legal problems, and how this has affected their access to justice and their personal lives. It focuses on family, employment and welfare benefits law.

As a result of LASPO, many individuals who would previously have been eligible for legal aid have been unable to gain legal assistance to pursue their cases in court or at a tribunal. Instead, they must now either pay for legal advice or representation themselves, try to find free support (usually from a charity such as Citizens Advice), or navigate their problem on their own. These alternative 'routes to justice' lead to difficulties for individuals in reaching a just resolution, and mean that if justice is achieved it is often delayed and at personal cost.

LASPO is one of several recent changes to the legal system in England and Wales that have affected individuals' demand for and ability to access justice, and it should be considered in this context. Related policies include the introduction of employment tribunal fees, other increased court fees, and changes to judicial review, such as largely restricting legal aid payment to challenges that are successful. Also relevant are significant changes introduced by the Welfare Reform Act 2012, such as the transition from Disability Living Allowance to Personal Independence Payments and the introduction of universal credit and the so-called 'Bedroom Tax', which have increased the demand for legal advice services.

The project involved 131 semi-structured interviews in the Liverpool City Region, comprising 115 interviews with people who had legal issues and 16 interviews with advice providers and legal aid practitioners. The findings from the interviews are informed by analysis of national data and literature on the impact of LASPO on

access to justice. All names used in this report have been changed to protect the identities of the interview participants. Further information about the methods is included in the Appendix.

## 2 | Background

### 2.1 The LASPO reforms

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The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was introduced in response to increasing pressure on the legal aid budget, and in the context of a wider policy to reduce the national deficit. According to the Ministry of Justice (MOJ) (2011a), LASPO aimed to:

- discourage unnecessary and adversarial litigation at public expense
- target legal aid to those who need it most
- make significant savings to the cost of the scheme, and
- deliver better overall value for money for the taxpayer.

Most of the projected cost savings were made by removing a number of areas of law from the scope of legal aid, including most private family, employment, welfare benefits, housing, debt, clinical negligence and non-asylum immigration law matters. Savings were also made by changing the financial means test for areas of law that remained in scope of legal aid, including ending automatic eligibility for those in receipt of means-tested benefits, and reducing the limit on the maximum income and capital an individual can have to qualify for legal aid.

Civil legal aid is generally available in two forms: legal help and legal representation (also called civil representation). Legal help refers to initial advice and assistance to resolve a problem, including specialist casework to help with the assessment of the merits of a claim, to correspond and negotiate with the other party, and to progress a claim towards a court or tribunal. Legal representation refers to formal representation by a solicitor or a barrister in court or at the upper level (appeal) tribunal. Individuals with problems in areas of law excluded from legal aid under LASPO can no longer access legal aid to fund either legal help or legal representation.

Prior to the introduction of LASPO, much of the legal help that was available was provided through advice organisations that held legal aid contracts with Government. The reductions to the scope of legal aid under LASPO led to a corresponding reduction in funding for advice organisations, and limited their ability to provide specialist legal help. Citizens Advice, for example, lost around £19 million of funding as a result of LASPO. Around half of Citizens Advice Bureaux previously held legal aid contracts, which funded qualified staff to provide specialist advice to people with legal problems relating to debt, welfare benefits, housing, family, employment and immigration (Citizens Advice, 2014b).

### **Family law**

Private family law cases, such as divorce and child contact, were generally removed from the scope of legal aid by LASPO. This was intended to encourage people to resolve their private family law problems out of court, which was the main way the Government planned to discourage litigation (MOJ, 2017: 38). The number of private family law proceedings in the family courts has not fallen significantly since the introduction of LASPO: between 2012–13 and 2016–17 the number of cases of this type fell by 2 per cent overall. The number of litigants in family law cases who have no representation has, however, increased significantly: in 2016–17, 64 per cent of parties in private family law cases (both applicants and respondents) were unrepresented, compared with 42 per cent in 2012–13 (MOJ, 2017: 42).

The Ministry of Justice predicted a corresponding increase in the uptake of mediation following the implementation of LASPO, and an increase in Mediation Information and Assessment Meetings (MIAMs), which establish whether mediation is an appropriate form of dispute resolution. In fact, uptake fell significantly, which the Government's post-legislative memorandum stated may be attributable to the fact that LASPO reduced the opportunities for clients to be in contact with law firms and therefore to be referred to mediation. Prior to LASPO most referrals for MIAMs (over 80 per cent) had come from legally aided solicitors (MOJ, 2017: 39–41).

Opportunities for free legal advice for family matters are scarce and cannot meet the demand. The Child Law Advice Service (CLAS), which provides free general legal advice on child, family and education law in England, reported that it is able to meet only about 20 percent of the demand across all areas, despite doubling its capacity by recruiting additional volunteers (Coram, 2018). CLAS received 15,500 calls about private family law matters in 2016/17 and estimates that about 9,500 of these were

from individuals who would have been eligible for legal aid prior to LASPO (Coram, 2018).

Legal aid has remained available for family law issues where there is evidence of domestic violence, including child abuse. However, the evidence requirements to qualify for legal aid in these cases were considered prohibitive. From January 2018, after sustained campaigning by a number of groups and a judicial review brought by Rights of Women, the requirements were relaxed by removing the time limit and allowing new categories of evidence.

### **Employment law**

All employment law matters, with the exception of employment-related discrimination, were taken out of scope for legal aid by LASPO. There is evidence of a shortfall in the take-up of legal aid for employment-related discrimination claims compared with the Government's predictions, and the causes of this need further investigation (Hickman and Oldfield, 2015). It may partly be due to the fact that victims of discrimination often need advice to understand that their employment problems engage anti-discrimination law in the first place (Equality and Human Rights Commission [EHRC], 2016). Without initial legal advice, individuals are less likely to be aware that legal aid is available and may therefore decide not to pursue a claim, even for strong cases that would qualify for legal aid.

Legal aid for initial advice in employment discrimination claims can now be accessed only via the Civil Legal Advice telephone gateway. The gateway has been underused compared with predicted take-up, which may be due partly to a lack of public awareness. Concerns about the low number of referrals for specialist and face-to-face advice have also been raised (Law Society, 2017a: 18). The barriers presented by the gateway may have resulted in victims of discrimination or harassment at work not accessing the legal help to which they are entitled.

### **Welfare benefits**

LASPO removed legal aid for almost all welfare benefits cases. Prior to LASPO, most legal aid for welfare benefits was provided as funded legal help, with around 82,500 legal help matter starts for 2012–13 and 102,900 for 2011–12 (Legal Aid Agency, 2014). This funded legal help would have provided specialist advice and casework to support people in appealing a decision about benefits eligibility in the first-tier tribunal. Legal aid rarely funded representation even prior to the introduction of LASPO, with only 15 and 24 civil representation certificates granted for welfare

benefits in 2012–13 and 2011–12 respectively (Legal Aid Agency, 2014). Legal aid post-LASPO remains in scope only for civil representation for appeal on a point of law to the upper tribunal and subsequent appeals, and for judicial review.

The Government accepted in its initial consultation on LASPO that the removal of legal aid for most welfare benefits matters was likely to have a disproportionate impact on disabled people (MOJ, 2010). The 2011 LASPO equality impact assessment similarly acknowledged that those in receipt of legal aid for welfare benefits were more likely to be disabled than the population in general (MOJ, 2011b: 2.213). It nevertheless concluded that the tribunal was ‘relatively accessible and user-friendly’ and that, despite evidence that the voluntary sector would be unable to meet the demand for advice, other sources such as the Job Centre remained available (MOJ, 2011b: 2.222). Welfare benefits legal help remains in high demand, particularly for the disability benefits Employment Support Allowance and Personal Independence Payments (Citizens Advice, 2017).

### **Exceptional case funding**

If legal aid is not targeted correctly, the UK Government may violate its obligations to provide access to justice in some instances to protect an individual’s human rights or rights arising from EU law. LASPO introduced an exceptional case funding (ECF) scheme to provide legal aid where necessary to meet these obligations, in cases that would otherwise fall outside of scope for legal aid. There is evidence that the ECF scheme is not functioning as intended (Justice Select Committee, 2015). The Bach Commission reported that ‘far too few people have been covered by the scheme and it has thus failed to function as an effective safety net’ (Bach Commission, 2017a: 10).

The numbers of applications for ECF since its inception were considerably lower than anticipated by Government, with a peak of 1,516 in 2013–14, compared with an estimate of 5,000–7,000 annually (Legal Aid Agency, 2016; Justice Select Committee, 2015). The number of successful applications has also been much lower than anticipated: in 2014-15 ECF was granted to around 230 people (a grant rate of 20 per cent), rising to around 670 in 2015-16 (50 per cent) and 950 in 2016/17 (51 per cent) (MOJ, 2017: 48). The Government had anticipated that ECF would be granted to 3,700 cases per year (Lord Faulks, 2014).

ECF has not provided a route to justice in welfare benefits cases, with only 13 applications out of 45 granted between April 2013 and March 2017, and it is also of limited impact in family law and employment law (Brooke, 2016). The unsuccessful

functioning of the ECF scheme may be attributed to a number of factors: the complex application form, low success rates acting as a deterrent in making applications, restrictive guidance on the circumstances under which ECF should be granted, and the restriction of payment for solicitors who assist with the form to only those cases that result in a successful grant (Justice Select Committee, 2015; EHRC, 2016a; Law Society, 2017a).

## 2.2 Assessment and criticism

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### Access to justice

LASPO has attracted considerable criticism about the potential and actual impacts on access to justice. The Law Society concluded that LASPO has harmed access to justice, placed strain on the justice system, and resulted in knock-on costs elsewhere in the public sector (2017a). The Bach Commission also criticised LASPO's impact on access to justice, calling for a new legally enforceable right of access to justice (2017a). Amnesty International reported that LASPO had resulted in a two-tier legal system, open to those that could afford it but closed to those who could not pay (Amnesty, 2016). The findings in these as well as the present study raise concerns that LASPO has had the effect of preventing *necessary* litigation, rather than only discouraging *unnecessary* litigation, across all three areas of law.

### Impact on protected groups

Significant evidence suggests that legal aid is not being targeted at those who need it most. In 2015 the Equality and Human Rights Commission published a report with evidence of a disproportionate impact on disabled people, ethnic minorities and women (Anthony and Crilly, 2015: 91). Amnesty International noted a disproportionate impact on disadvantaged groups, including vulnerable young people, migrants and refugees, and people with 'additional vulnerabilities' (such as those with mental health conditions, learning disabilities, low numeracy and literacy levels, language problems, medical conditions such as terminal illness, and alcohol and drug dependency) (Amnesty, 2016: 4).

Amnesty International noted disproportionate impacts on children (Amnesty, 2016: 4) and the Bach Commission called for a restoration of legal aid for all cases where children are involved (2017a). The Office of the Children's Commissioner has published research showing that LASPO has forced children to attempt to find free

legal advice, represent themselves as litigants in person, or not try to solve their legal problems (Carter, 2014). The Law Society stated that LASPO has had both a direct and indirect negative impact on children, despite assurance from the Government at the time that, as far as possible, legal aid would be provided where children were involved (Law Society, 2017). The Equality and Human Rights Commission noted the high incidence of mental health conditions among people involved in private family law proceedings, which created a risk that parents would lose contact with their children because they were unable to present their cases effectively without legal representation (Anthony and Crilly, 2015).

### **Cost implications**

The Justice Committee concluded in 2015 that LASPO had only achieved one of its objectives – to make significant savings – and had harmed access to justice for some litigants (Justice Select Committee, 2015). The Committee urged the Ministry of Justice ‘to appreciate that a significant and unexpected saving in the civil legal aid budget requires immediate investigation as it may indicate a significant impairment of access to justice’ (Justice Select Committee, 2015: 21). The under-spend in the legal aid budget is around £0.5 billion annually compared with what was anticipated at the time of the LASPO bill (Bach Commission, 2017a: Appendix 7; MOJ, 2017: 52).

The significant savings to the legal aid budget are likely to have had the effect of shifting costs within the justice system. For example, the National Audit Office (NAO) (2014) noted that the increase in the number of litigants in person in the family courts may have increased costs. The escalation of legal issues as a result of restricted access to legal aid at an early stage, such as to provide specialist casework support, may also have increased costs. The Bach Commission highlighted the withdrawal of legal aid for early legal help as ‘one of the least cost effective cuts’ and recommended that legal aid for legal help (not including representation) be restored for all welfare rights and family law cases (2017a). Amnesty International also raised concerns about the loss of early legal help and the uneven provision of legal advice services across the country (Amnesty, 2016).

Savings from the legal aid budget may also have increased costs in other parts of the public sector, which both the Bach Commission and the Low Commission have expressed concern about (Bach Commission, 2017a, Low Commission, 2015). The present study identifies a specific example where the NHS is funding advice provision, and evidence that an inability to resolve employment law issues can



increase take-up of welfare benefits. This raises the question of whether the legal aid cuts have in fact delivered better overall value for money for the taxpayer.

# 3|

## Approaches to legal problems

In line with prior legal needs surveys (for example, Genn, 1999; Pleasence et al., 2010; University College London, 2015; Balmer et al., 2013), the research for this report was based on four categories of potential action that people could take in response to a legal issue:

- **used formal advice:** either paid or unpaid, including generalist, typically one-off advice, and specialist, usually ongoing advice, which often involves casework or legal representation
- **used informal advice:** from sources such as family or friends
- **handled alone:** dealt with some or all aspects of the legal problem without assistance from others, and
- **did not take action:** did not take or ceased taking action to pursue a solution.

Participants in the study typically were forced to pursue several approaches to try to resolve their legal problem, due to a lack of access to free ongoing legal advice. For example, participants were able to find some limited free advice at some stages of their case, while handling their case alone at other stages; or were unable to take action for a period of time and then made renewed efforts to resolve their legal problem, with or without legal assistance. The lack of access to free ongoing legal advice, for which all of the participants would have qualified before LASPO, caused delays and hampered participants' ability to pursue their problem to resolution and achieve justice.

### Used formal advice

LASPO has significantly affected the formal advice available for family, employment and welfare law. As described in chapter 2, prior to LASPO, legal aid was available in all these areas for legal help (advice and assistance to initiate and progress a case) and civil representation (by a solicitor or barrister in court or at an upper-tier tribunal). In family law, legally aided representation was common, whereas in

employment and welfare benefits law, legal aid usually funded legal help, often provided by third sector organisations.

There are two ways of accessing formal advice for areas of law now outside the scope of legal aid: paying for legal help and representation, usually from solicitors in private law firms; and obtaining free legal help, representation or general advice, usually from advice agencies in the third sector (of which Citizens Advice is the largest provider). As described in chapter 2, because LASPO removed areas of law from the scope of legal aid, it also removed the funding that advice agencies had previously received to provide free legal help in those areas. Consequently, free legal help, as well as funded legal representation, are now very difficult to find. What is mostly available, and what most of the participants received (where they were able to access formal advice), is referred to in this report as **general advice**. This refers to formal legal advice provided by someone who is not a specialist (sometimes a volunteer), who can advise on the law and the best approach to resolving a case. It is usually one-off rather than ongoing, and it does not provide the level of support that casework would, or extend to representation. As a result, even those participants who accessed some initial or general advice handled their cases on their own to a greater extent.

In the context of family law, general advice is mostly available only at the initial stage; for employment and particularly welfare benefits it may be available beyond this point. Participants with employment and welfare benefits law problems tended to use this formal advice at different stages, mostly handling a problem on their own but returning to a third sector agency to get further general advice at various points. This suggests there has been a noticeable shift in the approaches that people take to their legal problems following LASPO (in combination with other changes), with an increase in the extent to which people handle cases on their own. In some cases this led to participants not taking or ceasing to take further action.

### **Used informal advice or handled alone**

There are two ways that people seek to pursue their legal issues without formal advice: either with informal help from friends or family, or by handling their case on their own. The use of informal advice was low in the study, and participants reported that it was of limited use in helping them pursue their legal issues. People on low incomes also reported not having the peer resources necessary to get this type of support.

Participants frequently handled their cases alone during at least one stage. This was often not through choice, and usually followed attempts by participants (which were unsuccessful due to the cost barrier) to get help from recognised sources.

### **Did not take action**

The final approach people adopt is to take no action in relation to their legal issue. LASPO was linked to participants being forced to take no action for various reasons, including the financial cost of getting recognised legal help and representation, and the lack of available free advice. There was also evidence of a perception or assumption among those with legal problems that legal aid is now generally unavailable.

## 4 | Family law

### Key findings

- Participants reported multiple unsuccessful efforts to engage an affordable solicitor.
- Other costs, such as court fees and the costs associated with providing the evidence needed to support a case, are also barriers to accessing justice.
- Inability to pay for expert or specialist evidence can lead to courts making decisions with insufficient information.
- Children are adversely affected by unresolved legal problems, particularly in relation to contact with their non-resident parent.

### 4.1 Introduction

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Of the 115 interviews conducted with individuals with legal issues, 25 participants described their experiences of attempting to resolve family law issues, mostly concerning divorce or child contact issues. Prior to LASPO, legal aid would have been available to fund legal help and legal representation in these types of cases, and all 25 participants would have been eligible for legal aid based on the income and assets means test. A further five interviews were conducted with family law service providers. The findings suggest that individuals were being prevented from pursuing necessary litigation as a result of LASPO, or were being denied advice and representation to respond to litigation initiated by another party. Participants with family law problems also reported experiencing other legal issues. Data on advice trends from Citizens Advice (2018) reflects this co-occurrence of legal problems at a national level. For example, in January 2018, 21 per cent of Citizens Advice family

law clients also had benefits issues, 11 per cent also had housing issues and 9 per cent also had debt issues.

## 4.2 Affordability of legal help and representation

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Participants were more likely to have tried to get legal advice and representation from a solicitor for family law problems than for other areas of law. However, cost was a significant barrier and participants described unsuccessful attempts to engage a solicitor without legal aid, with no alternative means to pay. Some did pay for legal assistance and reported going into debt as a result:

I did seek legal advice but... you get 20-30 minutes free and the next thing you know you're getting a letter for a bill ... I need their services to go through the courts because I didn't know the system ... I ended up thousands and thousands of pounds in debt. (Interview 27)

Some participants reported trying to find free advice but found it was only available at a cost. Commercial online sites often advertise free family law advice but in fact require payment to access any substantive legal advice:

You look on the internet and ... at first it comes up with a load of sites which say free divorce advice, oh but you've got to pay, and you've got to pay this, and you've got to pay. (Interview 91)

Those participants who handled their legal issues on their own, without paying for help and representation, still faced court fees and other associated costs, for example in relation to providing evidence. Disbursements to cover the costs of obtaining evidence, as well as the casework to help organise evidence into a court bundle, could previously have been funded by legal aid. This service provider confirmed the range of expenses people face:

And then there's all the other add-ons around the proceedings, like the fact that they can't afford to get evidence, they can't afford to get medical reports, drug test reports, psychiatric reports. (Service Provider Interview 2)

### 4.3 Limited access to formal third sector advice

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Opportunities for free legal advice for family matters are scarce. The free legal advice that is available is usually general in nature, such as information about how the divorce process works and where the relevant forms can be found online. There is very little free casework, such as help to gather the evidence needed for court, and very limited free legal representation available. A small number of participants had received free general legal advice from organisations such as Women's Aid, Family First and Citizens Advice, but reported limitations on what was available.

I was recommended to phone the Citizens Advice but they can only offer you 10-15 minutes' worth of advice and then they'd say where to go from there.  
(Interview 32)

Some participants had taken advantage of law clinics at local universities to get free specialist advice, and found this helpful but limited because it did not include representation. Provider participants reported that many third sector organisations who had previously referred individuals to solicitors for representation funded by legal aid are now unable to do so. Some solicitors still provide a pro bono rota at Citizens Advice offices and other third sector agencies, but this is limited to offering some free initial information and identifying clients who may be eligible for legal aid. Previously, these solicitors would have been able to take on these individuals as clients, funded by legal aid. LASPO has largely removed these potential sources of referrals in family law.

Some legal aid service providers reported a particular impact on the ability of men to seek contact with their children without legal help or representation:

I was representing lots and lots of dads who were being prevented from seeing their children ... Once LASPO came in, we weren't able really to service a whole group of people and provide them with that legal advice.  
(Service Provider Interview 3)

### 4.4 Mediation as an alternative means of resolution

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The Government expected take-up of mediation to increase after LASPO was introduced, as a way of resolving legal problems without recourse to litigation. Individuals must attend a Mediation Information and Assessment Meeting (MIAM) to

determine whether their case is suitable for mediation before they can progress to court. However, instead of mediation providing an alternative after the withdrawal of legal aid, the main alternative approach that people have pursued is to represent themselves in family courts as litigants in person (Barlow, 2017). Of those who do engage in mediation, the number for whom it provides a solution seems to be dropping: in 2016/17 61 per cent of completed mediations resulted in a successful outcome, down from 68 per cent in 2013/14 (Legal Aid Agency, 2017).

Few participants in our study reported engaging with mediation. Some of those who did noted problems with getting the other party to engage with this process. One participant had mental health issues and learning disabilities. Prior to LASPO and with legal aid funding, she and her mother had gone to court over parental responsibility for her child whom she had when she was 17. At a point after legal aid was cut under LASPO, her mother stopped allowing her contact with her child, in violation of the terms of the judgment. She tried to get advice and representation from a solicitor funded by legal aid but none was available. She set up mediation but when her mother refused to take part she had no means to make her mother comply with the judgment:

I did set up mediation and my mum said she would do the mediation, but she didn't want to sit in the same room as me so therefore, there is no mediation. She basically put a blocker on it. (Interview 63)

This is a good illustration of why mediation cannot always provide an alternative to necessary litigation: the non-adversarial option may seem preferable, but as it is voluntary it only works when both parties agree to take part.

## 4.5 The challenge of handling the problem alone

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A number of participants reported having no option but to seek a resolution to their legal problem on their own, for a variety of processes associated with family law from form-filling to court hearings. Some participants reported trying to use online sources to help with their case but found the information too complex and sometimes at a cost.

### Family law case study: Ian (interview 32)



Ian was interviewed at Citizens Advice while seeking help with divorce proceedings. He was concerned about being able to continue seeing his two children, aged two and six, as he expected his wife to seek full custody. He had called a number of solicitors and found that he could not get any free consultation.

He had looked for information online, and although he found it to be helpful, it did not enable him to pursue his case on his own. At Citizens Advice, Ian was only able to get 10–15 minutes of general advice and could not get a further referral for free legal advice and representation. At the time of interview, he was planning to engage a paid solicitor, but he was worried about how to pay for this. He had some limited savings but had been signed off work due to the stress and anxiety of the divorce. This, along with the ongoing costs of maintaining the house in which his wife and children live, was using up his savings. Ian said that ‘a divorce is not a nice thing to go through and then to have the money worries on top of that, to pay for the divorce and the worries of how it’s getting on, how it’s gonna run with the children, with the ex and like.’

Informal advice did not emerge as an important approach to the resolution of participants’ family law issues. Those who did seek advice from friends or family members reported that the advice did not help them to reach a resolution:

It’s all like hearsay and myth and what someone else has experienced and never a guarantee that what they say is right. (Interview 27)

As the study population comprises those living on a low income, participants may not have a social network that encompasses many people with the relevant knowledge and experience to help them solve legal problems. Since so many participants are forced to attempt to navigate their problems without the benefit of formal legal advice and representation, not having a reliable informal source of advice provides a further barrier.

Those who represent themselves in proceedings present challenges for the courts, as the Ministry of Justice acknowledged in the LASPO green paper:

This may potentially lead to delays in proceedings, poorer outcomes for litigants (particularly when the opponent has legal representation),

implications for the judiciary, and costs for Her Majesty's Courts Service.  
(MOJ, 2010: 4.266)

The National Audit Office (NAO) has criticised the Government's understanding of why people go to court and noted that this led to a failure on the part of Government to adequately predict what the outcomes of the LASPO reforms would be (NAO, 2014). The National Audit Office showed a large increase in the number of cases in which one or both parties were unrepresented (NAO, 2014). Research published by the Ministry of Justice into the experience of litigants in person in the family courts found that most in their sample were unrepresented because they were ineligible for legal aid but still could not afford representation (Trinder et al., 2014). In addition, around half of litigants in person observed had one or more 'vulnerability', such as a disability or long-term health condition, learning or language difficulties, difficulties controlling emotions, or experience of domestic violence, abuse or harassment. These made it difficult or prevented litigants in person from adequately presenting their case (Trinder et al., 2014: 27). The evidence from our sample supports the findings in the Ministry of Justice study: the participants we interviewed did not choose to be litigants in person but felt they had no other choice because they could not access legal aid and were otherwise unable to afford representation.

Overall, many participants found that the legal process was too complex to pursue satisfactorily, or at all, on their own. Participants described not knowing how to navigate child contact disputes, how to revisit financial settlements that they perceived to be unaffordable, or even how to fill in the divorce petition on their own. Service providers highlighted the complexity of legal cases and the risks to case outcomes where people cannot access representation. One service provider said:

They really... a lot of them need representation in court which they don't have at all. (Service Provider Interview 2)

Individuals often cannot represent themselves effectively or provide the evidence that courts need to reach a fair decision. This is particularly true for people with certain protected characteristics, such as those with mental health conditions and learning disabilities, and those who face language barriers. The risk that a case outcome may not be just, because the parties have not been able to access appropriate legal help and representation, is particularly concerning since children are frequently involved. Coram Children's Legal Centre has stated:

Adults with learning disabilities, language barriers and/or mental health issues will all struggle to engage with the legal system without specialist support. If a

parent cannot understand the evidence requirements in a case, cannot effectively navigate the procedures and processes required, and cannot represent themselves effectively in a hearing by presenting their argument and advocating their position, judges are more likely to lack the necessary information to ensure that the outcome of a case is in the best interests of a child. (Coram, 2018)

Frequently, one party to a family law case is forced to pursue litigation by the other party initiating action. Men pursue applications for contact more frequently than women, and mothers are unwilling litigants in such cases (Kaganas, 2017: 181). Such unwilling unrepresented litigants are less likely to understand the case and to be able to articulate their position, and more likely to lack confidence (Kaganas, 2017: 181).

#### **4.6 Inability to resolve legal problems**

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In some cases the barriers described above led to participants being unable to take any action to resolve their legal issues. This means that necessary litigation was left unresolved, leading, for example, to participants being unable to enforce a contact order or get a divorce:

I mean I am at the moment still married, I would get a divorce but obviously I know there's no legal aid and I haven't seen him for five years now. You know we moved away. He's in another relationship but we've had no contact for five years so a divorce would... I would have normally have done that. (Interview 36)

These findings support research by Rights of Women and Women's Aid, which in a survey of 239 women nationally found that half (53 per cent) of respondents took no action in relation to their family law problem because they could not apply for legal aid (Rights of Women, 2015).

#### **4.7 Evidence requirements for domestic violence**

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Legal aid remained available for family law issues where there is evidence of domestic violence, including child abuse. However, restrictions on the types and age of evidence that would be accepted have created barriers to accessing legal aid in

these situations. One participant's ex-partner, who had been abusive in the past, applied for parental responsibility. The participant tried to get legal aid from a number of different solicitors but could not because her evidence of domestic violence was not recent enough. She had to handle the case on her own. Her ex-partner was awarded parental responsibility and she reported being afraid when he comes to her door every week:

It's hard when you know he's coming to your door and he's threatening you and your son's in the living room and he's heard it. (Interview 38)

Changes to the evidence requirements had taken effect at the time of the study, removing the time limit and allowing new categories of evidence to be submitted. Service provider participants reported that they had already been able to get legal aid for clients who had experienced domestic violence whom they would not have been able to help under the previous requirements.

## 4.8 Summary

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For family law problems, participants typically tried but failed to secure free legal help and representation from solicitors. They could not afford to engage a solicitor for legal help and representation or went into debt to pay for it. Other costs, such as providing the evidence required for a case or for court fees, were also identified as a significant barrier to resolving family law problems and reaching an appropriate outcome. Free general legal advice from the third sector, pro bono services and mediation did not compensate for the lack of legal help and representation for participants.

As a result, many participants were forced to handle cases alone or felt they had no choice but to take no action. This suggests that necessary litigation cannot be pursued by some people under the current legal aid arrangements. For those participants who handled their cases alone and represented themselves, the complexity of family law processes prevented them from presenting their cases effectively. This is likely in some cases to have resulted in outcomes that are inappropriate or unjust, including where children are involved.

# 5 | Employment law

## Key findings

- Participants were often forced to handle cases alone because they could not access legal aid for legal help or representation.
- Participants indicated a range of barriers to accessing justice, including costs, lack of knowledge about their rights, difficulty dealing with complex legal issues on their own or with only informal support, and concerns about job precariousness.
- Participants were deterred from bringing claims because the costs they would need to meet without legal aid were disproportionate to the value of their claims.
- Some participants who had been unable to resolve an employment issue were now unemployed and reported having to claim welfare benefits.

## 5.1 Introduction

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We interviewed 28 participants who had experienced employment law problems that would have been in scope of legal aid prior to LASPO, and two employment law service providers. Most participants were interviewed at Citizens Advice offices or at Merseyside Employment Law, which is the only not-for-profit provider of specialist employment advice in Liverpool. Participants reported a range of employment issues, including changes to hours, job location or role, non-payment of holiday or earned pay, and dismissal. A number of participants also reported experiencing welfare benefits issues as a result of being unable to resolve their employment problem. According to national data (Citizens Advice, 2018), in January 2018, 25 per

cent of Citizens Advice clients also had benefits issues and 7 per cent were seeking advice on debt.

Participants reported that an inability to resolve an issue led to it escalating or was a precursor to a more serious employment problem. Sometimes this was to the point of being dismissed from their job or having to resign, and subsequently being forced to claim welfare benefits. The case study below describes a participant who did manage to claim legal aid, but only once she had been dismissed and the case had become more complex and costly to resolve. She had suffered serious personal impacts in the intervening period.

### **Employment case study: Sophie (interview 70)**

Sophie was on a three-month fixed-term contract which was repeatedly renewed over eight years. She was unable to agree a more stable employment contract with her employer directly or through the conciliation and arbitration service, Acas. She was also unable to access advice from a solicitor without legal aid.

Sophie was unable to resolve the case on her own, and after she suffered a period of sickness, with severe headaches, vomiting and high blood pressure, her employer ended her contract and she was dismissed. It was only at this stage after seeking advice from Merseyside Employment Law that Sophie was able to pursue a legal aid-funded disability discrimination claim. At this point her savings had almost run out, and while she was reluctant to make a claim for welfare benefits, she felt she had little choice.

## **5.2 Affordability of legal help and representation**

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Participants saw the tribunal process, including the process of deciding whether to bring a claim, as too legalistic and complex to handle without the advice of a solicitor. A small number of participants did pay for access to legal advice from a recognised source, but most reported finding this too expensive.

The solicitor costs are so high. I'm on minimum wage job—it's not something you can really think about. The hourly rate that they charge for their work... Going to a solicitor is like the last resort. (Interview 31)

Some participants reported trying to get a solicitor to take their case but with no success because of the low value of their claims:

I find the solicitors these days, they seem to cherry pick what work they take. One time years ago when I did use a solicitor, you used to be able to get one quite easy, that's when you could get help, but now they don't seem to want to deal with small problems, yeah. So that's what I found. (Interview 31)

Specialist employment law providers highlighted that it is the low value claims that are least likely to be taken forward in the absence of legal aid, as conditional 'no-win, no-fee' arrangements would not be equitable either for the solicitor or the client. This suggests that LASPO has had a disproportionate impact on those with low incomes because they cannot access legal advice (unless there is a discrimination element to their claim) or use the conditional fee arrangements that avoid the need for unaffordable upfront costs. This leaves people with lower value claims disproportionately at risk of not getting the support they need to continue with their cases.

Much of the analysis of the post-LASPO position for people with employment law problems has centred on the impact of employment tribunal fees (set at between £160 and £1,200), which were ruled unlawful by the Supreme Court in 2017.<sup>1</sup> The imposition of these fees has compounded the impact of LASPO on people's ability to resolve employment law issues. In particular, the high fees were likely to deter lower value claims, and evidence shows that this disproportionately affected people with protected characteristics (TUC, 2016). The introduction of employment tribunal fees coincided with a significant drop in the number of applications. Ministry of Justice data indicates a 72 per cent drop in the number of claims accepted by the tribunal, comparing the first quarter of 2013/14 (when no fees were payable) to the first quarter of 2015/16.

### 5.3 Limited access to formal third sector advice

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Third sector advice organisations provide some free legal help for employment issues. However, this is now typically limited to one-off, usually initial legal advice, rather than preparation for tribunal or specialist casework to support the resolution of a legal issue. In a previous study, many local Citizens Advice services reported that

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<sup>1</sup> (*R (on the application of UNISON) (Appellant) v Lord Chancellor (Respondent)* [2017] UKSC 51, at 20)



they had no capacity to provide assistance with preparing employment claims, which is time-consuming and complex (McDermont et al., 2016). This is the situation in the Liverpool City Region where the present study was carried out. Merseyside Employment Law can help with the limited employment matters that remain in scope for legal aid and can provide lower-cost legal help and representation in other employment law areas. However, there are no paid specialist employment advisers at Citizens Advice, which means that people in the area have limited access to specialist legal help. Research highlights that this lack of meaningful support, which could previously have been provided through legal aid, acts as an impediment to justice (McDermont et al., 2016).

Since the introduction of LASPO, legal aid for employment matters is available only if the claim has a discrimination element. Merseyside Employment Law estimates that it can take forward 5–10 per cent of the employment advice calls it receives via legal aid through their contract to provide discrimination employment advice. In addition, it seems likely that not all discrimination cases are receiving legal aid. One participant, who attended a Citizens Advice office to get advice about benefits, mentioned an issue with her former employer that she was unaware was a legal issue, even though there was an element of discrimination due to her pregnancy. In the way it was reported to the research team, her situation would probably have qualified for legal aid. She had not visited Citizens Advice for advice on this matter and it was not clear if she had mentioned it during her session:

[Speaking of her former employer] He's just a horrible person but no other issues... Just, he told me last minute I had to get let go. It was like, I was six months pregnant and he was asking me to climb ladders and I was like no I'm pregnant and I could fall and injure myself and my, the baby... And he just let me go from then so. Now that I'm pregnant he just took the mickey a bit and just said, yeah I'll let her go. (Interview 96)

This may illustrate that it is difficult for people without access to initial advice to identify that their employment problems engage anti-discrimination law (EHRC, 2016). Without the initial legal help, individuals may not be aware that legal aid could be available to help them pursue their claim. Participants in the study indicated that they thought legal aid no longer existed:

I knew straight away that there wouldn't have been any point because I didn't have no representation with me, right, and I know everything cost me, and I know because my situation and what it was, I couldn't afford to pay legal representation and I wasn't in the union, which was... I think I learned from



that mistake really. But... and I know legal aid wasn't accessible because as far as I was aware legal aid had been scrapped. (Interview 45)

Implicit in statements like this is the perception that formal legal action is something that can only be taken with legal representation. Only a small number of participants mentioned using Acas, which gives limited, impartial information about how to proceed with a case, and must legally be notified by an individual who intends to bring an employment claim. This may reflect a lack of understanding about the role of Acas or the limited extent to which they can give legal advice:

Somewhere along the line I think I contacted a company called Acas... They [the employer] didn't answer my letter of grievance, so they've paid me my wage at the reduced level of 12 hours but then they have paid me in lieu, but I have tried everything possible and I can't work out what they have done, how they've done it, what hours they have paid me for, it's just a payment of my wage. (Interview 77)

## 5.4 The challenge of handling the problem alone

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Many participants tried to handle their issues with their employers – through informal discussions or through recognised grievance and disciplinary processes – without more formal support and often with little success. The issues were often complex, including bullying, changes to terms and conditions, and transfer of undertakings issues. These participants tended to have negative experiences of in-work resolution processes, due to lack of employer engagement or precariousness of work contracts. They also expressed little confidence in achieving a satisfactory resolution on their own that would avoid the need to take further action.

Service providers reported that people are likely to try to handle a case alone, but that they would generally struggle to cope without some form of legal help and/or representation because of the complexity of the process. This can also act to discourage people from bringing a claim:

I think that they might give it a go but when it's a more complex issue like even so much as submitting your ET1 [claim initiation form] sometimes that is quite overwhelming for clients so I think that they will then go 'do you know what, I can't take this any further, for me it's too much time and it's not something I am capable of doing on my own' so I think that they do just drop it so it's not... fair. (Service Provider Interview 12)

For claimants that do get to tribunal without representation, there continues to be a significant ‘inequality of arms’, as employers tend to be represented by a solicitor. In 2015, one-third of claimants were represented at employment tribunal compared with just over two-thirds of employers (Department for Business, Innovation and Skills [BIS], 2014).

The complexity of the issues interviewees faced and the difficulty of navigating the tribunal process without representation emphasised the importance of receiving legal advice about employment issues. Previous studies have indicated that the support claimants need (particularly in cases leading to tribunal, such as how best to present a case, understanding previous case law, and what evidence to seek) is precisely the support that could have been provided through legal aid prior to LASPO (Busby, 2017).

## 5.5 Inability to resolve legal problems

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Some participants, even those with seemingly strong claims, reported feeling they had no choice other than to give up pursuing a resolution and to accept the decision of an employer without challenge. Previous studies have found various factors linked with not taking action at different stages of an employment issue, including complexity, stress, a perception of powerlessness in the legal process, the costs of a claim and concern about the perceived likelihood of success (Busby, 2017).

Participants indicated a number of other barriers to justice as causes of taking no action, which cannot be directly attributed to but are exacerbated by LASPO. This includes the precariousness of employment, as described by this participant who was from another EU country:

But this unfair treatment I can be scared about it and be thinking, to be thinking about or be too, too confident and if I want to do any problems for my employer then they can just sack me in one second. So this is problem.  
(Interview 108)

Although precarious employment is not a result of LASPO, the lack of free advice available to help people understand when their situation might give rise to a potentially successful claim is a direct result of LASPO.

Participants reported receiving little informal advice from family or friends, other than being urged to seek formal advice. The impression was that without this advice and

encouragement, participants would have accepted issues such as unenforceable changes to contracts and unjustifiable reductions in payments without seeking formal advice to challenge them.

## 5.6 Summary

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Participants indicated a strong need for the type of formal advice previously provided through legal aid, due to the complexity of employment cases. With almost all legal aid funding for employment cases removed by LASPO, it is now very difficult to get legal help without paying for it up front. Solicitors are viewed as expensive and unavailable, while legal help from third sector organisations is limited in availability and scope. Participants expressed feelings of powerlessness in the legal process, and negative expectations in terms of reaching a resolution.

In the third sector in this region there are very few employment law advisers who can advise fully on the merits of a case or on the best strategy to progress it, apart from Merseyside Employment Law, which provides a limited amount of free legal advice. Where legal advice is available at no cost, such as Citizens Advice, it is usually restricted to a single interaction without any ongoing support or strategic advice. The costs barrier has been exacerbated for those with low value claims, as conditional fee arrangements are generally unavailable for such cases. In the small number of cases with a discrimination element where legal aid could be available, the reduced availability of legal advice post-LASPO has also reduced the awareness that such a claim could be made.

People are likely not to challenge an issue because they do not initially see it as a legal problem, or because they cannot see a way to resolve it without free legal advice. Participants handled cases themselves with limited success, and many claimants reluctantly gave up on a case and accepted unjust outcomes.

## 6 | Welfare benefits law

### Key findings

- LASPO has significantly diminished the capacity and scope of charities and voluntary advice organisations, who are the principal providers of formal welfare law advice. There is little specialist advice left to support appeals against welfare benefits decisions.
- The complexity and stress of legal processes and the scarcity of specialist legal advice are identified as barriers to justice.
- LASPO has exacerbated the impact of recent changes to the welfare benefits system, with a disproportionate impact on disabled people.

### 6.1 Introduction

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Welfare benefits issues were reported by 90 participants and discussed in nine interviews with service providers. The issues raised related mainly to the disability benefits Personal Independence Payment (PIP) and Employment and Support Allowance (ESA), as well as Job Seeker's Allowance (JSA), housing benefit, tax credits and discretionary housing payments. There were also a number of participants seeking general advice about the benefits system.

Participants relied on charities and voluntary organisations for advice, but this was limited in scope and availability. A number of participants tried to resolve their legal problem by themselves, sometimes with some one-off general advice. There was also evidence of people feeling forced to take no action. Participants described the complexity of the welfare benefits system and of specific claim processes, and cited

the mental and emotional difficulties they experienced when trying to resolve legal issues.

### **Welfare benefits case study: Alice (interviews 110 and 111)**

Alice had previously been refused Disability Living Allowance (DLA). She tried to resolve this on her own but was unsuccessful. Alice then sought advice from a charity, which helped her to prepare her appeal, and she had the benefit awarded at tribunal. Alice described her experience at tribunal as 'horrible'.

A few years later, Alice attempted to complete PIP and ESA claim forms by herself but found the forms and the evidence required to support them were too complicated and difficult to obtain. Alice tried to seek advice from the charity that had helped with her DLA appeal, but its service had closed after funding was cut. Without the previous support, and without time because of her son's needs (she and her husband have a severely disabled child), Alice delayed taking action to resolve her legal issue.

Alice has suffered a panic attack and she and her husband are now in debt due to the lost benefits income. They have had their utilities put onto meters and are in rent arrears, although they have an 'understanding' private landlord.

As with family and employment law, problems with welfare benefits typically cluster with other issues. According to national data from Citizens Advice (2018), the most frequent additional problem is debt, with 18 per cent of people seeking advice on benefits in January 2018 also having a debt issue. The incidence of debt problems was higher for welfare benefits clients with a mental health issue at 25 per cent. Housing issues were the second most common issue for benefits clients, which may reflect problems with rent arrears as a result of benefits issues, as well as problems with poor-quality housing associated with living on a low income.

The data also suggests a tendency for several different benefits problems to intersect, and there may be knock-on effects when eligibility for one benefit is denied. For clients with ESA issues, 35 per cent had an issue with Personal Independence Payments, 17 per cent had a housing benefit issue and 12 per cent had a council tax problem. For clients with JSA issues, over a quarter (27 per cent) also had a housing benefit issue, and 32 per cent had a problem with ESA. For JSA

clients who reported a mental health condition, 61 per cent also had an issue with ESA.

## 6.2 Affordability of legal help and representation

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On the limited occasions when participants commented on solicitors in relation to welfare benefits issues it was usually about the difficulties of engaging one. No participants were using a solicitor at the time of interview, but a small number had used one in the past when legal aid was available. Some of these referred to law centres. One participant, who was interviewed at Citizens Advice seeking assistance with her PIP appeal, reported having previously used a legal aid solicitor to help with her son's DLA appeal, and said that the advantage of a solicitor at tribunal was that:

They speak up for you. They ... seem to know how to put the words and what to say (Interview 105).

When asked a hypothetical question about whether legal aid would have helped resolve their welfare benefits issue, almost all participants responded that it would have been useful, particularly to get help at the appeal and tribunal stage.

The more support you can get the better ... the CAB [Citizens Advice Bureau] are very good with information and help. But I think a solicitor would have more sway but you just can't get one these days. It's not an option. (Interview 31)

But the loss of legal aid is devastating, yeah devastating because [people] cannot get their rights at all. But someone with money can ... it's wrong. (Interview 29)

## 6.3 Limited access to formal third sector advice

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The voluntary sector advice and information services, mainly Citizens Advice, Raise and the law centres in Liverpool, play an important role in helping people access support in relation to welfare benefits law. Many of the participants who had discussed their legal issues with friends and family stated that they told them to go to Citizens Advice.

Although participants valued the support they received, advice centres cannot meet demand and they can only provide a limited service. This can mean long waiting times or being unable to obtain advice at all. Participants reported that they waited up to ten weeks for an appointment:

I accept you have to wait in the Citizens Advice for a long time for your initial assessment and so, it was something that I dealt with... luckily I don't live very far from Citizens Advice. And I was lucky there wasn't 50 people. In some Citizens Advice they take the first ten and the others have got to go. (Interview 18)

Service providers stated that they had lost almost all of their welfare benefits specialists due to LASPO. Citizens Advice have estimated that 350 specialist advisers were lost nationally, largely due to LASPO removing the legal aid contracts that funded them, and partly due to local authority funding cuts in recent years (Justice Select Committee, 2015). There was a £20.4 million reduction in spending for legal help and civil representation for welfare benefits between 2010-11 and 2016-17 (Brooke, 2017: 8). Most of this funding would previously have gone to third sector agencies. The extensive cuts to specialist legal advice due to LASPO have exacerbated an already difficult funding environment for the third sector. A community-based advisory service in Liverpool that we spoke to closed in March 2018 because of a withdrawal of funding, despite the high demand for and positive outcomes from its service.

The loss of specialist advice meant that participants were usually seeking advice at a specific point in the benefits claim or appeal process, sometimes repeatedly, from different volunteer advisers. These advisers are trained to deal with general legal issues, rather than to provide specialist legal advice on an ongoing basis until resolution. Participants remarked on the lack of specialist advice most commonly in relation to going to tribunal:

I had to phone up and make a Mandatory Reconsideration [of original welfare benefits claim denial]. They just took details basically and then I got a letter. But when I was appealing I came up to Citizens Advice. But unfortunately they didn't have anyone to come with me to the tribunal. It's a bit daunting cos you're on your own and stuff. (Interview 105)

The reduction in specialist knowledge in third sector organisations as a result of LASPO limits the service that they can provide: it not only increases the demands on the volunteer-based general legal advice services but also reduces the second-tier



support and training for that service, because the specialist legal knowledge in the organisation is much reduced as a result of LASPO.

Participants found it difficult to access the welfare benefits advice that was available because many were struggling with low incomes that meant even the cost of public transport to an appointment was hard to meet. The extreme efforts participants made to access welfare benefits advice highlights how much they value it:

I'm here today because I literally don't have any money or any work or any benefits or any food. I got a foodbank voucher from here last week so I can eat... I was supposed to go to a meeting at the doctors in the hospital now this morning but I had to come here so I had to reschedule a meeting with them for one o'clock. You know it's hard. And I walk. I don't drive because I'm not having money so I'm walking eight, ten miles a day. So getting from A to B takes a lot of time. So when people say you've got an appointment here, I say 'OK'. I turn up you know soaking wet because it's actually [gestures at heavy rain] now. It's very difficult. (Interview 12)

The relationship between LASPO and changes to the benefits system was a clear theme in the interviews, confirming findings from previous research:

It's impossible to separate the cuts to legal aid from the cuts to the benefits system. The bedroom tax and Atos disability reassessments all feed into problems we deal with, such as homelessness. Because we can't do benefits work anymore, it's harder for us to nip problems in the bud. We're forced to take action at a much later stage, which will ultimately cost the government a lot more. (Logan Green and Sandbach, 2017)

The high demand for advice for disability benefits means that the almost complete removal of welfare benefits from the scope of legal aid has had a disproportionate impact on disabled people or those with a long-term health condition. These people relied on legal aid to support appeals of incorrect decisions and to provide a valuable check on decision-making concerning eligibility for welfare benefits (Organ and Sigafos, 2017; Scope, 2011).

The healthcare budget is one of the ways in which these services have been (partly) replaced. In Liverpool, the 'Advice on Prescription' project, which is funded by the NHS Clinical Commissioning Group and based in healthcare settings, is currently the second largest funding contract for Citizens Advice in the area. This highlights the increased reliance on other parts of the public sector and indicates a possible transfer of some of the LASPO savings into costs for other areas.



## 6.4 The challenge of handling the problem alone

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Some participants had tried to represent themselves at tribunal hearings for welfare benefits issues. Most found it to be a complex and intimidating prospect, particularly as many were unwell at the time (ill-health was usually why participants were applying for benefits):

I went to the tribunal with a three-person panel and that wasn't a great experience at all. It almost felt like you're in a court 'cos you're sat at one end and you've got three people at the other end ... It wasn't a very pleasant experience. (Interview 103)

A number of participants had completed the welfare benefit application forms themselves, to the best of their ability, but then had to seek advice at the mandatory review stage, which is the first step to challenging a benefits decision, or at the later appeal stage. Once they accessed this advice they were then on their own again at the tribunal stage, which many described as daunting and stressful. A small number of participants referred to a successful outcome at tribunal when they represented themselves. However, even when participants were successful, they did not feel that it was a quick or straightforward process to navigate:

We got everything back [via tribunal but] we wasted 18 months and we got the money backdated and that. But I went to him I could never go through this again. Oh, the stress. (Interview 101/101A).

Participants also referred to the importance of getting financial and emotional support from families during the time they were trying to deal with their welfare benefits issues:

God help anyone that doesn't have parents to help... These vulnerable people, anyone so vulnerable. God help them if they've got a family that can't support them financially and emotionally. God help those people. (Interview 18)

## 6.5 Inability to resolve legal problems

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We interviewed almost all participants at the locations where they were seeking advice. Therefore, only a limited number of participants were not acting on their problem at the time of interview. Nevertheless, there were participants who had

delayed acting, potentially causing problems to escalate, and others who had felt forced to give up at some point while trying to resolve their issues. Even not taking action for a while is potentially problematic. When asked what else they tried to do to get access to ESA, one participant responded:

Erm, we just gave up because my mum was like I am not putting you through that stress again ... because it's making me have more seizures. (Interview 85)

Several participants stated that they had delayed taking action or considered not acting because of the stress and complexity of navigating the benefits process without the legal advice that would have been available pre-LASPO, while others questioned whether the process was worth going through because of the stress:

It's just stressful at times. Sometimes you sit down and go 'is it worth this hassle?' Is all this worth the hassle?' You just sit in and vegetate. You know, is the car [paid for by the mobility component of the disability benefit PIP] worth this? (Interview 101/101A)

You basically just wanna put your head in the sand and just completely ignore [it] because it's getting too much because the housing benefit ... it's like really complicated to follow. (Interview 6)

Not acting is a course of action that participants felt was forced on them because the immediate impact of trying to resolve an issue outweighed the potential benefits of success. Taking no action can also be the result of an overwhelming sense of helplessness when participants started trying to resolve issues.

## 6.6 Summary

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Third sector organisations are the main source of advice for people with legal issues related to welfare benefits and the benefits system, but LASPO along with other funding reductions has significantly reduced the funding available to them to provide that service. This financial pressure, combined with welfare reform and increased demand, means there are limits to the services organisations can provide – in particular, it has led to the loss of specialist legal advisers. The remaining, mainly volunteer-led services face increased pressures which have led to longer waiting times and reduced availability of appointments. Organisations have adapted to the new funding environment but have been unable to mitigate the impact of cutting the

legal aid that previously paid for caseworkers, whose specialist legal experience also supported the overall capacity of their organisations.

Financial and other barriers to formal advice mean there are more people attempting to handle their welfare benefits issues on their own. A number of participants commented on the complexity of understanding entitlements, and of the process to make and challenge a claim. ESA and PIP are the two benefits that participants most commonly sought advice about.

There is evidence of people deciding not to claim benefits although they need them (and are entitled to them), or not challenging decisions, due to the stress and complexity of the application process. The impacts are felt not only by individuals but by parts of the public sector, such as the NHS, where the costs resulting from LASPO may be transferred.

# 7 | Impact of LASPO on people's lives

## Key findings

- Unresolved welfare benefits issues resulted in financial deprivation, including in some cases a risk of homelessness and an inability to pay for necessities such as food, heating and electricity.
- The difficulty of resolving legal issues caused physical, emotional and mental health problems.
- Children's lives have been affected by unresolved legal problems, particularly in relation to family law.
- Costs may be incurred in other parts of the justice system and the public sector as a result of cuts to legal aid.

## 7.1 Introduction

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Participants reported extensive and wide-ranging impacts on their lives from the difficulties they faced in resolving their legal issues, across family, employment and welfare benefits law. These included financial and social impacts, as well as impacts on health and wellbeing. These impacts seem to be further exacerbated by other factors such as the increased complexity of welfare benefits processes and the adversarial nature of the family courts.

## 7.2 Financial and housing insecurity

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**Financial problems are common across all areas of law**

There were financial impacts on people's lives in all areas of law. This was most pronounced in family law cases, where people were more likely to have sought paid formal legal help, often after failing to find free advice. Participants reported going into debt or taking extreme measures to be able to pay for formal advice:

I suppose if I hadn't have had nearly £5,000 in [legal] bills I may have been able to scrape together the money to pay him off so I wouldn't have had to sell my house. (Interview 39)

In the case of both employment and welfare benefits issues, some participants reported that unresolved issues led to a drop in their income that meant they were unable to pay for essentials, such as utility bills, clothing and food:

I've been under a lot of pressure with paying my bills... I'm worried about arrears on [water], I'm worried about also my [utility company name] gas and electric bill was quite high. They hounded me saying 'you need to pay, you're in arrears and I said 'look I haven't got the money'. (Interview 78)

### **Problems escalate if help is not available, leading to worsening impacts**

Participants reported worsening financial impacts from legal problems that escalated when they could not be resolved at an early stage. If these participants had been able to access specialist advice earlier, the subsequent financial problems might have been mitigated.

In one example, a 60-year-old participant encountered problems reapplying for a benefit. She has type 1 diabetes, and a previous case of septicaemia had led to severe kidney and liver problems. She had twice applied, without assistance, for Employment and Support Allowance (ESA). On both occasions her claim was denied, and her subsequent requests for mandatory reconsideration to have the decision looked at again were also denied. She attended the Job Centre on two occasions to try to claim Job Seeker's Allowance instead and was advised there of her right of appeal the ESA decision. She was now at Citizens Advice trying to get some help with the appeal, having previously been unable to get an appointment because of the high demand on their services. Over this period her financial situation had worsened: she had been getting by borrowing some money from her children, but they were not in a position to be able to support her, and she was hiding her financial difficulties. She expressed hopelessness at attempting to navigate the process on her own:

I'm not a fighter really ... I just go 'okay' and go away. (Interview 42)

Her escalating financial difficulties had driven her to try to appeal this time. She was experiencing difficulties paying for electricity and gas, arrears and a summons on her council tax, and a lack of money for food that could have further health implications:

I'm diabetic, I need to keep an eye on my sugars and all the rest of it. I've had to stop taking one needle as much because I haven't had as much food to be able to take that. You know how you're supposed to take so many meals a day to have your sugar regulated - I can't do it. I can't do it. I'm living on bread. Toast. (Interview 42)

In one extreme example, a service provider reported a case of a benefit claimant with no other income or means of actively seeking work who had died, as a result of a lack of food, during the process of resolving their welfare benefit appeal. The Department for Work and Pensions was criticised by the coroner in this case for not fulfilling its duty of care.

The financial impact of being unable to resolve a benefits issue can often worsen because receipt of some benefits 'passports' individuals to further support. This means that when one benefit is withdrawn, so are several others:

Now I've phoned a couple of days ago they've told me I might not get a payment until I'm assessed and that could be a while. So what am I meant to live on? I'm in a house with five kids and because my ESA has stopped so has my Council tax contribution – the help I get with that. And my housing benefit stopped as well. (Interview 102)

Legal help is potentially an important preventive factor in breaking the cycle of impacts, and avoiding the most severe outcomes. The preventive value of early legal help has been shown to extend beyond the legal problems themselves. For example, debt advice can help to prevent debt getting out of control and the subsequent onset of mental health problems, and therefore provides a cost-effective intervention (Knapp et al., 2011). A survey of young people receiving advice from youth advice agencies prior to the introduction of LASPO found that 42 per cent had improved housing situations and that 70 per cent had experienced improvements in either health or stress (Balmer and Pleasence, 2012: 22).

### **Financial difficulties following legal problems are linked to housing insecurity**

Many participants explained that the financial impact of unresolved legal issues left them anxious about inadequate housing situations and worried about the risk of homelessness. One participant spent time in a homeless hostel following an

employment problem that led to the loss of his job and family break-up. Participants who had experienced family law issues reported selling off property to pay for legal fees and paying more than could be afforded on private tenancies to accommodate children:

She refuses me... joint you know custody which means that I have to stay in private tenancy that I can't afford. I'm actually only four or five weeks from being evicted and being homeless. (Interview 109)

Housing insecurity was associated with psychosocial distress, for example for this participant with welfare benefits issues:

Oh stress, thinking [if] I'm gonna get kicked out my flat. I don't wanna lose the flat. I stay in a one bedroom flat but they say they have to send you the eviction notice as procedure but they shouldn't really be doing that because it comes as a red letter that you owe it all. It's all lit up, it's all a big letter in big print you owe £700-800 or something like that and I'm like there is no way I can pay that. It's impossible for me to pay that. I couldn't. So it is stressful. It is really stressful. (Interview 11)

### 7.3 Adverse effects on health and wellbeing

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#### **Difficulty resolving legal problems is linked to mental and physical ill-health**

Participants with issues in all areas of law repeatedly described stress, anxiety, depression and other emotional or mental and physical health problems, including sleeplessness, loss of appetite, high blood pressure and other issues. Adverse effects on wellbeing are to some extent an inevitable consequence of any legal problem. However, the lack of access to legal advice and representation as a result of LASPO means that legal problems take longer to resolve, are more difficult to resolve, or cannot be resolved at all, which exacerbates the negative impacts on people's lives. These impacts are often part of a cycle of multiple reinforcing problems for participants, including job loss, family break-up, debt and social exclusion.

One participant, who cried throughout the interview because of the emotional impact of the previous 12 months, had multiple emotional, financial and health impacts from a delay in resolving welfare benefits issues. She had needed advice and support to help her resolve a problem with overpayment of Disability Living Allowance, which

had occurred when her husband (who subsequently died) had continued to receive the benefit after he had been admitted to hospital. This spiralled into debt:

So it's all that coming in as well. And it just brings loads of other problems that you shouldn't really have. I have never been anxious in my life, I never had a panic attack. I didn't even know what... I thought I was having a heart attack when I was in the shops and I went to the doctors and they said no it was a panic attack and it was all brought on by the issues of the money and not knowing what I was to do. (Interview 5)

A number of participants described emotional and mental distress when dealing directly with the welfare benefits system. One service provider commented on a suicide that he was aware of taking place during the process of trying to resolve welfare benefits issues. Other research has confirmed an increased risk of suicide as a result of the reassessment of benefits claimants using the Work Capability Assessment (Barr et al., 2016). Benefit claims are, for many people, associated with psychosocial distress, often exacerbating existing conditions, particularly during the long appeal process. This participant was pursuing an ESA appeal and, in the meantime, surviving on food vouchers and struggling with the recurrence of mental ill-health:

Mentally it's not been too good, like I've said before I'm a self-harmer. That's what I turn to when I get stressed so I've tried to stop myself from doing that as well. Financially I'm not doing that good either. I just get on day-to-day. (Interview 40)

LASPO is unlikely to be the sole cause of these sometimes extreme impacts on health and wellbeing, but the loss of specialist advice casework that could support individuals like this during their appeals process is likely to be an important contributing factor in some cases. While it would be difficult to quantify, the cost to the health service – as a result of increased mental and physical health problems for those with legal issues they cannot or struggle to resolve – is an important consideration in the economic assessment of LASPO.

Several participants reported social self-exclusion as a significant knock-on effect of unresolved legal issues in all three areas. The following participant was being prevented from seeing his four-year-old daughter, who lives with her mother. He and his ex-partner did not have a formal separation arrangement. The participant tried to get help from a solicitor but was told that there was no legal aid available and he could not afford to pay without it. He expressed hopelessness at being able to



resolve the situation ('there's literally nothing else I can do') and described resulting stress and depression ('I literally sit around and I smoke my days away'). He described his resulting self-exclusion:

Yeah, like because I just don't wanna go out no more. Like I used to enjoy going out, and I don't. I won't even go in a pub, I won't go in a shop, I won't stand in a queue, I won't do nothing. I... when I leave this building, I'll put my hood up and I'll just try and get away from it all. (Interview 21)

## 7.4 Impact on children

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Participant interviews highlighted the significant impact of not being able to access legal aid in cases involving children. Previous research has also focused on this issue (TUC 2016; Law Society 2017a). There are a number of children at the centre of private family law proceedings who are not parties in the case, but whose lives (and their rights to justice and not to be put in danger) are nonetheless seriously impacted by its outcome. These cases may determine who children live with, whether they will have contact (supervised or otherwise) with the non-resident parent, and how much financial support will be available to their household (Coram, 2018). The Ministry of Justice estimated the cost of providing legal aid for all matters involving children at £5–6 million (Law Society, 2017).

In addition to the impact of family law problems on children, participants described how other issues, such as an unresolved welfare benefits problem, could lead to family disputes that directly affect children. Others reported splitting up children from their caregivers and the settings they were used to:

It took me a while because we've gone from a lovely big house where we were all together to having separate houses and my granddaughter who I've, you know, I've brought up really, is with her mum and only comes on the weekend so it's just... it's a whole sad situation I think if... I do think that if the legal aid had carried on throughout, things may have been different. We may all still be together. (Interview 39)

The service provider interviews also emphasised the impact on children and contact with non-resident parents, usually fathers. In addition to the problems of unrepresented parties, there is also an issue with the lack of funding to provide the evidence needed to assist the court to evaluate claims of alcohol or substance

abuse, mental illness, or violence. Prior to LASPO, disbursements for this type of evidence would have been covered by legal aid.

Whereas now you're relying on possibly a parent who's got quite severe mental health problems on a brief letter from the GP saying this is a diagnosis and they are compliant with treatment, and that's about it. So how that then... how you then assess the impact that that has on children, and parenting, and all of those processes it's... the information just isn't there. So then you're back to just relying on the parents self-reporting really, on how they think their mental health is and the other parents reporting on how that impacts on the children and that relationship, which is not really satisfactory. (Service Provider Interview 3)

If there are drug and alcohol issues, often contact will not progress beyond a supervised and safe setting, particularly if the court are satisfied that there definitely has been a history of this, which often the person who's not seeing the children won't deny. But unless they can provide the evidence in a hair strand test for drug use, it's... I think it costs £240. They are often stuck seeing their children in a supervised centre for years, because they can't afford to get the drug test, or they don't understand how important it is for them to get that in order to progress their case. So they say well I can't afford it, and anyway she's lying, so I don't understand why I can't just see my children. And so they can't engage with the legal process. (Service Provider Interview 2)

If insufficient evidence is provided, it is difficult for courts to assess effectively where the balance should lie between protecting children and allowing appropriate access to parents. This is particularly concerning in relation to domestic violence. Women's Aid, a national domestic violence charity, published research in 2004 showing 29 homicides of children in the previous ten years by a domestic abuser during or as a result of unsafe child contact (Saunders, 2004). Women's Aid published a further report in 2016 showing 19 children killed by an abusive father between 2005 and 2015 'in circumstances related to child contact' (Women's Aid, 2016: 9). One service provider reported:

With the domestic violence there are real problems around evidence and legally really the court should hold fact finding hearings if there isn't enough evidence. They don't want to hold fact finding hearings where people aren't represented, because they don't want the alleged abuser cross examining somebody. Plus also it's quite difficult for the court to actually find out what

really happened without legal representation in a fact-finding hearing. It is quite complex. So, that can be problematic. Either it might mean that the father doesn't get to see his children when he hasn't been violent. Or alternatively the court will allow him to have contact when he has been violent, because they haven't really got enough evidence to make a decision either way, so they... well it just... they can't really make good decisions. (Service Provider Interview 2)

## 7.5 Costs passed to other areas of state funding

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While LASPO has made significant savings to the legal aid budget, it may also have increased costs elsewhere in the justice system. This is particularly associated with the pressure on courts and tribunals that has resulted from the increase in people representing themselves, typically with no legal help to support them up to this point.

The escalation of legal problems without early intervention can also increase costs in the justice system and other parts of the public sector. Early legal help has preventive value and can avoid the need for lengthy, more complex, and more costly legal processes. Citizens Advice research has found that for every £1 spent on employment advice the state saves £7.13 (Citizens Advice, 2010). The Bach Commission reported:

One of the most damaging aspects of the cuts to scope has been the withdrawal of legal aid for early legal help across a number of areas. It is also one of the least cost effective cuts. Whether housing help or advice about a family breakdown, an early understanding of how the law can help resolve problems can help prevent significant distress downstream. It will also save the state money; the pressure on welfare services, for example, from a homeless person far exceed the cost of early help. (Bach Commission, 2017b: 29)

The previous section notes the potential increased costs to the health services as a result of adverse mental and physical health impacts related to unresolved legal problems. The study also identified a specific example of health services funding advice provision: the Advice on Prescription Service is funded by the NHS and delivered in partnership with Citizens Advice in Liverpool, providing advice for non-health related issues in GP surgeries, such as welfare benefits, employment, housing and debt.

In addition to health services, the lack of support to resolve legal problems may increase reliance on benefits. This was evident for unresolved employment issues, which in some cases led to increased uptake of welfare benefits. Many of the participants with employment problems were identified when they were seeking advice at a Citizens Advice office for welfare benefits claims. Their unresolved employment problems had led to unemployment and they were seeking advice about welfare benefits to substitute their lost income, often as first-time claimants struggling with the application process. They reported that they had not planned to get advice about the employment issue they discussed in interviews, because of their perception that it could not be resolved. Potentially some of the cases would have been resolved in the participant's favour had they been able to get the advice and representation needed to pursue them or even to recognise that they had a justifiable employment law problem. This may have meant they could have avoided needing to make the welfare benefits claim, which many were reluctant to do:

Any [advice] would help, to help me in the situation, anything. I don't want to come out of work. I've never not worked. This is why I don't understand what [welfare benefits] I could be entitled to. Nothing at all, I don't understand any of it. (Interview 100)

Further research is needed to identify other areas of the justice system and the wider public sector where costs may have increased. This consideration is important in the assessment of the full cost implications of LASPO and overall value for money.

## 8 | Conclusion

This qualitative study provides new perspectives on the impact of LASPO, and evidence of the extent of the adverse impacts on people's lives in family, employment and welfare benefits law. It shows how changes to legal aid have negatively affected people's access to justice and their ability to reach a satisfactory resolution to their legal problems.

Many individuals could not afford to get the help they needed, and across all three areas of law participants reported significant difficulties in accessing formal advice from solicitors or from charities and voluntary organisations. Participants repeatedly cited cost as the barrier to using a solicitor. Some were aware that legal aid was previously available to pay for advice and representation; others perceived legal aid to be generally unavailable, even in areas where it may have been in scope to support their case.

In family law matters, the more adversarial nature of cases and the need to respond to legal action brought by another party meant that participants were more likely to seek paid legal support and representation. Some reported going into debt as a result. In all areas of law, free formal advice was very difficult to obtain, due to the effect of LASPO on the capacity of the third sector, in the context of other funding reductions. Significant changes to the welfare benefits system have also increased demand. Organisations have refocused their services to try to mitigate the impact of legal aid cuts, but remain limited in the amount, type and degree of specialism of the advice they can provide. Participants faced long waiting times for appointments and mostly were able to access only one-off or general advice, rather than ongoing casework and specialist advice.

Participants reported little satisfaction from trying to handle legal issues on their own. There was a sense of disempowerment; many people experienced escalating issues and worsening impacts, and some felt they had no option but to stop trying to resolve their legal problems.

In all areas of law, participants reported financial, social, emotional, physical and mental health impacts. There were numerous reports of relationship difficulties due to the strains of struggling to resolve legal issues. The process of trying to pursue justice without legal aid added extra physical and mental strain, which may exacerbate existing physical and mental health issues or cause new ones. This was particularly noticeable for disabled participants, who found the stress of trying to resolve a welfare issue with inadequate advice made their health condition worse. Financial, housing and employment instability exacerbated the impact of unresolved legal issues. At least one participant accepted unlawful changes to her work conditions owing to the fear of losing her job altogether.

The study highlighted a number of 'false economies' that may undermine the savings LASPO has made from the legal aid budget. For example, a number of people might have stayed in their jobs if free employment advice had been available and avoided needing to claim benefits. There was also evidence that changes have led to higher public sector costs elsewhere. These include the cost to the NHS of supporting those whose physical and mental health has deteriorated as a result of not being able to resolve their legal problems. There are also costs to the justice system of litigants in person in the family courts, and as a result of issues that have escalated by the time they reach the courts because of a lack of legal advice at an earlier stage in the process.

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# Appendix: Further methods information

## Fieldwork schedule

A six-week period had been planned, but in week five we had neared the target for participant interviews and it was apparent from analysis that service provider interviews would add useful context to the study. We therefore conducted service provider interviews in weeks six and seven.

## Sampling strategy

We approached potential participants at charities and voluntary organisations throughout the Liverpool City Region. The participating organisations or charities were primarily local Citizens Advice offices, Merseyside Employment Law, Merseyside Law Centre and foodbanks. Because of the nature of the client population, we anticipated a high incidence of people who have relevant legal issues, and of people who would have met the legal aid means test pre-LASPO. We oversampled in agencies/wards with higher ethnic minority or migrant populations, in order to reach persons sharing this protected characteristic. Liverpool has a high level of disability deprivation, which ensured a sufficient sample of individuals sharing this protected characteristic. In order to reach participants with family and employment problems, which are less common than benefits problems, we worked with Merseyside Employment Law to contact their clients and pro bono family law clinic and drop-in providers.

Every client who entered the charity or voluntary organisation was given basic information on the study by the receptionist or other relevant gatekeeper. Interested clients were directed to the study team. We asked potential participants if they had a legal problem or problems in the area of family, employment and welfare, and we asked them to confirm that they would have met the legal aid means test pre-LASPO by providing them a list of the financial eligibility requirements. We collected information on protected characteristics from all participants who wished to disclose this information. Interviews were conducted in private rooms.

Participants were offered refreshments and £10 compensation for their time and expenses.

Service provider interviews were sampled by asking relevant individuals at the participating agencies and others if they were willing to participate. Nearly all potential interviewees approached agreed, although three potential interviewees did not have time to take part.

### **Interview questions**

The semi-structured interviews consisted of open questions to allow individuals to describe the impact of their legal problems on their lives and the route to justice they pursued. Follow-up probing questions addressed particular impacts, such as the financial burden, emotional distress, physical or mental illness.

### **Data analysis**

The data were coded in QSR NVivo 10, using a thematic analysis on an ongoing basis. The coding and analysis followed the approach identified by Braun and Clarke (2006) for thematic analysis: becoming familiar with the data, producing an initial coding framework and coding the data, searching for themes, reviewing and defining themes and then writing up the analysis.

### **Data limitations**

Although this study was conducted in the Liverpool City Region, it is not expected that the experiences of our participants would be significantly different, when viewed as a group, from those of other low-income populations in England and Wales. The Liverpool City Region is economically deprived, relative to many other places in England and Wales, but it still has resources for advice services.

Most participants were interviewed when they were in the process of seeking advice about a legal issue and could therefore be perceived as a relatively 'active' group when compared with the general population. In fact, we identified a number of cases in which people had not taken action to resolve a legal issue, but we recognise the methodological challenges associated with identifying 'inactivity'.

# Contacts

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