



Accessing justice in Family Courts

**The Family Court Unions'
Parliamentary Group
November 2015**

The Family Court Unions'

Parliamentary Group (FCUPG) was formed in 2006 to support the work of those employed in the family justice system. It meets every two months whilst Parliament is sitting with officers from Napo – the Probation and Family Court Professional Association – PCS – the union representing court staff – and Simpson Millar solicitors – a law practise specialising in family justice. The group is chaired by Lord Fred Ponsonby and comprises over 20 MPs and Peers on a cross-party basis. The current focus of the group's campaigns within Parliament are:

- Cuts to Legal Aid
- Increase in Litigants in Person

- The future of Cafcass
- Funding of the National Association of Child Contact Centres (NACCC) and closure of child contact centres
- Delays in the family justice system.

Membership of the group is open to all parliamentarians. If you require further information or would like to be included in future mailings, please contact the group's co-ordinator:

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Foreword

The Magistrates' Association is a national membership charity with a mission to provide a voice for magistrates, promote the sound administration of the law, including in the Family Court, and to educate people on the role of the magistracy in England and Wales.

The MA welcomes this leaflet by the Family Courts Unions Parliamentary Group (FCUPG) addressing 'Access to Justice'. It represents family magistrates who, like the FCUPG, are concerned about the impact of legal aid cuts in family private law introduced under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) reforms of April 2013. Responses to an MA survey carried out eighteen months ago indicated that in family private law cases post LASPO, 60% of parties are representing themselves. This is concerning as 58% of respondents said they thought litigants in person (LiPs) negatively affected the court process most or all of the time.

Parties representing themselves may

require additional assistance which can result in delays. During a meeting of the APPG for the Magistracy, the difficulties for LiPs in filling out complex and lengthy forms was raised. It also discussed legal advisors having to spend time helping LiPs prepare for their hearing, thus negating any savings made by legal aid reductions. Ironically, reforms aimed at efficiency lead to inefficiencies and impede access to justice.

The information and support provided to LiPs by Personal Support Units is invaluable, in addition to their important role in signposting parties to mediation. We have obvious concerns about fairness when only one party is represented. These concerns are compounded when there are allegations of domestic abuse. It must surely never be the case that alleged abusers can put questions directly to potential victims.

Malcolm Richardson JP
Chairman-Elect
The Magistrates' Association

Napo and PCS: LASPO has caused chaos in our justice system

The government is aiming to cut the legal aid budget by £220m annually until 2018. These cuts are leading to chaos in our courts as people attempt to represent themselves. Both PCS and Napo warned of the inevitability of such chaos if these cuts were made. The changes in relation to family courts have not made proceedings more efficient or cheaper. They are prolonging them and we believe actually costing the taxpayer more.

People without a lawyer, known as litigants in person, have increased considerably since civil legal aid cuts came into force in April 2013.

In February 2015 the Public Accounts Committee reported that there had been a 30% rise in the number of cases starting in family courts in which both parties were representing themselves, and the number of contested family cases reaching the courts rose from 64% in the three months before the reforms to 89% a year later.

We can only guess at how many potential litigants in person simply feel unable to try and access justice alone.

It is estimated that 68,000 children a year

are affected by legal aid being removed for family contact and finance disputes.

Legal Aid is only available if there is evidence of domestic abuse or child abuse in the last two years. A very high and bureaucratic threshold has been set for demonstrating evidence. It requires written proof. This not only comes at a financial cost for example £50 on average for a GP's letter, but a cost in terms of delay in accessing justice. Many victims cannot afford such fees to prove that they are exempt. Many don't even have access to money or to the necessary proof, often as part of the abuse. To break free and survive domestic violence you need support, not bureaucratic obstacles. Those who cannot prove eligibility for legal aid face cross examination by the perpetrator, a continuation of the abuse.

Before the cuts lawyers were more likely to be present in family cases to encourage clients to seek mediation and agree arrangements, resolving some cases whilst the court heard others. Our greatest concern for children is where cases are contested; this causes parents, who with a little help from a lawyer would have reached agreement, to spend hours saying things in evidence about each other that will make it more difficult for

them to communicate amicably about their children in the future.

Court staff are noticing that proceedings are taking substantially longer and that litigants in person are less child focussed in their approach. Aggression towards court staff is rising as parties struggle to engage with a system that they don't understand.

It also means higher workloads for already hard-pressed court and Cafcass staff. The Child Arrangements Programme introduced complex orders which must be completed by a Legal Adviser or District Judge in each case where there is no lawyer. This takes further court time in addition to identifying the issues and trying to broker agreements.

Litigants in person struggle to know what is and what is not relevant to tell the court. They often don't know what the court can and cannot do. Time is either wasted explaining this or allowing the party to tell the court as it is quicker in the long run. Courts have to be mindful that if they intervene or appear to intervene too often to stop a party speaking or to move them on, it can create a perception in the eyes of the party that they are not receiving a fair hearing.

Cafcass officers who work in Early Intervention Teams (EIT) are spending longer clarifying expectations, identifying legal baselines or explaining the court process. Those who work within Work After First Hearing (WAFH) teams have also experienced increased workloads. They are spending more time clarifying roles and court process. Interviews with parties are taking longer. Parents with low literacy levels are least likely to be able to afford a solicitor but find it harder to cope with being litigants in person.

The number of private law family cases listed for their first hearing has been reduced by a third in some courts because of the additional time taken by cases involving litigants in person. Courts used to be able to block-list two or three private law applications at the same time, safe in the knowledge that in most cases, negotiations between the parties' lawyers would result in an agreement, freeing up court time. This can no longer happen.

Court delays not only cost the taxpayer money but more importantly, are not in the best interests of children, children whose welfare the courts should be safeguarding.

Family law on the front line – what do the lawyers say?

Simpson Millar LLP is a national law firm with over 150 years of successfully representing the rights of individuals and their families in the UK. We focus on the impact of LASPO on the front line and our concerns about proposed court closure.

Legal Aid and access to justice

Legal Aid has left a black hole in the family legal process. Clients are not eligible for legal aid to secure advice and representation to resolve their family problems unless they are survivors of domestic violence (which requires evidence unobtainable for many) or the local authority have issued care proceedings.

So what is the legal profession doing to fill that hole and maintain access to justice?

According to Justice Secretary Michael Gove ‘wealthy lawyers’ should do more free work for the justice system.’ He says that the legal profession needs to ‘help protect access to justice for all’

At Simpson Millar we have carried out a study to determine how many hours on

average per week our family law lawyers work for free. We have discovered that on average each of our lawyers delivers 55mins of non-chargeable legal advice to customers and enquirers per day. Taking account of our part time lawyers, across the country the Simpson Millar family team delivers approx 23.8 hours of free legal advice to the general public every working day. We have now launched our ‘Access to Justice’ service with reduced hourly rates for those who would historically have been eligible for legal aid on a means basis and we have launched fixed fee services and unbundled services to achieve transparency and affordable services to all going forwards.

Is that enough to protect access to justice for all and can we stay in business?

At Simpson Millar we can stay in business despite the challenges in family law by virtue of the fact that we are a large firm offering services across every legal discipline and we can achieve efficiencies of scale. Small firms are struggling and going out of business every day. Lawyers cannot fill the gap more than they are doing and in the interim we continue to turn clients away because even our reduced price services are out of reach. We are still turning away on a month to

month basis more than 50% of enquirers who pre-LASPO would have secured legal aid. We estimate we turn away more than 50 legitimate vulnerable enquirers each month who we would previously have represented.

Increasing Court Closures

The MOJ has released proposals to shut down numerous Courts across England and Wales. The government is consulting on plans to close 91 courts and tribunals in England and Wales. The fear is that the closures will subsequently add further pressure upon any remaining Courts and subsequently will cause a ripple effect of consequences for both professionals and public alike.

Courts under threat include 57 magistrates’ courts, 19 county courts, two crown courts, four tribunal hearing centres and nine combined courts. Her Majesty’s Courts and Tribunals Service operates 460 courts and tribunal hearing centres.

So what are the anticipated consequences?

1) Access to Justice: With cuts to legal aid limiting accessibility to Lawyers for those suffering genuine financial hardship, the court counters

are one of the few places members of the public can go to get help and direction for their legal problems. Court closures widen that black hole left by LASPO, furthermore, issuing court cases and attending before the judiciary will become ever harder because of travel limitations and restrictions faced by many.

2) Accessibility: Court closures will mean that the vulnerable public will have to travel out of their local areas to sometimes very unfamiliar surroundings to a Court quite some distance away if their ‘local’ services have now been combined into centralised systems. Financial hardship makes this unaffordable. The elderly, sick and vulnerable are simply not fit enough to travel.

3) Cost: Because of the increase in litigants in person, court resources are already exhausted. How will they cope? It is clear the savings made from the court closures are not being redirected to the remaining courts to empower them to increase their staffing and extend their services.

Family justice – what next?

With professionals from across the family justice sector highlighting the immense failings of the governments' reforms of legal aid, the Family Courts Unions Parliamentary Group have welcomed the announcement of the new Labour Leader and group supporter Jeremy Corbyn MP that Labour will launch their own review regarding the impact of LASPO.

The FCUPG have long warned parliamentarians, from all parties, that the most vulnerable in society will lose their access to justice through these draconian reforms with children and families going through care and divorce proceedings as well as cases involving domestic abuse being the most likely to lose out.

We are therefore calling on all parliamentarians to:

- **Demand the government halts any further cuts to the legal aid budget in order for a full and independent review to be carried out regarding the impact of LASPO**
- **Meet with family court legal advisors, solicitors and Cafacss officers to discuss the growing crisis in the family justice system**
- **Commit to the continued funding of the National Association of Child Contact Centres to ensure safe and secure environments for families to engage in contact.**

napo



Simpson Millar^{LLP}
Solicitors

