



Association of **Lawyers for Children**
Promoting justice for children and young people

Statement of the Association of Lawyers for Children: Government's Post-implementation review of LASPO

1. On 7.2.19 The Government released its long-awaited Post-implementation review (PIR) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO"). The [PIR of Part 1 of LASPO](#) deals with civil and family legal aid and the Government's action plan to deliver better support to people experiencing legal problems is set out in '[Legal Support: The Way Ahead](#)'.
2. The Association of Lawyers for Children (ALC) is a concerned stakeholder in relation to policy-making and the delivery of legal aid funded services and other support to children and family members who are involved in the family justice system, or who are involved in family disputes which involve children.
3. The ALC welcomes the publication of the PIR and the action plan. It is clear that much work lays ahead and the ALC looks forward to contributing to any reforms aimed at providing better support to those in need of legal services. However, we are clear that no matter how well-intentioned alternative forms of support may be, there are a significant number of people in society who require legal advice, support and representation, whether or not other forms of support are provided in alongside legal services. The ALC believes that where such legal services are required, legal aid should be made available. That goal aims to prevent a situation which is increasingly prevalent: where access to justice becomes the preserve of those who can afford to purchase legal services on a privately paying basis.

What we are pleased to see

4. There is much to be commended in the Government's action plan. In particular, the ALC welcomes the following proposals.
 - a) There will be a comprehensive review of legal aid eligibility¹. The ALC supports this because we are aware that for many people who have a legal issue which is within scope of the legal aid regime, they may not qualify for legal aid funded services because they fail the financial eligibility tests – this is the case even where they are on a low income and are financially struggling.

¹ Action plan, p. 11. To be completed by Summer 2020.

- b) Parents and those with parental responsibility (PR) will be able to apply for non-means tested legal aid funded services where they wish to oppose applications for placement orders or adoption orders in public family law proceedings².
- c) For parents or those with PR who wish to oppose applications for placement orders or adoption orders, the Government says: *[i]n both these cases we will also bring forward proposals to provide a less stringent merits test, equivalent to the merits test currently applicable in 'Special Children Act 1989 cases'.* The current merits test³ for Special Children Act 1989 cases (typically care and supervision order proceedings) requires the parent or person with PR to satisfy the requirement that there is a need for representation. In the ALC's experience, this usually only relates to whether parents need separate representation, which is satisfied in most cases given the potential for conflict between parents. Typically, therefore legal aid services for care and supervision proceedings are considered to be non-merits and non-means tested.

The Government says that an equivalent merits test will be applied to parents or those with PR who wish to oppose applications for placement orders or adoption orders. This proposed change taken together with the proposal above at [b] for non-means testing would see all parents and those with PR effectively being afforded non-means and non-merits tested legal aid services to oppose applications for a placement order (where those applications are not joined to current care proceedings⁴) and applications for an adoption order. The ALC believes that challenging the making of an adoption order can be complex and requires specialist legal advice and representation. We are pleased to see that the Government appears to recognise these challenges although we would welcome the opportunity to work with the Government on formulating the detail of the proposal.

- d) Although our members do not typically practice in immigration and asylum law proceedings we are pleased to note that scope changes will be made to include separated migrant children in immigration cases⁵.

² Action plan, p. 11. Subject to Parliamentary approval it is hoped that the proposals will be in place by Summer 2019.

³ See § 10.16 of the [Lord Chancellor's Guidance under s. 4 of the LASPO Act 2012](#), January 2018: *"These cases are defined in Regulation 2 of the Merits Regulations and the criteria set out in Regulation 65 will apply. Children, parents and those with parental responsibility in certain proceedings will be granted funding without reference to means or prospects of success. However, Merits Regulations 39(e) (the need for representation) applies. This is particularly relevant to ensure that parties are not unnecessarily separately represented. It would usually be expected that children who are the subject of the proceedings would each be represented by the same solicitor."*

⁴ Where an application for a placement order is made within the currency of live care proceedings, the legal aid provision already in place for the care proceedings will cover the placement order aspect although providers will need to amend the scope of the legal aid certificate – this is however, a procedural step.

⁵ Action plan, p. 13.

- e) That legal aid scope will be expanded to cover proceedings for special guardianship orders (SGOs)⁶. Although the Government's action plan is silent as to the detail, we expect and trust that the scope changes will cover both applicants (usually friends and family members) as well as respondents (parents of and those with PR for the subject child). The Government recognises that: *“Ordinary care proceedings are in scope of LASPO, but SGOs are not unless there is risk of abuse to the child, despite the fact that such orders are often made as an alternative to care orders or adoption orders. We will bring forward proposals to change this.”* (our emphasis). It is essential therefore that scope changes ensure that legal aid is available to both applicants and respondents – this is necessary if legal aid provision for SGO proceedings is to be aligned as closely as possible to the legal aid position for care proceedings.

What we are still concerned about

5. We believe that there is still more that can be done. The following remain priorities for consideration.

- a) There are a vast number of parents who are struggling to settle on suitable arrangements for their children. The ALC supports the principle that not all these situations require court-based interventions and some disputes may stand a better chance of speedier and more effective resolution through alternatives to court. Lawyers have a role in assisting parents to consider other methods of dispute resolution. The PIR acknowledges this as well as the fact that referrals to family mediation services have plummeted since the introduction of LASPO where the cuts to private family law legal aid were severe. § 610 of the PIR explains: *“Whilst the volume of publicly funded mediation was expected to increase, it has actually declined, largely because of the removal of funding for legal aid providers to refer clients towards mediation.”*

The ALC believes early legal advice (funded by legal aid for those who are financially eligible) is integral to the endeavour of encouraging parents to consider and participate in alternative dispute resolution, such as mediation. Lawyers can also assist in negotiating and settling arrangements so that parents do not need to take their disputes to court. We would like to see legal aid being made available to cover early legal advice.

The action plan states that: *“We will continue to work with The Law Society to explore an alternative model for family legal aid.”*⁷ We assume that this is in relation to private family legal aid. The ALC would wish to work with the Government and other stakeholders in the exploration of options to assist those who are caught by the scope cuts in private family law and are left with little or no legal advice and assistance.

⁶ Action plan, p. 13. By Autumn 2019.

⁷ Action plan, p. 13.

- b) Expert evidence is often crucial in children proceedings and relied upon to assist the parties and the court; yet there is a decreasing number of experts who are willing to undertake this work. While it is unlikely that legal aid is the sole contributor to this problem, the ALC believes that cuts to the remuneration of experts does have a role to play. We are aware that the President of the Family Division is concerned about the reported shortage of medical experts and has established an Experts Working Group to consider the issue. We hope that the Government will be open to considering any proposals made by that working group to improve the current situation.

There are a number of related issues concerning experts and suppliers which we hope the Government and the Legal Aid Agency (LAA) will work with us to address. These issues are:

- Transparency around experts who have agreed (or not) to codified rates as this will aid providers when engaged in identifying experts to instruct.
 - Addressing the gap between rates payable to interpreters by the LAA and what is paid by HMCTS.
 - Translation of documents (within proceedings) for clients – which continues to vex providers.
- c) Although some positive steps have been taken already, the ALC remains concerned that those who have suffered domestic abuse or who have children who have experienced child abuse still struggle to obtain evidence of this to satisfy the Government's requirements. That evidence is mandatory before legal aid funded advice can be provided to those who have a private family law matter which is in scope of legal aid and who are financially eligible. This is a real barrier for vulnerable people. The ALC would wish to see further relaxation of the very stringent requirements.
- d) The ALC would wish to see enhanced use of and improved funding for providers who are advising and assisting clients involved in the pre-proceedings process.
- e) Consideration should be given to extending non-means and non-merits tested legal aid to cover private law cases where the court has made an interim care or supervision order in conjunction with a section 37 direction.
- f) Similarly, we believe that non-means and non-merits tested legal aid should be available to parents and persons with PR where an application is made by a local authority to extend the duration of a supervision order.
6. The Government's action plan is a step in the right direction. The ALC is keen to understand the detail of the various proposals and hopes that it will be invited to participate with other key stakeholders in the continuing work that is clearly still required.

27.2.19

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