

JUSTICE WEEK 2020 ESSAY COMPETITION

“What is the biggest threat to UK justice in 2020 and what can be done to remedy this?”



Legal Aid Cuts: A Threat to Family Justice

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Writing for the Sunday Telegraph, Vice Chairman of the Conservative and Unionist Party, Ranil Jayawardena, M.P., declared 'It's time to put families at the heart of politics again'¹, explaining that it was now The Conservatives' 'mission' to ensure that core principles and 'values of family and opportunity are the foundation of this people's government'. Of course few would refute the importance of HM Government supporting and encouraging families, but, if this so-called 'people's government' is to get serious about translating Boris Johnson's 'vision that Britain should be the greatest place in the world to live and start a family' into policy and legislation, Conservatives must take a second look at legal aid.

In 2009, David Cameron told the Conservative Party Conference: 'If we win this election, it is going to be tough. There will have to be cutbacks in public spending, and that will be painful'². Upon winning said election in 2010, Mr Cameron's sentiments that 'we're all in this together' failed to materialise in 2012 as Parliament passed the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). Despite reassurance from, acting Minister of State for Justice, The Lord McNally that 'where children are involved, legal aid will still be provided', the Ministry of Justice would later estimate that around 75,000 children and young people would no longer have access to legal aid³.

The family justice system is charged with helping families avoid and resolve disputes. This is an essential protection for children caught in the middle of family disputes, minimising the disruption to a child's development and damage to their mental health that can be inflicted by hostility and friction within their own family⁴. The family courts must be accessible to families to ensure a level playing field is maintained and the right

¹ Ranil Jayawardena, 'It's time to put families at the heart of politics again' *The Telegraph* (8 February 2020) <<https://www.telegraph.co.uk/politics/2020/02/08/time-put-families-heart-politics/>> accessed 9 February 2020

² Speech from David Cameron to The Conservative Party Conference (Manchester, 08 October 2009)

³ The Law Society, 'ACCESS DENIED? LASPO four years on: a Law Society review', (The Law Society of England and Wales June 2017)

⁴ Family Court Unions Parliamentary Group, 'The impact of legal aid cuts of Family Justice' (April 2014) <<https://www.napo.org.uk/sites/default/files/The%20Impact%20of%20Legal%20Aid%20Cuts%20on%20Family%20Justice.pdf>>

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choices are made for both children and parents. However, The idea of a level playing field in family law has been diminished, as in 2017 it was recorded that only 20 percent of family law cases involved two litigants with professional representation. LAPSO has left parents - many of which are struggling to deal with the stress and mental anguish of divorce and child custody proceedings - alone and without direction to navigate a complex legal system which would otherwise be navigated by experienced legal professionals.⁵

Between 2010 and 2018, the number of people accessing legal aid in family matters has fallen by 88%. This has led to many litigants dropping their cases as they simply do not have the time, money or level of expertise in matters of family law to continue their fight. Whilst the courts themselves have been accessible, justice has not as without representation parties remain on the back foot, especially in cases where only one party has no legal representation. In too many circumstances, LAPSO has effectively forced parents to give up their legal battles to gain custody of their children.

It is unreasonable to expect litigants that are unfamiliar with the specialist vocabulary of legal proceedings, unskilled in advocacy and unable to effectively test and present evidence to act as an objective legal advocate in their own case which they are emotionally attached to. All this serves to do is further complicate matters between the two disputing parties creating a hostile and unstable environment within the family.

In remedy to this, HM Government can implement two solutions: a) review the reforms to legal aid made in 2012, in light of the damage it has caused to access to justice; and b) support and drive forward legal education initiatives helping the public to better understand the justice system and their own legal rights.

The Ministry of Justice, in 2010, controlled a £10.9 billion budget⁶, £2.5 billion of which was dedicated to legal aid. By 2019, legal aid spending had been reduced to £1.6 billion⁷. This has had a detrimental effect on access to justice for families in the UK. Whilst there is no doubt that proposed policies such as increases to the child care allowance and advancing the marriage tax allowance further will support families financially, HM Government must also recognise that when families fall into difficult times and begin to drift apart, or worse (when physical and mental abuse are present)

⁵ Amelia Hill, 'How legal aid cuts filled family courts with bewildered litigants' *The Guardian* (26 December 2018) <<https://www.theguardian.com/law/2018/dec/26/how-legal-aid-cuts-filled-family-courts-with-bewildered-litigants>> accessed 14 February 2020

⁶ Jane Croft and Barney Thompson, 'Justice for all? Inside the legal aid crisis' *Financial Times* (27 September 2018) <<https://www.ft.com/content/894b8174-c120-11e8-8d55-54197280d3f7>> accessed 14 February 2020

⁷ Owen Bowcott, 'The Society Interview - Lord McNally: "We had to cut legal aid. It's not a bottomless pit"' *The Guardian* <<https://www.theguardian.com/society/2019/jan/30/lord-mcnally-cut-legal-aid-mps-justice-system>> accessed 12 February 2020

these matters must be addressed fairly, effectively and with due process, as well as, ensuring any children or vulnerable people involved are kept safe. By reviewing the 2012 reforms, HM Government can identify areas these cuts have failed and fill in the gaps where justice has become inaccessible to so many

Finally, HM Government should seek to offset the damage caused by expanding legal education across the UK. With a basic understanding of legal procedure and the rights of the individual, litigants in person will at least have some understanding of how to represent themselves instead of firing from the hip, blindfolded. Further, this has the potential to inform individuals involved in a family dispute of the most cost effective options available to them and where best to seek legal advice and remedy. Simply by knowing where to start will make navigating the legal process much easier, for those affected by reforms to legal aid.

Bibliography

Amelia Hill, 'How legal aid cuts filled family courts with bewildered litigants' *The Guardian* (26 December 2018) <<https://www.theguardian.com/law/2018/dec/26/how-legal-aid-cuts-filled-family-courts-with-bewildered-litigants>>

David Cameron, 'Party Leader's Speech', The Conservative Party Conference, 08 October 2009, Manchester

Family Court Unions Parliamentary Group, 'The impact of legal aid cuts of Family Justice' (April 2014) <<https://www.napo.org.uk/sites/default/files/The%20Impact%20of%20Legal%20Aid%20Cuts%20on%20Family%20Justice.pdf>>

Jane Croft and Barney Thompson, 'Justice for all? Inside the legal aid crisis' *Financial Times* (27 September 2018) <<https://www.ft.com/content/894b8174-c120-11e8-8d55-54197280d3f7>>

Owen Bowcott, 'The Society Interview - Lord McNally: "We had to cut legal aid. It's not a bottomless pit"' *The Guardian* <<https://www.theguardian.com/society/2019/jan/30/lord-mcnally-cut-legal-aid-mps-justice-system>>

Ranil Jayawardena, 'It's time to put families at the heart of politics again' *The Telegraph* (8 February 2020) <<https://www.telegraph.co.uk/politics/2020/02/08/time-put-families-heart-politics/>>

The Law Society, 'ACCESS DENIED? LASPO four years on: a Law Society review' (The Law Society of England and Wales June 2017)