

## The Legal Aid, Sentencing and Punishment of Offenders Bill (LASPO) A Briefing from Resolution

### About Resolution

Resolution, which was formerly known as the Solicitors Family Law Association (SFLA), is an organisation of 6000 members who believe in a constructive, non-confrontational approach to family law matters. Resolution also campaigns for improvements to the family justice system. Resolution supports the development of family lawyers, mediators and collaborative lawyers through its national and regional training programmes, through publications and good practice guides and through its accreditation schemes.

### Resolution and LASPO

- Resolution is extremely concerned that many of the proposals outlined in LASPO will reduce access to justice for the poorest and most vulnerable in society; will lead to children losing contact with their parents and could cost the government more than they save. The proposals will disproportionately affect women and those who have been abused.
- Legal aid gives many people the resources they need to take responsibility for their lives after divorce, without unnecessary reliance on state-provided services. Taking away their access to justice could have a vast effect on individuals' lives and increase government expenditure.
- Family law is complicated, and families need tailored legal advice specific to their circumstances. Ignorance of legal rights breeds fear and can lead to unsustainable or unsafe agreements that may break down and place a greater burden on the family justice system.
- The cuts will affect large sections of society:
  - 600,000 people will be impacted by the changes in scope across family and civil legal aid<sup>i</sup>.
  - 210,000 fewer private family law cases will qualify for Legal Help<sup>i</sup>
  - 45,000 fewer private family cases will qualify for Legal Representation<sup>i</sup>
  - 68,000 children will be affected by legal aid being removed for family contact and finance disputes<sup>ii</sup>
  - The proposals will affect the very poorest. 95% of those in receipt of civil and family legal help are in the bottom two income quintiles<sup>i</sup>

### The costs of the Bill

- The current proposals may shift spending around government rather than save money, and could even increase total costs. The Citizens Advice Bureau estimates that in some circumstances, every £1 of legal aid spending can save over £8 of state spending elsewhere.
- Reducing family legal aid provision will lead to more people representing themselves in family courts as litigants in person. This would increase delays in the already overburdened family court system and raise administrative costs.

- Costs may also be transferred to other state-funded services such as social housing and the benefit system, if inadequate and unfair settlements are agreed by those without legal advice.

The Ministry of Justice could recoup much of the cost of legal aid through taking account of and extending the statutory charge. The statutory charge is currently used to recover legal aid funding in financial matters. The Bill misses an opportunity to extend this to other family cases, e.g. injunction and private law children matters, where the legally aided person has assets such as a property with equity, or to the costs of mediation. The resulting income could be used to preserve funding for those most in need.

### **Impact on families and children**

- Many parents rely on legal aid to help them to continue their relationship with their children after separation. Under the new proposals, if their partner refuses to mediate, they may have to walk away or struggle through the court system on their own.
- Many of these children may lose contact with their parents. This contradicts the Government's stated aim of ensuring that both parents are actively involved in their children's upbringing.
- The parents of thousands more children will find it difficult to secure a fair financial deal from their former partner impacting on the upbringing of their children, potentially plunging them into poverty or a reliance on the welfare system.

### **Domestic violence**

- Many victims of domestic violence will be denied legal assistance because the definition of domestic abuse and the circumstances proposed by the Government as evidence of domestic abuse are too narrow. This will increase delays, costs and the emotional trauma for the victim and their family.
- The Bill also leaves a number of crucial areas unresolved, including the full list of circumstances that would allow for the granting of legal aid to victims of domestic violence. We are concerned that this approach does not provide adequate protection for those issuing private family law proceedings after separation or reflect family situations where domestic violence is a real and ongoing issue.
- If legal aid is not available, victims of domestic abuse may be forced to cross-examine or be cross-examined by their abusers in substantive children and finance matters. Similarly, children alleging abuse would be at risk of being cross examined by their alleged abuser. Vulnerable women and children should not be forced into this situation.
- It is possible that a mediator may assess a case as unsuitable for mediation due to domestic abuse issues that fall outside the narrow circumstances seen by the government as evidence justifying legal aid. This would leave victims and their families with no recourse to assistance.

### **Alternatives to court action**

- Currently 90% of separating parents make their own contact and parenting arrangements and family lawyers, particularly Resolution members whose Code of Conduct promotes a non-adversarial approach, play a key role in this. Many of these couples use family

lawyers, who can provide information and advice to show them that litigation is not always the most appropriate solution.

- Mediation will continue to receive legal aid funding. This is extremely welcome and important, but mediation is not suitable for all cases. There needs to be funding for cases where mediation is unsuitable, and for other alternatives to court such as collaborative law where clients and their legal advisers all meet to seek to settle cases quickly and efficiently out of court.

### **Abducted children**

- If a child has been abducted within the UK, the vast majority of parents will not be able to access legal aid. It is unreasonable to expect parents to go through this distressing experience on their own.
- International abduction often occurs after abduction within the UK. Although legal aid will be available for cases of international abduction, at this point a lengthy, expensive and traumatic situation will have arisen, which could have been avoided by swift intervention in the UK.

### **Resolution's recommendations**

Resolution makes the following recommendations to improve the Legal Aid, Sentencing and Punishment of Offenders Bill.

- Legal aid should be made available in private family law proceedings in defined circumstances where mediation is unsuitable or it has been tried and found to be unsuccessful.
- The door should be left open to public funding for other dispute resolution services in family cases. Legal aid should be made available for collaborative family law as well as for mediation. This will help couples to resolve disputes without recourse to the family courts.
- The definition of domestic violence should be aligned with that used by the Association of Chief Police Officers and across government to ensure that victims involved in private family law cases are protected.
- Abduction of a child within the UK should be treated in the same manner as international abductions to ensure that more serious situations do not develop. Legal aid should be available for a parent faced with the removal of their child to another part of the country.
- People seeking the new interim lump sum from their former partners to pay for legal representation to resolve financial issues after separation should be given legal aid to help them to do so.

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i Ministry of Justice Impact Assessment

<http://www.justice.gov.uk/downloads/consultations/annex-a-scope.pdf>

ii Sound off for Justice, Not Seen and Not Heard, p6 [http://soundoffforjustice.org/Not%20Seen%20&%20Not%20Heard\\_SOFJ%20&%20JustRights.pdf](http://soundoffforjustice.org/Not%20Seen%20&%20Not%20Heard_SOFJ%20&%20JustRights.pdf)