



Unite's response to the Ministry of Justice Consultation on the Future of Legal Aid - February 2011

This response is submitted by Unite the Union, the UK's largest trade union with members across the private and public sectors. The union's members work in a range of sectors including manufacturing, financial services, print, media, construction, local government, education, health and not for profit. Unite represents 60,000 employees in the Community Youth and Not for Profit / Third Sector.

1. Background & Introductory Comments

- 1.1. Unite welcomes the opportunity to provide input into this debate and to provide additional oral evidence if necessary.
- 1.2. Unite the Union represents a significant number of members who work in agencies providing legal aid, including CABx, Law Centres, Shelter, independent advice agencies and private practice.
- 1.3. Additionally, most of the union's members have an interest in legal aid, as they may need to rely on these services themselves, or have family members who rely on them. As unemployment rises, we anticipate that the number of people both eligible for and needing legal aid will increase, and we believe that a well run legal aid service is essential to protect low income individuals from illegal acts, and to protect their basic legal rights.
- 1.4. This response focuses on the concerns of members working in the not for profit sector, and does not cover all the issues being consulted on. We do not have large numbers of members working extensively in criminal or family work, therefore our focus is on the proposals for civil legal aid.
- 1.5. We welcome the commitment in the ministerial foreword to protecting access to justice – however, we believe that the proposals as set out would destroy access to justice for some of the most vulnerable people in our society. We very much hope that the Ministry of Justice will reconsider and will ensure that civil legal aid continues to provide a much needed lifeline for people.

2. Importance of Network of Provision

- 2.1. Much legal help work being carried out under the current scheme already prevents unnecessary litigation – without this income stream, we anticipate that many cases which could have been resolved via negotiation will end up in court. The numbers of

people helped are higher than LSC data shows – most nfp and legal aid practices will provide some initial telephone or face to face diagnostic work at no cost to the public purse – if those agencies do not exist, clients will either be denied access to any independent legal advice entirely, or the costs will have to be picked up elsewhere, defeating the intention of saving money.

- 2.2. We note that MoJ wishes to avoid unnecessary litigation and to encourage clients to take responsibility for resolving issues and to use alternative sources of assistance. Unite represents members across the not for profit sector (including a range of CABx, Law Centres and independent advice agencies). In many cases, we are the only source of assistance that people have found, and many of our clients have already made significant efforts to resolve the issue themselves. Where they have not been able to do so, the reasons are often linked to mental health problems and/or issues related to basic skills, which mean that they would not be able to resolve the problem without support.
- 2.3. Many of our members' clients are seeking assistance with the very basics of existence – for example, their benefits have stopped, or they are at risk of eviction. They may be at risk of losing their job, or have a child who is not in school. They may be being pressurised in relation to complex debt matters, some of which they may not legally be liable for. Alternatively, they may have issues in relation to their immigration status which prevent them from living as full citizens in their local community. They are usually seeking to restore the former status quo, rather than looking for compensation, and in many cases their legal problem has arisen as a result of an error by a statutory agency, or illegal action by an employer or landlord. These are cases which require a specialist legal input, both to determine whether there is a legal issue at stake and, if so, whether the circumstances of the particular case mean that it has merit. Most of our members are faced with extremely high levels of demand, and do not run cases unless they believe that this is a good use of their time – for every person that they are able to assist, there will be others who are turned away due to lack of capacity. We would make the point that levels of demand for specialist advice services are at an all time high, and that most agencies are facing a dramatic drop in income as local authorities are under no statutory obligation to fund this work, and are making large cuts, and trusts and charitable funders are seeing significant drops in investment income and increased numbers of applications for funding.
- 2.4. We would also ask the MoJ to note that the current funding arrangements allow charities and similar civil society agencies to maximise the impact of several different funding streams to provide a holistic service to communities. For example, a client may be able to access legal aid for a housing matter, but receive pro bono assistance for a small grant application to help with essential furniture or clothing for their children. This leads to economies of scale, and opportunities for volunteers to contribute effectively to advice services. However, if the proposals were implemented, we are concerned that a number of advice agencies would close, and that the total resources for advice and legal help would drop disproportionately. This would have a profound impact and dramatically reduce access to justice.

3. Eligibility

- 3.1. We are concerned at further changes in eligibility – the current system is already very heavily means tested, meaning that people who are working but are on low incomes are often excluded, and further changes will add to the amount of time and money spent on administration and increase the potential for confusion amongst

potential clients as to whether they are eligible. A number of people cannot access capital in their homes, and will simply be excluded from the scheme. We are aware that the complexity of the current scheme has led to errors and that this has added to the audit and related costs of the LSC and we would favour at least retaining the current eligibility criteria.

- 3.2. We do not support the removal of the current capital passporting arrangements – we are concerned that this will feel very unfair to low income potential clients and that it will involve providers in significant amounts of additional work, much of it unnecessary as the client will not in fact have significant amounts of capital.
- 3.3. Many of our members work in agencies that do not charge users for their services – in a number of cases this is written into their constitution. The requirement to collect £100 from certain clients will lead to constitutional difficulties. It will also lead to significant additional operating costs – not only in administration, banking and accountancy, but also in terms of cash handling and health and safety for front line staff and volunteers. For some agencies, the additional costs will require a significant upfront investment that they will not be able to meet, and as this will not be additional income for the provider, it will force some agencies out of business.
- 3.4. Many charities work with the most excluded and vulnerable clients, and a number of clients present as destitute. Agencies will be in a very difficult position in terms of the conflict between their aims and objectives and the need to take tough business decisions in relation to the credit worthiness of their clients, and we do not think that this is a reasonable burden to place on providers.

4. Reduction in Civil Fees

- 4.1. We are opposed to the proposed reduction in civil fees by 10%. We believe that the current fee structure already creates perverse incentives which do not reward providers who take on the most vulnerable clients, and that the rates do not reflect the real costs of delivering the service. We know that a significant number of providers have already closed down, or withdrawn from legal aid, and we are concerned that a 10% cut on rates which were last raised in 2008 will lead to the unplanned closure of good quality providers. The fee rise in 2008 was the first for some time, and legal aid providers have therefore already seen a significant reduction in real income. There are real costs associated with files having to move from one provider to another, and the impact of this will be to create further gaps in provision, with no strategic decisions about priority. We also think that there will be a disproportionate impact in areas where it is expensive to deliver services, such as London and the South East. As the fixed fee is applied on a national basis, a reduction of 10% would mean that many agencies would be trying to deliver high quality legal aid services with skilled and experienced lawyers at rates which are lower than those used by most private sector companies providing basic office services such as IT or maintenance. We believe that this is not within the spirit of the Compact, which commits government to realistic funding levels for services provided by the voluntary sector.

5. Telephone gateway

- 5.1. We do not agree that there should be a single telephone gateway to access civil legal aid – we are aware that many clients simply do not have access to a telephone

with credit and that others have difficulty making themselves understood clearly over the telephone – either because they are not fluent in spoken English, or because they have a communication difficulty or learning difficulty.

- 5.2. Others need someone to read documents for them as they may not be able to read English or may have literacy issues. It is recognised that there is a significant problem around basic skills for a high percentage of people who are not working, and therefore a number of them require a face to face service.
- 5.3. Additionally, clients with substantial mental health issues or language barriers may only access a service with the support of someone who can provide encouragement and give the person confidence to get help.
- 5.4. We regret the loss of the “Level One” provisions which used to apply under the old Not-for-Profit contracts that the LSC had with eg CABx, Law Centres and independent advice agencies. These allowed quick initial advice, with minimal bureaucracy, funded by the LSC. In the event that it became clear that a client could not communicate easily over the phone, or if they had an urgent problem, they could then be seen by the same person, reducing the amount of time and money that needed to be spent, and preventing the client from having to explain their situation a second time. We know that there are real difficulties for national telephone services in providing effective signposting to local agencies, as they are often not aware of eligibility criteria, capacity, or transport routes. We are aware that many providers currently receive enquiries which are completely inappropriate as a result of contact with national telephone provision. We consider that a national telephone gateway would exclude significant numbers of people who desperately need assistance.
- 5.5. We do not agree that in some areas of law, the majority of cases could be dealt with via a telephone based service. We believe that this will target resources away from those people least able to resolve their matter without skilled intervention, and towards people who have less complex problems, and are better able to advocate on their own behalf. We see value in a telephone based service for some clients, but we believe that this should be complemented by direct access to face to face provision for those people who require it.
- 5.6. We are concerned that, if there is only a tiny residual face to face service, this will be economically unviable over time, and that clients will then not be able to access skilled advisors with experience in working with clients who may face particular difficulty in giving instruction.
- 5.7. We believe that vulnerability, particular access needs, literacy and fluency in English, should form some of the criteria for deciding whether face to face provision is required, but we also believe that it is important that other factors are taken into account, including the complexity of the case, the number of documents involved, and an element of client choice. We are not convinced that it is always cheaper and more cost effective to provide telephone based services rather than face to face services, as the latter can sometimes assist the client in getting to the heart of the matter and giving clear instructions more rapidly and can ensure the best use of the lawyer’s time.
- 5.8. We note that impact assessments on current levels of satisfaction with telephone based services are based on a self-selecting sample, as many people are able to access face to face services at present, and we think that much more work needs to be done to understand the major impact that this proposal would have, and in particular on the equalities implications.

6. Scope

- 6.1. We do not agree with the proposals to reduce scope in civil legal aid matters. We are concerned that this will lead to a lack of preventative work and an increase in crisis work – for example, in challenging contested debt cases, a client can be put into a position whereby they can meet their ongoing housing costs, and become debt free. If agencies can only assist clients once their home is at stake, there will be significantly more stress on the client's household (with associated physical and mental health problems) as well as costs to the landlord. This does not represent best value for public money.
- 6.2. The changes to the benefits system are wide ranging and complex. Additionally, the rise in unemployment means that many people are claiming benefits for the first time in their working lives, and will be unfamiliar with what to do if their benefits end unexpectedly. It is likely that there will be errors made in the administration of benefits, and that people will need expert assistance in challenging these. There is a strong correlation between the needs of target groups such as children and pensioners, and benefits casework and we believe that this work should be retained.
- 6.3. We are strongly of the view that education, employment and immigration law should also remain in scope – the issues at stake for clients are often huge, and will impact on them for the rest of their lives. Again, we feel that there would be relatively small savings to the MoJ, but huge additional costs to other parts of government.
- 6.4. For example, the parents of disabled children often face very real barriers to involvement in community life – ensuring that their child is receiving an appropriate education at an early stage can not only transform the child's long term ability to take up education and training opportunities, but also enable the parent to become economically active.
- 6.5. Employment clients are often assisted to stay in work – the cost of the fixed fee in this area of work is likely to be less than one week's benefit costs, and if the client has a family, this not only gives rise to a significant saving in benefits, but also has a long term impact on child poverty.
- 6.6. Many immigration clients have established family lives in the UK and are contributing to the local economy and are long term tax payers. We think that there are significant issues around social cohesion if clients are not able to access assistance and we would strongly argue that this element should also remain in scope.
- 6.7. Whilst we welcome a commitment to retaining anti-discrimination work, we know that in reality, issues are often presented en masse, and we fear that removing other employment and education work from scope, for example, will make it harder to resolve issues via negotiation and informal advocacy and mean that the focus needs to be on tribunal preparation.
- 6.8. We regret that this opportunity has not been taken to review the issue of scope for Tribunal representation – we are aware that many clients do not find it easy to express themselves at Tribunal, and the success rate of people who are represented is very significantly higher. We note that clients are often faced with opponents who are represented either by solicitors or Counsel, and that this suggests that the procedure is not equally available to both sides. We also note that there is real merit in being able to advise individuals when not to proceed with a claim, and that there are likely to be a lot more litigants in person bringing cases

which may not have a strong chance of success, or which will require significantly greater input from Tribunal staff as the client has not benefitted from assistance in preparing their claim.

- 6.9. We are very worried at the assertions that there are other funding streams available for some of the areas of law which it is proposed are taken out of scope. Much of this funding is short term, under threat and/or targeted at particular client groups. Recent national research highlights the very large cuts facing the voluntary sector, and the indicators are that advice services will be particularly hard hit. We believe that it is important that there is a basic level of access for eligible individuals facing real difficulties to a specialist, independent service which can provide face to face help and casework where needed.

7. Alternative Income Streams

- 7.1. Whilst we recognise the value in considering alternative income streams, we are concerned that there is not a sufficiently clear picture of the current arrangements, and in particular, the impact on voluntary sector providers should client interest be used to “top up” legal aid. We would prefer to see client interest money used to provide funding for not for profit agencies to support a range of services which are complementary to legal aid.
- 7.2. We think that there is real potential here to identify a longer term funding stream to meet the needs of some of the most vulnerable clients, and which could address some of the Government’s Big Society aspirations.
- 7.3. We are very concerned at the lack of opportunities for new lawyers to qualify in legal aid practices, and client account money could also be used to establish a new training grant scheme, following the ending of the former LSC scheme.

8. Reducing Bureaucracy

- 8.1. We would welcome a reduction in the bureaucracy that is currently required to operate under the contract, and we believe that a disproportionate amount of time and resources are currently spent on monitoring and reporting. However, we recognise that this is public money and that there is a need to ensure that it is being well spent, leading to effective outcomes and guarding against fraud.
- 8.2. At present, we are concerned that the fixed fee is set at the wrong threshold, and can mean that a few organisations that focus on level 1 advice could even make gains, whereas others are clearly making a loss as the fixed fee is set at too low a rate. Exceptional cases are set at too higher threshold, and therefore this level should be reduced. Hourly rate would ensure that the realistic cost of quality legal work is met, and there should be greater consideration given to rebalancing the time between agencies undertaking the work and finally receiving payment (especially on exceptional cases).
- 8.3. We feel that the current contract structure makes it difficult to reduce red-tape, and would welcome a review as to alternative commissioning models – for example, funding access to services, or posts. The not for profit contracts that funded eg CABX and Law Centres prior to October 07 may provide a useful model, as this was

much lighter touch in terms of administration and allowed the most effective use of the lawyer or caseworker's time.

8.4. This would require a review of what was being measured and why and we believe that there should be a genuine debate with providers around better mechanisms.

9. Size of Budget

9.1. We are of the view that the complete budget needs reviewing in the light of changing needs – for example, the radical changes being made to the welfare benefits system are likely to lead to an increase in welfare benefits and housing enquiries, if homelessness is to be prevented.

9.2. The level of unmet need in social welfare law is extremely high, and as services are now being impacted by cuts in a variety of budgets, there is a need for joined up thinking across government to ensure that tax payers money is being spent effectively on preventative services and the targets and ways of monitoring are not leading to perverse incentives.

10. Quality of Service

10.1. We believe that the proposals as set out represent a false economy – simply opening and closing cases or providing telephone triage does not necessarily lead to an improvement in the client's case.

10.2. There is significant evidence that the quality of the relationship between the advisor and the client is crucial in enabling a good outcome to be obtained.

10.3. As a Trade Union, we are daily seeing evidence of people working extremely long hours of unpaid overtime, to the point of endangering their health, and services cannot be run on this basis in the long term. We are also seeing worsening terms and conditions and much higher staff turn over.

10.4. Experienced advisors are being replaced with lower paid staff and volunteers who do not bring the same expertise to the role, and are not able to receive sufficient support and supervision to carry out their work to the highest standard. Inaccurate advice can lead to very severe consequences for clients, and many of the people using legal aid services are facing destitution, homelessness, or extreme poverty.

10.5. The lack of clear and consistent funding streams means that a number of agencies are struggling to survive.

10.6. Some agencies closed last year (both in the not for profit and private sector), and we know that the current situation is very unstable. This is not a strong basis from which to deliver services to the most vulnerable people in society, and we fear that the MoJ's proposal will destroy what should be a crucial element of a Big Society response to community needs.

11. Conclusion

- 11.1. We are concerned that the driving force behind the proposals is simply to make major savings to the Legal Aid budget and that the proposals will devastate access to justice, whilst at the same time pushing up costs elsewhere, ultimately costing the tax payer more, and creating real human misery.
- 11.2. Our members have been working in the sector for years, managing to make small sums of money go a very long way. They know that the alternative funding streams simply do not exist, and that if these proposals go through, hundreds of agencies who are very skilled at working with some of the most vulnerable and challenging people in society will go to the wall. The impact assessment shows that nfp agencies will lose 77% of legal aid funding, and that scale of cut will mean that they will not survive.
- 11.3. The voluntary sector has unique expertise in some of these areas, and can bring a holistic approach which is cost effective and can transform communities.
- 11.4. We call on the Government to work with providers to undertake an urgent review and to develop a new strategy which will be cost effective, which will provide opportunities for communities to develop the services which they need to meet local needs and which ensure that there is genuine access to justice for all sections of society.

Rachael Maskell

National Officer for the Community Youth and Not for Profit / Third Sector

Unite

35 King Street

London

WC2E 8JG

0207 420 8978

Rachael.Maskell@unitetheunion.org

For further information contact:

Rick Graham, Researcher,

rick.graham@unitetheunion.org

020 7611 2634