

## LEGAL AID

**Venue:** PSU - RCJ

**Date:** 11FEB2020

**Speaker:**

**ADAM TEAR** was called to the Bar in 2001 and cross qualified as a Solicitor in 2004, and as a Solicitor Advocate in 2005. He is qualified as an Immigration & Asylum Accreditation Scheme at its highest level, as a Level 3 Advanced Caseworker and Supervisor as well as being the Chief Assessor for the Law Society.

**Housekeeping:** Please ensure that all electronic devices are switched to a silent mode and that any usage does not disturb others. In the event of an emergency please follow instructions given by your speaker. You may drink and consume snacks but please ensure these do not disturb others.

**Registration:** Please ensure that you have signed the central register.

**Papers:** Please ensure you have the course papers (This document) and your course validation. You will be provided access to an electronic version of this presentation, for future reference at [adamtear.com](http://adamtear.com). The live version contains hyperlinks which will enable the user to follow the material.

**Schedule:** This course is broken down into a one hour session. All sessions will start promptly.

**Audience:** This course is designed for those that are assisting and directing those who are working with members of the public in need of legal advice.

**Presentation:** The speakers will use both oral and visual presentation to deliver the content of this course. Please indicate before the start of the presentation if you have any special requirements that may affect how you receive a visual or audio presentation. The material for this presentation has been prepared for use during the presentation and to keep for reference after the presentation. Please remember you must keep yourself updated with the most recent changes.

**Questions:** We ask that questions are saved until the end of a section when the speaker will ask for questions from the audience.

## CONTENTS

Registration 09:00

### **Session One 09:00 – 10:00**

- (1) Introduction
- (2) LASPO 12 – General
- (3) Civil – Types of funding
- (4) Civil – Schedule One
- (5) Civil - Exceptional funding
- (6) Criminal – Civil imprisonment cases

## **LASPO 12**

### **Introduction**

1. The aim of this course is to refresh knowledge and practice of those representing assisting individuals in need of legal assistance. Further to develop the knowledge of caseworkers to enable them to sign post individuals to legal aid providers and others that will be able to provide represented legal assistance.
2. What this course is not, is how to apply and obtain legal aid in legally aid matters, and is only a brief introduction to a very limited area of criminal legal aid.

### **What was LASPO 12**

3. An Act to make provision about legal aid; to make further provision about funding legal services; to make provision about costs and other amounts awarded in civil and criminal proceedings; and other criminal matters.
4. Widley regarded as an overt attempt to remove legal aid from the majority of individuals, but was it.

### **History of Legal Aid – Sourced in part from Wikipedia**

5. Legal aid has a close relationship with the welfare state, and the provision of legal aid by a state is influenced by attitudes towards welfare. Legal aid is a welfare provision by the state to people who could otherwise not afford advice from the legal system. In

recent times it has been identified that being able to enforce your rights has significant effect on many parts of your life, and effects your health. Legal aid helps to ensure that welfare provisions are enforced by providing people entitled to welfare provisions, such as social housing, with access to legal advice and the courts.

6. Prior to the mid-20th century, literature on legal aid emphasised collective enforcement of economic, social and cultural rights. As classic welfare states were built in the 1940s and following World War II, an underlying principle was that citizens had collective responsibility for economic, social and cultural rights; and the state assumed responsibility for those unable to provide for themselves through illness and unemployment. The enforcement of economic, social and cultural rights was to be collective, through policies rather than individual legal action. Laws were enacted to support welfare provisions, though these were regarded as laws for planners, not lawyers. Legal aid schemes were established, as it was assumed that the state had a responsibility to assist those engaged in legal disputes, but they initially focused primarily on family law and divorce.
7. Legal aid started to expand and covered all areas of law effectively, for those that could otherwise not afford legal advice. It was well remunerated. In the 1990s this changed significantly, and the contraction of the provision of legal aid started, which includes the remuneration rates, which have not increased since the 1990's and actually shrunk. LASPO is the latest iteration of this, save for exceptional funding as discussed later.

#### **Types of legal aid.**

8. Legal Aid is provided either for civil or criminal. Civil legal aid is broadly broken down into Controlled Work and Licensed Work. Controlled work is in its self-split into sections. Legal help is generally for assistance before a Court hearing, and Controlled Legal Representation provides assistance in the lower civil courts. Licensed Work is also split into investigator and full assistance. Investigatory certificates allow for a matter to be investigated where the merits of the matter are unclear, and preparation of pre-action letters. Once the merits are understood then a full certificate can be granted.

#### **General tests**

9. For general legal aid there are three factors that need to be considered. Firstly is it within Schedule One, secondly does the individual meet the means criteria test, and thirdly save for investigatory help, that the chances of success are in excess of 50%, or above 45% with serious human rights issues.

### **Schedule One**

10. Legal aid, is provided under all types of funding so long as it within Schedule One, Part One, Paragraphs 1 – 46, so long as not excluded in Part Two. Schedule One provides legal aid in the following areas:

- 1.Care, supervision and protection of children
- 2.Special educational needs
- 3.Abuse of child or vulnerable adult
- 4.Working with children and vulnerable adults
- 5.Mental health and mental capacity
- 6.Community care
- 7.Facilities for disabled persons
- 8.Appeals relating to welfare benefits
- 9.Inherent jurisdiction of High Court in relation to children and vulnerable adults
- 10.Unlawful removal of children
- 11.Family homes and domestic violence
- 12.Victims of domestic violence and family matters
- 13.Protection of children and family matters
- 14.Mediation in family disputes
- 15.Children who are parties to family proceedings
- 16.Forced marriage
- 17.EU and international agreements concerning children
- 18.EU and international agreements concerning maintenance
- 19.Judicial review
- 20.Habeas corpus
- 21.Abuse of position or powers by public authority
- 22.Breach of Convention rights by public authority
- 23.Clinical negligence and severely disabled infants
- 24.Special Immigration Appeals Commission
- 25.Immigration: detention
- 26.Immigration: temporary admission
- 27.Immigration: residence etc restrictions

28.Immigration: victims of domestic violence and indefinite leave to remain

29.Immigration: victims of domestic violence and residence cards

30.Immigration: rights to enter and remain

31.Immigration: accommodation for asylum-seekers etc

32.Victims of trafficking in human beings

33.Loss of home

34.Homelessness

35.Risk to health or safety in rented home

36.Anti-social behaviour

37.Protection from harassment

38.Gang-related violence

39.Sexual offences

40.Proceeds of crime

41.Inquests

42.Environmental pollution

43.Equality

44.Cross-border disputes

45.Terrorism prevention and investigation measures etc

46.Connected matters

11. [Part Two](#) provides for the matters which are excluded by LASPO 12. The services described in Part 1 of this Schedule do not include the services listed in this Part of this Schedule, except to the extent that Part 1 of this Schedule provides otherwise.

1Civil legal services provided in relation to personal injury or death.

2Civil legal services provided in relation to a claim in tort in respect of negligence.

3Civil legal services provided in relation to a claim in tort in respect of assault, battery or false imprisonment.

4Civil legal services provided in relation to a claim in tort in respect of trespass to goods.

5Civil legal services provided in relation to a claim in tort in respect of trespass to land.

6Civil legal services provided in relation to damage to property.

7Civil legal services provided in relation to defamation or malicious falsehood.

8Civil legal services provided in relation to a claim in tort in respect of breach of statutory duty.

9Civil legal services provided in relation to conveyancing.

10 Civil legal services provided in relation to the making of wills.

11 Civil legal services provided in relation to matters of trust law.

12(1) Civil legal services provided in relation to a claim for damages in respect of a breach of Convention rights by a public authority to the extent that the claim is made in reliance on section 7 of the Human Rights Act 1998.

(2) In this paragraph—

“Convention rights” has the same meaning as in the Human Rights Act 1998;

“public authority” has the same meaning as in section 6 of that Act.

13 Civil legal services provided in relation to matters of company or partnership law.

14 Civil legal services provided to an individual in relation to matters arising out of or in connection with—

(a) a proposal by that individual to establish a business,

(b) the carrying on of a business by that individual (whether or not the business is being carried on at the time the services are provided), or

(c) the termination or transfer of a business that was being carried on by that individual.

15(1) Civil legal services provided in relation to a benefit, allowance, payment, credit or pension under—

(a) a social security enactment,

(b) the Vaccine Damage Payments Act 1979, or

(c) Part 4 of the Child Maintenance and Other Payments Act 2008.

(2) In this paragraph “social security enactment” means—

(a) the Social Security Contributions and Benefits Act 1992,

(b) the Jobseekers Act 1995,

(c) the State Pension Credit Act 2002,

(d) the Tax Credits Act 2002,

(e) the Welfare Reform Act 2007,

(f) the Welfare Reform Act 2012, or

(g) any other enactment relating to social security.

16 Civil legal services provided in relation to compensation under the Criminal Injuries Compensation Scheme.

17 Civil legal services provided in relation to changing an individual’s name.

### **Civil - Exceptional funding**

12. Where a case does not fall within Schedule One, and is not excluded under Part Two, you may apply for assistance under the Exceptional Funding issue. The means

and merits tests still apply. Additionally for exceptional funding you must also establish that without the provision of legal aid the individual will be unable to represent themselves such that there would be a breach of Article 6.

### **Criminal – Civil imprisonment cases**

13. Where imprisonment is possible in civil courts this is generally funded under the criminal legal aid. Applications for legal aid can be made and dependant which Court they are depends where the application is made. In the High Court and County Court these are now made to the Legal Aid Agency directly and are merit and means free tested. In the Court of Appeal and Supreme Court, they are made to the Court of Appeal.
14. In Committal cases it is essential that legal aid is provided as soon as possible at the first available moment. As such these cases must be referred as soon as possible.

### **Conclusion**

15. Legal aid is provided by a wide number of firms under legal aid contracts of various types. The main contracts are public, actions against public authorities, housing, immigration, and family under civil. Initially a person who meets the means assessment should be referred to a legal aid advisor in that area. Some areas of law are not contract specific, such as protection from harassment, or environmental pollution cases, and these should simply be referred to a firm with a general legal aid practice.