

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Seventh Delegated Legislation Committee

DRAFT EARLY LEGAL ADVICE PILOT SCHEME
ORDER 2022

Thursday 24 February 2022

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The Committee consisted of the following Members:

Chair: ANDREW ROSINDELL

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| † Ansell, Caroline (<i>Eastbourne</i>) (Con) | † Khan, Afzal (<i>Manchester, Gorton</i>) (Lab) |
| Bailey, Shaun (<i>West Bromwich West</i>) (Con) | McCabe, Steve (<i>Birmingham, Selly Oak</i>) (Lab) |
| † Benton, Scott (<i>Blackpool South</i>) (Con) | † Mann, Scott (<i>North Cornwall</i>) (Con) |
| † Cartlidge, James (<i>Parliamentary Under-Secretary of State for Justice</i>) | † Owen, Sarah (<i>Luton North</i>) (Lab) |
| Cryer, John (<i>Leyton and Wanstead</i>) (Lab) | Ribeiro-Addy, Bell (<i>Streatham</i>) (Lab) |
| † Daly, James (<i>Bury North</i>) (Con) | Russell-Moyle, Lloyd (<i>Brighton, Kemptown</i>) (Lab/Co-op) |
| † Djanogly, Mr Jonathan (<i>Huntingdon</i>) (Con) | † Saxby, Selaine (<i>North Devon</i>) (Con) |
| † Garnier, Mark (<i>Wyre Forest</i>) (Con) | Robi Quigley, <i>Committee Clerk</i> |
| Hollern, Kate (<i>Blackburn</i>) (Lab) | |
| † Hunt, Jane (<i>Loughborough</i>) (Con) | † attended the Committee |

Seventh Delegated Legislation Committee

Thursday 24 February 2022

[ANDREW ROSINDELL *in the Chair*]

Draft Early Legal Advice Pilot Scheme Order 2022

11.30 pm

The Parliamentary Under-Secretary of State for Justice (James Cartlidge): I beg to move,

That the Committee has considered the draft Early Legal Advice Pilot Scheme Order 2022.

It is a pleasure to serve once again under your chairmanship, Mr Rosindell, as I did on the Judicial Review and Courts Bill, where we worked with great efficiency.

This statutory instrument establishes the early legal advice pilot scheme that will be conducted in Middlesbrough and Manchester for a time-limited period. The instrument amends part 1 of schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012, known as LASPO, to bring civil legal services for certain housing, debt and welfare benefits matters into scope of the legal aid scheme for the purposes of the pilot scheme. It also makes consequential amendments to secondary legislation for the purposes of the pilot scheme.

This draft order is to be made using the powers conferred by LASPO. In summary, this instrument lays the necessary foundations to operationalise the pilot scheme. It also signifies an important step in delivering a key commitment made in the Ministry of Justice's legal support action plan, which was published in 2019. Through the pilot scheme, we will test the impact of early legal advice on the resolution of legal problems, seeking to quantify benefits to individuals, their support networks, the Government and, ultimately, the taxpayer.

Civil legal aid is available to an individual if their issue is listed in part 1 of schedule 1 of LASPO. If the type of case is listed in part 1 of schedule 1, it is considered to be in scope of legal aid. Additionally, legal aid may be available on an exceptional basis where there would be a breach, or risk of a breach, of the individual's rights under the European convention on human rights, or of any retained enforceable EU rights. This is known as exceptional case funding, or ECF.

Eligibility for legal aid, both for in-scope matters and for ECF, is subject to statutory means and merits assessments. The means test sets out that if an individual's capital or disposable income is above a certain threshold, they would generally not be eligible for legal aid. There are different merits tests depending on the type of case, but for most cases, the merits test provides for a cost-benefit test and a prospects of success test. If those tests are not met, funding would not be granted.

Under the current arrangements, legal aid for social welfare law matters such as debt, housing and welfare benefits is limited to the most urgent circumstances—for instance, in the event of an individual losing their home through eviction or repossession. This is to ensure that legal aid is targeted at those who need it most. However, during the post-implementation review of LASPO, we

heard from respondents that the LASPO reforms, which came into effect in 2013, might have caused increased financial costs to individuals, their support networks and, overall, the Government.

Respondents explained that individuals experiencing social welfare legal problems, especially those related to housing, were now unable to resolve their problems at an early opportunity and therefore likely to experience problem clustering and problem escalation that required costly intervention. Frequently cited examples included increased use of court services as individuals were issued with possession proceedings; greater reliance on welfare benefits and of temporary and permanent accommodation provided by their local authority following eviction; and of course increased use of health services for stress and anxiety.

Although there is much anecdotal evidence to support the view that early legal advice could produce benefits to individuals and to local and central Government, there is limited empirical evidence. In particular, there is limited evidence relating to the financial impact of early intervention through the legal aid scheme. We therefore seek to bring these matters in scope, and to use the pilot scheme as an opportunity to understand whether early legal advice can lead to early problem resolution and, in turn, cost savings to the public purse. Ultimately, the order seeks to bring certain social welfare law matters in scope of legal aid so that we can gather empirical evidence and establish a strong evidence base on this question.

I turn to the details of the pilot and how it will operate. It will be conducted in two areas, Manchester and Middlesbrough, and will be time limited: it will run from 1 April 2022 until 31 March 2024. Under the order, individuals will be eligible for the pilot scheme if they live, or habitually reside, in the area of Manchester City Council or Middlesbrough Council and are selected to participate by a person appointed by the Lord Chancellor. The Lord Chancellor will publish guidance that will explain who this person will be—they are likely to be some form of independent evaluator—and how they must select participants. Participants will receive a maximum of three hours of advice and assistance on housing, debt, and welfare benefit matters.

On the scope of the amendment, since 2019, my officials have not only considered the evidence provided in the LASPO post-implementation review, but have worked closely with legal aid providers and other Departments to devise the pilot scheme and finalise the terms of the amendment. Civil legal services for matters covered by the pilot are currently not in scope of legal aid. This amendment to part 1 of schedule 1 of LASPO brings those matters into scope for legal aid, subject to exclusions outlined in the order; participants cannot receive advocacy or more than three hours of advice, for example.

The amendment covers a maximum of three hours of civil legal services relating to advice and assistance on housing, debt and welfare benefits. Participants can receive advice and assistance irrespective of whether their matters fall into one or all of those categories. No individual will be entitled to more than three hours of legal advice, however. Additionally, unlike most in-scope and ECF cases, the service will be provided without individuals needing to pass a means or merits test. The only criteria for eligibility will be that they meet the

geographical requirements and are selected for inclusion in the pilot scheme by the person appointed by the Lord Chancellor.

The order also makes technical amendments to the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013, the Civil Legal Aid (Merits Criteria) Regulations 2013, and the Civil Legal Aid (Remuneration) Regulations 2013. Those regulations set out the means and merits tests that individuals are expected to meet to receive legal aid. The amendments to the means regulations and the merits regulations remove the requirement for participants to fulfil the merits and means test. The amendments to the remuneration regulations introduce a new fee that is to be paid to providers who undertake work as part of the pilot scheme. As well as covering remuneration for the legal advice provided to pilot participants, that bespoke fee includes a 25% uplift to reflect the additional reporting legal aid providers will be asked to complete for the purposes of evaluation, as that is something that we would not ordinarily ask them to do for other in-scope or ECF work.

To conclude, the draft order lays the necessary foundations to ensure that the Ministry of Justice can pilot an ambitious early legal advice scheme that enables individuals to access timely legal and expert advice on debt, housing and welfare benefit matters. Moreover, the pilot will provide the evidence required to show whether such a service would provide meaningful benefits to individuals, and to local and central Government.

11.37 am

Afzal Khan (Manchester, Gorton) (Lab): It is a pleasure to serve under your chairmanship, Mr Rosindell. I thank the Minister for his opening remarks. Let me say from that start that the Labour party will not oppose the draft order.

The provision of early legal advice is essential to ensure that legal issues are dealt with effectively before they escalate into more complex and costly problems. I appreciate that housing and welfare benefit issues often go hand in hand. I am glad that the scheme will allow providers to advise on housing problems alongside any welfare benefit issues that may contribute to rent arrears.

The broader the scope of legal aid, the more opportunity there is for providers to take a holistic and, ultimately, more successful approach to legal problems. Having spoken with the Law Society and the Greater Manchester Law Centre, however, I am concerned about the capacity of legal aid providers to meet the increased demands that the scheme will create, especially as those areas of law have not been in scope of legal aid for a decade. There are only two welfare benefit legal aid providers in Manchester city, and only two housing and debt legal aid providers in Middlesbrough, one of which also advises on welfare benefit law, meaning that all the new cases in Middlesbrough that arise from the pilot scheme will have to be handled by those two firms.

The issue of capacity is unlikely to be resolved by the proposed fees because most cases will require more work than a three-hour time limit will allow, meaning that in a majority of cases, providers will operate at a loss and will be discouraged from providing early legal advice. That will make it very difficult for the pilot scheme to collect accurate data about the effectiveness

of early legal advice. I therefore encourage the Minister to lift the three-hour time limit or increase the proposed fixed-fee arrangements.

The pilot scheme is a welcome step in the right direction, but I hope the Minister will consider the concerns that local legal aid providers and I have raised. The Labour party supports the draft statutory instrument.

11.39 am

Mr Jonathan Djanogly (Huntingdon) (Con): As the former Minister responsible for LASPO, I thought I should give a view. When we were looking at the legislation initially, the view was taken that the provision in the voluntary sector was often better than that being provided by the legal sector. In addition, there was the point about the holistic approach just made by the hon. Member for Manchester, Gorton: lawyers would not necessarily look at things from a holistic point of view, and people in the voluntary sector often took a more rounded view. Therefore, the decision was made to take these issues out of scope.

Times have moved on. It might be that the voluntary sector does not have the provision that it once did—I am interested to hear the Minister's view on that—so I think it is wise to have this pilot, because it will enable the Minister to assess the situation and see whether he has got this right; he is doing this in the right way. I am interested to hear his views.

11.41 am

James Cartledge: I am grateful for the contributions of the hon. Member for Manchester, Gorton, and my hon. Friend the Member for Huntingdon. Some good points were made.

I heard the Opposition spokesman's point about capacity. On the numbers, as I understand it, we are talking about some 1,600 people in two cohorts—a control group of about 800 persons, and the 800 people who will receive the advice—so it is not an enormous number. We are confident that our contractual providers have the capacity.

The hon. Gentleman also said that the fee should be higher. I emphasise that this is a significant increase—a 25% increase. The fee for the three hours of work is £200.70, which compares with about £150, although of course the increase reflects some additional work from the monitoring. For us, the key thing is the data—we want to get data out of the pilot, so that we can build an empirical case and assess whether we should go further. That is important to stress.

On the providers, there is another important point to make. My hon. Friend the Member for Huntingdon has great legal experience from his professional background and, as he said, was a Minister in the Department at a crucial time for LASPO. I very much respect his expertise. He is right about the voluntary sector. In Manchester, one of the contracting providers is the citizens advice bureau, so it would have that holistic service; in Middlesbrough, there is one provider, and of course there will be additional resource for them from the extra fees; this is actually an opportunity for them. However, we are always happy to liaise with providers should they have specific concerns.

Afzal Khan: Will the Minister elaborate, for clarification, on the methodology? He talked about the 800 participants and the 800 people in the control group. How will those be separated, to ensure more clarity for people coming forward?

James Cartlidge: That is a perfectly good question. The selection of the participants will be undertaken independently of Government, likely by an independent evaluator appointed to the project. We are tendering for the evaluator, and that process will conclude on 2 March. We intend to use a proxy indicator of potential legal need, such as council tax arrears or social rent arrears, to identify a cohort of people who are likely to experience social welfare matters that could be resolved through early advice and assistance. As I said, they would divide into a control group who would not receive that advice and assistance, and a group who would, so that we can build up data.

On the providers, as I was saying, there is one in Middlesbrough and eight in Manchester. They all have housing contracts and therefore the capacity to provide this type of advice. That is an important point to stress.

My hon. Friend the Member for Huntingdon said that it is wise to pilot, and I agree with him. We want to look at what works; that is the crucial thing for the Ministry of Justice.

The draft instrument is an important part of the Government's work to deliver legal aid services that are based on evidence of what works, and that provide direct benefits to individuals and their social networks, to local and central Government, and, ultimately, to the taxpayer. I hope that colleagues will agree that the statutory instrument is necessary. I commend it to the Committee.

Question put and agreed to.

11.44 am

Committee rose.

