

Response to consultation on 'Transforming Legal Aid' from Alison Giraud-Saunders

Thank you for the opportunity to comment on the proposals in this consultation paper. My interest in this matter is two-fold:

- I have a relative with learning disabilities and can envisage circumstances in which he might wish to be able to call on legal aid to challenge the actions of the NHS or his local authority
- my work as an independent consultant includes work with a variety of statutory and third sector organisations to improve fair access to justice and fair treatment by the youth and criminal justice systems for people with learning disabilities.

I regret the Ministry's decision to allow a consultation period shorter than 12 weeks. This makes it even more difficult than usual to consult people with learning disabilities and family carers effectively. The Equality Impact Assessment acknowledges that people with learning disabilities could be affected disproportionately, yet a short consultation period makes it harder for them to comment.

I am not an expert in how legal aid works currently. However, my links with disabled people and their families and my work with health, social care and criminal justice agencies lead me to believe that the proposals as currently drafted risk reducing fair access to justice for people with learning disabilities in at least three ways:

- some people's cases would be excluded from legal aid altogether. The equality impact assessment acknowledges that prisoners with learning disabilities and/or mental health problems are over-represented in cases relating to access to treatment. For example, Dennis Gill brought a successful case for discrimination against the National Offender Management Service because his sentence plan included an offending behaviour programme from which he was excluded on grounds of his intellectual impairment. This case has been influential in making the case for availability of more adapted programmes, which have the potential to reduce re-offending. Reducing re-offending is a Government aim, driven by both 'safer communities' and cost-saving concerns. I do not believe that many people with learning disabilities would be equipped to pursue a case through the complaints system without support, so the suggested alternative of this means of seeking redress does not seem fair
- legal firms will be discouraged from supporting claimants unless they stand a high chance of winning - in effect their cases will be pre-judged. The equality impact assessment acknowledges that disabled people are over-represented in 'borderline' cases. This might affect, for example, disabled people and family carers seeking a judicial review against a council for reduction in social care services without a proper assessment. I have had examples cited to me of authorities being challenged, refusing to back down, a lot of work being done to prepare a case and then the authority backing down at the last minute. Under the new proposals, the legal firm concerned would receive no payment. Rachel Gunter won a landmark case against the NHS in order to receive care at home instead of being put into residential care. Would a legal firm have taken this on 'at risk'? Could costs to the public purse even be increased if the proposals incentivise continued pursuit of a claim instead of early settlement?
- the proposals to reduce fees for experts and legal practitioners may result in people with learning disabilities and family carers who do qualify for legal aid being unlikely to

be able to afford services of comparable quality to those of the opposing party, such as a council or the NHS or a big service provider such as Castlebeck (which was responsible for Winterbourne View). Parents with learning disabilities who are fighting to keep custody of their children could very well lose out in such circumstances, and I understand that cases before the Court of Protection could also be affected.

I am very concerned that the Equality Impact Assessment acknowledges that people with learning disabilities could be affected disproportionately in a range of ways, yet suggests that this is acceptable in order to achieve “legitimate aims”, i.e. targeting legal aid more tightly and thereby achieving savings. Disabled people and their families are acutely aware of the Government’s need to make savings. However, this should not be done at the disproportionate expense of people with protected characteristics under the Equality Act. Painful decisions are being made across a wide range of public sector responsibilities; the pain should be shared equally.

The Legal Services Board has commissioned research on access to legal services by people with learning disabilities, which is due to report soon. I hope the Ministry of Justice will take account of the findings. I hope the Ministry will reconsider its proposals and reshape them to avoid discriminating against disabled people.

Alison Giraud-Saunders
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