

Research impact: making a difference

Producing critical evidence to fight unsupportable cutbacks in legal aid funding

LSE research helped document the serious social and economic consequences of reducing public access to legal aid

What was the problem?

Legal Aid was first introduced in the UK in 1949 as a pillar of the welfare state. Rounds of funding cuts to this provision in 2004, 2007 and 2010 resulted in the introduction of 'fixed fees' for particular areas of law, including immigration and asylum, and led to many legal providers turning down complex cases funded through legal aid.

By 2013 the annual bill for legal aid had risen to £2 billion and the British system had become one of the most expensive in the world. Justice Secretary Chris Grayling argued that the entire legal profession was wasteful, stuffed with overpaid lawyers and in need of modernisation. The *Legal Aid, Sentencing and Punishment of Offenders Act 2013* (LASPO) came into force in April 2013 as part of a plan to make annual savings of £350 million.

Divorce, child contact, employment and housing law were no longer eligible for public funding save in very limited circumstances. The government stated that it was using limited funds to target those most in need, while campaigners against the reforms claimed that they were inhumane and unworkable.

What did we do?

Deborah James, LSE Professor of Anthropology, and Research Fellows Evan Killick (2007-8) and Alice Forbess (2011-12) undertook research following the switch to 'fixed fee' arrangements in Legal Aid. They attended consultations between caseworkers and clients at branches of the South West London Law Centres, observed tribunals and analysed the effect of reform on vulnerable citizens.

They also examined how the transition from an hourly rate to a one-off case payment affected paralegals' motivation. Despite the Law Centres' fragile finances, empathy motivated the advisers to provide exceptional levels of aid, but this was ultimately unsustainable. The advisers' commitment had complex motivations: they wanted to help immigrants and asylum seekers but also wanted to encourage them to become more compliant with the legal process and better able to accept unfavourable Home Office decisions.

Research impact: making a difference

In addition, they examined the revised pay structure for reimbursing legal aid work. All eligible cases were now divided into lower tier (less than four and a half hours billable work at a flat fee of £280) and higher tier cases (meriting extra time and paid at £765). Any cases falling between the two tiers lost money for the Law Centre and, additionally, complex cases had now become too expensive to pursue.

Subsequent research in the Southwark Law Centre and at Community Links, a charity in Canning Town, established that, despite the Coalition Government's suggestions to the contrary, swift one-to-one legal advice in a local office, i.e. legal aid, was increasingly necessary because legislation had become incomprehensible to non-lawyers and lower-level bureaucrats had insufficient expertise. This mattered because success in the UK's adversarial system depended on familiarity with increasingly complex procedure and legislation.

An additional problem identified by the research was perception by litigants that legal advisers and government providers functioned as part of the same exclusive system, with legal advisers frequently correcting mistakes made by providers. This gave an impression of collaboration and, thus, injustice.

What happened?

The Law Centre Foundation used the LSE research in a campaign to secure continued public funding for legal advice services, based on the key finding that early intervention saves money in the longer term. *Deep Value: the role of effective relationships in public services* (Bell and Smerdon 2011), a report published by Community Links, also cited *Ethical dilemmas? UK immigration, legal aid funding reform and case workers* by James and Killick (2010) to support claims about the 'value for money' offered by legal advisers.

Time well-spent (2009), a report by the Council on Social Action commissioned by Prime Minister Gordon Brown, cited James and Killick's research as evidence that empathy and personal interaction are crucial to improved representation and that one-to-one relationships reap benefits whether the clients win or lose, since if they win justice is served and if they lose they are less likely to appeal.

To substantiate this point, *Time well-spent* cited a pilot study in Solihull in 2006, which gave all asylum seekers access to free legal representation before the initial decision-making interview with the Home Office case owner. Case conclusion rates (where conclusion

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Research impact: making a difference

implies either integration or removal within six months) rose from 29% to 58% in the final two quarters of the evaluation (compared to 34% in the control study in Leeds). Citizens Advice Bureau and *Information Centre about Asylum and Refugees* cited these legal outcomes as evidence of the economic value of personal interaction.

When financial difficulties threatened the South West London Law Centre with closure, the Ministry of Justice was prompted by LSE research to provide emergency interim funding. This was backed by private law firms and charities in recognition of the Centre's work.

After the Coalition Government proposed the LASPO bill, James and Forbess wrote a briefing for the House of Lords which was reported across social media. This was aimed at contributing to the debate on an amendment to keep social welfare benefit appeals within the scope of legal aid. Although the amendment was reversed by the House of Commons, benefit appeals on points of law were retained within the scope of legal aid funding. This was a key concession because low-level bureaucrats frequently make mistakes in benefit case decisions and it is crucial for the legal system to continue to challenge such miscalculations.

Deborah James is Professor of Anthropology at LSE. Her recent research – conducted in South Africa, and, more recently, in the UK - contributes to socio-legal debates on advice in a context where market, state and third sector intertwine. She is author of *Money From Nothing: Indebtedness and Aspiration in South Africa* (Stanford 2014); with Evan Killick, of “Empathy and expertise at the legal interface: case workers and immigration/asylum clients in London” *Law and Social Inquiry* 37(3) (2012), and, with Alice Forbess, of “Acts of assistance: navigating the interstices of the state with the help of UK non-profit legal advisers” *Social Analysis* 58(3).

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