

**ILPA BRIEFING
House of Commons - Committee**

July 2011

**LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS BILL –
Bill 205****Amendments Nos. 86, 87 & 88**

Kate Green

86

Clause 1, page 2, line 7, at end add –

- (13) The Lord Chancellor must ensure that any individual wishing to access legal aid through face to face provision shall be entitled to do so and shall not be compelled to do so through a telephone gateway.

Kate Green

87

Clause 1, page 2, line 7, at end add –

- (14) The Lord Chancellor must ensure that before any proposals to provide legal aid through a telephone gateway are progressed a full further public consultation takes place on the specific details of such proposals and such proposals are fully assessed for cost.

Kate Green

88

Clause 1, page 2, line 7, at end add –

- (15) The Lord Chancellor must ensure that if a telephone gateway is introduced sufficient protection is in place to protect the rights of those who would have problems accessing it by reason of learning difficulties, mental health problems, language difficulties, problems of literacy, or from not being articulate.

Presumed Purpose

These amendments provide opportunity for the Committee to consider the risk that a mandatory single telephone gateway to Legal Aid, as generally proposed by the Government, may impede or prevent access to Legal Aid to those for whom it is intended to remain available.

Briefing Note

The Government's response to the Legal Aid consultation states¹

“In the Consultation Paper, Proposals for the Reform of Legal Aid in England and Wales the Government proposed that the CLA helpline should be the

¹ Annex D, para. 21 *et seq*

mandatory single gateway to civil legal aid services. The mandatory single gateway means that if a person wants legally aided advice in a particular area of law, he or she will be required to telephone the helpline in order to apply for legal aid.

“The Government agrees that a telephone gateway could in principle present a barrier for some people applying for legal aid advice services. However, we believe that the design of the existing CLA service and our proposed future gateway service will ensure that these barriers can be removed sufficiently for the effective delivery of the required service...”

The mandatory single telephone gateway is proposed to be first introduced for matters of debt, Special Education Needs, discrimination (claims of contravention of the Equality Act 2010) and community care². Further, the Government intends that the following should be exempt from the gateway requirement: children, those in detention and those assessed under the gateway as requiring face-to-face advice within the previous 12 months (where they are returning to the same adviser)³.

The Government's proposal is that the operator of the telephone gateway will determine whether, if Legal Aid services are available, these are to be provided by way of telephone advice or face-to-face advice and will route the enquiry accordingly. As regards telephone advice, the Government has accepted that asylum is not suitable for the telephone advice option⁴. Insofar as that acceptance goes, it is welcome; but ILPA continues to be concerned that the mandatory single telephone gateway may exclude people from the advice and assistance to which they are entitled. Specific concerns which remain unanswered or inadequately answered include:

- Telephone-only advice is not appropriate for those who may need to claim asylum, but are not aware of this. Clients seeking asylum require face-to-face advice at nearly every stage of the process as outlined below.
- Telephone-only advice is not appropriate for those who are vulnerable by reason of age, physical and/or mental illness and experiences of trauma. It is not appropriate for those who are destitute, who are unlikely to have the means to access it or to make use of it. A lengthy telephone call, in which the caller is referring to documents and must wait for interpreters and answer detailed questions, cannot be conducted in any acceptable manner in a public telephone box.
- Telephone-only advice is not appropriate for those who do not speak English as a first language or at all. Three-way telephone conversations involving an interpreter are highly problematic and less effective than personal attendances. Non-verbal signs in communication are always important. Where a language barrier exists and there is a risk of losing important detail in translation, non-verbal signs in communication are of critical importance.
- A non-qualified diagnostic operator will not be able to spot an asylum claim unless it is completely obvious to the caller and the operator alike (and they are not all obvious).
- A diagnostic operator or telephone adviser will not be able to see whether the caller is making contact under duress. This may be an insurmountable problem in certain cases, the identification of which could be difficult.
- Consideration of documents cannot be achieved effectively or efficiently over the phone.

² *Op cit*, para. 26

³ *Op cit*, para. 23

⁴ *Op cit*, para. 80

- On a straightforward cost / benefit analysis it is very hard to see how this proposal will justify its start-up and running costs, and how duplication of work will be avoided in cases where the individual has already identified the adviser they want – perhaps because an appropriate referral of their case has been made and/or there is already a network of specialist advice in place.

Underpinning many of our concerns are problems of trust, the risk of misdiagnosis and the importance of seeing documentation. It is not only in asylum claims that there can be profound hurdles to overcome before an adviser can establish sufficient trust and confidence on the part of the client. For example, individuals may have medical histories or conditions that they do not wish to disclose, and victims of domestic violence and survivors of torture are often reluctant to speak of their experiences. These contribute to the risk of misdiagnosis since, if the operator (or later telephone adviser) has not been told something relevant (or the way in which it has been disclosed is too indirect for the operator or adviser to have understood) the advice given may well be wrong – including cases where the advice may be that the person is simply not eligible to receive Legal Aid services. The situation where the information is provided in too indirect a fashion may be particularly problematic because in such a case the individual may wrongly think the advice given is based upon the relevant information. Moreover, immigration is one area where the importance of seeing documentation is often vital. Clients often present with bundles of papers, not knowing which is relevant and sometimes not understanding what many of these papers mean. Yet, somewhere among these papers may be the vital document, without which the nature and importance of the case cannot be understood.

ILPA would be grateful for Committee members to establish from the Government:

- Does the exclusion of asylum from telephone advice extend to excluding this area from the mandatory single telephone gateway?
- Will advice given by an operator or adviser through the telephone gateway subsequently be provided to the caller in writing?

For further information please get in touch with:

Steve Symonds, Legal Officer, steve.symonds@ilpa.org.uk, 020-7490 1553

Alison Harvey, General Secretary, alison.harvey@ilpa.org.uk, 020-7251 8383