

Pro bono work and access to justice



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1. INTRODUCTION

In our busy daily life, at some point everyone faces a legal problem, whether it be a minor problem that we try to solve the matter by ourself, but if the matter involves legal issues, then we go to a legal professional like lawyers.

Elliot and Quinn stated that “ legal system should be equally bound and equally served by all the members of its society and this will only be possible when they are enforced by everyone. As we know, to get legal help or legal advice is very expensive, especially for those people who cannot afford to enforce their legal rights and will denied their access to justice”[1]Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn (Edinburgh Gate Harlow CM20 2JE United Kingdom: Pearson Education Limited, 2017), p. 307.

For my experiential project, I will be investigating all about “ Pro bono and access to justice”. The main aim of this report is to analyse, the history of legal aid and access to justice in the UK and how has it changed over the years; and also Austerity cuts.

2. History of legal aid and how has it changed over the years?

“ In 1949 the Legal aid system was established after the Second War World to respond to the huge need for legal assistance which was not being met”[2](Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn: 2017, p. 310). There were few systems introduced by the Labour Government to balance between the rich and poor, one of them was the National Health Service (NHS) which is still applied today and the other was legal aid the first state-funded system (Appendix A).

“ Ministry of Justice was provided in devorce cases, criminal cases, and matrimonial cases in 1970, but in 1960s public funding was available in almost every sectors, therefore in 1970 legal aid for individuals proceeding before courts was expanded. The Legal Aid Board was created in 1988 and their main aim was to control legal aid as a public body, however during 1990s the Government tried to keep the costs down by cutting the financial costs, as a result the Access to Justice Act 1999 passed and which had created most important changes to the system”[3](Ministry of Justice, *Proposals for the Reform of Legal Aid in England and Wales*, (Consultation Paper CP12/10 November 2010), p. 22). What is legal aid?(Appendix B).

“ People who was earning more than £2, 300 per month or had savings of £8, 000 or more were not qualified to get legal aid support after applying a means test on them, but people with income support were eligible and people with low income had to pay part of their legal costs and the proportion of those entitled to legal aid was decreasing from 80% in 1949, to 52% in 1998 and in 2007 by 29%”[4](Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn: 2017, p. 310).

What is the problems that legal aid facing now? The biggest problem that legal professionals face nowadays are due to, although 80% of people qualify for legal aid, it is getting harder and tougher, as a result this proportion has declined, in 1990s there were only 45% who were entitled and now only 20% of people are eligible (Appendix C).

What is Pro bono?“ The Final Form of funding to consider, albeir briefly, is where work is undertaken pro bono, in other words for free”[5]Alisdair

Gillespie, *The English Legal System*, 4th edn (Great Clarendon Street, Oxford, OX2 6DP, United Kingdom: Oxford University Press, 2013), pp. 333. The UK's LawWorks has provided a definition of Pro bono in two parts (Appendix D).

How does legal aid relate to Pro bono and access to justice? The legal aid's growing cost to the taxpayer of its budget in the 1980s has become a political issue. By 1986 total legal payment had increased by £419m a year but the net cost recovered was £342m, from that year the first cuts began (Bowcott, 2018). However, it is really sad to hear that publicly funded services are gradually being withdrawn in the UK, as the UK is cutting back, while in Uganda access to justice is an everyday challenge for both the legal system as well as for their people (Appendix E).

Are there any alternatives to legal aid? There are few lawyers and judges that have recommended an inquisitorial system rather than an adversarial system. " Lord Thomas stated that criminal cases need to be sent to the crown court (Appendix F).

Citizens Advice Bureau (CAB) is a national network of individual bureaux who offer free advice to their client. " As with Law centres the initial advice is often free and non- means tested "(Alisdair Gillespie, *The English Legal System*, 4th edn (Great Clarendon Street, Oxford, OX2 6DP, United Kingdom: Oxford University Press, 2013), pp. 332). " There are 316 CAB in the United Kingdom and some of them offer for legal aid so that they can do casework in several types of law, including family law and employment law. The CAB is very important for advice and funding will need to put in place to ensure that it continues given it is unlikely that many members of the public would

consider charitable donations for the funding of legal services”[6](Alisdair Gillespie, *The English Legal System*, 4th edn (Great Clarendon Street, Oxford, OX2 6DP, United Kingdom: Oxford University Press, 2013), pp. 332).

In the Solicitors’ Journal, January 2017, they discuss that “ it is becoming harder to become a solicitor, but it is a benefit to the profession to increase pro bono work and by doing pro bono work, lawyers are helping their society directly and in return they are getting free training benefits to become an experienced lawyer from being an undergraduate lawyer, in that way they can understand the cases better and the whole process”[7](Denise Farran, “ Solicitors Journal”, *Nursing Standard*, 17(2017), 1 [Accessed 22 April 2019]).

“ Research has found according to a survey carried out that England and Wales were spending at least four times more on legal aid than any other European country (Appendix G).

3. Primary research (Austerity cuts)

We had been given an opportunity for our primary research from a number of Pro-bono providers and solicitors. We was lucky that the lawyers who participated were able to come in at different times, therefore we did not have to send out a questionnaire.

Hilary Panford

Hilary Panford used to be a Director of the Community Advice Programme (CAP), which was maintained by the School of Law in the University of West London. Due to the Access to Justice Act 1999 and from the increasing cuts from 2012, she noticed an increase in clients, which affected the way pro –
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bono was operated by the providers. In order to supply the appropriate training and expertise needed to give the advice, the centre needed to get as many partnerships as possible. The University was in a prime location to provide services, forming ties with local solicitors and barristers, The Ealing Equality Council and the MILAR projects. They were able to get funding from National Lottery, Erasmus, and the Tudor Trust. An issue that they faced was dealing with ‘ new’ areas of injustices, such as hate crimes and the status of refugees. Law firms providing legal aid services is current just under 5, 000 compared with 11, 000 in 1998, so the pro-bono providers are depending on training to cover the demand. Due to the small amount of firms providing legal aid, certain people didn’t have access to legal advice because of where they lived, which created ‘ legal aid deserts’. Ms Panford gave us an example with two cases (Appendix H).

Nazil Shah

He is a private practice solicitor, who has been working more than 12 years at Hillingdon Law Centre. He said that due to austerity cuts to central and local government had made poor decisions. They cut funding to external advice agencies and more importantly to agencies which represented people at the First Tier Tribunal (Social Entitlement Chamber). Law centres such as Hillingdon had lost funding and as result their future will be in danger, certainly in 2015 the Fulham Legal Advice Centre closed down.

Welfare benefits problems were made more delicate by the introduction of Universal Credits and greater restrictions on housing benefit. As a result, advice and support was cut from face to face advice and tribunal

representation to telephone advice. This was difficult for those without access to the internet or a telephone to start the process. Under the previous system, home visits were possible had been removed. If there were any complicated legal challenges to Upper Tribunal (Administrative Appeals Chamber), these could only be only be undertaken by an someone who had been given the contract. However, very few local firms met the criteria, and those who did, would only take the case if there was a profit to be made, with the ‘big is beautiful’ rationale.

Marie Quinn

She is a solicitor who set up her own practice, in 2010 M2M Community Solicitors LLP. Ms Quinn explained the effect of the cuts in details. The main vital key is the Legal Aid Agency which replaced the Legal Services Commission. In 2010 there was a fixed fee £150- £250 provided for Legal Help per case, however, this was reduced by 10% in 2012. It was the complex method of calculating cost which was an ongoing problem. The average waiting time can take up to a year for the income and this individual file is calculated on a ‘line by line’ basis.

Ms Quinn agreed with Mr Shah’s statement that several areas of law were removed for free legal help particularly Lower Chamber work and Upper Chamber work since April 2013 and will be only for large providers. That is not fair for the citizens, as they have to travel far distances searching for providers; however it’s a worse scenario for those citizens who live in rural areas, as they have to travel more than 20 miles and then it is only for a limited time.

Cutting costs based on procedural changes created more problems, for example, before if a person was unhappy with an assessment, they could appeal to the Independent Tribunal Service. Changes meant that now the person would have to apply for a mandatory reconsideration, which was not only time-consuming, but with cuts to staffing, this also meant that there were few officers with the knowledge needed to deal with the reconsiderations. So these people had no income for months.

Ms Quinn noticed that the number of Litigants People was increasing due to lengthening court hearings. The problem was that a huge amount of cases were going to court without any value, which would be avoided with preliminary advice. The litigant would have to pay the unnecessary costs.

Nigel Durbin

He is a solicitor, who works for Duncan Lewis Solicitors. Mr Durbin supported and agreed with almost all the points made by Ms Quinn, concentrating on the morale of those still within the Legal Advice Scheme. Basically his Law firm is reliant on legal aid work. The amount of time needed auditing the case took longer than that the actual provision of legal advice. Over the expertise and due to less staff in the Legal Aid Agency, questions have also been raised. High street law firms and many private practices have long disappeared due to low rates of pay. Mr Durbin said due to poor rates of payment (in some case the average hourly rate was £8. 60) advisors can only offer a limited amount of time.

David Barling Gasson

He is a barrister and lecturer, who had contributed towards our research work. In 1992 Mr Gasson had formed a Legal Advice Service at Thames Valley University; his aim was to advise free to the law students, with facilities provided by NUS. This was later followed by the other members of the University, where members of the School of Law were given advice in the majority cases. Since they were in West London, it was easy to contact a local firm of solicitors if specialisation was needed. Mr Gasson noticed that there was a significant drop in the number of law firms offering Legal Advice, since the introduction of the Access to Justice Act 1999. For legal process it is getting harder to find solicitors, who are willing to take a case to the next level, even though many cases can easily be solved. It was found that until the SC in 2016, failing to provide funds for Employment cases was in breach of the European Convention on Human Rights (ECHR).

There was a Radio 4 broadcast about Austerity and the Justice System in May 2019, where Lord Neuberger stated that due to wearing away access to justice would ultimately lead to a breakdown of the rule of law. Lord Neuberger refused to explain the reason behind this. Since 2010 it was noticed that half of the magistrate courts have closed because the cutting edge of justice. Hence the concepts of local justice are being worn away for our criminal justice system. Further to the problems are threats of further strike action from the criminal bar. Lord McNally, a Justice Minister in the coalition government, stated the reasons for the austerity cuts was to restore market confidence and Kenneth Clarke the then S of S for Justice, was keen to get on to the Cabinet Expenditure Committee to further this political aim, he put forward legal aid cuts that we face today.

4. CONCLUSION

Taking everything into account this report has found that due to cut budgets for the legal aid, it has had a major affect on Pro bono and access to justice. As a result a lot of the citizens who are in need for legal support are not getting any help which they are entitled to from the government. Not only are the general public suffering, but it also affects the legal professional like solicitors, barristers, and judges. Professional wants to help or give their advice to their clients but no one will provide their fees. Therefore the government should impose more budgets into this section, where big law firm should provide this funding towards their legal professional service and in this way their clients can be benefited. There should be a new law passed regarding pro bono service that all lawyers should at least provide 40 hours of their work for free per year. Once this new law is imposed then all the lawyers will adopt this in their system and they will provide their service free of charge.

5. BIBLIOGRAPHY

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6. APPENDICES

Appendix A

“ There were few systems introduced by the Labour Government to balance between the rich and poor, one of them was the National Health Service (NHS) which is still applied today and the other was legal aid the first state-funded system. Its main purpose was to help lower income people to get legal advice and help in court when needed, which should be offered by the solicitors, not by the client and will be funded by the government, for all or part of the costs”[8]Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn: 2017, p. 310.

“ By the 1980s, the system had improved into six systems, which included types of legal cases, and was run by the legal aid board. The main problem was the growing costs, which over the time (by 1990s), the government tried to find ways to reduce its financial cost, as a result of criticisms and also reducing access to justice”[9]Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn: 2017, p. 310.

Appendix B

What is legal aid? “ Legal Aid is a programme which is run by lawyers who volunteer themselves to advise those people who are in need and it was established during the 20th century by the Labour government Clement Attlee, who had created the modern system in 1949 Legal Aid and Advice Act”[10](Bowcott, 2018). “ Under the Sentencing and Punishment of Offenders Act 2012, Pt 1, where legal aid proposals are based on the green paper “ Proposals for the Reform on Legal Aid in England and Wales” (Cm 7967, November 2010), where Lord Chancellor has given a duty to secure Pt 1 and the availability of legal aid. Where it defines “ legal aid” in the term of

criminal legal aid (services needed under s 13, 15, 16 or Sch 3, para 4 or 5) (s 1) and civil legal aid (services needed under s 9, 10 or Sch 3, para 3), this removes the non- departmental public body, “ the Legal Services Commission (established under the Access to Justice Act 1999) which was previously responsible for administering the system of legal aid in England and Wales, and repeals Pt 1 of the 1999 Act”[11](Halsbury’s Annotation).

Appendix C

“ Research has found according to a survey carried out that England and Wales were spending at least four times more on legal aid than any other European country and the spending on legal aid growth has increased over 5% in real terms that is in 1982 £536 million and in 2012 £2 billion. Not only that, legal aid spent more per person compared with other countries outside Europe, including Australia, Canada and New Zealand”[12](Bowles and Perry, 2009; Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn (Edinburgh Gate, Harlow CM20 2JE United Kingdom: Pearson Education Limited, 2017), p. 310).

However, “ the implications of major changes in recent years to the eligibility for both civil and criminal legal aid are evidenced in the increased public use of pro bono”[13](Cathál MacPartholán, “ Access Denied? Pro Bono And The Truncated Right To Justice”, *Criminal Law & Justice Weekly* And Published-15 January 2018, 2018).

Appendix D

What is the problems that legal aid facing now? “ The biggest problem that legal professionals face nowadays are due to, although 80% of people qualify <https://assignbuster.com/pro-bono-work-and-access-to-justice/>

for legal aid, it is getting harder and tougher, as a result this proportion has declined, in 1990s there were only 45% who were entitled and now only 20% of people are eligible. Under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012, for civil legal aid, large areas were considered not eligible and removed from any legal aid service, which involve cases including Family law, housing problems, employment disputes, immigration, and benefits payments disputes. In family courts, there are about 80% of cases where people have had to represent themselves because they cannot afford any legal professional. Due to the legal aid cuts, solicitors and barristers were going out of business as the fees were covered mainly by the legal aid, therefore people cannot find professionals help to get advice, which is known by the Law Society as “ advice Deserts”[14](Bowcott, 2018).

Appendix E

“ The UK’s LawWorks has provided a definition of Pro bono in two parts (Appendix D). The first part is defined as- people such as community groups, individuals, and charities that cannot afford to pay for their legal advice or where there is no alternative funding available for those people, lawyers help them by providing legal advice or legal service. The work that lawyers provide to their general people or public is known as Pro bono. The second part is defined as- When voluntary work provided to the general public, to those who need it, without any charges or payment, those particular services (legal work) that are provided by the lawyers to their client is free of charge then that legal work is known as Pro bono legal work”[15]. (The Pro Bono Protocol’, LawWorks: <https://www.lawworks.org.uk/why-pro-bono/what-pro-bono/pro-bono-protocol>).

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Research has shown that in “ recent years it has shown pro bono work has been encouraged as part of a social responsibility by professions and large city firms” Alisdair Gillespie, *The English Legal System*, 4th edn”[16](Great Clarendon Street, Oxford, OX2 6DP, United Kingdom: Oxford University Press, 2013), pp. 333

What do we understand by Pro bono publico? “ Pro bono publico, is a Latin word which means ‘ for the public good’, as a result, Pro bono and access to justice indicate, where specialist people like lawyers who work in legal sectors can offer their expertise to their community or society. Research has shown”[17](Andrew Boon and Avis Whyte, “ Pro Bono Publico – 150 NLJ 1564”, *New Law Journal* 150 NLJ 1564, 2000 Volume 150. 6957 (2000) [Accessed 4 April 2019].) that lawyers have been providing their advocacy as free litigation services to the people who are in poverty.

Apprndix F

Norway has funded Uganda Law Society, where 10 law centres operate a legal aid project where land dispute cases are 60% and many other cases such as physical assaults on children and domestic violence. These cases require the most support from their lawyers and law students, who provides their services free of money but they have still refused some of their clients due to lack of resources. Therefore qualified advocates have given 40 hours of work per year. Although in UK, Legal aid who offers access to justice to general people is wearing away, while Uganda is trying their best to put their heart into it.

Appendix G

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Are there any alternatives to legal aid? There are few lawyers and judges that have recommended an inquisitorial system rather than an adversarial system. “ Lord Thomas stated that criminal cases need to be sent to the crown court, a change that would significantly restrict the right to trial by jury”[18](<https://www.theguardian.com/law/2014/mar/04/inquisitorial-system-family-civil-cases-judge-lord-thomas>). Local authorities who fund law centres “ are under threat, often step in to provide services of advice and sometimes representation for those who are adrift in the justice system Unqualified people (McKenzie Friends) who can sit beside defendants or claimants and provide advice or help are being used more and some of them even charge fees for their help”[19](<https://www.theguardian.com/law/2018/dec/26/legal-aid-how-has-it-changed-in-70-years>). However, the Citizens Advice Bureau also works as pro bono services.

Appendix H

Hilary Panford gave us an example with two cases:- Mr M a Polish man was notified that he was not able to get pension credits because he was told that he was working without proper documents. But in the Lower Tribunal his case was successful due to CAP finding his documentation

Ms V, who is a Sri Lankan refugee, was placed in a flawed premise where she hurt herself. Her case was successful due to CAP, as she was given damages and her property was repaired. Without the help of CAP, neither of these cases would have been successful as they did not qualify for legal aid. So they were lucky to live in the area where CAP was operating. Ms Panford told us about Citizens Advice Bureau’s (CAB) work, that they have been operating

since 1938, providing an essential service. However they are run by volunteers, who are not fully qualified which has lead to mistakes being carried out. Therefore Ms Panford said that In the UK more Universities need to contribute to the unmet need for legal advice.

[1]Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn (Edinburgh Gate Harlow CM20 2JE United Kingdom: Pearson Education Limited, 2017), p. 307.

[2]Catherine Elliott and Frances Quinn, *English Legal System* , 18th edn (Edinburgh Gate Harlow CM20 2JE United Kingdom: Pearson Education Limited, 2017), p. 310.

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[18]<https://www.theguardian.com/law/2014/mar/04/inquisitorial-system-family-civil-cases-judge-lord-thomas>.

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