

Ministry of Justice Consultation:

'Housing Legal Aid: The Way Forward'

Response from South West London Law Centres

About Us

South West London Law Centres (SWLLC) is one of the largest law centres in the UK . The first law centres in south-west London were founded in 1974, by local people with a shared vision that everyone should have access to legal advice and justice – regardless of income.

In 2004, four law centres in Battersea, Croydon, Kingston and Tooting joined together to create SWLLC. Since then, our team has given vital legal advice to many 1000s of residents across the six south-west London boroughs of Croydon, Merton, Kingston, Sutton, Richmond and Wandsworth.

SWLLC hold legal aid contracts in housing, welfare benefits, asylum, public law and discrimination. SWLLC also provide specialist advice in debt and employment matters.

SWLLC co-ordinate a pro bono clinic that has operated for over 45 years.

For many years SWLLC has delivered the HPCDS in Croydon, Kingston and Wandsworth County Courts. Since 2020 SWLLC has included a housing crisis team to support with grant applications, welfare benefit applications and debt reduction to help people remain in their homes. As a result of the increase in housing issues during Covid-19 SWLLC has offered a housing advice line to Wandsworth and Merton boroughs and we hope to expand this offer to all the boroughs we work with.

A Law Centre is a not-for-profit law practice that specialises in social welfare law and targets its services at the most disadvantaged people in its community. The Law Centre movement in the UK is over 50 years old and there are currently 41 member Law Centres across the country, nearly all of which hold legal aid contracts.

Q1. Do you agree with our proposal to reform the way housing possession legal aid services are delivered and create the Housing Loss Prevention Advice Service, providing duty advice at court and early legal advice? Please provide reasons for your answer.

Since 2020 SWLLC have employed crisis navigators to work alongside housing solicitors to keep people in their homes. The insight that the crisis project has given to SWLLC is that early intervention and wrap around advice is crucial in helping tenants and residents remain in their homes. This should run alongside and never replace expert specialist legal advice which is also critical, as is early advice and on the day advice.

Below is an example of how proper advice can keep someone experiencing crisis in their home and allow them to repay their arrears and move on.

'My problems started when I got behind with my rent. I'd gone to Citizens Advice and was going through the process with them and then lockdown hit. My situation got worse and my landlord started threatening to take me to court with a possession order.

'My solicitor recommended the Law Centre to me and they just stepped in and were absolutely fundamental in helping me – not just in the work they did in speaking with my creditors and sorting

Commented [R(1): What year did it start?

Commented [GU2R1]: Don't know

Commented [R(3): What is the correct date?

Formatted: Not Highlight

things out for me, but in the time that they gave me. It was absolutely overwhelming. I was embarrassed to explain my situation but the kindness and patience they showed me; I can't put it into words.

'Every problem I raised, Jaye had answers and showed me there was hope. She walked me through everything and gave me so much encouragement and help. I struggle with my mental health but she gave me the positivity that I could get through it. She was absolutely brilliant. I felt so much happier and that I could do things for myself.

'I still have arrears of around £8,000 which is a huge thing for me. I'm of West Indian heritage and because of what happened in the 1950s, the fear of losing the roof over my head has an extra dynamic for me. I have to pay £70 a month towards my rent arrears, so losing the extra £20 a week from universal credit is going to make a big difference. I see a lot of mums and families struggling too. It's going to impact us in a big way. We need to have you on our side. You treat us with such kindness and respect. You've been an absolute lifesaver to me. I can't say how grateful I am.'

Doreen is on Universal Credit and has rent arrears of approximately £7,770. We were able to apply for the Breathing Space scheme to help her manage her debts and also put in an application for a discretionary housing payment. At her possession hearing, the court ordered that she pays her full rent plus £70 per month towards rent arrears. By doing this she will be able to stay in her home.

**name has been changed*

SWLLC feel it is good that under these proposals clients will be able to access early legal advice, especially after WB and debt legal advice has been cut due to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) however given that debt/benefit matters have reduced roughly 98% after LASPO, SWLLC feel the proposals are quite limited in their ambition.

SWLLC appreciate that the early advice is not means tested and within these proposals there are fewer restrictions on claiming stage 1 and Stage 2 fees together and also opening up Legal Help (LH).

SWLLC are supportive of the MoJ's ambition to strengthen legal aid and the crucial HPCDS as those who are delivering the service can see how vital the service is and how it needs to be strengthened.

SWLLC support the idea of an expanded Housing Loss Prevention Advice Service (HLPAS) and would encourage you to go further to ensure sufficient change in delivery for those at risk of losing their homes.

SWLLC know that there is great need for the HPCDS, although ambitions fall short of meeting the policy aim of making the service more sustainable.

HLPAS proposal should be triggered at an early enough stage to ensure sufficient time is allowed to resolve issues that put a clients homes at threat, such as rent arrears.

SWLLC would encourage an earlier trigger point for HLPAS. Even if it is brought forward to the point of issuing an eviction notice this will still not allow enough time to address root causes of rent arrears and for case worker and client to tackle the issue. An example of this is an underlying benefit issue which can take many months for the appeal to reach court and is unlikely to be heard before the possession hearing date.

SWLLC have two part-time specialist WB caseworkers who are always at full capacity. SWLLC also employ a debt specialist team funded by MAPS with a warning this may end within 12 months. This type of project work although crucial is target led and time restricted.

Although SWLLC have two part-time WB case workers, they are always at full capacity so there is a need for more properly funded WB and debt caseworkers. There should also be investment in specialist skills to deliver this vital support once again. There needs to be more clarity on how the MoJ intend to deliver HLPAS work and what the scope, supervision and quality controls will be.

SWLLC feel that access to justice should be for everyone and capacity of crucial legal advice such as that through HPCDS needs to be expanded. As a south west London legal aid provider giving housing advice to some of most vulnerable and badly treated people in the country we are constantly peddling at full capacity. SWLLC feels that making providers duty bound to see anyone who turns up at early stage regardless of capacity may put potential providers off or create situations that are hard to fulfil in the best interest of the client. In light of this there needs to be a clearer, more considered approach.

Commented [GU4]: HPCDS

Q2. Do you agree with our proposed approach to remunerating the new HLPAS service? If no, please suggest an alternative and provide supporting evidence.

A fixed fee for early advice at stage 1 with no escape fee will limit amount of work that we can do to diagnose or address underlying issues. SWLLC are slightly concerned that there won't be any providers to provide this follow-on work as many providers stopped doing debt/benefits after LASPO. The consultation suggests providers can open LH to do further work but obviously this is not helpful if the follow up work is no longer in scope.

The remuneration for stage 2 advice is still low compared to the amount of work caseworkers undertake when taking instructions, advocacy, after hearing conference and advice letter.

A fixed fee of £157 is too low and in order to provide the benefit or debt work that is needed to avoid a case going to court and to ensure the issue is resolved normally exceeds two hours. Often you are dealing with complex cases and people who have many issues. You are also trying to engage with reduced third-party services to get issues resolved.

SWLLC would encourage MoJ to review its fix fees. There is chronic underfunding of certificated work/ LH and HPCDS.

Although £157 fixed fee may be in line with other social welfare matters, all of these need review and are outdated as they have not been updated in over two decades.

Legal aid needs to be delivered by quality caseworkers who are drawn to the work and retained. To ensure the sustainability of these schemes, costs should be recoverable, and caseworkers should be better remunerated.

Commented [GU5]: HPCDS and elsewhere

Q3. Do you agree with our proposal to introduce an in-court attendance fee in place of the existing nil session fee? If no, please suggest an alternative and provide supporting evidence.

Yes

Q4. Do you agree that this attendance fee should be equivalent to the fee payable if the provider had seen two clients during the session? If no, please suggest an alternative fee and provide supporting evidence.

No, although SWLLC welcome the increase and feel this will help make the HPCDS scheme more sustainable. Considering the remuneration of a solicitor's time SWLLC believe the fee should still be higher.

In order to make the scheme more sustainable new fees need to be set to incentivise solicitors to advise on the HPCDS and to properly remunerate solicitors for their time so vital lifelines such as law centres can remain open.

Q5. Do you agree with the proposal to allow providers to claim the fee for any follow up Legal Help matter in addition to any fees claimed under the HLPAS? If no, please suggest an alternative and provide supporting evidence.

Yes

Q6. Should the HLPAS be under a separate contract like HPCDS?

SWLLC feel that only those who hold face to face housing contracts should be able to tender for HPCDS, although we acknowledge the benefits of being able to bid for either HPCDS-only contracts or HPCDS and HLPAS contracts together.

Prior to LASPO the legal advice sector was able to prevent crisis at an earlier stage. Caseworkers were well trained and provided first and second stage support. In order to reintroduce this much needed support SWLLC would welcome the reintroduction of second-tier support contacts.

Q7. Do you agree with our proposed approach to tender for individual courts? Should there be just one HLPAS contract awarded for each court? If no, please suggest an alternative and provide supporting evidence.

SWLLC support the proposal of contracting by single court and for just one provider for each court.

Q8. Do you agree that ensuring providers are located in close proximity to the court where they are contracted will ensure a better service for clients?

SWLLC, like other law centres hold local knowledge and connections that are vital in supporting a client in crisis. It also means that we can attend the courts locally in person which is better for the client.

SWLLC would hope that firms bidding for contracts would have local connection and would not be tempted to send more junior staff to the HPCDS to cut costs as this could mean that clients do not receive the same standard of advice/advocacy that is normally provided through the HPCDS.

Commented [GU6]: HPCDS

Q9. Do you agree with the assumptions and conclusions outlined in the Impact Assessment? Please provide any empirical evidence relating to the proposals in this paper.

Assumption page 1: It is assumed that all HPCDS claims (based on 2019 volumes) would also receive early legal advice. In practice, we would not expect all HPCDS claims to also receive early legal advice, and we would expect some claims which receive early legal advice to be resolved before court, which would offset some of the costs

For varying reason, many clients SWLLC see through the HPCDS we have not seen before. In some instances, it is because the client has tried to access SWLLC but was not able to secure support. This may be because the support that is needed is currently out of scope for legal aid or because our part-time welfare benefit specialists did not have capacity to help with the client's urgent welfare benefit issue which could have prevented eviction. In other instances, the client may not have sought legal advice before reaching court.

The Bureau of Investigative Journalism's investigation into housing possession court hearings found that in just under 60% of hearings neither the tenant nor their lawyer attended their court hearing – so no one was there to argue against the eviction.¹

Offering earlier and follow-on legal advice will provide a level of service that clients deserve. Proper funded legal advice will reduce burden on the public purse and pressure on statutory services as evidenced in Dame Hazel Genn's Law for Health report.²

Q10. From your experience are there any groups or individuals with protected characteristics who may be particularly affected, either positively or negatively, by the proposals in this paper? We would welcome examples, case studies, research or other types of evidence that support your views.

From the experience of SWLLC many of the clients seen on the HPCDS are vulnerable and the need is not for you to tell them what their problem is, they need you to diagnose it and then solve it. The lack of funding for proper follow up work is adding to the problem.

Q11. What do you consider to be the equalities impacts on individuals with protected characteristics of each of the proposals? Are there any mitigations the government should consider? Please give data and reasons.

¹ [Evicted in less than 10 minutes: courts fail tenants broken by pandemic — The Bureau of Investigative Journalism \(en-GB\) \(thebureauinvestigates.com\)](https://www.bureauinvestigates.com/2020/07/10/evicted-in-less-than-10-minutes-courts-fail-tenants-broken-by-pandemic/)

² https://www.ucl.ac.uk/health-of-public/sites/health_of_public/files/law_for_health_hjp_final.pdf

Q12. What do you consider to be the impacts on families of these proposals? Are there any mitigations the government should consider? Please give data and reasons.

SWLLC consider the proposals to be positive. The proposals if implanted correctly could allow vital advice services such as law centres to remain open and offer the crucial support that is needed. SWLLC believe if done properly the impact on families will be positive as accessing expert legal advice improves your chances of remaining in your home and being able to resolve your housing issues. This should reduce the level of families being forced from their homes into inadequate temporary accommodation which can be over 50 miles from a child's school.

SWLLC know from our debt, housing and welfare benefits services that advice is crucial for families and any service that will increase access to this support will be important.

A recent example of how proper case work alongside HPCDS is beneficial for families:

"SWLLC took on where a client suffering from depression with 4 children accrued £4k rent arrears due to the benefit cap. Client referred to our crisis navigator to obtain a Discretionary Housing Payment to cover rent shortfall and the eviction prevented by our duty solicitor.

This client told us "You were absolutely fantastic. I was really worried. I hadn't eaten anything all day. I've felt so sick and nervous.

The duty scheme has been a fantastic service. I now know far more about my benefits and that I now need to do is save my home."

SWLLC were able to offer this support to this family due to short term funded project work. It will be far more sustainable for services and the state if this life changing advice was funded through legal aid. SWLLC know from recent reports that early advice reduces burden on other underfunded statutory services such as the NHS, schools, local authorities as properly funded early advice will cost the taxpayer far less.

Again we refer to Dame Hazel Genn's report Law for Health in which she says:

"Law is arguably one of the most important social determinants of health, critically influencing the framework in which individuals and populations live, face disease and injury and eventually die"

South West London Law Centres, Registered office address: 5th Floor, Davis House, Robert Street, Croydon, CR0 1QQ.

20.01.2022