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# Legal Aid Retrenchment and Access to Justice in the United Kingdom: The Rule of Law, Human Rights and the Legacy of LASPO 2012

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## Abstract

The study examined the effects of legal aid retrenchment on access to justice in the United Kingdom, with particular attention to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in England and Wales, the constitutional status of the right of access to the courts, and the human rights implications of reduced public funding for legal assistance. The study adopted a qualitative literature-based methodology, drawing on peer-reviewed journal articles, parliamentary and government reports, independent reviews, and judicial decisions. The analysis was anchored in the access to justice theory of Cappelletti and Garth and augmented by rule of law theory and the critique of neoliberal governance. Findings reveal that LASPO achieved substantial reductions in public expenditure but narrowed the scope of civil legal aid, increased the number of litigants in person, produced geographical advice deserts, and weakened the capacity of disadvantaged groups to enforce their civil and social rights. Criminal legal aid has also experienced sustained underfunding, which has contributed to workforce attrition and record Crown Court backlogs. The judgment in *R (UNISON) v Lord Chancellor* reaffirmed that access to the courts is a constitutional right that the executive cannot impede without clear parliamentary authority. The study recommends that the UK government should restore early legal help in housing, family, welfare and employment matters, revise financial eligibility thresholds, provide sustainable funding for criminal legal aid, and enact a statutory right to justice.

**Keywords:** Access to justice, legal aid, LASPO, rule of law, human rights, criminal justice, United Kingdom

## 1.0 Introduction

Access to justice is widely recognised as a foundational element of the rule of law and of democratic governance in the United Kingdom (UK). Bingham (2010) identifies the provision of means to resolve civil disputes without prohibitive cost or inordinate delay as one of the core principles of the rule of law, since legal rights have limited value where individuals cannot enforce them. Since the establishment of the modern legal aid scheme under the Legal Aid and

Advice Act 1949, publicly funded legal assistance has served as the principal mechanism through which the state has sought to ensure that people of limited means can obtain legal advice and representation. Legal aid has therefore occupied a central place in the relationship between the citizen, the courts, and the state.

The decade that followed the 2008 financial crisis marked a significant shift in UK justice policy. In pursuit of fiscal consolidation, the coalition government enacted the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which came into force in April 2013 and removed large areas of civil and family law from the scope of legal aid in England and Wales. The National Audit Office (2014) reported that the reforms were on course to deliver estimated annual savings of approximately £300 million, yet observed that the Ministry of Justice had been slower to consider how people would access legal aid and the wider costs that would arise elsewhere in the public sector. These developments have generated a substantial body of scholarly and policy literature on the consequences of legal aid retrenchment.

This paper presents a literature-based analysis of legal aid reform and access to justice in the UK, with a focus on LASPO, the constitutional right of access to the courts, and the condition of criminal legal aid. The study draws on scholarly literature, parliamentary and government reports, independent reviews, and judicial decisions to construct a structured review of the subject. Because legal aid is a devolved matter in Scotland and Northern Ireland, the analysis concentrates on England and Wales, where the most extensive reforms have occurred. The paper is structured as follows: a problem statement outlining the research gap; a literature review; a theoretical framework; the research methodology; a discussion of the findings; and a conclusion with recommendations.

### **1.1 Statement of the Problem**

The stated objectives of LASPO were to discourage unnecessary litigation, target legal aid at those most in need, make significant savings, and deliver better overall value for money. However, the House of Commons Justice Committee (2015) concluded that the reforms had achieved only the objective of reducing expenditure, had not achieved the remaining three objectives, and had harmed access to justice for some litigants. The Ministry of Justice (2019) subsequently conducted a post-implementation review of Part 1 of LASPO, which drew on evidence from more than 130 organisations, yet the review made no specific recommendations and was instead accompanied by a separate Legal Support Action Plan. The persistent gap between the objectives of reform and its documented effects therefore remains a central concern in the literature.

The consequences of retrenchment are visible across civil, family and criminal justice. The Law Society (2023) reports that 43.6 percent of the population of England and Wales lives in a local authority area without a housing legal aid provider, compared with 37 percent in 2019. In criminal justice, Bellamy (2021) described the funding he recommended as the minimum first step towards restoring criminal legal aid after years of neglect, while Leveson (2025) recorded a Crown Court backlog of more than 77,000 outstanding cases. The problem, therefore, lies in establishing the extent to which legal aid retrenchment has undermined access

to justice in the UK and in identifying the reforms necessary to restore effective, rights-based access to legal assistance.

## 2.0 Literature Review

The concept of access to justice has been extensively theorised in comparative legal scholarship. Cappelletti and Garth (1978) describe the worldwide movement to make rights effective as proceeding in three waves: the provision of legal aid for the poor, the representation of diffuse and collective interests, and a broader access to justice approach that reforms institutions, procedures and methods of dispute resolution. Their work established that formal equality before the law is of limited value where economic, procedural and informational barriers prevent individuals from asserting their rights. Applied to the UK, this framework suggests that the withdrawal of legal aid under LASPO represents a retreat from the first wave, with consequences for the effectiveness of the procedural and institutional reforms that followed.

Genn (2010) argues that civil justice has been progressively downgraded in public policy, as governments have promoted mediation and other forms of private dispute resolution as alternatives to adjudication. She contends that civil courts perform a public function by declaring and developing legal norms, and that the diversion of disputes away from the courts weakens the legal framework within which private settlements are negotiated. This argument is directly relevant to LASPO, which assumed that mediation would replace legal representation in private family disputes. The National Audit Office (2014) found, however, that mediation assessments fell by 56 percent in the year after the reforms, rather than increasing by the 9,000 additional referrals per year that the Ministry of Justice had anticipated.

Empirical scholarship has examined the rise of litigants in person as a direct consequence of the removal of legal aid from private family law. Trinder et al. (2014) found that the inability to pay for legal services was the dominant reason for self-representation, with only a quarter of litigants in person appearing without a lawyer wholly or partly by choice. Most participants experienced difficulty in managing their cases, including those with higher education or professional backgrounds, and the available support was disparate, variable and limited. The National Audit Office (2014) similarly reported a 30 percent increase in family court cases in which neither party was represented in the year following implementation, which imposed additional costs on HM Courts and Tribunals Service.

Scholars have also situated legal aid reform within the broader political economy of austerity. Mant (2017) argues that LASPO reflects a neoliberal approach to family justice in which economic reasoning has been applied to concepts such as justice, fairness and equality. According to Mant (2017), the family court has been placed between its traditional obligation to safeguard fairness and equality and the economic demands that constrain the capacity of judges and court staff to fulfil that obligation. This analysis suggests that the effects of legal aid retrenchment extend beyond the individual litigant to the institutional character of the courts, as principles of justice are increasingly measured against criteria of cost and efficiency.

Research commissioned by the Equality and Human Rights Commission has documented the consequences of LASPO for people with protected characteristics. Organ and Sigafos (2018)

found that the reduction in the scope of legal aid prevented many individuals from obtaining legal advice and representation in family, employment and welfare benefits matters, with detrimental consequences for their ability to resolve legal problems. Building on this research, Sigafoos and Organ (2021) argue that restrictions on free legal advice, combined with welfare reform, have weakened the capacity of citizens to establish and enforce welfare entitlements. They conclude that the state has failed to uphold its side of the reciprocal relationship with the citizen, thereby eroding the social citizenship described by Marshall (1950).

Human rights organisations have advanced a parallel critique. Amnesty International UK (2016) argues that the legal aid cuts have produced a two-tier justice system that remains open to those who can afford legal representation but is increasingly closed to the poorest. The report draws particular attention to children and young people, observing that the removal of legal aid from private family law hinders consideration of the best interests of the child under the United Nations Convention on the Rights of the Child, and that the withdrawal of legal aid from most non-asylum immigration cases affects the right to respect for family life under Article 8 of the European Convention on Human Rights (ECHR).

The geographical distribution of legal aid provision has received increasing attention in the literature. The Law Society (2023) documents the growth of legal aid deserts in housing, reporting that the proportion of the population of England and Wales without a housing legal aid provider in their local authority area increased from 37 percent in 2019 to 43.6 percent in 2023, while only 33.3 percent of the population had access to more than one provider. The National Audit Office (2014) had already identified 14 local authority areas without providers initiating face-to-face legal aid work in 2013 to 2014. These findings indicate that formal eligibility for legal aid does not guarantee practical access where the supply of providers has contracted.

The constitutional dimension of access to justice was addressed by the Supreme Court in *R (UNISON) v Lord Chancellor* (2017), which concerned the introduction of fees in employment tribunals. The Court unanimously quashed the Employment Tribunals and Employment Appeal Tribunal Fees Order 2013, finding that the fees had produced a sharp, substantial and sustained fall in the number of claims and unlawfully restricted access to justice. The Court held that the right of access to the courts is inherent in the rule of law, that any impediment to that right requires clear authorisation by Parliament, and that the higher fees for claims more commonly brought by women constituted indirect discrimination. The judgment has become a central authority in the literature on the constitutional limits of austerity in the justice system.

The condition of criminal legal aid has been examined through independent reviews and policy analysis. The Institute for Government (2019) reports that criminal legal aid spending fell by approximately one third in real terms from 2010/11, following means testing and reductions in fees for solicitors, barristers and expert witnesses. Bellamy (2021) recommended an immediate increase in funding of at least 15 percent, approximately £135 million per year, to secure parity between defence and prosecution, stem the departure of practitioners from criminal defence work, and assist in reducing the Crown Court backlog. Leveson (2025) subsequently warned of a real risk of total system collapse and proposed reforms that include extending trial without a jury in certain categories of cases.

The policy literature has also proposed structural reform. The Bach Commission on Access to Justice (2017) concluded that austerity had produced a two-tier justice system and recommended a Right to Justice Act that would consolidate existing legal aid entitlements and establish a new right for individuals to receive reasonable legal assistance without costs they cannot afford. The Commission further recommended the creation of an independent Justice Commission to oversee the right, the expansion of early legal help, the revision of eligibility criteria, and the replacement of the Legal Aid Agency with an independent body. These proposals reflect a growing consensus that the sustainability of legal aid requires a legislative foundation rather than discretionary budgetary allocation.

## **2.1 Theoretical Framework**

This study is anchored in the access to justice theory developed by Cappelletti and Garth (1978) as its primary theoretical framework. The theory holds that the effective enjoyment of rights depends on the removal of the economic, organisational and procedural barriers that prevent individuals from asserting them. The first wave of reform, the provision of legal aid for the poor, addresses the most fundamental of these barriers, namely the cost of legal advice and representation. The relevance of this framework to the UK is evident in the instruments through which the state has historically sought to promote access to justice: civil and criminal legal aid, duty solicitor schemes, law centres, and publicly funded advice services.

Rule of law theory offers a complementary lens for understanding the constitutional significance of legal aid. Bingham (2010) argues that the rule of law requires that the law be accessible, that all persons be equal before the law, and that means be provided for resolving civil disputes without prohibitive cost or inordinate delay. This position was affirmed in *R (UNISON) v Lord Chancellor* (2017), in which the Supreme Court held that access to the courts is a constitutional right inherent in the rule of law. At the European level, the European Court of Human Rights held in *Airey v Ireland* (1979) that Article 6(1) of the ECHR may require the state to provide legal assistance where it proves indispensable for effective access to court.

The critique of neoliberal governance provides a third analytical dimension. This perspective holds that the reform of public services since the 1980s has subjected social provision to market principles, cost containment and individual responsibility (Mant, 2017). From this vantage point, LASPO represents not only a fiscal measure but a redefinition of the relationship between the citizen and the state, in which legal assistance is treated as a discretionary service rather than an entitlement of citizenship (Sigafos & Organ, 2021; Marshall, 1950). Together, these frameworks permit a rounded theoretical analysis of the tensions between fiscal policy, constitutional principle and human rights obligations in UK legal aid policy.

## **3.0 Research Methodology**

This study employed a qualitative literature-based research methodology, which was appropriate for a study that sought to synthesise, interpret and critically analyse existing scholarly knowledge on a defined subject. The study relied exclusively on secondary data sources, including peer-reviewed journal articles, parliamentary committee reports, government publications, independent reviews, judicial decisions and academic books accessed through Google Scholar and publicly available online repositories. Sources were

selected on the basis of their relevance to legal aid reform, access to justice and the rule of law in the UK, with preference given to publications from 2010 to 2025, supplemented by foundational theoretical works.

Content analysis was applied as the primary analytical technique, enabling the identification of thematic patterns, theoretical arguments and empirical findings across the reviewed literature. The themes examined included the scope of civil legal aid, litigants in person, the geographical availability of providers, the constitutional right of access to the courts, human rights obligations and the sustainability of criminal legal aid. The study did not involve primary data collection, human participants or fieldwork, and was therefore not subject to the ethical clearance requirements associated with empirical research designs.

#### **4.0 Discussion of the Findings**

The literature reviewed in this study reveals a persistent disjuncture between the stated objectives of legal aid reform in the UK and its documented effects on access to justice. LASPO succeeded in reducing public expenditure on civil legal aid, yet the House of Commons Justice Committee (2015) found that it failed to target legal aid at those most in need, to discourage unnecessary litigation, or to deliver better value for money. The National Audit Office (2014) further established that the reforms generated additional costs for HM Courts and Tribunals Service, which indicates that a proportion of the savings was transferred to other parts of the justice system rather than eliminated.

The rise of litigants in person constitutes the most visible structural consequence of LASPO in civil and family justice. The findings of Trinder et al. (2014) demonstrate that self-representation is predominantly a consequence of financial necessity rather than choice, and that unrepresented parties experience considerable difficulty in managing legal proceedings. Consistent with Genn (2010), the expectation that mediation would replace legal representation proved unfounded, as the removal of legal aid also removed the principal route through which parties had previously been referred to mediation (National Audit Office, 2014). The result has been a family justice system in which courts must accommodate unrepresented parties with limited institutional support.

The literature further demonstrates that the effects of legal aid retrenchment have fallen disproportionately on disadvantaged groups. Organ and Sigafoos (2018) and Amnesty International UK (2016) document adverse consequences for people with disabilities, children, migrants and people on low incomes, while Sigafoos and Organ (2021) show that the combined effect of welfare reform and reduced legal advice has weakened the enforcement of social rights. These findings are consistent with the access to justice theory of Cappelletti and Garth (1978), which holds that rights lacking effective means of enforcement provide limited protection to those who most require it.

The growth of legal aid deserts reveals that the problem of access is not confined to eligibility but extends to the supply of legal services. The Law Society (2023) data indicate that a growing proportion of the population lives in areas without a local housing legal aid provider, which limits the practical value of the housing matters that remained within the scope of legal aid after LASPO. Where providers withdraw from legal aid work because of low remuneration,

individuals facing eviction or homelessness may be unable to obtain timely advice, even where they satisfy the financial eligibility criteria.

The judgment in *R (UNISON) v Lord Chancellor* (2017) represents the most significant judicial articulation of the constitutional limits on measures that restrict access to justice. By holding that access to the courts is inherent in the rule of law and may not be impeded without clear parliamentary authorisation, the Supreme Court affirmed the principle articulated by Bingham (2010) that legal rights depend on effective means of enforcement. Although the judgment concerned tribunal fees rather than legal aid, the literature treats it as establishing that the value of access to justice cannot be assessed solely in terms of public expenditure.

Criminal legal aid presents a parallel pattern of sustained underfunding. The real terms reduction in criminal legal aid spending reported by the Institute for Government (2019), together with the recommendations of Bellamy (2021), indicates that the defence sector has experienced prolonged financial pressure that threatens its capacity to provide representation. The Crown Court backlog of more than 77,000 cases recorded by Leveson (2025) has implications for the right to a fair trial within a reasonable time under Article 6 of the ECHR, for victims and witnesses, and for defendants held in custody. The proposals of Leveson (2025) to restrict jury trial have also prompted debate regarding the extent to which procedural rights should be adjusted in response to resource constraints.

The literature also draws attention to the need for a durable legislative foundation for legal aid. The Bach Commission on Access to Justice (2017) argues that the vulnerability of legal aid to successive spending reductions reflects the absence of an enforceable statutory right to legal assistance. A Right to Justice Act, supported by an independent oversight body, would provide a framework for reconciling fiscal responsibility with the constitutional and human rights obligations identified in *R (UNISON) v Lord Chancellor* (2017) and *Airey v Ireland* (1979). Such a framework would shift the policy debate from the question of how much legal aid the state can afford to the question of what level of legal assistance the rule of law requires.

In summary, this study has examined legal aid retrenchment and access to justice in the UK through a literature-based analysis anchored in access to justice theory and complemented by rule of law theory and the critique of neoliberal governance. The review of empirical scholarship reveals that LASPO reduced public expenditure but narrowed access to legal advice and representation, increased the number of litigants in person, and contributed to the emergence of legal aid deserts. Across civil and criminal justice, a consistent tension has persisted between the fiscal objectives of government and the constitutional principle that individuals must be able to enforce their legal rights.

## **5.0 Conclusion**

This study has demonstrated that the effectiveness of access to justice in the UK is contingent on the scope, adequacy and sustainability of publicly funded legal assistance. The access to justice theory of Cappelletti and Garth (1978) provides an analytically productive lens for understanding how the withdrawal of legal aid affects the capacity of individuals to assert their rights. The study's findings also confirm that the reforms introduced by LASPO, combined

with sustained underfunding of criminal legal aid, have weakened the practical realisation of rights that are recognised in law, with disproportionate consequences for disadvantaged groups.

The core conclusion of this paper is that legal aid policy in the UK requires a fundamental recalibration from a model driven primarily by expenditure reduction towards a rights-based model that treats access to justice as a constitutional requirement. This recalibration must involve the restoration of early legal help in areas of social welfare and family law, the revision of financial eligibility thresholds, sustainable investment in criminal legal aid, and a statutory foundation for the right to legal assistance. Without such a recalibration, the UK risks consolidating a two-tier justice system in which the protection of the law depends on the ability to pay.

## **6.0 Recommendations**

Based on the findings and conclusions of this study, the following recommendations are advanced:

- i. The UK government should restore legal aid for early legal help in housing, family, welfare benefits, debt and employment matters, since early advice can prevent legal problems from escalating into litigation and reduce costs elsewhere in the public sector.
- ii. The Ministry of Justice should revise the financial eligibility thresholds for civil legal aid and review the operation of the exceptional case funding scheme, so that legal aid is accessible to those who cannot afford legal representation.
- iii. The government should provide sustainable, multi-year funding for criminal legal aid in line with the recommendations of the Independent Review of Criminal Legal Aid, in order to retain defence practitioners, secure equality of arms, and reduce the Crown Court backlog.
- iv. Parliament should consider enacting a statutory right to justice, supported by an independent oversight body, so that the scope and funding of legal aid are anchored in enforceable rights rather than discretionary budgetary decisions.
- v. Future research should examine the effects of legal aid reform in Scotland and Northern Ireland and compare them with England and Wales, using empirical data to assess how different models of legal aid provision affect access to justice for disadvantaged groups.

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