KING'S College LONDON

Research Summary

Unintended Consequences: the cost of the Government's Legal Aid Reforms

Research Rationale

Contained in *The Legal Aid, Sentencing and Punishment of Offenders Bill* are proposals to save £270 million (net) per annum by changing the scope of civil and family legal aid. The Government estimates that 595,000 people will no longer receive legal aid as a result.

A key policy driver is the need to reduce the Ministry of Justice's expenditure by £2 billion per annum as part of the Government's commitment to reducing the fiscal deficit through public expenditure reduction. To achieve this, the scope changes must not generate substantial unintended or knock-on costs.

Despite the Government's own impact assessment identifying numerous such costs they concluded that:

> *"The lack of a robust evidence base means that we are unable to draw conclusions as to whether wider economic and social costs are likely to result from the programme of reform or to estimate their size."*

Given the stated policy driver this is surprising, as noted by the Justice Select Committee:

> *"We are surprised that the Government is proposing to make such changes without assessing their likely impact on spending from the public purse and we call on them to do so before taking a final decision on implementation."*

In response, The Law Society commissioned King's College London to identify and where possible quantify the *"likely impact on spending from the public purse"*. The final report, *"Unintended Consequences: the cost of the Government's Legal Aid Reforms,"* is now available and indicates that the net savings will be less than half of the Government's predictions.

Methods & Data

The report investigates the impact of the proposed changes within three broad areas of law: private family, social welfare (incorporating debt, benefit and housing advice) and clinical negligence. Together these account for 85 percent of the proposed savings both in terms of

expenditure (c. £239 million) and the total number of cases (c. 504,500) to be removed from scope.

Following the same methodology as the Government's Impact Assessment, the analysis is based upon the number of clients who received legal aid funding in 2009-10 but who would no longer receive funding under the proposals.

Using responses to the nationally representative Civil and Social Justice Survey 2009, consultation responses and other publically available data, the counterfactuals were mapped – what avenues are available for people denied legal aid – and the likely knock-on costs estimated.

Unintended Consequences: Key findings

Figure 1 illustrates the overall finding of the report. Based upon the assumption outlined in the report, total knock-on costs across the three areas of law could be £139 million per annum, generating an annual net saving of £100 million. This is approximately 42 percent of the net saving predicted in the Government's Impact Assessment for these areas of law. In clinical negligence the costs may outweigh the savings.

Figure 1: Government Savings against Estimated Knock-on Cost (£ millions)

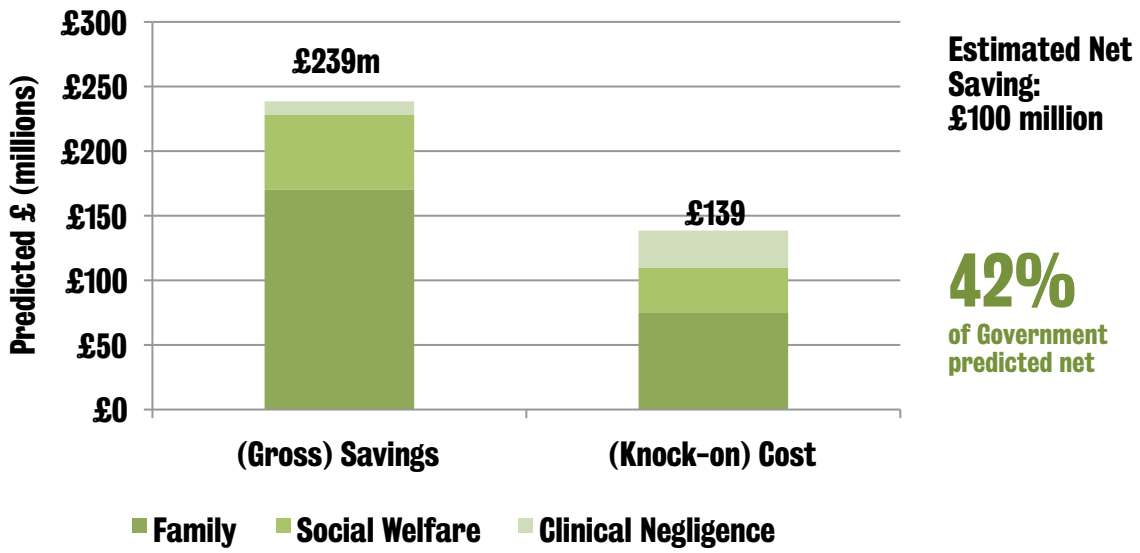
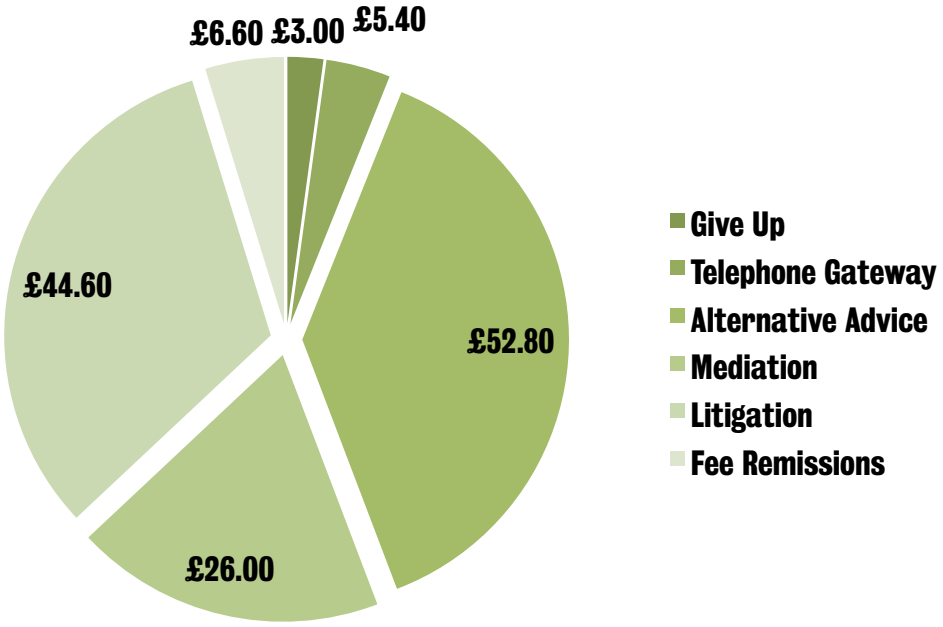


Figure 2 depicts the key cost areas identified in the report. The single largest cost is mediation with an estimated cost of £42 million per annum (£16 million net expenditure). The Government predicted an increase of 4-10,000 mediation cases per annum from a potential 'demand' of 210,000 clients no longer receiving family legal aid. Analysis of the Civil and Social Justice Survey and the result of a recent mediation pilot scheme indicate a doubling in the number of mediation cases is more likely.

Litigation costs are also predicted to increase by £45 million per annum. This includes an increase in clinical negligence costs of approximately £28 million per annum for the NHS due to increased cost of After The Event insurance for expert witnesses (£13 million) and a proposed 10 percent increase in damage payments to cover legal costs (£15.6 million). A further £7 million per annum increase in court costs are predicted based upon an increased likelihood of self-representation in family law cases.

Figure 2: Key Knock-on Costs (£ millions) – Total £139 million



The Government's rationale for removing these particular areas of law from scope is the availability of 'alternative advice', such as The Citizens' Advice Bureau. While numerous advice agencies exist they are frequently charities that rely upon Government support directly or indirectly.

Therefore increased utilization of their services is likely to increase the cost to other Government departments. The report estimates this cost to be over £53 million per annum. This impact can already be observed. For example, the Government has announced that the £27 million Financial Inclusion Fund, which provides debt advice for 100,000 clients per annum, will continue for a further year despite plans to close the scheme this year.

Conclusions & Recommendations

Without a trial, it is impossible to say for certain what the impact of the proposals will be, just as it is impossible for the Government to assert that there will be a net saving of £270 million per annum.

The implication of the Government's assertion that "[i]t is not possible to quantify accurately these wider costs[,]" is to estimate them at zero cost. This report therefore attempts to establish some estimate for these costs based upon the best available data.

On this basis, the report *suggests* that it is unlikely that the Government will realise such substantial savings, and therefore the reforms are unlikely to make a significant contribution to reducing either the fiscal deficit or the Ministry's own expenditure.

Based upon the analysis in the report, the net saving could be as low as £100 million per annum or 42 percent of the Government's estimate. While the Ministry of Justice may generate small savings, the proposals could pass on a cost of over £80 million to other Departments.

The report echoes the recommendation of the Justice Select Committee that further evidence is gathered on the impact of the proposals before legislation is passed.

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