

<b>Institution: London School of Economics and Political Science</b>
<b>Unit of Assessment: 24A: Anthropology and Development Studies: Anthropology</b>
<b>Title of case study: Shaping the debate on cuts in Legal Aid funding</b>
<p><b>1. Summary of the impact (indicative maximum 100 words)</b></p> <p>By exploring the social and economic effects of cuts in funding for legal aid, this research directly influenced legislation aimed at preserving legal aid for welfare benefit appeals. This was a major victory for campaigners who cited the research to lobby against cuts proposed by the 2011 Legal Aid Bill. The research informed a proposed House of Lords amendment to the Bill. Although the amendment was turned back by the House of Commons, welfare benefit appeals on points of law were discussed during the second reading and retained within the scope of legal aid funding.</p>
<p><b>2. Underpinning research (indicative maximum 500 words)</b></p> <p><b>RESEARCH INSIGHTS AND OUTPUTS</b></p> <p>The initial research [1,2] was undertaken during the first round of cuts in funding for legal aid. It examined the effects of the new 'fixed fee' system of funding introduced by the Labour Government. Paralegals, having previously been reimbursed on an 'hourly paid' scheme that recognized the complexities of their cases, were now administering a new billing structure focused on single 'acts of assistance'. The research analysed how the reforms, aimed at reducing costs, might affect access to justice for the poor and vulnerable.</p> <p>The research focused on the advice given to immigrants and asylum seekers in branches of the South West London Law Centres (SWLLC), and gave an ethnographic account of one-on-one relationships between caseworkers and clients. Despite pressure for efficiency and savings, the research found that empathy drove advisers to provide often exceptional levels of aid to their clients as they faced an arbitrary bureaucracy. Such personalized commitment was nonetheless aimed at shaping immigrant/refugees as model citizens by persuading them to accept the decisions of the bureaucracy.</p> <p>The research documented the new system of legal aid remuneration. Instead of cases being remunerated for the exact amount of time spent on them, as in the past, eligibility for legal aid was now decided before a case started and work was awarded on a 'threshold' basis: eligible cases that reached the first threshold were paid an initial flat fee of £260 – representing four hours and 26 minutes of caseworker time; cases deemed to merit extra time (by reference to their presumed higher chance of success, and after authorization from the Legal Services Commission), could proceed to the next threshold of £765. As a result, anything in between was, in effect, non-reimbursable, causing the Law Centre to lose money (James and Killick 2010). The research concluded that the new 'fixed fee' regime was making it too expensive to pursue complex or precedent-setting legal cases.</p> <p>Subsequent research [3,4,5,6,] was undertaken in the Southwark Law Centre and at Community Links, a charity in Canning Town, and explored broader-reaching forms of legal aid-funded advice to a variety of clients in receipt of welfare benefits. At this time, further cuts to legal aid funding were being debated, as the Coalition Government claimed that welfare benefits do not need specialist legal advice. Against this background, the research focused on the provision of state services at the local level and concluded that advice was in fact essential. The second tranche of research [3] (and Source I in Section 5, by Will Horwitz of Community Links), showed still further how early intervention and one-on-one advice interactions are increasingly necessary, because of 1) the uncoordinated manner in which the state provides services, 2) the need for professionalism as lower level bureaucrats become ever more inexperienced, and 3) the growing complexity of legislation, incomprehensible to ordinary citizens. The need is particularly acute in an adversarial common law system where success in both negotiation and litigation depends on familiarity with complex procedural rules, recent legislation and case law. On the one hand, advisers and</p>

governmental service-providers seem to function as part of a single system, with the former often correcting mistakes made by the latter. On the other hand, advisers can challenge government: overturning unfair legislation and even contesting the categories and assumptions that are enshrined in law. These findings refute the Coalition Government's insistence that social welfare problems ought not to necessitate legal assistance and demonstrate that advisers are crucial in helping welfare dependent people to actualize their rights.

### KEY RESEARCHERS

The research was conducted by Deborah James (Professor at LSE throughout), Evan Killick (research fellow in 2007-8), and Alice Forbess (research fellow in 2011-12). Researchers shadowed client consultations, followed up on cases, and sat in on tribunal hearings. Later, dissemination and discussion occurred in Advisory Board meetings, at feedback workshops, and at Law Centre AGMs.

### 3. References to the research (indicative maximum of six references)

1. James, D. and Killick, E. 2010. 'Ethical dilemmas? UK immigration, legal aid funding reform, and case workers' *Anthropology Today* 26(1):13-15 [earlier drafts were entitled 'Afraid of the form' and 'At the legal interface']. DOI: 10.1111/j.1467-8322.2010.00710.x  
[http://eprints.lse.ac.uk/30975/1/Ethical\\_dilemmas\\_\(LSERO\).pdf](http://eprints.lse.ac.uk/30975/1/Ethical_dilemmas_(LSERO).pdf)
2. James, D. 2012. 'Empathy and Expertise: Case Workers and Immigration/Asylum Applicants in London'. *Law and Social Inquiry* 37(3):430-55. DOI: 10.1111/j.1747-4469.2012.01312.x
3. James, D. and Forbess, A. Under review. 'Acts of assistance: navigating the interstices of the state with the help of UK non-profit legal advisers'. In *Stategraphy*, special issue of *Social Analysis*, edited by T. Thelen, K. Benda-Beckmann & L. Vettters. Available from LSE on request.
4. James, D. 2012. 'Rights, Welfare and Law. Legal Aid Advocacy in Austerity Britain'. *Policy Briefing*. <http://www2.lse.ac.uk/anthropology/JamesForbes.pdf>, see also <http://www2.lse.ac.uk/newsAndMedia/news/archives/2011/11/legalAidBriefing.aspx>
5. Forbess, A. 2012. 'A report on the use of volunteers within four not for profit legal services providers'. Report for Community Links, Southwark Law Centre, Tower Hamlets Law Centre. Available from LSE on request
6. James, D. 2012. 'Poverty Law' *The Justice Gap Blog* <http://thejusticegap.com/2012/03/poverty-law/>

*Evidence of quality*, as requested/specified by sub panel C, is that the research was funded by peer-reviewed grants (British Academy and STICERD) and that articles 1 and 2 appeared in peer-reviewed journals. 3 is under review.

### 4. Details of the impact (indicative maximum 750 words)

#### 1. Economic: early intervention saves money

The LSE research was used by officers and paralegals in the Law Centre Federation, and by other actors in the broader field of legal-aid-funded advice, in a campaign to secure public funds for advice services. The research provided them with evidence in support of their claim that early intervention in problem cases would save money in the longer term (by preventing complex knock-on effects, and by forestalling the emergence of 'problem clusters'). In other words, the research supported their claim that in the long run it would cost more to cut funds and to force paralegals in Law Centres to adopt the new 'fixed fee' regime as this would force them to waste time on calculating their exact fee rather than delivering value for money through the benefits of face-to-

face advice.

Two further reports used the paper (among other data) in support of similar claims about the ‘value for money’ offered by advisers (citing it as James 2010, ‘At the legal interface’):

“For every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34.”

“For every £1 of legal aid expenditure on debt advice, the state potentially saves £2.98.”

“For every £1 of legal aid expenditure on benefits advice, the state potentially saves £8.80.”

“For every £1 of legal aid expenditure on employment advice, the state potentially saves £7.13.”  
 [Source A].

This report attempted to give a monetary value to case-worker/client interactions in order to prove their indispensability [A].

A second report, authored by the Council for Social Action set up in 2007 by then Prime Minister Gordon Brown, cited a different draft of the same paper - James and Killick (in preparation), ‘Afraid of the Form’ – in support of its claim that empathy and quality interaction are of key importance:

‘the quality of the human relationship between the person delivering public services and the person using public services is an important factor’ [C]. From the case workers’ point of view, the role of a good relationship in gathering ‘good information’ from clients and in taking the case forward is key. Establishing such a relationship, which requires both time and skill, contributes to the clients’ ‘empowerment’, increasing their confidence and ability to deal with problems without the need of external help.

“One important claim in the second report was that benefits are felt ‘even if the legal outcome is not what the client wanted.’ [B]. The pilot study cited in the report, conducted in Solihull with a control in Leeds, measured ‘faster recognition and integration of refugees’. It produced a higher grant rate of 58% (Leeds 34%), meaning cases did not proceed through to expensive appeal. Correspondingly, Allowed Appeal rates in the pilot were 10% (Leeds 20%). On the measure ‘effective conclusion of negative decisions’, there was improvement in the pilot area from 10% to 16% (Leeds 5% to 6%) and the report notes ‘a strong impression that negative decisions were better received by asylum claimants.’ [B]. Testimony by Matthew Smerdon, of the Baring Foundation, reiterates the importance of the research in demonstrating the importance of one-to-one relationships [C]. A similar line of argument was echoed by other reports, such as the Citizens Advice Bureau [D], Trude and Gibbs [E], and NEF [F].

In sum, the LSE research was used to lobby the then Labour Government’s Ministry of Justice, so as to reduce the negative impact of the proposed new ‘fixed fee’ arrangements on the quality of the relationship between advisors and their clients. When the Law Centre was threatened with closure, the Ministry of Justice, under (later) Lord Bach, was prompted by these reports to provide emergency interim funding: various private law firms, non-profit organizations, charitable trusts and other funding bodies were likewise influenced to club together to shore up the Centre, in recognition of the ‘deep value’ of the work done by its advisers and paralegals, as noted in the testimony by Michael Ashe, then CEO of South West London Law Centre [G].

### **Subsequent research:**

## **2. Policy**

When the Coalition Government came into power, its new Legal Aid, Sentencing and Punishment of Offenders Bill threatened to cut legal aid funds even further. James and Forbess wrote a briefing (Section 3, 4) for the House of Lords, ahead of the second reading of the Bill on 21st November

2011, which was reported on in the media [H]. It was read by members of the House and informed the debate on a proposed amendment to the Bill to keep social welfare benefit appeals within the scope of legal aid. Although the amendment was turned back by the House of Commons, welfare benefit appeals on points of law were discussed during the second reading (e.g., by Peers Lord Philips of Sudbury and Lord Newton of Braintree and by Baroness Doocey, who proposed the amendment) and were retained within the scope of legal aid funding. The retention of at least this one area of funding was of key importance, given how frequently low-level bureaucrats make mistakes in allocating or deciding on benefits cases, and how crucial it is (for the individuals concerned, and for broader questions of legal precedent and access to justice) to challenge such misallocations when they occur.

Forbess in consultation with James also contributed to the debate through various interventions on social media (e.g. Section 3: 6 and others; see also Source I).

#### 5. Sources to corroborate the impact (indicative maximum of 10 references)

All Sources listed below can also be seen at: [https://apps.lse.ac.uk/impact/case\\_study/view/84](https://apps.lse.ac.uk/impact/case_study/view/84)

A. Bell, K. & Smerdon, M. 2011. Deep Value: the role of effective relationships in public services. London, Community Links. <http://www.community-links.org/uploads/editor/Deep%20Value%20-%20final%20web.pdf> Source file: <https://apps.lse.ac.uk/impact/download/file/1231>

B. Council on Social Action. 2009. *Time well-spent: the importance of the one-to-one relationship between advice workers and their clients*. London, Community Links. [http://www.community-links.org/uploads/documents/time\\_well-spent.pdf](http://www.community-links.org/uploads/documents/time_well-spent.pdf) Source file: <https://apps.lse.ac.uk/impact/download/file/1232>

C. Testimony from Deputy Director, Baring Foundation. Source file: <https://apps.lse.ac.uk/impact/download/file/1233>

D. Citizens Advice Bureau. 2010. Towards a business case for legal aid. [http://www.citizensadvice.org.uk/towards\\_a\\_business\\_case\\_for\\_legal\\_aid.pdf%20](http://www.citizensadvice.org.uk/towards_a_business_case_for_legal_aid.pdf%20) Source file: <https://apps.lse.ac.uk/impact/download/file/1234>

E. Trude A and J Gibbs. 2010. Review of quality issues in legal advice: measuring and costing quality in asylum work, ICAR (Information Centre about Asylum and Refugees) <http://www.icar.org.uk/Cost%20of%20Quality%20Executive%20Summary.pdf> Source file: <https://apps.lse.ac.uk/impact/download/file/1235>

F. NEF Consulting. 2009. The Socio-Economic Value of Law Centres. London: NEF. <http://www.lawforlife.org.uk/wp-content/uploads/2013/05/nef-socio-economic-benefits-of-law-centres-129.pdf> Source file: <https://apps.lse.ac.uk/impact/download/file/1237>

G. Testimony from former CEO of South West London Law Centres. Source file: <https://apps.lse.ac.uk/impact/download/file/1238>

H. Finchchannel.com. 2011. 'LSE academics brief the House of Lords on potential impact of legal aid cuts' 2/11/2011 Source file: <https://apps.lse.ac.uk/impact/download/file/1239>

I. Testimony from Policy and Media Coordinator, Community Links. Source file: <https://apps.lse.ac.uk/impact/download/file/1240>