

RESEARCH ARTICLE

Access to justice and the role of parliamentarians: what happens to those who fall through the justice gap?

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Abstract

This is the first academic paper to consider the role that parliamentarians play in access to justice. Under austerity, England and Wales has seen cuts to legal aid and local authority budgets that have impacted the ability of people to get help for legal problems in social welfare law from the advice sector. Members of the UK Parliament and Members of the Senedd Cymru are increasingly being called upon by their constituents to fill the resultant gap in advice. This paper draws on interviews with parliamentarians that draw out the nature of the role they are now playing in access to justice across three key areas of civil justice: welfare benefits; housing; and immigration. The growth of parliamentarians as figures in access to justice has thus far been largely neglected but is crucial to grasp, as the implications for the future of access to justice are massive. The paper calls for more research to better understand the phenomenon but urges caution that elected representatives should not be considered as an adequate substitute for a properly functioning, adequately funded advice sector.

Keywords: legal aid; access to justice; lawyers; parliamentarians; austerity; social welfare

Introduction: cuts and access to justice

This paper considers the role that parliamentarians in the UK play in access to justice, following an austerity programme wherein the UK government made financial cuts that it claimed were a response to the global financial crisis of 2008. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) abolished almost all civil legal aid funding for advice services in England and Wales from 2013. It represented the deepest set of cuts to the legal aid scheme since it was established under the Legal Aid and Advice Act 1949. LASPO came alongside significant reductions in local authority funding, which have led to further cuts to third-sector advice agencies. At the same time as these cuts to support services, there have been further cuts made to social security in a wide-reaching reform of social welfare. Social welfare constitutes the largest subject-area of advice service provision by the very agencies suffering from legal aid and local authority cuts. This has led to what Organ and Sigafos have referred to as ‘a perfect storm’ for the advice sector, whereby greater demand for services has gone together with drastic funding cuts.¹

LASPO was the centerpiece of the 2010 Conservative-Liberal Democrat coalition government approach to justice. At the heart of LASPO was the drive to cut £350 million a year from the £2.1 billion legal aid budget.² LASPO saw the legal aid budget reduced through the removal of public

¹J Organ and J Sigafos ‘What if there is nowhere to get advice?’ in A Flynn and J Hodgson (eds) *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (Oxford: Hart Publishing, 2017).

²L Gray ‘Legal aid cuts: What has changed?’ (BBC, 18 June 2013).

funding for cases on employment, family law (unless there is evidence of domestic violence), housing (except where there is a risk of homelessness), immigration and asylum, and welfare benefits. Following LASPO, approximately 62% of those entitled to legal aid in 2012 were no longer entitled the following year.³ Overall, the proportion of the population eligible for legal aid fell from 80% in 1980 to around 20% after LASPO.⁴ Mant has argued that the pursuit of economic savings has overtaken notions of equality and fairness in justice policy.⁵ Central tenets of social citizenship are being challenged by the LASPO cuts.⁶

The cuts have led to the unravelling of an already threadbare network of advice agencies, a process exacerbated by austerity-driven local authority cuts: a ‘double whammy’ for the third-sector.⁷ Austerity also brought cuts to local authority budgets, which further impacts on the provision of services to those suffering social welfare problems. Funding to local authorities across England was cut by almost 50% since 2010.⁸ The Welsh government felt a knock-on effect in the moneys they were provided and Welsh local authorities saw a 12% cut in their funding over the same period.⁹ The Local Government Association estimated a £7.8bn funding gap in England,¹⁰ while the Welsh Local Government Association suggested a £720 million funding gap in Wales.¹¹ As one example of the twin impacts of austerity, 11 law centres have closed since 2010 and many of those that survive offer a limited service.¹² Law centres historically relied on equal parts legal aid and local authority funding in the main (with a smaller amount from grant capture), and have lost over 40% of their total income since the beginning of austerity policies.¹³ England’s second city, Birmingham, came within a month of losing its Citizens Advice offices due to local authority cuts, despite huge demand (in 2011 they helped 2.1 million people deal with 7.1 million problems, an increase of 23% on the previous year).¹⁴ Citizens Advice services in the city were maintained but Birmingham Law Centre was not so fortunate, the combination of local authority cuts and legal aid cuts meaning that the 2,000 clients a year they saw would have to find assistance elsewhere.¹⁵ Across England and Wales, there were more than 1,000 fewer civil legal aid firms operating in 2017/18 compared to 2011/12.¹⁶ More than half of legal aid practitioners consider their remuneration under the scheme to now be unfairly low.¹⁷

These cuts took place as the coalition government imposed its austerity welfare reforms on the UK. Spending on social security shrank by nearly a quarter after a decade of austerity, with £37bn less spent on working-age benefits compared with 2010.¹⁸ On his visit to the UK, Philip Alston, the United Nations’ rapporteur on extreme poverty and human rights, noted that one in five people lived in

³A Flynn and J Hodgson ‘Access to justice and legal aid cuts: a mismatch of concepts in the contemporary Australian and British legal landscapes’ in Flynn and Hodgson, *ibid*.

⁴Bach Commission *The Right to Justice* (London: Fabian Society, 2017).

⁵J Mant ‘Neoliberalism and the cost of family justice’ (2017) 39(2) *Journal of Social Welfare and Family Law* 339.

⁶J Sigafoos and J Organ ‘What about the poor people’s rights? The dismantling of social citizenship through access to justice and welfare reform policy’ (2021) 48(3) *Journal of Law and Society* 362.

⁷D Morris and W Barr ‘The impact of cuts in legal aid funding on charities’ (2013) 35(1) *Journal of Social Welfare and Family Law* 79.

⁸National Audit Office *Financial Sustainability of Local Authorities* (London: National Audit Office, 2019).

⁹Welsh Centre for Public Policy *At the Tipping Point? Welsh Local Government and Austerity* (Cardiff: Welsh Centre for Public Policy, 2019).

¹⁰Local Government Association *Local Government Funding: Moving the Conversation On* (London: Local Government Association, 2018).

¹¹Welsh Local Government Association *Localism 2016–21: A Plan for Public Services in Wales* (Cardiff: Welsh Local Government Association, 2015).

¹²O Bowcott ‘Legal advice centres in England and Wales halved since 2013–14’ (*The Guardian*, 15 July 2019).

¹³J Robins ‘Underfunded and overstretched: the lawyers seeking justice for Grenfell’ (*The Guardian*, 24 July 2017).

¹⁴A Gentleman ‘Citizens Advice services face closure’ (*The Guardian*, 27 January 2011).

¹⁵C Baksi ‘Birmingham Law Centre closes as cash runs out’ (*Law Society Gazette*, 1 July 2013).

¹⁶D Gilbert ‘Legal aid advice network “decimated” by funding cuts’ (*BBC*, 10 December 2018).

¹⁷C Denvir et al *Legal Aid and the Future of Access to Justice* (Oxford: Hart Publishing, 2023).

¹⁸P Butler ‘Welfare spending for UK’s poorest shrinks by £37bn’ (*The Guardian*, 23 September 2018).

poverty.¹⁹ For Alston, ‘lack of access to legal aid also exacerbates extreme poverty, since justiciable problems that could have been resolved with legal representation go unaddressed’.²⁰ Alston identified LASPO as one of the causes of such impoverishment and the decline of the advice sector thus plays a key role here:

There have been dramatic reductions in the availability of legal aid in England and Wales since 2012 and these have overwhelmingly affected the poor and people with disabilities, many of whom cannot otherwise afford to challenge benefit denials or reductions and are thus effectively deprived of their human right to a remedy.²¹

Amnesty International claimed that LASPO had created a two-tier system, ‘increasingly closed to the poorest, most vulnerable and most in need of its protection’.²² Their research showed that, left unaddressed, legal problems could create the type of financial shock that pushes a vulnerable person under the poverty line and make it harder for those in poverty to escape it. The changes to civil legal aid adversely impact the most precarious in society, with many – especially the most disadvantaged – prevented from obtaining access to justice.

Perhaps the most damaging of all LASPO cuts were relatively small in financial terms, those related to early intervention. Genn’s research highlights that unresolved civil justice problems lead to pressures on other services and budgets exerting broader economic consequences, including legal costs but also more broadly in social and health terms.²³ Thus, the removal of early advice may have had a larger, and more long-term adverse impact quite beyond the headline financial figures. LASPO cut legal aid for early advice in social welfare law, impacting legal aid for support prior to representation in courts and tribunals. While the cuts were predicated on the cost savings of £350 million a year at a time of apparent fiscal pressure, these savings did not factor in the inevitable later costs that come from defunding early advice. The Low Commission calculated that every pound invested in advice saved the state between £2 and over £9 in other expenditure.²⁴

In reforming legal aid post-LASPO, the Bach Commission labelled the reformed early advice as ‘one of the least cost effective cuts’.²⁵ One of their most prominent recommendations was:

The priority should be to bring early legal help back into the scope of legal aid... in order to encourage early dispute resolution and prevent further distress and cost downstream.²⁶

The UK government’s post-legislative review of LASPO was accompanied by a supplementary Legal Support Action Plan that recognised the importance of new innovations focusing on early legal advice.²⁷ Ministers agreed to test forms of early intervention and evaluate whether they were cost effective. In 2020, the House of Commons Justice Committee conducted an inquiry into the sustainability of legal aid after LASPO and found an ‘urgent need to overhaul the system so that providers are

¹⁹United Nations Human Rights Office of the High Commissioner *Visit to the United Kingdom of Great Britain and Northern Ireland: Report of the Special Rapporteur on Extreme Poverty and Human Rights* (New York: United Nations, 2019).

²⁰Ibid, p 10.

²¹United Nations Human Rights Office of the High Commissioner *Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on Extreme Poverty and Human Rights* (New York: United Nations, 2018) p 13.

²²Amnesty International *Cuts That Hurt: The Impact of Legal Aid Cuts on Access to Justice in England and Wales* (London: Amnesty International, 2016) p 3.

²³H Genn *Paths to Justice* (Oxford: Hart Publishing, 1999).

²⁴Low Commission *Tackling the Advice Deficit: A strategy for Access to Advice and Legal Support on Social Welfare Law in England and Wales* (London: Legal Action Group, 2014).

²⁵Above n 4, p 29.

²⁶Ibid, p 6.

²⁷Ministry of Justice *Legal Support: The Way Ahead* (London: Ministry of Justice, 2019).

paid for all the work they do to support their clients, especially at the early stages of the process'.²⁸ A key proposal was:

We recommend that the government restores legal aid for early legal advice to pre-LASPO levels for all areas of social welfare law (including debt, employment, welfare benefits, immigration and housing).

The pandemic saw developments to restore such crucial early advice stall and there is at the time of writing a proposal for a new two-year Civil Legal Aid Review.²⁹

This paper looks at the state of access to justice under austerity through considering an often-unappreciated consequence of the cuts: the way parliamentarians are increasingly being expected to fill the justice gap that has emerged from austerity. The data demonstrates that the issues being brought to parliamentarians are what may have been expected if conducting interviews with advice agencies. The difference is that trained advisers would have the knowledge and skills to deal effectively with the cases. As such, parliamentarians are being used as a substitute for experienced advisers. The findings raise fundamental questions about whether and how access to justice does, could and should operate following austerity. This paper focuses on Members of the UK Parliament (MPs) and Members of the Senedd Cymru (MSs) to investigate their understanding and experience of the legal problems facing their constituents following the introduction of austerity.³⁰ In our research, we identified that MPs and MSs have effectively become part of the advice ecosystem for people struggling to access the advice sector. We begin by setting out the context for parliamentary involvement and the little data on this phenomenon that does exist. We next outline the research methods used in this study. We then present the data, starting with a consideration of parliamentarians' experiences of the advice sector and, thereafter, exploring the three main areas of casework that we encountered: respectively, welfare benefits, housing and immigration. We finally offer some concluding thoughts about what could be done next following our study.

1. Parliamentarians and legal problems

Legal need surveys have previously shown that 2.5% of those with justiciable problems sought advice from an MP or local councillor.³¹ The last such research is over 15 years old and we unfortunately lack an up-to-date comparative figure. However, there appears to be an increase in people taking their legal problems to their parliamentary representatives over recent years. Such has been borne out in a handful of reports over the last decade into MPs at Westminster. In 2012, a study by Young Legal Aid Lawyers found that 38% of MPs' casework involved legal issues, and the majority (87%) of constituents expected their MP to 'take action to resolve these issues following the surgery'.³²

Even in the early stages of austerity, this research reported that more than seven out of 10 MPs (71%) had needed to refer constituents to a legal adviser: 67% of MPs referred constituents to Citizens Advice for generalist help; 64% referred constituents for specialist advice from a dedicated not-for-profit organisation such as a Law Centre; and 60% of MPs had referred constituents to a firm of solicitors. There was already significant legal demand and parliamentarians were being drawn into supporting their constituents, albeit this appeared to often take the form of signposting and making contacts for constituents.

²⁸House of Commons Justice Committee *The Future of Legal Aid: Third Report of Session 2021–22* (London: Her Majesty's Stationery Office, 2021) p 25.

²⁹M Fouzder 'Civil legal aid review "to report in 2024"' (*Law Society Gazette*, 5 January 2023).

³⁰The overall project comprised over 200 interviews with those in and around the social welfare system. This paper draws on a subsample of unused data.

³¹P Pleasance et al *Civil Justice in England and Wales: Report of the 2006 English and Welsh Civil and Social Justice Survey* (London: Legal Services Research Centre, 2007).

³²Young Legal Aid Lawyers *Nowhere Else to Turn: The Impact of Legal Aid Cuts on MPs' Ability to Help Their Constituents* (London: Young Legal Aid Lawyers, 2012).

However, there was also a sense that people were struggling to find advisers to support them and so were approaching their MPs in lieu of being able to access the advice sector themselves. To this end, the report stated that:

Constituents frequently turn to MPs as a last resort when they have been unable to resolve their legal problems. As a result, MPs devote a significant amount of their time and resources to assisting their constituents in resolving their problems.³³

The situation in which people needed to go to their MPs because they could not get help from the advice sector seemed to worsen following the introduction of LASPO. Robins reported on an exchange between two London MPs noting the increase in legal matters they were being presented with two years after the implementation of LASPO.³⁴ John McDonnell (Hayes and Harlington) noted that ‘most MPs, particularly London MPs’ were becoming ‘swamped’ with welfare benefit cases.³⁵ In response, Jeremy Corbyn (Islington North) stated that: ‘If I did every housing issue I would be dealing with about 500 people a week. I could not do it’.³⁶ While anecdotal, this dialogue suggests that by this point key areas of social welfare law were being taken directly to parliamentarians – perhaps demonstrating the impact of LASPO restricting the availability of legal aid and precipitating the decline in the advice sector.

In a 2017 report by the All-Party Parliamentary Group on Pro Bono into unmet legal need in London found that almost nine out of 10 of appointments at MPs surgeries raised legal issues.³⁷ By this stage, the effects of the cuts would be fully established and the high proportion of constituents approaching with unmet legal need can be read as telling a story about the travails of access to justice under austerity. The biggest issues these London MPs faced were housing (37%), immigration (23%) and welfare benefits (13%). The study drew on observations of 40 surgeries held by 21 MPs (15 Labour, five Conservative and one Liberal Democrat) comprising 325 constituents’ appointments.

More recently, the All-Party Parliamentary Group on Legal Aid noted how, ‘as MPs, we have seen the effects of these cuts in our own constituencies’; an explicit statement on the impact of legal aid and local authority cuts on the ability of people to obtain legal advice.³⁸ In 2018, they sent out a short survey to all MP offices in England and Wales, asking how the volume and nature of their casework had changed.³⁹ Half of the 249 MPs who responded to the survey believed that the volume of constituency casework had increased over the past year and over half saw a noticeable increase in the complexity of this work. Over the course of a month, four out of five MPs reported that they refer cases to Citizens Advice, five out of 10 to Law Centres and four out of 10 to firms of solicitors. Almost one in three said that they refer to the Bar Pro Bono Unit or another pro bono service. Many responded to the survey pointing out that funding has been lost for immigration services in particular, while some drew attention to other reductions in available services such as local Law Centres or Citizens Advice offices closing. Nearly 90% of those surveyed were dealing, on a weekly basis, with welfare benefits issues, almost 75% were dealing with housing and 65% with immigration.

Despite this apparent trend for approaching parliamentarians with legal problems, there has been a dearth of academic scholarship looking at the issue.⁴⁰ While there is an increasing amount of academic

³³Ibid, p 6.

³⁴J Robins ‘A brave new dawn’ (*New Law Journal*, 1 October 2015).

³⁵Ibid.

³⁶Ibid.

³⁷All-Party Parliamentary Group on Pro Bono *Mind the Gap: An Assessment of Unmet Legal Need in London A Survey of MPs’ Surgeries Oct–Nov 2016* (London: Hogan Lovells, 2017).

³⁸All-Party Parliamentary Group on Legal Aid *Westminster Commission on Legal Aid Inquiry into the Sustainability and Recovery of the Legal Aid Sector* (London: Legal Aid Practitioners Group, 2021) p 57.

³⁹All-Party Parliamentary Group on Legal Aid *MP Casework Survey – Findings – September 2018* (London: Legal Aid Practitioners Group, 2018).

⁴⁰Model legal needs surveys promoted by experts in the field include suggesting ‘Member of Parliament’ in their prompts for sources of advice that respondents may have attended to address their problem. See P Pleasance et al *Paths to Justice: A Past, Present and Future Roadmap* (London: UCL Centre for Empirical Legal Studies, 2013).

research looking at access to justice in a time of austerity, none has – to date – looked at the role played by parliamentarians.⁴¹ This paper is the first to do so thus providing a new perspective on the advice gap as it works in practice. We found the same three main areas of legal issues as the All-Party Parliamentary Group on Pro Bono did for London albeit in a different order, while we found the same three main areas of legal issues and in the same order as found by All-Party Parliamentary Group on Legal Aid looking across England and Wales. Throughout this paper, our focus will be on giving voice to the parliamentarians on their experiences around social welfare to best highlight the reality of access to justice for many of those who do not get help through the advice sector. In so doing, we hope to encourage others to think about this aspect of access to justice in a new light.

2. Research methods

We interviewed 20 parliamentarians. There is debate about sample size in qualitative studies but this number sits within accepted levels – and, further, the key element of robustness is often taken to be saturation, that participants are saying similar things, which we achieved in this fieldwork.⁴² In social research, politicians are considered an example of an elite interviewee, for whom access is more difficult than other social groups.⁴³ We sought a combination of MPs and MSs. While England has only MPs at the UK parliament, Wales has a combination of MPs at Westminster and MSs in Cardiff. Though justice is a reserved matter and thus of greatest relevance to MPs, those with social welfare problems may not restrict themselves to Westminster parliamentarians. For some, their local MS may be better known due to having a higher national profile (through, for example, a ministerial position in the Senedd), a stronger community presence (due to spending more time in Wales rather than in England) or representing a party favoured by the constituent (the Senedd has regional list seats that promote a balance across political parties). Both were potentially important to constituents. There are 573 MPs and 60 MSs in all, and there are 15 MPs and five MSs in this research. We visited 12 locations across England and Wales for our case studies – cities, towns and rural areas in south and north Wales, as well as the south east of England, south coast of England, English Midlands and north west of England; 12 of the sample are based in England, 8 in Wales.

This research was not aligned to any party. There is an imbalance toward Labour over other political parties despite our contacting every local MP and MS in the research areas. We had 17 Labour parliamentarians, with one each from the Conservatives, Liberal Democrats and Plaid Cymru – which we do not consider as ideal but is a starting point for understanding. We would have especially liked more Conservative parliamentarians to balance the number of Labour parliamentarians in recognition that the Conservatives have been a governing party for over a decade at UK-level during the period in which the cuts under discussion in this paper have been made.⁴⁴ A limitation of this study is that the role of parliamentarians – particularly opposition ones – in relation to access to justice may be seen through the lens of political struggle waged. By this line, justiciable problems may have become a political battlefield in which, for example, Labour MPs would look to highlight and push back against policies for which they might criticise Conservative-led governments. We note the insight from Ball that, ‘political interviews are themselves highly political’.⁴⁵ He highlights how politicians in research interviews will invariably push their own agendas and ‘carve out space of their own’.⁴⁶ While recognising this drawback, it is important to note that our findings do not seek to explore the political

⁴¹Beyond parliamentarians there is also scope to look at the role of councillors – above n 32.

⁴²SE Baker and R Edwards (eds) *How Many Qualitative Interviews is Enough? Expert Voices and Early Career Reflections on Sampling and Cases in Qualitative Research* (Southampton: National Centre for Research Methods, 2012).

⁴³X Liu ‘Interviewing elites: methodological issues confronting a novice’ (2018) 17(1) *International Journal of Qualitative Methods* 3.

⁴⁴The sample includes parliamentarians from Labour who have been a governing party in Wales over that same period.

⁴⁵SJ Ball ‘Political interviews and the politics of interviewing’ in G Walford (ed) *Researching the Powerful in Education* (London: UCL Press, 1994) p 97.

⁴⁶*Ibid.*

positions of the parties – the explicit content of our questions here is not necessarily party political. As such, the significance of the individual make-up of the sample is lessened to a degree. The research is formally focused on practical rather than ideological issues, such that any parliamentarian might be expected to respond to their constituents' needs in a non-partisan manner.⁴⁷ We cannot assume, for example, that a Labour MP would be more likely to help a constituent with a housing problem than would a Conservative MP. Regardless, readers should be alert to possibilities of bias that result from the relative under-representation of Conservative parliamentarians in our sample. While we cannot know whether and to what extent political agendas motivated the responses or action of the parliamentarians in this study, the potential for such influence should be borne in mind in reaching an understanding of the data we present.

The political imbalance stems from two main factors: first, that we often picked towns and cities to study that coincidentally had higher proportions of Labour parliamentarians. The locations were chosen as part of the larger project in which we addressed access to justice in a range of settings. We aimed to gain broad coverage across England and Wales, including regions in the east, west, north and south of England, and well as the north and south of Wales. We wanted a balance of urban and rural areas, including differing types of experience such as large cities and small towns, more and less culturally diverse areas, and both prosperous and economically-deprived areas. We did not build sitting constituent political party into that selection process. Secondly, few Conservatives or Liberal Democrats responded to our approaches. This lack of engagement is understandable for a study framed through looking at the impact of the austerity policies they were associated with and may have felt we would attack them for. Indeed, one response from a Conservative MP simply stated that there were no problems in their constituency.

We do not claim this study as representative or generalisable, and want to provide this breakdown of our sample for transparency to allow the reader to draw their own inferences around the data we have collected. Whatever the limitations of this small-scale sample, our research with parliamentarians offers a unique contribution to the academic literature on access to justice in England and Wales. We hope that it will inspire more targeted, comprehensive studies of parliamentarians and their role in access to justice and social welfare moving forward.

We conducted semi-structured interviews – anonymised here to protect the identity of those who took part. They took place in our or the participants' offices. Interviews ranged from 15 minutes to two hours with an average length of around 45 minutes. Interviews were as short as 15 minutes because that is the time that was granted by the politicians. Cowley has noted that politicians are difficult to interview – as an elite group – and offer many challenges from other types of research interview.⁴⁸ One of the problems that can be faced is the time demands required in an interview:

They are busy people. Even the most junior has an almost infinite set of demands on their time... a packed diary. They will have plenty of better things they could be doing.⁴⁹

Cowley urges 'doggedness' and 'flexibility' on the part of the researcher: adapting to the requirements of the politician.⁵⁰ He offers a 'golden rule' for interviews to avoid behaving 'like a dick' by ignoring the demands the politician is under or pushing at the agreed parameters.⁵¹ Therefore if, for example, an interview needs to be short as for some in this research, we needed to respect that.

Interviews were transcribed and then coded using thematic analysis – a method for identifying, analysing, and reporting patterns across a data set.⁵² We asked parliamentarians to reflect on the

⁴⁷However, there is no legal duty to constituents: see B Wheeler 'MP "has no duty to constituent"' (*BBC*, 29 April 2009).

⁴⁸P Cowley 'How to get information out of Members of Parliament (without being told off by the Speaker)' (2022) 20(2) *Political Studies Review* 236.

⁴⁹*Ibid.*, at 237.

⁵⁰*Ibid.*

⁵¹*Ibid.*, at 241.

⁵²V Braun and V Clarke 'Using thematic analysis in psychology' (2006) 3(2) *Qualitative Research in Psychology* 77.

impact of austerity on their casework and the role they played in dealing with constituents' social welfare problems. In particular, we were interested in the extent to which they had experience on issues around access to justice and that might have been funded by legal aid or otherwise dealt with through the advice sector. Asking practitioners for reflections is an effective method utilised by researchers to gain insights and perspectives from 'on the ground'.⁵³ We thus adapted the approach in these interviews that cast the parliamentarians as quasi-practitioners. There were a variety of constituencies, with different local issues, including post-industrial areas with higher than average unemployment or remote areas with connectivity issues. Across all, though, we applied a consistent set of questioning on social welfare, which though similar in its narrative allowed the parliamentarians to identify what issues they most encountered in their casework and how they dealt with them.

Our lens was one of social constructivism,⁵⁴ a methodology that sits between positivism – which views reality as an objective to be discovered – and interpretivism – which is based upon the recognition that objective knowledge of the social world is impossible to achieve and instead focuses on the socially constructed nature of knowledge. We view reality as not 'out there' to be discovered but instead produced through interaction with others.⁵⁵ Our research also took an integrated approach, resting somewhere between structuralism – an outlook centred on the development of often politically motivated, theoretical frameworks that allow the realisation of privileged understanding – and interpretivism – which emphasises the truth as something subjective that is constructed by individuals, therefore leading to multiple realities.⁵⁶ Crucially, having not conducted observations to complement these interviews, we could (or should) not readily contradict or discredit the accounts. As such, we do not make it our mission to disprove what we were told; what we are doing is creating a narrative that the parliamentarians in our study should recognise as authentic. Recognising the limitations of our sample, this approach gives voice as much as possible, though one thing we still will not know is whether parliamentarians outside Labour – and, most pertinently, in the Conservative party – would have produced a different narrative. The presentation in this paper allows the MPs and MSs we have interviewed to set out their positions in a manner that they would accept – there is a minimum of engagement with existing literature in those sections to present the voice of those experts from the front line. This does not mean that we accept their positions uncritically but that it is our intention that the experiences they share should be taken as a new evidence base to inform further discussion and debate moving forward.

In the next section, we will explore the impact of austerity on the advice sector and the position that MPs and MSs found themselves in. The parliamentarians show their awareness of the problems constituents face in seeking advice for legal problems.

3. The advice sector

All parliamentarians we spoke with demonstrated knowledge of the local advice sector in their constituencies. We were told in each interview of the engagement between their office and providers across their constituency. MP10, for example, talked about how they worked with a local organisation with clients who had problems with immigration:

People can't afford legal aid and there are various organisations that can help. We've got an organisation that we work closely with and they provide some legal advice on immigration and asylum.

⁵³D Newman et al 'Vulnerability, legal need and technology' (2021) 21(3) *International Journal of Discrimination and the Law* 230.

⁵⁴M Denscombe *Ground Rules for Good Research: A 10-point Guide for Social Researchers* (Berkshire: Open University Press, 2002).

⁵⁵H Blumer *Symbolic Interactionism: Perspective and Method* (Los Angeles: University of California Press, 1969).

⁵⁶D Newman *Legal Aid Lawyers and the Quest for Justice* (Oxford: Hart Publishing, 2013).

Such was standard, with constituency offices having contacts with the local advice sector, albeit the nature of the services available varied from location to location. Parliamentarians would often list the organisations that they worked with for us. An example can be seen in MP4's account:

We refer to Women's Aid on Domestic Violence, on custody arrangements etc. For benefits, we often refer people to advocacy services in the courts, so someone can accompany constituents to benefits tribunals. We sometimes get referrals from the Refugee and Migrant Centre, usually if they can't get answers from the Home Office as we have a more direct line to them. And other charities working with asylum seekers, such as Initial Accommodation Centres.

Just as each parliamentarian discussed the importance of the local advice sector, they also told of us the struggles that were being faced. Every interview included detail on how there were less providers to consult with than in years previous and that their offices increasingly struggled to refer constituents on for specialist help. As an example of the decline in the advice sector, MP12 explained the problem they faced following austerity:

I've noticed a very big difference in where we can signpost. There was a time when many people were able to get expert representation from people who really knew the rules inside out and knew how to help them. There are now far fewer people available and that's because of austerity cuts to advice agencies.

Cuts affecting the advice sector were having a noticeable impact for these MPs and MSs. MP1 articulated the position of many that they saw the problems but were often not able to signpost as they once did, though neither were they able to give legal advice themselves:

We feel that the city provided very decent advice services on the whole. But it's shrinking for sure. It's very frustrating for us as we cannot give legal advice and there are not many places we can direct people too.

This put parliamentarians in a bind. While not providing legal advice, as a result of the increasing absence of advice services, MP12 described the kind of intervention MPs and MSs would routinely find themselves having to make:

There are a number of organisations we try to signpost to but there are others who don't have the same service or have actually been shut down. We now try to deal directly with the organisation involved so if its DWP [Department for Work and Pensions], we have our contacts there. MPs have our own hotline and people that we deal with there so we always make our own representations. And I sometimes make representations to ministers as well if I don't get success locally.... So we try all of those routes. And we're very persistent. And sometimes in the end we can persuade, for example, DWP to use some discretion.

One of the parliamentarians in this research had been involved in a campaign to save their local Citizens Advice office. The local authority had cut the grant provided to the Citizens Advice, putting it at risk of closing and leading to a reduced skeleton service before a late reprieve provided temporary relief with restored funding. MP5 detailed their concern over how losing the Citizens Advice would impact the area (and the work that MP5 did as MP):

Harming the Citizens Advice Bureau will have an impact on the services that I provide. I've taken on an additional caseworker in the last two years because of the amount of work that we've got. And the paucity of advice services is very, very worrying, because we don't have a Law Centre or anything like that. The Citizens Advice Bureau closing would also have increased pressure on the MP's office.

MP5 described how they had to take on an extra caseworker to deal with problems that might otherwise have been the domain of the advice sector. However, MP5 saw the limitations of this fix considering the nature of legal problems:

What I would say to my staff is, ‘Well, they’ve really got to see a solicitor’. There’s a limit to what we’re doing. Firstly, you can’t get involved in the cases because that’s not our role. Secondly, I can see judges getting really pissed off with us getting involved in cases, and I think it could actually be ultimately counterproductive. And also, we just don’t have the capacity to deal with it, and for all those reasons, we can’t provide the legal advice. I don’t think the Citizens Advice Bureau can do it either because it doesn’t have the capacity and their services are being reduced. So where do they actually go?

Recognising the limitations of the advice sector ecosystem, many of these parliamentarians reflected on the growing importance of their role. MP7 wanted to help with legal problems to give something back to a community that was losing out due to austerity:

It’s about the community seeing that what is being taken away with the legal aid cuts and through removing services is actually removing the ability of people to fight back against the decisions that have been imposed on them. I don’t have the resources to provide that. I’ve taken PIP [Personal Independence Payment] cases, to parliament and raised them in Prime Minister’s Questions but you can only do that for so many people.

MP7 detailed having to take extra measures following the closure of Citizens Advice office in their constituency. In this case, they managed to mitigate the impact slightly through working with a local university pro bono scheme to provide specific legal clinics:

So, we had our Citizens Advice Bureau closed. We’ve now started putting on legal advice surgeries in my office. We’ve done that with the university. They come once a week where we have constituents we feel would benefit from discussing their issue with someone who has a legal understanding. We’ve also got someone with legal experience in housing and someone from the university with experience in immigration who’s going to start soon as well.

What MP7 showed was a more formalised version of what all the parliamentarians described: MPs and MSs having to fill the gaps where the advice sector once was. Such is the context for the exploration of legal problems in this paper.

The parliamentarians interviewed identified three main areas across their casework: welfare benefits, housing and immigration. In the following sections, we will consider each in turn, following the frequency with which we were told they were the biggest problems presented by constituents – starting with welfare benefits.

4. Welfare benefits problems

Welfare benefits was the most discussed issue in the interviews and all parliamentarians identified it as one of the main parts of their casework. This is perhaps unsurprising given the impact of LASPO on legal aid for welfare benefits. In one of the most pronounced examples of the decline of legal aid under austerity, the number of people granted legal aid in welfare benefits cases fell from 29,801 in 2011–12 (before the cuts) to 308 in 2016–17 (post-LASPO), which was some 99% less.⁵⁷

The Welfare Reform Act 2012, which made changes to the rules concerning a number of aspects of the UK social security system, was at the root of many problems across social welfare law but especially

⁵⁷T Helm ‘Disabled people lose legal aid in 99% of benefits disputes’ (*The Guardian*, 14 April 2018).

in welfare benefits. For example, MP5 framed discussion of welfare benefits complaints in the context of the UK government phasing out Disability Living Allowance and replacing it with Personal Independence Payments:

Benefits is the biggest part of our casework. Benefits work has definitely increased. I think it's been precipitated by the changes in particular benefits as well. The benefit that has really had a massive impact, for us, is Personal Independence Payments.

There were generally two aspects to the complaints constituents approached their MPs and MSs with relating to Personal Independence Payments. The first was around the assessment process, as MP5 described:

We noticed almost immediately a very high incidence of people contacting us about withdrawal of Personal Independent Payments, and those have really impacted continuously since then with issues that hadn't really been resolved within the system, namely, we had people presenting to us who clearly had very, very substantial health issues who were getting no points, the assessment seemed to be completely illogical, there were complaints about the assessors, and this really continues.

This aspect of reform was brought in in 2013, having an immediate negative effect on constituents, but was still having an impact seven years later during this fieldwork. The approach taken in conducting the assessments was the crux of the matter for many. MP12 explained the difficulties that arose from questions asked of constituents in the assessment process:

Sometimes, people who are ill are unable to deal with things themselves to enable their lives to be as normal as possible and find that the questions they are asked on the assessment forms just miss the problems they've got. Or it might be people who don't know the best way to answer a question. If they're asked what they can do, it can cause problems. I'll give you one example: the question of 'can you cook unaided?' And I've come across people who've come to see me who say, well, they can cook and they want to be positive. But, actually, they can only do it if somebody is there with them. But they don't realise that if they just say, 'yes, I can cook unaided', that gets them no points or very few points when the reality is that, if no one was there, then they really couldn't cook but they just put a positive spin on things. And the other thing is where people say that they've given answers to questions during assessments, and they've felt the atmosphere was very cold and hostile, and that the wrong information has been recorded.

Some were asked a question that didn't catch the reality of their situation, some did not know how to answer a question and some found the people asking the questions were just not listening to the answers. All approached their representative when they could find no recourse to put these problems right in the advice sector.

The second most common complaint with Personal Independence Payments was around appeals. MP5 detailed this other aspect:

We also have continual complaints about the length of time that appeals take and the impact that has on people for a very substantial period. So that has been a constant presence for the last three years.

If the assessment process is deemed awkward or unfair then the ability to challenge decisions made at appeal becomes crucial. However, in addition to the burdensome length of the process, MS3 suggested that further cause for concern came from how it was only the most able and knowledgeable who tended to succeed with appeals:

And the people who do win the appeals tend to be the people who are educated, who often work at some point for councils, for Citizens Advice, for the benefits office, for job agencies. Those are the people who tend to win the appeals. They do the work themselves, because the forms are quite difficult and complicated. They also know to essentially...throw everything at them. As many doctors' letters, nurses' letters, consultants' letters, letters from churches, letters from MSs. You just throw everything at them and that tends to work.

Not everyone has the capability or capacity to put together a strong case, while the insider knowledge required to be successful at appeal was not available to all.

The rollout of Universal Credit was the other major reform to welfare benefits that MPs and MSs cited as negatively impacting their constituents. Universal Credit combined and replaced six previous welfare benefits including Employment and Support Allowance, Jobseeker's Allowance, and Income Support, and Child Tax Credit and Working Tax Credit. It was first piloted in 2013 with a gradual rollout due to be completed by 2018. Due to numerous problems with the system the rollout has faced delays; it was ongoing during the fieldwork and has most recently been pushed back to the end of 2023. For the MPs and MSs in this study, Universal Credit had merely added to the problems of Personal Independence Payments. MP4 identified the concern shown by their constituents during the rollout then occurring in their constituency:

We have hundreds of emails concerning Universal Credit and how worrying and confusing our constituents find it. Concerns include the effect that Universal Credit will have on disabled children. Moreover, the key issue for our constituents is the confusion surrounding Universal Credit, they are not receiving the correct amount of money and issues are often ongoing for months before we are contacted or before the issues are resolved. In the meantime, constituents struggle with the consequences of underpayment and the stress this entails. The rollout of Universal Credit has been a cause of significant confusion and distress for constituents.

Many of the parliamentarians talked about how complicated welfare benefits work was – and how they had relied on the advice sector for their expertise. MP5 noted that, even with a legal background, they personally struggled to understand the benefits system when faced with complaints around reforms such as Universal Credit:

I'm a solicitor by background. I've always found benefits more incredibly complex compared to most other types of law but all of these benefits, and particularly Universal Credit, are just so complex to deal with that it's very difficult. Having a system where it's very, very difficult to identify what you're being paid and why makes things really difficult. It also makes it essential that there's some sort of advice service available.

The need for the advice sector to deal with complex matters such as problems with Universal Credit was only highlighted by the decline in the advice sector. Indeed, MP4 noted the unfortunate timing of their local Citizens Advice service being cut back coinciding with the rollout of Universal Credit:

In general, Citizens Advice Bureau have been able to do less and less over recent years, so constituents can't sit and talk to them anymore, but have to phone when it is often difficult to get through. At a critical juncture in the rollout of Universal Credit for example, the lack of readily available advice and support risks letting problems spiral, letting people slide into rent arrears and often homelessness

Considering the complexity, one of the anxieties exhibited by these parliamentarians was the emphasis that Universal Credit placed on applicants navigating the system online. MP5 described the added drawback:

An online system also makes it much more difficult. I mean, I don't like dealing with things online. I prefer dealing with things face-to-face. And with a complex system like Universal Credit, it's difficult in the first instance, and we're dealing very often with the kind of individuals...where there are very complex needs who find dealing with bureaucracy difficult at the best of times but will find dealing with issues online even more difficult.

Online systems challenge all but can be especially burdensome to some, including the most disadvantaged groups in society who are more likely to be drawn into the welfare system.⁵⁸ This can comprise some disabled people, people with English as a foreign language, people with low levels of literacy, people with mental health problems or older people. MS3 explained how issues such as low income or living in a rural location can exert an adverse impact:

The people who need Universal Credit and need disability allowance are often the same people who cannot have access to a computer. Or accesses nearby. You think of the pressures that are put on people as well to go for work interviews and so on. They don't tell them that they can get their bus fare or whatever, or what the costs are, and all sorts of things. You know, it's seven pounds down there, seven pounds back. The whole system is almost unaffordable for people who are on benefits. And you've got the sort of tyranny of geography in places that are more remote, they're far more likely to need benefits and they need far more money to actually get anywhere to get a job, to get to a Job Centre, to get to a computer, to get to a library. And that's if they're able to use them.

While moving the system online might intuitively feel like it could make access easier, it made access more difficult for many of those who require welfare benefits, as has been reflected in more recent Ministry of Justice research on the impact of the pandemic on the advice sector.⁵⁹

Having looked at the most common issue of welfare benefits, we will now move on to consider the second most prominent issue from casework. While sometimes overlapping with welfare benefits, housing was a significant issue in its own right.

5. Housing problems

The next most cited problem was housing. The links between housing and poverty are well-developed, meaning many will struggle with this fundamental need.⁶⁰ Research has shown how often people with housing problems find them bewildering and can perceive the law as inflexible.⁶¹ They frequently need help but this is harder to find following LASPO.⁶² Housing problems were experienced by constituents in varying forms across all the parliamentarians in this study. The prevalence of housing as a constituent problem was expressed by MS3:

Housing is a big issue. People not understanding the system, how it works. Desperation of people and very little advocacy for them.

A major issue was the scarcity of reasonable quality social housing. MP15 discussed something that many MPs and MSs talked about across England and Wales, that constituents struggled to find social housing to escape from their substandard private rented accommodation:

So mostly the issue is the lack of access to secure, genuinely affordable social housing. We see people every week who are on the housing waiting list, who are living in a variety of different

⁵⁸Above n 53.

⁵⁹J Mant et al *Blended Advice and Access to Justice* (London: Ministry of Justice, 2023).

⁶⁰M Desmond and M Bell 'Housing, poverty and the law' (2015) 11 *Annual Review of Law and Social Science* 15.

⁶¹D Cowan 'Legal consciousness: some observations' (2004) 67(6) *Modern Law Review* 889.

⁶²D Brown 'The housing legal aid problem – just how bad is it?' (*LexisNexis*, 11 November 2022).

circumstances, often at the very sharp end of the worst of the private rented sector. And so, access to housing that people on very low incomes can genuinely afford but within a secure tenancy is the kind of biggest issue. But then stemming from that, there is a problem about the quality of the private rented sector; it's a very, very poor.... People are living with high levels of overcrowding and suffered financial problems that stem from trying to sustain a level of rent that isn't really sustainable on the amount of income coming in.

Thus problems were faced by many on low incomes, even if they were supported by local authorities. MP4 talked about the inadequate response of their local authority to constituents struggling with their housing:

One of the issues that stands out is the use of hostels and bedsits as temporary accommodation. Lots of one-child families end up in accommodation that is not suitable for them, creating added social and economic challenges.

Because of such issues, tenants are forced into the private rented sector and parts of that sector are of a very low standard and vulnerable tenants are being exploited. The private rented sector had problems of both quantity and quality that could impact on the constituents that these parliamentarians saw.

While the precise issues varied by constituency, in part depending on national and local policies, the parliamentarians across the sample frequently picked out the significance of the private rented sector. Within the private rented sector there were a range of problems that constituents reported to their representatives, including issues with the area and the accommodation itself. MS3 outlined some of these issues that constituents presented with that made it such a cause of concern:

Desperation probably around the housing thing is one of the biggest issues. People desperate to get out of an area, to move to an area, their circumstances are dire. The issues of wanting to live close to family and the availability of accommodation, just the general lack of it. And then people with disability and so on. And we do get people as well where they still haven't had that damp sorted for example.

Whether or not constituents explicitly came with a housing problem, though, housing may still have been an important issue. Justiciable problems tend to cluster and certain vulnerable categories of individual suffer from multiple problems.⁶³ Housing concerns underpinned and were related to a variety of common problems and are one of the most prominent examples of clustered injustice whereby, as Clements explains, disadvantaged people often experience multiple and synchronous legal problems.⁶⁴ MP1 underlined the importance of housing to constituent casework for its knock-on effects on other areas:

Housing is a massive issue and underpins most of the casework we see even if the constituent doesn't realise it. Domestic violence, homelessness, mental health, debt, rogue landlords, party houses, HMOs [Houses of Multiple Occupation], unaffordable PRS [private rented sector].

With the insight of clustered injustice, it becomes obvious that problems do not come in discrete packages, as exemplified by housing where – as in this example – there could be related debt and homelessness matters that both need to be tackled in order to achieve progress for the person involved.

⁶³P. Pleasence et al. 'Multiple justiciable problems: common clusters and their social and demographic indicators' (2004) 1 (2) *Journal of Empirical Legal Studies* 301.

⁶⁴L. Clements *Clustered Injustice and the Level Green* (London: Legal Action Group, 2020).

Support needs around housing – and the solutions to the problems presented – are thus many and varied. When constituents had housing problems, MP15 outlined the kind of support that parliamentarians would provide:

We do a variety of things. Sometimes we make direct representations to the councils on behalf of residents, particularly where we think that the constituents themselves are having difficulty navigating the process. So, if we think that somebody hasn't had a medical assessment of their health needs in their household or may not be in quite the right priority band relative to their circumstances, or might not understand the bidding system. Or if we think something's gone wrong with their application; if they haven't been treated as they should. But we also do quite a lot of signposting people to some of the specialist organisations that we have locally, where there might be need for advice on housing rights, or where there might be a problem to do with the way that a private landlord is behaving where they might need some legal representation.

Again, it is important to note the importance of the advice sector, especially for specialist housing issues and those more complex cases where there could be multiple issues to unpick. However, the struggles of the advice sector impacted here, as noted with welfare benefits, as MP15 explained:

We have some brilliant organisations and every single day we're grateful for them. They are also overstretched. We try not to overburden them with lots of people so sometimes we'll take a view that there's generic advice we can provide. But, in cases where there's a need for legal representation, that's where we sometimes run into difficulties about the different organisations that exist because you end up just not having the funding and the capacity to take on everybody who needs help.

'Advice deserts' are now common in housing legal aid, with over a third of regions in England and Wales having one or no housing provider.⁶⁵ This impacts both the constituent's ability to find initial advice, and the ability of the parliamentarian to get the expertise needed.

An added problem for some of the parliamentarians, which was especially prominent in relation to housing, were court closures. MP15 was one of those who had lost courts in their constituency and they noted the detrimental impact on their constituents:

We've lost more than one court now. So, we've lost the County Court, the Magistrates' Court, Youth Court. And so there are multiple different problems which stem from that. One of which is the housing cases which are heard in County Court. So, the consequence of the closure is the court system is very, very silted up and chaotic. The lawyers who I speak to tell me about cases that are listed that never get heard, long waits, and constant adjournments, for people who are having housing cases. They are in very, very precarious circumstances, often on the verge of losing their home, having to travel a much longer distance and then to interact with a system that is so much more chaotic than it was. I think that is a material detriment to those people. It makes their chances of getting a fair hearing worse than if there was a functioning court closer to home.

Court closures impact some areas worse than others, and are especially prominent in rural areas and small towns,⁶⁶ which makes for an unequal ability of all to defend themselves or enforce their rights.⁶⁷ The court backlog in England and Wales that has worsened again since this research was carried out would only add to the chaos described.⁶⁸

⁶⁵M Fouzder 'Millions deprived of lawyer as vast legal aid deserts revealed' (*Law Society Gazette*, 27 September 2021).

⁶⁶D Newman 'Attitudes to justice in a rural community' (2016) 36(4) *Legal Studies* 591.

⁶⁷D Newman and R Dehaghani *Experiences of Criminal Justice: Perspectives from Wales* (Bristol: Bristol University Press, 2022).

⁶⁸H Siddique 'Almost 75,000 defendants awaiting crown court trial, says head of CPS' (*The Guardian*, 1 November 2022).

Having looked at housing and thus addressed two of the topics under consideration in this paper, in the next section we will explore the other most common issue; immigration. Again, we encountered overlaps with welfare benefits and housing, but the parliamentarians were keen to stress the importance of this area to constituents in and of itself also.

6. Immigration problems

Immigration was a prominent issue across the sample but also that which had the most variety between parliamentarians. In a minority of areas, there were low levels of immigration so parliamentarians did not consider that they had a great deal of work on this topic. For example, MS3 worked across a (largely rural) constituency with such low levels and noted that it was a nearby MP who would have more immigration casework:

There isn't a large immigrant population here. So, whereas I know that my colleague has regular immigration surgeries – it is an enormous part of their portfolio in the city – it's not been part of ours but that's just because of where we are.

In some, especially rural and post-industrial, areas then the MPs and MSs did not consider immigration a big issue. However, for most of these parliamentarians, who had large towns and cities in their constituencies, immigration concerns were a noticeable problem that their constituents experienced. This reflects recent Welsh Government research on immigration services that has pointed to an increased role for MPs and MSs.⁶⁹ Overall, then, immigration was the third most common area of casework identified by these parliamentarians. As MP1 explained:

It forms a large part of our casework. The Home Office seems to be in disarray, understaffed and very resistant to helping anyone at all. We definitely experience a 'hostile environment'.

The notion of the 'hostile environment' came from a set of policies introduced in 2012 by then Home Secretary Theresa May, intended to make staying in the UK as difficult as possible for people without leave to remain, in the hope that they would choose to leave. It has since, as in this usage, been taken on as a general complaint about UK government policies deemed to dehumanise and degrade migrants living in the UK. Indeed, amongst the MPs and MSs in this sample, the Home Office was widely identified as the root of the immigration problems being faced. MP15 described some of the problems they found with the Home Office, including:

With all the issues that we see that relate to immigration, the problem is the Home Office. Broadly speaking, cases tend to be either about people who are trying to resolve their own status in the UK or people who have relatives who they want to be able to come from overseas to visit. And in both circumstances, the Home Office don't help. What we see on the relatives' side is a smaller part of the problem but still quite significant. If you've got a new baby and you want your mum to come for three months to help out, we see the Home Office taking an assumed view that that person would want to stay, and therefore refusing visa applications, and there's no right to appeal for those cases.... And the people who are already in the country who are trying to get their status resolved also suffer. So, we've had quite a few Windrush cases where people have been treated very badly over a long period. And we see how the Home Office system is loaded to say 'no' until it's proven wrong. Lots of people being refused on spurious grounds then going through the appeals process for many years at a great cost to themselves.

⁶⁹Welsh Government *Migrant Integration: Research on Immigration Legal Advice Services* (Cardiff: Welsh Government, 2023).

The example here includes mention of the Windrush generation, Commonwealth citizens being deported after not being able to prove their right to remain in the UK, which was one of the most emblematic examples of Theresa May's 'hostile environment' policies. These were one group amongst many suffering a range of legal problems due to the Home Office's approach to immigration. MP10 explained how the parliamentarians would help constituents:

We give them loads of help. We write to the Home Office on their behalf in a lot of the cases. And when people are about to be deported, we do interventions.

Contacting the Home Office was a key support mechanism offered to constituents. The help here was largely confined to MPs. MSs tended to pass such cases on to neighbouring MPs due to the greater access MPs have to the Home Office, with immigration being a Home Office issue dealt with at Westminster.

However, there were still limits on what MPs could do also. Some of these limits are highlighted by MP15:

We often take direct representations to the Home Office on behalf of constituents.... And sometimes we will try to access legal advice for people. That's really hard because there's no legal aid funding. So, that's a big problem: people who are just at a total disadvantage in the system because they haven't got good advice from a qualified, registered person. And we can't provide that because we're not...registered or qualified. But if you haven't got any money – if you have no recourse to public funds you haven't got any money – you're finding getting access to the advice that can actually help you navigate the system and resolve your status is really hard.

As noted previously with welfare benefits and housing, the parliamentarians struggled with the decline in the advice sector, which impacted on what they could do for constituents on immigration matters also. 'Advice deserts' were even worse in immigration work than for housing, with two-thirds of England and Wales classified as such.⁷⁰ Legal aid for immigration work has been amongst the most badly hit under austerity, leading to huge levels of demand but limited supply with 'droughts' – where supply cannot meet demand – as well as 'deserts'.⁷¹ MP12 explained how there often came a point where specialist legal advice was required:

If they're having difficulty in getting their cases heard properly, I do my best to assist them. And I am very persistent. But in the past they were able to get legal aid at some point and I'm not a lawyer so I don't attempt to give them any legal advice. I just try to make sure that all the relevant information is available and sometimes I make direct representations to ministers. But often it does need legal advice and sometimes I'll aim to persuade helpful local solicitors to give people free advice. But that can be very limited and its certainly not how it used to be.

Pro bono advice was often the only advice available. For constituents who came to their representative because they could not get legal advice, that parliamentarian in turn often had to hope they could find legal advice for them. To some degree, the parliamentarian's role was to try and persuade lawyers to give such pro bono advice on behalf of their constituents. MP12 suggested that their attempts get expert help would generally rely on charity, and being lucky in being able to convince lawyers to assist for free:

⁷⁰ Above n 65.

⁷¹ J Wilding *The Legal Aid Market Challenges for Publicly Funded Immigration and Asylum Legal Representation* (Bristol: Policy Press, 2021).

There are supportive people who try but often they're too restricted by finances. I perhaps send a lot of referrals through to help pro bono but I can't assume it will happen all the time. Sometimes they will be able to give some initial advice but not able to take cases through to a judicial review where a lot of money is involved.

There are limits to what pro bono support lawyers can give; sometimes they can provide limited advice, sometimes none at all. Lawyering in this area of practice is especially difficult, which means it would be unrealistic to expect there to be much potential for lawyers to work for free.⁷²

Without specialist advice being available, MP13 suggested that the decline of the advice sector has in effect led to parliamentarians doing work that used to be funded by legal aid:

Asylum seekers and refugees are coming to us because the Home Office is not really fit for purpose. MPs have a specific role because the Home Office will accept representations from MPs that they won't accept from anyone else. It's a bit naughty. What the Home Office has done is [it has] recruited MPs as unpaid – or paid from a different source – Home Office advocates.

The privileged position of MPs gave them a clout when it came to dealing with the Home Office. The underfunding of the advice sector highlighted the importance of this privilege for those suffering with immigration problems.

The three most popular problems that arouse in casework have now been detailed. We will next move on to provide some conclusions and recommendations that stem from our research with parliamentarians.

Conclusions: what role for parliamentarians in justice?

This paper has shown that parliamentarians are playing a little-recognised role in access to justice for those struggling with social welfare problems. After LASPO, the already creaking advice sector has suffered from the decimation of the legal aid system and cuts to local authority funding. The justice gap that has resulted in the advice sector means some will invariably fall through the cracks. We have found that MPs and MSs are one of the places that people go when they need help but cannot otherwise access legal advice. This paper has demonstrated the engagement of MPs and MSs across a range of areas, such as welfare benefits, housing and immigration. We found that these topics constitute a significant proportion of parliamentarians' casework.

The paper shows the need for a study that looks specifically at the role of parliamentarians in access to justice. Such research should include the potential of using this resource as part as some expanded notion of the public sector, as a wider element of the safety net that protects citizens' rights and entitlements. It seems to function in this manner in practice, thus we need to understand what benefits it provides, how and to whom. At the same time, any research in this area must also look at the limitations of parliamentarians performing this role, such as the risks of allowing non-experts to provide these services and the question of which groups are less likely to approach their MP or MS for help. Our research did not look at outcomes so it is difficult to get a sense of what – if any – additional value is being provided by parliamentarians. Are they as effective, more effective or less effective than trained advisers? If additional research is being suggested, then asking questions about what, if anything, a parliamentarian brings to access to justice – beyond connection with specialist advisers – deserves attention. We recommend a small-scale qualitative study that should include observation of surgeries and consumer research with constituents bringing casework, as well as a larger quantitative study that covers a cross-section of MPs and MSs offices.

Future research should build in a broader cross-section of parliamentarians than was found in this research. It would be interesting to know, for example, if the Labour parliamentarians regarded the

⁷²N Graffin 'The emotional impacts of working as an asylum lawyer' (2019) 38(1) *Refugee Survey Quarterly* 30.

welfare changes documented here as ideological rather than economically driven. Indeed, there is a possibility that a Labour parliamentarian may have regarded legal help or local authority cuts as inherently political. While our research sought to focus on the practical impact of cuts, future research – with a wider representation – might also use that base to explore broader issues. For example, it could explore whether the cuts to the advice services coming at the same time as the introduction of welfare benefits changes were considered ideologically linked reforms or an unintended consequence of fiscal necessity. In so doing, future research might grapple with the question of whether the responses of parliamentarians – especially those in opposition – are political issues manifested through the legal system or justiciable problems that might be ameliorated by legal aid. Criticism of the Home Office in this paper is an example of how parliamentarian responses could be understood through either lens. If the issues were considered part of a political struggle, it may lead to different conclusions on the appropriateness of parliamentarian involvement than if it were considered simply a pragmatic reaction.

If there were to be positives in MPs and MSs taking on these roles, it is important that we work out how best to harness this additional protection for social welfare issues. There may be the possibility of establishing hubs, developing clusters and co-locating services to best reach out to those in need. There is certainly a value in exploring the integration of the advice sector into partnerships to understand the potential for progressing access to justice as has been set out in a public health context.⁷³ It is possible that more parliamentarians could work more closely with the advice sector moving forward, in the way that we have found some MPs and MSs to have already done. Typically, it appears pure luck that a parliamentarian has someone in their office with experience of working in a Law Centre, or that a local pro bono clinic reaches out to a representative that they hope will be sympathetic. It may be the case that a more concerted effort needs to be made to link the expertise of the advice sector with whatever it is that an MP or MS can provide, to help mitigate some of the worst effects of austerity.

But even if the role of parliamentarians was found to be advantageous, we do not want it to be advocated as any manner of replacement for a properly funded, robust advice sector. The MPs and MSs we spoke with recognised this. For MS3, parliamentarians filling the gap was invariably a short-term fix:

The longer term has got to be providing advice and assistance to people from people who are capable and are properly trained to do it.

In our research, time and again we saw the value of specific legal expertise in helping people solve their problems around social welfare – and this needs to be funded.⁷⁴ It is the experts who appear best placed to intervene decisively and early, thus preventing escalation and problem clustering. By the time the constituent reaches their MP or MS the problem has often become acute, complex and more difficult to resolve – the cascading first identified by Genn.⁷⁵ Indeed, Robins and Newman, in assessing the impact of the advice sector's diminishment, witnessed:

How people's problems snowballed for want of early advice – someone loses their job, has difficulties claiming welfare benefits, falls into arrears with rent payments and end up facing losing their home.⁷⁶

⁷³S Beardon and H Genn *The Health Justice Landscape in England and Wales: Social Welfare Legal Services in Health Settings* (London: UCL Centre for Access to Justice, 2018).

⁷⁴We note research that problematises the assumption that lawyers are more competent than non-lawyers. See R Moorhead et al 'Contesting professionalism: legal aid and non-lawyers in England and Wales' (2003) 37(4) *Law and Society Review* 765.

⁷⁵Above n 24.

⁷⁶J Robins and D Newman *Justice in a Time of Austerity* (Bristol: Bristol University Press, 2021) p 179.

Seeing legal experts, and early, can be vital in stalling this downward spiral. These same experts would seem to be ideally suited to noting when the apparent issue is actually a symptom of a different trouble, and of unpicking the tangled web that people will often face. Just as with pro bono clinics, parliamentarians offer a useful addition to the access to justice arsenal – especially at times when it has been as debased, as under austerity. But they can never replace the advice sector; such is not their primary function, they are not designed – or even resourced – to be able to fulfil such a role.

Further, it needs to be noted that it is only the most confident and competent who will contact their parliamentarian. This was recognised by those we interviewed. As MP12 identified, parliamentarians only saw a limited range of those needing help;

I'm always very concerned about the people I don't get to see who will still be there.... While I always try to help, for every one person I see, there must be many more who don't even know who to go to. It's only the most proactive people who contact an MP and get help, many struggle in silence.

There was concern about those left behind. Research has shown that vulnerable groups have a high likelihood of experiencing justiciable problems.⁷⁷ As such, many will miss out, as articulated by Newman et al:

It is unsurprising, yet remains confronting, that unmet legal need has always been disproportionately experienced by those who are the most marginalised or disadvantaged within society, and particularly in relation to their interactions with society's institutions.⁷⁸

The most marginalised and disadvantaged might be considered less likely to approach their parliamentarians, whether due to language and communication problems, transport and access problems, or literacy and digital literacy problems. For example, some with disabilities, chronic mental ill-health, those who speak English as a second language, people with addictions or the street homeless could all, for a variety of reasons, have difficulties or doubts that prevent them from approaching their parliamentary representative. Whatever support parliamentarians might provide, it is likely that only an especially determined, specifically knowledgeable and particularly able cross-section of those with legal problems will identify the potential for an MP or MS to help. And, in all likelihood, it is then only going to be a further sub-sample who do reach out.

Fundamentally, we are conscious to resist any interpretation that we might be promoting MPs and MSs taking up these additional roles as quasi-legal advisers. We do not wish to encourage those who made such cuts as occurred under austerity or obfuscate the harm they have done to access to justice. Kaganas has highlighted the way that the LASPO cuts were couched in terms of both promoting individual responsibility and demeaning the role of lawyers.⁷⁹ Those who would rely on the advice sector have been castigated as feckless and needing to take responsibility rather than relying on state support by the UK government. In this vein, those who would take the initiative to approach their representative might be considered those worthy enough of support – a patronising and divisive argument we would oppose. Likewise, negative portrayals of lawyers or the role of the law in social welfare problems were incited by the UK government as a supposed waste of 'taxpayer's' money. Championing the removal of legal expertise and substituting MPs and MSs as an adequate replacement is another argument we would oppose for the structural damage it could bring to the advice ecosystem.

⁷⁷A Buck et al 'Social exclusion and civil law: experience of civil justice problems among vulnerable groups' (2005) 39(3) *Social Policy and Administration* 302.

⁷⁸Above n 53, at 230.

⁷⁹F Kaganas 'Justifying the LASPO Act: authenticity, necessity, suitability, responsibility and autonomy' (2017) 39(2) *Journal of Social Welfare and Family Law* 168.

What we have found, then, is that parliamentarians offer a safety net for a safety net for a safety net. The welfare state is supposedly every citizen's safety net against vulnerability. The advice sector should function as a safety net to ensure citizens get the support they deserve from the welfare state. And now we have MPs and MSs taking on the role of helping those who cannot get access to the advice sector. This must be recognised as a deeply problematic situation that exposes the debasement of the state under austerity. It should not be celebrated but should be documented. Despite these powerful and important limitations, we do need to better understand the place of MPs and MSs in helping people with their social welfare problems. It is our hope that, having discussed the phenomenon here, others will follow up with further research into this little-considered reality of access to justice following austerity. Since this research was conducted we have seen the full force of the pandemic and international crises being cited as economic constrictors for the UK requiring further shake up in state provision – all during (and potentially exacerbating) a 'cost of living crisis'. The problems parliamentarians faced could conceivably be increased in quantity and heightened in severity – and there is a need to understand this more fully.