Response of Legal Aid Practitioners Group to the consultation:

Civil legal aid: Towards a sustainable future
Proposals for Housing and Immigration fee increases and exploring contract reform
https://www.gov.uk/government/consultations/civil-legal-aid-towards-a-sustainable-future

Submitted 21 March 2025 to: civillegalaidreform@justice.gov.uk

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Introduction

Legal Aid Practitioners Group (LAPG) is a membership body supporting those who carry out legal aid work in England and Wales. Our members are private practice firms, not for profit organisations, barristers, costs lawyers and legal aid policy specialists. Our members carry out all areas of civil and criminal legal aid work and cover the whole range of business models from smaller, niche and/or sole principal firms, charities and other not-for-profits, to many of the largest providers of legal aid services.

The proposals set out in this consultation represent the first significant increase in civil legal aid fees for nearly 30 years. We are grateful to the Minister and her civil servants for formulating these proposals. We are also grateful for the constructive and positive rhetoric which reflects that the Government understands the importance of the legal aid system and is willing to take steps to remedy three decades of chronic under-investment. We would also like to express our appreciation to the Ministry of Justice (MOJ) officials who have carried out a comprehensive review of the civil legal aid system and have published a detailed and candid set of reports and data sets. The reports arising out of the Review of Civil Legal Aid (RoCLA) are unflinching in their assessment of the myriad issues blighting the administration of the scheme and undermining the ability of providers to deliver legal service to those in need. The data and analysis arising out of RoCLA has reinforced the key messages from the many reviews and research reports that preceded it. We have used the RoCLA reports to inform our response to this consultation.

All of the practitioners with whom we have engaged for the purposes of formulating this response have welcomed the proposals to increase fees. We hope the fees proposals will be introduced without delay. We appreciate that the Minister has noted that this is just the first step in the MOJ's civil legal aid reform programme. In the context of regressive legal aid policy making over several decades, this consultation represents a very positive first step. We look forward to working with the MOJ on the next steps to improve the legal aid system, and we remain fully committed to our ongoing work with the LAA to improve systems and processes. We also acknowledge that, as a department with an unprotected budget, there is a strong likelihood that the MOJ's finances will come under a great deal of pressure in the years ahead.

We have set out in this response a number of issues that highlight the enormity of the task ahead for the MOJ if it wishes to meet the principles set out in the consultation document. We accept that those principles are broadly sensible. With sufficient investment and a willingness to rethink the way the scheme is administered those principles are achievable. If they are achieved then we will be well on the road to having a sustainable supplier base and the agile, efficient and accessible legal aid system that clients deserve.

The importance of the MOJ's civil and criminal legal aid reform programme cannot be overstated given huge volumes of unmet legal need and the dire consequences for people, communities, society and public services if legal problems go unresolved. The MOJ has a vital role to play in creating a fair, just and economically prosperous society. By working collaboratively with legal aid providers and representative and membership bodies the MOJ can improve the legal aid system and deliver better outcomes for clients. This will also cement the MOJ's place as a key department in Labour's Plan for Change and assist the Government to deliver a variety of critical missions such as reducing violence against women and girls, ending homelessness, reducing demand on the NHS, supporting people back into work and reducing child poverty.

In preparing this response we undertook consultation with our members and practitioners on our Advisory Committee, which is made up of legal aid providers, barristers, costs drafts people and practice managers. We have also called upon our broad experience of policy work and research about the legal aid scheme and our extensive engagement with the LAA and MOJ on all legal aid contracting and policy issues as a Contract Consultee body and member of various engagement groups.

We also obtained the information and evidence set out in this response through three other methods:

1. We conducted detailed, semi-structured interviews with a small set of legal aid providers who have either a Housing & Debt (H&D) contract, an Immigration & Asylum (I&A) contract, or both. To ensure a broad range of perspectives, the providers interviewed represented both private practice firms and not-for-profits organisations of varying sizes. They are described in this response as Providers 1-6 (PROV1-PROV6) for the sake of confidentiality and we have removed any text which might identify them.

   Prior to conducting the interviews, we asked each provider to use one of the three methods set in Appendix 1 to estimate potential changes to their legal aid fee income as a result of the proposed fee increases. We then used the interview structure set out in Appendix 1 to explore a range of themes to gain a better understanding of any potential changes to their organisational and service delivery plans as a result of changes to their legal aid fee income. Interviewees had sight of the themes to be covered in advance of the interview and were encouraged to consider responses in light of the analysis carried out in relation to potential changes in their legal aid fee income. Interviewee responses are set out below under the relevant consultation questions.

   As can be seen from Appendix 1, in the course of these interviews, we explored a range of themes designed to test whether these proposals are likely to achieve the MOJ's objectives, which are set out as the *'Principles that inform decision making on civil legal aid fees'* at pages 13-14 of the consultation document. Where we talk about the MOJ's principles in this consultation response, we are referring specifically to the four principles set out in the consultation document unless otherwise stated.

   Appendix 1 also contains a summary of the methods used by each organisation to calculate any potential changes in legal aid fee income along with any immediate thoughts they had after undertaking this exercise.

2. In a joint initiative with ILPA, HLPA and LCN we devised a survey (the 'Provider Survey') to obtain the views of a wide range of legal aid providers about the consultation proposals and discussion points. The Provide Survey was not restricted to I&A or H&D providers and was open to current providers, prospective providers and those with an interest in legal aid on a policy level. We received 122 responses to the survey (although around half of these were incomplete responses as it was possible to skip certain questions in the survey) and the data derived was made available to all of the participating membership bodies to inform their respective responses.

   Appendix 2 contains an overview of the questions posed in the Provider Survey and a brief summary of the profile of respondent organisations. Throughout our publicity of the survey we asked practitioners to submit one response per provider organisation to avoid duplication.

3. In late 2024 we launched a research project which is seeking to compile robust empirical data on the hidden or 'non-chargeable' costs of doing legal aid work – the LAPG Non-Chargeable Time Research Project (the 'Research Project'). For many years practitioners have raised concerns about the volume of non-chargeable work generated by having a legal aid contract and conducting legal aid cases so we are seeking to quantify the work, understand what causes it and formulate suggestions on how it can be minimised. As all work has an associated cost to providers, non-chargeable work is a particular concern in the context of legal aid fees that have not increased over the better part of 30 years, have been cut in that time, and have manifestly not kept pace with consistent increases in business costs. Although we are still in the data gathering stage of the project, we contracted an independent researcher, Dr Jo Wilding, to conduct an analysis of the data we have gathered up to and including 28th February 2025, for the purposes of applying preliminary findings to the proposals in this consultation.

   We have included elements of that analysis below where relevant and set out a more detailed analysis and data tables in Appendix 3.

   The Research Project is an ongoing piece of work and we are still in the process of recruiting participants, with data continuing to build as each organisation completes the time recording process. We plan to share anonymised data with the MOJ and LAA once we have a larger sample set as we seek to progress our three research objectives:

   I. Identify and quantify 'hidden' but unavoidable costs associated with legal aid contracts.
   II. Analyse what tasks are intrinsically linked to the proper management of casework but are not currently claimable time in the Cost Assessment Guidance and Criminal Bills Assessment Manual.
   III. Evaluate the complexity of the funding scheme and contractual framework and identify elements that may create complexity without adequate justification. This may include identifying of duplication of tasks required by legal aid contracts and regulatory or quality assurance requirements.

Summary of Key Recommendations for Civil Legal Aid Reform

The fee increase proposals in this consultation are a positive step in the right direction. Providers have generally welcomed the proposals and many believe that they will be helpful in the short-term. As the Minister has stated that these proposals are just a first step towards creating a sustainable future for civil legal aid, we thought it would be helpful to set out here the main recommendations made in this consultation response. We believe these recommendations, and the many sensible points raised by other organisations in their responses, could form the outline of a much-needed MOJ *civil legal aid reform strategy*.

Recommendations

- Introduce the proposed increases in I&A and H&D rates as soon as possible.
- Introduce increased rates in all areas of civil legal aid as soon as possible.
- Introduce a mechanism for regularly reviewing rates to ensure they are uprated in line with increases in the cost of delivering legal aid services. Never again should providers be expected to work at rates that are not commercially viable.

- Reform the fee schemes to enable all providers to claim their reasonably incurred costs on a regular basis and introduce a process for all categories that enables providers to claim disbursements as and when they are incurred.
- Consider further harmonisation of rates to continue the process of simplifying the fee schemes and to reflect the high degree of expertise required to deliver all types of legal aid work.
- Gather robust data on an ongoing basis about the costs of delivering legal aid services to inform the regular review of legal aid fees.
- Continue to refine the principles that inform decision-making on civil legal aid fees to encompass the MOJ's statutory responsibility to ensure there is a sustainable supply of legal aid services that can meet an empirically measured assessment of legal demand.
- Develop a Legal Aid Workforce Strategy to deliver on the MOJ's responsibility towards those who deliver legal aid which, at least in the short- to medium-term, accepts that the MOJ will need to introduce specific interventions, in addition to fee increases, to nurse the workforce back to health.
- Reduce both the administrative burdens and compliance risks that inhibit providers' ability to run viable organisations.
- Where administrative burdens cannot be sensibly reduced (because, for example, there are specific legal or auditing requirements related to the allocation and use of public funds) ensure that the time and costs generated by those burdens are factored into legal aid fees.
- Amend cost assessment guidance to enable providers to claim for all tasks (including tasks carried out by non-fee earners) that are carried out as a specific requirement of their legal aid contract.
- Reduce or remove all situations where providers are expected to work at risk.
- Introduce a blanket exemption for publicly-funded cases from the Fixed Recoverable Costs regime.
- Apply the enhancement system to all levels of legal aid work to recognise that work requiring exceptional expertise and skill is carried out across the scheme.
- Carry out extensive and robust research about the merits or otherwise of reducing or removing contractual limits on remote applications and requirements for permanent office locations before formulating any policy proposals. These potential policy interventions should not be conflated with, or used as a justification for, diluting access to face-to-face services for clients who need to obtain in-person legal advice and assistance.
- Whist carrying out the research noted above, develop and implement a strategy to encourage providers to deliver face-to-face services in all recognised areas of low provision to ensure that both in-person and remote access to services are realistic options for clients. The LAA will need to develop a more sophisticated 'capacity assessment' process to make this possible.
- Re-establish a research centre with responsibility for obtaining and analysing data about, inter alia, unmet legal need, the drivers of legal need, public legal capability (particularly in relation to accessing online services), the impact of legal aid services and the sustainability of the legal aid provider base.
- Explore the merits of introducing a 'high trust model', whereby oversight and auditing is proportionate to each provider's track-record of quality and compliance.

Consultation Questions

Chapter One: Increases to civil legal aid fees for Housing and Immigration work

Question 1)

Do you agree with our principles for setting fee levels within civil legal aid? Please state yes/no/maybe/do not know and provide reasons.

Generally yes, although a large number of providers have expressed a desire to redefine or expand on the proposed principles.

Despite general agreement that the MOJ has drafted sensible principles, providers expressed serious reservations about whether the proposals set out in this consultation will enable the MOJ to meet those principles. We explore the reasons for those reservations in more detail below. We are, however, encouraged that the Minister has clearly expressed that these proposals are just a first step in creating a sustainable and accessible legal aid scheme and look forward to continuing to work with the Minister and her officials on further steps to enable the MOJ to meet its stated objectives.

Although legal aid providers and their staff are not part of the civil service, they deliver a vital public service and the MOJ has a direct responsibility for ensuring that the workforce is healthy, productive, valued and equipped with the tools and resources it needs to meet client need now and into the future. We strongly believe that this responsibility should be clearly articulated in the MOJ principles, along with a much clearer articulation of the MOJ's responsibilities towards clients who require legal services but do not have the resources to pay for them. By expressly accepting these responsibilities, and then taking the steps necessary to fulfil them, the MOJ will go a long way to ensuring the Lord Chancellor can comply with her legal duties set out in LASPO *and* reduce the chance that the MOJ will continue to fail to comply with equalities duties.

Throughout this response we will raise a range of significant issues that adversely impact on the legal aid workforce. We believe that it is of utmost urgency that MOJ develops a Legal Aid Workforce Strategy which seeks to properly understand and remedy issues such as:

- the inability of providers to offer competitive salaries which leads to a gradual seep of practitioners away from legal aid and towards other areas of legal practice. The primary cause of this is low legal aid fee rates, but there are also virtually no incentives built into the legal aid scheme to recognise expertise and experience or compensate for the additional burdens placed on management and supervisory staff.
- the lack of experienced providers able to fulfil training and supervisory roles, which causes two significant issues for providers: (1) an inability to recruit or replace the supervisory staff that underpin their ability to hold a legal aid contract and (2) a lack of capacity to recruit and train junior lawyers.
- skills gaps and shortages which were primarily caused by LASPO scope changes and which continue to undermine early intervention in many categories of law and will remain an issue even if scope restrictions are removed.
- an inability to conduct effective succession planning as it proves ever more difficult for providers to replace the most senior staff.

- the low awareness of and general disregard for legal aid practice as a viable career route amongst many higher education providers and the lack of focus within current training and qualification routes on legal aid practice areas.

We believe that developing a robust Workforce Strategy, backed up by ongoing work to introduce commercially viable fees, must be a key component of the MOJ's approach to achieving principles 1, 2 and 4 set out in this consultation.

Feedback was obtained via the Provider Survey and through consultation with members to explore whether practitioners agree with the MOJ principles and whether they feel there is anything missing from the principles. Practitioners raised the following issues in relation to the principles:

- They should state expressly that provision must expand to meet legal need and that the MOJ should ensure that effective access returns to identified legal aid deserts.
- There should be a more direct statement that both sustainability and paying a fair price are heavily reliant on periodic increases in rates.
- That paying a fair price is more about ensuring that organisations are viable than it is about incentivising efficient delivery models.
- There was general unease about the terms 'innovating and trying different delivery models' and 'efficient delivery models' and concern that these are a code for digital and/or remote delivery.
- Practitioners are disappointed that the principles don't recognise the link between what is in scope and sustainability. There was also disappointment that there is no link between scope and ensuring high quality provision or on ensuring that clients can access the legal services they need to resolve all of their interlinked legal problems.
- That the term 'fair price' should more explicitly acknowledge that legal aid fees must cover the full costs of delivering services and that it is crucial that legal aid fees actually generate a profit.
- That the only references to outcomes for clients is in relation to 'early resolution'. Access to services is not an outcome in and of itself, and the principles need to encourage the best possible legal outcomes for clients, such as outcomes that deliver identifiable and sustainable improvements for clients.
- There is no reference to the positive impact that legal aid has on addressing the inequality of arms in legal processes, holding public bodies to account, maintaining the rule of law, and ensuring that clients can vindicate their rights.
- That the principles talk about ensuring a sustainable market but make no reference to the need to rebuild the market.
- That future simplification and reducing complexity should not be restricted to fee schemes given the heavy administrative burden inherent in all legal aid processes.

Question 2)

Do you agree that we should increase the fees paid for Housing and Immigration work? Please state yes/no/maybe/do not know and provide reasons.

Yes.

Feedback from our members has reinforced two very clear messages from practitioners:

1. That the proposed increases are welcome and should be introduced at the earliest possible opportunity; and

2. The proposed increases are not sufficient to create a sustainable supplier base and will not, on their own, help the MOJ to meet the other principles set out in the consultation document.

We appreciate that in formulating the proposed fee levels the MOJ has used data produced the Frontier Economics research commissioned by The Law Society. The consultation also notes that data obtained about two immigration providers was used to consider what might be a reasonable baseline hourly rate for immigration work. This is the first time in many years that the MOJ has attempted a significant overhaul of fee levels and it is encouraging that it is willing to do so with reference to external data and analysis.

However the MOJ has acknowledged that the Frontier Economics research has limitations. The MOJ has also acknowledged significant issues with its own methodology and assumptions to set the proposed fees. Basing proposals for immigration fees on the data from two providers is methodologically very unsound, and we are surprised that that there was no attempt to obtain data from a wider pool of immigration providers.

Of particular concern for us is the MOJ's concept of a 'utilisation rate', which we believe has little relevance to current legal aid practice and does not, as acknowledged by the MOJ itself, lead to the creation of hourly rates that are profitable for all providers. It seems strange to us that, even after adjusting the hourly rates to around £67 per hour, the MOJ seems to accept that around 25-40% of providers will still be making a loss. There seems to be no rationale for setting an hourly rate that, using the MOJ's own analysis, still means that such a significant proportion of providers lose money on their legal aid work.

The MOJ has stated that the available housing provider data indicates a current utilisation rate of between 50-60%. The methodology is heavily predicated on fee earners increasing their utilisation rate to 70-80% of their time so that a higher proportion of providers will be, in the MOJ's view, profitable. No explanation is provided as to how fee earners will be able to move from current utilisation rates to the MOJ's 'profitable' utilisation rate (and again we note that even at this higher rate, the MOJ has accepted that some providers will still be unprofitable). Certainly nothing in this consultation document suggests that the MOJ plans to reduce the administrative burdens and non-chargeable work associated with legal aid cases to such an extent that this will result in a 20% increase in utilisation of fee earner time on chargeable legal aid work.

The concept of a utilisation rate here also fails to recognise that many providers spend time on notionally chargeable legal aid work even though some of that work may end up not forming part of the fee they eventually recover from the LAA, such as work on cases that fall between the fixed fee and escape fee threshold.

What is also clear is that the MOJ and LAA have no data to hand to measure the impact that legal aid administrative burdens and other overheads have on either the costs of delivering services or the time available to fee earners to focus on chargeable legal aid work. This is a major weakness in a methodology that relies so heavily on increasing utilisation rates and on assumptions about the legal aid rates required to ensure that providers can run profitable organisations.

As noted in our Introduction, we have been seeking to measure unbillable, or what we have termed 'non-chargeable', time that is a direct consequence of having a legal aid contract. While we are in a relatively early stage of our Research Project, our preliminary findings, commissioned with specific reference to this consultation and set out in full in Appendix 3, shed some light on the issues faced by

providers. The preliminary analysis also points to the need to explore this issue in much greater detail and to use this research to identify ways to reduce administrative overheads and/or adjust fees schemes to account for tasks that the LAA deems necessary but does not currently allow providers to include in their claims and bills. *However we are very clear that the proposed fee increases must be introduced as soon as possible, and that any further analysis of non-chargeable time is used to inform future fee increases and improve the LAA's systems*.

In summary, the Research Project's preliminary findings show that:

- All those involved in the delivery of legal aid services, both caseworkers and support staff, spend time on non-chargeable tasks. This means that a proportion of all staff members' time is spent on work for which they cannot obtain remuneration from the legal aid fund even though those tasks are directly related to and often specifically required by the LAA.

- The amount of time that each staff member spends on non-chargeable time varies greatly depending on their role(s) and the way that tasks are allocated within a particular provider organisation. However the average time per day spent on non-chargeable tasks is more than 1 hour out of every 7 hour day (and approaching 20% of recordable time).

- Much of the management and administrative work required to, for example, bill cases, is carried out by non-fee earners. The utilisation rate concept employed by this consultation seems to miss this point entirely. These staff members are not accounted for in the utilisation rate analysis despite the fact that organisations are required to meet the costs of employing and training them without the ability to include their time in their legal aid claims and bills.

- For an alarming number of employees, the combination of recorded chargeable and non-chargeable time accounted for more than their contracted hours. When you factor in the time taken on tasks that could not be recorded for the purposes of this research because it did not relate to legal aid work, many employees are working well beyond their contracted hours. This not only has a significant impact on the cost of the delivery of services, but also raises serious concerns about the potential for burnout. One participant, a solicitor-owner, expressed a view that will be familiar to many legal aid practitioners: 'I work seven days per week which is barely sufficient for the volume of work I am expected to undertake to support our practice.'

- The analysis potentially indicates that casework staff are more likely to work above their contracted hours on legal aid work, which is likely to reflect the demands of carrying out casework directly with clients, but then being required to undertake non-negotiable non-chargeable tasks both within and alongside that client-facing work.

- A wide range of tasks generate non-chargeable time, but the data suggests particular pinch points in the life-cycle of legal aid cases: prior to commencing or at the outset of legal aid cases, and at the billing stage. Quality mark and LAA auditing processes, along with general finance admin not necessarily specifically related to running a particular case, appears to be the largest generators of non-chargeable non-casework time.

We will submit more detailed, anonymised data and analysis to the MOJ once we have completed the Research Project. However for the purposes of this consultation we think it is important that the MOJ acknowledges that systems need to improve to reduce administrative and managerial overheads and burdens. To ensure that fee levels are set at commercially viable rates they must properly account for

all of the costs generated by the legal aid system. The rules relating to what constitutes chargeable work may also need to be reviewed to ensure that they allow providers to bill for tasks that are intrinsically linked to and required by legal aid contracts and LAA systems.

Question 3)

Do you agree that fees for Housing and Immigration work should be increased to a minimum hourly rate of £65.35/£69.30 (outside London/inside London)? Please state yes/no/maybe /do not know and provide reasons.

No.

We believe the minimum hourly rates and all other legal aid rates should be set at higher levels, and that these higher rates need to be applied to all civil legal aid categories as a matter of urgency. However it is vital that while fees and fee schemes are being reviewed that the MOJ introduces these proposals as soon as possible as an interim measure to minimise the impact of the current unviable rates on H&D and I&A providers.

Feedback received from providers during our semi-structured interviews, which were carried out after participants had applied the new rates to their caseloads and estimated the potential increase in their income, demonstrate why it is so important that the MOJ considers introducing:

- higher rates
- improved claiming processes
- a mechanism for regularly reviewing rates and increasing them as business costs increase

Analysis by the participating providers confirmed that the proposed fee increases will result in a 20-30% increase in their legal aid income from H&D and/or I&A cases. All of the participants expressed a sense of relief that there will be an increase in rates and felt that the increase will help to sustain them, or at least relieve pressure, in the short-term.

However the increase to total organisational income was often much smaller as H&D and/or I&A cases generally form one component of a wider mix of legal aid and non-legal aid work. This raises serious concerns about the MOJ's analysis of 'profitability' on an organisational level. PROV4, for example, told us that legal aid income (from I&A, H&D and other contracts) accounts for only 25% of their overall funding, so the potential increases proposed in this consultation were not even significant enough to build into their business planning processes for the coming year. Another participant noted:

> *"Because legal aid fees have been frozen, legal aid income for the Law Centre has gone down from 50% of income to around 30%."*
>
> **PROV1**

All participants confirmed that these increases are welcome, particularly in the context of stagnant and falling fees over the last three decades, and urged the MOJ to introduce them as quickly as possible. However all participants expressed significant reservations about whether these increases will make a material difference to their medium- to long-term sustainability.

Clear themes and messages emerged from the provider interviews, many of which are echoed in the feedback received from a wider pool of practitioners who completed the Provider Survey (see below):

Workforce, recruitment and retention

Providers were in general agreement that the fee increases are unlikely to enable them to recruit more staff. Increasing their head count was viewed as the only realistic way of increasing the number of clients they assist (see **Case Volumes** below).

If providers are able to recruit, this is likely to only be possible at the junior end of their workforce. New junior fee earners require a great deal of training, support and supervision, and there will be a significant delay between recruitment and when they are likely to be able to generate a reasonable level of fee income.

> *"We might consider the possibility of recruitment at the junior end due to the increase in pay for legal help work. If you are a firm with a good reputation and they have funding, then people are keen to work for you, but when they are older and want to buy a house they leave for a bigger salary."*
>
> **PROV3**

> *"We now don't have sufficient experienced staff to supervise new staff. Many of our older staff have either left, or are approaching retirement age. We lost a very experienced staff member to the local authority recently as she wanted to buy a house. So that makes it difficult to take on trainees even if we have the funding to pay their salaries."*
>
> **PROV1**

> *"In the last four years we took on a lot of junior staff. Financially that has not really worked as it takes so long for someone to build up a case work, plus training and the cost of the accreditation. The cost of supervising lots of new people has fatigued the more experienced people that have had to do it. The vibe in the organisation is exhausted by trying to do that. We are very close to making a business decision not to take on unqualified people to do immigration work as the challenge is too overwhelming.*
>
> *We have not done such a large recruitment since due to the legal aid rates not going up and the work as a result becoming loss making at the junior casework level. We have no plans to recruit again until the rates go up sufficiently i.e. more than in this current consultation."*
>
> **PROV6**

The proposed fee increases may enable providers to increase salaries, with many participants expressing the view that this will be their priority ahead of investing in any other aspect of their organisation. However they are not sure when they will be able to increase salaries because of concerns about how long it will take for increased fees to be seen in their legal aid claims, meaning that they may continue to lose staff in the intervening period.

> *"My analysis reinforces my thinking that we would use most of the increase to increase salaries of existing staff. That would be our priority as we need to retain our current team."*
>
> **PROV3**

"We have lost 4 lawyers in the last few years. The new fees will enable us to give two people a retainable wage and everyone else up to the new minimum wage rate. We are not for profit so that amount is not enough to recruit new staff. Business rates have gone up by 50%. Other running costs are going up."

PROV4

"We are unlikely to pay higher salaries but we might be able to meet certain salary expectations. Just because fees are going up, doesn't mean that translates into salary increases, as other costs are going up and the fee increase will not go up again in the next few years."

PROV2

However participants noted that the fee increases will still not be enough to enable them to offer 'retention salaries' – salaries that ensure that they can retain existing staff and prevent them from moving across to other types of legal practice where pay is higher and conditions are more favourable, or losing them to the legal sector altogether.

"Pay really needs to go up by 25% to be competitive. An experienced caseworker gets just over £40,000. To be competitive it should be £50,000. We have introduced compacted hours and increased the annual leave entitlement. The older staff have already bought houses so they stick around, but many are approaching retirement age. Everyone else leaves when they want to buy a house."

PROV1

"We might be able to offer better pay for existing staff but where will any new people come from? It will be a slow burn. A person recently was looking for around 30% more than we were offering."

PROV3

"It is far harder to retain people once they qualify. Two people have just gone through SQE 1 and 2. Both have accepted job offers. Generally those who we train, stay on. People stay for about 6 years. After 6 years, they tend to leave for a higher salary, they want to buy houses, and also they suffer from burn out."

PROV2

The proposed fee increases will not address the recruitment crisis across the legal aid sector and the dearth of experienced fee earners who understand the legal aid system and can fulfil supervisory roles.

"*Our recent experience of trying to recruit housing practitioners is that it is impossible. Qualified staff don't exist. So we have to recruit people who don't have experience, and then trainees leave once they qualify. They go off to GLD or a local authority. Or move out of London. The housing team has gradually reduced as a result and we can't replace them."*

PROV1

Capacity to increase case volumes (please also see below at Question 5 for our detailed response on this issue)

All participants noted that they cannot take on more cases without increasing their staffing levels, reinforcing the point that the MOJ must take steps (beyond this fee consultation) to address the recruitment and retention crisis. This is one of the main reasons that we have suggested that the MOJ must develop a Legal Aid Workforce Strategy as a matter of urgency. We see no realistic prospect of an increase in case volumes and clients assisted unless and until providers are given sufficient resources and support to ensure they can retain their staff and expand their teams.

> *"We want to be able to pay our people more and would do that before we look to recruit. That is the only way we can retain experienced staff. That doesn't result in being able to take on more work."*
>
> **PROV3**

> *"It is marginal as to whether we can take on more cases. If as a consequence of the implementation of the higher fees we do press ahead with additional recruitment; that will lead to an increase in the number of cases taken on. The lag is about 18 months between taking on new staff and them covering their costs. They need to get accredited and build up experience and skills."*
>
> **PROV2**

> *"The increases really won't make any difference with taking on new clients. It takes time for people to start being productive, around 6 months before they can bill. A disbursement on every meeting and you have to wait for 3 months. Interpreter's fees on every case. No money to rent additional office space for more staff. We need an additional £30,000 to employ a new member of staff, and given our analysis it would take around 15 years before we can afford to take on new staff at the increased income."*
>
> **PROV5**

In some cases, the ability to take on more clients simply exposes the ongoing need to cross-subsidise legal aid funding with other forms of funding, which is a further indication that legal aid is not a sustainable service.

> *"We can't take on more cases without increasing staff – if we got more grant funding, we can take on more staff. The grant funding can seed the ability to take on staff but legal aid fees can't as it takes too long for someone to be productive."*
>
> **PROV1**

Responses also indicated that additional funding doesn't necessarily help providers to deal with the complexity and traumatic nature of the work.

> *"Supervisors spend a lot of time helping junior staff and the junior staff need support as it's such a traumatic area of work."*
>
> **PROV6**

However case volumes may increase if the proposed fee levels encourage new providers to enter the market.

Likely impact on case mixes

Most participants noted that stagnant legal aid fees have meant that they have had to gradually increase their grant funding or private paying work to make ends meet. Fee levels have also impacted on the types of legal aid cases they run, or the proportion of cases run under different legal aid funding levels. Participants noted that the proposals are unlikely to change their approach to funding and case mixes.

> *"Our business plan relies heavily on trying to get more privately paying clients. Gently expanding that so it is slowly increasing over time. We wouldn't stop doing that. The rates are not high enough to change that path."*
>
> **PROV5**

> *"The levelling up between legal help and certificated rates might make a difference in housing cases. The ability to get inter partes costs has dropped as local authorities and housing association cases have dropped off since Covid, so the work is mostly private landlords now and costs recovery is difficult."*
>
> **PROV1**

> *"Our approach to our ratio of legal aid to private work won't change. The extra money [from the fee increases] will make the business more stable. There is a lot of pressure on legal aid firms, and many go bust so our focus in on making ourselves more stable."*
>
> **PROV6**

Facilities and infrastructure

Participants noted that fee increases are unlikely to enable them to put additional investment into their facilities, infrastructure (such as IT systems) or support staff. However most noted that as established legal organisations, it is necessary to meet the costs of maintaining their premises and IT systems and they will do what they can in this regard without much regard to these proposals.

> *"We don't think that these increases will mean more support staff, it's just not enough. We will put these rates into retention. It would be good if the MoJ could take away some of the admin burdens as well and that might make a difference."*
>
> **PROV3**

> *"You need a certain level of IT infrastructure anyway. If the work was better paid, we would have better facilities so we are doing it in a pared back way. The extra income might be used for IT infrastructure but it's really not enough to employ extra staff."*
>
> **PROV6**

> *"We lack capital to invest in our infrastructure. The increase in fees might make our deficit more manageable. Over the last 5 years, the change to digital has been rapid. We did get some funding for new computers but they now need to be upgraded. There are so many other factors at play – but I am slightly more confident that we might have some more income."*

PROV1

The time lag before increased fees will be realised

Participants all expressed concern that it will take a long time for the proposed fee increases to have any impact on their income. Apart from HLPAS fees, other increases might not be seen for anywhere between 6 and 18 months or more from the date they are introduced. This is because of in-built delays in legal aid claim systems, even when payment on account mechanisms are factored in. From a business planning point of view this meant that participants did not feel confident about adjusting their income forecasts for 2025-26 and have little confidence that the increases will make a significant impact in 2026-27. Participants noted that throughout these two years business costs will increase and it will continue to be very challenging to deliver legal aid services. By the time they are introduced, participants were concerned that any real-terms increase will be wiped out by inflation and other increases in business costs in the intervening period.

> *"We won't see any positive impact on income until 2027 as it will take time to close the cases that have been opened under the new fee regime. There is of course the built in lag between a staff member starting, it takes two years for a new staff member to build up a case load, and bill enough cases to cover their costs. Even then it's problematic. Nobody in the legal aid team makes enough, the LAA are so pernickety, so time is wasted on getting disbursements paid and arguing over costs at the end of a case."*
>
> **PROV1**

> *"National insurance changes coming are a concern when we already can't compete with other organisations."*
>
> **PROV3**

Participants urged the MOJ to introduce changes to claiming processes (such as enabling interim payments for all CW cases and the ability to claim disbursements as and when they are incurred) to ensure that any potential benefits from these proposals can be seen as quickly as possible.

There also needs to be a change of approach so that providers are not expected to work at risk.

> *"Enhancements are possible on certificated cases but that also comes with the threat of not being paid at all on JR cases. You are only paid if you either get permission or there is a sensible remedy after proceedings are issued – in those cases you will either get legal aid costs with most likely a 50% enhancement in most cases or inter partes costs. If you get any sort of remedy before proceedings are issued, you don't get paid anything for any of the preparatory work. As a result, the number of certificated cases we do has reduced as they are too high risk. So if you take on 10 JR cases, and you only get paid for 3, 70% of your time is not paid at all. Too many certificated immigration cases are paid on a retrospective costs basis. So lawyers bear all the risk with these cases."*
>
> **PROV2**

Respondents to the Provider Survey were asked about their views on the proposed new fee levels. A small number of respondents think that the proposed new fees are 'about right' (6.5% for I&A fees and 4% for H&D fees). However, as set out below, over 90% of respondents think the fees are either 'too low' or 'much too low'.

	Immigration & Asylum fees		Housing & Debt fees	
Much too low	41.94%	13	39.29%	11
Too low	51.61%	16	57.14%	16
About right	6.45%	2	3.57%	1
Too high	0.00%	0	0.00%	0
Much too high	0.00%	0	0.00%	0

Non-I&A or H&D providers were also asked for their views on their own practice areas, should the MOJ apply the same rationale to increasing fees in those areas.

	Other civil fees	
Much too low	70.59%	12
Too low	23.53%	4
About right	5.88%	1
Too high	0.00%	0
Much too high	0.00%	0

While the number of respondents to this aspect of the survey is relatively low, the results indicate that providers have very similar and consistent views about the proposed fee levels.

Feedback from our membership and Advisory Committee and via the Provider Survey was also unequivocal as to why the proposed fee increases will not achieve the principles set out in this consultation:

- The proposed fee increases do not take into account the significant increases in the cost of delivering services since fee levels were last set three decades ago. To account for inflation, fees would have to increase by more than 95%. Along with inflation, fee increases would also need to take into account increased case complexity, changes to court processes, increased client vulnerability and the impact of LASPO scope changes.
- Many providers pointed at that in 2011 most fee levels were reduced by 10%, so the proposal to increase rates by a minimum of 10% restores those fees to where they were 14 years ago, but does not address the increase in the cost of delivering services in the intervening period.
- Providers are very concerned that there is no proposal to introduce a mechanism to review fees periodically and increase them in line with inflation.
- As the government will introduce increases to the costs of employing staff in the coming months, many providers pointed out that the proposals will be negated by these additional personnel costs and other increases in their business overheads by the time the new fees are introduced.
- Providers do not believe that the proposed increases will enable them to recruit new fee earners or offer the pay and other incentives required to retain existing fee earners. Many noted that the proposals are not sufficient to offer 'retention salaries' that can compete with other similar employers, such as local authority or central government legal services.
- Providers expressed a preference for the MOJ to use a new metric for setting fees, such as an increase which accounts for inflation since fees were last set, or by reference to the Guideline Hourly Rates (the lowest of which, for unqualified fee earners, is still approximately 100% more than the highest hourly rate available under these proposals).

- A number of providers expressed concern that any increases available to counsel are not sufficient to increase supply and address the difficulty they have finding counsel to instruct on their cases.
- The proposed fees do not reflect the significant administrative, management and compliance costs associated with having a legal aid contract and delivering legal aid cases, and as the proposals in this consultation to simplify fee schemes represent a very minor element of those burdens, they will not have a significant, positive impact.
- Along with increasing fees, the MOJ must undertake an urgent review of the structure of the fee schemes and the mechanisms for claiming fees and disbursements. These issues, which prevent steady cash-flow and often compel providers to carry large amounts of debt, are significant barriers to sustainability.
- Whilst most providers expressed positive views about proposed increases in Controlled Work rates and fixed fees, many providers raised serious concerns about continuing to work under fixed fee regimes, and in particular with the escape fee mechanism.
- Fee increases also need to be introduced in conjunction with other improvements in the legal aid system to be effective. In particular providers routinely raised the nature of LAA audit processes and 'nit-picking' in relation to compliance requirements such as evidence of means and bill assessments, all of which create undue risk for providers and generate disproportionate stress and uncertainty.

All of these concerns are acknowledged in either the consultation document or in various elements of the reports that arose out of RoCLA. We therefore urge the MOJ to prioritise further policy development to introduce higher fees (for all areas of civil legal aid) than proposed, and work to address the administrative and systemic issues that are undermining the ability of providers to run sustainable services.

Many of these concerns can be illustrated with reference to specific feedback received during our semi-structured provider interviews.

Question 3a)

If the fee is already above this rate, do you agree that rates should be increased by 10%? Please state yes/no/maybe /do not know and provide reasons.

No. A more significant increase is required to meet the MOJ principles.

Please see our response to Question 3, which addresses this issue.

Question 4)

Do you agree that the minimum hourly rates for Controlled and Licensed Work should be the same? Please state yes/no/maybe /do not know and provide reasons.

Feedback from practitioners varies on this issue. Some believe that the rates should be the same for Controlled Work (CW) and Licensed Work (LW) as the same degree of expertise is required at both levels. Others believe that LW should attract higher fees because they believe that it often involves more complex work and greater levels of expertise than CW. This difference of opinion generally reflects the differences between the fee structures and case types across different categories of legal aid, or the different approaches or ethos adopted by particular types of providers. What is clear is that if the minimum hourly rates for CW and LW are the same, they must be commercially viable and

account for both the real cost of delivering services and a reasonable profit margin as this is necessary for any sustainable business or charity.

There has also been a tendency for providers to allocate CW in some categories to junior staff because it attracts the lowest level of fees. It makes business sense for providers to orient their more senior fee earners to the types of cases that attract the highest level of fees because those fee earners generally receive higher salaries and have higher billing targets than junior staff. This does not necessarily mean that CW is simpler or requires less expertise and many providers have noted that junior staff undertaking CW require significant levels of support and supervision because of the complexity of the work. It is therefore the fee levels which have in many cases dictated which type of fee earner carries out which type of case, rather than legal complexity or client vulnerability, in a form of perverse self-fulfilling prophecy. In categories where LW hourly rates and enhancements are not, or are very rarely, available this creates double jeopardy for providers: they cannot orient senior staff to better paid cases and cannot recover fees that reflect the seniority (and therefore costs associated with) employing senior staff. This is the antithesis of a sensible fee scheme and a completely different approach to that applied across all other areas of legal practice. For example the Guideline Hourly Rates and the fee structures that public bodies (including the LAA) use when they instruct counsel all include gradation to reflect that more experienced lawyers can charge higher fees.

In relation to the degree of expertise required to run CW and LW cases, a number of practitioners noted that categories in which a large proportion of cases are run under CW, such as Mental Health and Immigration & Asylum, require high levels of specialist accreditation and/or additional regulation. This indicates quite clearly that the MOJ and LAA have acknowledged the degree of skill and expertise required to undertake this work and have imposed these additional requirements to ensure that practitioners are working to the required standards. However despite high levels of accreditation these categories have tended to attract the lowest levels of remuneration and have inflexible systems in place to claim fees and disbursements. This reflects the fact that the fee schemes have developed organically over time across different categories of law, rather than through a logical, planned process. It also reflects a general misapprehension that tribunal preparation and advocacy requires lower levels of legal skill and knowledge than court-based litigation. We believe this is simply wrong and while the move towards a harmonisation of hourly rates for CW and LW is a step in the right direction, there is an urgent need to review the whole structure of civil legal aid fee schemes.

Many practitioners expressed the view that along with low underlying rates, CW is rendered unviable by the level of the fixed fees, the threshold for claiming escape fees, the inability in many cases to claim staged or interim payments, and the inability to recover disbursements until the conclusion of the case (despite a contractual obligation to pay experts and other suppliers within a month of being invoiced). Setting the minimum hourly CW rate at the same level as the rate available for LW does not resolve these issues. If the MOJ is going to retain CW and fixed fees, these issues need to be addressed as a matter of priority.

A number of practitioners have expressed a preference for removing the different levels of service and associated fee schemes and replacing them with a universal hourly rate and harmonised system for claiming fees and disbursements. However this would require careful thought to ensure it does not create unintended adverse consequences for providers who are used to working under a fixed fee regime and have oriented their services and internal systems accordingly. And of course all providers would be reluctant to move to a universal hourly rate if that rate is too low to be commercially viable.

Question 5)

Do you agree that our proposed rates will enable legal aid providers to undertake increased volumes of legal aid work? Please state yes/no/maybe /do not know and provide reasons.

No.

Please see our response to Question 3, which addressed this issue with reference to the interviews we conducted with providers. As the new rates are unlikely to enable providers to increase their staffing levels, they see no realistic prospect of increasing their case volumes.

The majority of respondents (60%, n=38) to the Provider Survey stated that the proposals will not enable them to increase their volumes of legal aid cases. 10% (n=6) did not know whether they will be able to increase their volumes, and 19% (n=12) said that they may be able to increase volumes.

Only 11% (n=7) of providers thought they will be able to increase volumes.

We were also interested to see whether the proposals are likely to encourage early intervention in the form of HLPAS Stage 1 work. The results are inconclusive, from a relatively small sample:

Would you consider taking on more Legal Help and/or HLPAS stage 1 work (if you have a HLPAS contract) if the fees for this work were to be increased as proposed in the consultation?

Answer Choices	**Responses**	
Yes	25.0%	6
No	29.2%	7
Maybe	29.2%	7
Don't Know	16.7%	4
	Total	**24**

Respondents were asked to estimate what level of increase they could expect to see in case volumes if they are able to increase their capacity. 26 respondents engaged with this question, with 75% of those respondents noting that at most they would be able to increase their case volumes by between 0-25% and 18% stating that they might be able to increase volumes by between 25-50%. However respondents noted that about a third of the increase would take two years or more to materialise, another third noted that an increase might be possible 12 months after the proposals take effect, and a third noting a potential increase within the first 12 months.

Narrative responses tended to restate concerns noted in earlier sections to this response:

- Increasing case volumes relies heavily on increasing staffing resources, which is very difficult given the recruitment and retention crisis across civil legal aid. Providers consistently noted that these proposals will not resolve that crisis. Reasons given for this included:
    - The proposed fees are still too low to enable providers to offer competitive salaries to attract new staff, particularly experienced staff, and offer salaries capable of retaining existing staff. Some providers noted that, in the short-term, they might be able to increase salaries and thereby reduce the number of staff that leave the legal aid workforce.
    - Where possible, providers will have to continue to subsidise loss-making legal aid services with funding from other sources. Some providers acknowledged that, at least

in the short-term, that level of subsidisation will be lower as a result of the fee increases.
    - A one-off increase will quickly fall behind rising business costs, so providers are not confident that they can take on the additional cost burden and management time associated with recruiting new staff. This will continue to lead to a loss of providers as a lack of regular recruitment means providers cannot plan for succession and replace experienced practitioners when they leave or retire.
    - Providers believe that even if the fee increases enable them to recruit, decades of underfunding means that there are too few practitioners willing to join the legal aid sector. This is particularly acute when trying to recruit experienced staff, with knowledge of the legal aid system, and staff capable of fulfilling supervisory roles.
    - Where they are able to recruit, this tends to be at the junior end of the profession, requiring them to invest significant amounts of time and resource into training and supervising new staff. Junior staff not only have a long lead-in time before they can recover a reasonable level of fee income, but they are also often unable to take on more complex and potentially more profitable cases until they have built up sufficient experience.
    - Delays built into LAA processes for claiming fees, particularly for CW, mean that it is difficult to recruit new staff and cover their costs for 12 months or more before they start to recover legal aid fees.
    - For providers with contracts other than I&A and/or H&D, the proposals are not sufficient to increase the overall profitability of the organisation. Fee increases would be needed across all areas of civil legal aid to enable them to consider increasing their capacity.
    - Given the inability to offer competitive salaries, and the complexities and administrative burden of legal aid work, it is also difficult to recruit support staff to take that burden off fee earning staff.
- Barrister respondents also noted that the fee increases are not sufficient to attract more barristers to take on increased volumes of legal aid work.
- The transitional arrangements, whereby the new fees will only be applicable to cases commenced after the amended remuneration regulations come into force, will further exacerbate the delays built into the legal aid claiming systems, and further delay any potential financial benefits to providers.
- Providers remain concerned that the fee increases do not reduce the significant administrative burden and compliance risk that accompanies legal aid work and that this must be tackled as a priority if the MOJ is seeking to make the system more efficient, more sustainable and more attractive to new providers. Without addressing these issues, providers believe it is unlikely that there will be any material increase in case volumes.
- Providers routinely noted that they maintain their legal aid services because of their organisational ethos and their commitment to helping vulnerable clients (a sentiment echoed by the findings of both the Legal Aid Census and the RoCLA reports). The proposals may therefore go some way to enabling providers to pay a more reasonable salary to their existing team of highly committed lawyers, but are unlikely to lead to increased capacity or case volumes.

Positively, some respondents thought that the increased rates might attract new providers to apply for legal aid contracts, although some expressed the same reservations about the ability of new providers to attract staff with the sufficient experience and expertise to run legal aid cases and manage the contracts.

Some providers also noted that the proposed increases for CW will enable them to maintain this level of services. So while they might not be able to increase volumes, the proposals will at least enable them to continue to carry out the types of cases covered by CW. Others noted that they might consider taking on more HLPAS Stage 1 work as a result of the proposals.

Question 6)

Do you agree that increases to Immigration should be implemented first? Please state yes/no/maybe /do not know and provide reasons.

If it is necessary to stagger the implementation of these proposals, then we see no reason to disagree with this proposal.

However we urge the MOJ to introduce a permanent exemption for publicly-funded cases from the Fixed Recoverable Costs (FRC) regime so that any potential benefits of the proposed reforms (and any future reforms) are not undone by the imposition of FRCs. This is particularly important for H&D providers as the current temporary exemption from the FRC regime may come to an end at about the same time as the MOJ is seeking to increase H&D fees. Providers have made it very clear to us that the proposed fee increases will in no way off-set the likely loss in inter partes fee income that will occur if H&D cases are subject to the FRC regime. In failing to make this change one MOJ team will be undermining the policy objectives of another team, with potentially terminal consequences for H&D providers and the clients who so desperately need their assistance. The loss of H&D providers will also adversely impact on wider government agendas, such as protecting tenants' rights, reducing homeless, improving housing conditions and digitising possession proceedings to improve HMCTS efficiency. It is also likely that imposing FRCs on publicly-funded cases will shift an element of cost recovery onto the legal aid fund and away from parties against whom costs orders are made and costs are recovered.

The MOJ has acknowledged that inter partes costs recovery is a crucial element in the complex matrix of funding that sustains the legal aid scheme. If FRCs are imposed on publicly-funded cases, the MOJ will have to compensate providers by enabling them to recover fees in those cases at inter partes rates from the legal aid fund.

Questions 7) 7a) and 7b)

Do you agree with simplifying the fee system by harmonising the fees identified? Please state yes/no/maybe/ do not know.
If you would like to give specific feedback on each proposal, please structure your answer as follows:

Yes.

Any element of simplification of the legal aid system is welcome. Immigration providers in particular have expressed that the multiplicity of fees and fee schemes creates unnecessary complexity and results in administrative burdens and compliance risk. However the MOJ has probably over-estimated the impact of any potential benefits of the simplification proposed by this consultation, which most providers have described as a very minor step in the right direction. A lot more is required if simplification is to lead to any meaningful reduction in administrative overheads and compliance risk.

Respondents to the Provider Survey were broadly supportive of this proposal, with just under half agreeing with it (47%, n=36) and 24% (n=18) opposed to it. 8% (n=6) of those who answered this question were unsure, answering 'maybe' and 21% (n=16) did not know.

Of those expressing support for this proposal, many did so because their area of law requires the same level of expertise at both CW and LW levels. This was a consistent finding across I&A, H&D and other areas of civil legal aid. Some practitioners noted that although fees are being harmonised, the availability of enhancements for licenced work means that higher fees are still available for cases that primarily involve litigation. However as the CLR element of CW was developed for tribunal proceedings, the same skill sets and expertise is required for both court and tribunal proceedings, so enhancements should be available in both settings. Some providers argued that enhancements should be available for all levels of work, subject to the current criteria, as all levels of work require a great deal of skill and expertise, client vulnerability is the same at all levels of work and being able to claim enhancements at any level would incentivise and reward skilful early intervention and problem resolution.

Many Provider Survey respondents, whether they agreed with harmonisation or not, called again for the abolition of fixed fees, for all of the reasons set out in the sections above.

7a) Feedback on harmonising 'travelling and waiting time' and 'attendance at court, conference or tribunal with Counsel' at 50% of the hourly rate for 'preparation and attendance' in Immigration and Housing and/or;

We do not agree with the approach of setting rates for these elements of casework at 50% of the preparation and attendance rate. The cost to the provider of fee earners travelling, waiting and attending court, conference or tribunal with Counsel is the same as the cost of that fee earner carrying out preparation or attendance. This is a fundamental flaw in current fee schemes and needs to be rectified by harmonising all rates up to the preparation and attendance rate. Doing so would also meet the MOJ objective of simplifying the scheme by drastically reducing the number of different rates and the need for the LAA micromanage the assessment of bills.

Provider Survey respondents had mixed feelings about this proposal, with 38% (n=23) in favour, 30% (n=18) against it and 13% (n=8) unsure.

There was consistent agreement in the narrative responses in the Provider Survey to the proposition that 'attendance at court, conference or tribunal with Counsel' should be paid at the same rate as preparation and attendance. Practitioners stated that this is not passive work and requires expertise.

There were mixed views in the narrative responses to proposal to harmonise travel and waiting time at 50% of the hourly rate for preparation and attendance. Some respondents accepted this proposal, but of those most noted that although they agreed in principle, the proposed hourly rates for preparation and attendance remain too low to be commercially viable. As a result, providers were concerned that lower rates for some casework functions have an adverse impact on sustainability.

Others strongly disagreed with the proposal, stating that there should be no distinction between rates because the cost to the business of performing the tasks remain the same. Some also noted that there are no distinctions between hourly rates for different tasks in the Guideline Hourly Rates – the primary differentiation being based on level of expertise/experience.

Providers in categories such as Mental Health were very concerned about the disproportionate impact of lower rates for travel and waiting given the need for them to undertake a great deal of travel to see their unwell, detained or incapacitated clients. This would render rates in these categories even more unviable and adversely impact the sustainability of providers who have to routinely visit their clients.

7b) Feedback on uplifting all 'routine letters out and telephone calls' in Immigration and Housing to the highest value present after the uplift occurs.

No, as the same rationale applies to our response above to Question 7a).

Provider Survey respondents were broadly positive about this proposal, with 50% (n=30) in favour, 13% (n=8) against it and 12% (n=7) unsure.

Question 8)

Do you agree that we have correctly identified the range and extent of the equalities impacts for the increases in fees for providers set out above? Please state yes/no/maybe/don't know and give reasons. If possible, please supply evidence of further equalities impacts as appropriate.

We note that this question relates specifically to the fee increase proposals and not to the suggestions about potential reforms in Chapter 2 in relation to remote working and office requirements. Chapter 2 of the consultation explores 'potential areas for improvement in the experience of civil legal aid processes, both for providers and users' (page 24) rather than setting out specific proposals. We also note that the published Equalities Statement confirms that the MOJ is 'not consulting on specific proposals at this stage' in relation to remote working and office requirements. We look forward to continuing discussions on these potential changes and to the robust and research-driven equalities impact statement that will accompany any specific proposals in relation to remote working and office requirements. We are encouraged that the consultation document acknowledges potential equality impacts and seeks views on potential measures or safeguards against those impacts.

It is always difficult to respond to consultation questions about equality impact as it is the consulting government department's responsibility to accurately assess impact, and whether any adverse impact is justified, proportionate and capable of mitigation. It is also generally the government that has the resources and data available to make that assessment. However the Equalities Statement confirms the government has no data about the protected characteristics of legal aid providers. There are also large gaps in the data held about legal aid clients. It must also be noted that absolutely no data is held about those who have a legal need that could be met by the legal aid scheme but cannot access the services. Given these rather alarming absences of data on which a robust qualities impact assessment should be based, we cannot say with any confidence that the government has correctly identified the range and extent of the equalities impacts for the fee proposals.

This issue underlines a wider problem with policy-making in relation to legal aid – a lack of robust and reliable data. Data-driven policy-making should be a priority for all public bodies and we urge the MOJ to make the resources available to re-establish a research centre with responsibility for obtaining and analysing data about, inter alia, unmet legal need, the drivers of legal need, public legal capability (particularly in relation to access online services), the impact of legal aid services and the sustainability of the legal aid provider base. Not only will this improve the MOJ's ability to formulate more effective policy, it will help to demonstrate both the upstream and downstream impact of legal aid, helping to make the case for further investment. Robust and reliable data will also help to ensure that the

government complies with equality duties, such as eliminating discrimination and advancing equality of opportunity.

Collecting and analysing robust data in relation to the provision of legal aid is particularly important given the profile of legal aid clients and that many of the legal issues that fall within the scope of legal aid are caused by or related to poverty, poor housing, discrimination, domestic abuse, homelessness, health issues and disability.

Chapter Two: Improving the experience of legal aid processes

Question 9)

Should we remove or reduce limits to the number of Controlled Work Matters where the client does not attend the provider's office to make an application for Controlled Work? Please state yes/no/maybe/do not know and give reasons.

There is no easy answer to this proposal so we welcome the fact that the MOJ is engaging through this and other processes to obtain a wide range of views before formulating potential policy responses.

Provider Survey respondents were asked whether they have any concerns about the suggestion that the LAA may remove or reduce the contractual requirement limiting the number of applications for Controlled Work Matters that can be conducted remotely:

Answer Choices	**Responses**	
Yes	28%	16
No	49%	28
Maybe	11%	6
Don't know	12%	7
	Answered	**57**

Respondents were also asked what factors influence their decision of whether a client should attend their office to make an application for Controlled Work. The contractual limit on the number of remote applications is not a major factor in this determination:

Answer Choices	**Responses**	
The contractual limit on number of permitted remote CW applications	9%	5
The client's wishes	40%	23
The client's location	41%	24
The client's familiarity with using digital technology	47%	27
The client's other particular vulnerabilities	53%	31
Complexity of the matter	34%	20
Urgency of the matter	43%	25
Resources e.g. inability to travel to a client in detention due to cost and/or time	29%	17
All of the above	38%	22
Other (please specify)	21%	12
	Answered*	**58**

* Respondents were asked to choose all answers that applied

Respondents were asked to rank their choices in order of importance for their organisation. The highest ranking factors were the client's wishes, their location, their particular vulnerabilities, and the urgency of the matter. The contractual limit on remote applications did not feature prominently in this ranking system.

The importance of seeing clients face-to-face to develop trust, confidence and rapport was highlighted in another survey question, wherein 74% (n=43) of respondents said that they would try to have an initial meeting with the clients for these purposes, if they had the funding and resources to do so.

A number of recurring themes appeared in the narrative responses to these Provider Survey questions:

- The pressing need for the MOJ to increase the overall number of providers and the capacity to see more clients, rather than focus on comparatively minor issues such as a contractual ratio of remote vs face-to-face applications.

> *"We worry about more and more remote appointments. Many of our clients are incredibly vulnerable. We worry that instead of solving the legal aid desserts problem with proper funding there will instead by a move towards more remote working and that really bothers us."*
>
> **PROV3**

- That the process of making the application, in-person or remotely, does not necessarily dictate how the case is run and whether the provider has ongoing contact with the client remotely, face-to-face or using a combination of both.
- The current requirements create an unnecessary administrative burden on providers to keep records of where CW applications are completed (and whether the Equality Act exemption has been applied) and, presumably, for the LAA to audit this requirement, which has little to no bearing on whether clients are receiving the services they need.
- However many respondents expressed concerns about a potential dilution of quality if remote restrictions are eased and that there should not be a move to remote delivery as a norm. One provider suggested limiting the ability to do more remote work to those who achieve a rating of 1 on Peer Review.
- While not the direct subject of the consultation suggestions, providers are concerned that a move towards remote delivery will further undermine the ability of providers to recruit and adequate train and supervise junior staff, who tend to require a higher level of in-person support from their managers.
- Providers who seek to service a large geographic area see the practical benefits of removing or reducing the limit on remote applications, but accept that they must retain the ability to offer face-to-face services where this is in the best interests of any particular client.
- A number of providers raised concerns that the MOJ is reconsidering this requirement, and office requirements, because of the now entrenched geographic gaps in provision (highlighted for example in The Law Society's advice deserts campaign). They are concerned that expanding remote provision and diluting office requirements might create a façade of access rather than compelling the MOJ to deal with the real causes of limited access to face-to-face advice, such as low fees and high administrative burdens.
- The applicability of remote advice varies significantly between contract categories, with respondents carrying out Mental Health and Mental Capacity work noting that face-to-face is almost always preferable and/or that they visit most of their clients in person in care homes and other settings.

Providers accept that an increasing number of clients are requesting remote/online services and offering these services expands their geographic reach. However many providers expressed reservations about the potential implications of expanding remote access on levels of client care and for clients who are digitally excluded and/or vulnerable. Providers routinely raised concerns about

the applicability of remote advice to a large proportion of their existing client base. Reasons given were clients with low literacy or confidence using digital tools, limited access to the tools and equipment needed to facilitate remote access, limited access to data, limited access to private spaces for consultations, high degrees of health issues and other vulnerabilities and limited grasp of English. Many expressed concerns that while remote services work for some clients, a shift towards greater use of remote delivery will necessarily exclude a significant proportion of those who currently access their services and further exacerbate levels of unmet need.

It is incumbent on the MOJ to ensure that there is an adequate supply of providers and a balanced service offering that caters for the needs of all clients. The MOJ needs to conduct more research on client need before it makes any changes to the contract or scheme which might undermine access for those who need face-to-face services. A failure to do so is likely to have very serious equality implications for the MOJ and further undermine public awareness of and the perception of the legal aid scheme.

Question 9a)

Thinking about the limit on Controlled Work applications that can be delivered remotely, in what ways does this affect your ability to deliver face-to-face and remote advice, based on client need? You may choose more than one:
i) it is sufficient (explain why)
ii) it creates problems (explain why)
iii) other (please specify)

We are not a provider of legal aid services. However we have provided a range of practitioner views that are relevant to this question throughout our responses to the questions in Chapter 2.

Question 9b)

If there were a removal or reduction in these limits, do you anticipate that in the areas in which you provide legal aid help and advice, your firm or organisation would:
i) Provide more advice remotely? By what approximate percentage?
ii) Provide less advice remotely? By what approximate percentage?
iii) Not change the overall percentages for your provision of remote advice?
iv) Unsure/do not know.
Please also provide any data or evidence you may have in relation to your answer.

We are not a provider of legal aid services. However we have provided a range of practitioner views that are relevant to this question throughout our responses to the questions in Chapter 2.

Question 10)

RoCLA evidence included feedback that providers are best placed to determine when clients need face-to-face advice, and where remote advice is appropriate. However, there is a risk that providers may move towards remote advice provision in a way that leaves clients who need face-to-face with difficulty finding a provider. When ensuring greater flexibility to provide remote advice, what measures or safeguards would help ensure that clients are not turned down or de-prioritised, because they require face-to-face?

Please see our response to Question 9.

We think it would be difficult, if not impossible, for the LAA to effectively monitor and enforce any safeguards designed to ensure that clients requiring face-to-face advice can access services in this way. It is therefore incumbent on the MOJ to proactively develop and maintain a steady supply of face-to-face services in all procurement areas and accept that legal aid fees must be set at a level that enables these services to be sustainable.

Existing measures to enable access to face-to-face services – such as matter start allocations linked to procurement areas, office requirements, and limits on remote applications – have failed to ensure an adequate supply of face-to-face services. Ad hoc interventions by the LAA to encourage take-up of contracts when supply wanes in a particular location or category of law have also failed. These historical failings are well documented in external research and in the RoCLA reports.

Increasing legal aid fees to a commercially viable level, taking a more proactive approach to funding the recruitment and training of junior practitioners, and reducing the administrative burden on providers will all help to entice more providers to take up legal aid contracts and ensure that existing providers are profitable and can maintain their services. However the MOJ must recognise that the situation has become so dire in large parts of England and Wales that it will take many years to restore an adequate and sustainable supply of providers and nurse the workforce back to health. The MOJ needs to develop a long-term strategy for creating a healthy and sustainable supplier base and is likely to need to take an interventionist approach, at least in the short-term, to remedying issues such as the recruitment and retention crisis. Over time, with sensible fees and proportionate LAA systems in place, the MOJ is likely to be able to step back and allow 'the market' to respond to changes in client demand and developments in the justice system. This will require a great deal more investment than is on offer via this consultation, and a commitment to periodically increase fees as business costs increase over time. We therefore welcome the Minister's comments in the consultation foreword that these proposals are just a first step to 'nurse this critical sector back to health, rebuilding a legal aid system that is sustainable'.

Question 11)

Which categories or areas of law do you practice in (or have experience in), that you have drawn from when answering questions 9 and 10?

We have drawn on the experience and expertise of practitioners and policy specialists across all areas of civil and criminal legal aid.

Question 12)

Would you want the contractual requirement for permanent office locations to be reduced or removed? Please state yes/no/maybe /do not know and provide reasons.

There is no easy answer to this proposal so we welcome the fact that the MOJ is engaging through this and other processes to obtain a wide range of views before formulating potential policy responses.

Provider Survey respondents were asked whether they have any concerns about the suggestion that the LAA may remove or reduce the contractual requirement for providers to have a permanent office location that is open and accessible to client in a procurement area:

Answer Choices	**Responses**	
Yes	24%	13
No	44%	24

Maybe	24%	13
Don't know	9%	5
	Answered	**55**

The narrative responses to this question demonstrated some key themes:

- As indicated by the answers to the question above, there is no general consensus on whether the LAA should reduce or remove the requirement for a permanent office presence.
- Where there does appear to be some consensus is that if the LAA is open to the idea of reducing permanent office requirements, it would be beneficial to providers to have flexibility over which days and times they are open. If the LAA goes further and removes the requirement for a permanent office location, most respondents recognise the need to ensure that providers are required to offer face-to-face appointments for vulnerable clients or where this is in the best interests of their clients.
- For some categories of legal aid, the permanent office requirement is less relevant, and therefore potentially more onerous, because fee earners routinely or exclusively visit their clients in their homes or in hospital or care home settings.
- However, many respondents noted that having settled office arrangements is beneficial as it enables providers to develop and maintain a team ethos and to train and support junior staff in particular.
- This needs to be balanced with the views of many respondents, who wish to embrace the flexibility afforded by and savings derived from not having a permanent office presence. Many noted that they already offer aspects of their services remotely, which increases their reach and enables clients to connect with them from outside of the locality.

> *"Our immigration practice is a national one anyway. We are not in the place that we are because the client group is there. The client group is spread around. Detention centres are nowhere near us. The requirement to have an office is a relic of an outmoded, out of date way of operating. People do need to be seen face-to-face so clients are still see clients in the office. It might be more financially sustainable to use rented meeting rooms rather than having an office. The LAA shouldn't impose a certain requirement on providers. We would maintain our main office in London because the current office estate is quite efficient in terms of the cost of running it. You do need a physical space somewhere if you have the number of people that we have as there are positives to having a permanent space, ethos and culture etc.*
>
> **PROV6**

- Not-for-profit providers noted that as charities they have a defined geographic area of benefit, which is usually linked to the town, city or county they were set up to serve. The charitable area of benefit does not dictate where they are located and how clients access their services, but as community-based organisations they tend to have a permanent office location and would maintain this whether the legal aid contracts requires it or not.
- However many respondents, including private practice providers, have expressed a need to have greater flexibility to offer both remote services and face-to-face services in the community, not just from their office, in outreach locations that encourage client take-up of and access to their services.

> *"If they did consider a more flexible approach to office requirements, then we might think more about creative solutions for meeting clients."*
>
> **PROV3**

- A number of respondents noted that a permanent office location means that providers are more likely to be 'rooted in their communities', understand local issues and services, and develop inward and outward referral arrangements as part of local advice and support networks.

> *"We have strong local links with other organisations. That is really important. We can help clients access other local services, e.g. mental health and accommodation. If people are not seeing local clients, you don't know how to help people – soft skills. They are important but hard to quantify. It is a mistake not to incentivise people to have a local office."*
>
> **PROV5**

- Providers have expressed that they see the benefits to their clients and their staff of having a permanent office presence but noted that these fees proposals do not go far enough to make retaining offices, with all the associated costs, a commercially viable proposition.
- As with many of the existing or proposed contracting issues, some providers noted that they all create the need for monitoring by the LAA, which generates a cost for both providers and the LAA. Diluted office requirements may even be more difficult to monitor and assess in relation to what clients require than the current permanent and temporary office requirements.

A consistent theme from the Provider Survey and from our members is that the MOJ must not dilute office requirements without ensuring there is sufficient access to in-person services for all clients who need them.

Survey respondents were asked whether the contractual requirement to have a permanent office location reduces their ability to deliver quality advice and meet client's needs.

Answer Choices	**Responses**	
Yes	9%	5
No	68%	36
Maybe	6%	3
Don't know	17%	9
	Answered	**53**

While the majority of respondents did not see the permanent office requirement as a factor that reduces their ability to deliver quality services, narrative responses indicate this is for a variety of reasons. Some providers noted that they would maintain an office irrespective of the contractual requirement. Some gave similar responses to earlier questions, such as noting that while they wish to maintain their premises, they would like more flexibility in relation when it is open to the public and the ability to offer more outreach services.

Many respondents noted that while maintaining an office enables them to deliver quality services, particularly for vulnerable clients, the associated overheads limit their ability to expand services and those costs should be properly factored into fee levels. This issues was evident in responses to the survey question: 'Do the *overhead* costs resulting from the permanent office requirement reduce your ability to sustain a viable business?' [Emphasis added]

Answer Choices	**Responses**

Yes	38%	20
No	35%	18
Maybe	10%	5
Don't know	17%	9
	Answered	**52**

Respondents' concerns about the impact of office overheads are not assuaged by the fee increase proposals, as illustrated by responses to the question: 'If the legal aid fees were increased as proposed, would the impact of the permanent office requirement on the financial viability of your business change:'

Answer Choices	**Responses**	
Significantly	4%	2
Slightly	16%	8
Not at all	50%	25
Don't know	30%	15
	Answered	**50**

Survey respondents were invited to share any final thoughts on the impact of the permanent office requirement on their legal aid business. Responses indicate a significant divergence of views. Whilst some providers believe having a permanent office is essential to meet the needs of clients, maintain staff wellbeing and morale (noting that having an office doesn't prevent them from offering flexible working arrangements) and train and support junior staff. Other providers believe strongly that this requirement doesn't reflect modern working practices, particularly following the changes brought about by the pandemic. These respondents tended to emphasise that the restrictions limit their ability to adapt their services and the associated costs could be better spent on supporting their staff and assisting more clients.

A number of practitioners expressed the view that concerns about the costs associated with the permanent office requirements would be ameliorated by fees that properly account for the cost of maintaining premises. Providers are concerned that the MOJ is exploring a reduction in office requirements because this is an easier and less expensive option than increasing fees to properly reflect the cost of maintaining premises. This is despite the MOJ acknowledging widespread and commonly understood concerns about the adverse impact that a further erosion of face-to-face provision would have on access to advice for vulnerable clients.

Question 13)

Does the requirement for a permanent office provide sufficient flexibility for the availability of civil legal aid advice based on your experience of client need in any category of law?

Please see our answer to Question 12.

Question 13a)

Where the requirement doesn't provide sufficient flexibility, in your experience, what is the impact on delivery of legal advice to clients?

Please see our answer to Question 12.

Question 14)

If there were a change to the requirement for a permanent office, what measures or safeguards would help ensure we meet the need for clients to have access to face-to-face civil legal advice in a safe, private and accessible environment be ensured?

Provider Survey respondents were invited to provide narrative responses to this question. A number of key themes emerged from those responses:

- Providers are doubtful that once an emphasis on local provision has been removed or reduced that any meaningful safeguards or measures can be implemented to ensure that clients who need face-to-face advice can access it. Existing contractual requirements and safeguards have not maintained face-to-face advice provision, which has been clearly demonstrated by The Law Society's advice deserts campaign. This failure to ensure an adequate supply of local services has had a significantly detrimental impact on vulnerable clients throughout England & Wales. The steady erosion of the provider base is due to decades of unsustainable fees and disproportionate and quite frankly maddening levels of bureaucracy.
- Rather than dilute face-to-face provision we would suggest that the MOJ should recognise the significant benefits of local, face-to-face provision, and accept that it has a responsibility to pay for it. This does not necessarily need to be at the expense of giving greater flexibility to providers or encouraging an expansion of remote advice where it is appropriate and demonstrably effective.
- However if the MOJ does choose to explore a reduction or removal of permanent office requirements, which would be supported by some practitioners, then it must conduct further research about the potential impact of any proposed changes on vulnerable clients (including a very robust equalities impact assessment), on the viability of current providers and on any potentially adverse impacts on the quality of advice that clients receive.
- Some respondents noted that the MOJ could and probably should develop more direct interventions to safeguard the needs of clients who require face-to-face services, such as establishing and funding specialist advice hubs in legal aid deserts, and providing incentives to encourage providers to set up office locations in areas where provision is low or non-existent (which would include areas where providers are notionally present but effectively dormant).
- Many respondents noted that if they were given more flexibility over where, when and how their services are provided, they accept that with this greater flexibility would come a responsibility to cater for the needs of clients who require face-to-face services. They noted that this responsibility could also be framed with reference to their duties and obligations under the SRA Code of Conduct their relevant Quality Mark and could be monitored by Peer Review.

The MOJ must not use the absence of face-to-face services as justification for further undermining access to face-to-face advice under the guise of 'reducing overheads' or 'providing greater flexibility'. We would suggest that a better approach would be to have contracts, systems and fees schemes that support a healthy supply of sustainable providers, fully integrated into vibrant, local advice networks, and encourage a mixed model of service provision that caters for the needs of a diverse range of clients. This would require the MOJ to align its commissioning strategy with wider legal support initiatives and the development of a national advice strategy which is orientated around the needs of clients.

Appendix 1 – Fee Income Analysis and Semi-Structured Interviews with Legal Aid Providers

1. Analysis of potential changes in legal aid fee income - methodology

Interviewees were asked to calculate the potential financial impact of these proposals by undertaking one of the following methods of analysis:

A. Take a representative sample of cases and apply the new rates (set out in Annex B of the consultation document) to their billing records to see what additional income they would recover for each case. This would include profit costs, account for increased counsel fees and any percentage increases obtained via enhancements. They were asked to extrapolate their findings over their entire caseload for a specific period of time (say the last 12 months); or

B. Use the ballpark increase figures that the MOJ set out in the Impact Assessment and apply these to their current income levels or the fees recovered over a specific period:

   i. Housing - increase by 42% for Controlled Work and 10% for Licenced Work;
   ii. Immigration - increase by 32% for Controlled Work and 10% for Licenced Work; or

C. Use another method of their choosing, to be explored during the structured interview.

2. Overview of potential increase in fee income

Provider 1 (PROV1) London-based law centre – H&D and I&A contracts (amongst a range of other civil contracts), HLPAS provider

Used method B. Applied the proposed new rates to all completed housing and HLPAS cases (N=~300) over the previous 12 months.
Would result in an approximate 25.3% increase in gross revenue.

Provider 2 (PROV2) London-based, 4 partner firm – I&A contract (and one other civil contract)

Used method B. Applied the proposed new rates to all completed I&A cases in the Dec 24-Jan 25 period. Looked in detail at reported profit costs, disbursements and counsel fees.
Would result in gross increases that ranged from 21-35% depending on the type of case, with the average being closer to 21%. Noted that the amount that counsel charge per case varies considerably.

Provider 3 (PROV3) Regional form, H&D and I&A contracts (and one other civil contracts), HLPAS provider

Used method B. Applied the proposed new rates to all completed housing and HLPAS cases (n=900+) for the previous 12 months.
Would result in an approximate 20.1% increase in gross revenue.

Provider 4 (PROV4) Regional law centre – H&D and I&A contracts (amongst a range of other civil contracts), HLPAS providers (as an agent)

Used method C – analysis of overheads and income carried out as part of research project related to RoCLA.

Provider 5 (PROV5) Regional not-for-profit provider, I&A contract

Used method B. Applied the proposed new rates to all I&A (including ECF) cases (N=300+) concluded in 2024.
Would result in an approximate 30.1% increase in gross revenue and 25.5% increase in net revenue.

Provider 6 (PROV6) London-based, large firm, I&A contracts (amongst a range of other civil contracts

Used method B. Applied the proposed new rates to all I&A CW and DDAS case in 2023-24. Noted that could not apply to LW as their system does not enable them to disaggregate legal aid, inter partes and private fees.
Would result in an approximate 22.8% increase in income for legal aid work across all departments.

3. Semi-structured interview themes

Interviewees were provided with a list of themes and potential discussion points at least one week prior to the interview and invited to consider these themes in light of the analysis set out above.

Recruitment

- Will you look to recruit new staff? How many new staff will you look to recruit and how does this relate to the overall size of your team carrying out legal aid work?
- What sort of staff will you look to recruit? i.e. paralegals/trainees, more experienced fee earners, supervisors etc.?
- What are the realities of recruiting legal aid practitioners at different levels – i.e. recruiting juniors vs seniors, or with different skill sets (i.e. experienced in legal aid billing)?
- What is your current/recent experience of recruitment? How does recruiting for legal aid work differ from recruiting for other types of fee earner?

Pay and competitiveness

- Will this enable you to offer higher salaries? If so, what sort of increases are you anticipating? How does this relate to comparable positions in your geographic location? (i.e. local authority legal depts., non-legal aid firms)

Other incentives/benefits

- Will you be able to offer other incentives to your team as a result of this change? i.e. higher pension contributions, bonuses or profit shares, more paid leave, health insurance etc.
- Explore issues like the cost of and practicalities of accreditation; explore career progression and whether fee increases enable providers to develop staff into different levels of seniority/responsibility and what this means for retention but also succession planning]

Proportion of legal aid work vs work funded using other methods

- Will you make any changes to your ratio of legal aid work vs non-legal aid work? If so, tell us what change will occur.

Case volumes

- Will you change the volume of cases that you ask fee earners to take on? If so, what sort of changes will occur?
- How does this change relate to your current understanding of demand in your area? i.e. if you are currently turning away X eligible clients each week, what proportion will you now be able to take on?

Case mix

- Will an increase in income change your approach to the types of legal aid cases that you take on? For example is there are particular type of case that you currently consider unviable that you will now consider taking on?
- Will you be able to carry out more 'early intervention' as the consultation anticipates?
- Will this change your approach to Controlled vs Licensed work?

Facilities and infrastructure

- Will this allow you invest in your facilities or infrastructure? i.e. I.T. systems, back office staff, office, home working facilities etc.
- Will the suggestions in the consultation to reduce the contractual requirements for permanent office presence change your business model?

Service location and delivery

- Will the changes in fees enable you to expand your services into other geographic locations?
- Will the suggestions in the consultation to reduce the contractual limits on remote applications change your business model?

Appendix 2 – Provider Survey – ILPA, LAPG, HLPA & LCN members

Survey Structure and Methodology

The survey obtained general information about the profile of respondent organisations and then directed them through a series of questions relevant to their area of interest. For the purposes of ILPA's response respondents from Northern Ireland were directed through a branch designed specifically for them. Respondent based in England and Wales were directed through branches dependent on whether they are a current or prospective provider, a self-employed barrister, another type of practitioner, an academic or a policy organisation.

Respondents from England & Wales:

Organisation that provides legal aid services	78
Organisation that could, but does NOT, provide legal aid services	6
Self-employed barrister	5
Other practitioner (including a practitioner not responding on behalf of an organisation)	13
Organisation that delivers policy advocacy around immigration and/or housing	3
Academic	0

Location:

East of England	3
East Midlands	6
London	41
North East England	6
North West England	18
South East England	7
South West England	12
West Midlands	4
Wales	3
Yorkshire and the Humber	9

Categories of civil legal aid practice:

Claims against public authorities	17
Clinical negligence	5
Community care	24
Discrimination	7
Education	7
Family	31
Family mediation	3
Housing and Debt	34
Immigration and Asylum	30
Mental health	26
Public law	29
Welfare benefits	9

Respondents were then asked whether they wanted to respond to the fee proposals in relation to I&A, H&D or both. The survey also enabled respondents to indicate that they did not want to respond to the fee proposals, in which case they were directed to respond to the contract change proposals.

The survey then asked a series of questions relating to:

- The MOJ's principles that inform decision making on legal aid fees
- The specific proposals for increasing I&A and/or H&D fees
- Whether the proposals to increase fees will enable providers to undertake increased volumes of cases and, if so, an estimate of both the increase in volume and the time period within which an increase might occur
- The proposal to introduce the same minimum hourly rate for CW and LW
- Whether the proposals will enable increased volumes of LH or HLPAS Stage 1 work (as a proxy for 'early intervention')
- For providers who deliver services in other categories of legal aid, their opinion of whether the proposals would be sufficient if introduced to those other categories
- The proposal to harmonise travelling & waiting time and attendance with counsel at 50% of the rate paid for preparation and attendance
- The proposal standardise rates for routine letters and telephone calls
- Whether respondents had any other suggested measures to improve the fees or fee scheme
- Whether the simplification proposals will result in a reduction of time in billing processes
- The suggestions in relation to reducing or removing the limits on the number or remote CW applications
- The factors that currently influence provider decision making on whether clients should attend their offices to make CW applications
- The suggestions in relation to reducing or removing the contractual requirements to have a permanent office location
- Potential measures and safeguards should the LAA reduce or remove permanent office requirements
- The impact of current contractual permanent office requirements and how this might change if/when fees are increased

Appendix 3 – Preliminary Analysis of Data Gathered to date for LAPG's Non-Chargeable Time Research Project

Methodology

Participating employees in legal aid organisations record all of the tasks that they undertake on legal aid cases (casework tasks) and tasks that are specifically linked to running a legal aid contract (non-casework tasks). Participants use a data collection instrument specifically designed for the purposes of this project and record their time, in 6 minute units, over 10 days. The instrument groups similar tasks into sub-sets to ensure the instrument is not unwieldy, with casework and non-casework tasks recorded on separate sheets. The list of tasks, and grouping into sub-sets, was devised by experienced legal aid practitioners and practice managers.

Participants are also required to submit their total chargeable time during the 10 day period (where relevant) for comparison purposes with non-chargeable time. The instrument also records key information about each participant, such as their job title/role, the area(s) of legal aid in which they work, whether they are full- or part-time and the number of hours they work each week, and the percentage of time that is allocated to legal aid work.

Participants are required to complete an online consent form and are provided with detailed instructions prior to commencing the time-recording process. Those instructions are also set out on the instrument and participants have an allocated member of the LAPG research team to contact if they have queries about the project. Once the 10 day period has been completed, participants submit their time-recording instruments to LAPG for collation and analysis.

The data collection process was piloted with a long-standing legal aid firm, with meetings carried out before and during the process to ensure consistency of data collection and understanding of the requirements of the Project. An experienced external researcher participated in the development of the instrument and data-collection process and reviewed the data and participant feedback from the pilot phase before we started to recruit additional participants. The Project has been widely promoted to LAPG's membership, and to date 14 organisations have either commenced data collection or expressed an interest in doing so.

Analysis of data collected from participating providers firms up to 28 February 2025

Dr Jo Wilding, Associate Professor in Law, School of Law, Politics and Sociology
University of Sussex

In total we have data for 50 individuals across 4 organisations. Of these, three are private firms and one is a not-for-profit. I have collated the data separately.

How much non-chargeable time?

Every participant (N=50) recorded some non-chargeable time. The range was 102 – 2922 minutes across the ten days, averaging out at between 10 minutes and 4.8 hours per day. The bare numbers do not account for those who work part time, so the averages are potentially misleading at individual level (skewing totals downwards), but they do show a substantial amount of time being spent on non-chargeable casework and non-casework tasks. The median was 642 minutes across the ten days, or

64 minutes per day, but the mean was higher at 788 minutes in total, or just under 79 minutes per day.

Altogether only five individuals spent 200 minutes or less on non-chargeable work. The 102 minutes at the lowest end of the range was by a part time administrative assistant, for whom it amounted to one-eighth of their total legal aid working time. The next-lowest was 162 minutes, by a trainee solicitor, but this made up 90% of the individual's legal aid working time. It is worth noting that these are also likely to be among the lowest paid employees.

By contrast, four individuals spent over 2000 minutes on non-chargeable tasks over the ten days, and another eight spent between 1000 and 1,999 minutes (between 1h 45m and 3h 20m per day). Of those in the 2000s, one is a practice manager and two are costs draftsman and costing clerk; all four are in the private firms. We currently have one further response from the Head of Costs in another private firm. This person recorded 1,440 minutes across the ten days, or 144 minutes (just under 2h 25m per day). Typically, those in the 1000s are a mixture of very senior staff and paralegals, indicating that the work splits into that which has to be done by someone very senior because of its importance and that which can be delegated to (presumably) much more junior staff. On one hand that delegation is likely to be cheaper than having all staff undertake the non-chargeable work themselves, but on the other, it requires organisations to employ and fund an additional person to undertake the lower-level non-chargeable work.

The totals across the three private firms are:

	Chargeable time	non-chargeable time: casework	non-chargeable time: non casework	Total non-chargeable	Percentage non-chargeable
F-002	54,525	8,328	564	8,892	16%
F-003	53,406	7,830	6,432	14,262	27%
F-004 (NfP)	*5,328*	*4,986**	*930**	*5,916*	*52%*
F-005	14,256	7,764	2,544	10,308	42%

*In F-004, an NfP, the non-chargeable time is an underestimate because we had to exclude their 'other' non-chargeable time.

Participants were also asked to record their contracted working hours. We calculated i) their total time worked on legal aid and ii) their total non-chargeable legal aid time, as a percentage of their contracted working hours. This helps to put the legal aid time and the non-chargeable time into the perspective of the individual working pattern, not only as a percentage of their legal aid time. This also shows where individuals are working clearly beyond their contracted hours, which increases the risk of burnout.

The outcome varied across organisations. In Firm 2, six out of eleven staff worked above their contracted hours, recording between 104-117% of their full-time working hours on chargeable and non-chargeable legal aid work. The business owner did not declare a contracted number of hours but stated that they work seven days a week. One worker did not give their contracted hours and was excluded from this calculation. The remaining participant cohort was wholly made up of casework staff. In Firm 3, three out of nineteen staff worked on legal aid (chargeable and non-chargeable) for more than 100% of their contracted hours, recording between 115-134% of their contracted working hours per week. Again, all but one participant who gave their job title (one did not) was casework staff.

In Firm 5, two staff worked above 100% of their weekly contracted hours but we excluded one of these from the analysis as the figure for chargeable time was unfeasibly high and appears to have been a mistake. That left one person working more than 100% (123%) of full time on legal aid work. Of the ten members of the participant cohort who were included in the analysis, seven were non-casework staff.[1] Although the sample size is too small so far to draw firm conclusions, the analysis potentially indicates that casework staff are more likely to work above their contracted hours on legal aid work, which is likely to reflect the demands of carrying out casework directly with clients, but then being required to undertake non-negotiable non-chargeable tasks both within and alongside that client-facing work.

There does not appear to be any correlation between those who worked the most hours over their contracted time and the percentage of their time which is non-chargeable. In other words, working overtime does not appear to reduce the percentage of their overall time which is non-chargeable.

What tasks take up substantial time?

Casework tasks

For the three private firms, the largest amount of non-chargeable time was spent on billing procedures (casework task 9), electronic and hard copy admin (casework task 6), new client enquiries (casework task 1) and means test related admin (casework task 3). The billing matters were by far the largest consumer of non-chargeable time across the three firms.

The pattern was quite different in the single not-for-profit, though of course caution is needed given the small samples so far. Billing, ranked 1 for private firms, ranked only 6th for the not-for-profit participant, which may indicate that this organisation does more fixed fee work than the three private firms.

The top two time-consumers for the not-for profit were electronic and hard copy admin (casework task 6) and new client enquiries (casework task 1), similar to the private firms, followed by 'legal aid issues' including CCMS admin and non-chargeable troubleshooting (casework task 5), which ranked only seventh for the private firms, and ECF / ICC / non-standard funding applications (casework task 4) which ranks eleventh (last) for the private firms. This does support anecdotal accounts that private firms avoid the unpaid labour of ECF applications, and only not-for-profits will undertake that work.[2]

Non casework tasks

There was great variation between the organisations in relation to non-casework tasks. The single largest time consumer was Quality Mark admin, including audit (non-casework task 10) but all of this time was recorded by one firm, which happened to be preparing for audit during its recording period. Although this skews the comparison, it also indicates the vast non-chargeable time that audit preparation takes, since one firm's time on that task outstripped all other firms' non-casework time recording. LAA audit liaison and preparation (non-casework task 2) ranked second-highest for the not-for-profit.

The second largest time consumer for private firms, and the largest for the not-for-profit, was 'Finance admin (internal and external) i.e. internal processes relating to client/office ledgers, disbursements, allocation etc.' (non-casework task 5). The private firms' third highest non-casework task was general

[1] Firm 4 is less reliable here as we excluded their 'non-chargeable – other' data because it included non-legal aid work.

[2] It may also relate to the areas of law each organisation undertakes.

supervision requirements, i.e. those which are not attached to specific files (non-casework task 6). The not-for-profit organisation did not record any time in this category, suggesting they may be managing to record it all as file-specific casework, or potentially in the 'File review of others' category, which was the third-ranked non-casework task (task 7) for the not-for-profit. It may also reflect the fact that there were more trainees and apprentices in the other organisational cohorts – highlighting the costs of training new casework staff.

Who is doing the non-chargeable work?

There is variation in the percentage of non-chargeable time between individuals in each organisation, and variation between organisations as to who undertakes each task. The tables below demonstrate this for each of the participating organisations. As can be seen, there are certain job titles which exist in all or most organisations, while others appear in only one or two organisations. Not all staff in each organisation participated, and some participant cohorts clearly contain a larger or smaller proportion of casework and non-casework staff. However, it also appears that not all organisations have the same proportion and type of non-casework staff, meaning that the casework staff have to undertake more of the (ostensibly) non-casework tasks in those organisations.

For example, Firm-005 employs a New Client Co-ordinator, who undertook well over two thirds of the work on new client enquiries in that organisation, with one trainee paralegal undertaking almost all of the rest of that task. By contrast, in the not-for-profit organisation (Firm-004), every participant undertook at least some non-chargeable time in that category, ranging from 36 to 456 minutes across the ten days. The person undertaking an average of just over 45 minutes per day on new client enquires is an immigration senior caseworker, while a housing solicitor undertook an average of just over half an hour per day, out of a 7.5 and 7-hour working day respectively.

In Firm-002, one paralegal and the solicitor-owner each had the highest non-chargeable workload, with the latter noting in the initial 'details' section of the firm that their own work is 100% legal aid and, 'I work seven days per week which is barely sufficient for the volume of work I am expected to undertake to support our practice.'

Firm-002

Stated role	Chargeable (minutes)	Casework non chargeable (minutes)	Non casework non chargeable (minutes)	Percentage non chargeable
Solicitor apprentice	1692	222	0	12
Paralegal	1890	1296	0	41
Not stated	4260	2076	0	33
Solicitor apprentice	4500	426	240	13
Solicitor COLP & COFA	3960	300	0	7
Solicitor and owner	1854	1278	0	41
Solicitor apprentice	1968	474	0	19
Caseworker	4422	198	0	4
Solicitor apprentice	4026	762	42	17
Solicitor apprentice	4710	300	240	10
Paralegal	4296	390	0	8
Solicitor apprentice	4614	408	42	9

Paralegal	3768	198	0	5
Total	**45960**	**8328**	**564**	**Average 17%**

Firm-003

This was the organisation preparing for a Quality Mark audit.

Stated role	Chargeable (minutes)	Casework non chargeable (minutes)	Non casework non chargeable (minutes)	Percentage non chargeable
Paralegal	2004	738	0	27
Solicitor	4578	336	48	8
Senior paralegal	1896	570	240	30
Solicitor	3126	606	78	18
not stated	3762	180	6	5
Solicitor and director	1758	372	330	29
Trainee solicitor	3138	540	234	20
Solicitor and director	2928	186	762	24
Solicitor apprentice	1050	114	768	46
Paralegal	2778	318	0	10
Assistant solicitor	3768	234	42	7
Practice manager	0	528	2394	100
Solicitor apprentice	3438	210	168	10
Paralegal	2844	180	60	8
Paralegal	1242	1752	96	60
Solicitor	4278	246	288	11
Chartered legal exec.	3606	318	282	14
Paralegal	3318	198	216	11
Solicitor	3894	204	420	14
Total	**53406**	**7830**	**6432**	**Average 24%**

Firm-004 (not-for-profit)

Stated role	Chargeable (minutes)	Casework non chargeable (minutes)	Non casework non chargeable (minutes)	Percentage non chargeable
Solicitor (housing)	864	1134	0	50
Snr immig. caseworker	2100	2544	0	33
Trainee solicitor	642	1128	162	20
Trainee solicitor	54	2670	0	90
Head of Org, Snr Sol	732	4038	0	66
Housing supervisor	396	3462	0	61
Solicitor (immigration)	540	3510	930	71
Total	**5328**	**18486**	**1092**	**Average 56%**

Firm-005

Stated role	Chargeable (minutes)	Casework non chargeable (minutes)	Non casework non chargeable (minutes)	Percentage non chargeable
Senior paralegal	7722	228	0	3
Head of costing & wellbeing	0	156	996	100
Costs draftsman	1410	2412	210	65
Senior paralegal	2214	216	12	9
Costing clerk	24	1914	180	99
New client co-ordinator	0	654	0	100
Finance manager	180	0	294	62
Admin assistant	726	102	0	12
Legal cashier	180	48	630	79
Trainee paralegal PT	246	1374	138	86
Trainee paralegal FT	1554	660	84	32
Total	**14256**	**7764**	**2544**	**Average 59%**

Data validity and reliability

There are some caveats –

1) All of the data is self-reported, but the chargeable time recorded is time which they are billing, and may be audited on, and the non-chargeable time which is recorded follows the same process, so is reasonably likely to be accurate and reliable unless anyone is deliberately mis-recording;

2) The participants are self-selecting in terms which organisations sign up to the research, though there is no reason to expect they are doing more non-chargeable work than other comparable organisations;

3) Participants are self-selecting within organisations, in that not all staff are completing the data collection, so it may be that those who have the most non-chargeable tasks are choosing (or being instructed) to take part. This is a caveat to the percentages rather than to the raw numbers, because it does show that those tasks are being undertaken and are unpaid. That means we cannot extrapolate the percentage across the entire staff body of an organisation, we can draw some conclusions about the kinds of work that have to be done and how much time individuals are spending on those tasks.

4) Some data has been excluded. The sole not-for-profit for which we have data had very high numbers recorded as 'other' non-chargeable, but gave descriptions which made clear this included non-legal aid work carried out under other funding. We therefore took the view that the data for 'other' non-chargeable tasks should be excluded, but that the data for specified non-chargeable legal aid work could still be included. This has undoubtedly excluded some non-chargeable legal aid time – which may be the reason why none of their participants were among the highest four non-chargeable time totals. However, it enabled us to use some valid

data from their responses. This also goes towards illustrating the very complex financial models that many not-for-profits operate on, combining numerous different funding streams.