This is the response of Legal Aid Practitioners Group (LAPG) to the Ministry of Justice 'Review of Civil Legal Aid – Call for Evidence' which was published on 10 January 2024.

About you

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If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

LAPG is a membership body for firms, organisations and chambers delivering 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 to many of the largest providers of legal aid services.

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QUESTIONS 1-5 – Overarching Questions

These questions seek views on broad, cross-cutting areas related to civil legal aid such as suggestions for improvements, future risks and opportunities, and the wider benefits of civil legal aid.

Question 1

Do you have any suggestions of changes that could improve civil legal aid – both short-term and longer-term changes?

Introduction

To say the Review of Civil Legal Aid (RoCLA) is overdue is an understatement. The civil legal aid system is in crisis after decades of underinvestment and deliberate dismantlement by successive governments. In many respects we can only guess at the true extent of the crisis, particularly in relation to the adverse impact on clients and communities, because of a conscious decision by government not to collect and analyse relevant data. The MoJ should be commended for initiating RoCLA and for improving the scope and focus of the Review following robust feedback from LAPG and other stakeholders. However the MoJ should also be under no illusion about both the severity of the problems and the scale and immediacy of the required solutions.

If the MoJ really does intend to create a sustainable, efficient and accessible civil legal aid scheme, as set out in the Terms of Reference for RoCLA, it must accept that this will take a significant amount of additional public funding. Whilst marginal improvements can be made in the short-term, it will take substantial system-wide improvements and significant increases in fees to ensure the long-term sustainability and accessibility of civil legal aid. Decades of neglect have shorn the provider base of resilience, of expertise, of infrastructure, of confidence in government, and of a balanced and healthy workforce. That neglect has also created a public perception that civil legal aid does not exist. This misconception must be addressed through a sustained public awareness campaign. However any initiatives will only enable family and social welfare lawyers to use their skills to improve lives and strengthen communities if those lawyers are given the tools do so, and paid a fair wage to utilise those tools.

While there are myriad issues blighting the civil legal aid scheme, issues that we expand upon throughout this response, they can be grouped into three broad categories:

- Fees – the one issue to rule them all
- Scope – the service simply doesn't meet the legal needs of clients
- Bureaucracy – the system is overly-complex, laden with risk, defensive and untrusting

There are over 340 references in our response to fees. This is partly because we reference existing fee schemes, but it is primarily a reflection that a failure by government to increase fees is the principal cause of the decline of the civil legal aid system. It is now an inescapable conclusion that only a significant increase in fees will halt the decline of providers, encourage new providers to enter the fray, and build sustainable, resilient business models that can effectively meet the needs of the many hundreds of thousands, if not millions, of people with unmet legal needs. It must also be true, therefore, that a one-off increase in fees will not be sufficient to ensure long-term sustainability: a mechanism must be put in place by the MoJ to regularly review and increase fees as the costs of delivering services increase over time. Such mechanisms exist for other publicly-funded services and

it is a reflection of government indifference or neglect that no such system exists for such a crucial public service as legal aid (be that criminal or civil legal aid).

Source Material

Throughout this response we have included evidence and findings from the Westminster Commission on Legal Aid (the Westminster Commission)[1] and the LAPG Legal Aid Census (the LAPG Census)[2], along with excerpts from responses to recent legal aid consultations. We have also tried to incorporate the views of as many front-line legal aid practitioners as possible. We invited LAPG's Advisory Committee and our members to a meeting in January to discuss the Call for Evidence and subsequently liaised with a group of over sixty practitioners and LAPG staff to obtain their input. Members have provided input about their experiences of operating legal aid contracts and their clients' experiences of navigating the legal aid scheme.

We are aware that the MoJ RoCLA team has been referred to the many reports that have been carried out into legal aid over the years, including reports from the Justice Select Committee and other parliamentary bodies, the Low Commission and the Bach Commission, reports by The Law Society and the Bar Council, YLAL's periodic Social Mobility reports, the three recent reports from P A Consulting, the National Audit Office and Frontier Economics, and many others. The evidence from various judicial reviews has also set out problems with civil legal aid and those legal challenges have often been the only way to 'persuade' the government to improve the scheme (or, in some cases, prevent it from inflicting yet more harm on the scheme).

The problems with civil legal aid are many and various and there is no shortage of information setting out the difficulties faced by clients and practitioners. LAPG and other representative bodies attend a multitude of meetings to provide feedback to the LAA and the MoJ and we respond to many consultations, including on all legal aid contracting matters and the Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)[3]. Representative bodies, practitioners, clients and NGOs have repeatedly and consistently warned the government of the consequences of inaction and of regressive civil legal aid policy. Those of us in the legal aid policy world have permanent brick-shaped indentations on our foreheads from raising the same issues with civil servants over and over again. We do so because we represent practitioners who care and who are not motivated by money. We do so because we know that thousands of clients cannot get legal assistance and we know, even if the research isn't there to prove it, that an inability to get advice ruins and in some cases even costs lives. We do so in the hope that civil servants will listen and that politicians will stop playing political games with the lives of so many people across England and Wales. We do so again as part of RoCLA because we know that the civil servants involved understand the issues and want to improve the scheme. And we do so in relation to RoCLA because a refusal to take decisive action now means that the MoJ will likely preside over widespread system-failure in the imminent future.

We have endeavoured to set out some basic principles in this section before looking at each category of legal aid. A number of issues in the responses to Questions 1 and 1.1 are also relevant to Question 3 about changes to the administration of civil legal aid. Where there is repetition in this response, this is generally due to the interlinked nature of the various issues that are undermining the civil legal aid scheme. All of the issues raised by our practitioner members are important and need to be addressed to ensure that the scheme is sustainable, efficient, effective and accessible.

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[1] For details of the Westminster Commission see Appendix 1

[2] For details of the LAPG Census see Appendix 2

[3] https://assets.publishing.service.gov.uk/media/5c5b3b2b40f0b676c362b4e0/post-implementation-review-of-part-1-of-laspo.pdf

This section is broken-down into the following key overarching themes:

- Fees
- Scope
- Commissioning services
- Contract issues
- Changes to the Means Test
- Complexity of claiming
- I.T. issues
- Court issues

Fees

Level of Fees

The lack of fee increases since 1994[4] is the most serious problem facing practitioners in delivering civil legal aid and clients in finding a provider. For many practices the work that they are carrying out is paid at less than 1994 rates. Even worse, if there are fixed fees these are based on these hourly rates and on a caseload mix that has changed from the original rationale. As we state in Question 6 – Fees, the 'swings and roundabouts' analysis is out of date as the cases that are left post-LASPO are the more complex cases. Staff, who are already poorly paid, need pay increases. Utility bills have increased particularly in recent years. Rents in many parts of the country remain high. PII and public liability insurance increase annually.

As a general rule, the costs associated with delivering a service and running a business or charity increase over time. The Frontier Economics report sets out that 'that general costs in the economy are effectively 40% higher today than they were in 2011, when legal aid fees were last cut by 10%, and over 90% higher today than they were in 1996'.[5] Whereas the recently-published National Audit Office report *Government's Management of Legal Aid*, notes that legal aid fees have not increased for 28 years, so the real terms value of those fees is now approximately half of what they were when they were imposed.[6] How are legal aid providers supposed to deliver services when their costs continuously increase while their income from legal aid continuously decreases?

Both The Law Society and LAPG have repeatedly made the point that civil legal aid providers are struggling and an urgent interim increase in needed. As every month goes by providers are dropping areas of work or cutting down on legal aid work. The MoJ has not commissioned research about what happens to clients with a legal problem who are unable to obtain advice. Every category of legal aid is designed to help people to improve their circumstances. Take legal aid away and their circumstances get worse. Unresolved legal problems simply shift costs onto other public services: the NHS is left to assist people whose health is affected; the Court Service sees an increasing number of litigants in person; the Police, social services and housing services have to intervene to protect survivors of domestic abuse. And these are costs in financial and resource terms. What are the human, social and societal costs of failing to meet someone's legal needs?

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[4] Fees only increased by £1.00/hour in the 1996 regulations. It must also be noted that, as pointed out by an experienced practitioner in Kent, the fees set in 1994 actually represented a fee cut as the previous fee system, controlled by the Legal Aid Board, was based on the rates charged for private work.

[5] https://prdsitecore93.azureedge.net/-/media/files/topics/legal-aid/research-on-the-sustainability-of-civil-legal-aid-draft---stc-v2.pdf?rev=4e322002548147adae77f1f8c0a7a4b5&hash=3AA9CBB859E3AC86D5223282F4C1D08B at section 3.2

[6] https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf, page 48

There needs to be an urgent increase across the board in civil legal aid fees and an annual review to ensure that fees account for inflationary increases in the costs of delivering services. We refer to P A Consulting's report.[7] The summary on page 8 reflects what providers and representative bodies have been saying for years:

> *"Participating organisations reported that they experienced multiple different pain points on a frequent (weekly) basis, covering a range of factors, such as fees, billing, workforce, LAA infrastructure and decision-making, and admin related to managing the service user.*
>
> *Prioritisation of pain points showed that low fees, spending excess time on matters which providers are unable to bill for, rigidity of the fee system, admin related to getting paid, difficulty attracting junior lawyers and time needed to manage the service user were all higher priority issues for providers."*

Here is feedback from an LAPG member in Southampton:

> *"My firm currently holds a family contract and we are one of the few firms in the Southampton area that is still taking on all types of family legal aid case. Most firms have stopped doing private law/injunctions/divorce and we do get referrals from not only within Hampshire, but also from Dorset and Wiltshire as the coverage in the "Wessex" area is very patchy. Most firms around Hampshire who have a legal aid family contract are now only doing the care proceedings work.*
>
> *Frankly, the pay is simply not good enough. Even the fees in care proceedings have not changed since the last reduction. We have had to endure many inflationary pressures over the last couple of years in particular and yet there has been nothing from the MOJ to help with that. Wages, utility bills, rent, PII, public liability insurance are all going up year on year. The starting pay needs to increase fairly significantly and there needs to be provision for inflationary rises each year of the new contracts, otherwise the supplier base is going to diminish even further. The care representation fees were cut significantly from where they started – the fee for representing one parent in a care case started off at £3230 in 2011, cut to £2907 in 2012 and then cut again to £2616 in 2014. We have been trying to keep the business sustainable on that same reduced figure now for the last 10 years, a figure which was around a 20% reduction from the start of the scheme in 2011."*

Legal Help fees[8]

Fixed fees and mechanisms for claiming fees and disbursements

The current fixed fee system has a number of major flaws. They do not reflect the cost of delivering services. They were devised when civil legal aid was wider in scope and covered some issues that were less time consuming to resolve. They cause issues when cases fall between the fixed fee and any escape fee threshold. Providers also generally have to wait until they have concluded the case to claim payment and recover disbursements, meaning that they have to carry a great deal of work in progress and meet external costs long before they can be reclaimed.

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[7] https://assets.publishing.service.gov.uk/media/65aa4068ed27ca000d27b28a/civil-legal-aid-providers-survey.pdf

[8] Set out in The Civil Legal Aid (Remuneration) Regulations 2013, as amended, available here: https://www.legislation.gov.uk/uksi/2013/422/contents

If the fixed fee regime is retained we recommend that fixed fees are based on realistic underlying hourly rates and that fixed fee and escape fee levels are based on an accurate assessment of the time required to resolve the case. The LAA should also implement interim costs and disbursements payment mechanisms for Controlled Work across all the civil categories and ensure that practitioners can claim reasonable rates for all associated costs, such as travel costs and travel time. This is particularly important in regions with a lack of supply, such as large parts of Wales, where practitioners often need to travel long distances to see clients and access to public transport can be limited.

Costs Limits in Certificated Cases

When providers apply for a legal aid certificate, the amount of costs they can incur is subject to initial limits imposed by the Legal Aid Agency. Initial costs limits vary by category of law. Providers are required to apply to the LAA to amend the certificate when they anticipate that their costs will exceed the limit. Initial costs limits for some family cases were increased to £25,000 as LAA data demonstrated that 99% of applications to amend a cost limit were granted so these amendment applications just caused unnecessary delay and wasted time for both practitioners and the LAA. We would recommend that initial cost limits are increased in all legal aid categories to reduce the administrative burden for practitioners and for the LAA.

Scope

In responses to Question 1.1 we have included recommendations for bringing specific areas of law or categories of cases back into scope to ensure that civil legal aid effectively meets the needs of clients.

Examples include:

- housing disrepair claims, including damages claims
- private family law matters
- advice and representation to family members who make applications but do not have gateway evidence
- debt and welfare benefits issues, at the very minimum where they are underlying factors in housing disputes
- employment law cases
- non-means tested advice for domestic abuse cases

We would recommend a return to the pre-LASPO position whereby all civil legal services were in scope, unless specifically excluded, to enable practitioners to deliver holistic services. We would also recommend that services are oriented to ensure that early legal advice is available wherever necessary.

Commissioning Services

Simplified tender process

Representative bodies for years were told that EU legislation meant that the tender process had to be as it was – inflexible, not allowing for changes mid-contract (except in limited circumstances) and not allowing new entrants. In view of how few providers want to carry out civil legal aid work, would it be possible for the MoJ to stand back from the contract process and think about how to simplify it, particularly ensuring that obligations which are elsewhere e.g. in Lexcel or demanded by the SRA are not duplicated in the contract terms. Representative bodies have been asking for this for years.

The Bravo system has been an issue for years now. It has caused a lot of grief for many contract rounds. Numerous issues have been reported and if the LAA will continue to rely on it then it needs improvements particularly regarding the screens which will tell a provider if a submission has been successful.

A practice manager in Nottingham reports:

> *"I would add that the Bravo system is not easy to navigate, the titles of the relevant sections are confusing and the tenders themselves are not where it would make logical sense for them to be stored.*
>
> *The system is clunky and it is only by spending some time pressing buttons that the user becomes aware there are more sections included within a tender that would need answering. Those new to the tendering process could easily miss important documents to read or sometimes where spreadsheets or documents are required to be uploaded, it is very unclear where within the portal this should be done."*

Contract Issues

Headline changes to the civil contract

There is a need for new entrants to be able to enter the market during the contracts. Although the current one year contract in 2024 will in effect allow this, we would urge this change if a longer contract is brought in. It is not as if legal aid practices are fighting for work. All the documented evidence is that practices turn away many clients every day.

Simplified Contract

One practitioner summed this up:

> *"We would like a reduction in the bureaucracy of the contract. We can spend ages looking for a simple point. There is no clear index and the page numbering runs out. As margins are so low we cannot afford to waste time. E.g. change of time for contract – three emails – streamline contracts."*

A complete change of approach from the LAA – trust providers and do not hinder access to justice

One example on this issue is when experienced providers apply for legal aid on behalf of their client and the application is refused on its merits. This can happen even where the provider attaches an opinion from an experienced barrister. There can be occasions where the application is genuinely inappropriate but poor decisions greatly dishearten providers.

In the past the LSC operated a limited preferred supplier model linked to processes like peer review. If a provider's record was such that it was considered that they were a reliable organisation then they had greater delegated/devolved powers to grant certificates and amend certificates.

Substantial reduction in audit and administration of contracts

There are many types of audits and the main ones are featured in the LAA list of Audit and Assurance Activities:

- Contract Management Activities
- Peer Review
- Core testing programme
- Contract Compliance Audit (CCA)
- Targeted file review

Within some of these categories there are variations of the basic 'audit'. For some large organisations carrying out several areas of law at least one member of staff can be tied up for many months dealing with these issues. And of course, because of the complexity of civil legal aid, the compliance needed to avoid problems at audits is a considerable burden on practices.

Supervisor Criteria

It is vital that supervisor criteria reflect what work is carried out within categories and is not as inflexible as it has been, meaning that people find it hard to comply or have to carry out cases simply to pass the standard.

The criteria need to reflect the reality of how hard it is to recruit and retain supervisors. Flexibility is needed over part-time working, over how many areas of law a supervisor can cover, whether attendance is in the office or remotely and the balance of cases.

The numbers of colleagues to be supervised also needs to be flexible to reflect levels of experience of those who are not supervisors.

Again, there are provisions in Lexcel and in SRA – does the LAA need to have contract terms that stifle the ability of organisations to do legal aid work when those stipulations are stricter than for other solicitors?

Here is an example from a practitioner in Southampton:

> *"Supervision is another issue. By the time we are asked to submit verification for the current contract bid round (hopefully we will be successful), I think we will have had to provide evidence of supervisor qualification on 3 or 4 occasions over the course of the last year. Getting on to the various panels is hard enough, then doing the supervisor training course and panel renewals. This is all really costly stuff. My children panel renewal costs something like £500 every 3 years and takes me out of fee earning work for at least a couple of days given the level of detail that is now required. When the representation fees came in for care proceedings work, we lost in one fell swoop the children panel uplift that had previously applied to the hourly rates that we previously charged. Given the cost of obtaining and retaining children panel membership, some recognition of that should again be included in the fees which we are paid. Bear in mind that privately paying family work would attract an hourly rate of somewhere in the region of £250. The legal aid hourly rates are a very long way short of that, so it is no surprise that people are leaving legal aid work behind."*

The Law Society's submission to the 2024 Civil Contract Consultation set out:

- adequate supervision arrangements in relation to the number of caseworkers and the volume of work but flexibility
- supervisors could be consultants not necessarily partners/directors/employees of a firm
- breach of paragraph 2.10 (subject to paragraphs 2.24 and 2.25) is a 'fundamental breach' resulting in the cessation of contract work is draconian, as there are many legitimate reasons why providers may not be fully compliant with the requirements. We suggest that a sanction should not be applied unless the provider has failed to agree alternative arrangements with the LAA

Shared & Serviced Offices

During the pandemic the LAA introduced welcome flexibility on office requirements. We appreciate that the LAA wants to ensure that clients can access a service but would flag up that while in the past the LAA said that it did not want services delivered in a bus (words said to LAPG staff) it may be that the time has come to consider changes in how legal aid is delivered and to consider more carefully accessibility for clients.

From The Law Society's response to the consultation on the 2024 Standard Civil Contract:

2.34 Permanent Presence: The requirement to have a permanent office in a procurement area is increasingly at odds with the way providers offer services and for some firms and organisations represents a significant overhead that may act as a barrier to those firms applying for a legal aid contract

Miscellaneous

Practitioners have reported to us that is remains difficult to transfer a certificate case from one provider to another, particularly in relation to billing issues.

Changes to the means test

While we welcome the MoJ's thoughtful Means Test Review and the response to the subsequent consultation, we are concerned that while more clients will become theoretically eligible for legal aid, the extant lack of providers will prevent practical access to the service. We also note with concern that there has been a delay in the most substantial aspect of the implementation of the Means Test Review recommendations – increasing the thresholds and allowances that determine eligibility for legal aid. There are also grave concerns about the practical impact of insisting that all clients in receipt of Universal Credit will be subject to a full means test.

A senior practitioner from London commented that:

> *"One of the problems with financial eligibility that I wish we didn't have to deal with is unhelpful and overly bureaucratic demands that arise later. If a client has entries in their bank account for something like "bingo.com" or "paddypower.com" etc., then we are asked to get an account for that for the last 3 months in addition to the bank accounts. This can add a lot of time and effort to checking eligibility. I get the reason – that in theory the client might be holding money in such an account rather than in their bank account – but it does cause issues*

> *and it is often a really vulnerable client and it is clear that they have a gambling problem which they are feeding rather than having any money that might come back from it."*

From another provider:

> *"Legal aid eligibility could be made a lot easier. I am lucky in that most of my work is care proceedings and therefore non means and non-merits tested, but I am aware that my colleagues who do work which is means tested are often spending hours of time trying to ensure that clients have provided all relevant information and dealing with queries raised after applications have been made."*

Complexity of claiming

Having such complex systems in place necessarily creates the risk of error by clients, providers and the LAA. Many practitioners have expressed exasperation about perceived nit-picking by the LAA on issues such as very minor errors on means assessment or having to provide evidence of small amounts of money that a client receives that makes no difference to their financial eligibility. We would recommend that the LAA either simplifies the rules or, if the complexity is maintained, there must be a more sensible margin for error.

IT issues

We deal with technology in Questions 14-16. The systems being used are clunky and far from user friendly. We have repeatedly been told that it is not easy to make changes e.g. to CCMS and that it is costly for the MoJ to pay for the changes.

Poor IT puts further pressure on providers and causes providers to have to either bring in administrative staff to carry out the extra work or to make fee earners do the administrative work – whichever way, this puts an increasing financial burden on the practice.

Checking the financial eligibility of clients on benefits needs to be easier. We welcome the fact that the LAA now has access to DWP and HMRC data, but would recommend that online eligibility checkers developed by the LAA should also give practitioners ready access to the same data. We would also recommend that online eligibility checkers should be linked to digital version of legal aid claim forms so that these processes can be completed simultaneously where appropriate.

As one provider reported to us:

> *"Use of IT – the LAA need to improve the process as opposed to saving money and pushing burden on suppliers."*

Court issues

These are covered in the Ministry of Justice *Assessing Risk of Harm to Children and Parents in Private Law Children Cases Final Report* (the Harm Report)[9] and will be considered as part of the current Justice inquiry on the work of the County Court[10].

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[9] https://assets.publishing.service.gov.uk/media/5ef3dcade90e075c4e144bfd/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf

[10] https://committees.parliament.uk/committee/102/justice-committee/news/198166/new-inquiry-justice-committee-launches-new-inquiry-on-the-work-of-the-county-court-amid-capacity-and-resource-concerns/

Here is a quick summary of some of the issues that our members have raised with us:

- Properly resourced Judges sitting days
- Essential repairs to be carried out in court rooms particularly as well as elsewhere in the building
- Fund court offices properly so, amongst other things, urgent calls are not diverted to call centres who know nothing about cases and are a waste of resources as they cannot assist. The lack of physical court offices is a major hurdle for clients. Going to court is a frightening experience even where people have lawyers, but to navigate processes when there is no court office, phones are not answered and emails are not dealt with – it makes the whole process so much worse. Has there been any research on how many orders are not complied with because the timescales are before parties receive the order? Or how many people miss hearings because they did not receive the paperwork?

Summary

From the LAPG 2024 Standard Civil Contract consultation:

As a general point, we would like to make it clear that without significant financial investment into the legal aid system, any changes to the contract either proposed by the LAA, or requested by the representative bodies, are unlikely to do very much to improve the sustainability of the sector and increase access to justice for clients. It is well recognised that current fee levels make legal aid work unsustainable. Nevertheless, some of the changes we are asking for, for example the introduction of interim payments for all Legal Help work and a reduction in the escape fee thresholds, may go some way towards preventing further attrition of providers. We would also like to see the LAA accept that where other professional or regulatory bodies set a standard the LAA should think very carefully about adding extra restrictions – we are thinking in particular about the SRA, Lexcel and the SQM.

However we must stress that while reducing bureaucracy and improving cash flow would be helpful, these measures are de minimis when considered in the context of fees that have not increased in decades and that fixed fees often bear no relationship whatsoever to the time and expertise it takes to carry out the work involved.

Question 1.1

Do you have any suggestions of changes – both short-term and longer-term changes – that could improve each of the following categories of law?

While practitioners have raised a number of category-specific issues, legal aid categories all have a number of issues in common: low fees and inflexible payment mechanisms; limited scope that prevents effective assistance; complexity and administrative burdens on issues such as means-testing; uncertainty and risk caused by complex systems and the ability of the LAA to overrule experienced, expert practitioners; the perception that auditing and compliance is officious and over-bearing; disproportionate consequences for what providers perceive to be relatively minor errors (which are themselves almost inevitable due to the complexity of the scheme). We stress that in our response below, the absence of a specific reference to any of the issues set out above does not mean that the particular category is unencumbered by those issues. It simply means that in the time available we have not been able to obtain specific examples.

For each category of legal aid, we have provided headline figures from the official legal aid statistics to demonstrate the changes to provider numbers and case starts since the introduction of LASPO.[11]

a. Family

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3	2,401	1,070	-55%
Legal Help matters started – Table 5.1	232,390	24,536	-89%
Providers reporting cert. work – Table 9.4	2,809	1,747	-38%
Certificates granted – Table 6.2	125,963	93,838	-26%

We have sight of the Call for Evidence response of Resolution, which makes a number of very sensible suggestions for how to improve family legal aid contracts, LAA systems and the interaction of family legal aid with the family court system.

Scope

When LASPO was enacted, much private family law work was taken out of the scope of civil legal aid, despite those cases dealing with the lives of children when a relationship has broken down. The wellbeing of the children should be in the public sphere as should the wellbeing of families. It is not necessarily the private matter which the government viewed it as.

This reduction in scope also impacts on non-parent family members. Many of the applications before the family courts are from other family members who do not have gateway evidence. They are often the only ones advocating for the best interests of the child but they generally cannot access civil legal aid.

The government has now committed to run an early legal advice pilot project for private family law.[12] We welcome this initiative and will be working with the government to design and implement the

[11] https://assets.publishing.service.gov.uk/media/6582bea2fc07f3000d8d4556/legal-aid-statistics-tables-jul-sep-2023.ods
[12] https://www.gov.uk/government/consultations/supporting-earlier-resolution-of-private-family-law-arrangements/outcome/supporting-earlier-resolution-of-private-family-law-arrangements-government-response#supporting-families-when-a-dispute-arises

pilot scheme. We will continue to raise concerns that early legal advice will help some clients to resolve their cases at an early stage, and should divert some cases away from the court system and to alternative forms of support such as mediation to resolve their cases. However, any early legal advice scheme will have limited impact if it is not coupled with public-funding for the ongoing legal assistance that is inevitably necessary for those cases that cannot be resolved at an early stage. We therefore continue to recommend that private family law should be reinstated into the scope of civil legal aid.

Fees

What is the effect of low fees? The LAPG Census provides an illustration on page 30:

> *"I continue to undertake legal aid work as I feel passionate about helping vulnerable members of society. A lot of my work is from local domestic violence charities - these are relationships I have secured through my commitment to providing a good level of service for their referrals. However, over the years it has been disheartening with the legal aid cutbacks and seeing colleagues in other non-legal aid departments have salary and career progressions."*

It is interesting to note that The Harm Report recommended additional investment in a number of areas in conjunction with proposed revisions to the Child Arrangements Programme. One of the areas was investing in legal aid. See inter alia pages 10 and subsequently para 3.1.10.

LAPG's co-chair Jenny Beck KC (Hon) summarised one aspect of family law problems in giving evidence to the Westminster Commission:

> 178. Jenny Beck QC (Hon) also discussed the effect that fixed fees had on her boutique family practice. She explained that when fixed fees were introduced in 2007, the fund that had been used to pay for legal aid was divided for the different practice areas. The fee structure worked on a 'swings and roundabouts' basis so that where providers would lose money on some matters the fixed fee would cover their work on others. Ms Beck added that the fees were then cut in 2011 resulting in a further exodus of legal aid providers. LASPO then removed the simpler cases from scope leaving only those more difficult and time consuming matters within the fixed fee. This made it very difficult for practices such as hers to sustain a business and necessitated subsidising the work with private cases.

What did the Westminster Commission recommend?

- Overhaul fixed fees
- Increase fees
- Remove barriers to legal advice and representation for those seeking protection from domestic abuse and their families
- Restore legal aid for private family law and for both sides in a dispute

Practitioners refer to low fee levels, which lead to low income for practitioners and specific issues with FAS Fees and e.g. the difficulty with cases running over the basic fee but not reaching escape limits.

The LAPG Census on page 37 gave an example:

> *"A domestic abuse case is £507. This kind of work includes meeting an extremely vulnerable client for the first time, seek[ing] their confidence to open up about traumatic abuse, prepar[ing] a detailed statement and application, serv[ing] papers, attend[ing] potentially two hearings, liais[ing] with [them,] etc. I would say these cases generally require around 25-30 hours of work."*

"The fee paid per hour is not reflective of the experience required to conduct cases that are complex. The clients can often be very demanding with mental and physical illnesses..."

A fixed fee of £507 for 25 hours work for example, would equate to £20.28 per hour."

A small family law provider in the south east fed back:

"We have stopped private law legal aid work. There is only one provider locally. That provider is overwhelmed. I will ask her to respond. Our firm was set up to provide legal aid. We cannot cross subsidise. I cannot see a future."

Family Advocacy Scheme (FAS) Fees

In their response to the 2024 Standard Civil Contract consultation both Resolution and the Law Society proposed that solicitors should be allowed to claim FAS fees after each hearing/be paid 100% of FAS fees during the case (which aligns with what can Counsel claim) and that FAS fees should be claimable where a hearing is vacated/cancelled (again, as Counsel can) if a hearing is settled by consent order or vacated, following an Advocates Meeting.

The LAA responded that there are significant financial and operational implications to this change.

The LAA has previously set out that it would consider the digital implications of the proposed changes when it had an opportunity to do so. We recommend that this should not be delayed any further.

Conference Fees

Both Resolution and The Law Society put forward as part of the 2024 Standard Civil Contract consultation that the number of conference fees allowed needs to be increased to accommodate the reality of how children cases now run.

The LAA responded that this has been raised with [MoJ] policy to consider and we would recommend an urgent review of conference fees as part of RoCLA.

A senior family practitioner in Bristol referred to how often she has raised FAS issues over many years:

"There is no reason why we should not be able to claim 100% FAS as soon as hearing has finished

All the FAS rules should be the same for counsel and solicitors.

Also if a hearing is listed as a final hearing then we should be paid as a final hearing as we prep for a final hearing – if it is adjourned then we only receive the interim hearing fee in Child private cases.

The number of conference fees does need to increase."

Funding for Qualified Legal Representatives (QLRs)

Issues around funding and support for QLRs are relatively recent. A practitioner informed us that there are only in the region of 100 registered QLRs and the target was 3000. This shortage means that

trials are cancelled at the last minute because if an advocate gets a better offer they will drop out as the rate of pay is so low for the huge amount of work needed.

Financial Limits on Certificates

Although this is relevant in other areas of law, family practitioners feel strongly that higher financial limits of private law certificates to bring them in line with public law would ease one administrative burden and ensure that litigation proceeds promptly.

Family practitioners have noted that the cost limit on Hague Convention cases needs to be increased – these cases are fast paced. By having delays in applying for extensions this puts the country in breach of International obligations. We note that this has been under consideration for many years.

Issues raised by family practitioners which are set out in the response to Question 1 and Question 6:

- Simplified means and evidence of means procedure
- Less complex billing scheme needed especially for Legal Help work
- More realistic expert rates
- More flexibility within the contract especially as regards procurement areas.

b. Community Care

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3	178	77	-57%
Legal Help matters started – Table 5.1	6,216	1,699	-73%
Providers reporting cert. work – Table 9.4	101	92	-9%
Certificates granted – Table 6.2	759	1,885	148%

LAPG refers to Access Social Care's 2022 report, *Community Care Legal Career Pathways* for a fuller understanding of the issues faced by community care practitioners.[13]

We set out below that the increase in certificated is in one sub-set of Community Care work – Court of Protection (CoP) work – and as such hides the lack of cases carried out in non-CoP work.

Fees including Interim Payments of Fees and Experts and Escape Fees

LAPG's co-chair Nicola Mackintosh KC (Hon) gave evidence to The Westminster Commission:

> 176. What became apparent from witness testimony, time and again, was how complex and specialised social welfare law can be. Nicola Mackintosh QC (Hon) spoke of her community care practice and the vulnerability of her client group. Disputes in community care are wide-ranging and generally include vulnerable individuals who are unable to obtain services (from basics such as shopping for food and other essentials such as personal care) or who need to challenge decisions imposed on them (decisions to move vulnerable people from home to a care placement or reductions in care packages). Advising in this area is extremely legally complex and involves a comprehensive knowledge of legal duties and powers applying to different statutory agencies. Clients are often disabled, always vulnerable, and exceptional skills are required to advise and represent them. Often,

13 https://static1.squarespace.com/static/5f2160ae3e84ef21653b8190/t/627250a7c95f3e62241f1e2c/1651658921088/Adult+social+care+and+unmet+needs+May+2022.pdf

this will require extra time on the part of the practitioner – time that is unpaid under the current fee structure.

177. Ms Mackintosh explained that the majority of this work (short of issuing court proceedings) is done under Legal Help rates, so reading papers, meeting with the client (generally at their home), identifying the legal issues, corresponding with the other side and preparing the legal arguments will all be done within a fixed fee of £266. As with other practice areas, an escape fee threshold applies. This means that should the practitioner's 'profit costs' exceed three times the fixed fee, they will be eligible to be paid on an hourly rate. In practice, however, providers told us that a significant proportion of cases required work that exceeded the fixed fee rate but remained below the escape fee threshold, resulting in huge amounts of legal aid work being done on a pro bono basis.

The LAPG Census on page 35:

> *"Fixed fees a particular issue with community care work (which attracted a ratio of 2.5 hours worked for every 1 hour remunerated)."*

LAPG raised concerns in its response to the 2024 Standard Civil Contract consultation:

"An important element of Community Core work is judicial review. Access Social Care has raised concerns about the reduction the number of practitioners undertaking judicial review cases and opting instead to focus on Court of Protection work. This is part due to the complexity of the different levels of funding. It is often required to obtain a great deal of information before assessing whether a judicial review is appropriate, and it is not always clear whether practitioners should carry out this work under legal help and/or investigative help and/or full certificated funding. These issues are compounded by practitioners having to work at risk post-issue and pre-permission. Due to the vulnerability of Community Care clients practitioners regularly incur significant costs and disbursements under legal help that cannot be claimed until the end of the case. We refer to the new provision 16.38 for staged billing and interim payment for disbursements in education cases and suggest this should apply across all areas (please see our General Principles document)."

Interim payments

Representative bodies have made this point on many occasions. A lot of work is carried out under the Legal Help/Controlled Work schemes but it is not paid until end of the case – which might take months or years. This creates an enormous financial strain for practitioners. The Law Society gave this feedback to the LAA when responding to the 2024 Standard Civil Contract:

"Timely reimbursement of expenditure, short of, or prior to the need for obtaining Investigative Representation on items such as language interpreters (including BSL) or potentially obtaining expert evidence e.g. medical letters, would be an important improvement. Community Care clients are disproportionately disabled, vulnerable, in need of complex advice in a 2nd/3rd language, isolated and unsupported. Providers are often reliant on interpreters and the support of 3rd party assessments and documentation which carries a cost."

Other issues raised included:

- *Current para 11.6 - regarding 'Requirements on Performing Contract Work for proceedings under the Mental Capacity Act 2005' a senior practitioner has recommended reducing the number of cases from ten to five because cases are more complex and caseloads are therefore sometimes smaller.*
- *The ability to use at least 10% of matter starts in any geographical area should be included.*

Escape Thresholds

Given the need to undertake work under Legal Help, we refer to the issues raised in Question 1 in relation to the perils of the current Escape Fee thresholds.

Commercially viable expert rates

A practitioner in a large firm stressed the difficulty of finding experts at the rates allowed. This is a common thread through many categories of legal aid.

A costs lawyer added:

> *"Also, perhaps worth a mention is codifying expert's rates since 2011 which were reduced by 20% in 2013 and again no increase ever since. Increasingly hard to find certain experts willing to do the work. In a lot of care cases in certain courts, it is not uncommon for the local authority to agree to a Court's direction that they pick up the difference on experts that cannot be covered by the rest of the parties who will be legally aided."*

Earlier access to legal aid certificate work or investigative representation

Community Care practitioners have reported to us (and as part of the Access Social Care *Legal Career Pathways* research report[14] and subsequent project) that there are significant problems with the interaction between Legal Help, Investigative Representation and full certificated funding. We would recommend that the contract needs to be reviewed to ensure that these levels of funding enable practitioners to work as effectively as possible to meet the needs of clients.

Issue Specific to Community Care

An academic involved in running a student law clinic proposed:

> *"Reintroduce hourly rates- providers are essentially turning away work that is fixed fee only as it is not financially viable. This means that many providers are only doing Court of Protection work, leaving adult social care cases struggling to find help. These are often some of the most vulnerable clients who requires a lot of time and emotional support.*
>
> *Bring continuing health care cases back into scope – these are complex and challenging."*

Simplified means and evidence of means procedure – make it easier for everyone especially clients

Again we have covered this elsewhere but in Community Care cases with such vulnerable clients, the difficulty for some clients in proving that they are financially eligible is considerable.

For practitioners, unpaid work in assisting the client is another de facto reduction in the rates being paid.

[14] https://www.accesscharity.org.uk/news-blog/community-care-legal-career-pathways-research-report

One academic who runs a law clinic proposed the following:

> *"Reduce the evidence requirements for capital/get rid of means testing for young people who are care leavers/trying to get recognised as care leavers, even if they are over 18."*

She goes on to say:

> *"Allow all legal help forms to be signed digitally – clients from this group often struggle to get into the office because they are either too unwell or have other difficulties that might prevent them from attending and office (e.g. learning difficulties or unstable accommodation/lifestyle if thinking about care leavers)."*

c. Housing & Debt

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3	755	279	-63%
Legal Help matters started – Table 5.1	101,905	26,634	-74%
Providers reporting cert. work – Table 9.4	699	338	-52%
Certificates granted – Table 6.2	11,914	5,241	-56%

The recommendations from The Westminster Commission were as follows:

- *Increase fees*
- *Restore funding for early legal advice for housing and debt.*
- *Bring debt and welfare benefits back into scope*
- *Restore funding for housing disrepair cases*

The LAPG Census p.47:

> *"Practitioners were more likely to find hourly rates unsustainable in the areas of housing (86.7%...)*

Fees, including interim payments and costs limits

The Law Society published a report on 14 February setting out interim findings from research being carried out by independent consultants Frontier Economics, *Research on the Sustainability of Civil Legal Aid* (the 'Frontier Report').[15] The interim findings are based on a detailed analysis of quantitative and qualitative data provided by 30 Housing & Debt contract holding organisations and paint an extremely worrying picture about both the future sustainability of housing legal aid services and client access as a result.

In relation to civil legal aid fees and financial viability, the Frontier Report found that:

- Housing legal aid is loss-making for the majority of providers, and when adjusted for the recovery of inter-partes costs (costs not paid by the Legal Aid Agency) all providers were found to be loss-making
- Fee earners from a typical provider from the sample are only able to recover around half of the costs of providing legal aid services from legal aid funding

[15] https://www.lawsociety.org.uk/topics/research/housing-legal-aid-sustainability

- Providers are attempting to maintain services by working longer hours, cross-subsidising legal aid services from other sources of funding, being selective about the types of cases they can afford to take on; and relying heavily on recovering inter-partes costs

The Frontier Report demonstrates that the costs of running services have increased over time, with general costs in the economy increasing by 90% since legal aid rates were last set in 1996 (and note that those rates were cut by 10% in 2011). As housing legal aid fees (and indeed all civil legal aid fees) have actually decreased in real terms in that period, the difference is widening between the fees recoverable between legal aid services and private client work remunerated in accordance with the Guideline Hourly Rates. This is making it increasingly impossible for providers to cover the costs of housing legal aid services and is a significant factor in a wide range of issues, such as:

- The need for housing providers to cover their costs using alternative funding sources
- Significant concerns over the viability of fixed fee Legal Help work, particularly given that providers report that a high proportion of cases fall between the fixed fee and escape fee thresholds
- An inability for housing providers to compete with organisations that deliver private legal work, or public services that employ lawyers, making recruitment and retention, particularly at middle to senior levels, extremely challenging. Providers also reported a high turnover at junior levels as many junior fee earners leave quite soon after qualification for better paid work and a better work/life balance.
- Resourcing pressures due to remuneration rates that do not vary according to experience levels.
- Significant concerns over the viability of specific schemes, such as HLPAS, particularly in low volume areas.

The Frontier Report states that their interim findings mirror other currently available sources and point to unsustainably low levels of housing legal aid provision, such as LAA data showing that provider numbers have reduced by one quarter in the last five years. The Law Society heat maps provide further evidence of the scale of the problem, with 25.3 million (42%) of people not having access to a local housing legal aid provider (as at March 2023).

A charity providing legal aid housing services in Wales said:

> *"The cost of delivering our legal aid services are about twice the level that we receive from the legal aid scheme. Our involvement in legal aid delivery is only made possible through the addition of statutory and charitable grants. There is no longer private practice legal aid housing provision in Wales operating at any significant scale and this isn't surprising given the financial realities of delivery. The lack of providers causes issues in recruiting experienced advisers and when a conflict of interest occurs. The costs associated with meeting the evidencing and audit requirements and the proportion of activities for which no fees can be claimed have made it almost impossible to run a standalone, self-funding housing legal aid service."*

A practitioner in Birmingham:

> *"We used to get paid the same for civil legal aid as we did for Inter Partes costs so the rates rose every time the IP guideline rates rose. The time when the indemnity rule was dis-applied to legal aid is the time that this stopped. This was certainly the case when I started in 1987."*
>
> *A particular issue is as Homeless Appeals are effectively Judicial Reviews in the County Court, they should be paid at High Court rates."*

The issue of Legal Help interim payments is relevant again in housing cases. The same practitioner in Birmingham said:

> *"Interim payments on legal help for disbursements in particular would help as it is becoming increasingly difficult to find experts who are willing to wait until the end for payment. Having said that, we do a vanishingly small amount of legal help work as it costs us twice as much to do the work as we are paid to do it, once you take into account the amount of work we do in cases that fall between the fixed fee and the escape fee. Lowering the threshold would help, but it costs us more than £50 to produce an hour's work, so it would just decrease the size of the loss we do on it."*

The issue of low fees and lack of interim payments can lead to cases being dealt with by fee earners of a higher level of expertise and where there are inter partes payments the rates of pay may be reduced.

Interim payments

The Frontier Report also highlighted a significant concern about uncertainty and delay in obtaining payment for housing legal aid work. Some providers reported that it can take up to 2 years to recover their fees. Where this related to Legal Help work, the introduction of interim payments would help to ease cash flow concerns.

Costs limits

Regarding costs limits, a practitioner in London raised:

> *"Possession cases etc. still given £2,250 standard costs limit even when they have merits advice from counsel to go all steps up to but excluding trial. Means you have to apply to increase costs extension immediately. They should just grant £10k first up. It's a limitation not a payment on account so just causes extra bureaucracy."*

Experts Fees

Commercially viable expert rates are needed. Over the years, the LAA has received a lot of information about the difficulties of instructing experts on legal aid rates and with the issues around payment.

A director of a firm in Birmingham:

> *"One thing our fee earners spend a lot of time doing is trying to persuade GPs to provide medical reports for the max fee that the LAA will pay. They often won't do we end up paying the balance of the fee out of our already meagre profit costs."*

They gave us this example from a GP:

> *"Thank you for your email, this work is not done in NHS time is it done in private time. Therefore a flat charge of £104.00 is required due to the amount of timely work involved."*

The finance manager at that firm told us:

> *"The fee for a GP medical report is a fixed fee of £50.40 for a medical report based on the patient's records (we are finding lately most GPs want £100 for a report). If they have a consultation with the patient in order to prepare a report the rate is £79.20 per hour.*
>
> *The added problems we have is if a report can be prepared on the hourly rate basis, trying to get a GP surgery to provide an invoice showing the hourly rate and time spent is more time consuming and ultimately usually proves fruitless."*

Scope

Scope issues are of great concern in housing, and the issues remain essentially the same as warned when LASPO was introduced.

From the LAPG 2024 Standard Civil Contract consultation:

Scope change for disrepair cases:

Practitioners are carrying out less disrepair work as it can only be covered by legal aid to reduce or remove risk of serious harm. However, in order to comply with their professional duty to their client, any proceedings issued should include a claim for damages. In reality the pleading is the same and it does not add much to the costs to include the damages claim at the inception of the claim. However, if the works are done before the case gets to trial, as they often are, the matter is no longer in scope and legal aid is discharged. The practitioner then bills the LAA for the work that they have done. The discharge of the Certificate terminates their retainer so the client is left with an issued claim, no costs protection and no lawyer, and the LAA is out of pocket. If legal aid was reinstated for damages claims then practitioners would continue to trial or settlement of the damages claim, the landlord would in many cases pay the costs instead of the LAA so the taxpayer would benefit.

If damages claims were restored to legal aid then competent legal aid lawyers could do a proper job.

A director of a firm in Birmingham:

> *"If you issue a claim now for disrepair with a legal aid certificate, because the property is a risk to health, you have to include a claim for damages or be professionally negligent. If the landlord does the repairs, legal aid is discharged, the client has to carry on damages claim alone (unless we are prepared to do it on a CFA which we are not) at risk of a costs order should they lose, and we bill the LAA for the work done. If LA were still in place for disrepair claims, we would carry on, the landlord would pay the costs and we would not claim anything from the LAA. It is a no brainer. It also leaves vulnerable tenants prey to poor firms/claims farmers."*

An academic who runs a law clinic confirmed this:

> "Para *35 of Sch 1 of LASPO should be amended to allow money (damages) claims against a landlord where there is a risk to health or safety in a rented home. This would be cost neutral for the LAA, as pretty much any claim where there is a serious risk of harm is likely to result in a successful claim for damages and a costs award. Indeed, allowing these claims to remain in scope could potentially even allow some costs to be recouped by way of the statutory charge. Given the developments over the last few years and the links between poor housing*

> *and poor health (and infant death) this seems like and obvious step as well as a deterrent to landlords."*

The same solicitor from Birmingham:

> *"The removal of Welfare Benefits from scope is still having an impact on the effectiveness of what the LAA pay us to do."*

Again representative bodies have raised this on many occasions. Taking welfare benefits effectively out of scope has meant that possession proceedings in particular are very hard to resolve. If there are rent arrears, pre-LASPO solicitors would resolve all issues including benefit problems. Now they will not be paid for that work. What happens? Some practices do the work unpaid (thus again affecting their financial margins), some try to find a local agency to do the work (increasingly difficult) or they send the client off to try to sort it out themselves.

A practitioner in London proposed this:

> *"Need to extend scope to pre-LASPO (or as close as possible) - would save them costs for people to get advice at an early stage. Current system means we are basically only able to come on board when there are proceedings issued or already contemplated. General housing advice would save so much costs elsewhere in the system."*

Contract Issues

Supervision

Supervisor requirements for housing present problems for housing practitioners. You can be a supervisor having worked on very few housing files, so long as you have the spread, and have spent the time on them. There is however limited quality control. On the other hand, it discourages specialisation in niche areas of housing law for bigger organisations. For example, a nationally known expert practitioner in the law as it relates to homeless people who does hundreds of homeless cases, has to work on a few possession files to retain supervisor status, even where the organisation employs people who are possession specialists.

While not specifically a contracting issue, the Frontier Report demonstrates real concerns over the ability to hire fee earners at supervisor level. This puts pressure on providers to try to train junior practitioners, which can take up to three years. This pressure is compounded by the turnover of junior practitioners and therefore a heavy resource burden for constantly training staff to be supervisors. This also creates the risk of contract compliance issues as providers must have a suitably qualified supervisor at all times.

Administrative burdens and unbillable work

The Frontier Report sets out that housing legal aid contracts generate a great deal of unbillable work such as screening clients in relation to scope, merits and financial eligibility and managing contract requirements that are not required when working for private paying clients. This compounds the low cost recovery set out above due to legal aid fee levels being just a fraction of the Guideline Hourly Rates available for private work. Providers also noted that these additional, legal aid-specific tasks take them away from delivering services to vulnerable clients.

Quicker decision making on legal aid applications and amendment requests

As noted above, housing practitioners have raised concerns about the delay and unnecessary additional work caused by having to apply for an extension to costs limits.

Practitioners are also concerned about delay to their ability to run cases caused by the time it takes for the LAA to make decisions about granting certificates.

Simplified means and evidence of means procedure

A practitioner in London:

> *"Make assessing eligibility simpler and fairer – I know that this is meant to be in the pipeline (but without increasing suppliers it will only make matters worse). They need to keep passporting for UC because without it assessing people is a nightmare. The administrative burden on dealing with new enquiries is bad enough as it is. Having to take people through eligibility assessment in the first call is very difficult and requires highly trained staff dealing with quite a complex and really important client care task that we will not be paid for."*

d. Immigration & Asylum

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3	284	248	-13%
Legal Help matters started – Table 5.1	60,792	37,361	-39%
Providers reporting cert. work – Table 9.4	155	113	-27%
Certificates granted – Table 6.2	2,566	856	-67%

LAPG considers that there are many challenges facing legal aid practitioners and their clients but those facing immigration practitioners are some of the most severe. The mixture of low paid Legal Help work, the time-limits on case increasing the stress and complexity of the cases, the government's frequent changes to the law and legal aid eligibility coupled with the hostility stirred up and the sheer desperation and vulnerability of the clients – these add up to an environment which could scarcely be more difficult.

For greater detail on immigration and asylum, we refer to the Public Law Project response particularly for their primary research and the response submitted by ILPA for their expertise in this area.

Fees

We refer once again to the rates of pay, the fee levels and the difficulties presented by escape thresholds. We are also informed that there is difficulty obtaining counsel for hearings at current fee levels and would recommend fair hourly rates as opposed to fixed fees.

Here is an illustration from a CEO at a law centre:

> *"We did figures for ILPA last year and calculated fees would need to be 4x to be anywhere near sustainable. The data we have done for Frontier is stark in the legal aid 'loss' vs other funding 'profit' that enables us to still be here as a charity (housing, mental health, I&A, discrimination contracts)."*

One advice centre said bluntly:

> *"I can't believe anyone can run a contract that isn't loss making."*

In relation to the lack of inflationary increases – one London senior solicitor comments:

> *"The situation in immigration is very bleak. It is all about fees. Staff need inflation linked pay rises. We cannot afford to do legal help work. Duncan Lewis is the biggest immigration firm – I understand that they are no longer doing representation at appeals. Senior judges recommended to Alex Chalk the Lord Chancellor that fees should go up by Services Index. So why not legal aid? Get the rates up and have a regular review."* [Technically this is the Services Producer Price Index[16]]

Interim/staged payments

While we welcome the introduction of staged claims during the lifetime of a case, practitioners continue to raise concerns that they are carrying too much work in progress, which affects their cash-flow. This problem is compounded by delays in the tribunal system and Home Office decision-making. We would recommend that the payment mechanism be reconsidered to ensure that practitioners can make more frequent claims. We have been looking at this issue in some detail and would welcome the opportunity to work with the LAA and MoJ to find more workable solutions (across all areas of legal aid).

Expert Fees

As is the case across the board, more realistic expert rates are needed to ensure that appropriate experts can be instructed in cases. And again payment needs to be available so that they can be paid in accordance with the contract or indeed the terms that the expert regards as reasonable.

Uplift

The current Advanced Caseworker uplift of 5% for Controlled Work is too low (for example higher uplifts are available for accredited practitioners in other areas).

Scope

Elsewhere we highlight the inordinately high percentage of cases in which ECF is granted in the immigration and asylum category. There are inherent delays which operate as a disincentive for busy practitioners to take on cases in which whilst there is a high expectation that funding would be approved, carry a risk element as a consequence of which those who are likely to be eligible for funding are simply unable to access a provider. One solution would be to extend the scope of what is available under legal aid in this category. An alternative, which enables an element of LAA control, is to provide delegated functions to trusted providers. This would free up time for providers by removing the need to prepare applications. It would reduce costs for the LAA as it avoids the need for determinations, which are granted in at least 70% of cases and, we would suggest, at a far higher proportion in respect of those who are represented. A further control would be available, should this be needed, on an audit or random sample though we would be reluctant to encourage yet more auditing in this area. However

[16] https://www.judiciary.uk/responding-to-recommendations-of-the-civil-justice-council-costs-review-and-new-guideline-hourly-rates/

that may be a quid pro quo to avoid the necessity of ECF applications and the delays therein which we believe limits the prospects of those in need of assistance.

There is a need to expand scope on certificates for Upper Tribunal work and to include representation/advocacy at the Upper Tribunal from the outset.

Contract issues

As with all categories of legal aid, we have received feedback about the amount of non-billable time. As in other areas of law we have had feedback about the work involved in the various audits that are carried out.

As the Immigration & Asylum Specification imposes a requirement to maintain a least one full-time equivalent Senior Caseworker to every two Casework Assistants/Trainee Casework Assistants (as opposed to a 1:4 ratio in other contracts) perhaps the LAA could relax this onerous requirement for providers who demonstrate strong compliance and/or high peer review ratings.

Practitioners report that supervisory standards are out of date so it is sometimes hard for experienced practitioners to meet them.

The contract also requires different levels of fee earner accreditation to carry our certain types of work. The cost of accreditation (and training more generally) is difficult for providers to meet given low fee levels. We therefore welcome The Law Society's collaboration with the Ministry of Justice (MoJ) to establish a new funding arrangement aimed at supporting Immigration and Asylum Accredited members holding legal aid contracts.[17] We hope that the MoJ recognises the benefits of such a funding scheme and makes similar arrangements part of their long-term strategy for supporting providers across all legal aid categories.

Simplified means and evidence of means procedure

As we have referred to in other areas, clients who should be entitled to Legal Help or legal aid on their finances may not receive it because of the difficulty proving their finances.

For practitioners, unpaid time is another reduction in fees.

Annex C Comments

Annex C of the Call for Evidence document provides various statistics. It was helpful for the MoJ to provide this information on case volumes, provider numbers and legal aid spend. However, whenever legal aid statistics are published we are concerned that many issues are masked by headline figures. To ensure that the data is understandable it needs to be put into context and accompanied by explanatory notes. We have put the immigration data here, followed by contextual comments, by way of example:

Civil provider income on page 15: Immigration: 2018-19 £51m 2019-20 £54m 2020-21 £42m

[17] https://www.lawsociety.org.uk/career-advice/individual-accreditations/immigration-and-asylum-law-accreditation/

2021-22 £47m
2022-23 £54m

Civil legal aid volumes (controlled work claims submitted) on page 16:
Immigration:
2018-19 38,853
2019-20 44,444
2020-21 33,338
2021-22 38,795
2022-23 47,423

Licensed work certificates completed on page 17:
2018-19 1,409 2019-20 1,025 2020-21 936 2021-22 1,049 2022-23 990

Civil legal aid contracted provider numbers on page 18:

Providers
2018-19 204 2019-20 189 2020-21 176 2021-22 167 2022-23 153

Offices
2018-19 305 2019-20 282 2020-21 264 2021-22 249 2022-23 224

Page 15 Provider Income: the provider income figure is fairly flat, with a noticeable drop in 2020-21.

The figures include income received from the other side in inter partes costs. Why do they include that? They should only include provider income from LAA surely? The issue is surely what is the cost to LAA/MoJ?

Page 16 Claims Submitted: we note that a very short period of time has been inserted in the Annex. If you compare these figures with pre-LASPO figures or even a couple of years earlier, there are stark changes.

For example comparing the volumes on page 16, pre-LASPO in 2010-11 Legal Help and CLR cases completed were 120,536. The next year cases numbered 77,025, then 62,635. There was a big slump in 2013-2014 to 48,634 and then cases stayed in the 40,000s or just below until 2018-19.

Page 17 sets out the Licensed Work certificates completed: these have gone up from the dip in 20-21. What is the reason for this? The immigration practitioners on LAPG's committee thought this could be that people were finishing and closing more cases including when exiting legal aid or not taking matters on to CLR for appeals. Or another explanation could be that the LAA processed more cases – there was at one point a backlog in processing escape fee cases and practitioners could wait up to six months. Other possible explanations for this may include the increase of opportunities for stage billing along with the fact that for the preceding year the decision-making within the Home Office and the courts had a significant delay in the numbers of decisions being made and that in turn had an impact on the billing points available.

We also considered some of the potential reasons for the reduction in case starts. One of our conclusions is that the "at risk" regime probably has something to do with it along with capacity generally – fewer Legal Help cases being taken on equates to fewer JRs arising from those caseloads. The at risk element is certainly relevant here including the fact that at some stage in approximately 2018/2019 statutory appeals in the Upper Tribunal proceeded under certificates rather

than under CLR though one would anticipate that this would increase rather than decrease the numbers. If these figures include not only judicial review figures but also some of the statutory appeal figures (there are slightly complex rules about the fact that if the person had previously had legal help prior to 2018 that the matter would proceed under CLR even if the statutory appeal in the Upper Tribunal element did not begin until today) this would suggest that the number of cases has probably plummeted far more than had initially been realised if it also includes those statutory appeal cases.

Page 18 outlines providers and offices. There is a significant decline in provider numbers and offices. It is even more problematic for clients to find a provider. Practitioners confirm that this is directly linked to not putting the rates up. It is all about the rates.

One of LAPG's Advisory Committee said:

> *"We are not taking on any more controlled work now – capacity limit has been reached for this financial year. Just doing certificate and private new cases. If rates had increased with inflation that would not be the case and we may well have even expanded into advice desert areas. MOJ reaps what it sows."*

Another London practitioner notes:

> *"We are still undertaking some controlled work, the fact that the number of enquiries that we receive is at least 25 times the capacity that we have reflects the fact that individuals are unable to find representation elsewhere and the fact that these enquiries are as far afield as Oldham and Devon would also show not merely advice deserts but also ravines drying up nationwide which means that within 12 to 24 months almost no one will be able to find a legal aid representative."*

e. Mental Health

Legal Aid Statistics	**2011-12 (pre-LASPO)**	**2022-2023**	**% change**
Providers reporting work – Table 9.3	230	152	-34%
Legal Help matters started – Table 5.1	39,578	31,827	-20%
Providers reporting cert. work – Table 9.4	109	96	-12%
Certificates granted – Table 6.2	610	1,737	185%

Feedback on mental health work issues was very succinct:
1. Rates of pay / fee levels / escape thresholds
2. Simplified billing process
3. More realistic expert rates

We would refer to any response from MHLA in view of their expertise in this area.

Fees

Rates of pay fee levels, escape thresholds and interim payments are all relevant in this area of law.

We refer to the issues about Controlled Work made throughout this consultation. It is a low hourly rate not properly revised since 1994, the escape threshold means that many cases are paid at an even lower rate than the hourly rate from 1994 (because they do not reach the escape threshold) and practitioners are carrying too much work in progress (WIP) because they cannot claim interim fees.

Travel costs to tribunals was flagged up as a major problem in the 2024 Standard Civil Contract consultation with representative bodies arguing that travel should be paid from home or offices in view of the numbers working from home.

Another issue on travel was raised by LAPG in the 2024 Standard Civil Contract consultation:

> ***Travel 9.5***
>
> *"This restricts travel claims to the lowest possible cost where a provider has an alternative arrangement in a procurement area. In line with the growing acknowledgement that working practices have changed, practitioners should be able to claim actual travel costs incurred provided there is sufficient justification on file as to why they, as opposed to someone closer is doing the case. This philosophy ought to be applied throughout this legal aid work given the reduction in the number of providers."*

Contract Issues

Serviced Premises

LAPG in the Standard Civil Contract 2024 consultation raised:

> *".. LAPG would flag up from the general specification 2.33B Serviced premises – there should be consideration for an exemption for a permanent presence if it is clear that a provider does not meet clients in their office."*

Supervisor standards

Again, from LAPG's response to the 2024 Standard Civil Contract Consultation:

> *"These should focus on quality and not assume that quantity of work can be a substitute for quality. Where areas of work are also subject to formal accreditation processes and a supervisor has to be accredited, then the requirements of the accreditation process and the supervisor standard requirements need not be duplicated. It should be enough to demonstrate that the relevant accreditation has been obtained – for example the requirement in these sections for supervisors to both be accredited and to do a certain amount of continuing professional development is an unnecessary duplication because in order to be accredited or re-accredited, one has to have completed a significant amount of professional development each year. We refer to our General Principles document about reducing contract requirements which are covered in other quality assurance regimes."*

Signatures

MHLA commented a few years ago that signing up a client should be done in a way that is most conducive to getting the forms signed in order to assist the client as soon as possible.

Remote provision

There are circumstances where remote advice can be given to a client under controlled work without any attendance on that client to obtain a signed form. The provisions in the contract allow flexibility

in terms of the requirement that 50% of cases can be opened with attendance on the client, and higher if certain criteria are met.

The LAA's response in the 2024 Contract Consultation was that they have in recent years increased the limit of how much work can be carried out remotely and believe it's an appropriate balance. However, the LAA will review this in the future once the Civil Sustainability Review is finalised.

f. Discrimination

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3*	0	18	N/A
Legal Help matters started – Table 5.1**	0	2,260	N/A
Providers reporting cert. work – Table 9.4*	0	10	N/A
Certificates granted – Table 6.2* **	0	40	N/A

* Introduced as a face-to-face stand-alone contract in 2019-20
** Delivered as part of telephone advice/remote contracts from 2013/14 until 2019-20

Given the very low volumes of work reported in this category, we think it is useful to point out that according to the LAA's publicly-available *Directory of Providers*[18] (last updated on 14 February 2024) that there are only 20 organisations with Discrimination contracts, operating out of only 24 offices across England and Wales.

We have had sight of a Call for Evidence response from a discrimination provider, which succinctly summarises the issues that they and other providers are facing:

- A reduction in face-to-face discrimination providers since contracts were award in 2019, leading to increasing advice deserts and pressure on remaining providers, primarily as a result of the consequences of low legal aid fees.
- Uncertainty over whether specialist telephone advice discrimination contracts will be extended beyond August 2024.
- Difficulties in recruiting and retaining suitably qualified staff and the practical difficulties associated with a high turnover of staff.
- The demoralising effect of working in such a pressurised environment, compounded by an acute awareness of the unmet needs of vulnerable clients.
- Concerns over a lack of discrimination law content within undergraduate law degrees which, when coupled with limited career prospects, is reducing the pipeline of new recruits.
- Staff members feeling overwhelmed by unnecessary bureaucracy and bogged down by time-consuming and complex administrative systems.

We have had sight of the Law Centres Network response, which summarises feedback received from law centres about some of the problems they encounter with discrimination cases:

- If discrimination cases are in the County Court, they may not be sufficiently high value to pass the merits test. If in the Employment Tribunal, representation is out of scope and as costs are not awarded, clients have to pay through the statutory charge.
- For employment discrimination work under controlled work, employers generally will not make offers of settlement until shortly before a hearing date. Delays in the Tribunal system mean that they have to carry work in progress for long periods until they can bill their work. This creates cash-flow problems.

[18] https://www.gov.uk/government/publications/directory-of-legal-aid-providers

- Most employment issues experienced by people in low paid and insecure employment, e.g. in catering, the NHS and social care, are not in scope, although discrimination in employment is.
- A Law Centre with a telephone contract for discrimination reports that they are contacted by many vulnerable clients who cannot obtain face-to-face advice due to lack of capacity in those providers. They have often made many unsuccessful attempts to obtain advice and representation, which can jeopardise their cases due to the short limitation period to submit Employment Tribunal applications.

Contract issues

A discrimination provider noted:

> *"One of the massive reforms required … is the bureaucracy of the contract. It's overwhelming, it's on multiple links, it's difficult to navigate and you can spend ages just looking for a simple thing and particularly new people to legal aid, god knows how they navigate it. I mean I've even got an example of the discrimination legal aid contract where there's no clear index and the page numbering runs out part way through."*

g. Education

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3	49	13	-74%
Legal Help matters started – Table 5.1	3,775	1,754	-54%
Providers reporting cert. work – Table 9.4	45	8	-82%
Certificates granted – Table 6.2	125	78	-38%

As with Discrimination contracts, given the very low volumes of work reported in this category, we think it is useful to point out that according to the LAA's publicly-available *Directory of Providers*[19] (last updated on 14 February 2024) that there are only 10 organisations with Education contracts, operating out of only 20 offices across England and Wales.

Legal need far outstrips the supply of services

The current data on the potential need for legal assistance with education issues is alarming when you consider that the data above demonstrates that there is only a handful of education legal aid providers across England and Wales. Even if you accept that some parents/caregivers will be in a position to pay privately for advice to, for example, challenge a local authority decision not to provide additional SEN support, it is safe to assume that legal aid education providers cannot meet demand.

There are currently:

- 389,171 EHC plans for pupils in schools in England. This figure is up by 9.5% from 2022[20]
    - 4.3% of pupils have an EHC up from 4.0% in 2022
    - SEN support/SEN without an EHC plan: 1,183,384 pupils in schools in England. This is up by 4.7% from 2022 (13% of pupils with SEN support, up from 12.6% in 2022)
- Over 1.5 million pupils in England have SEN, an increase of 87,000 from 2022

[19] *Ibid*

[20] Special educational needs in England, Academic year 2022/23 – Explore education statistics – GOV.UK (explore-education-statistics.service.gov.uk)

- The most common type of need for those with an EHC plan is autistic spectrum disorder and for those with SEN support is speech, language and communication needs

Fees and Shortage of Providers

The Westminster Commission reported on the evidence it heard as follows:

> 117. '[In education law there are] just eight law firms nationally across the whole country … so it's really hard for clients to be able to access legal advice … And it genuinely is heart-breaking that you can see a legal issue and you can do something to help, but you just don't have the time. And so you suggest other firms, but you know they will be facing exactly the same challenges. And you never quite know what happens to those clients.'
> Polly Sweeney
>
> 179. We also heard from Polly Sweeney, of newly established firm Rook Irwin Sweeney, who specialises in education law. She explained that the primary remedy for special educational needs (SEN) and discrimination cases lies with the First Tier Tribunal (Special Educational Needs and Disability), and therefore this work is funded under the fixed fee Legal Help scheme with no opportunity for inter partes cost awards. Initial work for Judicial Review cases is at Legal Help level and can progress onto a legal aid certificate (and paid at hourly rates) if proceedings are issued (which is very rare) or if Investigative Representation is required…
>
> Ms Sweeney submitted the relevant fee tables as evidence low fees undermining sustainability.
>
> See Table 10: The Civil Legal Aid (Remuneration) Regulations 2013 (Schedule 1, Table 7(a))
>
> 183. Ms Sweeney explained to the Commission that the maximum a practitioner outside of London can claim for a legal aid case, regardless of their seniority or experience, is £48.24 per hour. In comparison, the HMCTS guideline solicitor's rate (which has itself not been uplifted for over 10 years) is £217.00. In London, for solicitors with over eight years' experience, that figure would be £409.00 per hour. This is a strong disincentive for practitioners to take on legal aid work.
>
> 184. In addition, because the First Tier Tribunal (Special Education Needs and Disability) is a 'no costs' jurisdiction, even if the parent or caregiver is wholly successful in their appeal, there is no opportunity for counsel to recover inter partes costs. The difference in the rates payable at market (or inter partes) rates and legal aid rates is illustrated in table 11 below:
>
> See Table 11: Selected Guideline Hourly Rates for Summary Assessment of Costs

The LAPG Census - Page 47:

> *"Practitioners were more likely to find hourly rates unsustainable in the areas of housing (86.7%) and education (86.7%)"*

As one practitioner fed back to us:

> *"The rapidly dwindling number of providers shows that the current scheme is unworkable and the level of remuneration is wholly unrealistic. SEND cases are hugely time consuming and involve large volumes of evidence to process and respond to."*

Scope

School exclusions should be brought back into scope for legal aid – at least for permanent exclusions. The statutory guidance on this refers to judicial review principles, which lay people are not familiar with and cannot reasonably be expected to argue. The data on school exclusions continues to show that school exclusions are discriminatory, in particular against certain ethnicities/backgrounds. Further, there are significantly documented links between school exclusion and prison. In failing to allow school exclusions within the scope of legal aid, the LAA is further adding to an already inherently unequal and biased system.

Contract Issues

LAPG pressed for an increase in the threshold figure for remote advice – up to 90%. Providers should be encouraged in every way possible to take on cases especially cases involving judicial review.

The LAA's response was that it has considered the comments raised by the consultative bodies but think that 90% remote advice is too high and could risk the connection between the provider and their local area entirely. For this reason, no additional changes will be made to this clause.

The change to allow interim payments in education case after three months to align with immigration and mental health cases is welcome. However we would recommend that interim payments should be available after one month because any unpaid costs under Controlled Work and expert fees (which are often considerable) act as a disincentive to carrying out this work. Low fees, slow payment and carrying disbursements renders this work unviable.

h. Public Law

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3	132	94	-29%
Legal Help matters started – Table 5.1	1,624	3,039	87%
Providers reporting cert. work – Table 9.4	284	103	-64%
Certificates granted – Table 6.2	1,698	1,632	-4%

Fees

The LAPG Census (at p.35) noted that fixed fees are a particular issue with public law work (where the ratio was 2.3 hours of work for every hour remunerated under legal aid).

The rate of pay, fee levels and escape thresholds remain a problem in this area.

Of particular relevance is judicial review funding. Removal of the requirement for permission to be granted on judicial review to recover costs would encourage practitioners to take on more cases. Governments of all persuasions have sought to restrict the number of judicial review cases that can be brought under public funding. We refer to Public Law Project's work on this issue over many years.

Simplified means and evidence of means procedure

This was flagged up once again as a barrier for clients.

Contract Issues

Speedier decision making on legal aid applications and amendment requests would assist practitioners and clients. We have had feedback about the number of applications refused by the LAA or queried in relation to whether the matter is really urgent.

i. Claims Against Public Authorities

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting work – Table 9.3*	157	77	-51%
Legal Help matters started – Table 5.1	4,007	1,503	-62%
Providers reporting cert. work – Table 9.4	106	90	-15%
Certificates granted – Table 6.2	1,162	847	-27%

* Previously referred to as Actions Against the Police

Fees

The rate of pay, fee levels and escape thresholds remain a problem in this area.

Increase in HCCP threshold from £25K.

Expert fees as in all areas of law need to be revised upwards.

Scope

There should be a separate category for Inquest work and removal of ECF requirements for representation i.e. preparation for and representation at inquests should be in scope.

Contract Issues

There needs to be a review of costs/benefit ratio and increased court fees cause real issues in this category.

Quicker decision-making on legal aid applications and amendment requests is needed in many of these cases.

There should be a review of the application of the "proportionality regulations" and the guidance – they should be more fully aligned with the Civil Procedure Rules.

Simplified means and evidence of means procedure

This was flagged up once again as a barrier for clients.

j. Clinical Negligence

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting LH work – Table 9.3	129	1	-99%
Legal Help matters started – Table 5.1	3,649	29	-99%
Providers reporting cert. work – Table 9.4	235	78	-67%
Certificates granted – Table 6.2	2,639	129	-95%

Very few of our members carry out clinical negligence work but we have received some feedback:

1. Increase rates of pay and review fee scheme
2. More realistic expert rates are needed
3. Quicker decision making is needed on legal aid applications and amendment requests
4. Simplified means and evidence of means procedure is needed for the benefit of clients as well as practitioners.

k. Welfare Benefits

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting LH work – Table 9.3	554	13	-98%
Legal Help matters started – Table 5.1	102,920	18	-99%
Providers reporting cert. work – Table 9.4	11	7	-36%
Certificates granted – Table 6.2	22	23	5%

As with Discrimination and Education contracts, given the very low volumes of work reported in this category, we think it is useful to point out that according to the LAA's publicly-available *Directory of Providers*[21] (last updated on 14 February 2024) that there are only 27 organisations with Welfare Benefits contracts, operating out of only 31 offices across England and Wales.

Scope

The Westminster Commission recommendation on Welfare Benefits was as follows:

Recommendation F1 – Bring back into scope in order to provide a more holistic service to clients.

The reduction in the number of Welfare Benefits cases is stark. We are not aware of any research into whether people excluded from the legal aid scheme have managed to obtain advice and representation elsewhere.

Financial Year	Quarter	Welfare benefits
2007-08		126,589
2008-09		135,751
2009-10		141,625
2010-11		116,081
2011-12		102,920
2012-13		82,554
2013-14		163
2014-15		505
2015-16		250
2016-17		442
2017-18 (r)		443
2018-19 (r)		334
2019-20 (r)		255
2020-21 (r)		135
2021-22 (r)		146
2022-23 (r)		76

[21] *Ibid*

Note: Only 5 New Matter Starts have been opened in the first 6 months of 2023/24.

Only £32,000 was claimed against the fund for Welfare Benefits work in 2022/23.

There are clearly issues around early advice and appeals in the Lower Tribunal no longer being in scope and the knock-on effect for benefit claimants having to represent themselves. It may well be that the lack of funding at the initial review/appeal and reconsideration stages affects the demand for Upper Tribunal work and beyond.

If advice for mandatory reconsiderations and appeals is reintroduced, this could save HMCTS considerable time and money, as claimants would be properly assisted to prepare their appeals where appropriate and/or advised on the merits of any appeal. The DWP may also settle more matters earlier where the claim is put to them more clearly.

Fees

The fixed fee is £208 excluding VAT.

On page 35 of the LAPG Census it was noted that fixed fees are a particular issue with Welfare Benefits work (where the ratio was 4.3 hours of work for every hour remunerated under legal aid).

Escape Fees

The Welfare Benefits fee structure set out at Table 1, Part 1, Schedule 1 of the Civil Legal Aid (Remuneration) Regulations 2013 became obsolete from the 1 November 2013 when the 2013 Standard Civil Contract (Welfare Benefits) came into effect. Under this contracts Welfare Benefits Controlled Work was paid for via a fixed fee with no escape fee mechanism and certificated work was paid for via hourly rates. We have liaising with the LAA on this point to allow escape fees for Welfare Benefits under the 2024 contract. Correcting this anomaly requires a simple amendment to the Civil Legal Aid (Remuneration) Regulations 2013.

I. Miscellaneous

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting LH work – Table 9.3	236	18	-92%
Legal Help matters started – Table 5.1	900	86	-90%
Providers reporting cert. work – Table 9.4	349	178	-49%
Certificates granted – Table 6.2	394	378	-4%

Civil legal services that are not included within any other category of legal aid are classified as “Miscellaneous Work”. The matters or proceedings that are described in Part 1 of Schedule 1 to the Act that are likely to fall outside all Civil Categories and thus be classified as Miscellaneous Work are set out in the LAA guide Category Definitions 2018 (April 2023).[22]

[22] https://assets.publishing.service.gov.uk/media/651aa8897c2c4a000d95e325/Category_Definitions_2018__April_2023__-_Clean_.pdf

Anti-social behaviour injunctions

The Civil Justice Council (CJC) published a report in October 2020 highlighting a range of concerns about the management of anti-social behaviour injunctions, including specific concerns about the availability of legal aid (at paras 171-191).[23] The CJC made a number of recommendations, which are summarised at paras 491-493 of their report. To our knowledge no substantial progress has been made by the MoJ in acting on the CJC's recommendations and we therefore recommend that this should be addressed as a matter of priority.

A practitioner from London also noted that:

> *"In In 2022 we had terrible trouble trying to claim for an ASBI Legal Help case that fell under the miscellaneous category. We were told that the LAA's billing system did not allow us to submit the claim as miscellaneous work and instead we had to submit it as a housing case and then manually amend the hourly rates.*
>
> *The other issue with ASBI cases is the link with contempt applications of course, where funding is by way of criminal legal aid (mags rate fees) and not civil legal aid. Although we carry out the same work and the same issues arise, our claims have to be separated out, and they are assessed on very different bases. Often we will be representing a client under a PFC on the injunction application and then have to obtain a Representation Order for the contempt application. It adds to the administrative burden on providers, and can be very confusing (especially where expert rates are also paid at different rates depending on whether the expert is instructed under the PFC or Rep Order!). It would make more sense for both to be funded by way of civil legal aid but allow for the contempt application to remain non-means and non-merits as it currently is. Splitting the work as we have to causes additional costs and confusion."*

m. Debt

Legal Aid Statistics	2011-12 (pre-LASPO)	2022-2023	% change
Providers reporting LH work – Table 9.3	648	29	-62%
Legal Help matters started – Table 5.1	102,065	476	-96%
Providers reporting cert. work – Table 9.4	162	15	-91%
Certificates granted – Table 6.2	232	16	-93%

Debt cases, as a stand-alone category, are not included within the scope of the Call for Evidence. LASPO removed almost all debt cases from scope, and those that remained were linked to loss of home so were incorporated into a new 'Housing & Debt' contract. However the scope of the new contract did not allow housing practitioners to resolve the vast majority of debt issues that may lead to, for example, a rent arrears possession claim and eventual eviction. As we are calling for all debt cases to be reintroduced into the scope of civil legal aid, we think it is instructive to consider the reduction in the volume of debt cases and providers since LASPO.

The MoJ reintroduced debt cases into scope in a very limited way when it created the Housing Loss Prevention Advice Service (HLPAS) as a replacement for the Housing Possession Court Duty Scheme.[24] Stage 1 of HLPAS, which enables providers to assist clients before they attend court, covers advice on

[23] https://www.judiciary.uk/guidance-and-resources/anti-social-behaviour-and-the-civil-courts/
[24] Introduced via The Civil Legal Aid (Housing and Asylum Accommodation) Order 2023 - https://www.legislation.gov.uk/uksi/2023/147/made

housing, debt and welfare benefits issues with the intention of giving providers the tools needed to resolve the linked, underlying issues that generate possession proceedings. While HLPAS is a welcome step in the right direction, the limited fees available and restrictions on the scheme undermine the ability of providers to deliver effective, ongoing help. For example, providers cannot give advice on welfare benefits and debt issues once the HLPAS scheme has run its course (i.e. after the first court hearing). If a client needs assistance to file a defence and/or counterclaim to a possession claim under certificated funding, from this point onwards debt and welfare benefits matters are out of scope. This is clearly counter-productive and such arbitrary limitations on the services that clients require must be addressed by RoCLA by reintroducing debt and welfare benefits back into scope in full.

As we have noted elsewhere, and as illustrated by the stark reductions in providers carrying out debt and welfare benefits cases in the tables above, simply reinstating these areas of law into scope will not solve the problems of client access and provider capacity to resolve linked legal issues. The MoJ will need a robust, long-term plan and strong incentives to encourage providers to expand their capacity and retrain in these complex areas of law.

Question 2

What are the civil legal aid issues that are specific to your local area? Please provide any specific evidence or data you have that supports your response.

There are a huge range of civil legal aid issues specific to local areas. The whole justice infrastructure has to be considered and this response reflects that.

This list is not definitive but our members have fed back to us that there are differences between England and Wales; between rural areas, towns and cities; between London and other cities; between affluent and less affluent areas; between areas with a good public transport system and those without; where asylum seekers are settled; where courts are located; and internet connectivity. The lack of provision of advice at all levels is however the overriding issue.

We refer elsewhere to the LAPG Census. We would also refer to the Open Access book *Legal Aid and the Future of Access to Justice* which resulted from the LAPG Census.[25]

Citizens Advice sets out in their *CA cost-of-living data dashboard*[26] and in *Advice issues: The last 13 months*[27] information on the problems facing people and the problems of accessing advice.

Lack of provision of advice

One of the consequences of the reduction of legal aid providers post-LASPO has been the expansion of 'advice deserts' (areas where there is no legal aid provision at all for a particular category of law) and 'advice droughts' (areas where there are providers but they have limited or no capacity to open new cases, thus resulting in a very restricted supply). This means that an individual may have a problem that is within scope, be financially eligible for public funding but still be unable to find any advice or representation in their local area.

As noted above civil and legal aid provider numbers have decreased sharply post-LASPO. This reduction was also particularly felt by the NfP sector as many Citizens Advice offices and Law Centres were forced to close or roll back their provision of free legal aid due to funding constrains. In 2013/14, 94 local areas had NfPs providing legal aid services, but by 2019/20 this number had fallen to just 47.

As noted above in our response to Question 1.1, the reduction in providers has been acute across civil and family legal aid including welfare benefits, clinical negligence, family, immigration, housing and community care and has disproportionately impacted rural areas. The Law Society has published updated heat map infographics showing the distribution of various legal specialisms across England and Wales.[28] They show that almost 40% of the population of England and Wales does not have a housing legal aid provider in their local authority area, a figure that has grown by around 2% since 2019, and that only 39% of the population have access to more than one provider in their local authority area. This means that many people across the country facing serious housing situations including eviction, will struggle to get the local face-to-face advice that they're legally entitled to. This was echoed by Refugee Action, which warned that since 2005, 56% of firms specialising in immigration and asylum law have left the market, creating geographical gaps in legal aid provision. The LASPO PIR was told the sparsity of legal aid providers was a particular problem in much of Wales.

[25] https://library.oapen.org/handle/20.500.12657/74779?show=full
[26] https://public.flourish.studio/story/1634399/
[27] https://public.tableau.com/app/profile/citizensadvice/viz/AdviceissuesTrendsJan2024/Cover
[28] https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts

This scarcity of provision, and the imbalance between high demand for services and low capacity to deliver services, is also an issue highlighted in the P A Consulting report.[29]

A former legal aid provider in south Wales explains the gradual reduction in services:

> *"I must emphasise the legal advice deserts, with one immigration provider in north Wales and only Shelter Cymru doing more than a handful of legal aid housing cases in Wales. One local firm handed back their housing contract at the start of 2023 and another closed its Cardiff office a couple of years back. Cardiff Law Centre closed in 2014 and another provider a few years later.*
>
> *There is also the difficulty of being able to start a legal aid service once they are lost, with it being very hard to find someone with the relevant supervisor knowledge and experience."*

The Annex to the Call for Evidence provides information on the number of providers' offices and the numbers of cases taken on but these figures only go back a few years. If the figures from pre-LASPO were included, then the reduction in case starts and providers would be most stark.

The MoJ also does not collect data on legal need. It is therefore not possible to determine whether the supply of legal services in any particular area is capable of meeting local legal need. The lack of data and research into the viability of legal aid services, and whether those services meet legal need, is a significant weakness of current legal aid policy formulation.[30] As the NAO's recent report sets out at para 18:

> *"MoJ has set providing swift access to justice as one of its primary objectives. Theoretical eligibility for legal aid is not enough to achieve this objective if there are an insufficient number of providers willing or able to provide it. MoJ must ensure that access to legal aid, a core element of access to justice, is supported by a sustainable and resilient legal aid market, where capacity meets demand. It is concerning that MoJ continues to lack an understanding of whether those eligible for legal aid can access it, particularly given available data, which suggest that access to legal aid may be worsening. Also concerning is its reactive approach to market sustainability issues. MoJ must take a more proactive approach and routinely seek early identification of emerging market sustainability issues, to ensure legal aid is available to all those who are eligible. Until then, it cannot demonstrate that it is meeting its core objectives and so securing value for money."*

We are currently analysing data about the drivers of demand for housing legal aid and the gradual reduction in the supply of services and will make this analysis available to the MoJ as soon as possible.

The lack of provision is not just in the total number of legal aid providers, but also the amount of legal aid work that each provider undertakes. Although this is captured to a certain extent in case matter starts, it is important to interrogate the figures for the numbers of providers. There are very few legal aid only firms, as most subsidise their legal aid work with private work and practitioners have reported that to remain viable they have had to increase the proportion of private work they carry out. Similarly, Not-for-Profit organisations receive other grant funding which may subsidise their legal aid work. Furthermore many providers take on fewer cases than in previous years because of the lack of

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[29] https://assets.publishing.service.gov.uk/media/65aa4068ed27ca000d27b28a/civil-legal-aid-providers-survey.pdf - see for example the data in Section 4.

[30] Contrast for example the pre-LASPO position when MoJ policy formulation was informed by the work of the Legal Services Research Centre, which both commissioned and undertook important research into the justice system.

profitability of the work. One firm in the north east has closed four departments in recent years because they are not financially viable – and this is in an area of the country where overheads and salaries are lower than other locations.

Many cases are referred to legal aid providers by local or national referral agencies. In many locations there are fewer advice agencies for people to go to as a result of local authority cuts and bankruptcies. A significant amount of advice service provision has been cut. Community groups and generalist advice agencies often triage and take initial steps, passing the client on to a civil legal aid provider when there is a need for specialist advice and representation. Community groups and generalist advice agencies are finding it increasingly difficult to make referrals to legal aid providers and simply don't have the capacity or expertise to deal with complex legal issues.

A provider in south west London fed back to us:

> *"We get in excess of 100 calls a month asking for legal aid housing advice. In addition we get dozens of enquiries through the website and emails sent directly to our solicitors." The firm can only take on a few cases."*
>
> *"Sometimes people are really desperate for housing advice because they have been unable to get someone to take on their case and they sometimes tell our call handlers that they feel suicidal if they cannot get help. This puts a strain on the wellbeing of staff dealing with new enquiry calls."*

There is an interesting illustration here from a provider working in Newham:

> *"Our main area-specific comment would be that although we have quite a few housing legal aid providers in the area, it is no way close to enough to cover the volume of work. We turn away large volumes of eligible clients because we have no capacity. Newham is one of the boroughs with the worst housing situation in the country. It is also worth noting that we believe it's one of the only local authorities that does not invest any funding into independent legal advice in the area (e.g. a law centre or CAB) – there is a steering group dedicated to this issue that is quite active at the moment. It has chosen instead to bring a lot of its advice services 'in house' (see for example 'our Newham money' – however feedback from clients is that this service is not the same or as good as independent advice."*

On a similar point, if a legal aid provider is contacted, and cannot take on the client, that provider wants to be able to refer the case on but it is not easy to do that even with good links with other providers.

We refer to Jo Wilding's research on the availability of immigration and asylum, which notes that 'the overarching conclusion is that there is not enough free or low-cost immigration, nationality and asylum advice available, and this leaves people at risk of serious harm'.[31]

Contract Issues

We have received feedback about the LAA capacity tests e.g. in family law a minimum of 4 practices per procurement area is the target and 1 in housing – these are not a robust enough mechanism for measuring provision and the supply needed. A provider in the north east has reported back to the LAA and MoJ over the years about the lack of family provision but no steps have been taken. The

[31] https://www.refugee-action.org.uk/no-access-to-justice-how-legal-advice-deserts-fail-refugees-migrants-and-our-communities/ - page 12

inflexibility of the contract process which has, to date, prevented new entrants coming into civil legal aid work during the contract term has not helped to deal with these issues, although we would stress that the most important factor remains the lack of economic viability in delivering the service.

This is particularly important when considering housing providers as some areas have a large amount of property in disrepair or with specific issues in high rise blocks. Where there is a lot of low quality housing, the need for providers will be greater.

County Court Closures

County Court closures, the limited opening hours of county court offices and the difficulty of getting through on the phone impact of access to justice for clients and providers. Given the closure of many county courts, it can be extremely difficult for clients to attend hearings if there is poor pubic transport, particularly an early morning hearing, with extra difficulties for those who have to take children to school first.

For providers, increased travel times if unpaid are another drain on resources or, if paid, are paid at a low rate so can make a day away from the office even more unprofitable.

One provider from south west London fed back:

> *"Courts are run down or closing but they have backlogs of several months so we are constantly chasing, things get lost etc. that causes issues chasing them up. When we chase Central London County Court we speak to the call centre and they are no help. They don't understand processes and they don't have a live system. They cannot answer queries when things get lost or stuck in the system because they are not at the court."*
>
> *"We are based down the road from Wandsworth CC. When it closes, I believe the plan is still that most cases will be moved to Clerkenwell and Shoreditch. Although I like that court, it makes no sense to send things there. It isn't a straightforward journey and it is on the opposite side of London. It will mean clients need to journey approx. 1 hr 15 minutes each way from their homes to court if they want to get the tube. It would be slightly quicker to take the overground but it would be significantly more expensive on the train. It also involves changes which might be difficult for those with disabilities. This is putting roadblocks up to accessing the courts. Even if things are sent to Kingston – that is not a straightforward or particularly quick journey from Putney."*

Financial Eligibility

There is a specific issue in relation to financial eligibility for legal aid in London and other locations with high property values as this impacts on their ability to qualify for legal aid. Rental prices in expensive areas mean clients are penalised because home costs are capped to £545 which is the same as 20 years ago. This means that many who should qualify don't because of this anomaly in the means test, so people with good cases cannot pursue them. It also means that the calculation on financial contributions excludes people with good cases. It can be very frustrating to explain to potential clients the way eligibility and contributions are calculated when you know that they cannot actually pay and they are only ineligible / or assessed as barely eligible because several essential costs etc. are ignored or artificially capped.

We have received feedback that older people are adversely affected by the value of their property and they cannot easily raise funds against the value of their house.

Housing Issues

A big issue in housing law in London at the moment is the lack of local housing stock which means:

> *"Clients are sent out of borough or even out of London which means if they take the accommodation they are often placed in legal aid deserts or find it harder to keep instructing London based solicitors. Clients are based in bedsit accommodation which is often not self-contained (even if they have children), is not safe and will negatively impact their health. Living like that for a prolonged, indefinite period of time can have all sorts of impacts including for example that young children can hit developmental milestones later because they cannot move around on the floor to build the necessary muscle mass to start crawling/walking when they should.*
>
> *As local authority finances are stretched (and more and more LAs are pleading bankruptcy by serving section 114 notices), it leaves a problem with housing supply. When people are placed in inadequate or unsuitable housing, we obviously fight for them to be moved. LAs are increasingly saying that they cannot move our clients because there is nowhere to move them to and they don't have any suitable housing/cannot afford to get more suitable housing. That means we might be lacking a remedy even if we are successful. This makes it difficult to manage client's expectations in a fraught system.*
>
> *The above sort of issues mean that our work is more urgent and more necessary than ever, and yet we have to get the client to comply with a lot of bureaucratic requirements before we can take on their case. It is a lot worse than when I started doing this work back in 2006."*

Question 3

What do you think are the changes in the administration of civil legal aid that would be most beneficial to providers? Please provide any specific evidence or data you have that supports your response.

Our responses to Questions 1 and 1.1 in particular set out a wide variety of concerns about the administration of the civil legal aid and, where possible, our recommendations for improving the scheme. Representative and membership bodies meet regularly with the LAA, for example via the Civil Contracts Consultative Group and Process Efficiency Team meetings. In recent years, the LAA has shown a willingness to work with external stakeholders to improve systems and contracts. During the pandemic a number of measures were put in place to mitigate the problems caused by restrictions on client contact and changes to the way that courts and tribunals were operating. The LAA was willing to recognise that provider practices were changing as result, and maintained many of the pandemic contingency measures as permanent changes to contracts and systems. More recently, the LAA is considering changes to commissioning processes, means-testing, payment processes and other measures to reduce the administrative burden on providers and promote client access.

Despite the LAA's renewed appetite for improving the system, further changes need to be made to the following headline areas:

- Commissioning processes
- Means testing and obtaining evidence of means
- Contract issues including:
    - Applications and amendments and trusting provider opinions on issues such as merits
    - Billing
    - Permanent presence
    - Supervisor issues
        - How to become a supervisor and out of date requirements
        - Ratios
    - High cost case plans
    - High profile cases and GLD involvement
    - New matter start allocations and limits
    - Remote applications
    - Audits
    - Reintroducing Points of principles on appeals no longer published

Of particular concern for practitioners is the amount of unbillable time required to run legal aid cases and manage a legal aid contract. Allied to this is whether LAA systems and contracts duplicate many of the compliance and regulatory requirements imposed on providers by the SRA and other regulatory bodies. LAPG is currently undertaking a research project to measure non-billable time and will share the results with the MoJ as soon as possible.

The Westminster Commission made a number of recommendations:

Recommendations

- Reduce administrative bureaucracy and streamline the application process
- Improve the system used by the LAA

194. While all law firms and legal advice agencies have to generate sufficient income to cover personnel costs and other overheads, legal aid providers incur additional costs that are directly linked to the legal aid contract requirements. It is not possible to list all of these legal aid specific overheads, but they can be summarised as:

- The need, in most cases, to have an office within the specific geographic location to hold a contract to deliver services in that locality. By contrast, non-legal aid firms can set up anywhere and deliver services to clients based in any location. Non-legal aid firms can opt for any mode of delivery (outreach, face-to-face, online) to meet their clients' needs and can adapt as they see fit. The mode of delivery for legal aid firms is dictated by the LAA and any adaptations to meet the changing needs of clients are slow to enact, with contractual provisions unlikely to change materially until new contracts are introduced as part of a periodic tender round. Legal aid providers are less agile than their non-legal aid counterparts as a result.
- Supervision of staff, with strict rules on supervisor/supervisee ratios, the designation of supervisors for each contract area, and the method(s) of delivering supervision and file review. These contracting requirements are over and above the requirements of quality standards (such as Lexcel) or the Solicitors Regulation Authority.
- Audit, compliance and quality assurance – despite legal aid fees being significantly lower than standard private fees, there are heavy compliance and administrative burdens on legal aid providers, which also include issues such as quality standard accreditation and specific panel member/qualification requirements for some practice areas.
- Administrative tasks, many of which are not unique to legal aid practice but cannot be claimed as billable work, despite being integral to file management, client care and compliance.
- The need to provide regular training to staff to maintain compliance and ensure they understand the legal aid scheme, over and above the training required to maintain competence in relation to legal practice skills and subject specialism(s)."

From the LAPG 2024 Standard Civil Contract consultation:

When providers act in good faith, but client conduct or inaction prevents full compliance, payment should not be withheld

We are aware that legal aid is public funds and that the LAA is right to ensure that public money is spent appropriately. However there needs to be an awareness that practitioners are often dealing with very vulnerable clients who are in the midst of a crisis and/or a chaotic period in their lives. Where practitioners act in good faith and can lose thousands of pounds because the client has not co-operated fully we want the LAA to bring in systems to ameliorate the loss to the provider. Furthermore the LAA needs to think carefully when disallowing fees because of its stringent interpretation of the rules. We understand that for the LAA to exercise discretion is difficult but we do think that there must be more thought given to this. Perhaps a meeting with representative bodies could lead to the development of more rational guidelines?

There are a number of restrictions in the proposals where it is clear that work done in good faith may not be remunerated. For example, Para 3.20 of the General specification states that providers will not be paid in respect of any matter where the client has not signed and returned the form. If the file was opened in good faith and reasonable efforts were made to obtain a signed form, providers should be paid. This approach should be extended more generally to, for example:

- *When there are minor errors on a CW1 form or minor items missing from the eligibility check – e.g. bank statements not covering the entire three month period or there being unidentified incoming payments on a bank statement for small amounts – these errors or omissions should*

only lead to a nil-assessment if it is clear that there is a real and appreciable risk that the client is not eligible for legal aid.

- *Providers should not be penalised if they have gone over their matter start allocation.*

- *More flexibility should be given to the assessment of costs, and in particular to consideration of whether to allow enhancements, to reflect that fees have not increased in decades and therefore do not cover the actual cost of work carried out or the experience or expertise of practitioners.*

Flexibility and remote working

The greater emphasis on remote working and some relaxation in office presence is broadly welcome, subject to some improvements that could be made for clarity and consistency as set out in the two tables of amendments. A flexible, modern approach is appropriate and should encompass many of the changes made during the pandemic.

In relation to forms being signed remotely and/or digitally - Paragraph 3.17 of the General Specification restricts postal applications to 50%. Allowances for remote sign-ups should not be subject to a restriction. Signing-up a client should be done in a way that is most conducive to getting the forms signed so as to assist the client with their legal needs as soon as possible. This is different from any KPIs about face-to-face contact during the course of a case which may be more dependent on the type of case and the needs of the client. In certain areas of work, there will be a case for ensuring a certain amount of face-to-face contact.

Recruitment and retention of supervisors

There remains a problem for providers in recruitment and retention of supervisors. We welcome the changes that the LAA are proposing around how many areas of law a supervisor can cover, and more flexibility. However, this has led to a number of queries from our Advisory Committee set out below which we think the LAA will need to clarify:

- *Most businesses are moving away from a model in which full-time employees are expected to work 5 days a week and 7 hours a day. People have to be able to work flexibly for many reasons – particularly because of child and other caring responsibilities – so strict requirements on working hours have a disproportionate impact on women and carers. Moreover, senior lawyers who are contemplating retirement may want to reduce the numbers of hours worked so this impacts that cohort as well. These issues are long-standing ones. Add to these the effect of the pandemic on people's work life choices and the need for flexibility on supervisor requirements becomes even greater. In view of the difficulty of recruitment and retention issues we would urge the LAA to allow more flexibility.*

- *What if an organisation can only recruit one part-time person who meets the supervisor requirements? Presumably they would have to find another person to work part-time in that category to make up the full time equivalent requirement? That is likely to be restrictive.*

- *It would be more sensible to look at what the LAA is aiming to achieve with supervisors overall. Then look at how that can be achieved and remove any unnecessary restrictions. The SRA, Lexcel and the SQM requirements all cover supervision of legal services to some degree so we would argue that the LAA only needs to add additional requirements to the contract where these are specifically needed for the effective delivery of legal aid services.*

- *It is becoming common practice across many professional industries for employees to work from home for a proportion of their week or to work compressed hours. So insistence on a 5 day working week is at odds with developing practice and expectations of employees, and makes it more difficult to recruit supervisors. We accept that supervisors are key to both quality and compliance, so providers should be required to demonstrate that there are adequate supervision arrangements in place if the supervisor does not work a 5 day week.*

- *We would also welcome further discussion on whether supervisors need to be directly employed by the provider, or whether consultants could provide the same level of both formal and informal supervision to ensure quality and compliance.*

Matter start usage – General Spec 1.15-1.24

The current position is that an organisation can only increase the number of matter starts granted by 50% of the total allocated to a schedule. It appears that the LAA amendment in para. 1.21 (Supplementary Matter Starts) merely clarifies that providers can self-grant on more than one occasion but the restriction on numbers still stands at 50% of the initial allocation.

We propose there should be greater flexibility in both the allocation of matter starts at the outset, and the ability of a provider to self-grant further starts without restriction if there is client demand. The logic behind the restriction of both allocation and self-grant appears now to be somewhat historic and unnecessary.

The LAA cannot support its long-held supposition that matter start allocations within a procurement area are based on any attempt at measuring and responding to client demand. Nor can it assert that the failure to utilise a matter start allocation is an indication of lack of demand. There is no basis for these assertions given that the MOJ has no mechanism in place to measure client demand or the drivers of demand. There is also no longer any real need to use matter start allocations as a budgetary control mechanism given the significant reduction in matter start usage post-LASPO.

There are no contractual limits placed on the number of certificated cases that a provider can take on, or the number of Legal Help cases that can progress onto a certificate, so why restrict a provider's ability to take on Legal Help work? It appears that the justification for the limits are practical - such as the capacity of a staff team and levels of client demand. However, it ought to be for providers to decide how many cases they take on as is the case with certificated work. Client demand across the board now outstrips the capacity of legal aid providers and these restrictions inhibit client access and prohibit growth. Supervisor ratios and requirements are sufficient to ensure that appropriate levels of work are undertaken by individual fee earners and departments.

If a provider organisation has an allocation of 100 matter starts, it can only ever do 150 cases in a schedule period regardless of demand. Why not allow providers to self-grant an uncapped number of matter starts at any point? If the work is there, and the firm has capacity, then they ought to be able to take on the work.

We received the following comments from a firm which demonstrates the issue:

'For example, 2 Mental Health lawyers wanting to start up their own firm, one with an office in Birmingham and one in London – they could currently only have 100 matter starts per office if they were both full-time fee earners. They wouldn't be able to get any bigger as they are now stuck at this level and can only increase by 50% of the 100 matter starts per office and this wouldn't be enough for another full time fee earner per office.

This is the case for us – we can't grow our Mental Health offering for this same reason and surely LAA want to increase the number of Solicitors carrying out this work?'

We are also aware that as providers determine merit and means eligibility at the outset of Legal Help cases the LAA may be concerned about compliance risks if there are no limits imposed on the number of Legal Help matters starts that can be opened in any given period. However the LAA has systems in place to check compliance through, for example, Contract Manager visits, NAO checks and the assessment of Escape Fee claims. The volume and value of Legal Help cases is also now so low that we would argue that any increase in risk is outweighed by the benefits of increasing access to advice for clients in need and in reducing the bureaucracy involved in checking how many cases fee earners are opening.

[Note: The LAA response to these points: The LAA has considered the comments raised by the consultative bodies, but there are currently no plans to make changes to matter starts for the 2024 Standard Civil Contract.]

Matter starts *- LAPG - This is a helpful clarification but really does not assist with the general problem with having a restricted number of matter starts.*

Please see our points about matter starts in our cover document.

[Note: The LAA response to this point: We have considered the comments made and have made a minor amendment to the provision to clarify the position in terms of the 50% increase.

To be clear, however, although providers can increase their allocation on any number of occasions within a schedule period their total allocation still cannot be cumulatively increased by more 50% when compared to their allocation at the start of that period. Providers would need to wait to the next schedule period to self-grant matter starts above the 50% limit.

In terms of the proposal to remove matter starts entirely, this is not a suggestion we can fully consider until we have seen the outcome of the review of civil legal aid.]

Please see our 'General Principles' document regarding the need for more flexibility on matter starts and allocations. Providers should not be prevented from claiming for work done if they go over their allocation. If the work is there, the provider ought to be able to do it. After all, to turn away clients who struggle to find a legal aid lawyer because you do not have enough matter starts is just an administrative barrier to access.

[Note – LAA response: We have considered the comments raised by the Consultative Body and this is not an issue for the contract. We do not intend to make any further changes to this provision at this stage.]

Use of residential property *- We understand the rationale behind this requirement but wonder whether it goes too far or does not cater for mixed-use buildings or premises? So, for example, some professionals now work out of a residential building that has been partitioned to enable them to deliver business services.*

[Note - LAA response: We do not intend to amend the provision, which is consistent with the Standard Crime Contract. If applicants (providers) have a query about whether specific arrangements constitute

a residential property they will have an opportunity to raise a query once the tender has launched, in accordance with the rules outlined in the Invitation to Tender.]

Serviced offices/permanent presence

LAPG - We are not convinced that these new provisions adequately deal with or provide the LAA with certainty on the three primary issues:

1. *Can clients make appointments?*
2. *Can clients access services when urgent help is required?*
3. *Does the premises offer privacy and client confidentiality?*

As any definition in the contract runs the risk of excluding a type of premises that is perfectly acceptable, perhaps the contact should set out the key requirements for any office space (such as those listed above) and then state that providers must satisfy the LAA that the office meets those requirements? Contractual provisions are too blunt and restrictive to cater for the complexity, variety and changing nature of current business practices.

This would have to include a provision (perhaps in the category specific provisions?) for an exemption for a permanent presence if it is clear that a provider does not meet clients in their office.

[Note – LAA response: The LAA has considered the comments raised, but do not intend to make any additional changes to this provision.]

LAA discretion

It has been said to LAPG by a previous LAA CEO that the LAA does not relish having discretion because it leads to challenges. Practitioners want a certain amount of certainty but would value a relationship with their contract managers and assessors where the LAA can allow some discretion.

We are aware that certainty is easier to manage by the LAA, and therefore easier for the NAO to audit against, but we refer to our comments in the opening paragraphs about payment for minor alleged breaches that occur in the hectic situations that arise in casework. Legal aid has become overly bureaucratic, with too many hurdles for clients and practitioners to overcome. Bureaucracy and risk are completely disproportionate considering the rates being paid. Private practitioners working for fees that are many multiples of legal aid hourly rates and fixed fees are subject to far less scrutiny and second-guessing than legal aid practitioners. Practitioners are hard-pressed delivering this service. The LAA needs to devise a way to ensure fair payment for work carried out where the practitioner has used all reasonable efforts to comply. We do not believe that this is easy but a more constructive and co-operative working relationship with the LAA would improve practitioners' working lives.

An example of an area where the LAA could soften its approach is set out above: small and non-material errors on the CW1 form or in the eligibility assessment which can result in a nil-assessment. This is another reason why providers are not doing legal help work as the risk of nil-assessment and extrapolation out-weigh the paltry fees that can be recovered. Practitioners can spend many hours on a case and then be nil-assessed at the end for a minor reason. Can the 'provider has acted in good *faith' idea be introduced? Sometimes it is impossible to gather all of the financial evidence required and often errors on forms have no bearing on whether a client is eligible for legal aid. The idea that fixed fees cover the work required to gather documents and check eligibility, along with all other necessary administrative tasks and legal work, simply does not hold up to scrutiny.*

***KPIs/rejection rates** - LAPG - The number of rejections may be outside the control of the provider. Bills may be rejected multiple times because counsel has failed to submit their bills at the same time as providers. There may also be inaccuracies in counsel's fees/hourly rates or lack of enhancement justification. In these situations providers' claims are rejected and subsequently impacts their KPIs. This is unfair when it is beyond the control of the providers*

[Note – LAA response: We do not intend to make any further changes to this provision at this stage.]

Please see our 'General Principles' document regarding the need to ensure that providers are paid if they act in good faith to commence work but the client does not complete or return the form.

Providers should not be penalised if there are minor errors or omission on the form which are not material to the question of whether the client is eligible for legal aid.

We have considered the comments raised by the Consultative Body and this is not an issue for the contract. We do not intend to make any further changes to this provision at this stage.

Payment for the means assessment and other administrative tasks

The assessment of means can be a lengthy and complicated process for providers, unless a client is on a passporting benefit, and even then, they have to produce bank statements to show that they are within the capital limit. We therefore ask that the LAA considers an amendment to the Cost Assessment Guidance to allow for payment for the time it takes to undertake a means assessment. This can of course vary, depending on the client's circumstances, so the time that it actually takes should be allowable. This is going to be particularly crucial as the LAA implements Means Test Review proposals. Along with means testing, we would suggest that the Cost Assessment Guidance (and CBAM) should be reviewed more generally to account for all tasks required to deliver an effective legal aid service. It was once thought by the LAA/LSC that fixed fees and hourly rates were sufficient to cover both legal and administrative elements of legal aid work, but this has long since ceased to be the case. The LAA does not have the power to increase fees, but it does have the power to amend guidance so that practitioners can claim for the work actually carried out to deliver legal aid services.

Question 4

What potential risks and opportunities do you foresee in the future for civil legal aid:
i) in general; and
ii) if no changes are made to the current system?

Please provide any specific evidence or data you have that supports your response.

The Westminster Commission summarised its findings as follows:

> 195. All of our witnesses described a palpable crisis in relation to the health and vitality of the legal aid workforce: perceptions of an ageing demographic, difficulty with succession planning, fewer juniors coming through, declining numbers of positions and an inability of firms to justify the costs associated with training the next generation given the current fee structure.

What are the risks?

Providers – with their unique skillset – will continue to leave the sector. Those who need training will continue to work within the legal aid sector as the need to qualify means that the lack of income will not deter them as much. Once experienced many will be unable to afford to continue to carry out legal aid work. Experienced practitioners in particular will continue to look for work outside legal aid. So legal aid work will be left to inexperienced practitioners who will work in organisations which will struggle to find supervisors and provide adequate training.

In brief, failures to recruit and retain are also compounded by the number of dedicated legal aid lawyers who are now at retirement age and leaving the sector. There can be knock-on difficulties if there is capital in the firm that they want to withdraw. Unless the remaining partners can meet that figure there can be disastrous implications for the firm.

The table in Annex C of the Call for Evidence (provider numbers) reflects this decline. See also Table 9.1 of the Legal Aid Statistics (Jul-Sep 2023) which demonstrate a sharp decline in providers, particularly from 2011-12 onwards. We have provided an overview of the decline in provider and case numbers for each category of legal aid in our response to Question 1.1.

Members of the public seeking advice on very important issues will find it hard to obtain advice and/or representation. Many are vulnerable and disadvantaged and those seeking advice on the actions of the state will feel even more alienated than they do already.

Examples

Every area of civil legal aid is designed to support clients through complex legal problems so an inability to access advice has potentially serious, real-world consequences for the client their family. There are multiple examples of these consequences, all of which the MoJ will be well aware of, so we provide just three such examples here.

In family law with the loss of most private family law advice, children are likely to be adversely affected by their parents' relationship breakdown. Solicitors would advise on contact arrangements and persuade parents to behave sensibly. That has been lost. An example would be if one parent walked away from the process if they cannot access legal representation.

In education, children who are excluded will not be supported through the process. There are very serious implications for families who are unable to secure adequate support for children with special educational needs. There are also consequences for schools which struggle to put adequate support in place for children with additional needs.

A lack of access to housing advice leaves tenants in particular unable to compel their landlords to carry our repairs and at risk of homelessness if they are unable to defend possession claims. This can shift costs to local authority homelessness and social services and health services where disrepair is prejudicial to health.

The MoJ identified in the consultation proposing to introduce LASPO[32] that reducing access to civil legal aid could lead to social unrest because of the lack of social cohesion that would arise when large numbers of people could not enforce their rights.

It is possible that we have already reached a stage where in most of the country there appears to be a legal aid system in place but in reality there is no advice and representation possible. For those with limited income we have a facsimile of justice, not justice.

[32] https://assets.publishing.service.gov.uk/media/5a7c811ae5274a559005a531/7967.pdf

LAPG

Question 5

What do you think are the possible downstream benefits of civil legal aid? The term 'downstream benefits' is used to describe the cost savings, other benefits to government and wider societal benefits when eligible individuals have access to legally aided advice and representation. Please provide any specific evidence or data you have that supports your response.

The downstream benefits of civil legal aid encompass a range of societal advantages, including cost savings and improved well-being for individuals. A growing body of academic literature and numerous empirical studies offer insights into these benefits.

Studies worldwide consistently show that the benefits of legal aid outweigh its costs. For instance, a joint report by the International Bar Association and the World Bank (2019)[33] highlights the positive cost-benefit analyses of legal aid services that have been conducted globally. Despite a lack of a similar research conducted by the Ministry of Justice in England and Wales, existing research underscores the downstream and wide-ranging benefits of civil legal aid. The Open Government Partnerships and Pathfinders commissioned a thorough literature review of empirical work assessing access to justice benefits (Weston 2022).[34] The Community Justice Fund also commissioned a study of the economic value of the advice sector (Leckie et al. 2021)[35]. There have been numerous global studies analysing economic benefits of civil legal aid and demonstrating clear positive impacts on both government revenues and commercial activity. Evidence suggests that each £1 of investment in civil legal services generates an average of £6.62 in commercial activity and savings for public services.

However, it is crucial to acknowledge the inner limitations that any cost-benefit study would face if such a study were to be conducted in the current circumstances. Given the underfunding of the sector and the severe mismatch between the demand and the supply for legal services, we would expect the current downstream benefits to not be as important as they would be if significant and necessary investments were made to the sector, starting with an increase in the legal aid fees. We therefore strongly advise the Ministry of Justice to retrospectively evaluate the impacts of funding cuts to civil legal aid, instead of relying exclusively on any measures of downstream benefits today. Please note that a PhD student is currently conducting an empirical study quantifying the impacts of LASPO on evictions and debt county court judgements (Uraz, Forthcoming)[36].

Outside the UK, research suggests civil legal aid can stimulate local economies by helping individuals secure benefits, work authorisation, and child support (for the American context see Abel and Vignola,

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[33] International Bar Association, World Bank (2019) *A Tool for Justice. The Cost-Benefit Analysis of Legal Aid,* World Bank Group, available online at: https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf

[34] Mark Weston (2022) "The Benefits of Access to Justice for Economics, Societies and the Social Contract. A Literature Review", Open Government Partnership and Pathfinders: https://www.opengovpartnership.org/documents/the-benefits-of-access-to-justice-for-economies-societies-and-the-social-contract-a-literature-review/

[35] Clare Leckie, Rebecca Munro and Mark Pragnell (2021) "Defending the public purse: The economic value of the free legal advice sector", Report for the Community Justice Fund, available online at https://atjf.org.uk/wp-content/uploads/2021/09/Defending-the-public-purse-The-economic-value-of-the-free-legal-advice-sector-September-2021.pdf

[36] Juliet-Nil Uraz (Forthcoming), "The Impacts of Reduced Access to Civil Legal Assistance: Evidence from England and Wales", PhD thesis, London School of Economics.

2010[37]; Prescott, 2010[38]). Similar benefits could be extrapolated to the British context, where legal aid may assist vulnerable households in accessing entitled benefits, preserving employment, and preventing homelessness. For instance, practitioners reported in previous calls for consultation that many housing law issues originate in a benefit issue (see for instance the Young Legal Aid Lawyers Response to LASPO Review, 2018). Legal aid clients often do not receive all the benefits they are entitled to partly due to the migration to Universal Credit and the extreme complexity of the welfare benefit system. Policy in Practice estimated in 2023 that low-income households in the UK leave £18.7 billion in benefits unclaimed annually (Clegg et al., 2023).[39]

We believe that from this perspective, civil legal aid not only aids in income maximisation but also promotes a more efficient allocation of funds to vulnerable populations. Legal aid providers often inform clients about unclaimed benefits and guide them to relevant support services. For instance, in possession proceedings cases, legal aid providers are very likely to inform their clients facing rent arrears that they can apply for Discretionary Housing Payment or benefit from the Household Support Fund. Moreover, legal aid providers may not only directly inform their clients about their likely eligibility for benefits but also accompany them and/or signpost them to other advice providers, working in partnership with the advice eco-system to ensure that extremely vulnerable households access the necessary support. This holistic approach can alleviate financial burdens on local authorities and ensure resources reach those most in need.

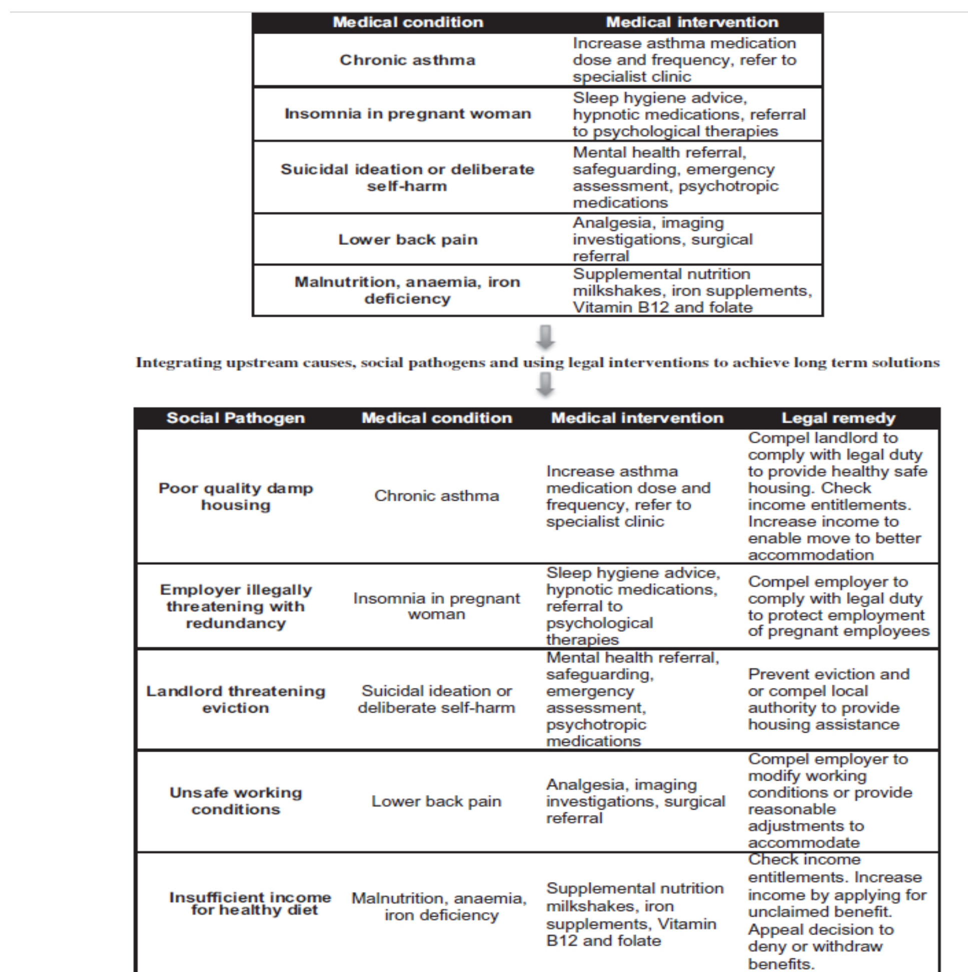
Moreover, civil legal aid can positively impact individuals' physical and mental health. Studies indicate a bidirectional relationship between legal problems and health outcomes, with legal issues exacerbating health problems and vice versa. The World Justice Project estimated in 2018 that one in three people suffered from physical or mental health as a consequence of their legal problems. Legal needs surveys report a high level of stress, anxiety, depression and physical health difficulties among households with social welfare legal problems (Organ and Sigafoos, 2018[40]; YouGov, 2019[41]). Moreover, legal problems have been shown to play a key role in exacerbating health inequalities (Genn, 2019)[42].

Such causal relationship between legal problems and morbidity is especially acute when it comes to housing quality and security, domestic violence or immigration (Tobin-Tyler et al., 2011[43]). Repeated and sustained exposure to stress have direct effects on high blood pressure, development of diabetes and ischemic heart disease (McEwen, 2000[44]), and indirect effect on health status through its influence

[37] L.K. Abel and S. Vignola (2010), “Economic and Other Benefits Associated with the Provision of Civil Legal Aid”, *Seattle Journal for Social Justice,* Vol. 9, Issue 1, pp. 139-167.
[38] J.J. Prescott (2010) “The Challenges of Calculating the Benefits of Providing Access to Legal Services”, *Fordham Urban Law Journal,* Vol. 37, No. 1, pp.303-346.
[39] Clegg et al. (2023) “Missing out: £19 billion of support goes unclaimed each year”, Policy in Practice, report available online https://policyinpractice.co.uk/wp-content/uploads/Missing-out-19-billion-of-support.pdf
[40] James Organ and Jennifer Sigafoos, (2018) “The Impact of LASPO on Routes to Justice” Equality and Human Rights Commission Research Report 118.
[41] YouGov (2019) “Legal Needs of Individuals in England and Wales. Technical Report 2019/20. A report jointly commissioned by and undertaken on behalf of The Legal Services Board and The Law Society”, available online: https://legalservicesboard.org.uk/wp-content/uploads/2020/01/Legal-Needs-of-Individuals-Technical-Report-Final-January-2020.pdf
[42] H. Genn (2019) ‘When Law is Good for Your Health: Mitigating the social determinants of health through access to justice’, *Current Legal Problems*, cuz003, available online: https://academic.oup.com/clp/advance-article/doi/10.1093/clp/cuz003/5522522?guestAccessKey=d8713ace-acad-4b01-8d1e-662209632ba4
[43] Elizabeth Tobin Tyler, Kathleen N. Conroy, Chong-Min Fu and Megan Sandel (2011) “Housing: The Intersection of Affordability, Safety and Health”, in Tobin Tyler and Lawton (eds.) *Poverty, Health and Law. Readings and Cases for Medical-Legal Partnership,* Carolina Academic Press.
[44] Bruce S. McEwen (2000), ‘Allostasis and Allostatic Load: Implications for Neuropsychopharmacology’, *Neuropsychopharmacology*, Vol. 22, No.2

on health risky behaviours (Adler and Newman, 2002[45]; Mullainathan and Shafir, 2013[46]). Legal problems triggering stress-related ill-health have also been shown to lead to a higher number of consultations with health care professionals (Balmer and Pleasence, 2018[47]). Legal assistance, by contrast, can alleviate stress and improve overall well-being by directly or indirectly improving health outcomes. Genn (2019) summarised these pathways in the form of the flowchart reproduced below (Figure X). However, comprehensive studies measuring the overall health benefits of civil legal aid, and the economic effects on the NHS, are still lacking.

In summary, civil legal aid offers downstream benefits that extend beyond mere cost savings. By facilitating access to entitled benefits, preserving housing stability, and improving health outcomes, legal aid plays a vital role in promoting societal well-being and economic prosperity, while also upholding the principles of access to justice, legal empowerment, and trust in institutions. Recognising the broader impact of legal aid on legal confidence, awareness, and capabilities is essential for the Ministry of Justice to fully appreciate its significance in maintaining the rule of law and ensuring equality of opportunity for all members of society.



Medical condition	Medical intervention
Chronic asthma	Increase asthma medication dose and frequency, refer to specialist clinic
Insomnia in pregnant woman	Sleep hygiene advice, hypnotic medications, referral to psychological therapies
Suicidal ideation or deliberate self-harm	Mental health referral, safeguarding, emergency assessment, psychotropic medications
Lower back pain	Analgesia, imaging investigations, surgical referral
Malnutrition, anaemia, iron deficiency	Supplemental nutrition milkshakes, iron supplements, Vitamin B12 and folate

Integrating upstream causes, social pathogens and using legal interventions to achieve long term solutions

Social Pathogen	Medical condition	Medical intervention	Legal remedy
Poor quality damp housing	Chronic asthma	Increase asthma medication dose and frequency, refer to specialist clinic	Compel landlord to comply with legal duty to provide healthy safe housing. Check income entitlements. Increase income to enable move to better accommodation
Employer illegally threatening with redundancy	Insomnia in pregnant woman	Sleep hygiene advice, hypnotic medications, referral to psychological therapies	Compel employer to comply with legal duty to protect employment of pregnant employees
Landlord threatening eviction	Suicidal ideation or deliberate self-harm	Mental health referral, safeguarding, emergency assessment, psychotropic medications	Prevent eviction and or compel local authority to provide housing assistance
Unsafe working conditions	Lower back pain	Analgesia, imaging investigations, surgical referral	Compel employer to modify working conditions or provide reasonable adjustments to accommodate
Insufficient income for healthy diet	Malnutrition, anaemia, iron deficiency	Supplemental nutrition milkshakes, iron supplements, Vitamin B12 and folate	Check income entitlements. Increase income by applying for unclaimed benefit. Appeal decision to deny or withdraw benefits.

Figure X: Biomedical model and integrated service delivery model compared (reproduced from Genn, 2019).

[45] NE Adler and K Newman (2002), 'Socioeconomic disparities in health: Pathways and policies. Inequality in education, income, and occupation exacerbates the gaps between the health "haves" and "have-nots"', Vol. 21, No. 2 Health Affairs 60, 65

[46] S Mullainathan and E Shafir (2013), *Scarcity: Why Having Too Little Means So Much,* Macmillan.

[47] N. Balmer and P. Pleasence (2018) "Mental Health, Legal Problems and the Impact of Changes to the Legal Aid Scheme: Secondary Analysis of 2014-2015 Legal Problem Resolution Survey Data"

QUESTION 6 - Fees

"The Review aims to ensure that civil legal aid offers a financially viable business option for legal aid providers (both private and not-for-profit) and is an attractive career option. This question seeks views on the incentives created by the structure of the current fee system.

Question 6.What are your views on the incentives created by the structure of the current fee system?

6.1 Do you think these support the effective resolution of problems at the earliest point?
6.2 How could the system be structured better?

Please provide any specific evidence or data you have that supports your response and any views or ideas you may have on other ways of payment or incentives."

Question 6

We are pleased that RoCLA aims to ensure that civil legal aid offers a financially viable business option for providers and is an attractive career option. At present practitioners struggle to manage on legal aid rates and it is hard to recruit and retain people because of low wages and the long hours that are necessary for economic survival. Stressful working conditions are part and parcel of civil legal aid work because of the need to carry a heavy caseload and because of the number of clients whose circumstances are intolerable. The impact of poorly functioning civil courts adds another layer of pressure.

In the response to Question 7 we refer to numerous reports which cover the civil legal aid scheme. The recent National Audit Office report[48] is particularly compelling on fees – para 13:

> *"Civil fees have been frozen since 1996, then MoJ reduced them by 10% between October 2011 and February 2012. In real terms, civil legal aid fees are now approximately half what they were 28 years ago. MoJ has only recently begun to review civil legal aid fees as part of its wider review of the system and has not committed to proposing changes to specific fees following this (paragraphs 2.21, 3.7 to 3.9, and 3.13)."*

We find it hard to identify "incentives" in the present system because the fees are so low and bare no relation to the cost of delivering complex, specialist legal services. We have therefore set out our analysis of and provided feedback from practitioners about the current fee structure. will have to answer this question simply on the basis of the structure of the current fee schemes.

When referring to Legal Help work we feel it is necessary to set out the low fixed fees. These are the fees for the entire case and are based on lower hourly rates than available to many high street firms and well below the hourly rate in City firms. We note that there may be changes soon for Illegal Migration Act cases, but even those rates fall well below the fees charged in all other areas of private civil work.

[48] https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf

Category	Fixed fee	Escape fee
Actions Against the Police	£239	£717
Clinical Negligence	£195	£585
Community Care	£266	£798
Debt	£180	£540
Education	£272	£816
Housing	£157	£471
Miscellaneous	Varies depending on area ASBIs - £157 (same as housing) Employment - £207 PI - £203 All other matters - £79	 £471 £621 £609 £237
Public Law	£259	£777
Welfare benefits	£208 (standard fee)	n/a

The Civil Legal Aid (Remuneration) Regulations 2013 set out the complex fee structures for family, immigration and mental health.[49]

To illustrate the complexity of the fees scheme please see the table[50] provided to us by costs specialist Paul Seddon, who is on LAPG's Advisory Committee and is a member of the Association of Costs Lawyers (ACL). Please note that this document has been included to show the dizzying number of different fees and therefore the combined impact of low fees and complex fee schemes.[51]

There are three main issues:

Low hourly rates

The MoJ is well aware that civil legal aid rates have barely changed since they were set in 1994, increased by £1.00 in 1996, and then reduced by 10% in 2011. We are not aware of any analysis that demonstrates that the 1994 fees were set at sensible, commercially viable levels.

A practitioner in London noted the disparity between legal aid hourly rates and the Guideline Hourly Rates, and said this about non legal aid rates:[52]

> *"We tend to get the standard rates for solicitors in zone 3 in London – from £138 to £301 ph. Obviously, recovery of inter partes costs is what keeps us afloat."*

A member of LAPG's Board is winding down her firm. She commented at The Law Society roundtable discussion on 29.01.24:[53]

> *"Recruiting is so difficult – trainee grants are only a sticking plaster. 1994 was the last time fees went up and then there was a ten per cent reduction (in some areas). Inflation is a key area. If the review comes up with e.g. a proposal of 5% that will not ensure a future – the figure needs to be higher. Only with a reasonable increase can the fee structures be considered."*

[49] https://www.legislation.gov.uk/uksi/2013/422/schedule/1#commentary-M_F_af0cdb43-27fd-40aa-f699-86a4b7f1d1c4
[50] http://lapg.co.uk/wp-content/uploads/Civil-Legal-Aid-Certificate-Rates-Fees.pdf
[51] This document must not be used by practitioners as a reference material and all fees should be taken from primary LAA or MOJ source material.
[52] https://www.gov.uk/guidance/solicitors-guideline-hourly-rates#london
[53] For an explanation of the scope and purpose of the roundtable meetings, see: https://www.lawsociety.org.uk/topics/legal-aid/join-a-roundtable-on-civil-legal-aid-reform

A senior practitioner outlined the salary pressures organisations face:

> *"Using the national living wage (NLR) – and based on a 39 hour week would be £21,131.76 per year in straight payroll costs. That would be minimum wages for all full time even without special training, which gives a base level of pay for anyone if they are 23 years or older (although note that this NLW rate will apply to anyone over 21yo from this year. That's a lot higher than costs used to be and it means that untrained staff are now much more expensive than they might have been years ago. Trainees are much more expensive than they once were too. And then you have to pay solicitors a wage that is commensurate with their training as they have to pay off student loans etc.*
>
> *Employer cost calculators back up the theory that whatever someone's wages are – they cost the business twice as much in other add on fees like Employers NI, pension contributions, office costs, support costs, supervision, PC fee, etc.*
>
> *Minimum trainee recommended (no longer prescribed mainly because I think by mid 2000s it was clear trainee wages couldn't be prescribed with legal aid rates so low) - for training contract now is £26,068 inside London and £23,122 outside London. That recommended minimum salary for out of London is actually not much different from the NLW full time rate. So people who are dealing with large volumes of new enquiry calls for example (which is completely unpaid) will cost the business almost the same as a trainee. Without some way of senior fee earners monetising their skills at a higher rate, it will not be possible to cover costs of non fee earning or junior fee earners.*
>
> *Staff costs are not just about wage demands and the recent cost of living crisis but also about government policies forcing up staff costs (for good public policy reasons). It isn't just passive inflation. They have imposed clear increases in direct costs on solicitors but without accepting that means they need to pay more for it. That's irrational. The lower age threshold that will come in for NLW shortly will further hit firms that might have been utilising younger staff who are fresh out of university or those on a sandwich course who might be spending a year in a law firm for experience as a way of minimising these direct costs."*

Fixed fees are not adequate following LASPO and are based on anachronistic hourly rates

Fixed fees were brought in based on the hourly rates at the time so the basis on which they were calculated has not been adjusted for decades.

Furthermore when fixed fees were brought in the argument was that there would be 'swings and roundabouts' i.e. that some cases would be completed below the fixed fee and that would balance the cases that would be above the fixed fee. When LASPO was introduced a lot of the shorter cases e.g. in housing (of which there had not been many) were taken out of the scheme and that made the de facto hourly rate paid even lower.

When the escape fees threshold of three times the fixed fee was introduced, it was pointed out that many cases would remain within the fixed fee and would not reach the threshold. If cases fall short of the escape fee threshold, but are well above the fixed fee, then in effect practitioners are not working at the hourly rates, but often for as little as £15-20 per hour.

On escape fee thresholds, The Law Society response to the 2024 Standard Civil Contract consultation noted that:

"We are aware that the Controlled Work fixed fee escape threshold has been reduced to 2 x the fixed fee in the Asylum and Immigration category, and we can see no reason why this should not be implemented across all the categories. Post-LASPO the fixed fee landscape changed significantly because of the restrictions in scope which has limited wider initial legal advice. This means there are far fewer instances of quick one-off advice cases which can offer an advantage to providers by having a value below the fixed fee level. Given change of the post-LASPO case profile to more complex time-consuming matters, a far higher proportion of Controlled Work cases exceed the fixed fees. Reducing the escape fee threshold would go some way to mitigating this disadvantage for providers. We are aware that some providers do not claim escape fees even where the escape threshold has been exceeded. This is because of the additional administrative complexity of submitting these claims, so we also suggest that the escape fee claims process should be simplified. We should also emphasise that we are not suggesting this change as an alternative to fixed fee increases which we regard as fundamental to civil legal aid sustainability."

When hourly rates and fixed fees are lower than the cost of delivering services, it means that providers are operating at a loss and that practitioners have no choice but to be selective about the types of cases that they can afford to take on. The Law Society has published guidance on rejecting un-remunerative criminal legal aid work[54], reflecting the complex interplay between solicitors' obligations to their clients, their regulatory requirements and compliance with their legal aid contract.

The impact of the level of WIP on cash flow

The lack of payments on account are yet another disincentive to carrying out legal aid work. If carrying out private paying work, where hourly rates are much higher, clients will be asked to pay a sum upfront to commence work. At stages the work is billed and the money transferred from client to office account. There is therefore prompt and regular payment. Compare legal aid work, particularly Legal Help work, where payment may not be claimed until after the case concludes. This could be one or two years or in some cases even longer. Ironically for immigration providers, delays at the Home Office in resolving cases is a major factor.

One practitioner in Birmingham flagged up another issue related to fees and retention:

> *"We are also being hit by a double whammy in terms of retention. We have NO grade B fee earners. We have lots of grade As who are absolutely committed to legal aid work. We have no difficulty recruiting trainees. Once they have a year or so's post qualification experience under their belts we lose them to firms who can pay them twice what we can. So we have nobody to delegate work to. We are criticised by opponents, in cases where we win and are awarded IP costs, for using grade A fee earners to do Grade B work, so we end up being paid less for it."*

[54] https://www.lawsociety.org.uk/topics/criminal-justice/rejecting-un-remunerative-publicly-funded-criminal-work

LAPG

Question 6.1

Do you think these support the effective resolution of problems at the earliest point?

A major problem in resolving legal issues at the earliest point is the lack of legal advice available in the early stages of a case – a specific decision made by the government when bringing in LASPO. There was much discussion when the LASPO bill was proceeding through Parliament about it being better to have a fence at the top of the cliff rather than an ambulance at the bottom but sadly the government proceeded to take away early legal advice from many parts of the legal aid scheme. The then Minister argued that advice agencies would be able to see clients. The Opposition explained at length that this was unlikely to be adequate. Years of austerity, local authority cuts and pressures on philanthropic funders have made the advice sector even less able to cope with the numbers seeking assistance, either because they are overwhelmed with numbers of clients and/or they do not have the specialised knowledge to assist.

This has also meant that practitioners can only assist on a limited number of issues and not deliver a holistic service. At one time providers had 'tolerance matters' that meant they could take on a few cases outside their contract. Now they are restricted by scope limitations and since LASPO much of the expertise to assist with linked legal issues has been lost.

And of course the low fees mean that it is hard to find practitioners to take on work even when it is within scope.

Furthermore, it is possible that the drive towards having junior practitioners carrying out legal aid work may mean that cases which a senior practitioner would have the expertise and experience to resolve promptly are taking longer to reach conclusion.

Two of the findings of the Westminster Commission were that the government should:

- Overhaul fee schemes
- Bring early legal advice back into scope so as to resolve the issue at the earliest possible stage. This benefits both the client and the taxpayer and is ultimately cheaper.

A practitioner summarised this very succinctly:

> *"Bringing back early legal advice reduces [the] chances of cases coming to court and promotes early resolution. Rates need to be effective so that people can get a solicitor to get early legal advice."*

The removal from scope of private family also meant that practitioners were not providing advice about alternative dispute resolution such as mediation services and thereby diverting cases away from litigation. Mediations declined from 15,357 in 2011/12 (pre-LASPO) to 8,438 in 2013/14 (post-LASPO), and mediation starts continued to decline for the following six years. A practitioner said:

> *"Removal of early legal advice means that sensible advice on mediation has gone and it incentivises litigation."*

LAPG

Question 6.2

How could the system be structured better?

a. Introduce realistic hourly rates and review them regularly

We strongly recommend that the MoJ introduces an immediate increase to all civil legal aid fees, at least in line with inflation, while further urgent work is carried out to set commercially viable rates.

Practitioners who have been carrying out civil legal aid work for several decades remember that representative bodies would meet with the MoJ equivalent annually to discuss fees. Many cannot remember when fees were last increased and a large proportion of current providers have only ever experienced dispiriting fee cuts during their career.

One practitioner told us that:

> *"I've worked for the firm since I was 16 in 2002, no pay rises since I started although they did change from hourly rates to fixed fees."*

At The Law Society roundtable on 29.1.24 an LAPG Advisory Committee member from a large immigration firm fed back to the MoJ along these lines:

> *"There are NO INCENTIVES. The scheme has a huge flaw – inflation. The structure of the current fees does not take into account inflation. Gas, electricity, professional insurance, staff pay rises. After LASPO there was nothing in the scheme to force the MoJ to consider payment rates. There were tiny increases in a few discrete areas. So the effect is organisations have to do less legal aid. Private work used to be under 10% at our firm and is now 50%. The MoJ need to increase by the rate of inflation. Compare fixed recoverable costs – last year it was agreed that these must increase as well as the guideline hourly rates – both went up with SPI. Judges took responsibility for increases in accordance with the Services Provider Index. If this is not addressed, forget any other changes."*

A managing partner confirmed that inflation is a huge issue. She worked as a school leaver 21 years ago – since then there have only been a couple of increases. She calculates that in real terms there has been a 49% decrease. They cannot retain staff as they expect gradual increases in their salary. For their well-being they cannot cope with the fees they need to generate. Staff are responding to emails late at night. And they struggle to appoint a barrister – they often have to accept a junior. The client may be unhappy and then they may have a complaint. They are not sure that they can keep doing legal aid work and have dropped private family work. A particular concerns is when cases are stuck in between fixed fee and the escape fee funding they can lose thousands of pounds of work.

Another practitioner agreed and is concerned that things have been left for too long. In Community Care and Court of Protection areas of law there are not enough practitioners. So many people cannot find a solicitor the system has collapsed. Her view is that the MoJ is approaching it too late.

Another practitioner was very clear:

> *"Whatever the cost of this Review is – the answer is very simple. Since April 2021 his firm has lost 20 solicitors – 15 trained there and 16 left legal aid altogether. Every time a solicitor you have trained leaves, you lose so much – training, relationship with clients, what they could*

> *pass on in future – they are going to do private work, going to the CPS, they all have transferable skills."*

Another major blow with fees was when a cap was imposed on the level of enhancements that practitioners can claim.

b. If fixed fees, base them on realistic hourly rates and review regularly

If the MoJ decision is that an hourly rate solution is not acceptable then how should the fixed fees be calculated?

Some practices do like the simplicity of claiming fixed fees but only if they are an adequate fee for the work carried out.

The LAA has a certain level of data about the amount of work involved in fixed fee cases. However it needs to review that data after discussions with providers because those reporting work on fixed fee cases will not necessarily record as assiduously as if making a claim based on hourly rates.

We are concerned that the process for calculating commercially viable fixed fees will take a long time as we doubt that the MoJ has sufficient data to carry out this analysis at present. Urgent action is required to ensure providers are able to undertake these cases. One option to mitigate the impact of delay would be to allow providers to claim under hourly rates for a period of, say, two years to enable the MoJ to gather accurate data about average case lengths. It must be noted however that even after gathering data on which to base fixed fees, there will need to be regular reviews of average case lengths because fees will need to be uprated over time as court systems, legal procedures, technology and other contributing factors change. We would welcome the opportunity to work with the MoJ on a research project to ensure that fixed fees are commercially viable.

c. If fixed fees, ensure that the escape fee threshold is reasonable

This is from LAPG's response to the Standard Civil Contract consultation:-

"Escape fee threshold

The current escape fee regime has had a number of extremely detrimental unintended consequences as it essentially forces providers to carry out unpaid work. Many Legal Help cases fall down the gap between the fixed fee and the escape threshold and, as a result, providers cannot recover the costs that they have incurred. This limits the amount of Legal Help work that they can do and has a direct influence on which types of cases can be taken on without generating an unsustainable loss for providers. It is not a case of lack of demand. Legal Help work is already completely unsustainable as the fees are so low. But to force providers to carry out unpaid work just renders many types of cases wholly unsustainable. Providers should be paid a realistic hourly rate across the board for the work that they do. However, if fixed fees are imposed, at the very least the escape fee threshold should be reduced to 2 x fixed fee. This has been done in immigration work and should now be applied to all areas of Legal Help.

Legal Help fixed fees were set many years ago and based on data about average case lengths and costs at the time. The escape fee mechanism was introduced to recognise that some cases fell well outside of the average case length and therefore limiting a claim to the fixed fee would represent a significant loss to the provider. However the case mix at the time was entirely different to the case mix now as a

result of LASPO changes which removed many of the shorter or less complex cases from scope. The 'swings and roundabouts' principle used to justify fixed fees is long past being relevant given the changes to scope imposed by the LAA, and the position has been compounded by depreciation of the real-term value of fixed fees that have not been adjusted in line with inflation. It is quite extraordinary to think that the LAA expects providers to work for fees set in 1996 that were then cut across the board in 2011.

The LAA has assessment mechanisms to ensure that the work being carried out is reasonable and proportionate, but the escape fee regime is not the way to do that. Some of the unintended consequences are highlighted below in comments from a provider:

'The escape fee threshold is too high. It is one of the reasons that we limit the amount of legal help work that we do. One of our partners is a peer reviewer and tells me that the vast majority of organisations that he has reviewed open a legal help file, send the client a letter of advice, and then close the file! Those of us who don't do that get caught between the fixed fee and the escape fee threshold. When it was a requirement to do a minimum number of matter starts we lost £30k per year in written off legal help work which was over the fixed fee but short of the escape fee threshold. We still lose, but not to that extent, because we will only take on legal help work which may lead to a certificate e.g. homeless reviews/JRs. The LAA talked about "swings and roundabouts" with the fixed fee scheme but the number of files that we have billed where the work done was less than the fixed fee, you could count on the fingers of one hand. If the threshold were reduced to twice the fixed fee that would help. It would also encourage those who "open and close" files to actually do some work on the case!"

d. Enhancements for senior lawyers and complex work

Enhancements act as an incentive so that senior lawyers will take on more complex cases. This seems self-evident. Enhancements are needed to ensure that experienced practitioners are rewarded fairly. The current procedure for claiming enhancements should also be reviewed so that they there is consistency in when they are granted.

As LAPG set out in its response to the Standard Civil Contract consultation

"For example the Family Specification for the 2024 SCC sets out that:

Panel membership enhancement in Family cases

7.23 Where the work is done by a member of a relevant panel:
(a) the threshold test at Paragraph 6.13 shall be deemed to be satisfied in respect of that work; and*
(b) the minimum level of enhancement allowed in respect of that work shall be 15%.

7.24 In Paragraph 7.23 "relevant panel" means:-
(a) the panel of Resolution Accredited Specialists;
(b) the Law Society's Family Law - Advanced Accreditation Scheme; or
(c) the Law Society's Children Law Accreditation Scheme.

** the 'Threshold Test' for enhancements on hourly rates claims"*

See para 2.3.8 for the rationale for introducing an uplift for work carried out by a supervisor.

We believe that where appropriate all work carried out by practitioners who are panel members or have other enhanced membership or accreditation should be subject to an automatic enhancement. LAPG supports the proposal for automatic enhancements for panel membership for areas other than family and enhancements for supervisors. The need to have experienced practitioners in organisations is recognised by the MoJ but unless there is a reasonable level of payment then his places another burden on practices."

A practice manager from Nottingham fed back to us:

> *"We have constant issues with enhancements and them not being consistently applied across the Board and are frequently negotiating with case managers or appealing to the ICA in relation to enhancements.*
>
> *It is time consuming to do so and costly with regards to the amount of fee earner and management time it takes to deal with these issues."*

A practitioner in London:

> *"In addition to the 10% hit we had on hourly rates for civil (I work in housing - I don't know if it included family etc), we also had the cap on enhancements introduced. So county court work could no longer get 100% enhancements. I used to get 70% enhancements on my county court work pretty regularly before that because a lot of work was urgent etc. The work is no less urgent. The complexity of the work has increased if anything but the cap on enhancements means I will get less, and that is lower % on a lower starting hourly rate (max 50% of £63ph instead of 70% of 70ph in old money – a maximum uplift now of £31.50 per hour in comparison to the oft awarded £49ph uplift that was there before) so it is a bigger cut than it might appear on first glance. And given 50% is the max award now, it means that typically we are given 30 – 40% now."*

e. Pay promptly in all cases

Over the last two decades the MoJ, the LAA and their predecessors have failed to consider the impact of fee changes on cash flow – indeed practitioners have often expressed to us that they believe there is a lack of understanding in government of the cash flow issues hardwired into the legal aid scheme.

In the 2024 Standard Civil Contract consultation LAPG raised the issue of staged and interim payments.

"We believe that staged/interim payments should be introduced across all areas of Legal Help work in order to assist with sustainability. Within all categories there are cases which can continue on for long periods without any ability for the provider to be paid for the work until the end of the case. That places all of the risk of running a case on the provider both in terms of their work in progress and disbursements incurred as the case progresses. This does not happen with certificated work, and should not happen with controlled work as this deters providers from taking on cases which may last for long periods: they simply cannot afford to have fee earners working in this way.

The LAA is proposing to allow interim disbursement claims in education law cases and it is already possible to claim interim payments for work in progress and disbursements in inquest Legal Help work. We cannot see any justification for not extending this to all areas of Legal Help work. The payment mechanisms already exist within the LAA's processes."

f. The same arguments apply to expert fees

There should be increases in their fees and these should be regularly reviewed. There has been considerable feedback to the LAA ever since rates were set about the difficulty of obtaining experts at the rates set. Please refer to our response to Question 1.

g. Disbursements

It is a nonsense that where providers incur disbursements, they cannot in all cases claim them back immediately, especially as the contract requires prompt payment to third parties such as experts. Again from the LAPG 2024 Standard Civil Contract consultation response:

> *"We received the following comments from a firm in relation to community care work which demonstrates the problem:*
>
> *'[I]t creates an element of uncertainty because a case could go on for some time without us being able to obtain a POA or to know what the LAA is going to deem a reasonable cost at the end of the case'.*
>
> *At the very least, all contract areas should be able to make a claim for disbursements to enable compliance with contractual requirements to pay third parties (such as the requirement to pay third parties within 30 days set out in the para 3.3 of Standard Terms). The current anomaly leaves providers with an obligation to third parties such as experts without being able to recover those costs from the LAA for many months or even years. This is has a significant impact on cash flow and thus sustainability. It is also important for the quality of experts available on legal aid cases. Members report with concern the limited number of experts who are willing to act at legal aid rates."*

h. There are many disincentives in carrying out JR cases

Public Law Project's *How to Apply for Legal Aid Funding for Judicial Review*[55] runs to over 30 pages and amply illustrates this point.

i. Unintended consequences

In some categories of legal aid there are sub-sets of cases paid at a higher rate. This means that with the limited numbers of practitioners with the expertise and willingness to carry out civil legal aid work they can choose to work on case with more realistic remuneration e.g. Court of Protection work rather than Care Act challenges (in the Community Care category).

j. Standardise as many processes as possible to reduce unbillable time

Practitioners carrying out legal aid work before franchising and contracting would all be able to understand how legal aid cases in different areas were run because similar rules applied. Now the contract specifies differences between controlled work, investigative representation and certificated work and within the different areas of law.

Operating a legal aid contract absorbs a lot of management time. Can you get a certificate in this type of case? Should you proceed under Legal Help or Investigative Representation? Or apply for a

[55] https://publiclawproject.org.uk/content/uploads/data/resources/234/How-to-Apply-for-Legal-Aid-Funding-for-Judicial-Review_15_9_16.pdf

certificate? Can you claim this disbursement now or only at the end of the case? Can you claim profit costs now or later in the case or only at the end? What is the fixed fee in this case? Is it worth applying for the escape fee? Can the case be billed now? Are billing clerks needed because of the complexity of the billing? These are just a few questions to illustrate the point.

k. Make the whole system simpler – excessive amounts of unbillable time compounds the unviability of hourly rates and fixed fees

LAPG is so concerned about the amount of work involved in running legal aid contracts that it has obtained funding for a research project to measure how much non-chargeable work is generated by the legal aid scheme.

Non-chargeable tasks encompass activities that are necessary to fulfil obligations under a legal aid contract but without being eligible for remuneration from the Legal Aid Agency. This involves means-testing, supervision, auditing, training, billing, bundling, amongst a range of other tasks that are required to comply with the contract requirements and provide an effective service to clients.

The research project aims to quantify the time invested by legal aid providers in non-chargeable tasks generated by their legal aid contract(s). The data will help the MoJ to understand the inherent challenges in maintaining a legal aid contract, and provide further insight into the lack of sustainability.

l. Improve digital systems

As is set out in the "Use of Technology" section (Questions 14-16) re digital systems – CCMS, CWA and Bravo should be improved and all legal aid application forms and processes should be digitised rather than some schemes continuing to require paper forms.

Conclusion

The MoJ attended a roundtable held by The Law Society at which a practitioner told that she had been made redundant on five different occasions as firms shut down or closed their legal aid departments. As she said:

> *"So much incredible talent has been lost."*

We also refer to Annex C to the Call for Evidence and the reduction in the number of cases, even in categories unaffected by LASPO scope changes. If Annex C included pre-LASPO figures then the reduction in cases and providers would be more stark, as illustrated by the provider and case data we have included for each category of legal aid in our response to Question 1.1.

QUESTIONS 7-8 - Career Development and Diversity

These questions seek views on career development and how diversity of the profession could be increased. It is important for the sector to reflect the society it serves and make use of the best talent in society, so that members of the public can be confident in the legal services they receive. A more diverse sector also means a more diverse pipeline to the judiciary. The MoJ is eager to understand what more it can do to improve diversity in the context of civil legal aid practitioners.

Question 7

Is there anything in particular in civil legal aid that prevents practitioners with protected characteristics from starting and continuing their careers? If yes, how could this be addressed? Please provide any specific evidence or data you have that supports your response.

It is clear from the Westminster Commission[56], the LAPG Census[57], The Bar Council report *Running on Empty*[58], the Law Society 21st Century Project[59], the report from P A Consulting[60] and NAO report *Government's management of legal aid*[61] that there are a multitude of issues undermining the ability of legal aid providers to recruit and retain staff. As such we consider it important to set out these issues before tackling the question, because all of these issues will affect people with protected characteristics.

Although there is limited evidence it does seem that the legal aid sector is much more diverse than many other sections of the legal profession. The latest SRA survey on diversity does not break categories into legal aid work.[62] Page 82 onwards of the LAPG Census reports on the ethnicity and disability of those who took part in the survey:

> *"From the responses of 1203 individual participants currently in practice, the age distribution presents a range, with the highest percentages observed in the 41–50 (22.7%) and 51–59 (19.5%) age brackets. Gender distribution indicates a majority of female practitioners at 60.9%, contrasting with 38.3% males. White British individuals comprised the majority ethnicity, accounting for 77.4%, and a significant proportion (91.0%) report no disabilities. Of those who do not identify as White British individuals, 7.1% identified as Asian or Asian British, 2.8% as Black, African, Caribbean, or Black British, 4.7% as Mixed or multiple ethnic groups, and 8.0% responded as belonging to other ethnic groups.*
>
> *Of the 107 respondents who identified as having a disability, these were represented as follows: mental health conditions (24.3%) and long-term/chronic illnesses (43.0%). Deafness or partial hearing loss (5.6%), blindness or partial sight (5.6%), physical disability (15.9%), learning disability (9.3%) and learning difficulties/ developmental disorder (8.4%)."*

[56] https://lapg.co.uk/wp-content/uploads/The-Westminster-Commission-on-Legal-Aid_WEB.pdf
[57] https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid_Findings-from-the-2021-Legal-Aid-Census_Final.pdf
[58] https://www.barcouncil.org.uk/resource/running-on-empty-civil-legal-aid-full-report.html
[59] https://www.lawsociety.org.uk/campaigns/21st-century-justice
[60] https://www.gov.uk/government/publications/review-of-civil-legal-aid-provider-survey-report
[61] https://www.nao.org.uk/reports/governments-management-of-legal-aid/
[62] https://www.sra.org.uk/sra/equality-diversity/diversity-profession/diverse-legal-profession/

This extract from the Westminster Commission (Annex A) flags up many issues, commencing at paragraph 199:

199. One issue that became immediately apparent upon speaking with practitioners at different stages of their careers is how much more it now costs to qualify into legal practice than it did a generation ago. Several of our more senior witnesses commented on having entered the profession with minimal amounts of debt by today's standards. They spoke of qualifying earlier, the cost of living and house prices being lower and the profession providing a comfortable lifestyle at a relatively early stage of their careers.

200. By contrast, those junior practitioners starting now can expect to incur debts of between £50,000 and £70,000 depending on their undergraduate degree and postgraduate qualifications….
For those without family support to fall back on, the prospect of such little return on their investment is a daunting one.

'I did my law degree, after which I accepted a job as a paralegal with a view to a training contract. You are not offered security for a training contract but the firm say they will think about whether they will offer you one. I was one of 900 applicants for that position which paid around £17,000. My parents paid my LPC fees which I did at the evenings and weekends. I lived outside London and commuted in on an annual season ticket costing £4,000. I was working all hours of every day to get funding.'
Rose Arnall

205. Julie Bishop of the Law Centres Network told us that Law Centres used to have 80 or 90 applicants for each role advertised. Now law centres, even those in London, will be lucky to get five or 10 applicants. Law Centres do still take on trainees but the number is falling and there is a huge issue with retention.

206. This was echoed by Marcia Willis Stewart QC (Hon) of public law specialists Birnberg Peirce, who mentioned that two members of her team retired recently and the firm received only three applications to those roles. She told us that this would have been dozens a few years ago.

'We need to be able to retain and recruit staff. And at the moment there aren't any community care lawyers out there. We recruit and we train our own. I've taken on three trainee solicitors, and I'm very proud that they're now qualifying as community care and mental capacity solicitors. But you know, this isn't about me as one firm. This is about an entire system that needs addressing so that everybody who needs advice about these very fundamental issues is able to access it when they need it.'

210. We see similar patterns in the data around retaining staff…

213. We asked witnesses what they thought lay behind these figures. They each pointed to low fees leading to low salaries in legal aid work. Many reported losing juniors or colleagues to local authorities and the CPS where salaries are higher and there is a perception of more stability and a better work/life balance.

214. Publicly funded law is renowned for welcoming practitioners of every race and background. It is a rich and diverse community reflective of the clients that it serves and we saw this time and again in our evidence sessions.

215. However, despite this diversity, concerns in this area were threefold and pertained to both ethnicity and socio-economic backgrounds.

216. Turning first to financial barriers, many witnesses expressed concerns that the high costs of entry and low fee rates rendered it harder for those from less affluent backgrounds to make their living in publicly funded work. These are themes that we have explored elsewhere in this report, but we heard over and over again that those from poorer backgrounds are less likely to choose social welfare law because of the cost of qualification versus the rates paid for this work. Without an extra cushion of support, these individuals may also be less able to remain within the profession once they have joined it. More than one witness told us that the junior end of the profession was only open to those who could afford to work for nothing. All thought that the system as a whole would be poorer for the loss of those from broader socio-economic backgrounds.

217. While the sector was generally held to be an ethnically diverse one, certainly more so than in other areas of the legal profession, witnesses noted that in many instances BME members of the profession may also be those from less secure socioeconomic backgrounds and so less likely to be able to train and qualify into the legal aid sector and weather the first few years within it.

'The issues of huge debts, fees remaining static and an ever-reducing number of solicitors practising in legal aid really weigh against those who want to enter the profession. My additional worry is that as the legal aid Bar has a proud history of better representing BME communities than other parts of the Bar that this too could be lost. My experience coming to the Bar in debt is far different to that faced by young practitioners today.'
Marina Sergides

[Paras 218-219 – see later in this section]

220. The overwhelming consensus from the evidence that we heard throughout the Inquiry was that legal aid work and the rates payable are not financially viable for practitioners. What came across was that for so many the work is a vocation not just a career. However practitioners are forced to leave legal aid in order to make a more comfortable living and improve their work/life balance and wellbeing. Some practitioners remain in legal aid but choose to undertake more privately paid work in order to pay their bills and turn a profit.

'Firms are not managing. In family law firms are turning to more private work in order to balance. 80% of my team do publicly funded work. However, the spread of our income is 50/50. So, 20% that do private provide 50% of fee income. This is the only way we can survive.'

Jenny Beck KC (Hon)

LAPG's Census captured the responses of 1208 current practitioners who had established a career in legal aid – 175 students studying for their LLB, GDL, LPC, bar course or enrolled in the SQE who expressed an interest in pursuing a career in legal aid, and 255 former legal aid practitioners.

At pages 17-18, the Census report states:

> *"Student respondents considering a career in legal aid were given an opportunity to provide a number of further additional characteristics pertaining to their educational background. The majority of respondents completed their schooling in the UK and attended a state comprehensive school (Table A8).*
>
> *Of those practitioners who did and did not attend university, 38.5 per cent indicated that they experienced or were experiencing financial barriers towards qualifying as a legal aid practitioner, compared to 61.5 per cent who did not. The experience of financial barriers varied by principal role and by age.*

Open-ended responses provided by those who did and who did not report financial barriers identified a number of common difficulties. The top five most commonly mentioned difficulties are detailed in Table 2.3. As shown, the cost of study, training and qualification was the most widely experienced problem. Other common issues included being reliant on family support, being reliant on additional work and extra jobs, and being concerned about the low levels of remuneration in legal aid work. Respondents who reported 'other' problems cited not having appropriate work clothes, the lack of job certainty, and the requirement to self-fund the qualification process."

In their responses, students also reflected on the extent to which their backgrounds could create and worsen these financial barriers. Given that legal aid work does not pay as well as other areas of law, many students felt unable to pursue it because they simply could not afford to after incurring the costs of qualifying. According to one respondent:

> *'Legal aid work simply isn't as lucrative as non-legal aid routes. People in higher classes can sacrifice a dip in a pay check because their family can help, people in higher classes can sacrifice their summer to an unpaid internship at a legal aid firm because their family can sustain them financially over the summer. I simply can't do that. I must earn money in the summer and I have my enormous debts to pay off in the future.'*

Concerns over the viability of a career in legal aid were pronounced amongst those who already had financial concerns.

Financial barriers were both precipitated and exacerbated by the levels of debt that existing and prospective practitioners incurred during their education and training. There were different experiences of debt between current practitioners and students but both cohorts experienced it to some degree. Over the course of their legal education, over a third of practitioners indicated that they had accrued debt, while 61.6 per cent indicated that they had no debt. The majority of students studying for their LLB/GDL/LPC/Bar Course/SQE indicated that they did or would have debt at the end of their legal education.

Those surveyed also referred to the lack of training opportunities." [Pages 19 and 20]

When asked to provide an open ended response to why they did not train practitioners, organisations most often suggested that:

- *limited funding, capacity, resources, infrastructure and time impeded their capacity*
- *training practitioners was not cost effective or that they could not afford it,*
- *minimal capacity, the small or niche nature of the area in which they practised or their inability to offer relevant training*
- *insufficient resources and infrastructure,*
- *that they had no time to do so,*
- *they had no lawyers on staff or only offered mediation services*
- *a lack of funding,*
- *the impact of Covid-19 and the same number of organisations citing the difficulties recruiting.*
- *In contrast, 6.3 per cent of organisations indicated that they were currently trying to recruit trainees or that they had had some trainees in the past*

We would also refer to Social Mobility Reports in 2010, 2013, 2018 and 2022 from Young Legal Aid Lawyers (YLAL) and most recently *Overstretched & Unsustainable: a case study of the immigration and asylum legal aid sector*" (April 2023).[63]

YLAL's 2022 Social Mobility report (at page 25), which was based on LAPG census data, indicated that fewer students were being exposed to social welfare law as part of their undergraduate studies:

> *"Overall, however, half of respondents (50%) indicated that the lack of modules relevant to legal aid and the lack of career events and/or information provided about careers in legal aid left them feeling unprepared for a career in the field. This was expressed by one student as follows:*
>
> *...even if there are some events and pro bono opportunities, the [law] course is entirely angled towards commercial/private law...I believe social justice/legal aid is completely neglected by universities at an undergraduate level, and if you do not have the personal passion for it [to find] events, journals, [and] opportunities yourself, universities will not push you towards the legal aid world...'*
>
> *By extension, 23% of students explained that they only became acquainted with legal aid via pro bono, volunteer and/or clinical work, with 12.2% indicating that they lacked practical understanding of legal aid work in spite of having taken relevant modules. The Census findings indicate the perceived importance of modules relevant to legal aid as well as the availability of experiential learning opportunities, either by way of pro bono projects or clinical legal education, as a factor in supporting students towards their future careers in legal aid. When asked to explain 'what has been the most valuable aspect of your legal education to date for preparing you for a career in legal aid?' students noted the provision of 'specific modules' relevant to legal aid (43.1%) and 'pro bono/clinical/volunteer' work undertaken as part of their studies (42.2%)."*

Feedback from Members

The findings of the Westminster Commission and the LAPG Census are mirrored in our discussions with practitioners.

The low salaries in legal aid affect the ability to recruit and retain. Student debt was not something that affected the earlier generations of legal aid lawyers but now means that idealism cannot always be afforded. People have to pay rent, heat properties and eat. Rents in many cities are prohibitive, heating costs have increased which is particularly relevant if working from home and the cost of food has increased. If they cannot afford to pay for these basics, far less entertainment, on a legal aid salary then there is no option but to look for better remunerated work.

When considering the level of salaries, The Law Society has a recommended minimum salary for training contracts and qualifying work experience to be £26,068 in London and £23,188 outside London. This will be what legal aid practices look at but it is unlikely that many pay much more than this. Compare this with salaries in other parts of the legal sector which in November 2023 reported first year trainees in City firms could be on a salary of £60,000 in London and frequently over £30,000 outside London.[64] Newly qualified salaries outside legal aid practices increase even more.

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[63] Overstretched and Unsustainable: a case study of the immigration and asylum legal aid sector
[64] See for e.g. https://www.thelawyer.com/trainee-newly-qualified-salaries-uk-law-firms/

Once qualified there is little career structure and as experience is generally not rewarded by increased legal aid fees, there is no guarantee of increases in salary commensurate with experience. This explains why so many people leave legal aid work early in their careers to carry out private work or to work in organisations such as local authorities Public bodies will attract lawyers because of not only superior salary levels and career progression but also flexible working and pension schemes.

The lack of enhancements to reward senior practitioners is an important element.

There are limited areas of law and types of cases where can claim any enhancement. For example in mental health there are no enhancements at all. In Court of Protection work (under mental health or community care contracts) enhancements on non-routine work is offered at up to 100%, however it is more difficult for a very junior member of staff to justify higher enhancements by reference to expertise, for instance.

A practitioner in Yorkshire reflected:

> *“There is little consistency in how enhancements, particularly in VHCC cases, are applied by the Legal Aid Agency, which creates more work for practitioners in appeals and negotiations in order to justify higher enhancements on fees, and the outcome is not predictable.”*

A practitioner in Birmingham reflects on this:

> *“We have had two really bright trainees that we have got through to qualification with all the pulls on management time and supervision to become good practitioners, for both to leave for much higher salaries than we can afford to offer.”*

A practitioner in Stoke-on-Trent:

> *“In an area like Stoke-on-Trent a local issue is about the inability to recruit. This is clearly linked to the decline in providers (well, the decline in availability of Legal Aid altogether since LASPO). If there is no local market in these areas of law, then recruiting people especially to Immigration where they have to have OISC accreditation is almost impossible.”*

A practitioner in Bristol:

> *“I completely agree – recruitment, retention and training are huge issues.”*

An academic who runs a London law clinic confirms this:

> *“I would also agree recruitment is a huge problem. Students struggle to see a viable future in this profession (because of the money).”*

She went on to explain that many universities are not teaching social welfare law any more. And it has been well-documented that this is an issue with the SQE.

Another practitioner informed us that his firm were trying to train their own solicitors but it takes a long time.

A practitioner in Yorkshire observes that

> *"[R]etaining staff is not just about competitive salaries, but other perks and benefits a firm might offer to both make up for lower salaries compared to other areas of law, or bigger firms, and to make working for us more attractive in general. This all come at an added cost to the firm including bonuses, employee assistance programmes, wellbeing initiatives, social events, charity work and so on. A small firm on predominantly legal aid fees with tight profit margins as it is, is under pressure to compete with bigger firms who might have substantial private fee workstreams that can shoulder the bill burden."*

One of LAPG's committee members set out three different examples of how difficult it is to retain staff:

- *Solicitor apprentice scheme – low socio economic background – son of a refugee and wanted to be a legal aid lawyer. After 9 months said he cannot do legal aid because he would not be able to survive. He is now at a City Law Firm!! Now a lot of people come from wealthy backgrounds.*
- *Age – best legal aid supervisor – bought a home – mortgage rates went up and she now works for MoJ!*
- *Sex – women who come back from maternity leave – they have lost four supervisors who have moved out of legal aid – GLS, academia, charities because it is hard to have family commitments – can't do this once they have had a child.*

There have been a number of initiatives to attract people into social welfare law:

- Justice First Fellowships[65]
- The Social Welfare Solicitors Qualification Fund[66]
- Training period grant funding from the MoJ for HLPAS providers
- The Apprenticeship Scheme which pays for the SQE and training preparation course

While many practitioners that we spoke to observed that the sector as a whole was comparatively diverse, other concerns were raised in relation to protected characteristics. We include this excerpt from the Westminster Commission regarding race by way of an example:

218. Practitioners also cited concerns with the treatment of practitioners from ethnic minorities by court staff and the judiciary. The first of our oral evidence sessions coincided with the publication of barrister Alexandra Wilson's book In Black and White, which speaks of her experiences as a Black woman at the bar and the discrimination that she faces in court. Sadly, we heard from our witnesses that such comments and discriminatory remarks were not uncommon. Witnesses reported being mistaken for the client in criminal proceedings, or a relative in family proceedings. This behaviour has no place in our courts or our legal system.

219. Finally, it was noted that while much had been done in this area, and that the sector is diverse and multicultural, more work is needed. Natasha Shotunde of the Black Barristers Network shared with us research that the organisation had undertaken highlighting issues of diversity and progression within the profession. The Bar Standards Board reported that around 3.2 per cent of the Bar, 5.3 per cent of pupils, 3.4 per cent of non-QCs, and 1.3 per cent of QCs are from a Black/Black British background. This compares to around 3.4 per cent of the UK working age population. As of 1 December 2019, there were just over 1,000 QCs at the bar, three of whom were Black women and 18 were Black men. Ms Shotunde added that in the beginning of 2020, the news that six Black females

[65] https://jff.thelegaleducationfoundation.org/about/about-the-fellowship/
[66] https://clls.org/initiatives/swsqf.html

had taken silk provided a lot of hope for her. However, these numbers fell once more at the end of the year with only 14 BAME QCs appointed. She informed us that to her knowledge, only one of those individuals was Black. While it is true that those being made QCs now have been in practice for many years, our concern as a Commission is with the pipeline of talent currently coming through the profession and the barriers that they may experience in entering it. It is also our responsibility to continue to work towards a position where those reaching the higher echelons of the legal profession are more representative of the communities that they serve.

The number one concern however, is the economic viability of the work.

Many practitioners fed back to us about how tiring the work is and the high levels of stress because of high caseloads. As so much was taken out of the legal aid system by LASPO, the cases that are left almost invariably involve disadvantaged people who are in a crisis situation. They are stressed. They often have multiple problems, only some of which can be addressed. Due to low fees, caseloads have to be high to ensure that an organisation survives.

Add to this that the nature of the work that often requires civil legal aid, can be emotionally draining at best, causing mental distress at worst even to the most experienced practitioners. That is not an inviting proposition for entrants into the industry when the financial compensation for doing it is low. Further, there is likely to be a significantly lower salary ceiling for legal aid practitioners even at the height of their careers, which in increasingly uncertain financial times, does not assist in advertising the work to prospective entrants. It has to be a vocation for people, for who making money is not their primary motivator.

One practitioner in the south west said:

> *"The rates are so poor that legal aid firms cannot afford to supplement training and cannot afford the reasonable adjustments necessary for social inclusion and for help and support and training, they focus on what they have to do from a regulation perspective."*

So if a person who is for example physically disabled or is neuro-diverse and they seek allowances e.g. not to work long hours under lots of pressure, the organisation will find it hard to make the reasonable adjustments that are needed. This may form a further barrier to undertaking social welfare work. It is these individuals with protected characteristics that we want to encourage to join the profession as their lived experiences may enrich the understanding, advice and the representation that they are able to give to their clients.

Feedback from one of the roundtables run by The Law Society encapsulated this: teams are all under so much pressure and there is a conspicuous lack of time to support people properly. This makes it hard to improve diversity. For example when colleagues are stressed and working long hours how do you make reasonable adjustments to help those with additional needs or disabilities? Are physical adjustments something that the LAA are able to help with at court? Further resources are needed within the system to support diversity. That may be additional time, fewer billing hours or physical support. When funding has been pared to the bone in this way, where is this support going to come from?

County Courts

Another issue is that some courts are not accessible. The Justice Committee's *Inquiry on the work of the County Court* amid capacity and resource concerns looked at a number of issues including[67]:

- The ways in which the County Court engages with litigants in person, and how this could be improved;
- The accessibility of the County Court for people with disabilities;
- The condition of the court estate, and its effect on the work of the County Court;
- The use of technology in the County Court and how it could be used to improve the service provided by the County Court.

The report itself is awaited. The consultation closed in December 2023.

Between 2010 and 2019, over half the courts across England and Wales were closed as part of a HMCTS plan to fund improvements to the court system, such as new digital services, by selling under-used court buildings. The impact of court closures on clients has been significant, as explained by a costs lawyer in Lincolnshire:

> *"Both the Scunthorpe Magistrates Court and the County Court have closed (in 2016 I believe). Their closure means that vulnerable clients now have to travel to Grimsby or Hull, both approx. 25 miles away from Scunthorpe. During covid hearings were dealt with remotely, however, post-covid things are going backwards again with in-person hearings becoming more frequent."*

While we support efforts to improve the courts through better technology, there will be times when only face-to-face hearings will deliver justice. The closures have resulted in many vulnerable court users needing to travel further for hearings, creating additional barriers for them. Upon arrival, they may find that their court is not accessible.

A practitioner in London also set out some of the practical implications of the under-resourcing of the court services:

> *"The admin side of the court service is really stretched at county court level. So there are enormous delays, documents getting lost, trials being vacated by the court without notice, cases that have stalled and that formal complaints fail to get going, orders that are sealed but then delayed in the post for a long while so that they may be received after deadlines have passed. The effect on clients is generally substantial delay and increased costs."*

[67] https://committees.parliament.uk/committee/102/justice-committee/news/198166/new-inquiry-justice-committee-launches-new-inquiry-on-the-work-of-the-county-court-amid-capacity-and-resource-concerns/

Question 8

How can the diversity of the profession be increased in legal aid practice, including ethnicity, disability, sex, age and socio-economic background? Please provide any specific evidence or data you have that supports your response.

Overall Funding

The answer, as for most of this Call for Evidence response, is that fees need to be increased significantly so that lawyers can expect to receive a competitive salary when working in legal aid and providers can afford to invest in their staff and their infrastructure. This needs to be done urgently to ensure that there is an adequate number of lawyers available to providers across the whole of England and Wales, with a recognised and sustainable pipeline of junior practitioners. Evidence suggest that the number of legal aid practitioners has declined to such a low level that even with significant investment, it will take time to rebuild the workforce to a sufficient level to meet client demand.

Given the seriousness of the situation the MoJ must act now by implementing an interim fee increase while it considers how to ensure that the legal aid workforce is put on a sustainable footing over the long-term.

By increasing fees the sector will be in a position to provide training, retain staff, reduce caseloads, provide more support for colleagues to deal with stress and vicarious trauma and ensure reasonable adjustments can be made.

Partial Solutions

Expanding training contract grants would help but is no substitute for properly set levels of fees. Training routes such as CILEx and Apprenticeships may offer a partial solution.

Some City firms pay for qualifying courses whereas legal aid providers cannot afford to pay for the Legal Practice Course or the Solicitors Qualifying Examination.

One solution from the Westminster Commission was to subsidise training because of the financial constraints on legal aid providers:

Recommendation D – The MoJ should fund training and qualification placements within legal aid firms and NfPs and publicly-funded chambers.

207. Witnesses at both our Publicly Funded Bar and Future of the Legal Aid Workforce evidence sessions commented on the financial hurdles faced by juniors at the bar. They told us that it takes up to a decade of university, postgraduate training and work before young barristers can start to see a reasonable income and standard of living. The Bar Council cite the average age of those who begin to earn a return on the huge debt levels they have built up as being 33 years old. For the years that precede this, individuals incur all of the risks of the economic investment in a career at the self-employed legal aid bar, with no insurance in the form of pension, sick pay, or regular salary.

Universities

As mentioned above, there is an absence of teaching around social welfare law at undergraduate and post-graduate level. Students that we spoke to as part of the LAPG Census reported having little to no training in these areas. We note also the findings of YLAL, as presented in their 2023 SQE survey and submitted to The Law Society Green Paper, Proposals for a 21st Century Justice System:[68]

> *"**Course content***
>
> *47. 86% of respondents felt that the areas they work in or hope to work in were not covered much or at all by the content of the SQE. Within this, one striking group are the six people who work exclusively in 'immigration & asylum' who all told us the content of the course did not reflect this work at all. Three of the four who work in housing (our second largest group) selected the slightly less severe option: 'No, they were not covered much'.*
>
> *48. The most emphatic 'not covered at all' option was still the most popular across the board, selected by 16 of 29 respondents.*
>
> *49. It is noteworthy that the single respondent who answered 'Yes, to a significant extent', works in Conveyancing and Residential Property. One of the three who answered 'Yes, they were covered in some detail' works in Public Law and the other two did not select an answer for the area they work in.*
>
> *50. As many people taking the SQE have been in work for a considerable period of time and may well have already decided which areas they hope to practise in, we suggest that the SRA looks at ways to include a broader range of areas of law within the course content.*
>
> *51. We particularly suggest the inclusion of more content which relates to 'social welfare law', which our research suggests is hardly covered at present but which is of fundamental importance."*

An LAPG member who is an academic and runs a law clinic set out these suggestions:

- *Money – it is not seen as a career that is sufficiently well paid due to large amounts of student debt people have and there seem to be limited jobs available. Those students who are first generation university goers/from the global majority also often have significant family pressures to be in a higher earning job. Providers obviously cannot afford to pay more.*
- *Also money – vacation schemes are not paid or don't exist which means those who need to work to live are often excluded.*
- *Awareness – students do not hear about this career path as much as e.g. commercial work and are not taught the modules that relate to these areas of practice in many universities. They are not included in the SQE[69]. Whilst the Justice First Fellowship (JFF)[70] and the Social Welfare Solicitors Qualification Fund (SWSQF)[71] are brilliant schemes, they are quite small and understandably do not have the same advertising and promoting power recruitment*

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[68] https://younglegalaidlawyers.org/wp-content/uploads/2024/01/YLAL-Final-Submission-January-2023-LS-21CJS-Consultation-.pdf

[69] https://sqe.sra.org.uk/about-sqe/what-is-the-sqe/assessment-topics

[70] https://jff.thelegaleducationfoundation.org/about/about-the-fellowship/

[71] https://clls.org/initiatives/swsqf.html

- *Reasonable adjustments – students with disabilities/other protected characteristics worry more about the ability of legal aid employers to make the adjustments they might need. Few of them will have occupational health teams*
- *Students with protected characteristics and/or lived experience worry about the potential additional emotional toll/triggers and vicarious trauma. There is insufficient structure in the profession (or time) to address this.*
- *Immigration/sponsorship issues – legal aid providers are rarely visa sponsors, presumably due to costs. Legal aid employers should be incentivised to become visa sponsors to encourage international talent into the sector.*

The PLP report *Overstretched & Unsustainable: a case study of the immigration and asylum legal aid sector* makes a number of recommendations including an urgent increase in legal aid rates, the provision of support for junior practitioners dealing with vicarious trauma and burn-out, and for increases in rates to translate into an increase in pay for staff.[72]

Conclusion

In conclusion, the lack of adequate funding means that it is a hard decision to carry out legal aid work, and often a sensible personal decision to walk away from legal aid work. We note that the P A Consulting report commissioned by the MoJ confirms that large numbers of providers do this work because of their strong social conscience despite the poor financial rewards. You cannot build a resilient and sustainable publicly-funded legal aid system on goodwill.

[72] https://younglegalaidlawyers.org/young-legal-aid-lawyers-release-a-new-report-overstretched-unsustainable-a-case-study-of-the-immigration-and-asylum-legal-aid-sector

QUESTIONS 9-13 – User Needs

The Review aims to ensure that the civil legal aid system is accessible to people eligible for legal aid, and that these individuals can successfully apply for and receive legal aid. These questions seek views on the experience and needs of those seeking and receiving civil legal aid and how these needs can be best met.

Question 9.

What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid? Please provide any specific evidence or data you have that supports your response.

There are a number of significant barriers/obstacles for clients seeking to obtain legal assistance:

One of the first issues individuals encounter is knowing if the problem they have is a legal problem. The Pleasence and Balmer report from 2014, *How people Resolve 'Legal' Problems*, provides an analysis that is relevant to this question. We would expect that the RoCLA Team has already looked at this.[73]

Clients may seek advice from a community group (whether a recognised advice giving organisation or otherwise e.g. a faith based organisation), an MP or Councillor's surgery or an advice agency that does not carry out legal aid work. It can be very difficult to find an organisation that can advise at an early stage. Many individuals will seek to clarify their options by looking online, but there are significant hurdles to access reliable legal information online, or understanding the information that is available, even from trusted sources.

If it is identified as a legal issue, either by the individual or any organisation they discuss it with, a further hurdle is knowing if the issue is one where civil legal aid is available.

The fourth problem is then finding a legal aid practice that has the capacity to assist.

The fifth hurdle would be when the provider checks their finances as this is a complex issue and the client may have thought they were financially eligible but they are not.

The sixth hurdle in some cases is providing other relevant evidence to progress the legal aid application e.g. for evidence of domestic abuse. There are particular challenges for survivors of domestic abuse in obtaining evidence.

The seventh hurdle would be when the provider attempts to obtain funding if it is a case where the LAA makes the decision on merits as it might be refused even if the provider thinks that it is a strong case. There will be further hurdles as the case progresses and the LAA consider for example amendments to a certificate. Appeal processes are time consuming, can lead to significant delays in being able to progress cases and are un-remunerated.

An eighth hurdle would be if the client (or a member of their household) is asked to pay a monthly financial contribution or a capital contribution and if that is unaffordable.

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[73] https://legalservicesboard.org.uk/wp-content/media/How-People-Resolve-Legal-Problems.pdf

We note that the RoCLA research into user needs focused on people who had found their way to a solicitor and been granted legal aid so has not addressed the issues raised here.

Is it a legal issue? Charities like Law for Life focus on this issue because so many people do not. Their website states:

> *"Law for Life: the Foundation for Public Legal Education is an education and information charity that aims to increase access to justice by providing everyone with an awareness of their legal rights together with the confidence and skills to assert them.*
>
> *We believe that everyone should understand their legal rights and obligations, and know how to gain redress through the legal system. Yet most people struggle to cope with legal issues, and often don't know where to go for help.*
>
> *Being able to cope with family and housing issues, sorting out employment and benefit matters or difficulties with goods and services is crucial. These issues are the cornerstones of everyday life that can become drivers of poverty and inequality if left unresolved.*
>
> *We have the expertise, the practical experience, and the tools to work with any organisation that wants to support the legal needs of their service users."*

The MPs sitting on the Westminster Commission also addressed the issue of whether their constituents can identify if an issue is legal in nature:

> 154. One issue that we have come across in our work as a Commission has been a lack of awareness as to what constitutes a 'legal' issue. As MPs, a constituent may approach us with an issue that they deem to be 'unfair' or 'stressful', but they may just characterise it as a housing problem or a debt issue. The Equality and Human Rights Commission reported that 62% of individuals faced with a discrimination problem did not know their rights, and a similar number were unaware of the procedures involved with bringing a claim. Therefore, although discrimination cases remain in scope for the purposes of LASPO, there are concerns that individuals will struggle to understand that their issue is legal in nature and will have low awareness of how to access appropriate and affordable help. Such difficulties often arise in the context of employment cases, which are out of scope, and so the person experiencing discrimination may well consider that they cannot access legal aid at all.

Is there an agency that can help? The second hurdle people is finding a local agency or online provider who can advise them. Citizens Advice offices and local organisations have reduced in number due to financial constraints. They are juggling the numbers approaching them and trying to keep staff.

We refer to Citizens Advice cost-of-living data dashboard.[74]

Will civil legal aid be available? The changes brought in by LASPO mean that only the legal cases defined are within scope and there are complex descriptions and exceptions. For example in housing, legal aid can be available for housing disrepair but if there is a serious risk to health and only until works are carried out. We set this out in the housing section of this response. So where only some issues in a category of law are included it can be difficult to understand if legal aid is available. Simplifying scope and expanding it would make it far easier for people to access civil legal aid.

[74] https://public.flourish.studio/story/1634399/

Can the person find a practitioner to take the case on? The problems of finding a provider to take on a case are well known to the MoJ RoCLA team and we will therefore only list the main points:

- As a starting point there used to be a Directory of Providers – organisations that could offer legal aid services – solicitors were able to offer advice to members of the public if they were prepared to work at legal aid rates so there was a network of supply. Nowadays local agencies may not know who to refer to or that there is an online tool.[75]
- The Law Society heat maps show areas of the country with limited or no legal aid provision. [76]
- Even where there is a provider, it does not mean that they can take the case on. They may have no capacity at that time.
- Some contracts are in effect dormant as no new cases are being taken on at all. Representative bodies have been asking the LAA to look dormant contracts, particularly as the existence of dormant or low capacity contracts distorts official data about the availability of advice. It should be noted that a provider can be dormant for a good reason such as a member of staff being unexpectedly off sick or leaving, and difficulty recruiting or covering that role. The LAA has this data but more needs to be done to understand why so many providers are operating dormant or inactive contracts.
- Many organisations know that they turn away eligible clients every day but these figures are usually not recorded, nor is there any research that we are aware of that monitors if these clients ever obtain legal assistance. As we have noted above, Jo Wilding has carried out useful research about the number of phone calls that line organisations make to try to referral immigration and asylum clients to a legal aid provider.
- Some clients, for example those with complex financial circumstances, will find it even harder to find a legal aid lawyer as the complex means tests creates delays and uncertainty in these cases.
- Example from Yorkshire and Midlands provider*:*

> *"One example month (July 2023) which is fairly representative of any month, we turned away 23 cases, 16 due to not having capacity, 5 due to not being within our expertise, 2 for other reasons."*

Is the client financially eligible? The client may not get any further if they are not financially eligible. The practitioner will need to check the finances of the person – even if the person has already checked online or an advice agency has. For a Legal Help case the practitioner will not be paid if it is found in an audit that the person was not financially eligible even if the practitioner has done their best to ensure that they have checked everything. The LAA has to check financial eligibility when a certificate is applied for.

Providing financial evidence is time consuming. It is not adequately remunerated if at all. It can feel very intrusive to the client for example if they are asked to provide evidence from adults in their home e.g. in a housing possession case. If the adult, who may be a grownup child does not cooperate the person may not be granted legal aid.

A practitioner in Yorkshire explains further:

> *"It is not adequately remunerated if at all. For instance, if a client is detained under the Mental Health Act and wants legal advice in relation to matters other than appealing their detention, reasonable efforts must be made to determine financial eligibility which for someone who*

[75] https://find-legal-advice.justice.gov.uk/
[76] https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/

might be mentally unwell, perhaps suspicious as well, and potentially without the usual access to their financial information, can be very difficult and time consuming for a provider to assist with. One provider of mental health legal services feels that the vast majority of legal issues a detained patient might seek advice on, relates to their detention and therefore the state's interference with their human rights, and so it would be more appropriate for legal help to be non-means tested for advice given in relation to their detention."

Example at The Law Society roundtable 29 January 2024: regarding the eligibility for the Legal Help scheme. £733 is the figure for income threshold. Lots of elderly clients in mental capacity cases if they have a state pension and low housing costs they are immediately over the threshold.

An example from Yorkshire firm:

"A case had to be stayed, and legal aid rescinded (without making a claim) due to an appointee (and carer) for a incapacitated client refusing to provide up to date means evidence for a variety of reasons including concern about the use of the data, and stress and pressure of the proceedings. All involved felt it would be inappropriate to continue to pressure the appointee due to the potential for complete breakdown of the client's care arrangements due to carer stress. This has led to over £2000 WIP write off due to the provider not wishing for the client to be pursued for legal aid costs due to the rescinded certificate, as it was not their doing, and again, due to the stress this would cause the appointee/carer."

Can supporting (gateway) evidence be provided? Apart from financial evidence and eligibility there are some areas of law where the evidence that is needed may be difficult or impossible to obtain or indeed it could be obtained but is rejected by the LAA. Soon after LASPO was passed, there was a problem obtaining GP's letters about domestic violence – not only that a GP may not want to write a letter where they strongly suspected DA but may have been concerned as both parties were patients, but there was also a problem about funding these reports. In recent weeks we have been informed that some evidence from health practitioners has been rejected as the LAA say it is not compliant with the guidelines.

Obtaining evidence of means poses particular challenges for survivors of domestic abuse. Rights of Women will be covering this in their response and we refer to that for more detail.

Can the client afford any contribution? Even if all of these hurdles are overcome, if a legal aid certificate is offered with a capital or income contribution, it is possible that the client will not accept it if the reality is that that contribution makes everyday existence too difficult.

A further financial barrier/hurdle is if the statutory charge will apply and the client has to decide whether to pursue legal aid given the future impact of paying back the legal aid with significantly high interest.

It is of note that MPs in the Westminster Commission set out some of the problems faced by people seeking to resolve their legal issues:

90. What does this mean in practice? The LASPO PIR *(Post Implementation Review)* found a significant reduction in legal aid spend in social welfare matters, which exceeded the estimation made in the original impact assessment. In housing cases, Legal Help spend between 2012/13 and 2020/21 fell from £18.5 million to £6.5 million, while expenditure on civil representation fell from £25 million to £15 million. In debt cases, Legal Help expenditure was estimated to have fallen by more than 99%,

from £17 million to less than £0.01 million; civil representation fell from £1 million to less than £0.11 million. Welfare benefit cases saw a reduction in legal aid expenditure of around £18 million per annum. The removal of employment cases from scope saw the estimated spend on both Legal Help and representation reduced from around £5 million to almost zero.

91. The volume of legal aid cases declined more than anticipated in each of these areas. During the evidence gathering phase of the LASPO PIR, respondents expressed concern about the inability of potential clients to find a provider for social welfare law cases, even where those cases remained in scope. This was particularly prevalent in the housing sector.

92. As MPs, we have seen the effects of these cuts in our own constituencies. In 2018, the APPG on Legal Aid sent out a short survey to all MP offices in England Wales, asking how the volume and nature of their casework had changed over the past year and past two years.

93. Half of all the 249 MPs who responded to the survey believed that the volume of constituency casework had increased over the past year and over half saw a noticeable increase in the complexity of this work.

94. Over the course of a month, four out of five MPs told us that they refer cases to Citizens Advice, five out of 10 to Law Centres and four out of 10 to local solicitors. Almost one in three said that they refer to the Bar Pro Bono Unit or another pro bono service. Many responded to the survey pointing out that funding has been lost for immigration services in particular, while some drew attention to other reductions in available services such as local Law Centres or Citizens Advice offices closing.

95. Nearly 90% of those surveyed were dealing with benefits issues and almost 75% were dealing with housing (rehousing, possession, homelessness, repairs) on a weekly basis. While we cannot be sure that this is due to the reduction in legal aid for early advice in these areas, it certainly indicates a key pressure point. Without swift and early intervention, such problems can escalate very quickly to the point where people are destitute or at risk of losing their homes, and all too often by the time the constituent reaches their MP the problem has become acute, complex and more difficult and expensive to resolve.

Question 10

What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs? Please provide any specific evidence or data you have that supports your response.

In reality there is virtually no choice because of the lack of providers. We therefore refer to the recommendations throughout this Call for Evidence which will boost the number of providers and the capacity of providers to assist clients. First and foremost, there needs to be an immediate increase in civil legal aid fees to halt the decline in numbers and to try to attract people in to this work.

Another issue is how difficult it is to change legal aid providers if you are unhappy with them or the provider decides there is a breakdown in the relationship, and the difficulties in finding a new provider willing to take your case on. Users can be stuck with the solicitor they have or no solicitor at all.

Question 11

Do you think that some people who are eligible for civil legal aid may not know that it is available and/or how to access it? If so, how do you suggest that this is addressed? Please provide any specific evidence or data you have that supports your response.

We have referred to this in the response to Question 9. To summarise:

- It would be helpful to have up-to-date research and continuing research to monitor this.
- There is a need for better public legal education. Organisations like Citizens Advice, Shelter, Access Social Care and Law for Life provide very important services giving advice in a range of formats, but organisations without a legal aid contact have difficulty referring on to civil legal aid providers because of the shortage.
- "Trusted intermediaries" play an important part and the MoJ is interested in this idea but funding cuts affect all of the advice sector and the ability to assist people with legal problems.
- Local authority funding cuts and bankruptcies have affected the funding for the advice sector.
- The Gov.UK web page "Find a legal aid adviser or mediator" sets out which organisations have contracts but that can be the start of a frustrating exercise trying to find a provider who can take the case on.
- Much like the point we raised above about the Means Test Review, increasing awareness of legal aid and how to access it may not lead to an increase in the actual take-up of legal aid services are there are insufficient providers to meet any increase in demand. Legal aid is so poorly remunerated that providers cannot expand capacity to meet demand.
- It is extraordinarily hard to understand what is within the scope of civil legal aid in some areas of law.
- For clients who are challenging the state, whether locally or nationally, the inability to contact a solicitor who will take their case on will reinforce their feelings of an uncaring and possibly corrupt state. At the very least they will feel that they and their problems do not count. Being told by potentially multiple solicitors that are available, that they can't take their case due to no capacity within their team, may lend to distrust in the profession for similar reasons. In a democracy that is unhealthy.

Question 12

How do you think that people receiving civil legal aid can be supported in cases where they have multiple or 'clustered' legal issues and some of these are outside of the scope of civil legal aid? Please provide any specific evidence or data you have that supports your response.

It would be helpful to the client for one organisation to be able to deal with all of the issues. This used to happen more often, when practices carried out a wider range of legal aid areas of work. While specialisation is likely to have increased levels of expertise on issues remaining in scope, it does mean that solicitors may not be able to assist with the full range of legal problems presented by each client. One example is that supervisor requirements mean a certain number and types of cases have to be carried out. As organisations curtail their legal aid work the areas of law covered will reduce.

There should be a return to the pre-LASPO position of cases being in scope unless specifically excluded. As in the past legal issues such as wills, conveyancing and other categories can be specifically excluded.

It is practitioners' experience that there are usually clusters of problems and it is frustrating that these cannot all be tackled holistically. Having said that, if there is not the skill set because of years of underfunding and limited scope, it is hard to identify what can be done in the short term. Increasing scope, which is absolutely necessary to meet the needs of clients, must be accompanied by a plan to increase expertise and encourage more lawyers to take up training and practice in legal aid categories.

The Ministry of Justice is of course only one funder. Local authorities, philanthropic organisations and grant funders all have roles to play but are all struggling with the demand on their funds.

We refer the MoJ to *Clustered injustice and the level green* by Luke Clements for a thoughtful analysis of those with clustered problems.[77]

[77] https://www.lag.org.uk/shop/book-title/208819/clustered-injustice-and-the-level-green

LAPG

Question 13

How do you think that the Exceptional Case Funding scheme is currently working, and are there any ways in which it could be improved? Please provide any specific evidence or data you have that supports your response.

The recommendation from the Westminster Commission was:

The **Westminster Commission** para 100: ECF should be overhauled, providers should not be expected to work at risk and the process should be simplified. If certain cases are routinely funded, they are no longer 'exceptional' and should be reintroduced into scope

Section 10 of LASPO introduced Exceptional Case Funding (ECF) for non-inquest cases that are not in scope for legal aid. It provided that funding should be available if an individual's human rights or European Union law rights would be breached if they did not receive funding for a lawyer. The key question is whether the individual could present their case effectively and without unfairness if they did not have legal aid. That may be because the case is complicated; because the individual is less able to deal with it alone; and/or because the case is so important to them that it is not fair for them to manage the case themselves. The individual must also show that their case is strong enough and that they are financially eligible for legal aid. The scheme was intended to act as a safety net and during the passage of the LASPO Bill through parliament, the Legal Services Commission estimated that there would be 5,000–7,000 section 10 applications per year. However, it soon became apparent that the complexity of the application process and the eligibility criteria meant that access to the scheme was severely restricted.

In the first year post-LASPO only received 1,520 applications were received of which 70 were granted. This figure has risen in the intervening years but still remains far lower than was originally expected, as set out in the table below:[78]

2013-14	70
2014-15	229
2015-16	668
2016-17	981
2017-18	1419
2018-19	1963
2019-20	2578
2020-21	2452
2021-22 (r)	2830
2022-23 (r)	2494

In 2013-14 1048 cases were refused and 387 rejected. In 2022-23 520 cases were refused or rejected. We think the low number of successful applications means that this scheme does not work as the safety net that it was presented as being. It is important that the LAA has tried to simplify processes and more cases have been granted. It is still, over ten years, a very low figure compared to the numbers referred to in parliament.

[78] Source Table 8 (various) Legal aid statistics England and Wales tables Jul to Sep 2023: https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2023

There may be a number of reasons why application volumes are so low. ECF is unusual in that funding can be applied for by both individuals (acting on their own behalf) and by practitioners. However, it seems to be accepted that the process is too complicated for individuals to undertake without the support of a legal professional yet applications for ECF are made at risk, with funding only being granted if the application is successful. Solicitors are unable to grant exceptional funding themselves, and all applications for ECF must be sent to the LAA. The LAA's target time for responding to an initial application is 25 working days, with the target time for responding to an urgent application is ten working days. Practitioners have told us via the Westminster Inquiry that the ECF application process is time-consuming, onerous and leads to delay (even when it is indicated that a matter is urgent).

The system works on the premise that when something is urgent, a solicitor would prepare and submit the funding application, and then proceed to work on the matter pending a decision, but we were told that this is unrealistic. A sensible business owner will not take on work when they do not know how or if it will be funded. The result is that providers are unlikely to take on urgent or complex matters, or will decline to make ECF applications altogether. More than one witness made the point that practitioners are disincentivised from undertaking this work because of the financial risks involved. Those who attempted to engage in the ECF scheme in the first years after its introduction were also likely to have had a very negative experience, which would dissuade them from taking the time and risk of continuing to make applications, even after improvements were introduced to the scheme.

We note that there has been some growth in the volume of matters being dealt with under ECF since LASPO but are also aware of a trend around particular types of cases which are routinely funded under ECF which may skew these figures somewhat. The vast majority of cases are immigration cases (1966 in 2022-2023). We would recommend that if a particular case is regularly funded under the scheme it ceases to be 'exceptional'. There is a compelling case for scope to be widened to incorporate such cases so that the legal aid scheme is fit for purpose and reflects public legal need

Some clients have made applications without legal assistance or with help from an advice or support agency and even if successful, that did not mean that a solicitor would take the case on.

For Inquest cases this is the mechanism for funding – 250 cases were funded in 2022-2023. We are aware of the serious difficulties in obtaining legal aid for inquests despite the changes introduced from January 2022.

Feedback from one provider:

> *"ECF was intended under LASPO to be a catch all, but it has become so narrow, for family it is so cumbersome, the application is so long, there are no funds in place to make the application, PR firm had to provide guidance on how to navigate it, rates so bad no one is going to bother applying for it. We have had only 3 accepted."*

We refer to PLP's research *Improving Exceptional Case Funding: Providers' Perspectives* for a full analysis.[79]

We also refer to Rights of Women's report *Accessible or beyond reach?* as the scheme has not changed since the report was published the findings on navigating the scheme without a lawyer remain relevant.[80]

[79] https://publiclawproject.org.uk/content/uploads/2020/01/Improving-Exceptional-Case-Funding-Website-Publication-Version-docx.docx.pdf
[80] https://www.rightsofwomen.org.uk/wp-content/uploads/2023/12/accessible-or-beyond-reach.pdf

LAPG

QUESTIONS 14-16 – Use of Technology

The Review aims to feed into MoJ's wider strategic objectives on the use of technology. Technology should enable users to engage with the legal process and support the smooth running of the civil justice system. These questions seek views on how the use of technology could improve civil legal aid, including through where appropriate, remote advice.

Question 14

What are the ways in which technology could be used to improve the delivery of civil legal aid and the sustainability of civil legal aid providers? We are interested in hearing about potential improvements from the perspective of legal aid providers and people that access civil legal aid. Please provide any specific evidence or data you have that supports your response.

In general we welcome the use of technology as a means of delivering a cost-effective service but note that any provision will need to be accessible for those for whom there may be more than merely language barriers.

Improvements for Providers

The delivery of civil legal aid and the sustainability of civil legal aid providers would be improved by improving the IT systems that providers have to use to interact with the LAA. This answer sets out briefly the problems with the current systems. If these were all improved and were user friendly, that would enormously assist civil legal aid providers.

CCMS

The introduction of CCMS suffered from a litany of errors including, but not limited to:

- limited interaction with providers at the start,
- buying a system which was and is so prohibitively expensive to change,
- replicating complex systems instead of simplifying them first,
- rolling out the system when there were too many faults and
- failing to be candid about problems.

The Association of Costs Lawyers' report May 2015 (submitted to the LAA) summarises the issues.

There remain issues including:

- The time it sometimes takes for necessary changes to be made to CCMS once the LAA agree that a change is needed.
- As the system is not simple to use there is a massive overhead cost in that there is a heavy administrative burden as CCMS is not intuitive. With such low margins, paying people to input data time and time again reduces fees further. Providers need a system that works well.
- The help guides are not always specific enough.
- The help desk never sees the screen that the practitioner sees.
- Billing certificated matters – counsel has to submit bill at the same time as the solicitor– the bill is rejected if that does not happen. Bills can be timed out. One practitioner commented on this:

> *"If counsel does not submit their bill within a set time of us submitting ours, the bill is rejected and it counts towards our KPI indicators as a rejected bill. This is not fair to solicitors as they do not control the submission of counsel's claims."*

- CCMS asks unnecessary questions and it is repetitive. The LAA intends for the new Apply system to be a more straightforward and user-friendly process. Whenever you log on to CCMS the log in screen includes "service status". "Apply: civil legal aid" always shows "server issues" so confidence is not high that it will be a good replacement.
- The process for applying for costs extensions is unnecessarily time consuming as is applying for extensions on the case. These can easily take 45 minutes and even though that is paid work, it slows down the case and shows a distrust of legal aid lawyers. One practitioner fed back:

> *"Often an application for a costs increase is refused at the first time of acting, and we have to threaten to down tools on a case to persuade the LAA to grant the new limit we have previously requested. Given that the costs are assessed by the legal aid agency at the end of the case, this seems to be ridiculous."*

- Outages, especially if you are using delegated functions, cause tremendous problems. If you cannot get into the system the client has to return. Practitioners have 5 days to submit an application so time is of the essence. You cannot be sure that a client will return to complete the application even where you have carried out the work. The provider would not be paid.

A practitioner in London noted:

> *"On CCMS – I would really like to have something to confirm what I have sent in to them – so that I don't have to press print on every screen and save the page into my case management system in case I need to prove what I did. Why can't there be some sort of messaging record?*
>
> *When you upload and submit documents on CCMS – if you don't do everything in a specific order, then when you submit it to the LAA they can get no documents. I have to constantly train new fee earners on doing the "hokey cokey" of going into the documents section, uploading documents then getting back out without having pressed upload one too many times and then submitting from that screen. It is not intuitive but it is also daft because it says something has been submitted when it clearly hasn't been and you never see what the LAA get, and you cannot check it all went through. You just have to cross your fingers and trust the process, when experience teaches you that you cannot trust it. Why can't we have a record of it. If we forget to print everything, we cannot have a record. What sort of system does that? It feels like it is a system there to prevent any accountability because there is no audit trail on our end. We just have to hope there is one on their end."*

When we asked if there were other issues one experienced practitioner reported:

> *"It is not possible to make contact with the ECCT team at all. There is no dedicated enquiry "task" in CCMS for Civil High Cost cases. If you click on "submit case query" you are taken to a "request type" page with a drop down menu. The last one on the list is "VHCC enquiry". However, and although the name would lead you to conclude otherwise, this is ONLY for family VHCCs. For civil ones you have to use "case general enquiry" which does not go to the team which deals with civil high cost cases, the ECCT. If you are chasing a decision from the HCCT you can only telephone the enquiry line and ask the person who takes your call to send an email to the ECCT. This results in an unacceptable amount of work being done "at risk" and is likely to deter people from taking on complex civil cases.*

We have to lie to complete legal aid applications. Client's often don't bring their court documents with them to the appt. If there is disrepair in the property and the claim is based on rent arrears, there will be a defence to the claim. But if you respond "no" to the question "do you have a copy of the claim form?" the system will not let you go any further. There is no "caravan" "mobile home" or "boat" in the drop down menu asking you what type of property your client's home is, so again we have to lie. Clients NEVER sign applications for amendment and never have done, yet you have to certify that they have signed it. This was raised with the powers that be at the very start and they told us to lie on the form!"

One of the recommendations of The Westminster Commission (para 80) was to "Update CCMS and make it fit for purpose."

A member of LAPG's board commented:

"For providers CCMS was about ten – fifteen years out of date. Poor system. Using technology – needs better IT – applications, costs extensions, technology can help providers but needs s culture change and a decent programme."

Feedback from a practitioner at The Law Society roundtable London and the South East: *CCMS has been a problem for years, and it is not intuitive. The help guides are not specific. Help desk does not see the screen you see. It wastes so much time. The firm has made complaints in the past and has asked for ex gratia payments but always refused. They waste so much time.*

Bravo

Practitioners are now used to the tendering system for contracts but it has been problematic and certainly has not been user-friendly. Please see our comments on Bravo in Question 1. The system is not intuitive and does not sufficiently flag up issues.

CWA

From the gov.uk website:[81]

"All claims for controlled work must be submitted via CWA. CWA is a digital billing service that contains all providers' contracts and schedules. It's used to make claiming simpler and more efficient, e.g. allows and validates monthly submissions online and calculates fees."

A practice manager in Nottingham reported to us:

CWA continues to be clunky and there are always issues with the monthly bulk upload that need to be remedied before the upload can be applied. Again, this is at a cost to us as we have to pay additional hours for the cashiering service to resolve such issues.

LAA Manual Systems

A member of LAPG's Advisory Committee who is a partner in a London firm which specialises in immigration and asylum has fed back that technology could improve things if designed properly. The firm does a lot of controlled work and CLR (mostly immigration and mental health) – outside of CCMS.

[81] https://www.gov.uk/guidance/submit-a-contracted-work-and-administration-cwa-claim-online

It is a manual process and resource-intensive. They have five full-time people employed to bill that work. He would like to see one universal system to cover everything, including checking eligibility. He noted that is a need for simplified legal aid reporting and that the LAA should only ask for data when it needs it.

Providers' Case Management Systems

Providers all have case management systems – it is a requirement of the contract. There have been concerns for years that legal software providers will not be interested in providing software solutions for legal aid practices because of the relatively small numbers and the lack of money to invest. The level of complexity increases the costs for software suppliers and this is passed on to providers. One provider referred to an enormous increase in fees recently. Another practitioner fed back that legal aid practices are using poorer technology and that impedes their ability to do work.

A practice manager in Nottingham reported to us:

> *"The case management system we use charges additional fees for the LAA billing modules. Therefore, we have to pay increased fees in order to carry out publicly funded work and to be able to bill the files through our system.*
>
> *Case management providers that provide compatible systems with LAA systems are limited and firms are often tied in to lengthy contracts, to keep costs as low as possible, and therefore shopping around and beauty parading such systems just isn't possible.*
>
> *Even though there are case management system providers that provide ready built workflows for Crime and Family law, there is no such product for the more niche areas such as Mental Health or Court of Protection work. We have had to build our own such systems, which is hugely time consuming and costly.*

Feedback from a practitioner at Citizen's Advice:

> *"Citizens Advice's Case Management System can't interact with the LAA's software. This is why we have to pay for Advice Pro – on top of paying CA for Case Book. Further all LA cases have to be opened and closed on both systems - admittedly only the barest details, but it is still a duplication of effort."*

A Director of a firm in Birmingham commented:

> *"We use Partner 4 Windows and it is ok for straightforward billing of civil legal aid files. You cannot however upload any document from it into CCMS. You have to save the document elsewhere to upload it."*

A solicitor in London told us:

> *"We use SOS and whilst I believe that there is a way of getting Legal Help billing to be part automated through SOS (one of the reasons the firm opted for that system) we ended up not using it because we don't do enough legal help work to make bulk spreadsheet worth doing. We submit the cases individually instead. We don't have anything that works with CCMS and at a previous firm it was the same. I'd be surprised if anything did integrate with it because CCMS is just so clunky. The billing on it is really painful. We have had to outsource it on multiple occasions because we constantly hit a brick wall of thinking we have done everything required*

and then receiving a failure message a few days later and ringing the helpline does not bring clarity but just more confusion."

Court IT

Much has been written about remote hearings. We would make a couple of simple points about the effect of court IT on civil legal aid practitioners.

Where there are no fees for travelling or they are very low, then online hearings would cut down on the very poorly remunerated parts of a day's work.

There have been reports of cases which are in-person when they could have been remote and cases where some parties have been allowed to be online but others had understood that it was an in-person hearing.

We would flag up again the Justice Committee report which will be looking inter alia at IT in all county courts. We do not know when it will report but the evidence collecting ended in December 2023.

Improvements for Clients

Well-built systems that are user-friendly undoubtedly will help a certain number of clients. However all the feedback we receive is that as LASPO basically took out of the legal aid system the straightforward cases, the remaining cases are complex and clients are often very disadvantaged and vulnerable.

They struggle to cope with the legal issue and all the problems (that are set out in research such as *Locked out: Barriers to Remote Services*[82]) make digital solutions of concern:

- Does the client/future client have access to the necessary technology?
- Does the person have the money to keep using the appliance?
- Does the person live a life that is not chaotic and can therefore keep e.g. a phone charged for use?
- In a sensitive case like domestic abuse, does using technology put the person at risk if the alleged perpetrator traces their digital footprint?
- Does the person build up a good relationship if contact is online? For many people their case is against the state so there may be a tendency to distrust all in positions in society. Face to face meetings tend to enable greater trust to be built up.
- The client's explanation in a face to face meeting is likely to be 'richer' – there will be a greater ability for the practitioner to understand issues that might not be apparent in a video call.
- Will the use of online systems bring a higher level of stress to clients/future clients?
- There will be individuals who are unable to utilise what may be commonplace technology for those in the UK but which would be alien to some, particularly those who are especially vulnerable. This is particularly important in immigration and asylum cases.

Conclusion

There have been some small but helpful changes e.g. in allowing electronic signatures. Resolution, in the last consultation on the 2024 Standard Civil Contract requested that any limit is removed on the

[82] https://www.snscab.org.uk/assets/Reports/Locked-Out.Final.pdf

number/percentage of forms where forms are signed remotely (which may include where there is no wet or digital signature and contract).

Resolution requested further clarification to the wording so that a signature can be wet, digital or by alternative means as per the Law Society guidance to ensure that the means of signing forms does not act as a barrier to accessing legal aid.

If the means test was digitalised that would help, particularly if the information could go straight into a CW1 form and other claim forms.

So how can technology be used to improve the delivery of civil legal aid and the sustainability of civil legal aid providers? Make the systems simpler, design user-friendly technology based on the simpler processes and ensure that civil legal aid is always available to those who cannot access digital solutions.

Question 15

Remote legal advice, for example advice given over the telephone or video call, can be beneficial for delivering civil legal aid advice. Please provide any specific evidence and thoughts on how the system could make the most effective use of remote advice services and the implications for services of this.

The Westminster Commission findings summarise the position very succinctly:

> 118. There have been tentative movements over the past few years towards providing services remotely where no local providers are available. University House Legal Advice Centre (based in East London) established a webcam advice clinic in partnership with a community organisation based in Falmouth. The bulk of the advice provided by the service is given by London-based lawyers via webcam. The organisation also runs a 'family law duty desk' at Truro Combined Court Centre. This duty desk provides assistance with section 8 private child arrangement cases and domestic abuse. It runs a similar scheme in Bodmin County Court and Family Court and a further remote employment law clinic in Plymouth.
>
> 119. We see huge positives in the role of technology in connecting the public with advice providers, particularly in more remote locations, and we applaud the LAA's decision to allow providers to bid for digital delivery of services in the last housing law tender round. However, there will always be vulnerable people who are unable to access technology in this way and who will be left behind. We are also concerned by the need for providers to deliver services digitally to cover those areas where providers have left the market and what this tells us about the economic viability of the work itself."

The mandatory telephone gateway was introduced for a brief period for education, discrimination and debt (for concerns on the process see Public Law Project's publication *The Civil Legal Advice Telephone Gateway*[83]) but community care was never made a part of the mandatory gateway process because of the arguments raised.

Our members are unanimous in highlighting that consideration must be given to the needs of the client. Some clients cannot use the technology and may need a home visit depending on their circumstances.

There are two current schemes – both relatively new. We would hope that the members of the Review team will be speaking to providers and clients involved to learn from these experiences.

HLPAS

Providers can take on stage 1 work from anyone across the country. So early advice can be delivered to anyone anywhere and this is not linked geographically to the court where the provider has the contract. A HLPAS contract holder raised these concerns:

> *"But who will be willing to do more legal help work than they have to? We simply cannot afford to do legal help work as it covers less than half of the cost of doing the work. When you include the work that we do which falls between the fixed fee and the escape fee level, we are paid £22 per hour to do it. It would be commercial suicide for us to do more of it, it can only be viable for those who have other income streams e.g. voluntary sector providers.*

[83] https://publiclawproject.org.uk/content/uploads/2018/05/The-Civil-Legal-Advice-telephone-Gateway.pdf

During lockdown we had no option but to take instructions remotely. Almost none of our clients had access to video link technology. They all have smart phones in order to be able to access UC, but have very limited data plans because they are poor. Many also lacked the skills to use video link technology.

We had to interact with our clients by telephone. This is far from ideal, especially with vulnerable clients. You do not know who is in the room with them and how they may be being influenced/coerced. A colleague who works with survivors of DV points out that many abusers track their victims phones and communications, and for this reason she often meets them in coffee bars to take instructions.

From 2000 to 2003 we ran duty schemes for the LAA in Southampton and Telford. The LAA had received no tenders and asked us whether we would agree to run the schemes remotely. We agreed. It was a perfect opportunity for the LAA to monitor the effectiveness or otherwise of providing representation in this way which, of course, they did not take.

It was almost impossible to provide effective representation by telephone. Very soon after the schemes started we decided to cover Telford in person as one of our partners lives in the town.

The amount of time that it took the advisor to receive the paperwork, take instructions from the client, liaise with the opponent and then represent in court made the Southampton scheme unviable at the price we were being paid to do it (the standard Duty Scheme Fee)."

South west immigration remote directory

We have had sight of Public Law Project's (PLP) submission and reiterate the concerns they have raised about the efficacy of remote services, particularly for the vulnerable client groups that make up such a large proportion of civil legal aid clients. In December 2023 PLP contacted all providers on the LAA maintained *immigration providers south west support directory*.[84] Along with worrying indications that the directory was out of date and inaccurate, PLP's research showed the majority of providers had no or very limited capacity to take on cases and, where capacity did exist, was often limited to certain types of cases. PLP repeated the process in January 2024 with similar, disappointing, results. PLP's research shows that simply pointing clients to providers in other locations, when the provider base as a whole is in decline and lacks capacity, is not an effective solution to a lack of advice in one geographic area. Creating systems such as this also risks displacing capacity to respond to local demand for providers offering remote service.

[84] https://www.gov.uk/government/publications/immigration-providers-south-west-support-directory

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Question 16

What do you think are the barriers with regards to using technology, for both providers and users of civil legal aid?

The responses to Question 14 regarding providers are also relevant here.

What does "using technology" cover? It will change rapidly. In this response we are dealing with many technological 'solutions' that are already being used but Artificial Intelligence and as yet unknown technological advances present both opportunities and challenges. Again we would raise our concern that the limited number of civil legal aid providers and the limited funds of private practice and not-for-profit organisations together mean that technological advances may pass the sector by.

Regarding barriers for clients we refer to the Westminster Commission:

> 71. A significant proportion of clients assisted by legal aid practitioners are vulnerable as a consequence of issues such as poverty, and physical and/or mental health problems. We were told by witnesses that as a result of these vulnerabilities clients find it difficult to properly understand information and provide their solicitors with documents and instructions, even when services are delivered face-to-face.
>
> 72. Many of these clients will be deemed digitally excluded from accessing online services. In 2018, the Office for National Statistics estimated that, in the UK, 11 million adults lack basic digital skills and 5.3 million adults are non-internet users. It also appears unlikely that the pandemic resulted in widespread digital upskilling, despite personal and professional life moving online, with 83% of UK adults saying they had received no support to improve their tech skills. Users of legal aid and advice services are often susceptible to digital exclusion due to a lack of financial means, a lack of stable housing or a lack of understanding. Clients with limited finances may not have access to the internet, or even have sufficient funds to top-up credit on their mobile phones. Homeless clients may have nowhere to charge their phones. Those detained in prison or hospital, or resident in care homes, will have limited access to telephones or the internet, or perhaps no access at all. With limited telephone access, clients cannot always instruct a solicitor or provide instructions to an existing solicitor. Access to the post will be similarly limited, with some being unable to send mail.
>
> 73. Groups that are likely to suffer from digital exclusion include older people, people with disabilities, homeless people and those on the lowest incomes. These are groups that are also likely to need access to free legal advice.
>
> 74. Online video hearings and meetings raise other issues too. The Equality and Human Rights Commission has said that they can significantly hinder communication and understanding for people with learning disabilities and mental health conditions, while the Lord Chancellor, Robert Buckland QC MP, raised concerns about the impact of video meetings on 'the client's ability to give instructions in a confidential way'. Further, we heard evidence that organising video meetings with prisoners became incredibly difficult and delayed due to insufficient and inadequate video calling facilities….
>
> 80. The Commission recognises the important role that technological solutions have played in maintaining access to justice over the past 18 months and the part that they will continue to play as we move forwards. Where the circumstances are right, the benefits of technological solutions can be significant. Online hearings, client meetings and online advice hubs must be part of the solution to the current crisis. However, we have plainly seen that there cannot be a total shift to

technology and front-line legal advice that is delivered face-to-face will remain necessary for many individuals. While the MoJ's Legal Support Action Plan committed £5 million of investment in legal support innovation, aimed at resolving legal issues including that of digital exclusion, this commitment was made prior to the massive shift online necessitated by the pandemic, and the Commission would urge further investment in support, infrastructure and training to tackle digital exclusion. Additionally, the development and application of adequate protocols and rules, especially regarding the use of online hearings for substantive matters, are essential if the shift towards technology is to be deemed a sustainable measure, and this must be balanced with a recognition that technological solutions are not suitable in every case and do not necessarily generate more effective outcomes or increase access to justice."

Written evidence from the Legal Services Board to the Justice Select Committee inquiry into legal aid[85], includes:

> *"...Prior to Covid-19 legal aid users largely received services in the traditional way, i.e., face-to-face. Our Individual Legal Needs Survey shows that those who used legal aid were more likely to have received their service face to face and less likely to have received it via telephone or email compared to the overall sample. 68% of legal aid users received the service face-to-face in comparison to 41% of the overall sample.*
>
> *28. The opportunities afforded by technological innovation need to be balanced against the risks posed to consumers and the risks of digital exclusion. We know that legal aid users are more likely to have lower levels of education, lower levels of legal self-efficacy and are more likely to be of social grade DE. Any technological advancements in the delivery of work funded by legal aid need to meet the needs of legal aid users and ensure that they are not excluded from accessing and engaging with services."*

The Communications and Digital Committee published its report *Digital Exclusion* in June 2023[86].

Key findings include that:

- 2.4m people are still unable to complete a single basic digital task to get online.
- 5m workers will be acutely under skilled in basic digital skills by 2030.
- 1.7m households have no broadband or mobile internet access.
- £63bn is lost each year to the UK economy each year due to overall digital skills shortages.
- 1m people have cut back or cancelled their internet packages in the last year due to affordability issues.

The lack of stable broadband and access to data is a particular issue when it comes to remote advice delivery.

[85] https://committees.parliament.uk/writtenevidence/12991/html/

[86] https://committees.parliament.uk/committee/170/communications-and-digital-committee/news/196028/the-government-has-no-credible-strategy-to-tackle-digital-exclusion/

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Question 16.1

Do you think there are any categories of law where the use of technology could be particularly helpful?

Question 16.2

Do you think there are any categories of law where the use of technology would be particularly challenging?

Please provide any specific evidence or data you have that supports your response.

We have decided to combine our response to these two questions as the use of technology can bring benefits for clients and practitioners but there are also many challenges.

This is an illustration from the Westminster Commission:

> 79. Many users of the legal aid system are particularly vulnerable and require legal assistance as a direct result of that vulnerability. This could be for a variety of reasons, but when cases are so complex that they require a team of skilled professionals to unpick them over time, there remain very real concerns in the notion of the default moving to the remote provision of a service. One witness spoke of a client who had locked himself in his room for over four years. He left it only at night in order eat, but there were very real concerns surrounding his mental and physical health. Our witness stood outside the door for almost a day, speaking to him and building a relationship, something that would be far more difficult if the service provided were digital. When the door was finally opened, they found four years' worth of faecal matter, food debris and maggots. The client had kept his door locked because he was being sexually abused by his mother's partner."

Careful consideration has to be given to any technology-based initiative to improve access to justice. Here are some examples:

- People in prison have civil legal aid problems so these issues are not just limited to criminal defence or prison law practitioners. Prisoners are not allowed access to IPads and generally have very restricted access to technology. Practitioners often have to travel long distances to visit their clients and encounter a range of barriers, both for in-person visits and for remote meetings. The Association of Prison Lawyers' report, *Justice Barred: the difficulties lawyers face in seeing clients in prison,* provides a thorough explanation of the issues.[87]
- Cases where clients cannot come to the office such as those that fall under the Mental Health contract. It is extremely difficult to take instructions remotely from people in mental ill health. Practitioners have to go to them for all but the most simple information gathering.
- There are case where the client cannot communicate and the provider is dealing with someone assisting them who may be more confident using technology.
- In legal aid deserts pending further work to attract more practitioners into these areas. Although as one housing solicitor commented:

[87] https://www.associationofprisonlawyers.co.uk/justice-barred-the-difficulties-lawyers-face-in-seeing-clients-in-prison/

> *"This would have to be paid properly for it to attract more practitioners. We declined the invitation to extend the Southampton Court Duty scheme which we were providing remotely as it was not viable."*

- In housing a different practitioner could see that technology could be helpful:

> *"It means some clients can zoom from the property so you can get a sense of size/condition etc. which might be relevant for a case like suitability of accommodation. Previously that would require a home visit which might not have been possible to justify or relying on the description from client. There are times when you can see something on the video call that the client has not mentioned, like the height of something or a safety feature that is missing, which you might not have been made aware of because client would not think to mention it and without the visual prompt you wouldn't know to ask about."*

- Family law is often nuanced and tactical, personal, emotional. There are lots of things in family law where fully automated screening will not work as a result.
- There are serious concerns over the need to ensure safe access where survivors of DA – that person's browsing history could be checked. However there are situations in which technology can and is being used to enable survivors to access legal support.
- Community Care clients are more often than not very vulnerable so the use of technology may not always cater for any accessibility requirements.
- There are concerns about the use of technology for vulnerable immigration and asylum applicants/appellants (see for example the Derwentside litigation and PLP pre-action correspondence).
- The areas of law in scope of civil legal aid are all incredibly complex and nuanced need to account for this complexity, improve the ability of clients to access independent legal advice and there will always be the need for non-tech based avenues to access advice.

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QUESTION 17 – Early Resolution

The Review aims to feed into MoJ's wider strategic objective to encourage, where appropriate, the early resolution of disputes, providing swift access to justice through early engagement where appropriate. This question seeks views on what could be done to encourage early resolution of disputes.

What do you think could be done to encourage early resolution of and/or prevention of disputes through the civil legal aid system? Please provide any specific evidence or data you have that supports your response.

Early resolution of legal problems has become harder to achieve since the changes brought in by LASPO and the drop in provider numbers. The governments stated aim of the LASPO cuts, focusing what remained in scope in a targeted way for those most vulnerable, has not been achieved, rather the opposite. Removing access to early legal advice has meant that court cases that may have commenced and been resolved at an early stage, or not commenced at all as the underlying problem could have been addressed without the necessity of court action, are now fully litigated. This uses up the resources of the courts and judiciary when previously this did not happen to the same extent.

Opportunities for early resolution are lost, problems deteriorate and become more costly to resolve. As previously stated, early legal intervention enables parties to be given an objective view of the strength or weakness of their own case and access to means of resolving issues outside the court process. The impact of lengthy and expensive litigation has a significant detrimental effect on the parties involved, and the courts. Re-instating legal aid in areas such as welfare benefits and debt, and early legal advice in housing and family law, would naturally start to resolve these issues, although without a significant increase in provider numbers to do the work, things are unlikely to change much. It is the current system of legal aid provision that stands in the way of early resolution of legal problems, not the people themselves.

A significant barrier to improving matters is that many legal aid providers are no longer skilled in giving welfare benefits and debt advice and providers numbers are just not sufficient, something that will take years to resolve if these areas of law and early advice are to be brought back into scope.

In addition, low fees, a lack of interim payments for work in progress and disbursements and the escape fee regime, has meant that providers are doing less Legal Help work which often used to catch problems early before they escalated to court. See previous comments on fees, interim payments and escape fees.

The recent NAO report into the Government's management of legal aid points out that the removal of early access to advice in family law has had the unintended consequence of reducing publicly funded mediation referrals, and says that the Government acknowledges that access to early legal advice has the potential to reduce the human cost and cost to the judicial system as a whole. This is because the reforms withdrew most funding for solicitor consultations which were the most common source of mediation referrals.

The NAO say that the Government acknowledges that removing early legal advice through the reforms may have caused additional costs elsewhere, but the MoJ does not hold the data it needs to understand the cost–benefit case for early advice.

In recognition of these facts, the MoJ attempted a pilot scheme in 2022, designed to promote early resolution of housing cases by re-introducing early advice in areas of law such as welfare benefits and

debt, often at the root of a housing possession case. The plan was to use the data to help build a case for change. However, the pilot was unsuccessful due to the approach adopted of relying on the local authority's council tax department to recruit participants. These shortcomings were pointed out to the MoJ by many organisations in advance of the pilot in various meetings, but the warnings went unheeded. In the end, only three participants were secured out of an intended 1600 and £5m was wasted which could have been sensibly invested in the legal aid system if the MoJ had listened to those who know and understand the system.

We welcome early engagement from the MoJ on the forthcoming early legal advice pilot in private family legal aid and hope that the lessons learned from the housing pilot to ensure that a robust case can be made for further investment. The need for publicly-funded advice in private family law cannot be overstated.

From the Westminster Commission:

> 153 …the removal of private family law from scope also led directly to a significant drop in referrals to legal aid mediation. Mediations peaked in 2011/12 (pre-LASPO) at 15,357. In 2013/14 (post-LASPO), this figure had dropped to 8,438 and mediation starts continued to decline for the following six years. Despite a slight recovery, in 2019/20 there were just 7,562 starts, less than half the pre-LASPO peak figure. Practitioners are clear that the reduction in mediation starts is directly linked to LASPO scope cuts as family practitioners were one of the main sources of referrals for mediators."

Bringing these figures up to date, mediation starts remain well below the pre-LASPO levels, with 7,350 taking place in 2022/23.[88]

We welcome the news that the MoJ has pledged not to make mediation mandatory for separating couples and, as noted above, has launched a new pilot of legal advice that is specifically designed for parents/carers in private family law cases, which were taken out of scope by LASPO.

We would also raise that in some areas of law early resolution is in many respects out of clients', practitioners' and the MoJ's hands and in the hands of central government or local authorities.

As an immigration partner in a London firm set out:

> *"One frustrating element for many providers in this field is the unwillingness on the part of the Home Office (including ECO decision makers overseas) to review decisions at an early stage. The idea behind the opportunity for a review which was highlighted in the report by Justice "Immigration and Asylum Appeal s- a Fresh Look" from 2018 examined but there were several opportunities for resolution at a far earlier stage, but an opportunity which is frequently not taken. Whilst the procedure now reflects a requirement on the part of decision-makers to undertake a review, it is by no means uncommon for a decision to be maintained and for costs to continue to accrue until a day or two before the hearing long after the formal deadline for review. Whilst the tribunal has powers to make orders for costs, those tend to be restricted and are not frequently exercised as a consequence of which the legal aid spend in this area could be reduced either by imposing greater emphasis on early resolution or extending the powers of the tribunal to penalise late resolution when this could have been achieved had the rules been observed not only as to form but also as to substance."*

[88] https://assets.publishing.service.gov.uk/media/6582bea2fc07f3000d8d4556/legal-aid-statistics-tables-jul-sep-2023.ods - Table 7.2

QUESTION 18 – Other Areas for Consideration

Is there anything else you wish to submit to the Review for consideration? Please provide any

We have nothing further to add to our response to this Call for Evidence. We will continue to engage with RoCLA and look forward to the publication of the final report(s) arising from the various work streams. We are also interested in participating in discussions with the MoJ to help formulate any policy recommendations for reforming civil legal aid ahead of a public consultation on potential changes later in 2024.

APPENDIX A – Background to the Westminster Commission

The Westminster Commission on Legal Aid (the Commission) was a cross-party initiative formed by the All-Party Parliamentary Group on Legal Aid (the APPG) to carry out an independent review of the viability of the legal aid profession as it emerged from the COVID-19 pandemic (the Inquiry). The Commission spent six months collecting a comprehensive body of evidence from practitioners and members of the public on the impacts of both the LASPO cuts and the COVID-19 pandemic on access to justice and the legal aid workforce.

Over a period of 12 months commencing in October 2020, the Commission:

(i) held the following oral evidence sessions:
   a. criminal legal aid;
   b. family legal aid;
   c. civil (non-family) legal aid;
   d. the publicly funded bar;
   e. access to justice; and
   f. the future of the legal aid workforce (experiences of junior practitioners); and

(ii) carried out extensive desk-based research, and further engagement with expert practitioners, to provide context to and a broader exploration of the issues and concerns raised by witnesses at the oral evidence sessions.

Witnesses pointed to a lack of targeted and centralised research undermining policymaking in this area. The Commissioners saw this absence of data for themselves in the writing of the report, and therefore sought to build as comprehensive a picture as possible of the legal aid sector as it emerged from the pandemic.

APPENDIX B – Background to the LAPG Legal Aid Census

The aims of the research were to develop a baseline demographic profile of legal aid practitioners as well as gaining a better understanding of education and training, salaries, fee arrangements and job satisfaction. The surveys sought to identify routes into the profession, lawyers' perceptions on barriers faced and how these correlate to socio-economic background. They also aimed to better identify and describe the key challenges facing legal aid lawyers across different areas of law; and to provide an indication of how legal aid advice providers may have been affected by legal aid cuts, wider austerity reforms and by the Covid-19 pandemic. Finally, the surveys sought to capture how lawyers had adapted to the changing legal aid landscape; and their perceptions on what is needed to sustain the legal aid sector in future.

The LAPG Census was comprised of five online surveys designed to capture responses from each of the following stakeholder groups:

1. Former legal aid practitioners ('Legal Aid Leavers')
2. Current legal aid practitioners ('Practitioners')
3. Organisations engaged in the provision of legal aid services ('Organisations')
4. Chambers engaged in the provision of legal aid services ('Chambers')
5. Prospective legal aid practitioners ('Students')

Respondents in the first four groups were asked for their perspectives on a range of topics, including but not limited to: the delivery of legal aid; their personal experiences in the industry; the impact of factors such as LASPO and the pandemic on the sector; the Legal Aid Agency; salaries and remuneration; recruitment, retention, training and professional development, and; working conditions. Current students who indicated an interest in pursuing a career in legal aid were asked a series of questions regarding their experiences of legal education and training as well as their motivations for pursuing a career in legal aid.

The Census gathered a wide range of data from managers and directors of legal aid organisations, barristers, solicitors, legal executives, clerks, paralegals, caseworkers, students, aspiring legal aid practitioners, and former legal aid practitioners. In total, 255 former legal aid practitioners, 1208 current practitioners, 369 organisations, 32 chambers, and 376 students responded to the Legal Aid