



## **Justice Committee Inquiry: The Future of Legal Aid**

### **Evidence from Legal Aid Practitioners Group**

**October 2020**

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## About LAPG

Legal Aid Practitioners Group (LAPG) is a membership body for firms and organisations with a contract to carry out legal aid work in England and Wales. Our members are private practice firms, not for profit organisations, barristers and costs lawyers. 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.

We seek to work constructively with the Legal Aid Agency (LAA) and Ministry of Justice (MOJ) on specific issues, and attend meetings where operational and policy matters are discussed.

We run training courses for practitioners, and annual conference, and the Legal Aid Lawyer of the Year Awards to celebrate the work done by legal aid lawyers.

We also provide the secretariat service to the All-Party Parliamentary Group on Legal Aid, in conjunction with Young Legal Aid Lawyers.

## The context and scope of our submission

In our response below we have focused on two significant pieces of work that we have undertaken in the last year:

1. Between September and October 2019 we surveyed legal aid providers on their experiences of LAA decision-making, and have provided a detailed analysis of that data in this response. We received 540 responses to the survey, with 1852 examples of poor decision making by the LAA in free text which yielded 2799 issues (explained further below).
2. Between June and October 2020 we surveyed legal aid providers in relation to their mental health and wellbeing and specifically about the impact of the pandemic on those issues. The survey yielded 420 responses and worrying insights into the concerns of practitioners, which we have sought to summarise below.

The Justice Committee is seeking evidence and comment on six broad themes:

- How LASPO has impacted access to justice and for views on the post-implementation review and the criminal legal aid review;
- The role of the Legal Aid Agency;
- Recruitment and retention problems among legal aid professionals;
- The impact of the court reform programme and the increasing use of technology on legal aid services and clients;
- The impact of Covid-19 on legal aid services and clients; and
- What the challenges are for legal aid over the next decade, what reforms are needed and what can be learnt from elsewhere.

We are aware that the Committee will receive a great deal of detailed evidence from practitioners and representative/membership bodies in relation to the specific themes of this inquiry. We are also aware of the Committee's previous inquiries into legal aid and that a number of other bodies have produced research and analysis in this area. To avoid duplication and repetition we do not intend to submit evidence in relation to the impact of LASPO on client access, or on the reduction in legal aid spend and cases since LASPO as this is well documented elsewhere.

In a further effort to avoid repetition, we have had sight of and fully endorse the submissions to this Inquiry from **Law Centres Network**, **Garden Court Chambers** and **Resolution**.

Our evidence focusses primarily on two themes of this inquiry: the role of the LAA and the impact of Covid-19 on legal aid services (and specifically on the practitioners who deliver those services). However our evidence also resonates in relation to other themes: how LASPO has impacted on access to justice; recruitment and retention problems; the increasing use of technology on legal aid services and clients; and the challenges for legal aid over the next decade.

## **The role of the Legal Aid Agency**

### **LAPG's relationship with the LAA and MOJ**

1. One of LAPG's primary functions is to improve the delivery and administration of the legal aid scheme by engaging with the LAA on operational issues and the MOJ on the development and implementation of legal aid policy. We do so as a statutory consultee body, through participation in the Civil and Crime Contract Consultative Groups, the Process Efficiency Team, the Quarterly Digital & Technology Meetings and numerous other informal and ad-hoc processes. We act as a conduit between the LAA/MOJ and practitioners in an effort to ensure that policy-makers take heed of the experience and expertise of those delivering services.

### **The 'LAA decision-making survey 2019' – context, purpose and scope**

2. Our evidence in this section is based on data from and analysis of the 'LAA decision-making' survey that we ran between June-October 2019. The survey was prompted by a groundswell of opinion that had been building amongst the legal aid community in recent years. Practitioners were concerned that the LAA had developed a culture of making it increasingly difficult for providers to obtain funding to run cases, were deliberately looking for a reason to deny applications for legal aid if possible, and were seeking to unreasonably reduce the costs claimable from legal aid work. Many providers were also concerned that LAA decision-making was becoming politically motivated, partly in an effort to save public money, and partly to discourage litigation against public bodies by refusing to fund such cases even when there appeared to be legal merit in doing so. Practitioners voiced concerns about informal and unannounced changes to LAA policy, such as refusing funding for cases that had previously been funded without adequate explanation.
3. Our aim in conducting the survey was to obtain quantitative and qualitative data about LAA decision-making based on the experiences and views of front-line practitioners. We asked a series of questions about the interaction between practitioners and the LAA and asked practitioners about the impact of these interactions on their ability to run cases, on their sustainability and on access to justice for clients.
4. It is important to understand the recent history of the relationship between legal aid providers and the LAA in order to fully understand the context of and need for our survey. For many years practitioners have voiced concerns about the quality and independence of LAA decision-making. As a membership body we are regularly approached by our members with concerns about the LAA's approach to a particular case and more often than not we can work with the provider and the LAA to resolve those concerns. Our visibility over the issues that impact on practitioners and clients shapes our policy work and feeds directly into a number of formal processes with both the LAA and MOJ. However, as outlined below, the scale of the concerns raised by practitioners in 2019 led us to conclude that we needed to gather the views of as

many providers as possible to assess the current state of LAA decision-making and the impact it was having on providers and client access.

5. Practitioner concerns seemed to come to a head when, on 26 June 2019, The Guardian's Legal Affairs Correspondent, Owen Bowcott, published an article entitled '[Homelessness lawyers complain of legal aid culture of refusal](#)'. The article was prompted by the case of Terryann Samuels and claimed that housing lawyers involved in homelessness prevention work were being forced to take on cases at their own financial risk because of a 'culture of refusal' adopted by the LAA in relation to funding decisions. The case highlighted successive LAA refusals to grant funding for a case which was ultimately decided in the client's favour in the Supreme Court. The chronology, [published here](#) by the Birmingham firm Community Law Partnership which ran the case, demonstrates the lengths that the provider had to go to in order to obtain funding for a case which not only had a positive outcome for the client and her family but also set an important precedent in relation to statutory homelessness duties. The Supreme Court judges specifically criticised the delays in bringing the case to court, caused by the LAA's refusals to grant funding. The case also illustrates that providers sometimes have to run a separate legal challenge against the LAA to obtain funding, which causes significant additional work, delays and cost to the public purse.
6. The Guardian article galvanised legal aid providers who had experienced similar problems with LAA decision-making. They co-ordinated their efforts and shared their stories through two public meetings in October 2019 and February 2020, both of which attracted several hundred concerned practitioners. Sharing experiences reinforced the notion that a culture of refusal had developed within the LAA. Whether by deliberate design or by a gradual shift in approach towards a tendency to refuse funding, practitioners believed that decision-making had deteriorated, had become inconsistent and unpredictable and that the LAA regularly failed to properly explain adverse decisions. Some providers reported receiving decision letters from the LAA stating 'your application has been refused because: [blank]', and without identifying the decision-maker. Providers were then expected to challenge decisions that lacked a legal basis through review and appeal processes that they perceived as costly, slow and lacking in transparency.
7. Given the limited scope of legal aid post-LASPO, many of the adverse funding decisions related to challenges to public bodies such as the Home Office, the Department for Work and Pensions and local authority homeless and social services departments. Practitioners were concerned that if the LAA had developed a predilection to refuse funding this would have a serious chilling effect on the ability of client to challenge the decisions, unlawful practices or inaction of other public bodies.
8. When the Legal Services Commission was abolished in 2013, the LAA was established to administer the legal aid scheme and policy development and implementation functions were subsumed back into the MOJ policy directorate. However practitioners have expressed concerns that the boundaries between the two bodies appear to have become increasingly blurred over time. In particular some providers have expressed concerns that decisions made by the LAA on funding high profile or potentially significant cases against public bodies, or cases which could cause political embarrassment, are felt to lack independence and transparency. The MOJ and LAA have consistently denied that any external influence is brought to bear on LAA funding decisions.
9. The survey was entitled the 'LAPG Survey on LAA decision-making processes'. We asked respondents to give us information about their level of experience, areas of practice and the

proportion of their work carried out under legal aid funding. The focus was on civil legal aid where decision-making was perceived to be causing particular difficulties. Despite specifically noting that we were not seeking feedback about the LAA's much criticised Client Case Management System (CCMS) it was inevitable that some responses referenced issues with the system.

### The structure of the survey

10. The survey sought respondents' experiences of LAA decision-making over the previous 12 months (approximately Sep/Oct 2018 to Sep/Oct 2019). The survey was broadly structured around the life-cycle of legal aid cases and different stages of interaction between providers and the LAA; applications, amendments, costs assessments and reviews/appeals. Each question asked respondents to provide specific examples of any issues they had experienced. Respondents could skip questions as not all practitioners deal with every aspect of application and billing processes.

The questions posed were:

Do you have experience from within the last 12 months of any of the following problems?

- Incorrect refusals of substantive certificates and/or amendments to substantive certificates?
- Delays in granting substantive certificates and/or amendments to substantive certificates?
- Any particular issues in relation to the way the LAA deals with applications for emergency certificates?
- Incorrect nil assessments of Escape Fee or other claims for costs?
- Incorrect requests for evidence of means that may be impossible to obtain and/or not in compliance with the regulations, in particular for destitute clients?
- Particular problems when dealing with the Exceptional Case Funding team?
- The appeal or internal review process for challenging any of the above (or any other) decisions by the LAA?
  - Were the appeals you have pursued dealt with promptly?
  - Have you been forced to issue a claim or make an application 'at risk'?
  - Do you or others in your organisation spend unpaid time dealing with appeals?
  - Does the amount of unfunded time required deter you from pursuing appeals?
  - In your opinion was the process fair and transparent?
- Please provide a response below to this statement: 'Over the last 12 months LAA decision-making processes have improved.'?

We also included free text boxes at the end of each answer so that respondents could provide us with their own examples of decision making.

11. The survey was advertised to LAPG members through our updates, but also more widely over social media and through other representative bodies. Responses were collected over a six week period and yielded a very large number of responses. In total 540 individuals responded, with a mixture of responses from an individual and organisational perspective. Along with responses to the closed questions, the responses yielded 1,852 free-text examples of what practitioners saw as poor LAA decision-making. We then created a system for analysing and categorising the issues raised (see below from para 17). When we tagged each free text example against the categorisation system, the examples provided yielded 2799 issues in total.

## Key findings from the survey

12. [The results of the survey are summarised in a slide presentation](#) prepared for the second public meeting referred to above at para 6. It will be noted from the responses provided that the overwhelming majority of respondents reported a negative experience when interacting with the LAA.
13. Figure 1 shows the number of respondents broken down by areas of legal aid specialism. The total number of specialisms exceeded the number of respondents as some respondents answered on behalf of their firm/organisation and because some practitioners specialise in more than one area of legal aid. Despite a stated focus on civil legal aid, nearly 100 criminal defence practitioners took the opportunity to raise concerns about the LAA.

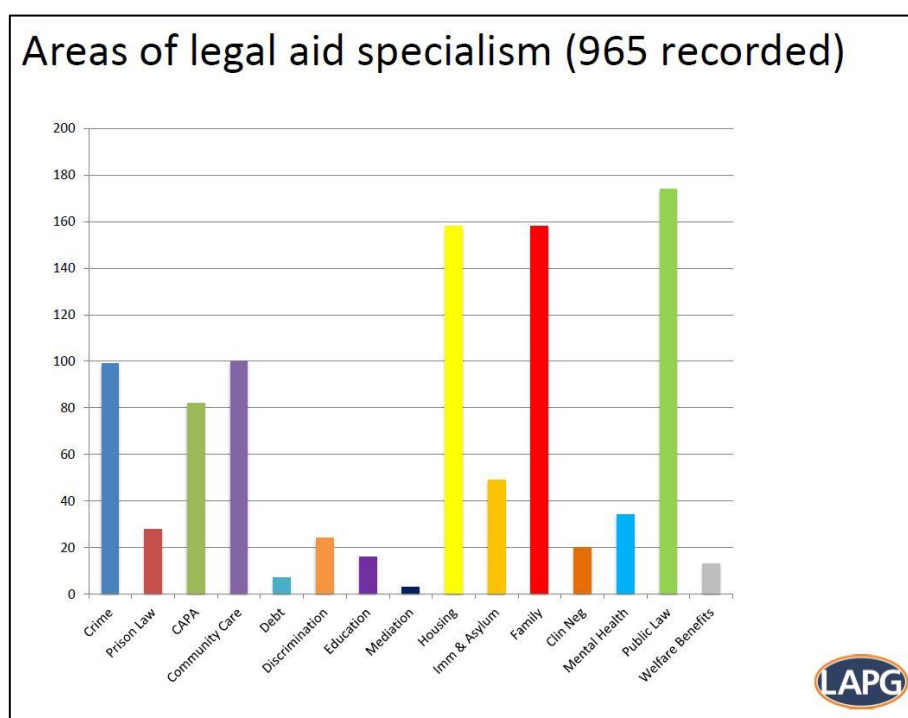


Figure 1

14. We would like to draw the Committee's attention in particular to a selection of the survey's findings which best illustrate practitioner concerns about the role of the LAA.

Figure 2 goes to the heart of the perception of the 'culture of refusal'. If applications for civil legal aid certificates are not granted when the case is in scope and the merits criteria are met, providers have stark choices to make which impact directly on vulnerable clients and have repercussions for organisational sustainability. Providers will have to decide whether to pursue an appeal against a negative funding decision, which can take time and resources to resolve, and in the meantime run the case at risk of not being paid. Appeals can be very slow to resolve, as was demonstrated in the Samuels case, and many providers simply cannot afford to take the financial risk. It is our view that providers should not be expected to take on such risks. If a case is in scope and meets the criteria for public funding, the provider should not have to fight tooth and nail to obtain funding.

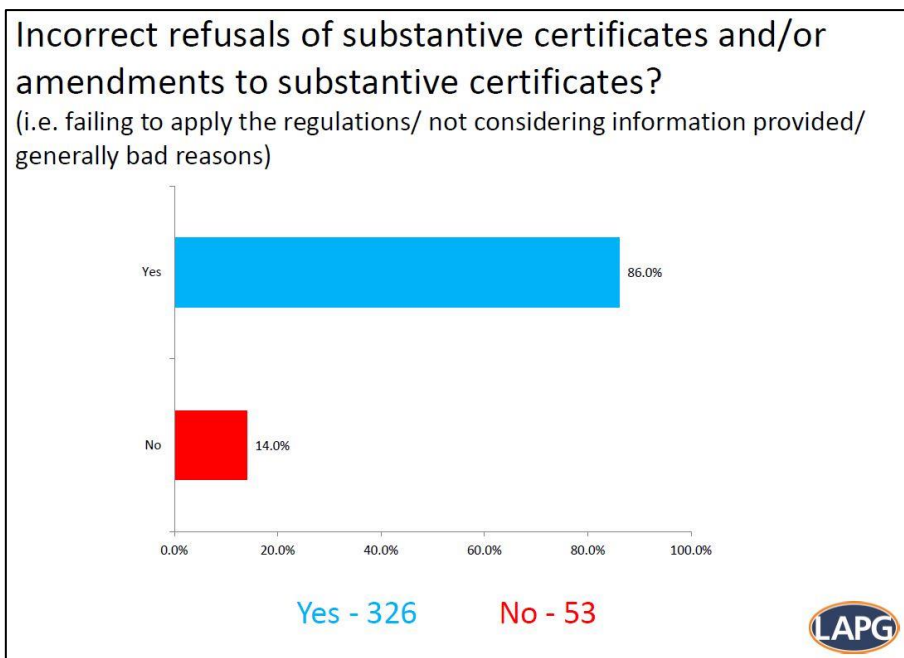


Figure 2

This approach by the LAA has a potentially devastating impact on access to justice for clients who depend on public funding. If providers have to go to such lengths to obtain funding many will choose not to undertake legal aid work, preferring to take on privately funded clients where there is more certainty of payment and the ability to charge more commercially viable fees.

It seems clear from the ever-decreasing number of firms and organisations prepared to take on publicly-funded work that the perception of a culture of refusal is one of the reasons that providers drop-out of the legal aid market. Having to spend so much time challenging LAA decisions cannot be viewed in isolation from other factors commonly associated with legal aid work: administrative burdens, heavy regulation and compliance requirements, low fees, long working hours and the stress of dealing with high caseloads, predominantly urgent and complex cases, and vulnerable and traumatised clients.

It must also be noted that the legal aid scheme is incredibly complex, with both providers and LAA decision-makers having to navigate primary and secondary legislation, contractual requirements, and official LAA guidance. The complexity of the scheme inevitably leads to errors by both providers and the LAA and conflicting and inconsistent interpretations and approaches.

15. A particularly problematic area, as described above, is providers being forced to work at risk. In this context, working at risk can mean the provider has no guarantee of being paid for the time they spend on the case, and not being reimbursed for disbursements incurred, such as court or expert fees. This issue was highlighted by Owen Bowcott and CLP in the Samuels case.

Figure 3 illustrates that working at risk is a common problem. It must be noted that responses to this question were provided in relation to working at risk pending the outcome of a review or appeal process. Many providers also work at risk whilst awaiting an initial decision on whether a case will attract legal aid funding. Given that legal aid providers are commercial

entities and/or registered charities, being forced to work at risk is another reason why many directors, partners or trustees decide that they cannot maintain their legal aid contracts.

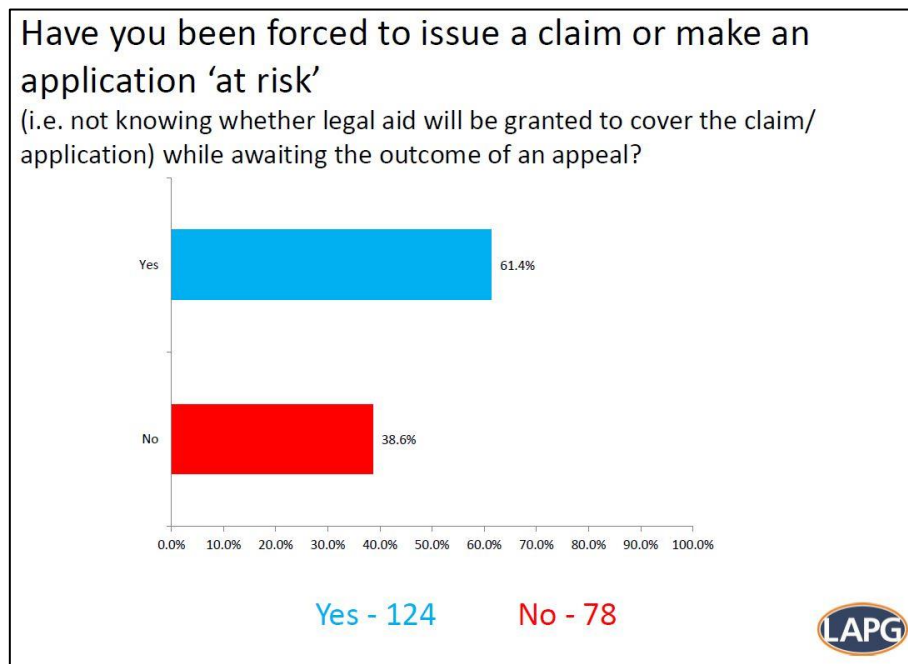


Figure 3

16. As Figure 4 demonstrates, over half of survey respondents also expressed concern about the LAA's approach to assessing claims for payment.

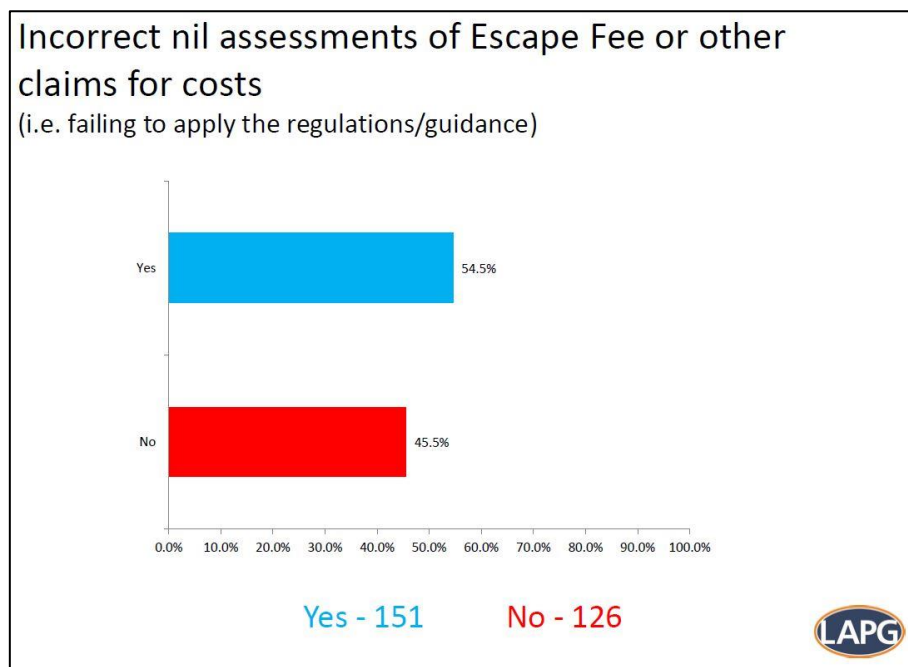


Figure 4

Over half of those who responded to this question believed that they had been incorrectly denied payment on a case where they had properly carried out work. This highlights how the sustainability of an organisation can be directly affected by poor LAA decision-making. In the event that a claim for payment is refused, reduced or nil-assessed, that has a devastating impact on provider finances and willingness to continue to undertake publicly-funded work.



17. As stated above, the 1852 free text examples provided by survey respondents were categorised and yielded 2799 concerns in relation to LAA decision-making. The categorisation process is outlined on page 21 of the slide presentation referred to at para 12 above.

We have provided below an example of the responses received which demonstrates the complexities and problems that arise with poor decision-making:

*'Many examples. A damages-only unlawful eviction claim where funding was incorrectly refused on the grounds that "the case was suitable for a CFA". We successfully appealed but had to demonstrate that there was no practical way of obtaining ATE insurance for the client's case and that therefore there was no scope for a CFA. From application to appeal decision took 3 months. An unlawful eviction claim (injunction and damages) where funding was granted for the interim injunction but client was then refused funding to continue the matter to trial. We successfully appealed after arguing that this was an absurdity since without continuing to trial, the client had no way to enforce the terms of the interim injunction and was vulnerable to a repeat unlawful eviction forthwith. Funding was subsequently granted for pre-trial steps only but the LAA are insisting on a separate application to extend funding to trial, supported by a huge quantity of documentary evidence as well as Counsel's opinion. There is no guarantee that further funding will be granted. An application to extend funding to cover an appeal on a housing possession case for which funding had already been granted. Because of delays at the Court end in obtaining transcripts of judgment, the LAA's decision took over 2 months and when it was received, funding was granted going forward only - no funding had been allowed for all the work that had gone into preparing the appeal. We would thereby have been out of pocket for the appeal issue fees, costs of a consent order to extend deadlines, Counsel's fees for advice and preparing the appeal paperwork, plus our own prep and attendance. It was necessary to appeal to obtain backdated funding. The appeal was successful.'*

This particular example illustrates a number of issues: (1) incorrect application of the merits criteria (2) telling the provider to use a CFA when the case was in scope for legal aid (3) delays leading to firm working at risk and (4) prejudice to the client's case.

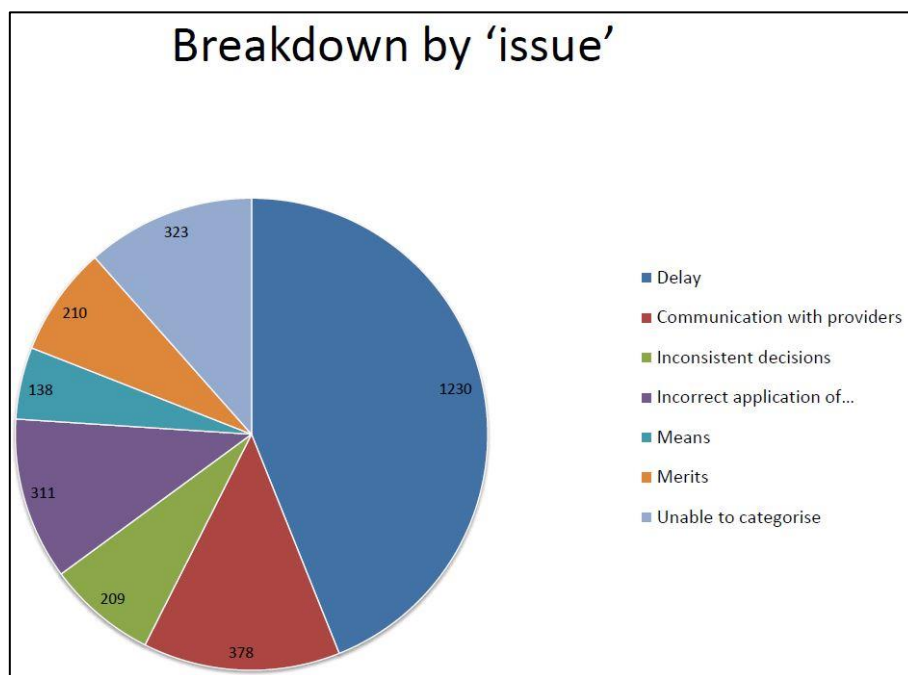


Figure 5

18. The categorisation process enabled us to analyse the survey responses and identify some specific themes, as outlined in Figure 5.
19. The issues are summarised in the slide presentation referred to above at para 12. However, a number warrant further explanation as they illustrate key issues in relation to the role of the LAA and the impact that decision-making has on provider sustainability and access to justice.

Figures 6 below demonstrates that providers regularly experience delays in funding and other decisions, which directly impacts on their ability to manage their cases and comply with their obligations to their clients and to the court. Delays also exacerbate the impact of working at risk (which, for some areas of legal aid is built into the system).

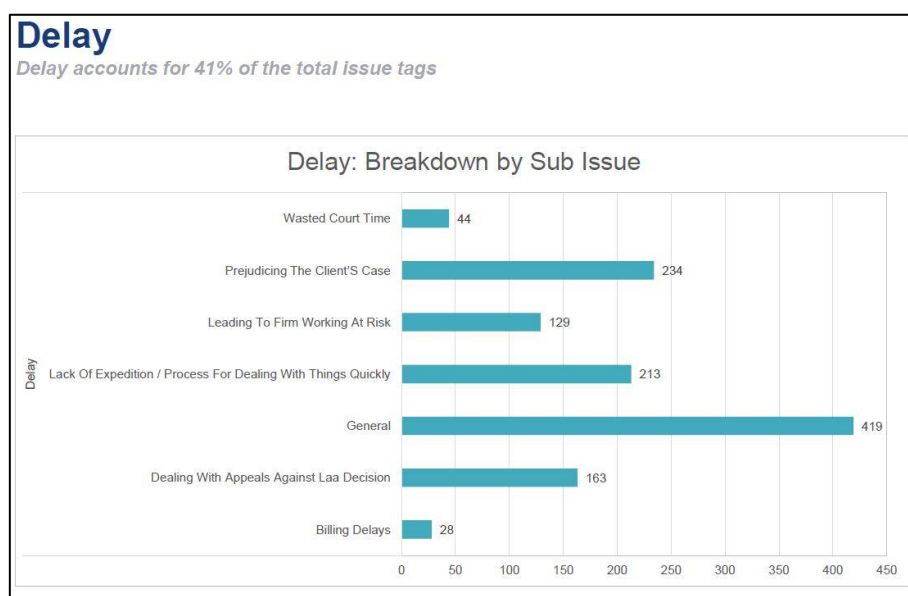


Figure 6

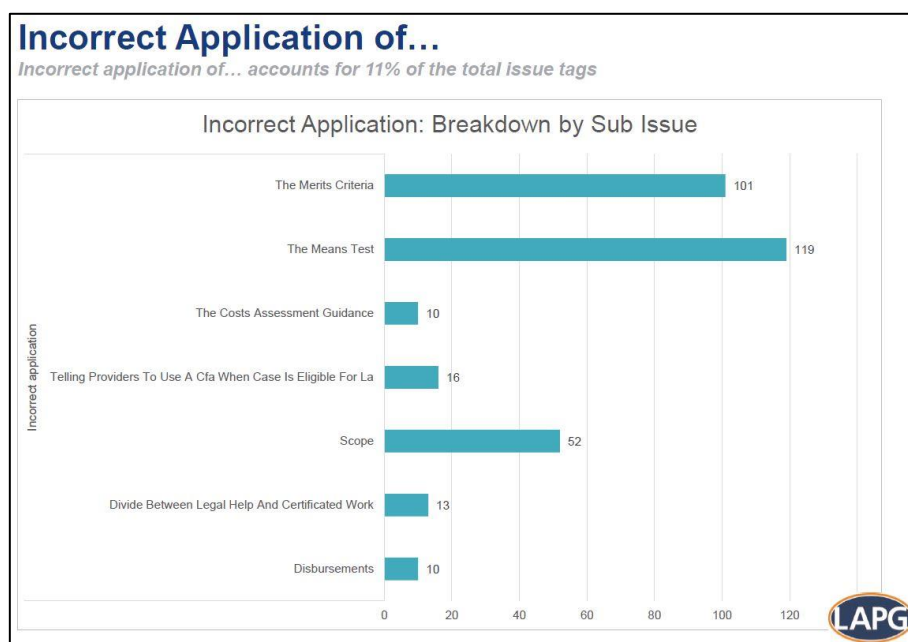


Figure 7

20. Figure 7 illustrates that providers experience what they perceived to be the erroneous application by the LAA of the legal aid means, scope and merits criteria. When one considers the combined impact of delays and incorrect decisions, coupled with the concerns that practitioners have about review and appeal process (see pages 14-19 of the slide presentation referred to above at para 12), in an environment when legal aid payment rates do not cover the cost of delivering services, it is little wonder that so many providers have left the legal aid market.

#### The work arising out of the survey

21. The survey data has been shared with the Chief Executive of the LAA, Jane Harbottle, and a meeting occurred in early 2020 to discuss issues with both 'operational' and 'cultural' issues within the LAA. The LAA has taken an open and constructive approach to dialogue on the issues identified by the survey. We met with LAA senior staff on 12 March 2020 to look at the first two priorities: delay and first instance decision-making in relation to the legal aid merits test. At that meeting, a number of operational changes were proposed and agreed:
- Development of Case Ownership for front-end processes. This will create accountability for caseworkers, encouraging them to get it right first time. Will reduce the volume of correspondence and further information requests, and shorten the end-to-end time.
  - Develop a 'fixer' email for applications in line with the system for billing (civil claim fix). Use examples and data to identify improvement areas and training needs.
  - Potential to expand the £25,000 cost limit to other categories of law. If not possible investigate the possibility of setting new default limitations.
  - Development of an 'appeals tracker' to understand how many are overturned/upheld. Create feedback and track reduction over time. Tracker to include Reviews and Appeals and feed into internal and external training plans.
  - Review the quality control culture: how are errors communicated and how do we ensure lessons are learnt? Building confidence of caseworkers to avoid multiple document/further information requests.
  - Run quality control samples on refusals and appeals, especially where there is Counsel's opinion.
  - Consider how to shorten the length of time from when delegated functions are used to when the substantive certificate is granted. Can this time be reduced?
  - Map the Provider Transfer process. Work with providers to understand the impact on the client when this process fails or takes too long.
  - Investigate how caseworkers are 'date-limiting' certificates. Understand why this is now happening and the wider impacts upon how certificates are funded.
  - When rejecting/refusing use 'other' to give providers more information on the reason for the decision to help them get it right next time. Understand use of language when rejecting and refusing applications. Work with caseworkers to provide constructive feedback and apologise when required.
  - Build an MI Tool for Managers to give detailed visibility on all caseworkers' decision-making. Every reject, refusal, document request and grant will be tracked and reported on for Managers to discuss during monthly touch point meetings.
22. Unfortunately, the Covid-19 crisis has impacted on the speed and progress of this work. The LAA have, understandably, been focused on contingency arrangements for legal aid providers and ensuring that system-critical processes are maintained. However, some useful work strands have now re-commenced from the list of actions, which include the new 'apply fixer'

email pilot project and meetings between LAA decision-makers and practitioners to identify issues and potential solutions to current processes.

#### Other issues impacting of provider sustainability

23. Despite adopting a constructive approach to working with LAPG and practitioners in response to the issues identified in the survey, it is clear that a great deal of work needs to be done to improve LAA decision-making processes. LAPG continues to field queries from providers who have concerns about the quality, timeliness and independence of LAA funding decisions. The current pilot of the 'apply fixer' email service, which gives providers ready access to senior decision-makers when they are concerned about a funding decision, has the potential to ameliorate some of these concerns, particularly if the LAA can demonstrate that caseworker performance improves as a result of this new service.
24. Another issue that will impact on the relationship between providers and the LAA, and on provider sustainability, is the LAA's decision to bring all 'legal aid only' bill assessments<sup>1</sup> in-house and out of the hands of judges. Providers were surprised at the timing and lack of consultation in relation to this decision, which happened very quickly and without a policy consultation in July 2020 (with an implementation date of 17 August 2020). Many practitioners have expressed reservations about the LAA's capacity and expertise to assess larger, more complex bills, as opposed to judges who have practical experience of conducting litigation. Many are also concerned because of the experiences that generated the perception of the 'cultural of refusal' within the LAA. It must also be noted that the LAA mandated this change without having developed the necessary processes and IT solution to submit larger, more complex bills. The LAA's stated position is that it does have the capacity and expertise to assess all legal aid bills and that it will be able to do so more quickly, more accurately and more consistently than the courts. Given this was a relatively recent change of approach, and as there has been Covid-19 related disruption across all areas of legal aid in recent months, it is not yet possible to assess whether the transfer of assessments to the LAA is having a negative or positive impact on providers.
25. Prompted by significant concerns raised by LAPG and other representative bodies about the sustainability of providers due to the impact of Covid-19, the LAA has introduced new provisions to enable faster and more regular payment for some types of legal aid work. For example, providers can now claim four, as opposed to two, payments on account on certificated cases, to help with cash-flow concerns. The LAA is also introducing new processes for claiming interim/staged payments for controlled legal representation and/or controlled work in immigration, mental health and inquest cases. This work must be acknowledged as beneficial for providers but we would urge the LAA to go further and adapt more quickly to support providers, particularly as the UK enters a second lockdown with the resulting financial impact on providers and inevitable increase in client need.
26. LAPG has also been pressing the LAA to be as transparent as possible with its management information and data in an effort to rebuild trust and a constructive working relationship with providers and representative bodies. Over the last two years the LAA's billing/finance team has developed a very useful tool for reporting performance and issues with billing processes. This tool provides insight into how the LAA assesses its performance and how it utilises learning from quality control processes. The LAA is currently developing similar reporting mechanisms for application and appeal processes, which would be a welcome step forward to

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<sup>1</sup> This phrase refers to bills that only include legal aid costs, not bills that include inter partes basis costs or a mixture of legal aid and inter partes costs, which continue to be assessed by the court

enable greater scrutiny and oversight over LAA processes. We also believe that greater transparency over LAA management information, and a more collaborative approach by the LAA, will help providers to improve their practices and reduce error rates.

## **LAPG Mental Health and Wellbeing Survey**

### **Scope and purpose of the survey**

27. When lockdown occurred in March 2020 we were very concerned about the likely impact that court closures and an inability to generate new work and progress existing work would have on legal aid providers. The provider base has been running on empty for many years as a result of years of underfunding and fee reductions – some direct and some due to changes in scope or LAA processes. However we were also aware of the impact that working in the legal aid sector can have on the mental health and wellbeing of fee earners and support staff.
28. Those working in the legal aid sector face a multitude of stresses on a daily basis, arguably over and above those experienced in other areas of the legal profession. The areas of law covered by legal aid providers are, by their very nature and due to changes introduced by LASPO, complex and involve traumatised and vulnerable clients who generally struggle to understand legal processes. In addition, many of those working in the sector face job insecurity, a lack of opportunity for career progression, tough financial targets due to uncommercial fees, long, antisocial or inflexible hours, and a lack of dedicated support or supervision.
29. Vicarious trauma is a recognised condition for many working in the legal aid sector. It is a process of change resulting from empathetic engagement with trauma survivors. This has the potential to directly affect lawyers and support staff within legal aid organisations, who engage empathetically with survivors of traumatic incidents such as torture, or who view material relating to their client's trauma. Common signs of vicarious trauma can be lingering feelings of anger, rage and sadness about a client's victimisation, becoming overly involved emotionally with the client, being preoccupied with thoughts of clients outside of the work situation, over identification with the client, loss of hope, pessimism and cynicism.
30. When lockdown was imposed, it became apparent very quickly that legal aid providers were going to face an extremely difficult time coping with the new and unprecedented situation that faced them, their clients and their businesses. Initially, when lockdown occurred, firms and organisations closed their doors and staff had to adapt very quickly to working from home whilst coming to terms with the reality of living through a pandemic. People were isolated and detached from colleagues and their daily support networks. That all-important daily contact with colleagues disappeared overnight and for many has been replaced by virtual relationships.
31. The gradual lifting of lockdown measures, with courts opening and some people returning to the office, created another set of stresses, particularly for business owners, inexperienced and young staff, and those with vulnerabilities to COVID-19. Throughout this period, providers have reported high levels of anxiety to us, with many finding it difficult to clearly divide home- and work-life and those responsible for staff and services extremely anxious about the future.
32. We wanted to gather evidence about how those working within the legal aid profession were being affected by the COVID-19 crisis, and what we, as an organisation, could do to support the sector. We began speaking to a number of large city firms and funders about ways of

providing mental health support to legal aid practitioners. We discussed issues such as managing stress, burn-out, anxiety and vicarious trauma and decided to run a survey to determine the levels of need for support within the sector.

### The profile of respondents

33. The survey was open to anyone and everyone who works in the legal aid profession, from partners and managers, to solicitors and barristers, legal executives, caseworkers, trainees, paralegals and support staff.
34. We launched the survey on 29 June and it ran until 4 September 2020. We received a staggering 420 responses. We posed a set of questions to better understand the respondents and their work, and sought to understand how they were coping during lockdown, the type of support currently in place, and the type of support they felt they needed.

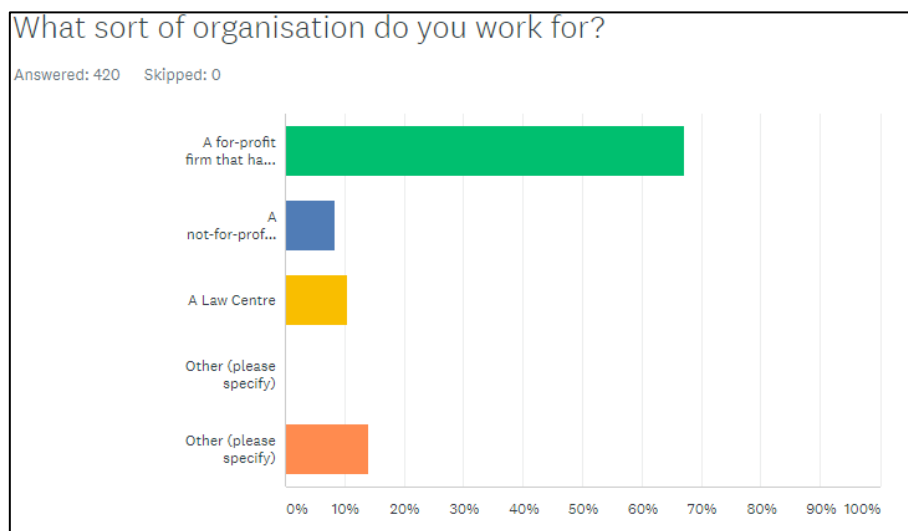


Figure 8

35. Figure 8 shows that the majority of respondents work in private practice, which reflects the fact that the majority of legal aid provider organisations are ‘for-profit’ private firms.
36. Figure 9 illustrates that a wide range of legal aid professionals answered the survey, with the largest group being solicitors.
37. Figure 10 shows the level of post-qualification experience of respondents. The majority of respondents were more than 10 years PQE, which suggests that it is not just young and inexperienced staff who are feeling the pressure and experiencing an adverse impact on their health and wellbeing: stress builds up over many years of practising in legal aid and can be exacerbated in senior positions when practitioners are responsible (and sometimes personally liable) for businesses.

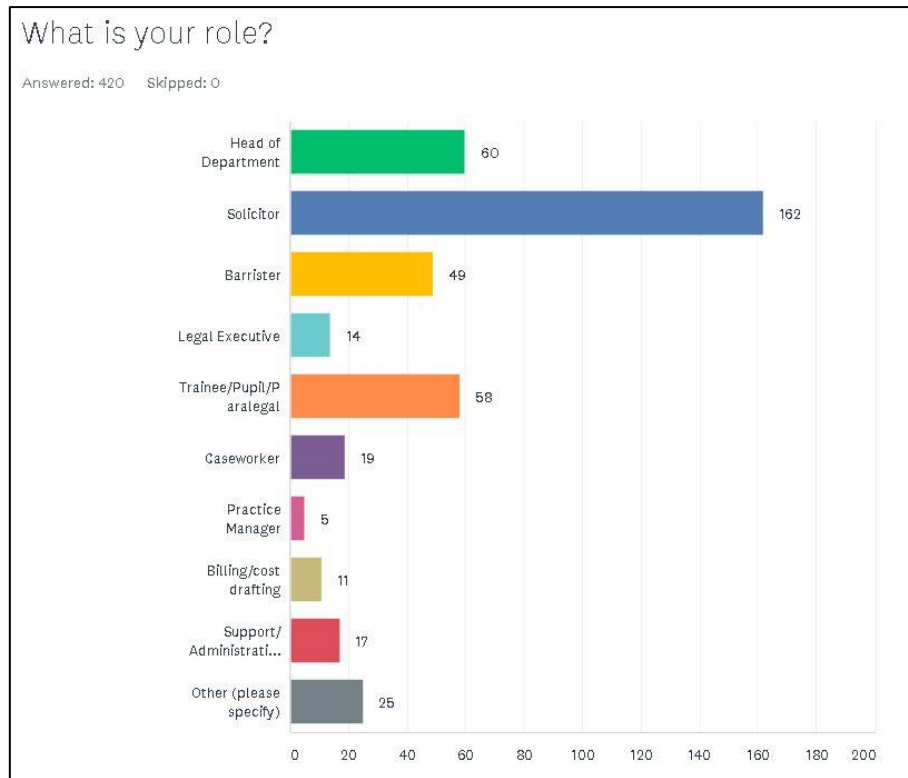


Figure 9

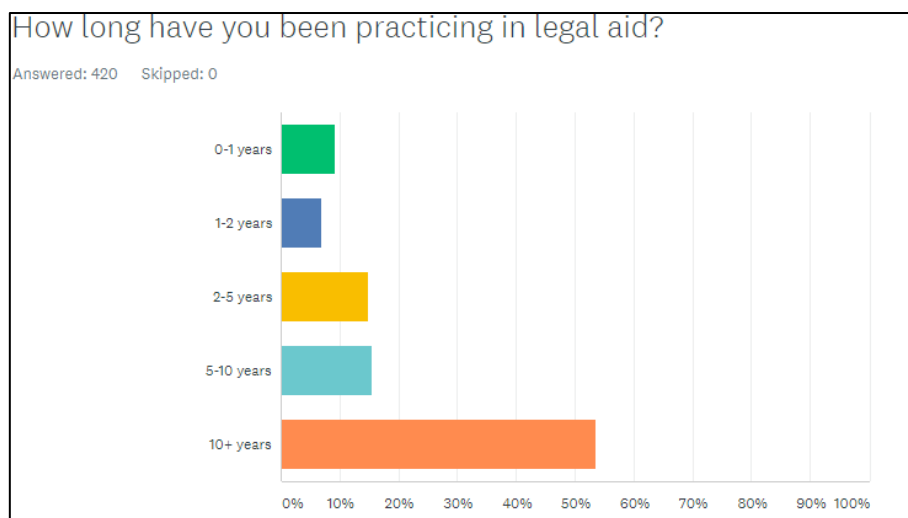


Figure 10

38. Figure 11 shows that responses were received from a wide variety of practitioners from across the legal aid sector.

ANSWER CHOICES	RESPONSES	
▼ Crime	27.62%	116
▼ Prison Law	10.95%	46
▼ Claims against public authorities	19.29%	81
▼ Community Care	13.10%	55
▼ Debt	2.38%	10
▼ Discrimination	8.33%	35
▼ Education	2.38%	10
▼ Mediation	0.95%	4
▼ Housing	19.76%	83
▼ Immigration and asylum	7.62%	32
▼ Family (Public)	19.76%	83
▼ Family (Private)	16.19%	68
▼ Clinical negligence	0.48%	2
▼ Mental health	9.52%	40
▼ Public law	25.24%	106
▼ Welfare benefits	6.43%	27
▼ Court of Protection	9.76%	41
Total Respondents: 420		

Figure 11

### The impact of lockdown on health and wellbeing

39. Questions about the impact of lockdown and the support available to practitioner yielded some alarming responses. Figure 12 shows that while only 10% of respondents had been furloughed (and we suspected that those furloughed would not have been made aware of the survey), over 60% had experienced changes in their working patterns or hours. Over 30% had experienced a reduction in their income or the income of someone in their household.

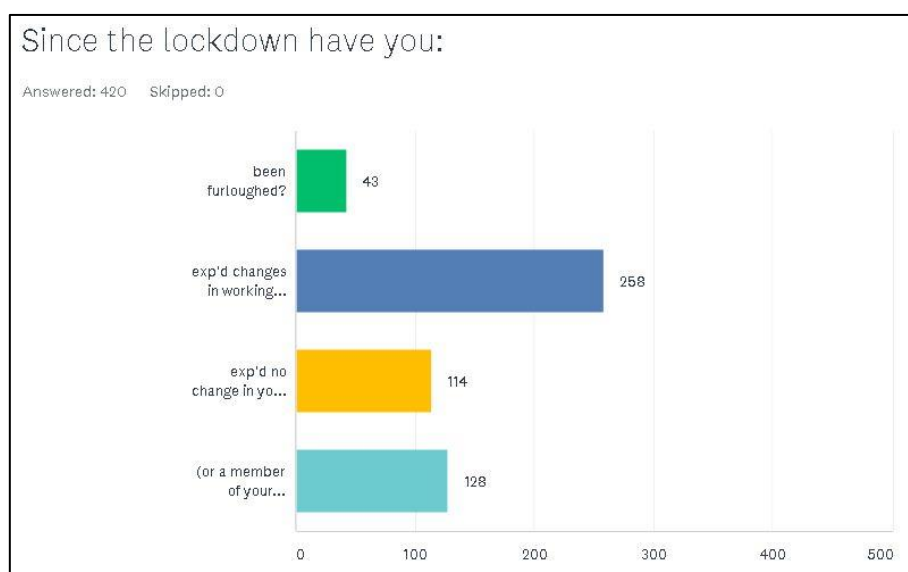


Figure 12



40. Figure 13 shows the stark impact of lockdown:

- a) 79% of respondents had experienced stress
- b) 66% were having difficulty switching off from work
- c) 59% were having difficulty sleeping or had disrupted sleep patterns
- d) 46% had experienced mood swings or sudden outbursts of emotion
- e) 41% had financial concerns
- f) 35% had management concerns
- g) 34% had experienced loneliness
- h) 23% had experienced vicarious trauma
- i) 9% had another form of concern
- j) Only 5% of respondents (19 respondents in total) had not experienced some form of adverse impact from lockdown

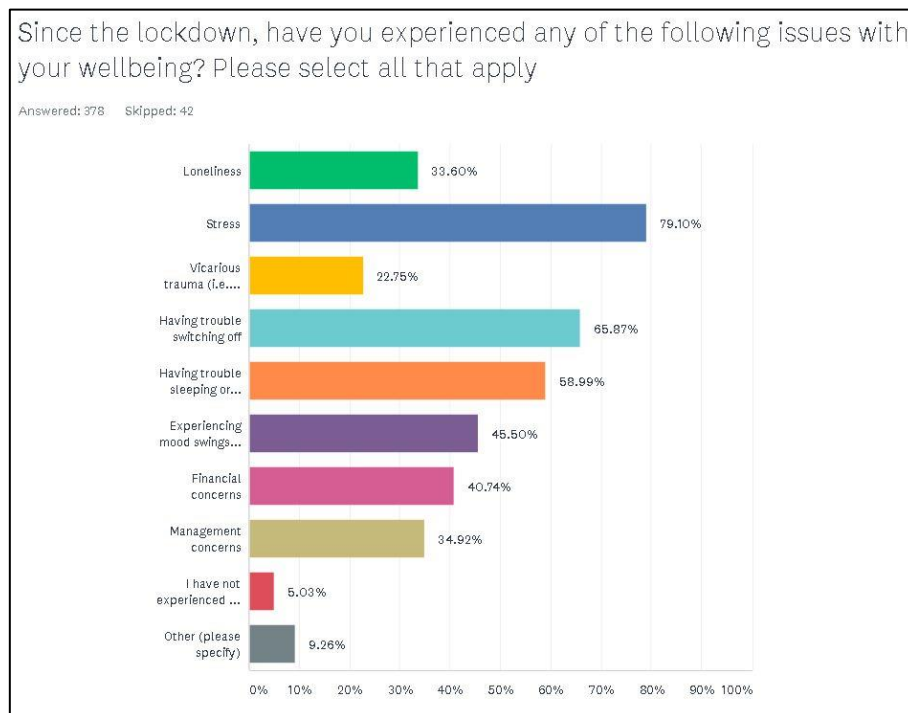


Figure 13

41. Figure 14 outlines the factors that respondents felt had an adverse impact on their wellbeing, with longer working hours (55%), greater work demands as a result of Covid-19 (50%) and job or organisational insecurity (49%) featuring highly. 43% also identified having more work to do as a result of having fewer staff, while 46% noted difficulty juggling responsibilities at home with their workload.

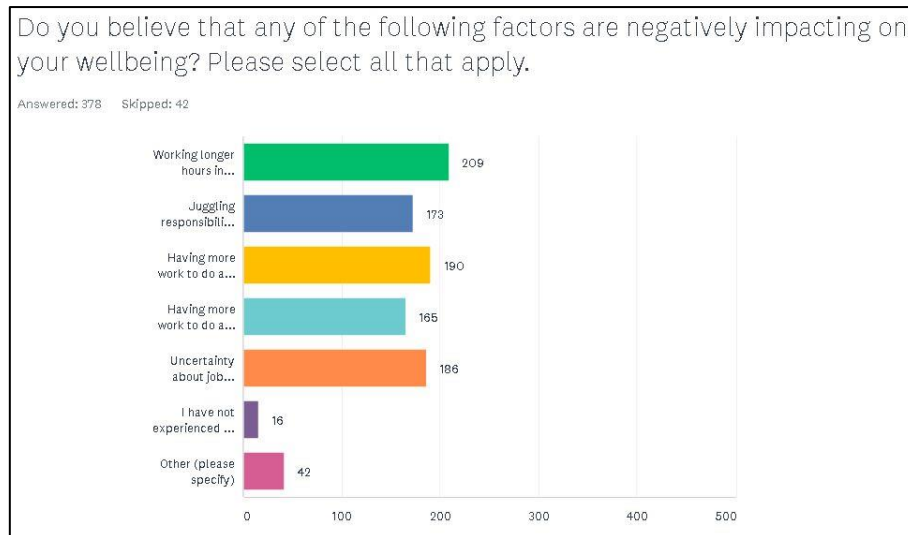


Figure 14

42. Just as concerning as the impact of lockdown is the lack of available informal or formal support structures for legal aid practitioners, as illustrated by Figure 15. The largest number of providers (41%) had accessed no form of support, despite Figure 5 demonstrating that only 5% of providers stated that they had not experienced an adverse impact from lockdown. Less than 10% of respondents had accessed a formal support service with a mental health practitioner, whereas Figure 16 shows that 33% would like to have access to such services. Figure 16 also shows that respondents felt that they would benefit from greater access to training courses and webinars, mindfulness training and peer support.

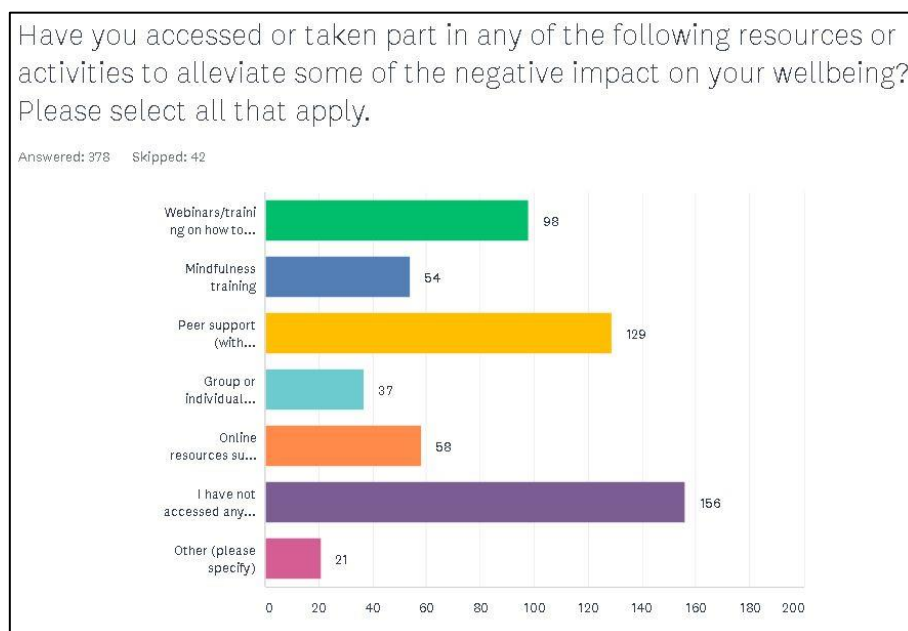


Figure 15

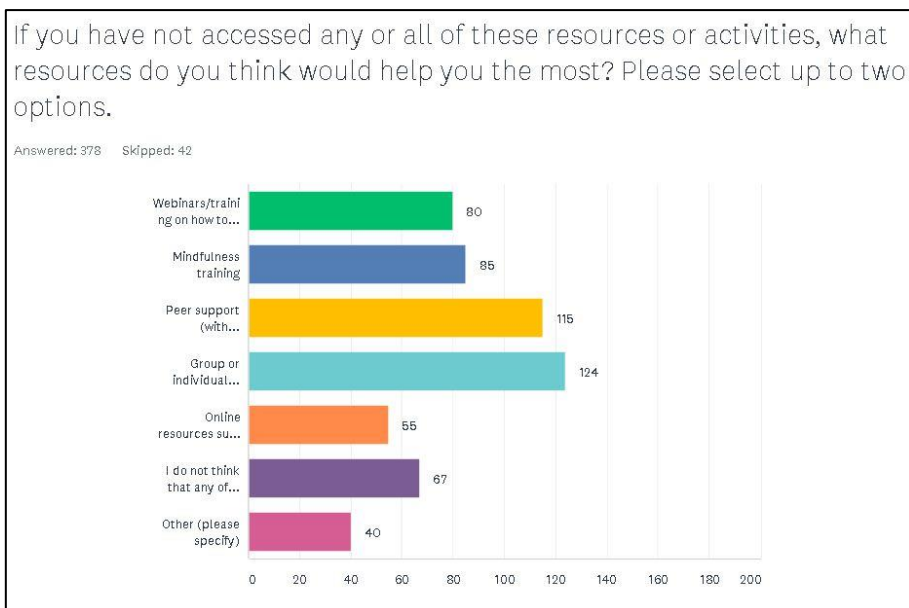


Figure 16

43. We received 260 free text responses to the question 'Are there any specific concerns that you have about the lockdown restrictions being lifted that you wish to share with us?' We have selected a number below which are illustrative of the general tone of the responses:

- Unreasonable demands by courts for in-person attendance at hearings, which expose me and my family to risk.
- That assumptions will be made that as those of us with caring responsibilities appear to have coped, this will be viewed as normal or acceptable.
- I feel very de-skilled as a result of lockdown and have severe anxiety about going back to court.
- I am concerned that things will go more quickly than ever before, as everyone tries to re-list hearings at short notice, which were adjourned in lockdown, and I have little to no support (due to our support staff being furloughed/made redundant). I worry about travelling into London and further afield, for court hearings. On the other hand, I worry that there will be some long delays in some cases, which will affect my ability to reach my billing targets.
- That they are being lifted to soon and erratically, without a basis in science. As such, I am concerned for mine and my family's safety. I am also concerned that we will lack training opportunities, team building and support as a result.
- Attending court and keeping safe and managing court hours around reduced childcare setting hours.
- Continued remote working is detrimental due to decrease in colleague interaction and decreased efficiency.
- That I cannot insist my team goes back into the office - and they don't think its safe - but working remotely is becoming difficult. Everyone is struggling to some degree or other. No team members were furloughed and we are busier than ever but struggling to cope as people have left due to work pressures.
- The rush to get the justice system back without allowing flexibility for practitioners to catch up or respond.

- Terrified of being infected with COVID as it would disrupt my other medical treatments and would affect my health negatively in ways additional to solely COVID related symptoms.
- Concern about pressure to go into the office - worried about risk to health and that it would limit how comfortable I felt seeing older loved ones.
- My office has declined to provide clear guidance as to returning to work. There is an informal arrangement but those who are most junior are expected to come in and take up the bulk of administrative duties whilst those more senior do not communicate as to who and when people will be in the office. Receptionist was furloughed longer than me meaning I was trying to deal my ever increased work load, various admin duties and answering the phone in a near empty office. We are told to work from home but then given a ridiculous amount of pressure to come in - but then more senior people come in and the office becomes crowded. It is stressful and unfair.
- The LAA have said that remote interview fixed fee will end at the end of September 2020. If Covid is still active at that time, that is a huge concern. We deal with the most vulnerable of individuals who do not understand social distancing and unfortunately, due to their circumstances, sometimes do not wash, so washing their hands is not a priority for them. This puts us all at a huge risk of Covid. This obviously applies to the Court system too where some Courts are being difficult about advocates appearing remotely.
- Overcrowded courts and requirement to travel on public transport more frequently. Indefinite warned lists in crime and extended court hours.

44. We received 245 responses to the question 'Are there any particular measures that could be put in place either by your organisation or the wider legal aid community to help with those concerns?'. Again we have selected an illustrative sample:

- More team building, group work and support.
- A significant amount of stress could be alleviated if the LAA would make funding decisions promptly and the quality of their decisions improved.
- I would like to see clear guidance and policies from management / regulatory bodies on how to avoid staff burnout, such as guidance on how and when to communicate with staff remotely, the importance of the working day ending on time where possible so that staff do not feel they should always be available. I would also like to see a commitment to allowing staff to work remotely where it is unsafe to return to the office.
- Court listing arrangements, prison visits easier legal aid applications, judicial expectations of solicitors need to be amended as we come out of lockdown.... We cannot procure miracles.
- I think mindfulness and/or yoga sessions would make a huge difference. It's one thing doing these activities on your own but it's important to feel part of a bigger group, otherwise the isolation can be very difficult to deal with.
- More flexibility and understanding from LAA about the difficulties in obtaining proof of income and liaising with Court system.
- There has been no relief in the form of grants to LA providers delivering essential services faced with fixed overheads and in certain categories of law reduced income.
- If there was better financial support for legal aid firms then the need to take on such a massive caseload would reduce and with it the additional stress.
- My view is increasingly that the main stressors in the job are endemic to the system and will be difficult to alleviate without root and branch change.

- I think the government needs to review the financial assessments for legal aid - there are many women who I have spoken to who require representation whilst they have escaped from abusers but they were not eligible financially. The government needs to appreciate the legal aid work that is done and the issues that are dealt with are complex and time consuming and the work that is put in for a pittance really.
- Have more manageable and realistic targets. Increase legal aid hourly rates and for the LAA to have better training about law so they stop rejecting things wrongly, increasing the need to appeal.
- If we are to home work we need proper desks, mice, keyboards, stands and the ability to print. We also need proper administrative support 2) we need a safe way of traveling to court and to and from the office 3) expecting caseworkers to make do from home and maintain pre Covid levels of productivity is not only unrealistic but ridiculous.
- An acceptance that our work culture has changed and that normality does not mean a return to travelling to the office 5 days a week.
- I think there needs to be an acceptance by the wider community that we are all doing the very best that we can, under very difficult circumstances, and we are all human. One example is court hearings being listed at extremely short notice last week, I received notification of a court hearing at 4:30 p.m. for a hearing the following day, at 1:00 p.m. I was able to juggle my diary, but that might well have not been possible.
- Basic support and caring attitudes from supervisors and partners at work would be nice. Supervisors just don't seem to comprehend that it's difficult for us to work from home, as junior members of staff don't have luxuries like a spare room to work in; we are all working in our bedrooms. This means we live and sleep and work in the same place, day in, day out. This is very bad for mental wellbeing. In addition, almost half of our solicitors were furloughed and we were then expected to take on all of their work, literally doubling (or more) our workload, with no recognition from supervisors that this was even a big deal - they acted like we were being dramatic and ridiculous when we raised legitimate concerns about our caseloads.
- Financial support for legal aid firms, pertinent to me, criminal firms, with very few trials taking place across the county the loss of those fees is devastating.
- I do not think organisations or the community (other than peer support) can allay concerns. The work LAPG have done to communicate the position alongside other associated organisations was excellent and to be commended. This government is just constantly moving the boundaries without consultation and without issuing updates/guidance. They are compounding the stress and wasting lot of people's time. We can only call it out.
- I think the profession (And the courts in particular), often behave like defence practitioners have no personal lives (or if they do, that they are of little value), and are expected to continue on regardless of the circumstances with no heed being paid to the fact that we are human beings with our own struggles, doing an extremely difficult job, often with no support whatsoever. In this respect, I feel our particular profession is stunted in its progression and will fail unless it starts looking after it's practitioners as if they are real people, human beings who have needs mentally, emotionally and physically. The problem is systemic and needs to be dealt with at the roots.
- Just get the LAA to accept we are not fiddling the system and trust our bills and applications.
- The margins of legal aid practices are already so tight that the work is already very pressurized. The LAA's constant battering of legal aid practitioners in bills, poor assessments that require appeals, audits etc., whilst simultaneously failing to adhere to own processes e.g. to respond in appropriate timescales to emergency applications etc. will become increasingly hard to manage work-wise and income-wise. The LAA needs to

increase capacity to ensure their own systems run properly and suitably experienced staff consider applications so that we don't have the constant rigmarole of appealing poor decisions (unfunded).

45. It is clear from the data that many of the staff members working in legal aid firms and organisations are feeling stressed and burnt out. That situation looks set to continue well into 2021 as a second wave of COVID-19 takes hold. We firmly believe that low fees, decades out of step with the rising costs of running businesses, has undermined that ability of employers to provide more comprehensive and targeted forms of support for their staff. Low fees also mean that fee-earners have to carry higher caseloads in an effort to generate the income needed to sustain a practice. Changes in scope, leaving only the most urgent and complex cases within the scheme, heavy administrative requirements and disproportionate auditing and compliance requirements all also add to the stress of working in legal aid.

### **Views on the LASPO Post-Implementation Review (PIR) and the Criminal Legal Aid Review**

46. The All-Party Parliamentary Group's inquiry into the sustainability of legal aid ([see here for further information](#) about the Westminster Commission on Legal Aid) commenced in October 2020 and comprises six oral evidence sessions and a comprehensive research project analysing the legal aid workforce. The first of those oral evidence sessions took place on 29 October 2020 and focused on criminal legal aid. Powerful evidence was submitted from front-line criminal defence practitioners about the current state of criminal legal aid and the criminal justice system. A full transcript of the session [will be available here](#) in due course and a recording of the session [can be viewed here](#).
47. Unsurprisingly, due to the parlous state of many criminal legal aid provider organisations, witnesses to the oral evidence session pressed the government to accelerate the Criminal Legal Aid Review and commit to both the reversal of the 2014 8.75% fee cut and an increase in fees to properly reflect the cost of delivering services. Along with a need to increase fees, witnesses also gave evidence in relation to serious difficulties recruiting new staff and the impact this has on succession planning; the drain on existing staff caused by, inter alia, attritional working conditions and the lure of more financial security in the CPS and other areas of legal practice; concerns in relation to diversity and inclusion; the risks for business owners of managing legal aid firms; stress and burnout.
48. More broadly, LAPG has serious concerns about both the conclusions reached by the LASPO PIR and the work streams that have arisen from it in the form of the [Legal Support Action Plan](#). While it cannot be disputed that Covid-19 has, understandably, diverted MOJ resources away from policy development and implementation, we would encourage the Committee to conduct further, more detailed, analysis of the MOJ's future plans for legal aid and legal support policy.
49. Notably, there has been no commitment by the MOJ in either the LASPO PIR, Legal Support Action Plan, or the recently announced civil sustainability review to conduct a detailed and comprehensive review civil legal aid fees.

### **The challenges for legal aid over the next decade and the reforms needed**

50. In our view, the biggest challenges for the future of legal aid are the ever diminishing size and viability of the provider base coupled with an inability by those firms and organisations still within the sector to recruit and retain staff. These factors directly and adversely impact on

the ability of clients to access the services they need, which, ultimately, must be the primary concern of the MOJ when developing legal aid policy. The appeal of choosing a career in legal aid work is wholly outweighed by any common sense approach to having a viable career. It is no longer the case that those sufficiently committed can 'make a go of it'. The current rate of attrition in terms of staff and providers of legal aid looks set to continue and, in all likelihood, accelerate due to the Covid-19 crisis. We are faced with a lethal combination of low fees, delays in court hearings and trials leading to delayed payment, LAA bureaucracy, and an aging workforce of stressed and burnt-out staff. Unless the government commits to significant investment and reform it is unlikely that we will have a functioning legal aid sector at all by the end of the next decade.

51. There are a great many structural, legislative and operational changes that need to be implemented to make legal aid a sustainable mechanism for ensuring access to justice for those without means. Fundamentally the system needs a huge amount of investment and it is highly doubtful that the level of investment required will be politically palpable in the foreseeable future. However, what is clear is that current government plans to reform legal aid, or legal support services, will do little more than skirt around the edges of what is necessary. We would therefore make the following recommendations for the reform of legal aid policy over the next decade:

- The creation of an independent body to periodically (we would suggest annually) review and set civil and criminal legal aid remuneration rates
- Reverse the LASPO scope changes by reinstating areas of law such as debt, welfare benefits, immigration and employment – reinstatement of these areas will enable providers to take a holistic approach to legal problem solving
- The re-introduction of early legal advice in areas such as family and housing law which will result in legal problems being resolved at an earlier stage
- Overhaul of the fixed fee schemes, to replaced with commercially viable hourly rates, to ensure that providers are actually paid for the work done
- Reassessment and uprating of the means test to ensure that legal aid is available to those without the means to pay privately for legal services
- An acceleration of work currently occurring within the LAA to reduce bureaucracy and improve decision-making
- Simplification of the legal aid scheme to reduce unnecessary cost and improve efficiency
- Accelerate the Criminal Legal Aid Review and immediately reinstate the 8.75% fee cut
- Significant investment in the legal aid workforce including a MOJ-funded training scheme, ensuring that there are viable careers in legal aid and a sustainable pipeline of practitioners entering the sector
- A concerted effort by the MOJ to change the political narrative around legal aid and legal aid lawyers who are being publicly vilified by politicians and sections of the media
- Acceleration of the LAA's development of the 'Apply' digital interface to replace CCMS (the existing system for applying for legal aid funding which is widely accepted as not being fit for purpose)
- The appointment of an independent body to consider appeals by providers against LAA funding assessment decisions
- Providers to be paid for the work done in respect of appeals against LAA funding assessment decisions
- A public legal education programme to improve understanding of entitlement to legal aid, how it can be accessed, and how it complements other forms of legal advice