



The Law
Society

Review of Civil Legal Aid - Call for Evidence Law Society response

February 2024

Contents

Introduction	1
Overarching questions	2
1. Do you have any suggestions of changes that could improve civil legal aid – both short-term and longer-term changes?.....	2
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?	6
Please provide any specific evidence or data you have that supports your suggestions. 6	
a. Family	6
b. Community Care	11
c. Housing & Debt	12
d. Immigration and Asylum	13
e. Mental Health.....	15
f. Discrimination	16
g. Education	16
h. Public Law.....	20
i. Claims Against Public Authorities.....	20
j. Clinical Negligence	20
k. Welfare Benefits.....	21
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.	21
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.	25
4. What potential risks and opportunities do you foresee in the future for civil legal aid:	30
i) in general; and	30
ii) if no changes are made to the current system? Please provide any specific evidence or data you have that supports your response.	30
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.	32
Fees	37
6. What are your views on the incentives created by the structure of the current fee system?	37
6.1. Do you think these support the effective resolution of problems at the earliest point?	39

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.	40
Career development and diversity	41
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	41
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.	44
User needs.....	46
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.....	46
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.....	47
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?	47
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.....	49
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	49
Use of Technology	50
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.	50
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.....	52
16. What do you think are the barriers with regards to using technology, for both providers and users of civil legal aid?.....	53
16.1. Do you think there are any categories of law where the use of technology could be particularly helpful?	54

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.....54

Early resolution.....54

17. 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. Other areas for consideration54

18. Is there anything else you wish to submit to the Review for consideration? Please provide any supporting details you feel appropriate58

Review of Civil Legal Aid - Call for Evidence

Law Society response

The Law Society is the independent professional body for solicitors in England and Wales. We are run by our members, and our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law.

Introduction

In its recently published report on legal aid the National Audit Office (NAO)¹ observes that:

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.

Civil legal aid has been allowed to fall into a state of decline that fails to meet its primary objective of delivering access to justice. In our response to this call for evidence we elaborate on the problems and make recommendations for resolving them. Whilst we raise multiple issues, there are key themes that emerge throughout:

- **Fee levels** - The single most important issue for the survival of civil legal aid is an increase in fees levels paid for the work. Fees have not been increased for 28 years. Pending a wider consideration of fees, we repeat our existing call for an urgent interim increase. A minimum **15%** increase for work undertaken at the early advice stage, that is for legal help and controlled representation, would cost an estimated **£11.3 million**. We call on the government to make this immediate increase as a first step whilst considering what more is required to make the system more effective and sustainable.
- **Lack of data and insight** - The MoJ and LAA must implement an access to justice data strategy.
 - Data on legal aid - MoJ policy making is hindered by not having sufficient data to understand provider capacity and resilience. There is presently unnecessary data gathering by the LAA that does not aid risk management or help future strategic planning of services. We do not want added bureaucracy for our members. The focus must be on cutting away unnecessary data gathering and instead collecting the right data.
 - Data on legal needs - The NAO report was clear that the 'MoJ does not collect sufficient data to understand whether those who are entitled to legal aid are able to access it.'² The MoJ and LAA do not understand the legal

¹ [NAO report 'Government's management of legal aid](#) (February 2024)

² [NAO report 'Government's management of legal aid](#) (February 2024)

needs of the traditional legal aid client base and the level of unmet need. A data strategy must be put in place to address this.

- **Bureaucracy** – Excessive bureaucracy is a major problem for legal aid providers and a disincentive for undertaking legal aid work. It creates largely unremunerated administrative costs and diverts scarce resources away from the core task of assisting clients.
- **Recruitment and retention** – Salaries are low, and caseloads are high. This makes it difficult to recruit staff especially at a more senior level. Trainees are likely to leave shortly after qualification to pursue non legal aid careers with better salaries and work / life balance. Once skills and capacity are lost, they are difficult to rebuild. The MoJ needs to have a strategy to make legal aid careers more attractive. Short term incentives such as the limited fees increase for immigration whilst welcome, do not in themselves build resilience into the system or act as a sufficient incentive for new entrants.
- **Intersectionality of issues is not realistically reflected in the current regime** - People often experience clusters of problems relating to several areas of law which cannot be addressed within the existing restrictive legal aid framework.

Overarching questions

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

In considering this question our view is that it cannot be clearly delineated from question 1.1 below on changes for each category and question 3 on administrative changes, so our responses to all three of these questions are closely linked and should be considered together.

The most significant short-term change that can be implemented would be an immediate fee increase. We have previously suggested a minimum interim increase of 15% across the board pending a more detailed analysis of the increases required to place civil legal aid on a sustainable footing. Our emerging analysis from Frontier Economics³ is giving a more detailed and evidence-based picture of what increase in fees is required to make the work viable and sustainable.

Other short-term measures would include changes that can be achieved quickly within the framework of the existing contractual arrangements. This is not a recognition that the current contracting framework is satisfactory, but that any significant changes to the nature of contracting will probably require a longer timescale to be achieved.

The current contract is unduly burdensome in the requirements it places on providers (generating additional costs to them) but are disproportionate to the risks the LAA is likely to incur. We note that some amendments to the current 2018 contract and changes under the 2024 contract which mainly concern supervisor requirements and remote working indicate that the LAA and MoJ are aware of the need for greater flexibility for providers. Whilst welcome, we believe these changes should just be the start of a much broader and

³ <https://www.lawsociety.org.uk/topics/research/housing-legal-aid-sustainability>

deeper streamlining process to reduce the administrative burden on legal aid providers and enable them to offer sustainable services in a manner that best meets their clients' needs. Further changes could include:

Remote working with clients: Feedback we have received from our committee members indicates that most civil legal aid providers favour the removal of limits on the proportion of clients who can be assisted remotely for controlled work. The contractual limit of 50% is regarded as arbitrary and difficult to plan for over a 12-month period as client demand can vary. Providers are aware of the need to provide face to face advice for some client groups who either cannot access or properly benefit from remote advice, but whether services are offered on an in person face to face basis or remotely, should be determined by professional discretion and client choice rather than LAA quotas.

Office requirements: Premises constitute the main overhead after staff costs, and one that for an increasing number of providers may not be essential for maintaining effective service delivery. For Mental Health providers their clients are often detained in mental health hospitals and therefore do not attend offices, in these circumstances the office requirement is superfluous and expenditure on premises unnecessary. We recognise that for many cohorts of legal aid clients, in person face to face advice is important, and we would be in favour of a contractual requirement that providers should be able to accommodate in-person face to face in suitable premises that provide confidential interviewing facilities. However, it should be for providers to determine whether that is accommodated within their own office space or at another location.

Recommendations:

- Fee increase - immediate minimum 15% increase pending further consideration.
- Remote working - remove contractual limits.
- Office requirements - remove office requirement subject to ability to continue to provide in-person face to face advice in suitable premises.

Longer term changes

A well-funded and sustainable legal aid system supports functional communities and local economies by helping to resolve debt, housing and family problems, as well as a range of other issues. Longer term changes that are essential to achieve this are:

- **Increased fees** - fees must be increased to ensure they realistically reflect the costs of providing civil legal aid. The Law Society has commissioned Frontier Economics to undertake an analysis of the sustainability of the legal aid provider base by understanding the costs and revenues of providers. This identifies the level of loss that legal aid providers are working at and offers a framework by which to identify realistic remuneration for providers moving forward.
- **Widen the scope of legal aid** - the review must look again at the scope of legal aid, widening access to early advice in social welfare and family law cases to ensure people are able to prevent their problems from escalating, and reduce the knock-on costs arising from financial, social, and health impacts of unresolved problems.

- **Reduce bureaucracy** – onerous and punitive bureaucracy is an additional burden that is driving practitioners away from legal aid work. A more flexible approach to the contracts would encourage innovation and a better relationship with providers. The MoJ and LAA should engage with the National Audit Office to understand how the legal aid contracts can be more flexible while complying with their accountability to the public purse. We suggest a review of the data that is gathered so that it is streamlined to include only the most essential information to manage risk and understand impact. A system where so much of the service is spent on unpaid bureaucracy, the cost of which falls on the provider, is not sustainable or sensible. As outlined below there are many saving to be made to the public purse through legal aid, however, the present system is creating an environment which drives providers away.
- **Invest in recruitment and retention of staff** – legal aid firms struggle to attract or retain staff. Law students do not see legal aid as a viable career option. The government must invest in the training of the future legal aid workforce to provide a sustainable service. However, this won't be effective unless young lawyers see legal aid as an attractive career option with sustainable pay levels in comparison to roles in other well remunerated public services.

Recommendations:

- Fee increase – increase fees so they realistically reflect the cost of providing the legal aid service.
- Widen the scope of legal aid.
- Reduce legal aid bureaucracy.
- Engage with the National Audit Office to understand how the legal aid contracts can be made more flexible.
- Invest in the recruitment and retention of staff.
- Rationalise legal aid data gathering.

Strategic approach in developing services

The legal aid landscape is fragmented. There is a failure to apply a strategic approach to services that address legal needs.

Legal needs surveys have shown that low-income groups and those traditionally from marginalised communities that make up the legal aid client group, are more likely to experience legal problems than the general population but are also less likely to recognise them as such and take action to address them. To respond to what is known of the needs of the legal aid client group, the Law and Justice Foundation of New South Wales⁴, identified four essential key features for the design of services. They should be:

- targeted to those most in need,
- joined-up with other legal and non-legal services,
- timely, and
- appropriate to the needs and capabilities of the user.

⁴ [Reshaping legal assistance services](#)

Longer-term changes need to deliver these features, through change of the legal aid legislation and contracting regime.

The MoJ undertook a post implementation review of LASPO (PIR) and as a result published the Legal Support Action⁵ plan in February 2019, with the stated aim of ensuring ‘everyone in society should be able to access the right support, at the right time, in the right way for them.’ The outcome of this work, whilst exploring good initiatives, has been limited and the projects, such as support for litigants in person, have largely been funded on an ad hoc basis. We have repeatedly called for a more strategic approach to this work that recognises legal support is only one part of an ecosystem - that for legal support to be effective there needs to be investment in all elements of the system including legal aid.

The Legal Aid Agency’s (LAA) role

The PIR also explored the role of the LAA in respect of which practitioners raised concerns that the LAA undertakes a purely operational role unguided by the strategic objective of ensuring access to justice. The review must consider the current role of the LAA and the nature of the relationship between the LAA and the Ministry so that strategic objectives are met.

The LAA primarily functions as the gatekeeper to legal aid funding, its role being to administer funds based on policy priorities determined by the MoJ. However, there is a common perception amongst providers that the LAA represents a barrier to funding rather than as a facilitator, or even neutral administrator of it.

The LAA sees its role and measures its success in relation to its efficiency and effectiveness within the existing and limited parameters defined by LASPO. Despite its mission statement to ‘make sure our services meet the needs of everyone who uses them, including the most vulnerable in our society’ the LAA has no remit to qualitatively understand what those needs are, or to evaluate the level of need. We understand there is a minimal aim to have at least one legal aid provider per procurement area, but even within the confines of the existing system this is a low bar, and there is no attempt to understand whether this minimal level of provision is adequate to meet local demand. Moreover, this minimal aim is increasingly not being met. In addition, there is an absence of data to understand the impact on people who cannot access advice and what is happening to them.

Although we have no desire to go back to the days of the overly bureaucratic Legal Services Commission, the LSC had a role to seek to understand unmet legal needs and develop partnerships and services to address them. Whilst we accept that these initiatives were not entirely successful, the LSC did at least attempt to ensure appropriate and adequate provision. This aspect is almost totally lacking in the remit of the LAA. There must be a clearer focus on the LAA’s role in ensuring access to justice.

Recommendation:

- The review must consider the current role of the LAA and the nature of the relationship between the LAA and the Ministry so that the strategic objective of ensuring access to justice is met.

⁵ <https://www.gov.uk/government/publications/legal-support-action-plan>.

- The MoJ and LAA should engage with the National Audit Office to understand how the legal aid contracts can be more flexible, fit for purpose and less demanding of providers' resources.

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?

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

For all civil categories our principle asks are for an increase in fees and a decrease in the amount of bureaucracy that generates unremunerated work. There are some additional category specific recommendations that are listed below.

a. Family

Family legal aid represents the largest percentage of the civil legal aid spend. It provides advice in complex cases involving vulnerable individuals, largely children.

The main areas covered by family legal aid are care proceedings involving social services, referred to as 'public family law', and family breakdown cases between two individuals often in relation to parental separation, referred to as 'private family law'. The Legal Aid Sentencing and Punishment of Offenders Act (LASPO) cut legal aid for most private family law cases. Legal Aid is now only available where there is evidence of domestic abuse or child abuse. The impact has been significant as a quarter of a million fewer people receive legal help in private family cases now than they did in 2009-2010.

In addition to the family category there is a separate contract category for Legal Aid to undertake family mediation, which remained in scope.

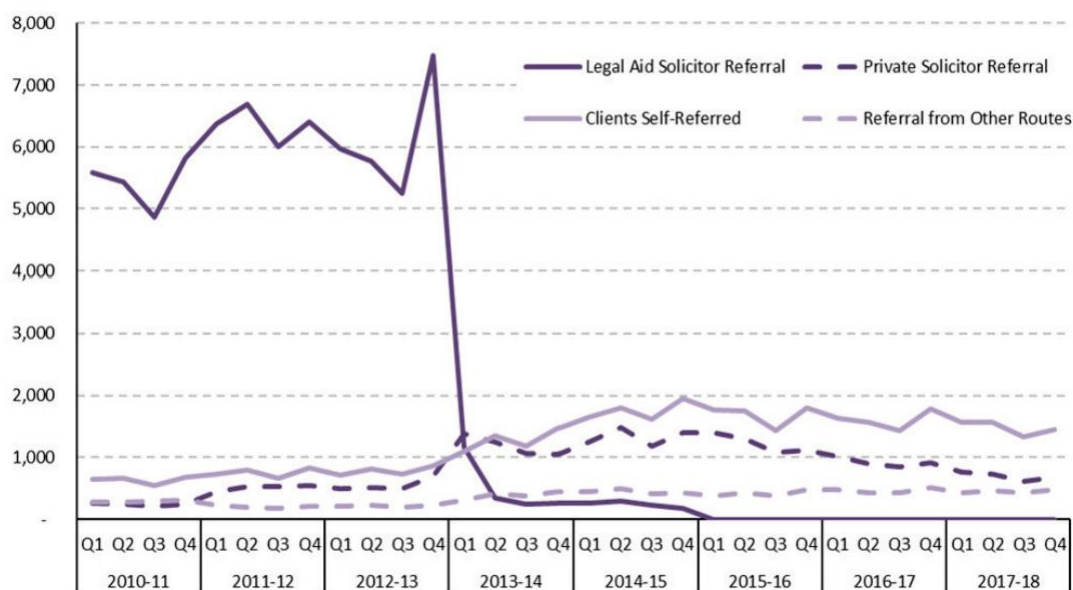
Early legal advice for separating couples

Since the cuts to legal aid in 2013 it has been very difficult for separating couples, on a low income, to get early advice to sort out their problems. The Government predicted that by cutting legal aid for separating couples they would reduce the number of cases going to court, and more people would go to mediation.

In fact, the data demonstrates, the opposite is true. After the cuts to legal aid were introduced the number of legal aid mediations reduced significantly and, despite efforts to address this, today remains at under half the pre-LASPO levels, dropping from 15,357 mediation starts in 2011-12 to 7,350 mediation starts in 2022-23. The reason for this, was highlighted in the government's post-implementation review (PIR) of LASPO⁶, where it stated: 'The loss of the primary referral routes to mediation is the most significant factor in the post-LASPO decline in MIAM uptake. Prior to LASPO, the majority of referrals to mediation were made by legal aid funded solicitors. The removal of private family law from the scope of legal aid removed the opportunity to refer cases towards mediation.' The table below taken from the PIR shows that the number of MIAMs fell by 66% between 2012-2018 and evidences the drop in referral route:

⁶<https://www.gov.uk/government/publications/post-implementation-review-of-part-1-of-laspo>

Figure 87: Volume of Publicly Funded MIAMs by Referral Routes¹⁵⁹ 2010-11 to 2016-17¹⁶⁰

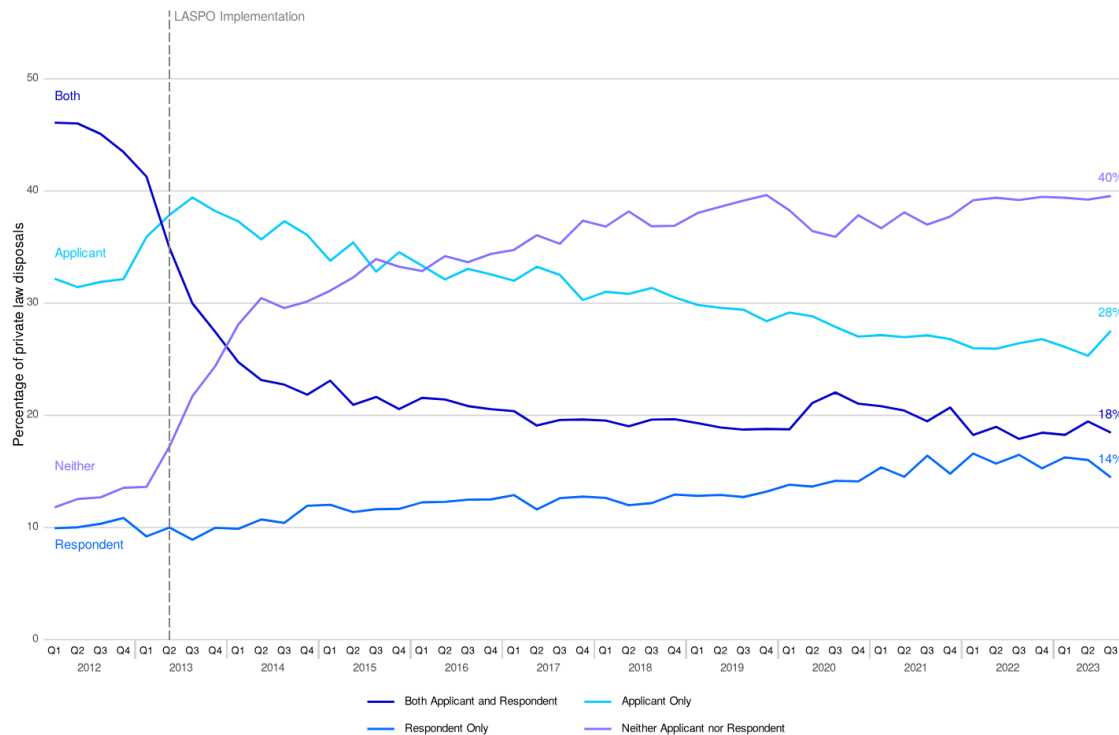


At the same time the number of people representing themselves in the family courts has tripled.⁷ Not only did LASPO fail to divert people away from court and towards mediation, but it has also added to the pressures on the court system with increasing case volumes and backlogs. Litigants in Person (LiPs) are unfamiliar with court processes leading to inevitable delays.

In July to September 2023, the proportion of disposals where neither the applicant nor respondent had legal representation was 40%, up from 13% since Jan - March 2013. The graph below taken from the family court statistics⁸ demonstrates the year-on-year rise.

⁷ <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023>

⁸ <https://www.gov.uk/government/statistics/family-court-statistics-quarterly-july-to-september-2023>



Funding early advice means problems are resolved at an early stage before they become entrenched. Advice provides a 'reality check' managing unrealistic expectations, assessing a client's suitability for mediation, and providing legal advice they trust. Reducing conflict and helping clients better understand the parameters of their case results in significant benefits for both mediation and court processes. It focuses parents on the needs of the child and allows for referral to other services such as Separating Parents Information Programmes.

We welcome the government's decision not to go ahead with mandatory mediation and instead to pilot early legal advice in family cases. We look forward to working with the Ministry of Justice on this pilot.

There are also benefits for those who must go to court, helping people understand their case better, and helping clients access services they are entitled to in relation to domestic abuse and child abuse cases.

Legal aid funding for cases involving children where there are allegations of abuse

Where there are allegations of abuse in family cases it is sometimes necessary and relevant to a child's welfare for a fact-finding hearing to take place.

The fair and effective conduct of these hearings is of huge importance to the outcome of the case. There are significant risks for both the victim of abuse and the child if the victim is not able to effectively participate. If the wrong decision is made the outcome could be exposing the child or parent to further risk and abuse. Conversely, if the alleged abuse

did not occur the result could entirely unjustly limit a parent's future relationship with their child.

Presently in these cases survivors of abuse can receive legal aid for representation only if they have provided sufficient evidence of the abuse they have suffered (this is referred to as the domestic violence gateway), and meet the legal aid means test. If they do not meet these thresholds, they may find themselves acting as a litigant in person, having to prosecute their own case and present evidence of their or their child's abuse to the court, acting against the alleged perpetrator. The domestic violence gateway continues to represent a barrier for victims of abuse from accessing advice and representation. Solicitors, and other advisers approved under the legal aid contract, should have delegated powers to confirm that a client is a victim of domestic violence.

Those responding to allegations of abuse are not entitled to legal aid, regardless of the seriousness of the accusations, their merits, or their ability to conduct proceedings. If those who are wrongly accused are unable to effectively participate, they also risk serious consequences, since the result may limit their relationship with the child.

Many alleged perpetrators will be acting as litigants in person due to the lack of legal aid. They will therefore be cross-examining their alleged victim in person. This is both a distressing and re-traumatising experience for the victims facing this experience. The [Domestic Abuse Act](#) has sought to address this in limited circumstances. The MoJ are running a Qualified Legal Representative (QLR) scheme which allows the court to appoint an advocate to undertake the cross-examination, in domestic abuse cases, in place of the litigant in person. However, the scheme is struggling to attract advocates because of the low remuneration rates available for the work. In response to a Freedom of Information request made last summer⁹ only 113 QLRs have been used in courts across England and Wales to that date since it had launched in the previous July 2022. This is adding more adjournments and wasted resources to an already struggling court system.

While the QLR Scheme is intended to be a last resort and will only be applied where there are no other means of preventing the alleged perpetrator from cross-examining vulnerable witnesses, the lack of legal aid for family law cases means that this situation will arise frequently and increase the need for QLRs. To overcome this, legal aid should be available for private law family cases up to the stage of fact-finding hearings. This would mean there will be less of a burden on the scheme and fewer practitioners required for the scheme to be viable.

It is in the best interests of families - particularly the children - for both parties to have legal aid for representation during the fact-finding hearing, where the facts regarding the alleged abuse can be explored and established.

Sustainability of Legal Aid in family cases

Fees - in addition to the lack of an inflationary increase to fee levels, the introduction of fixed fees combined with the scope cuts introduced in 2013, have caused problems in family legal aid. Before 2009 family legal aid was remunerated on an hourly basis. In 2009 a fixed and standardised fee scheme was introduced. The calculation was based on an

⁹ <https://www.theguardian.com/law/2023/jul/16/scheme-to-protect-abuse-case-litigants-lacks-resources-lawyers-say-england-wales>

average of hourly rate spend from a mixed caseload, a 'swings and roundabouts' approach.

Scope cuts - in 2013 LASPO introduced cuts to the scope of legal aid, and private family law was the hardest hit. All private family law work was cut from scope apart from cases involving domestic abuse or child abuse. This had a significant impact on the mix of cases available to practitioners. By their very nature the remaining cases were the most complex, but the standard fee remained the same with no ability to cross subsidise from simpler cases.

Year on year reduction in the provider base - The effect of the unsustainable fee levels means that many family law firms have stopped undertaking legal aid work. The number of provider offices completing work for each period in family Legal Help work has dropped by over half from 2,401 in 2011-12 to 1070 in 2022-23¹⁰.

Fees in care proceedings - for public law cases the backlogs in the family courts have led to a recent relaunch of the Public Law Outline (PLO). The PLO was originally introduced in 2008 and was designed to reduce unnecessary delay and promote better co-operation between the parties. To achieve this there is a greater emphasis on pre-proceedings work. However, this work is paid at very low rates that are not financially viable for firms. The fees need to be increased to appropriately reflect the shift in emphasis to earlier work, and the need for highly skilled practitioners to be involved at this early stage in order to ensure this approach is effective and reduces costs down the line.

Regional fee disparity - Our members have raised concerns regarding the regional disparity in fees. In areas where there are lower fee levels this can exacerbate recruitment and retention as remote working increases and there is competition in the recruitment market from areas paying higher fee levels.

Special Guardianship Orders - we welcome the recent changes that have improved the funding of cases involving Special Guardianship Orders, however, there continues to be problems around the means testing of these cases. The changes proposed in our response to the legal aid means test¹¹ should be implemented to resolve these problems.

Recommendations:

- Legal aid funding for early advice in all private law family cases should be reinstated subject to financial eligibility.
- Fees for early advice in public law family cases should be increased to appropriately reflect the emphasis in the PLO regarding earlier work, and the need for highly skilled practitioners to be involved at this early stage in order to ensure this approach is effective and reduces costs down the line.
- Solicitors, and other advisers approved under the legal aid contract, should have delegated powers to confirm that a client is a victim of domestic abuse.

¹⁰ <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2023>

¹¹ <https://www.lawsociety.org.uk/campaigns/consultation-responses/legal-aid-means-test-review>

- Legal aid should be available for private law family cases up to the stage of a fact-finding hearings.

b. Community Care

Community Care legal aid provides specialist legal advice for adults and children with disabilities on their rights to care and support, when they cannot afford to pay for that advice themselves.

Reductions in cases

After the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) reductions in some areas of legal aid practice were predicted where case types were removed from the scope of the legal aid scheme. Although no changes were made to the scope of Community Care there has been a 77% reduction in the number of Community Care cases taken on under Legal Help in the last 10 years. This catastrophic decline in Legal Help matter starts does not reflect a reduction in the need for specialist Community Care legal advice.

Demand for services

Academic research commissioned by Access Social Care¹² identified 'large and increasing numbers of people who are not receiving the social care they need and to which they may well be entitled under the legislation.' The research found that:

- the number of people with a disability in the U.K. is rising and is now around 21% of the total population, or 14.1 million people.
- there is also an increasing number of people with learning disabilities who, thanks to medical advances, are now not only surviving childhood, but living much longer.
- the number of older, and oldest-old, people has also been rising. In the UK, the number of people over 85, when needs tend to increase sharply, will double from 1.6 million by 2041.

Legal Aid Deserts

The Law Society's analysis of legal aid data demonstrates that there are large parts of the country where people cannot access legal aid funded specialist advice for Community Care. Our research¹³ shows that 70.8% of the population, or over 42 million people, do not have access to a community care legal aid provider in their local area. Only around 14.9% of the population have access to more than a single legal aid provider in their local authority area.

As in other areas of law, remuneration is the problem that has led to the reduction in legal advice cases. A particular problem for community care casework is that a significant

¹² <https://www.accesscharity.org.uk/news-blog/community-care-legal-career-pathways-research-report>

¹³ <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

amount of the work is undertaken at the initial advice stage, and this stage of the case is paid for at the lowest fee level which providers find financially unviable.

Community Care cases are often complex, both legally and factually. There is often a lot of paperwork documenting the history of interactions between the client and social services. However, after early legal help through specialist advice, in most cases the local authority will reconsider, so the cases do not need to go to court.

It is therefore better for government, society and the individual involved for this work to be placed on a more sustainable footing.

c. Housing & Debt

The main areas of law covered by the Housing and Debt category are possession proceedings for tenants and mortgage borrowers, homelessness, unlawful eviction, and some disrepair matters. Although housing disrepair is endemic, since the implementation of LASPO, legal aid is only available for serious disrepair that presents a health risk. This undermines the ability of tenants to obtain early resolution of disrepair issues before they become a risk to health.

The requirement for there to be a serious risk of home loss has prevented tenants and mortgage borrowers from seeking early advice to assist with arrears and other grounds for possession. The 'Debt' element of the category is largely nominal as most debt advice has been out of scope since the commencement of LASPO.

Prior to August 2023 the HPCDS (Housing Possession Court Duty Scheme) enabled tenants and mortgage borrowers to obtain advice at court on the day of the hearing. HPCDS providers were required to have a Housing and Debt contract as a pre-requisite for HPCDS work, but the majority of Housing and Debt providers did not do HPCDS work.

Since August 2023 the HPCDS has been replaced by HLPAS (Housing Loss Prevention Advice Service). Like the old HPCDS, HLPAS offers court duty advice on the day of the hearing under HLPAS Stage 2. The new element known as HLPAS Stage 1 also offers non-means, non-merits tested legal advice on housing, debt and welfare benefits prior to the hearing date, from the point where the landlord/mortgage lender has indicated they intend to issue proceedings. Welfare benefits and debt are regarded as key associated issues often linked to arrears. These additional areas have been brought back into scope but only for work carried out under HLPAS Stage 1, which is time limited up to the date of the possession hearing.

We welcomed the HLPAS concept to adopt an approach embracing earlier and more holistic advice but cautioned that the pre-hearing date advice element of the scheme is problematic to implement because of the general sustainability issues facing housing providers. Since LASPO, the legal aid sector has lost most of its welfare benefits and debt specialists, and providers cannot afford to take on new caseworkers with these skills. We also welcome provision of advice on a non-means tested basis, which significantly reduces the administrative burden of providing advice, and we think this model could be extended to other areas of controlled work.

There is a clearly observable crisis on housing legal aid. Since the main bid round for the 2018 civil legal aid contracts, the LAA has needed to issue multiple local re-tenders for housing and HPCDS work as existing providers have dropped out. The number of

provider offices completing housing work for Legal Help and Controlled Legal Representation fell to 303 in 2021-22 from 755 ten years earlier. The Law Society has produced [housing advice desert maps](#); the most recent data shows that 43.6% of the population of England and Wales have no housing legal aid provider in their local authority area.

Although housing legal aid provision is in decline, we do not see this as in any way reflective of a lack of demand. [The level of possession proceedings](#) has increased significantly in the last year, fuelled by the cost-of-living crisis. Also, recent widely publicised reports point to the poor state of the UK's housing stock and suggest a high level of unmet legal need in relation to disrepair.

The situation is particularly acute for the duty scheme and potentially for HLPAS too because of the overheads of travelling to court in rural areas where client numbers are low, although there have also been problems maintaining service provision in major urban centres. It is noted that the LAA is struggled to find providers to offer the new HLPAS services from August 2023 and is currently trying to secure providers for services in Lancaster and St Helens,

The housing legal aid sector is now in an extremely precarious position, as demonstrated by the interim report from Frontier published on 14th February 2024, and there is a real possibility of further collapse within the timeframe of RoCLA and the implementation of any proposals coming out of the review. A cash injection to make fees commercially viable for providers is required urgently.

Recommendations

- Immediately increase fees to prevent the collapse of housing legal aid
- Monitor and review the operation of HLPAS to ensure ongoing viability and the effectiveness of HLPAS Stage 1 advice

d. Immigration and Asylum

The Immigration and Asylum category predominantly concerns asylum work as most non asylum work was taken out of scope in 2013. The non asylum work remaining in scope includes bail applications, immigration advice for victims of domestic violence, trafficking and modern slavery, and immigration advice for unaccompanied minors. Non asylum immigration is the main category of law where exceptional case funding (ECF) applications are made and granted for otherwise out of scope work, where not granting legal aid could breach the applicant's rights under the ECHR.

In addition to the main Immigration and Asylum Contract some providers also have contracts under the Detained Duty Advice (DDA) scheme to provide 30 minutes of initial advice to detainees in immigration removal centres. All caseworkers undertaking immigration and asylum work under a legal aid contract must be personally accredited under the Law Society's Immigration and Asylum Accreditation Scheme (IAAS).

There has been a significant decline in Asylum and Immigration provider offices from 305 in 2018 (when the current contract commenced) to 223 in 2022/23 as shown by the most

recently published legal aid statistics. This has led to advice deserts where there are no providers at all as well as limited capacity in other areas which makes it very difficult for clients in many parts of the country to find a provider. The reasons for the decline in capacity include:

- The declining economic viability of legal aid Immigration and Asylum work. As with other civil categories there has been no increase in fees since 1996, thus reducing the real terms value of the fee in 2022 by approximately half. One of the largest providers of Immigration and Asylum legal aid work has substantially reduced the amount of appeal cases under Controlled Legal Representation (CLR) it is able to take on, and other providers are following suit. The Law Society is concerned that it has become increasingly difficult for clients to find legal aid representation, particularly at the CLR appeal stage.
- A significant proportion of provider offices with Immigration and Asylum legal aid contracts have either not commenced any matter starts¹⁴ or have only undertaken low volumes of work.
- Large numbers of asylum applications (78,768 applications to year ending June 2023)¹⁵. These figures pre-date the commencement of the Illegal Migration Act (IMA) which significantly restricts the ability to claim asylum but will not necessarily reduce the number of arrivals.
- Immigration providers are mainly located within Greater London and other metropolitan areas, but under the Home Office asylum dispersal policy, asylum applicants can be located in areas where there is no local access to legal aid providers.
- Whilst we are aware that the MoJ is implementing a fee increase of up to 15% for work required under the IMA, the increase is just for this limited area of work, and it will not be sufficient to enable providers to increase capacity to meet the anticipated demand. We also welcome the recent agreement with The Law Society for the MoJ to subsidise the cost of accreditation under the Immigration and Asylum Accreditation Scheme which is mandatory for legal aid caseworkers. This will offer some much-needed assistance to providers and is a positive step but is unlikely to stem the decline in provision and resolve capacity issues unless there is also a fee increase.

In addition to low fees there are other pressures impacting on the sector including:

- Uncertainty created by the IMA which effectively prevents unauthorised entrants from claiming asylum, thus significantly reducing the number of asylum claims. Unauthorised entrants will be entitled to advice, and some will have grounds for appeal, but as yet no decisions have been made under the IMA and the demand for advice, and the likely number of appeals is uncertain.
- Inability to control workflow due to lengthy Home Office delays in determining asylum applications. After months of low activity there can be a sudden batch of refusals resulting in providers experiencing major difficulties in providing resources to represent clients at appeal. Whilst it is recognised that the Government needs to reduce the backlog of asylum claims, the sector will struggle to provide advice to clients under current initiatives that require asylum seekers to return a questionnaire within a short timeframe.

¹⁴ 14.5% of Immigration providers opened no matter starts in 2021/22 – [Jo Wilding The Justice Gap'](#)

¹⁵ [UK government statistics November 2023](#)

- Major delays in appeals coming to hearing which creates similar problems in planning availability of representation when appeals are finally listed. There is the added problem with providers having to carry unremunerated work in progress pending an appeal, and this problem has been exacerbated by the Tribunal's online appeals procedure which requires greater frontloading of casework than previously. Therefore, the Law Society has repeatedly called upon the LAA to implement interim payments for CLR at the stage where the Appeal Skeleton Argument has been filed.
- Highly complex fee arrangements under the Asylum and Immigration Legal Aid Contract. There are now five different types of CLR claims determined by an interaction of the date of the initial grant, the nature of the appeals process and case outcome, and claims can include a combination of hourly rate and fixed fee claims. It is an additional administrative overhead to work out which fee is the applicable one and the level of complexity inevitably means that inadvertent mistakes are made. This points to the need for simplification of the Asylum and Immigration fee structure in addition to a significant increase in fees.
- Comments in the media and from some sections of government that criticise immigration lawyers for doing their job by advising clients within the law are also having a demoralising effect on the sector and have created genuine fears that such views could place lawyers at risk of physical danger.

Recommendations

- Increase the fees across the whole Immigration and Asylum category.
- Review and simplify the complex multiplicity of fee arrangements.
- Implement payments on account for controlled work, prioritising the CLR appeal stage.
- Review Immigration Exceptional Case Funding applications and bring back into scope areas such as family reunion cases where ECF is usually granted.

e. Mental Health

The Mental Health category mainly covers advice and representation of clients detained in hospital under the Mental Health Act, as well as those under Community Treatment Orders. It includes representation at Mental Health Tribunals.

The scope of Mental Health cases was unchanged by LASPO. However, the number of provider offices starting work in the mental health category dropped from 274 in 2011-12 to 154 in 2022-23. This again suggests that even in areas where there has been no change to scope, firms are deciding to stop undertaking the work. The number of legal help matter starts also dropped from 39,578 in 2011-12 to 31,818 in 2022-23 despite the fact there was little change in the number of clients at tribunal over the same period.

The work is paid for on a fixed fee basis. There are three levels to the payment structure.

- Level 1 covers all work from the initial meeting, submission of the application to the tribunal, initial letters, and advice to the client. This is paid at £129.

- Level 2 covers investigation and examination of evidence, including reports to the tribunal, review of medical records, interviews with the client for instructions and interviews with professionals for additional information. This is paid at £321.
- Level 3 covers advocacy at the tribunal hearing and follow up- work. This is paid at £294.

When first introduced in 2008 the fixed fees for completing all three levels was £827, although this was reduced by the 10% fee cut introduced in 2011 to £744. The Mental Health Lawyers Association have calculated that this amounts to the hourly rate on a tribunal file in the region of £45 per hour, and for non-tribunal work as little as £35 per hour.¹⁶ Firms cannot afford to cover their overheads at these fee levels which include office leases, insurance, staff, IT, training, as well as the costs associated with complying with the legal aid contract.

The Government's Draft Mental Health Bill 2022, which will reform the Mental Health Act 1983, proposes a greater number of safeguards and tribunals all of which will require lawyers to represent the clients, but there are no proposals to ensure that there is a sustainable legal aid supplier base to provide these services.

As highlighted in our response to question 1 the office requirements are particularly onerous in this area of law because the clients in this area of law are largely detained in mental health hospitals and therefore permanent offices are not required to provide services.

f. Discrimination

Discrimination law issues are largely employment related but can cover other aspects of discrimination against 'protected groups' as defined by the Equalities Act 2010.

From the implementation of LASPO in 2013 until May 2020 legal aid for unlawful discrimination was only available via the mandatory Telephone Gateway which presented a barrier to accessing advice. Following the abolition of the Gateway the number of providers providing Controlled Work in the discrimination category currently stands at 19.

Legal aid discrimination law providers are largely from the not-for-profit sector (approximately 10 out of 19) and 8 providers are based in the Greater London area. Due to the small number of providers and limited geographical spread, most potential clients will not have access to face-to-face advice from a local provider.

Volumes of legal aid discrimination work are low. In 2022/23 there were 2,2261 Controlled Work matter starts which is not atypical of previous years. These low volumes point to a need to quantify unmet need in relation to discrimination law.

g. Education

Legal aid for advice and representation in education matters covers:

¹⁶ <https://www.lawgazette.co.uk/news-focus/news-focus-mental-health-lawyers-are-willing-to-strike-over-pay/5116036.article>

- **Special Educational Needs** this work is for disabled children and young people, with complex needs. One of the ways local authorities discharge their duties towards this group of children and young people is through an Education Health and Care plan that can run from birth to the age of 25. This plan is a legal document which outlines the education and social care support that will be provided by the local authority (and Clinical Commissioning Group where it relates to health) and what placement a child or young person should attend. Disputes regarding EHC plans can be resolved through an appeal to the Special Educational Needs and Disability Tribunal.
- **Disability discrimination cases within schools** - these are also resolved through the tribunal.
- **Judicial review** - these can range from cases such as failures to provide a child with an education plan, through to challenges of local authority's policies, and budget cuts. This work is often under a legal aid public law contract.

High demand for services

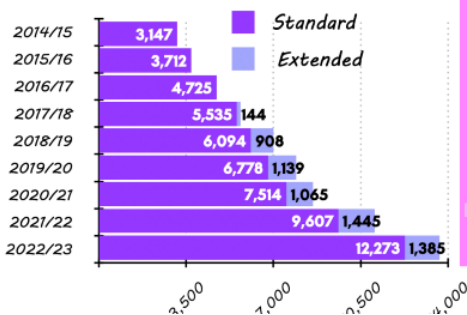
There were 430,700 children and young people with Education, Health and Care (EHC) plans in January 2021. This is an increase of 10% from 390,100 as at January 2020. This follows similar increases in recent years since the plans were introduced in 2014.

This is also an area where concerns have been raised regarding a crisis in the system with an increasing number of complaints and problems with provision of services. In October 2019 the Local Government Ombudsman issued a report looking at SEN complaints and found that 9 out of 10 complaints (87%) involving Education and Health Care plans were upheld. The Ombudsman is now investigating more complaints than ever before. In 2018-19 it received 45% more complaints and carried out 80% more detailed investigations about EHC plans, than in 2016-17.

At the same time, the number of appeals to Tribunal continues to rise year on year.

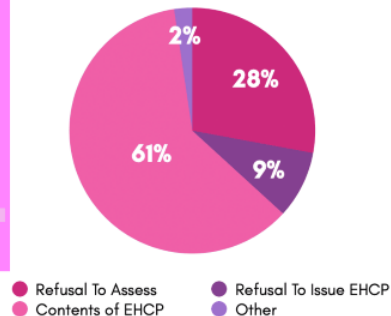
Families registered **13,658** appeals with the SEND First Tier Tribunal (SENDIST) in the 2022-23 academic year - **24% up on the previous year**. The largest number of appeals ever recorded in a single year. It is also **four times** the number of appeals that were registered in **2014-15**, when the SEND reforms were introduced.

Appeals Registered at First-Tier Tribunal



13,658 appeals registered with SEND Tribunal in 2021-22, **24%** up on last year (In 2022 the rise was 29%)

What do parents appeal about?

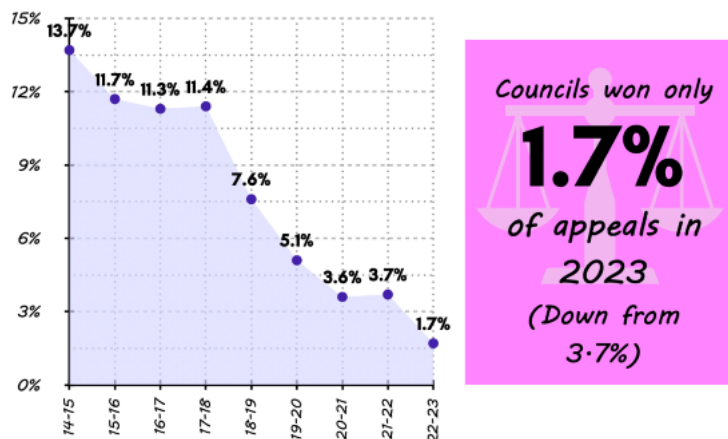


In **2022-23**, SENDIST panels upheld the local authority's original decision in **139** of the **7,968** appeals that went to a full hearing. That is a Local Authority success rate

of **1.7%** - the lowest on record. When tested at a Tribunal hearing, local authority decisions had to be corrected on 58 out of every 59 occasions in 2022-23.

What are the outcomes at hearing?

% of LA decisions upheld at SENDIST hearing:



It has been estimated that these appeals have cost the public purse over £100 million over the last year.¹⁷ The knock-on effects of failure in provision have a significant impact on a child's education and attainment.

Reductions in the provider base - impact of the Mandatory Telephone Gateway

Prior to LASPO, advice on education law was provided on a face-to-face basis but this was removed when LASPO introduced access through a mandatory telephone gateway. The number of providers dropped significantly to the point where there were just two providers nationally doing all the education work. Significant concerns were raised about the Gateway and that it was creating a barrier to justice in these cases. After the contract tender round in 2018, the Legal Aid Agency announced that it wasn't going to be awarding any civil legal aid contracts for the telephone gateway for education because there were insufficient compliant tenders. Finally in February 2019 the mandatory telephone gateway was removed completely, but by that stage it had decimated the legal aid provider base in this area of law.

As of the latest LAA tender round, there are now just 13 law firms available nationally to support almost 8,000 appeals to the SEND Tribunal each year. Even where a firm does have a legal aid contract, there will often only be a small number of solicitors within the firm who do this work.

¹⁷ [SEND Tribunal 2023: When will councils stop wasting public funds defending SEND appeals when they fail almost all the time? - Special Needs Jungle](#)

Number of provider offices completing Education work in each period for Legal Help and Controlled Legal Representation

Year	Number of provider offices
2011-12	49
2012-13	33
2013-14	32
2014-15	24
2015-16	11
2016-17	4
2017-18	4
2018-19	1
2019-20	3
2020-21	10
2021-22	13
2022-23	13

Reduction in legal aid case numbers

The Legal Aid Agency statistics show a huge year on year drop in education cases. In 2006 to 2007 there were 11,930 matter starts for legal help work, but by 2011-2012, this had dropped to just 3,775. For 2022-23 the figure had dropped further to just 1,754. Whilst there has been a significant increase in the client group needing support, and a system in crisis, there has at the same time been a huge drop in education legal aid cases. The data above indicates that the limited supply of education providers is not meeting the high demand for Special Educational Needs legal aid services.

Financial viability of work

The central reason why firms are not undertaking this work is the same as for other areas, remuneration. The majority of special education needs work is funded under the Legal Help Scheme. The tribunal offers no opportunity for inter partes costs, that is costs from the other side if the case is successful. The most a solicitor can recover for a very complex tribunal appeal is at the Legal Help rate which for a solicitor based outside of London, would be £48.24 an hour. This level of remuneration does not cover overheads and means that firms are very often working at a financial loss with no potential to recover inter-partes costs. In comparison, the HMCTS guidelines hourly rate for a solicitor outside of London is between £146 and £217 depending on expertise.

h. Public Law

The Public Law category mainly relates to judicial review proceedings determined to be in scope under LASPO Schedule 1, Part 1 as well as those cases granted legal aid under the Exceptional Case Funding provisions. Public Law contracts can also provide advice on other avenues of redress such as a complaint to the Parliamentary and Health Service Ombudsman. There is some overlap with other categories such as immigration and housing. Holding a Public Law contract can be useful where a judicial review involves more than one category for example, housing and community care.

One of the main barriers to legal aid funding for judicial review is the risk faced by providers who can only be sure that their legal aid costs will be paid if the application for permission for judicial review is granted, or where the judge orders a 'rolled up' hearing, i.e. where the permission and applications stages are combined into a single hearing. Costs where permission is refused may be payable but only if they are reasonable based on the criteria set out in paragraph 5A of the Civil Legal Aid (Remuneration) Regulations 2013. This creates a level of uncertainty that acts as a disincentive for legal aid providers to do this work. This issue arises irrespective of whether the case has been taken on under the Public Law or another relevant contract category. The number of provider offices completing Public Law civil representation certificates has fallen significantly from 155 in 2018/19 to 115 in 2022/23.

Recommendation:

- The risk factor should be removed by replacing the current rules with a presumption that legal aid costs should be claimable in any event (except where a judge rules that the permission application is entirely without merit)

i. Claims Against Public Authorities

The Claims Against Public Authorities category mainly deals with civil damages claims against the police and the Prison Service but also includes claims against local authorities for child abuse whilst in the care of the authority and claims against any public authority for abuse of a vulnerable adult in its care. Claims can relate to matters such as wrongful arrest or imprisonment, assault, as well as death in custody, prison or other public authority such as a mental hospital. As with most other categories there has been a significant decline in the number of providers in recent years with the number of provider offices declining from 119 in 2018/19 to 90 in 2022/23. This decline is reflected in the number of cases commenced with the 2022/23 figures being the lowest ever recorded.

	Legal Help matter starts	Civil rep certificates
2018/19	1855	1215
2022/23	1503	847

j. Clinical Negligence

This category is limited to clinical negligence claims relating to neurological injuries sustained to a child in the womb or within 8 weeks of birth which has resulted in severe

disability to the child. It is a low volume category which had 78 providers in 2022/23. Work is predominantly carried out under a civil representation certificate of which just 129 were granted in 2022/23. These cases invariably require complex medical reports and providers have expressed concerns about problems in obtaining reports from experts of the necessary calibre who are prepared to do the work at legal aid rates. Providers have also noted the huge discrepancies in the remuneration they can expect from legal aid compared to the rates paid to both lawyers and experts instructed by the NHS and have expressed concerns that notwithstanding the catastrophic injuries sustained by their clients, they are not operating on a level playing field.

k. Welfare Benefits

Prior to the implementation of LASPO legal advice on welfare benefits was available under the legal aid scheme. But since 2013 legal aid for welfare benefits has been limited to legal services relating to an appeal on a point of law to the Upper Tribunal, Court of Appeal or Supreme Court. This in effect means that welfare benefits are effectively out of scope as higher-level appeals on a point of law are few. This stark reality is illustrated by the statistics which show 82,554 Legal Help welfare benefits matter starts in 2012/13 compared to just 76 in 2022/23.

Failure to provide legal aid advice in welfare benefits should be regarded as a false economy as it impacts the most vulnerable members of society and creates consequences such as rent arrears that can result in possession proceedings and homelessness as well as other social problems and health issues for the client. This creates additional knock-on costs for other government departments and local authorities.

The MoJ has recognised the need to include welfare benefits and debt advice as elements of a more holistic approach to social welfare law as envisaged by the Early Advice Pilot and the Housing Loss Prevention Advice Scheme. These categories have been brought back into scope for Legal Help specifically for and limited to these initiatives. The problem is that these categories have been out of scope since 2013 and there are very few specialist practitioners in these areas to provide welfare benefits and debt advice. Additionally, providers do not have resources to recruit or train advisers for these limited schemes.

Recommendation:

- Welfare benefits should be restored to scope generally together with a strategic approach and adequate funding to ensure enough specialist practitioners to provide this advice.

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.

The knock-on effect of the reduction in provider offices is that even those who are eligible for legal aid are finding it difficult to find a solicitor to represent them.

Our analysis of data from the Legal Aid Agency shows a number of areas of the country have little or no provision of legal aid advice - otherwise known as legal aid deserts. A

desert is an area where advice is not available through legal aid or where there is only one provider locally.

Legal aid deserts mean that people on low incomes facing important legal issues are struggling to get the local face-to-face advice they're legally entitled to.

We have recently updated our advice desert heat maps^[1] which show the continued shortage of providers across the country:

- [community care](#) - **70.8%** of the population, or over **42** million people, do not have access to a community care legal aid provider
- [education](#) - **90%** of people in England and Wales do not have an education legal aid provider in their local authority area, that's **53** million people
- [housing](#) - **43,6%** of the population of England and Wales do not have a housing legal aid provider in their local authority area, a figure that has grown **6.6% since 2019**
- [immigration and asylum](#) - across England and Wales, **63%** of the population do not have access to a immigration and asylum legal aid provider

Due to the Home Office's dispersal policy, there can often be a mismatch between supply and demand, with those in need of support housed in areas without legal aid provision

- [welfare benefits](#) - **84.9%** of the population do not have access to a welfare legal aid provider, leaving them unable to challenge or appeal decisions

Large areas have no provider, but having only a single provider in a legal aid area is also a major problem for advice provision for the following reasons:

- Families on low incomes cannot afford to travel to see the one provider that might be located many miles away from where they live. This means they are unable to seek essential legal advice, even in the most extreme cases, such as homelessness.
- One firm in a large area might not have capacity to provide advice to all those who need it.
- As what remains within the scope of legal aid are crisis issues, such as, repossession or domestic violence people need that advice urgently, and cannot go onto a waiting list. This means that some of the most vulnerable people in society are left without critical professional advice and support.
- Conflicts of interest can arise because one law firm cannot, for example, represent both a tenant and their landlord. A conflict can also arise if the firm has been acting for e.g. the landlord on another issue, such as a family matter. This would mean the firm would not be able to act for the tenant.

In a sustainable market, ten years after a change like LASPO, case volumes should have stabilised, particularly given the cost-of-living crisis and growing need for advice. There has been no reduction in demand over this time but the number of firms providing services are continuing to reduce.

Lexis Nexis have also undertaken research into legal aid deserts and compared the demand for services with supply¹⁸. Their data showed areas with high demand but worryingly low supply. In the area of family legal aid, the research revealed:

- 1.09m people live in legal aid deserts for family law expertise.
- The five best served local authorities have 14.43 providers per 1,000 incidents.¹⁹
- The family legal deserts in the bottom 10% had 0 providers per 1,000 incidents.

Much of the research into advice deserts has been based on the number of providers that have legal aid contracts. However, the published information does not indicate the amount of work that is being undertaken by those contracted providers. A Freedom of Information request²⁰ demonstrated that for many areas there are dormant contracts where providers that have contracts are no longer taking on new legal aid work. The table below shows the different areas of law, the number of contracts for each area and the percentage of contracts where work is no longer being undertaken. It also demonstrates the provider loss from September 2021-March 2023 where firms have handed back their legal aid contracts. The number of inactive providers is particularly stark in debt and welfare benefits. Nearly a third of housing providers, where we know there are significant advice deserts, are also inactive.

Area of law	Procurement Areas	Offices (Sept 21)	Matter Starts Reported (21-22)	Inactive providers (21-22)	Provider loss (Sept 21-March 23)
Housing	131	431	14,923	129 (30%)	80 (20%)
Debt	131	431	57	401 (93%)	80 (20%)
Immigration and asylum	6	262	32,714	38 (14.5%)	38 (14.5%)
Welfare benefits	8	51	119	36 (71%)	14 (27%)
Community care	12	127	1,843	52 (41%)	21 (17%)

¹⁸ <https://www.lexisnexis.co.uk/insights/the-lexisnexis-legal-aid-deserts-report/index.html#section-Housing-Y9KiWILmGc>

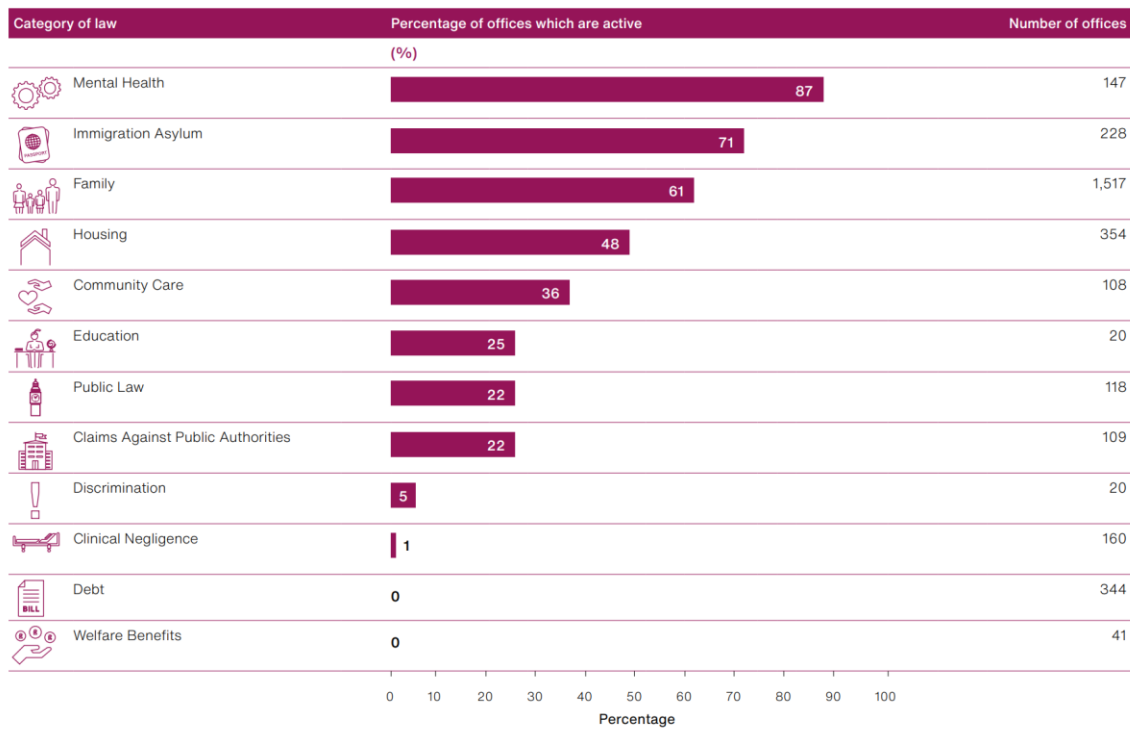
¹⁹ The definition of incidents within the Lexis Nexis report 'Legal need was determined by the number of legal "incidents" in a local authority area (for example, domestic abuse cases, homelessness or crimes committed), while legal aid supply was determined by using the number of legal aid providers in a local authority area as a proxy.'

²⁰ <https://www.thejusticegap.com/serious-decline-in-legal-aid-provision-reveals-extent-of-post-laspo-crisis/>

Discrimination	4	22	198	9 (41%)	3 (16%)
Education	4	22	325	6 (27%)	4 (18%)
Mental health	5	182	32,762	5 (3%)	38 (21%)
Claims Against Public Authorities	7	102	1,416	39 (38%)	12 (11%)
Public law	7	131	2,751	39 (29%)	18 (14%)
Family law	106	1,556	23,999	489 (31%)	122 (8%)

The NAO have also recently published a further analysis of the percentage of offices that are active by area of law in 2022-23²¹. This demonstrates that in only 3 out of 12 categories of law are the majority of offices active. Active status is calculated according to the Legal Aid Agency's definition, which is a provider with more than 30 new matter starts and/or certificate applications in the financial year.

In only three out of twelve categories of law are a majority of offices active



²¹ <https://www.nao.org.uk/wp-content/uploads/2024/02/governments-management-of-legal-aid.pdf>

The Low Commission report from 2015 demonstrated how stark the reduced access to specialist legal advice had become over the years. As the figures show the situation has only deteriorated since 2015:

'20 years ago, over 10,000 solicitors' offices offered publicly funded legal advice through the civil legal aid (green form) scheme across most areas of law, working alongside a Citizens Advice network that run 721 CABx operating from multiple access points, and a growing Law Centres movement. Today less than 2,000 firms offer any civil legal aid at all with many fewer firms than that providing social welfare advice... only 21 [CABx] offer specialist civil legal aid advice compared to over 200 just five years ago... [I]t is impossible to come to any other conclusion that key services are being eroded over time (Low Commission, 2015: 20).

The recent National Audit Office²² report also shows the lack of provision identifying that 'Our analysis shows that sustained decreases in the number of legal aid offices means a smaller proportion of the population are now within 10 kilometres of an office in most categories of civil law.'

Recommendations:

- Urgent work should begin on solutions to ensure that there are visible access points to legal aid services in every local authority area.
- The review should seek to understand the demand for services in local areas and the degree to which that demand is being met.

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.

As well as the central problem of low fees there are other factors which make legal aid work unattractive and has resulted in providers withdrawing from their contracts. These are mainly based around administrative burdens placed on practitioners by overly prescriptive measures in the civil legal aid contract. These measures affect the day-to-day operation of cases and the overall management of the business, preventing providers from adopting the most appropriate business models for delivering services.

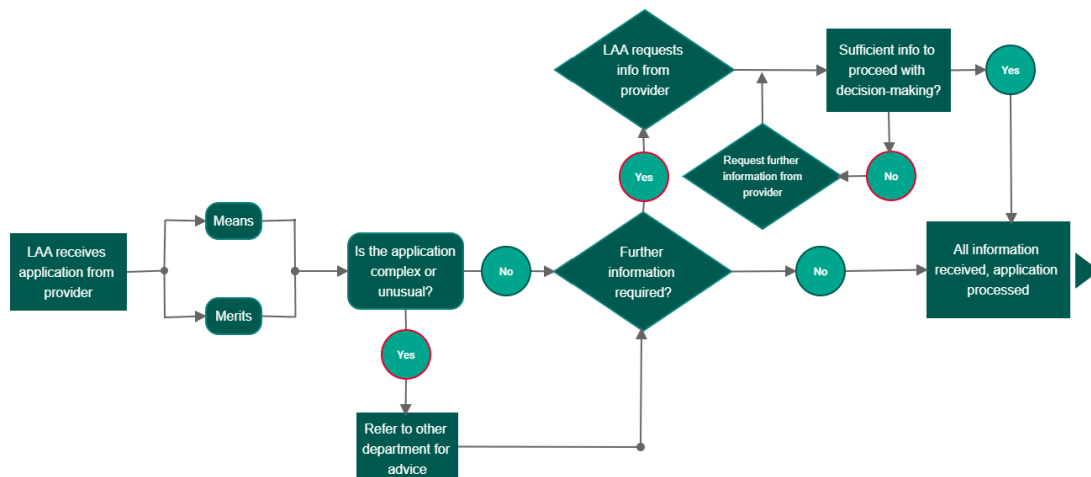
The unpaid administrative costs of running a legal aid contract include the costs of dealing with applications and means testing, billing, audits, complying with contractual pre-requisites such as obtaining Lexcel or the Specialist Quality Mark accreditation and using the online Client and Costs Management System (CCMS). These are in addition to the usual costs of running a private practice, such as professional indemnity insurance and practising certificates. These costs are not taken into consideration when calculating fees paid and have increased year on year. We recognise that legal aid is public money, and that appropriate mechanisms must be in place to ensure that it is being properly spent, but those mechanisms must be proportionate. At present they are in our view disproportionate and in need of streamlining.

²² <https://www.nao.org.uk/reports/governments-management-of-legal-aid/>

Micromanagement

The micromanagement of the legal aid contract by the LAA gives rise to a huge amount of bureaucracy. In 2021/22 the LAA processed around 400,000 legal aid applications and over 1.2 million bills.

The legal aid scheme is made up of a complex mixture of contracts, guidance and legislative provisions. The complexity of the application process alone is demonstrated by the flow chart below.



The legal aid contracts specify in remarkable detail not only what work solicitors do, but how they should do it. The civil specification is full of rules about how casework is to be carried out and recorded. For example, a significant problem that arose in family cases was that to progress from level 1 to level 2 fees, the rules required that the solicitor has a second meeting with the client, even when this is completely unnecessary for the conduct of the case. This created considerable confusion and unfair penalties.

This micro-management extends beyond the conduct of cases to take in file management systems, supervisory arrangements, and business management.

Supervisor requirements - finding supervisors that meet LAA requirements is difficult particularly in categories such as housing, community care and mental health. It can be problematic to find supervisors who meet the case involvement and legal aid competence standards which apply to all providers but do not necessarily reflect the caseload of a particular provider and are increasingly not reflecting the level of experience available as older caseworkers leave the market and are not being replaced with new entrants. This presents a barrier to firms and organisations applying for a civil legal aid contract or being able to continue with their present contract.

Office requirements - the contract includes the requirement to have a permanent office in a procurement area. This requirement is increasingly at odds with the way providers offer services post Covid, 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 - particularly as in common with many industries law firms no longer maintain the same levels of estate in the shift to homeworking. Clients too are seeking greater opportunities

to engage through calls or online means for accessibility and cost reasons. We do not want to dispense with the principle of local client access and face to face provision but as long as the provider can offer telephone access during normal office hours and can demonstrate their ability to arrange physical face to face interviews in appropriate local venues, we do not think that a permanent office presence in the procurement area is essential or cost effective.

Cashflow and interim payments – controlled work is only paid for at the end of the case. For the majority of legal areas there is no ability to claim for interim payments throughout the life of the case. This includes not being able to claim for disbursements, such as, interpreters or experts fees. Cases may take over a year to complete and involve carrying a large amount of work in progress with negative implications for firms’ cash-flow. This is particularly difficult for new entrants who wish to start providing legal aid services or where a new caseworker has been taken on, as there will be no income generated for this service or caseworker for a significant period. This represents an additional disincentive to start or grow legal aid services. Therefore, there must be arrangements for timely, interim costs and disbursements for controlled work across all the civil categories or else effectively firms themselves are bearing the costs of providing the legal aid system.

Recommendations

- Ensure supervisor requirements are commensurate with market conditions and existing levels of experience.
- Remove office requirement subject to ability to continue to provide in-person face to face advice in suitable premises.
- To improve cash flow, introduce interim payments for controlled work.

Means Test

Whilst the recent improvements to the legal aid means test are welcome, the proposal to remove Universal Credit as a passporting benefit for legal aid will significantly add to the bureaucracy of the application process, adding to unpaid work that legal aid providers have to undertake and making the work less financially viable. As outlined in our response to the government’s consultation on the Legal Aid Means Test Review, we believe that Universal Credit should remain as a passporting benefit and practitioners should be remunerated for the work involved in the means test application process. Our recommendations regarding the means test are outlined in our response to consultation here: <https://www.lawsociety.org.uk/campaigns/consultation-responses/legal-aid-means-test-review>.

Decision making

This level of micromanagement requires considerable decision making on the part of LAA caseworkers. Reports from practitioners suggest that poor and inconsistent decision making at case level from the LAA has impaired operations of providers. Evidence from

the Legal Aid Practitioners Group survey (2019)²³ indicated most practitioners experienced the following in the prior 12 months:

- Incorrect refusals of substantive certificates and/or amendments to substantive certificates
- Delays in granting substantive certificates and/or amendments to substantive 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
- Issues with the appeal or internal review process for challenging any of the above (or any other) decisions by the LAA 8
- Being forced to issue a claim or make an application 'at risk' (i.e. not knowing whether legal aid will be granted to cover the claim/application) while awaiting the outcome of an appeal

These results were linked to a perceived "culture of refusal" at the LAA resulting in the refusal of certificates for licenced work required for vulnerable clients.

Micromanagement of cases also means there are times when simple errors are made by practitioners on forms but the onerous level of decision making on each case means this generates costs and delays for both the provider and the LAA as claims go back and forth.

Audits

The LAA's costs assessment and audit regimes often mean that solicitors find payments for work genuinely done in good faith for eligible clients, are disallowed because of very minor and technical errors. A report by Wilding (2019) indicates that audits of immigration providers by the LAA have been triggered by minor errors in billing or means testing - with undue delay and disruption to serving clients as a result.

A stringent audit and contracting process is likely to have been influenced by the LAA's concerns not to have their accounts qualified by the NAO as happened to their predecessor the Legal Services Commission three years in a row from 2009 -2012. Qualification indicates the auditor had reservations about aspects of the accounts which, in this case, related to payments to legal aid providers. However, in their reporting NAO identified the complexity of the schemes as a major contributory factor toward the relatively high level of error in claims (NAO, 2010).

Simpler processes would be easier to implement and monitor but have not materialised in the intervening years, whilst complex audit arrangements have been maintained.

We have repeatedly argued that standard commercial contracts would not require such strict compliance with such a vast array of very technical rules, or in some cases impose disproportionate penalties for minor breaches. It makes no sense either for the contracting authority or the contractor. The contract should be rewritten on sensible

²³ https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid_Findings-from-the-2021-Legal-Aid-Census_Final.pdf

commercial terms, including provision for a "margin of error" which will not lead to any financial penalties for minor breaches in good faith.

Recommendation:

- Simplify the contracting process based on standard commercial contracts so that the weight of resources is spent on the provision of much needed professional advice rather than administration.
- Simplify the contract audit process.
- Include within the contract a provision to allow for a 'margin of error' that will not lead to any financial penalties for minor breaches in good faith.

Appeals

Providers also have concerns regarding the poor quality of legal aid appeal decisions and the lack of independence in the appeals process.

The costs, funding and contract appeal processes are supposed to be independent; however, both are wholly administered by the LAA and both Independent Costs Assessors, and Independent Funding Adjudicators are recruited, trained and paid for by the LAA. This results in lack of confidence in the independence of decision-making.

These appeal panels provide the last line of defence for practitioners against poor LAA decision making, very few practitioners would have the resources to pursue matters to legal proceedings, and so it is critical that these appeal routes are robust and truly independent of the LAA.

Recommendation:

- Set up an appeals process that is independent of the LAA.

Tendering process

The current tendering process takes place approximately every three to five years with ad hoc tenders occurring in smaller areas when required. Therefore, providers that may want to enter the market could have to wait several years for the opportunity to do so. The contract tendering process should be changed to provide greater flexibility for new entrants. This could take the form of rolling contracts rather than the current fixed term contract arrangement. This would allow for newcomers and the evolution of the sector. When there is such a shortage of providers it does not make sense to retain unnecessary barriers to entry.

Recommendation:

- The contract tendering process should be changed to provide greater flexibility for new entrants to join the market.

LAA IT systems

We deal with this issue in our answer to question 14 below.

Constraints of the contract stifling innovation

The combined effect of these rules is to stifle the development of more efficient processes for undertaking work, and the evolution of more effective business models. A more flexible, less punitive approach to the contracts would encourage innovation and a better relationship with providers. The government should set the broad parameters for what the system should deliver but allow flexibility within those parameters. It should allow organisations the commercial freedom to manage their businesses and services in an economical and professionally rational way.

4. What potential risks and opportunities do you foresee in the future for civil legal aid:

i) in general; and

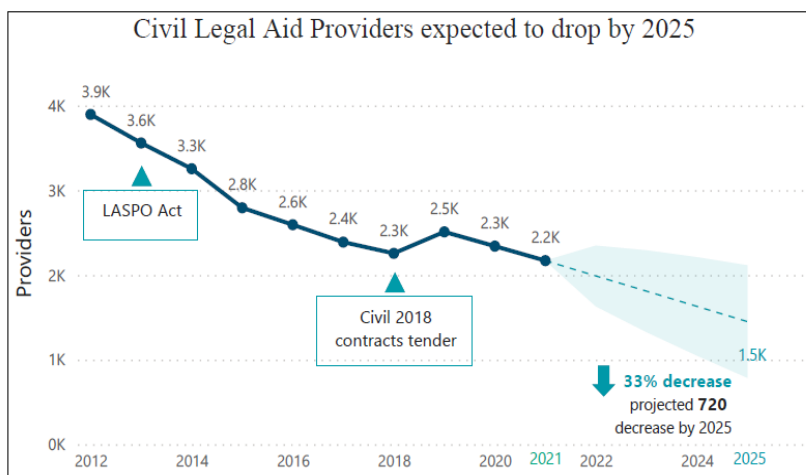
ii) if no changes are made to the current system? Please provide any specific evidence or data you have that supports your response.

We see significant risks in the future for civil legal aid without investment, likewise opportunities only exist if urgent investment is made.

There are sustainability concerns in all civil legal aid categories. The observation in the Criminal Legal Aid Independent Review that the situation is 'parlous' applies equally to civil legal aid.

The implementation of the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) in 2013, significantly reduced the scope of civil legal aid in family, immigration and housing cases and virtually abolished it in categories such as welfare benefits, debt, employment, and clinical negligence. The LASPO scope rules inhibit providers from both nipping problems in the bud and from addressing clients' needs holistically.

The scope cuts have reduced work volumes considerably and is one of the reasons for the decline in civil legal aid provision. It might have been expected that once the sector had absorbed the impact of the scope cuts, provider numbers would have levelled out, but this has not happened. Instead, the overall number of providers continues to decline year on year as illustrated by the graph below which also includes a projected fall of 33% from 2021 levels by 2025.



The fall in the number of providers means less access to legal advice for the most vulnerable people in society whom the legal aid system is designed to assist. Reduced access to justice means fewer problems are resolved with inevitable financial and social costs.

Declining viability and need for interim investment

Research indicates that the main reason for the continuing fall in the number of providers results from the declining financial viability of civil legal aid work. Fees have not been increased since the 1990s and more recently high inflation has further eroded their value. In the 2021 LAPG legal aid census 50.1% of organisations indicated that there were areas where they used to but no longer provide legal aid services. When asked to explain why their organisation had moved away from certain areas of legal aid practice, 61% explained it was because it was not profitable or economically viable to undertake the work.²⁴

Between 1996 and 2022 the real terms value of civil fees has reduced by 49.4%. Whilst we welcome the MoJ's review we note that the timescale indicates that the outcome of the review will not be published until March 2024, it is inevitable that there will be further delay before final recommendations are made and can be implemented. It is also necessary to factor in the added uncertainty of the outcome of a general election which must take place within the timescale of the review.

Even the most optimistic estimate suggests that recommendations will not be implemented before 2025 at the earliest, but this could be too late to save the sector now from almost total collapse. For that reason, we call for urgent interim measures to increase legal aid fee rates to a level that enables civil legal aid work to be viable for both private and not for profit providers.

With investment, reduced bureaucracy and widening of scope there is the opportunity to build a legal aid system that addresses the needs of the client in a holistic way. That deals with problems at the earliest point and therefore save costs to other government departments. That leads to collaboration across the sector and join up between legal and non-legal services to ensure problem resolution in the way most appropriate to the client. The sector is incredibly innovative, it has had to be to survive but this is despite the way in which it is operated and funded not because of it. Investment and flexibility can help build on this innovation.

Recommendation:

An interim increase of fees is required for all fee levels. An interim minimum increase of **15%** for work undertaken at the early advice stage, that is for legal help and controlled representation, would cost an estimated **£11.3 million** based on the expenditure from the financial year 2022/23. We call on the government to make this immediate increase as a first step whilst considering what more is required to make the system more effective and sustainable.

²⁴ https://lapg.co.uk/wp-content/uploads/We-Are-Legal-Aid_Findings-from-the-2021-Legal-Aid-Census_Final.pdf

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.

Despite the significant drop in cases and the number of providers undertaking legal aid, the demand for services has not decreased. This has resulted in knock on costs across the justice system and to other government departments.

Litigants in Person (LiPs)-

As outlined above there has been a reduction in the number of family cases going to mediation after cuts to early advice and a significant rise in the numbers of litigants in person (LiPs) in the family courts. LiPs can be a substantial burden on court time and resources - in 2014 it was estimated that the increase in litigants in person in family courts cost the MoJ £3.4 million²⁵, and since then the number of LiPs has increased. The number of cases where neither party is represented has increased by three times over the last decade. LiPs often struggle to understand their legal entitlements and create additional work for judges and court staff. Judges have estimated cases involving litigants in person take 50% longer on average. This creates not only additional costs for the courts but the costs of unresolved family issues. The last published data on backlogs in the family courts demonstrated a backlog of 60,847²⁶ cases. There are significant delays; private children’s law cases, where families apply for child arrangements, such as where a child will live or who a child will spend time with, took on average 45 weeks to conclude during July to September 2023, up almost one week from the same period the year before. This continues the upward trend seen over the last seven years. Additionally, there were 13,420 new private law applications during this period, with 19,908 individual children involved in these applications.

CAFCASS represent the interests of children and young people in the family court. They independently advise the family courts about what is safe for children and in their best interests. The long-term trend over the last five years has been for an increase in the number of children and young people CAFCASS work with each year from 127,670 children in 2017/18 to 143,469 in 2022/23 an increase on 12.4%. The biggest increases have been in private law proceedings. CAFCASS worked with 97,098 children in private law proceedings in 2022/23 compared with 82,818 in 2017/18, an increase of 17.2%.²⁷

This increase in cases represents both an emotional and financial cost. Law Society analysis in 2018 estimated that the cost of a day of court time would be £2,692²⁸. The re-introduction of legal aid for early advice would be a cost-effective way to deal with this issue and provide better support for families. We welcome the proposed pilot of early legal advice for private family cases.

²⁵ National Audit Office, Implementing reforms to civil legal aid HC 784 Session 2014-15 20 November 2014, <https://www.nao.org.uk/report/implementing-reforms-to-civil-legal-aid/> paragraph 1.19

²⁶ <https://www.gov.uk/government/statistical-data-sets/hmcts-management-information-october-2022>

²⁷ <https://www.cafcass.gov.uk/about-us/our-data>

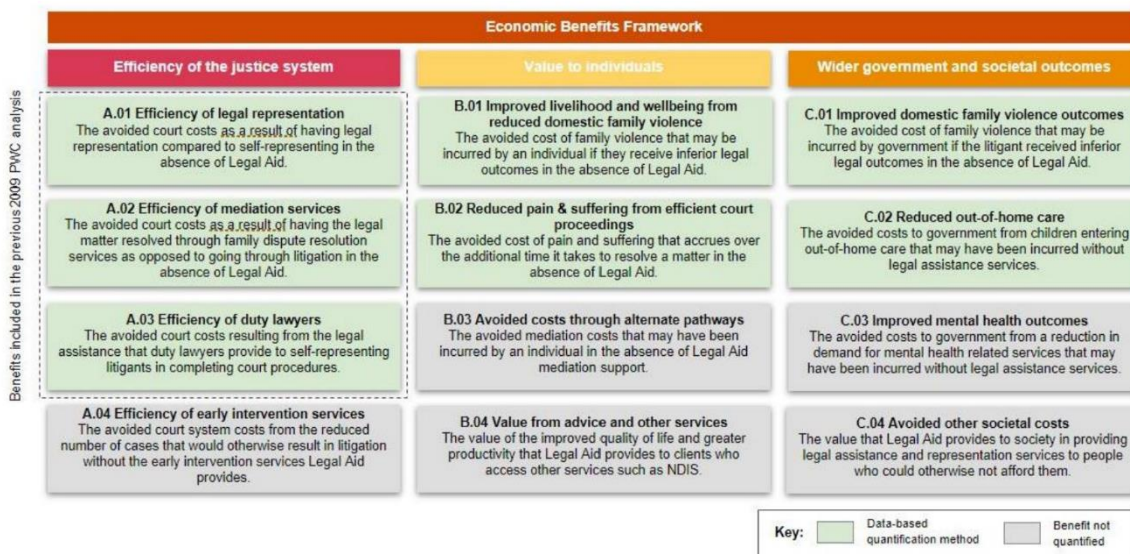
²⁸ <https://www.lawsociety.org.uk/topics/research/cost-of-day-in-court-new-analysis-by-law-society>

Better data is needed on the experience of claimants who represent themselves. Without this data, policy is being made in the dark. Better data will help show where investment is needed and what changes are working.

Without legal advice, which is free or subsidised, and accessible, individuals are more likely to wait until a problem has escalated before seeking or accessing help. This means that relatively minor problems which could be resolved quickly – such as rent arrears – can end up becoming much worse – such as resulting in the loss of a home. This spiralling of problems is demonstrated by the Law Society research on early advice [Research on the benefits of early professional legal advice | The Law Society](#). These escalating problems can create additional public service costs, for example for the NHS, and local authorities dealing with increased homelessness and health problems.

Access to justice research over the last two decades has demonstrated that social welfare law problems can cause adverse impacts on health²⁹, with a knock-on cost for the health service. Early access to legal advice can improve health outcomes and consequently reduce the cost of public health care provision, and the burden to the taxpayer.

A recent Cost Benefit Analysis (CBA) by PWC for the Australian government suggests breaking the CBA down into the following framework covering efficiency of the justice system; value to individuals and wider government and societal outcomes:



A report published by the Home Office in 2019 estimated the social and economic costs of domestic abuse are £60billion³⁰ annually.

Domestic abuse costs the police a significant amount, figure 15 of the report demonstrates police unit costs for domestic abuse recorded crime. Therefore, legal aid

²⁹ [Hazel Genn, When Law is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice](#)

³⁰ <https://assets.publishing.service.gov.uk/media/5f637b8f8fa8f5106d15642a/horr107.pdf>

provides savings through protective injunctions, and resolving other private family issues such as child contact and finances that removes the victims from the abusive environment. There are also the savings through referral of the abusive partner to perpetrator programmes. This can result in savings in the criminal justice system, as crimes are prevented and creates better outcomes for the children involved. These not only represent economic savings for the Ministry of Justice and Home Office but represent wider benefits for society and the individuals involved.

Additional savings are due to the child remaining within the family and not being placed in care. This has significant emotional and social consequences. From a purely financial perspective it will also cost the local authorities a significantly greater amount to place a child in care than it will cost the Ministry of Justice to provide family legal aid that removes a child from the violent situation but keeps them within the family unit.

There are also the health costs of domestic abuse, the loss of working days and the obvious psychological impact.

In terms of financial savings for the Department of Work and Pensions (DWP) there are savings created through ensuring there is a fair share of property and income as a result of the private family case, this may mean that a child will not have to live in poverty and an x-spouse does not have to fall back onto the DWP because they have an appropriate financial settlement that ensures that they are able to live without relying on state benefits. Better pension sharing arrangements could also create considerable savings. This is demonstrated through the work being undertaken by the 'fair shares? Sorting out money and property on divorce' research³¹ project that is ongoing.

Additional savings are through Special Guardianship Orders these are orders that are made which allow children to remain in the family and friends network, for example, with grandparents rather than being removed from parents and placed in care, again this represents a significant cost saving and social benefit, legal aid can ensure that these Special Guardianship Order arrangements don't break down.

Housing

Housing law is an area where there appears to be a clear case that provision of early advice in housing and related social-welfare areas can prevent substantial social and financial costs occurring down the line. Most significantly prevention of home loss can prevent the wide-ranging negative consequences of homelessness such as, the cost to local authorities in rehousing those who have a priority need, which often results in families being placed in 'temporary' accommodation sometimes for months or even years because of the acute shortage of social housing. This can result in disruption to employment, education particularly where people are placed in accommodation at a distance from their work, schools or social support networks. (See eg *Hutchings, HA, Evans, A, Barnes, P Demmler, J, Heaven, M et al. 2013. Do children Who Move Home and School Frequently Have Poorer Educational Outcomes in Their Early Years at School? An Anonymised Cohort Study. PLoS ONE. [Online]. 8(8).*) These consequences can have

³¹ <https://financialremediesjournal.com/content/fair-shares-sorting-out-money-and-property-on-divorce.3e17250b629342c9a1831e8ceb333843.htm>

negative impacts on mental and physical health creating distress for the individuals concerned as well as additional demand on already scarce NHS resources.

Housing disrepair is another area where early advice could prevent downstream problems if early advice was available for disrepair. Currently disrepair is only in scope where it constitutes a significant health risk to the occupants, which means in practice that tenants have to live with the consequences until they become ill. The benefits of obtaining advice before this point arises are clear, not only in terms of the wellbeing of the clients and their families but also savings in court resources where matters can be resolved without resort to litigation.

We appreciate that HLPAS is an attempt to address this situation, and one that we support in principle. But the problem remains that advice under HLPAS Stage 1 is only available at the point where the landlord has given notices of repossession, whereas welfare benefits and debt problems that have given rise to or contributed to the arrears are likely to have started long before the notice of repossession is issued.

Co-location

Co-location in relation to legal advice services usually refers to the siting of advice services in accessible locations such as GP surgeries. Such services are also sometimes characterised as 'health-justice partnerships'. Co-location falls within the wider framework of 'social prescribing' where non-medical solutions are offered to patients, recognising that the cause of illness such as depression may be exacerbated by welfare, debt, housing and family issues. The intention is to enable people, including the most vulnerable, who would not usually consider going to a solicitor, to obtain advice in a more familiar location that they regularly visit. The theory behind this is that there is a link between health outcomes and access to legal advice particularly for social welfare law problems, and that better health outcomes can be achieved by the provision of that advice. There is some evidence that a modest outlay for advice provision can result in significant savings on more expensive health treatment including hospitalisation. In *The Low Commission report 'Getting it Right in Social Welfare Law' (March 2015)*³² in section 4 there is a good explanation of the interaction of health and legal issues and some evidence of the benefits that co-location can offer. More recently as an outcome of the LASPO Post Implementation Review the MoJ has become interested in co-location and is funding co-located advice sessions operated by Citizens Advice Wirral and is commissioning a study of several existing other co-located advice projects.

Co-located services potentially have a valuable part to play in delivering advice to hard-to-reach clients. This must include the provision of specialist legal advice to be provided in the co-located environment or at least the ability of the co-located services adviser to make effective referrals to a specialist local legal advice provider. This can only work where civil legal aid services are sufficiently resourced to be sustainable and reflect the intersectionality of social, welfare and legal issues so that each can be similarly funded.

We understand that the current MoJ co-location pilots will include an evaluation of the evidence of costs savings to both the justice and health systems that may be obtained from the provision of co-located services. Given the potential costs savings to the NHS, we think that NHS trusts should be persuaded of the financial benefits of providing funding for co-located services as one element of social prescribing.

³² <https://www.lag.org.uk/about-us/policy/the-low-commission-200551>

Integrated cost benefit analysis

When calculating the value for money for the public purse there should be consideration of the outcomes for citizens and communities, and the savings for other government departments rather than purely the number of cases and the administrative costs of the LAA. The MoJ should undertake regular cost benefit analysis of legal aid to demonstrate the cost savings overall, generated to the Treasury.

A report commissioned by the Law Commission in 2014,³³ reviewed the research into the economic value of legal aid. All of the studies reviewed concluded that legal aid not only pays for itself, but also makes a significant contribution to households, local economies and reducing public expenditure.

From the UK, the most commonly cited study is by Citizens Advice³⁴ (2010) which estimated that for every £1 spent on legal aid, the state saves:

- £2.34 from legal aid spent on housing advice;
- £2.98 from legal aid spent on debt advice;
- £8.80 from legal aid spent on benefits advice; and
- £7.13 from legal aid spent on employment advice.

Similarly, the think tank the New Economics Foundation (NEF) and AdviceUK, a network of independent advice agencies (2010) estimated the social return on investment for debt and housing as over £9 for every £1 invested.³⁵

More recently a financial evaluation by Citizens Advice in 2015/16 reported a return on investment of £20.57 for every £1 invested in welfare advice services. This evaluation was undertaken in conjunction with New Economics using a tool that had been developed and approved by HM Treasury economists.³⁶

Economic research by the Access to Justice Foundation published in 2021 also showed that the provision of free legal advice to the most vulnerable in society on issues such as housing, employment, welfare benefits and debt would save the taxpayer £4bn a year.³⁷ Therefore, a strong case exists for regular cost benefit analysis to demonstrate the value of investing in legal aid services.

³³ LegalAction Low Commission evidence review, The business case for social welfare advice services An evidence review – lay summary Professor Graham Cookson and Dr Freda Mold1 University of Surrey July/August 2014
<https://openresearch.surrey.ac.uk/esploro/outputs/journalArticle/The-business-case-for-social-welfare/99514601402346>

³⁴ [Towards a business case for legal aid. Paper to the Legal Services Research Centre's eighth international research conference, Citizens Advice, 2010.](#)

³⁵ Outcomes in advice, NEF and AdviceUK, 2010, page 12, available at:
http://www.infohub.moneyadvicetrust.org/content_files/files/bold_outcomes_advice_final.pdf

³⁶

<https://www.citizensadvice.org.uk/Global/Public/Impact/ModellingthevalueoftheCitizensAdviceservicein201516.pdf>

³⁷ <https://atjf.org.uk/supporting-free-legal-advice-would-save-treasury-4bn-next-year>

Learnings and systemic improvements should also be integrated into the process. Many cases are generated through poor decision making of other government departments. There should be an approach which seeks to address this.

Better data collection is required by the MoJ to understand the impact of its policies on both its own departments and across government.

Recommendation:

- The MoJ should undertake regular cost benefit analysis of legal aid to demonstrate the cost savings overall, generated to the Treasury.
- The MoJ should collect better data so that it understands the impact of its policies on its own and other government departments.

Fees

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

The Law Society has commissioned Frontier Economics to undertake an analysis of the sustainability of the legal aid provider base. An interim report of emerging findings is attached at **Annex A**. The analysis has focused initially on housing legal aid providers. These emerging findings indicate that:

- 100% of providers surveyed to date are found to be loss making when adjusted for inter-partes incomes, and the majority are found to be loss making even when accounting for inter-partes incomes.
- The average fee earner is only able to recover around half of the full costs of providing housing legal aid.
- Providers are working long hours with high levels of stress and burnout, which is exacerbated by the significant administrative costs involved in housing legal aid work.
- There is a high turnover of junior staff as they leave for better pay and work-life balance.

The current rates and remuneration offer no incentives for legal aid providers, hence the significant decline in provider numbers in recent years. We note that the MoJ's own civil legal aid provider survey found that the majority of providers do legal aid work for 'moral' or 'habitual' reasons rather than for financial reward. But this is not sustainable, and the same research finds that low fees are the main reason why providers have given up legal aid or are likely to give it up in the future unless fees are improved.

The preliminary findings of the Frontier research paint a similar picture of unsustainability. An in-depth analysis of legal aid housing law provision has found that none of the participating providers are making any profit in this area. This clearly points to a reason why housing law has seen one of the largest declines in the number of providers since LASPO, even though much of housing law remains in scope for legal aid. It also suggests why more than in any other category, the Legal Aid Agency has had to issue multiple re-

tenders in housing beyond the main contract tender exercises, as existing providers have given up legal aid work.

Within the existing framework of low fees there are incentives for providers to seek out areas of work that are less poorly remunerated than others. Controlled Work is widely regarded as the worst paid work, because of the rates of remuneration and the level of unpaid administrative work associated with carrying out Legal Help means assessments that are totally disproportionate to the fees that can be claimed. Where possible providers may seek to minimise or avoid Legal Help work and focus on Licensed Work, which it offers slightly higher rates of pay at legal aid rates, and in some cases opens up the possibility of being able to recover costs from the other party at inter-partes rates which are much higher than legal aid rates. In the latter case, inter-partes costs present the only opportunity for providers to make a reasonable profit, which is often used to cross-subsidise the largely unprofitable work paid at legal aid rates.

Fixed Fees

Initially fixed fee calculations were based on an average of hourly rate costs from a mixed caseload, a 'swings and roundabouts' approach, where in some simpler cases, providers were rewarded with a surplus, and in some more complex cases providers lost out - but the stated intention was that overall, it should average out.

The LASPO scope cuts shifted the balance significantly to more complex cases as early advice provision often only requiring a 'one off' advice session was largely removed from scope. For example, the removal of non-asylum immigration matters which included a significant amount of 'one off advice' shifted the focus decisively to asylum claims which are inherently long running and usually complex matters. Consequently, the ability for providers to claim the fixed fee in excess of the actual value of the work virtually disappeared, to be replaced with a situation where a higher proportion of cases significantly exceed the value of the fixed fee. The LAPG Legal Aid Census 2021 demonstrates this, 94.1% of respondents to the Census indicated that fixed fees did not adequately cover the number of hours actually worked to complete a fixed fee task. The Census further found that only 57 minutes of every two hours of work performed is remunerated under the fixed fee regime.³⁸

The current fixed fee system operates as a disincentive for providers. The main issue is that the fixed fees are too low. This problem is exacerbated by the fixed fee structure that requires providers do work to the value of three times the fixed fee before the 'escape threshold' that enables the case to proceed on an hourly rate basis is reached. This means that work done that exceeds the fixed fee limit but does not reach the escape threshold goes unremunerated. This can potentially create perverse incentives to cut corners to remain within the fixed fee, or to pad cases out to reach the escape threshold. In the Immigration and Asylum category the escape threshold has been reduced to two times the fixed fee. As an immediate measure pending any wider consideration of the fixed fee system, the MoJ should implement the two times escape threshold across all civil categories.

The current fixed fee structure also negates the simplicity of administration that fixed fees could deliver. Providers still need to cost their files on a nominal hourly rate basis to

³⁸ <https://lapg.co.uk/lapg-publishes-the-findings-of-the-2021-legal-aid-census/>

determine whether they have reached the escape threshold, and when that threshold is reached there is further complexity in submitting a costs claim both for the initial fixed fee and the subsequent hourly rates. This additional bureaucracy can also act as a disincentive to undertaking this work.

If fixed fees are to be retained, the MoJ must ensure that rates are set at a level that provides a reasonable level of remuneration for the majority of cases, so that the administrative complexity of escape threshold cases can be minimised.

The cost base

The present fee schemes do not reflect the costs of carrying out legal aid work. The Law Society's 2023 Law Management Section Financial Benchmarking Survey³⁹ demonstrates that a typical firm, working 1,100 chargeable hours, a standard average for a law firm, would need to see rates of around £80 per hour to break even each year. Currently civil legal aid rates are significantly below this level, the average fee being £45-50 per hour, meaning that, civil legal aid work is unsustainable. Many firms are cross subsidising their legal aid work with private work but this is not a sustainable business model and not an option for practices that do not have means to do this. The effect is to place the burden of funding legal aid advice on SMEs.

Fees should be set at a level that realistically reflects the cost base of providing services and should be regularly reviewed by an independent body as suggested by the CLAIR review for criminal fees.

Recommendations

- Longer term fees should be set at a level that realistically reflects the cost base of providing services.
- Review fixed fees in terms of whether they are the most appropriate form of remuneration.
- Immediately reduce the escape fee threshold to 2x the fixed fee for all categories
- Increase fixed fee levels to a sustainable level.
- Regular uprating of fees with inflation.

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

The current system does not facilitate early resolution of disputes. LASPO removed major swathes of family and social welfare from scope, such as private law family, welfare benefits, debt, employment and non-asylum immigration, thus effectively closing off legal aid as an avenue for seeking redress in these areas of law. As noted above for the areas

³⁹ This figure is based on analysis of the costs for law firms in the lower quartile turning over less than £2m annually from the Law Society's 2023 Law Management Section Financial Benchmarking Survey

remaining in scope, providers are increasingly unwilling and/or unable to take on loss-making legal help work, with the result that opportunities for early resolution are more likely to be missed. We believe that the MoJ is aware of this problem and is looking at ways to address it, but this must go beyond HLPAS and the recently proposed family legal advice pilot.

The short-term solution must include a substantial increase in legal aid fees, but consideration must also be given to the issue of scope, and ways to deliver early advice without the current disproportionate administrative overhead.

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.

The civil legal aid system has developed over the years on an ad hoc basis, at some historical points expanding scope and at others reducing it, and also creating a bemusing multiplicity of complex rules and fee schemes. If the government decided to start from a blank sheet to create a functional and sustainable civil legal aid system that meets the needs of clients in today's world, it is highly unlikely that it would look much like the current system. We recognise that starting again from scratch is not a likely prospect and perhaps not even realistically feasible, but existing structures must be adapted and simplified if the system is to survive.

The most important change is to increase civil legal aid fees to a sustainable level, so that providers can offer a service without making a loss, that has to be subsidised from profits in non-legal aid work, or grant funding in the case of the third sector.

As stated above in answer to question 6, there must be a comprehensive review of the fixed fee schemes looking the basic fixed fee as well as the escape fee thresholds.

It is also important for providers to be able to boost their cash flow through the introduction of stage claims or payments on account for controlled work. This is a significant issue in categories where the majority of cases are conducted as controlled work including appeals to the First-Tier Tribunal. In Immigration and Asylum there are delays in decision making and long delays in getting appeals to the Tribunal listed. This means that providers can go unremunerated for work done for several months and in some cases years. Similar problems arise in Mental Health and Community Care. We have raised this issue on many occasions over the last few years, and we have been informed by the LAA that this is too problematic to implement on the CWA system that controlled work operates on. This suggests that the LAA must update its digital systems to have the flexibility needed to enable the relatively straightforward changes to be made as they become necessary.

On the wider question of fees, it is important that the necessary fee increase required to put civil legal aid on a sustainable footing is not a one-off exercise that will then permit fees to stagnate indefinitely. The government should look to create an independent fee review body to monitor legal aid fees on a regular basis so they can be adjusted in line with inflation or other circumstances that increase the providers' costs base. This should prevent future funding crises and create some stability in the system that encourages providers to remain, and give potential new entrants some confidence that civil legal aid is worth investing in.

Recommendation

- The government should set up an independent legal aid fees review body to periodically review fees to ensure they maintain sustainability

Career development and diversity

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's an exercise in withering on the vine. We're all quite old. I look at it and think, in 10 years' time there won't be any legal aid work."

"Fewer services, fewer people, fewer providers. This puts more pressure on the providers which are left."

"It's really hard to recruit and retain people, and a lot of skills have been lost over the last ten years."

"If I hadn't been the Partner here, and been here for so long, I don't know whether my Partner would have continued to do Housing anyway."

"We have no difficulty recruiting trainees but they leave us for more money elsewhere within a year or two of qualification."

(Source: Housing legal aid provider interviews, Frontier Economics, Research on the Sustainability of Civil Legal Aid - Interim Findings)

Recruitment and retention

There is a crisis in both recruitment and retention of legal aid lawyers. Since the introduction of LASPO a rising number of providers have exited the civil legal aid market due to decreasing financial viability of the work, those that remain have little or no resources to invest in future service provision, including training future legal aid lawyers. Firms have largely implemented a freeze on recruitment since LASPO. This in combination with the removal of the training contract grant scheme, that was available to firms pre-LASPO, has resulted in a significant reduction in the intake of trainee solicitors. Ten years on and we have an ageing legal aid provider base and shortages in supervisors available to both fulfil the supervisor requirements of the legal aid contracts or train up new graduates.

The lack of funding and poor remuneration in legal aid practices has a direct impact on social mobility. The Young Legal Aid Lawyers have documented the problems with lack of funding in their social mobility reports from 2010, 2013 and 2018 which demonstrate that high levels of debt combined with low salaries make legal aid work unsustainable for those from a lower socio-economic background. Whilst the new Solicitors Qualifying Exam (SQE) route helps reduce the costs of qualification in the legal aid sector the cost burden continues to fall on the candidate whilst the SQE1 exam can be incorporated into undergraduate studies covered by student finance there is no funding for SQE preparation courses.

Both anecdotal evidence and the data below indicate that legal aid practices are likely to have a more diverse workforce than other areas of law. However, this does not address the major problem in that there are few new trainees coming through as there is not enough money in the provider base to train them.

Law Society PC Holder Survey 2022

The Law Society's PC Holder Survey provides an indication of the profile of the provider base. Out of 1094 solicitors working in private practice, 138 individuals reported working for legally aided private individuals. A higher proportion of solicitors working in small practices undertook publicly funded work, compared to solicitors working in the larger firms.

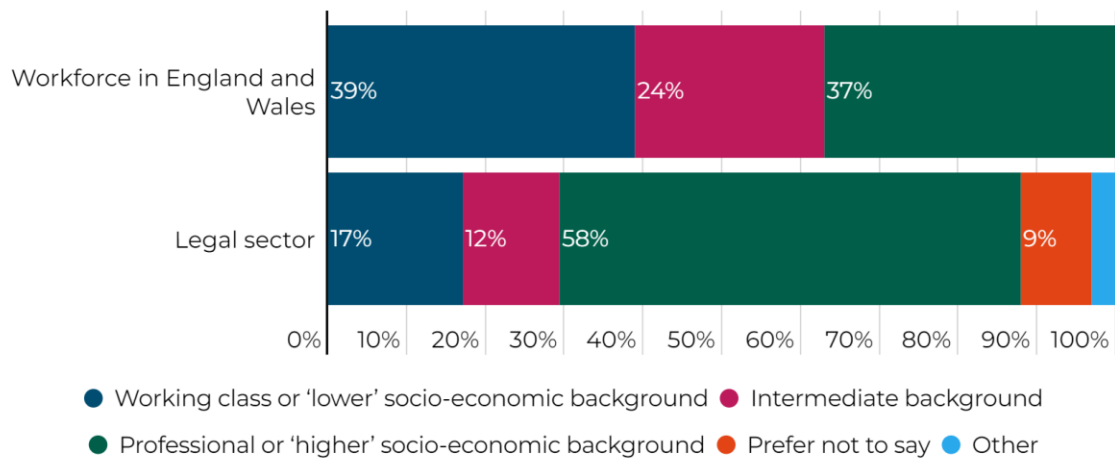
- 21% - sole practices
- 26% - 2-4 partner firms
- 18% - 5-10 partner firms
- 5% - 11-25 partner firms
- 11% - 26-80 partner firms
- 3% - 81+ partner firms

Or, 25% of solicitors in small firms (1-4 partners), 13% of medium sized firms (5-25 partners) and 6% of large firms (26+ partners).

The SRA data tool ([SRA | Law firm diversity data tool | Solicitors Regulation Authority](#)) demonstrates that diversity of small firms vs law firms overall for solicitors. Generally, small firm are more or as diverse. The data for solicitors from Black, Asian or minority ethnic background is most pronounced with significantly higher numbers working in small firms. This correlates with the Law Society's Race for Inclusion research: [Race for inclusion: the experiences of Black, Asian and minority ethnic solicitors | The Law Society](#) where Black, Asian & Minority Ethnic solicitors felt white trainees were typically encouraged towards corporate and commercial work, whilst they were 'pushed' towards personal injury, legal aid, immigration and family work.

SRA firm diversity data says that the number of lawyers from lower socio-economic backgrounds has reduced from 21% in 2015 to 18% in 2023.

How does the legal sector compare with national benchmarks?



Data sources, June 2023:

National benchmarks – [Social Mobility Commission](#)

Legal sector diversity data – [Solicitors Regulation Authority \(SRA\)](#)

Lack of flexible working

Legal aid practitioners were less likely to be working flexibly a higher proportion (22%) reported not accessing any flexible working opportunities compared to 18% of solicitors working with private clients. This is most likely a result of the constraints of the legal aid contract.

Lack of career progression

A higher proportion of legal aid solicitors either 'disagreed' or 'strongly disagreed' with the statement – 'my job offers good prospects for career progression' – 29% compared to 18% of solicitors working for private individual clients, 13% of those working for small and medium-sized enterprises (SMEs), 13% working for larger private sector firms or companies and 12% of those working for public sector bodies. This reflects the evidence around lack of retention within the legal aid workforce.

Commitment to working in legal aid

Legal aid solicitors were more likely to report working in their chosen practice area because of the value of the work to the community (34%), the client-based approach (37%), and to ensure that people had access to justice (56%).

Legal aid solicitors were more likely than solicitors serving other client types to agree/strongly agree that 'the work that I do is meaningful'. 90% compared to 80% of private client solicitors 72% working for SMEs, 67% for large companies and 73% working for public sector bodies.

This supports the findings in the government's own research undertaken by PA consulting, the main incentives for legal aid work are not primarily financial.

Legal Aid Training Grants

The Legal Services Commission (the LAA's predecessor) used to run a training grant scheme which was cut in 2010, these grants were awarded to legal aid firms funding 100% of the tuition fee for the Professional Skills Course, contributing towards the Legal Practice Course fees and the trainee's salary for the duration of their training contract.

The MoJ has recognised that there has been a loss of expertise in social welfare law areas and has created a limited number of funded social welfare law training contracts to facilitate the operation of the Housing Loss Prevention Advice Service.

This pilot scheme funds either the SQE1 and SQE2 including preparation courses or the professional skills course element of the LPC. Whilst welcome, concerns have been raised that the scheme only covers 75% of the Law Society's recommended minimum salary which represents only half the cost of training to a provider when considering the additional costs such as national insurance, pension contributions and supervision. Concerns have also been raised that the roll out of the scheme was rushed with only four weeks for providers to fill places.

In principle we see the pilot as a positive step, but the reality is that a few funded training schemes will not address the wider sustainability issues surrounding civil legal aid and will do little to convince young lawyers already carrying the financial debts of education and training, that they have a viable career future in legal aid work.

Loss of expertise

Loss of expertise in the legal aid sector arises generally from the decline in the number of new entrants. Whilst law students are interested in doing legal aid work, it is not widely seen as a viable career option in financial and career development terms (LAPG Census 2021). Expertise has also been lost due to the LASPO scope cuts, particularly in areas where there is little or no market for private services such as welfare benefits, debt and discrimination. This has hindered the development of recent MoJ initiatives to provide a more holistic approach to social welfare law such as the Housing Loss Prevention Service (HLPAS) and the Early Advice Pilot (ELAP) which was intended to offer advice in housing, welfare benefits and debt. In the HLPAS case, the MoJ has set up a Specialist Support advice line to assist front line providers who will provide welfare benefits and debt advice but do not currently have a supervisor who has sufficient expertise in these areas. We can only regard this as a partial solution which is unlikely to resolve the expertise issue in the long run as the limited resources going into HLPAS are not sufficient to enable providers to cultivate the level of expertise required. We have also pointed out to potential providers that not having in-house specialists can increase the risk of being in breach of their professional duty of care to clients.

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.

It is evident that there are no resources within the sector itself to train up new entrants. The Law Society believes if firms were properly remunerated a career in legal aid would be considered a viable option for graduates and firms would have sufficient funds to train new recruits. No scheme can work without a properly funded provider base. The ability to recruit trainees appears to vary across different areas of law and geographical regions.

However, what is a universal experience is the problem in retaining trainees. Retention is key to ensure a sustainable work force moving forward. The government should provide training grants to encourage new graduates into legal aid practice. However, any graduate scheme must also focus on retention.

There are a number of initiatives that have developed to try and encourage new entrants into the social welfare areas of law below we outline some of those initiatives that the Ministry can take learnings from in developing any future scheme:

Justice First Fellowship

The Justice First Fellowships⁴⁰ are run by the legal Education Foundation and provide fully funded training contracts for social justice lawyers. The scheme provides comprehensive financial support and also networking and development opportunities. Fellows also can also develop their own project. This scheme helps reduce barriers of access to the profession and provides a good model of provision that the government could base a fully funded training programme on.

Social Welfare Solicitors Qualification Fund (SWSQF)

SWSQF was developed by City of London Law Society, BARBRI and Young Legal Aid Lawyers with the support of Legal Aid Practitioners Group (“LAPG”) and Law Centres Network (“LCN”). SWSQF provides financial assistance for the SQE preparation courses and assessments to outstanding applicants currently working in social welfare law for organisations serving disadvantaged communities.⁴¹ Recipients commit to 70% of their work being in ‘social welfare law’ and are expected to remain in social welfare law for at least two years after qualification. This provides an opportunity for those that have already demonstrated a commitment to social welfare law to become qualified.

There are limitations in the fund as it relies on charitable funding and SWSQF does not currently fund employee’s salaries. Any future government training grant can learn from the SWSQE but must ensure trainee salary is covered.

Apprenticeship levy

A partnership of funders has facilitated the transfer of unused apprenticeship levy funds from corporate city law firms to social welfare providers to pay for the training of social welfare lawyers. This represents a positive addition to encouraging the development of social welfare lawyers at no cost to government. There are, however, limitations on the use of the levy, for example, the transferred funds cannot presently be used to pay for salaries and supervision and only 25% of the levy can be transferred. There is also a lot of bureaucracy involved in the transfer of funds. We call on the government to allow greater flexibility in the use of the levy funds and reduced bureaucracy in facilitating the transfer of funds.

Recommendation

- Invest in legal aid training grants.

⁴⁰ <https://jff.thelegaleducationfoundation.org/>

⁴¹ <https://clls.org/initiatives/swsqf/applicants.html>

- Allow flexibility in the use of the apprenticeship levy.

User needs

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.

The most significant barrier to individual's accessing legal aid is the lack of available services. As recently observed in the National Audit Office⁴² report:

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.

We have outlined comprehensively our concerns around accessible services in our response to question 2. We have recently updated our legal aid advice desert maps which continue to demonstrate the lack of provision across the country. We also highlighted the significant level of dormant contracts where providers are not taking on any work. Lexis Nexis have also produced advice desert maps and the recent NAO⁴³ report also identifies the significant lack of accessible services.

Demand for services does not meet supply and consequently the biggest barrier for clients is that they cannot access any services or the services they might access are at capacity and they are repeatedly referred on. This referral fatigue results in people dropping out of the system and failing to have their problems resolved resulting in more complex cases reaching crisis point, people being left to represent themselves in court or left in dangerous situations, for example, in cases where clients are unable to access a provider for domestic abuse services.

A key problem we have repeatedly raised and is also now raised in the National Audit Office (NAO) report is that the MoJ does not collect sufficient data to understand whether those that are entitled to legal aid are able to access it.

The NAO's report⁴⁴:

MoJ does not collect sufficient data to understand whether those who are entitled to legal aid are able to access it. Delivering access to justice is one of MoJ's three key priorities. However, MoJ lacks a good understanding of both the demand for legal aid and the capacity of existing providers so it cannot ensure advice is available to those entitled to it.

⁴² <https://www.nao.org.uk/reports/governments-management-of-legal-aid/>

⁴³ <https://www.nao.org.uk/reports/governments-management-of-legal-aid/>

⁴⁴ <https://www.nao.org.uk/reports/governments-management-of-legal-aid/>

As we have highlighted in our response to question 1 the LAA does not focus on client need. We have covered the issues relating to remote advice and digital exclusion in our response to the questions in the use of technology section.

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.

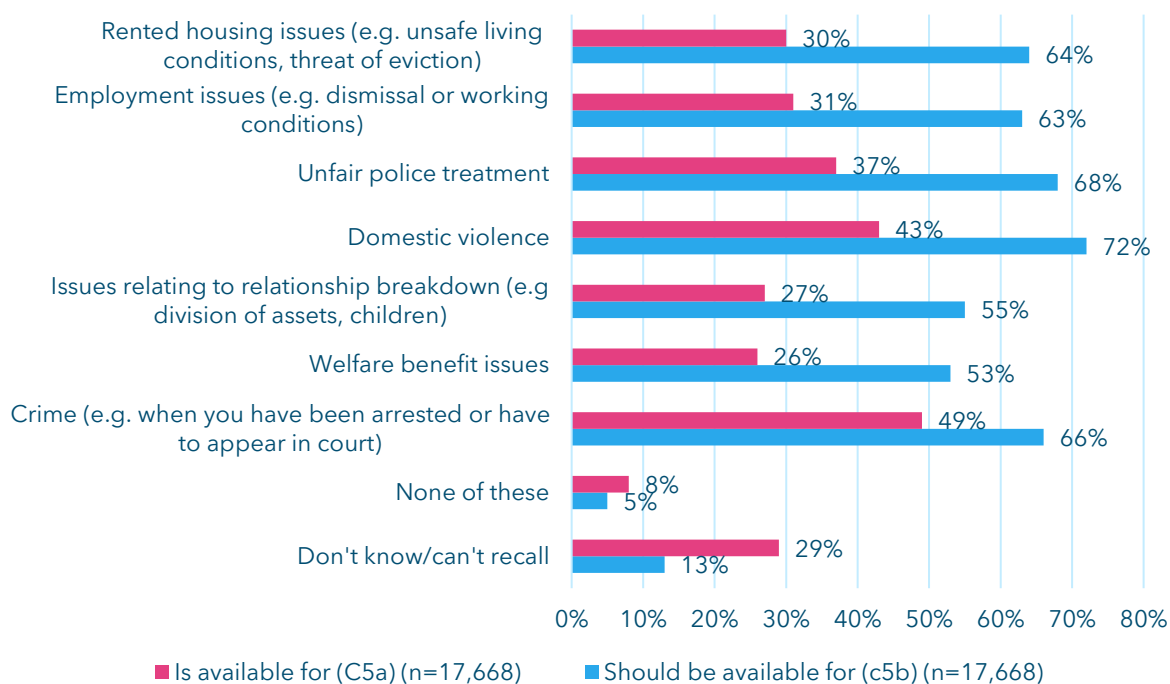
To ensure that it is easier for clients to access services the services need to exist. The MoJ's recent report by PA consulting identified the large number of clients regularly being turned away by providers because of lack of capacity. The investment and changes highlighted throughout this response must be implemented to ensure a healthy and thriving provider base. There may be new approaches to technology as outlined in the response to our technology section of this call for evidence, but these must be supported by a robust provider base and the option for in-person face to face advice, especially for more vulnerable consumers.

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?

The dwindling provision of legal aid exacerbates a lack of public knowledge that legal aid exists. The Legal Needs Survey 2023 found that the public is unsure of what issues legal aid is currently available for, 29% of the public did not know if it was available for any issues. Those on lower incomes (from households with a gross annual income of £32,000 or less) were more likely to think that legal aid is not available for any issues.

The Legal Needs survey demonstrates the confusion and lack of understanding by the public for which areas legal aid is available. This is symptomatic of very complex scope restrictions, the lack of visible services and the lack of clear and trusted sources of information regarding the availability of legal aid. Also, it is imperative that legal issues are recognised as such. Without early advice consumers may be unaware that legal redress is an option and fail to be steered towards effective means of early resolution in cases that merit it.

C5a/b: Which of the following types of issues do you think legal aid is/should be available for?



Source: *Legal Needs of Individuals in England and Wales (YouGov on behalf of The Law Society and Legal Services Board, 2023)*

If so, how do you suggest that this is addressed?

As stated elsewhere investment in the legal aid provider base is essential to ensure the sustained provision of services and clear consumer information. In addition to this, more flexibility around the contract could help facilitate greater collaboration, partnership working and better joined up services, such as the co-located services we have described in response to question 5. However, such programmes require an infrastructure to run them. There is potential for the training of trusted intermediaries so that they can identify if a client may have a legal problem and refer them to a qualified legal adviser who can properly assess the client’s issue. However, to provide such training and set up such services requires sustained investment in the existing provider base and the front door advice sector.

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

The 2023 Legal Needs Survey demonstrates public support for legal aid; 93% of the general public agree or strongly agree that legal aid is a good thing, an increase on the 90% reported earlier in 2023 ([January 2023](#)).

27% of respondents from households whose chief income earner was not working in a managerial or supervisory occupation (C2DE) disagreed with the statement ‘I understand my legal rights and responsibilities’. This compared to 22% of respondents from households with the chief income earner occupied in a managerial or supervisory role

(ABC1). Similarly, 30% of C2DE respondents disagreed with the statement 'I know where to get information and advice' compared to 25% of ABC1 respondents.

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.

As stated elsewhere in our response the removal of early advice from the scope of legal aid has resulted in clients not being able to resolve their problems early or holistically. The scope of civil legal aid should be expanded. Greater flexibility within the contract could encourage services to collaborate with other legal and non-legal services such as co-located services as described in our response to question 5.

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

Section 10(3) of LASPO provides for exceptional case funding (ECF) for categories of law that are out of scope for Legal Aid and where failure to provide legal services would be in breach of an individual's Convention rights (within the meaning of the Human Rights Act) or other enforceable retained EU rights relating to provision of legal services.

During the Parliamentary debates on LASPO, the government estimated that there would be 5,000- 7,000 applications a year, of which 53-74% would be granted. Application numbers and grant rates have increased significantly since an initial low start in 2013/14 of 1516 applications with a 5% grant rate, to 3,405 in 2022/23 with a grant rate of 73%, but the overall level of applications is still significantly lower than originally predicted.

In terms of categories of law, by far the largest number of applications relate to immigration with 2264 applications in 2022/23, followed by inquests with 403, and family with 370. Numbers in other categories are negligible but there were 250 in 'other' non-specified categories.

ECF applications are complex and time consuming. Solicitors only receive payment if the application is successful, which means that there is little incentive for solicitors to take on these applications, and relatively few providers do. The Legal Aid Agency will accept applications directly from applicants in person but relatively few are made. In 2022/23, of the 3405 ECF applications made, only 490 (around 15%) were applications in person, and it is likely that many of these applications will have been made with the assistance of third sector non-legal aid providers with some specialist knowledge of the ECF application process. Although there have been attempts to simplify the ECF1 application form, the problem is that the ECF eligibility criteria are inherently complex for lay applicants. Most will lack the specialist legal knowledge to demonstrate that the highly technical criteria for breach, or risk of breach of Convention or retained EU rights, will apply in their case.

We are also aware of problems with ECF applications in immigration where the LAA has granted ECF to an applicant in person (usually assisted by a charity) but the applicant has been unable to find a solicitor to take on their case, due to lack of provider capacity.

Another issue is that the majority of ECF applications in some areas such as asylum family reunion cases will be granted. This suggests that it would make sense for cases of this

nature to be included in scope for mainstream legal aid and this would avoid the additional complexity and administrative burden for the LAA and providers which is generated by an ECF application.

Recommendations

- Remove the 'at risk' factor for providers by allowing them to claim costs for submitting ECF applications irrespective of the outcome. This may incentivise more providers to take on ECF cases.
- For issues where ECF applications are routinely granted, either bring that matter back into scope for mainstream legal aid or implement a simplified application procedure.

Use of Technology

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.

Feedback from providers suggests that their main concern is the poor functionality and unreliability of the LAA's digital systems. The main systems used in civil legal aid are CCMS (Client Costs Management System) for Licensed Work applications and billing, and CWA (Controlled Work Administration) that covers Controlled Work billing. The CCMS online processing system has been plagued by delays and technical difficulties and times of complete shutdown. CCMS became mandatory to use in 2016 despite concerns raised at the time that it was not fit for purpose. Practitioners have complained that submitting applications and bills through the system is more time consuming than the paper-based system it replaced.

Although the LAA has made piecemeal improvements to the system since 2016, it is still largely regarded by providers as an unduly cumbersome system with poor functionality which has failed to deliver the benefits that should be provided by a modern digital system.

The limitations of the CWA system for Controlled Work have also prevented the LAA from introducing more flexible stage billing arrangements. Urgent investment in operational systems is required to reduce administrative overheads for both providers and the LAA.

Recommendation:

- Urgently invest in updating the LAA's IT systems to enable more flexible billing arrangements and less onerous administrative procedures.

Low revenues from legal aid work have created a situation where providers struggle to invest in technology that can potentially improve their back-office systems, with the result that they are less likely to access the benefits and efficiencies that such systems may offer. Increased fees may enable providers to make the necessary investment, but additionally the government should consider capital grants to legal aid providers to improve their digital systems.

Client facing technology for the delivery of advice is a separate matter which is considered below.

We believe as much information as possible should be available to parties on their options for resolving their dispute, whether inside or outside of court, as early on as possible. There is potential for technology to assist with this.

For example, since the cuts to legal aid services introduced through LASPO the public has found it difficult to resolve their problems early. In private family law low-income families have found it increasingly difficult to deal with and understand their family breakdown issues. There is very limited free advice, and it is difficult for individuals navigating the system to identify what is a trusted or accurate source of information. There are numerous unreliable and inaccurate resources and cases of individuals spending large amounts of money on unregulated non-solicitor services that claim to provide family breakdown advice and information.

We would welcome a visible and trusted source of online information that could help families navigate this complex landscape. There should be a place where a full spectrum of information is available at the earliest possible point. There is also the opportunity to, generally, improve the public's understanding of the legal system. In our response to the recent government consultation on supporting earlier resolution of private family law arrangements we suggested a single hub where all information relating to family separation is provided. It should include safeguarding information so those with domestic abuse or other welfare issues clearly understand their rights. It could also include information on the benefits of engaging in mediation. Dissemination of information could also be done through social media, YouTube and on video screens in court waiting rooms and at Children/Family Centres. These platforms should contain a link to any online hub.

The information should differ for child arrangements and for financial matters and should be in clear and accessible language.

The hub could also direct the public to other appropriate services, for example, there could be links to organisations such as FLOWS (Finding Legal Options for Women Survivors) and to legal aid providers. Where possible a continuum of service should be achieved for clients so that they do not become lost in the system or suffer from referral fatigue. However, this continuum of service relies on there being a robust legal aid provider base to refer in to.

Whilst information resources are valuable, the public needs more than information when dealing with their family breakdown and other legal issues. They should have access to early legal advice at the earliest point in the process so that information and advice can be tailored to their circumstances, and they can understand the right choices for them in resolving their issues.

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.

We agree that remote advice can be beneficial and convenient for many clients, but it is not a universal solution, as it does not take into account digital exclusion, and that those who are digitally excluded are likely to be disproportionately represented in the legal aid social welfare law client base. This client base includes those such as the homeless people or people threatened with homelessness, victims of domestic abuse, people with mental health, drug and alcohol problems or learning difficulties, and people who cannot speak or write in English, whose circumstances limit their access to and /or ability to use digital services. For these client groups and possibly others, access to in person face to face advice is essential.

This does not mean that all legal aid clients need in person face to face advice, and some will prefer the convenience of remote advice, particularly if they live in remote areas where transport is difficult and expensive. We think that that the current LAA contractual requirement to limit remote advice to 50% of clients is an arbitrary limit and one that's problematic to comply with as it is difficult to predict what the 50% figure is as it can only be known in retrospect at the end of the year. The decision whether to offer digital services should be at the discretion of the provider, but we do think it is reasonable to have a requirement for providers to have the capacity to offer in person face to face services where specifically requested or where it is in the clients' best interests to do so. In the context of innovative and emerging technologies, there are a range of existing technological tools and platforms that could be argued to represent innovative solutions to increase access to justice more broadly that may be adopted as part of delivering civil legal aid advice.

Recommendation

- Contractual limits on remote working should be removed subject to requirements that providers can offer in-person face to face advice at a suitable location where required

The use and deployment of a such platforms could help to increase efficiencies and reduce the resources required for supporting a civil legal aid case. However, alternative technologies can often represent a grey area within Lawtech regulation, as they are not carrying out reserved activities regulated by the SRA. Technology platforms, especially in non-reserved areas, or compliance-related areas where the law leaves greater scope for interpretation, may leave the consumer vulnerable to inadvertent errors or omissions if there is a lack of expert advice. As a result, while technological solutions may increase affordability and accessibility to legal services, caution should be taken over their adoption and promotion. Moreover, their use may also raise new issues such as

accessibility and interoperability between existing back-office operations and external systems, particularly for those interfacing with government services.

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

For users of legal aid the main barrier to using technology is digital exclusion which we have referred to in the answer to question 15 above.

For providers, our own research shows there is a need for resources that support upskilling and increasing the knowledge of legal services providers⁴⁵. Cybersecurity and data protection risks in the design, development, and deployment of technological tools need to be directly considered, including the implementation of checks and balances to ensure that appropriate protection is in place to protect legal privilege and personal information.

Concerns over the risk of client confidentiality and data protection legislation breaches on top of client requirements mean that technology adoption, including trailing new technologies, are often not straightforward, requiring detailed planning and consideration of these issues. There will be significant resourcing and financial burdens that disproportionately affect SMEs, who make up a large proportion of civil legal aid providers, who are in a different position to large firms with high capacity and dedicated teams for technology implementation and innovation:

- The time and cost of selecting and using technologies is often overlooked and underestimated.
- Disproportionate burden is placed on SMEs given additional responsibilities to satisfy cost benefit and risk assessments against regulatory requirements, including SRA enforcement of its rules, professional indemnity insurance requirements, and risk of litigation, complaints and claims.
- There may be a risk of legal services being less accessible through the lack of suitable legal technology, disproportionate and anti-competitive impact on SMEs, and reduced choice for legal services consumers.
- YouGov research on the operational and business challenges faced by SME firms that was commissioned by the Law Society found that technology investment cycles make it harder to quickly adapt systems, particularly as new technology projects are costly and can hurt short-term profitability unless planned well. Such burdens will inevitably act as a further barrier to access to justice.

More broadly, in consideration of technology adoption, it is also important to recognise the range of digital connectivity across the country, both from individuals' perspective as well as businesses' abilities to access broadband. While statistics from Ofcom's Connected Nations 2020 report demonstrate that superfast broadband is available to 96% of homes, around 0.6%, or 190,000 homes are still without access to a decent broadband connection⁴⁶. Across England and Wales, 119,000 and 18,000 households cannot get decent broadband services from either fixed or fixed wireless networks respectively. Although this represents a tiny percentage of households that are unable to connect to the

⁴⁵ <https://www.lawsociety.org.uk/topics/research/read-our-new-report-on-attitudes-towards-lawtech-adoption>

⁴⁶ https://www.ofcom.org.uk/data/assets/pdf_file/0024/209373/connected-nations-2020.pdf

internet, the number is significant and as the cost of living rises, if there are additional costs to connectivity, many households may not be able to afford to stay connected⁴⁷. Older people are disproportionately affected, where 20% of those aged 65+ do not have domestic internet access and 1 in 4 of those who do have access to the internet aged 65+ do not use it⁴⁸. Even with connectivity, 11 million customers experience broadband outages of three hours or more between 2021 and 2022⁴⁹

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

Rather than areas of law, it might be more relevant to talk about stages of a case. We can see there might be benefits provided by tech platforms that can assist with triaging. It is common for clients to present with multiple problems that potentially have legal solutions, but from the client’s perspective, they may not be able to separate out all the issues or be aware that the problems are of a legal nature. This is why it is essential for triage to be carried out by experienced caseworkers, but there could be potential for tech to assist with and streamline the process. However, this has to be premised on the existence of a sustainable provider base and that the problems will fall within scope for legal aid.

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.

In addition to the barrier to using technology as noted in Question 16, any promoting, or even mandating, technology adoption without additional resource provision risks unfairly targeting broadly underfunded sectors such as the legal aid sector which at present could benefit from direct technology investment.

Early resolution

17. 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. Other areas for consideration

Prior to LASPO the Access to Justice Act allowed for all areas of law to be within the scope of legal aid apart from a proscribed list that was excluded. LASPO reversed this approach, excluding all areas of law from legal aid apart from a proscribed list of areas that were within scope. Most social welfare law was removed from scope along with much of early advice, most notably on family and housing. The result of this change was to fragment services and limit a client’s ability to resolve their problems. The table below demonstrates the drastic reduction in social welfare cases.⁵⁰

Area of law	year	Legal Help case numbers
Debt	2009/10	143,858
	2022/23	475

⁴⁷ https://www.ofcom.org.uk/__data/assets/pdf_file/0022/234364/digital-exclusion-review-2022.pdf

⁴⁸ https://www.ofcom.org.uk/__data/assets/pdf_file/0013/220414/online-nation-2021-report.pdf

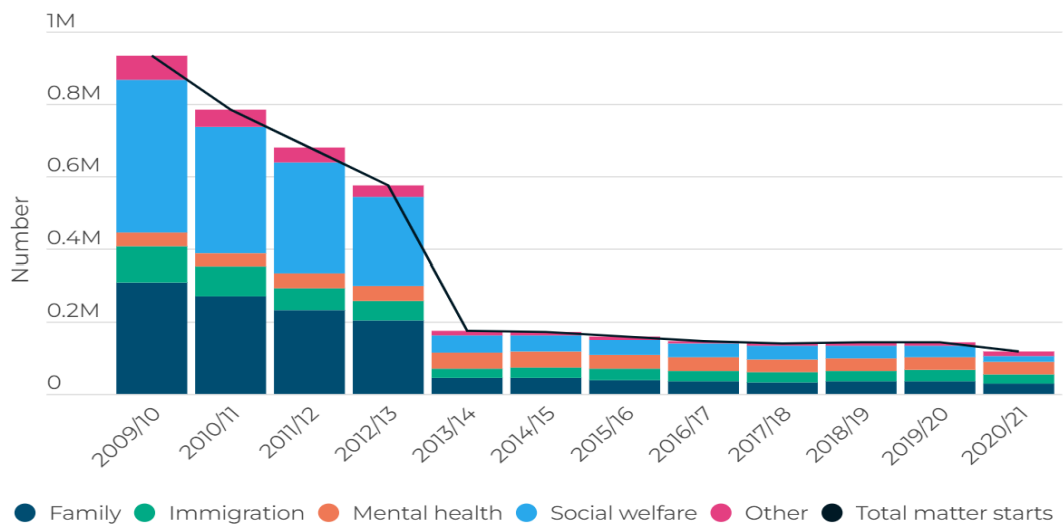
⁴⁹ <https://www.uswitch.com/broadband/studies/broadband-statistics/>

⁵⁰ <https://www.gov.uk/government/collections/legal-aid-statistics>

Employment	2009/10	31,223
	2022/23	5
Welfare Benefits	2009/10	141,625
	2022/23	78

Early advice

Early advice enables problems to be resolved at an early stage before they escalate to a point where the costs in financial, social and potentially health terms are likely to have exceeded the relatively low costs of advice provision. The graph below demonstrates the significant drop in early advice legal help cases since 2009/10.



The limited scope of legal aid also prevents problem resolution, for example, in housing cases the practitioner can deal with the crisis of the repossession proceedings but is then not able to resolve the cause of the repossession as there is no legal aid available to advise on the debt and housing benefit matters which have led to the repossession.

Following the 2019 LASPO Post Implementation Review the MoJ has a greater understanding of the benefits of legal advice provided in a timely way, hence initiatives such as Housing Loss Prevention Service (HLPAS) the Early Advice Pilot and the Co-location Pilot (ELAP).

The Law Society supports these initiatives in principle although we have concerns about the details and implementation of HLPAS and the ELAP has failed to produce any valuable results.

In family cases the cuts to legal aid have made it very difficult for separating couples, on a low income, to get early advice to sort out their problems. The Government predicted that by cutting legal aid for separating couples, they would reduce the number of cases going to court and more people would go to mediation.

In fact, the data demonstrates, the opposite is true. After the cuts to legal aid were introduced the number of legal aid mediations reduced significantly⁵¹:

Case type	Year	Amount
Mediation assessments	2011-12	31,336
Mediation assessments	2022-2023	11,577
Mediation starts	2011-12	15,357
Mediation starts	2022-23	7,320

The main referral route to mediation prior to 2013 had been through early advice from solicitors. The cuts removed this referral route and hence the number of mediations dropped significantly.

At the same time the number of people representing themselves in the family courts has tripled.⁵² Not only did LASPO fail to divert people away from court and towards mediation it has added to the pressures on the court system with increasing case volumes and backlogs. Litigants in Person (LiPs) are unfamiliar with court processes leading to inevitable delays. We welcome the government’s recent proposal to pilot an early legal advice scheme in family and look forward to engaging with this work.

Not only has early legal advice reduced due to scope cuts but there is also evidence of a reduction in case numbers for early advice in areas of law where there were no scope cuts. The table below, (based on a report produced by Access Social Care but with updated figures for 2022/23) shows the number of new Legal Help matter starts opened in 2011/12 compared 2022/23 and the respective scope cuts brought in by LASPO in the different areas. This demonstrates a 73% cut in community care and a 20% cut in mental health although neither of these areas of law had seen their scope cut because of LASPO.

Number of matter starts opened in non-family work⁵³

Area	2011/12	2022/23	Reduction % (to nearest whole number)	Summary of impact of LASPO on scope
Community Care	6216	1705	73%	No change
Actions against the Police	4007	1509	62%	Scope of work reduced

⁵¹ <https://www.gov.uk/government/collections/legal-aid-statistics>

⁵² <https://www.gov.uk/government/collections/family-court-statistics-quarterly>

⁵³ Table (updated) from <https://www.accesscharity.org.uk/news-blog/community-care-legal-career-pathways-research-report>

Clinical Negligence	3649	29	99%	Restricted to neo-natal cases
Debt	102065	475	99%	Almost completely removed from scope
Discrimination	Previously recorded under separate categories	2261	–	No change
Education	3775	348	53%	Restricted to special educational needs
Employment	18870	5	100%	Almost completely removed from scope
Housing	101905	26592	74%	Most disrepair removed from scope
Immigration/Asylum	60792	37206	39%	Almost all immigration removed from scope
Mental Health	39578	31818	20%	No change
Miscellaneous	900	81	91%	Different definitions
Personal Injury	527	0	100%	Almost completely removed from scope
Public Law	1624	3044	Increase	No change
Welfare benefits	102920	78	100%	Almost completely removed from scope

The low fee levels for Legal Help work and the onerous auditing of cases at this level mean that it is not financially viable for practitioners to undertake and the most likely reason for the drop in numbers. Community care work is particularly complex with extremely vulnerable clients which adds to the cost of delivery.

To encourage early resolution and prevention of disputes through the civil legal aid system, the problems identified above need to be addressed. There should be an increase in fees and reduction in bureaucracy which is presently disproportionate and leads to providers spending large amounts of time on unbillable administrative work rather than resolving problems for clients. Presently the financial risk in these cases is disproportionately placed on the provider, this needs to change. This will encourage providers to undertake work at the legal help and controlled work level.

In addition to these changes to the legal help and controlled work that is presently in scope there must also be an extension of scope to encourage the resolution of cases at the earliest possible point. We welcome the proposal to pilot early legal advice in family cases and look forward to working with the ministry in developing the pilot. We were disappointed that the pilot in social welfare law failed due to problems in the design of the pilot and hope that lessons can be learned from this to ensure that the experience of our members can help inform the design of a robust pilot going forward.

We have repeatedly expressed our concern regarding the decision to remove the passporting of clients on Universal Credit through the means test. This will add an additional administrative hurdle which, particularly at the legal help level, will make this work even more unviable. We believe that Universal Credit should remain a passporting benefit for all legal aid cases but particularly at the legal help and controlled work level. This will help ensure clients receive early advice and resolve their problems as early as possible.

Recommendation:

- Proposals for effective early advice in social welfare law and family must be one of the main outcomes of RoCLA.
- Universal Credit should remain a passporting benefit for all legal aid clients

18. Is there anything else you wish to submit to the Review for consideration?
Please provide any supporting details you feel appropriate

- **Frontier Economics preliminary report (Annex A)**
<https://www.lawsociety.org.uk/topics/research/housing-legal-aid-sustainability>
- **National Audit Office report on legal aid**
[Government's management of legal aid - NAO report](#)
- **Means Test** - The Law Society's recommendations regarding the legal aid means test are outlined in our response to consultation here:
<https://www.lawsociety.org.uk/campaigns/consultation-responses/legal-aid-means-test-review>.
- **The Law Society's Interim Submission to the Review of Civil Legal Aid**
<https://www.lawsociety.org.uk/campaigns/civil-justice>
- **Civil legal aid: a review of its sustainability and the challenges to its viability**
<https://www.lawsociety.org.uk/topics/research/civil-sustainability-review>