Coram Children's Legal Centre response to the Ministry of Justice Review of Civil Legal Aid

February 2024

Introduction

Coram Children's Legal Centre (CCLC) holds Legal Aid Agency contracts in education law, family law, immigration and asylum law, community care law, and public law. CCLC represents children, or their parents depending on the area of law, in hundreds of cases per year where the subject at the heart of the legal case is a child.

As well as being a legal aid provider, CCLC delivers charitable grant-funded work providing free advice line and outreach advice services to thousands of children, young people and families each year, including through the Child Law Advice Service (CLAS).

The Child Law Advice Service (CLAS) is a Department for Education-funded service providing free legal advice and information to members of the public on family and education law. It is one of the very few alternative sources of free advice on out-of-scope family and education law issues. Between 2020 and 2023, CLAS provided 50,508 individual sessions of advice via telephone and email to 42,396 unique clients. Demand for this service is consistently extremely high. CLAS also provides free online legal information and received 4,550,386 unique visitors to its website during the same period.

This response also contains evidence from Coram Voice, a national advocacy charity providing independent advocacy services to children in care and on the edge of care across the UK.

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Overarching questions

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

For many years, civil legal aid providers including Coram Children's Legal Centre have done their best to function within the current civil legal aid scheme and to meet a torrent of need from some of the most vulnerable children and young people in the country. Our responses to the questions below are rooted in decades of organisational and individual expertise. We hope that the RoCLA process allows us to contribute to the reconstitution of a system of legal aid which not only works for, but is built around, the needs, rights and best interests of children.

Coram supports the responses put forward by colleagues across the legal aid sector, and in particular those of the Legal Aid Practitioners' Group, the Immigration Law Practitioners' Association, Young Legal Aid Lawyers, and the Law Society.

Below are the changes we would suggest, in summary.

General

- The Ministry of Justice must take on responsibility for monitoring legal aid demand, as well as supply

- The LAA should absorb or contribute to the costs of reasonable adjustments made by providers to their staff with disabilities or access requirements

Fees

- Civil legal aid rates should increase with the amount they have lost in the decades of inflation since they were set in 1996 and must be index-linked to future-proof their stability
- Fees should be immediately increased by 50% to allow for fair wages and to allow for investment and development of the sector
- Introduce a system of automatic uplift across all areas of civil legal aid for experienced staff and those holding additional accreditations
- Abolish fixed fees altogether, or set fixed fees based on a reasonable hourly rate and review regularly
- Reconsider why hourly rates vary so widely across (and even within) different areas of law
- Pay providers fairly for work at pre-proceedings to incentivise early resolution
- Review rates of pay for experts and interpreters, and reimburse interpreters' costs for travelling to and from court hearings to interpret

Means testing

- Child recipients of legal aid should be genuinely exempted from means testing
- All looked after children and care leavers up to the age of 25 should be passported through the means test for legal aid
- The means test must be made more flexible to account for the variations in income that can be experienced by young and vulnerable people
- The means test should account for rent not being payable in cases where the client is homeless
- Introduce a streamlined assessment for the re-testing of means and merits within a fixed period
- Review approach to the means assessment of students in receipt of SLC maintenance grants

Changes to scope

- Allow providers to undertake, and be paid for, work on matters out of scope as long as they are linked or related a client's in-scope issue.
- Bring school exclusion matters back into scope of legal aid
- Bring immigration matters engaging human rights arguments back into scope of legal aid
- Bring all initial family law advice back into scope of legal aid
- Regularly review the use of ECF and bring matters with high grant rates back into scope of legal aid
- Legal aid should be available in all cases in which a child is at risk of abuse

Administration of legal aid

- Cease making providers work at risk
- Refocus case monitoring on improving quality of advice, rather than subjecting financial claims to unreasonably intense scrutiny
- The LAA approach to auditing bills should take into account the need for front-loading of cases and to better reflect variations in client vulnerability
- Give providers across all areas of law prior authority to tender for disbursements

- Allow disbursements to be reclaimed immediately
- Remunerate providers for successful appeals that have been prepared on final claims
- Funding appeals should have a service standard and should be decided promptly
- Significantly broaden the Lord Chancellor's discretion to pay costs even if permission is not granted at JR
- Make it easier for clients to switch solicitors

Exceptional case funding

- Reform the exceptional case funding system. In the immediate term, a question should be added to the CIV ECF1 form to ask about the rights and interests of any affected children.
- Where the applicant is a child, a presumption would operate so that a child or young person could expect to have their case for civil legal aid funding granted, in line with children's rights standards.
- The LAA should accordingly publish guidance for its casework staff deciding ECF applications on how to handle applications affecting children.
- Further work should be done to promote the use of the ECF to those working with children and young people, in an effort to counter the low proportion of applications from them
- The Legal Aid Agency should ensure that sufficient resources are allocated to allow for urgent cases to be decided within an appropriately quick time-frame

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?

a. Family

The need for broad-scope early advice

There have been strong calls to reinstate legal aid-funded early advice in family law in the years since the passage of the Legal Aid, Sentencing, and Punishment of Offenders Act 2012 (LASPO). Were early advice to be brought back, however, it would need to be much broader in scope than family law matters currently in scope for legal aid. This is because understanding of what is in and out of scope of family legal aid is poorly understood and there is little public understanding of the means thresholds and evidential requirements where relevant. The confusion may in part arise because only the most complex cases such as those involving domestic violence and child abuse remained in scope.

Take up of mediation, which remained in scope, has fallen since the passage of LASPO: the number of Mediation Information Assessment Meetings (MIAMs) fell by 66% between 2012-13 and 2017-18.[1] The Law Society and others have surmised that this fall is due to the fact that prior to LASPO family mediation was largely dependent on referrals from family legal aid solicitors, and the removal of private family law from the scope of legal aid reduced the opportunity to refer cases towards mediation.

Slow pace of change

While we welcomed government action to bring Special Guardianship Orders (SGOs) back into scope for legal aid in May 2023,[2] we note that the government announced this measure as early as

[1] https://www.lawsociety.org.uk/topics/research/civil-sustainability-review
[2] https://www.gov.uk/government/news/civil-news-changes-to-scope-of-family-legal-aid

February 2019 in Legal Support: the way ahead,[3] and question why it took more than four years for the change to take place. In those four years, CLAS received approximately 3000 calls relating to SGOs and other alternative care arrangements, and each call represented at least one family desperately searching for alternatives to care proceedings.

CLAS received a call from a relative concerned about the ongoing care of a child, whose mother passed away and whose father was unwilling to be involved in the upbringing of the child. Although children's services had proposed a private fostering arrangement, they were not providing further support or help the family to make an application for a special guardianship order. The caller had to try to make the application themselves at their cost, which inflamed pre-existing tensions with the father and caused distress to the child.

Narrow drafting of scope harms children

Even matters which have always been in scope such as child abuse often fall foul of evidence restrictions or the means threshold. The deeply restrictive nature of legal aid scope post-LASPO also means that even in clear cases of child abuse, if the abuser is not the other party to proceedings the child may not receive the protection of legal aid.

CLAS provided advice to a father. The children lived with their mother and the mother's partner. One of the children told the police that the mother's partner had sexually assaulted her. The mother's partner had been bailed and was not allowed to be in the family home. The father had concerns and wanted to apply for an emergency order. As the other party to the proceedings would be the children's mother, the allegations of abuse relating to the partner meant that the father was not eligible for legal and had to proceed through the urgent complex legal process unrepresented.

Early resolution of care proceedings is disincentivised

There is also a grave problem with how late legal aid is made available in public law child cases, which has been exacerbated by a recent policy change. As per the Public Law Outline, relaunched in January 2023,[4] the conduct of public child law cases is now to be frontloaded with a focus on resolving cases at the pre-proceedings stage, for which legal aid is not available.

However understandable the desire to lessen the load on the Family Courts, this raises several concerns. First, a child being taken, or not taken, away from their birth family and into care is a matter of critical importance to that child, and this is recognised by the fact that once the notice of intention to issue has been sent, parents are granted legal aid which is neither means- nor merits-tested. If more cases are to be resolved at the pre-proceedings stage, this change in practice should be reflected in the provision of legal aid at legal help stage.

Secondly, during pre-proceedings stage there is no formal mechanism for children's voices to be heard, so they are simply not heard or accounted for when life-changing decisions are being made about their futures. This is the role of both the legal representative and the children's guardian who

[3] https://assets.publishing.service.gov.uk/media/5c5b3a0840f0b676e6ddc6dc/legal-support-the-way-ahead.pdf

[4] https://www.judiciary.uk/courts-and-tribunals/family-law-courts/re-launch-of-the-public-law-outline-plo/#:~:text=The%20President%20of%20the%20Family,PLO)%20on%2016%20January%202023.

instructs them, and both are only appointed following pre-proceedings. The need for legal aid funding for pre-proceedings work was recognised in the 2021 report of the Public Law Working Group which recommended that: '*It is recognised that the current legal aid regime would appear to place a burden on parents and legal professionals in terms of the overall lack of funding pre-proceedings. This report recommends that the Legal Aid Agency review the remuneration available for this important work, which may ultimately save the taxpayer the cost of care proceedings*.'[5]

Children are not eligible for legal aid early enough

Parents who share parental responsibility are means-merited tested for stage 1 legal help in respect of child protections matters. Once the local authority sends the parents a pre-action letter (i.e., informing the parents to obtain legal advice because the local authority are likely going to issue an application to the family court for a care order) then the parent would be eligible for non-means/non-merited legal help (stage 2). Children, however, are not entitled to assistance and/or advice under the legal help scheme and, compounding this lack of representation, Children's Guardians only become involved after care proceedings are issued.

High-cost case plans

High-cost case plans are an administrative burden and are needed with relative frequency in care proceedings. The administrative cost incurred by providers, coupled with the fact that work above the threshold is paid at a lower rate, can operate like a tax on complex cases. In this particular area of law, the upper threshold for total work should be raised to limit the routine use of high-cost case plans. We suggest, to echo the Association of Lawyers for Children, an upper limit of £35,000.

Recommendations

- Funded early legal advice, with the offer of follow-up in writing, should be provided in private family law cases, and widely advertised.
- Subject children should be represented by legally aided solicitors for the pre-proceedings stage
- Work at pre-proceedings stage should be fairly remunerated
- For care proceedings, the upper threshold for total work should be raised to £35,000 to avoid routine use of high-cost case plans
- Legal aid should be available in all cases in which a child is at risk of abuse

b. Community Care

Sector capacity

According to the Law Society, 40 million people do not have access to a local community care legal aid provider.[6] Despite being one of the only areas of civil legal aid to have seen its income grow since 2018, community care professionals nevertheless face the prospect of a shrinking sector. Both provider numbers and numbers of offices have shrunk by approximately 25%, and analysis by the Ministry of Justice would be needed to understand to what extent the increase in income and certificates completed reflect wider changes to judicial review. We support research undertaken in

[5] https://www.judiciary.uk/guidance-and-resources/message-from-the-president-of-the-family-division-publication-of-the-presidents-public-law-working-group-report/
[6] https://www.lawsociety.org.uk/topics/legal-aid/civil-legal-aid-review

April 2022 by Access Social Care to more completely outline issues within the community care sector.[7]

Community care is a broad discipline whose professionals work with extremely vulnerable people, including clients in the court of protection and looked-after children on the edges of the care system. This has an impact on who can deliver the work and means that many community care solicitors are by necessity specialists in a particular area like age assessments or court of protection work. This means that mere provider numbers do not reflect actual capacity for to meet certain kinds of need.

Front-loaded work

As a discipline, community care is front-loaded because the key remedy available to a representative is judicial review. This means an emphasis on early investigative work. This emphasis on front-loading and early work sits uneasily with the way in which cases are billed. Although Civil Legal Aid certificate work is set at a flat rate, it is in theory possible to claim an uplift based on experience or the level of complexity of the case. However, this is nearly always challenged by the LAA. In the time it takes to challenge the negative funding decision representatives must also be doing the investigatory work, and by the time the appeal comes through successfully the time to conduct the work under legal help has passed. This is to the detriment of clients, who are unable to benefit from their representative's experience unless the representative is willing to do extra work at risk, and providers who absorb that risk and the administrative burden of challenging negative funding decisions.

Age assessment work issues

The lack of legally aided immigration providers has a knock-on effect where the child or young person also has a community care issue (for example an age assessment). There also is a general lack of capacity in the community care legal aid sector for the demand, particularly with the rise of the number of age assessments in recent years: there were 798 age assessments (21% of those presenting as asylum-seeking children) in 2019, but 2999 age assessments (57% of those presenting as asylum-seeking children) in 2022.[8] As with many policy changes in this area of law, this rise in demand has not been reflected in a commensurate growth in capacity in the legal aid sector.

There had been some hope of improvement with the introduction of appeals for age assessments through the Nationality & Borders Act 2022, and significant work and plans were started to work on services and capacity. However, the Ministry of Justice suddenly paused the introduction of those appeals in March 2023, and a potential solution to a long-standing problem was stopped. This is indicative of negative impact of wider government policy on legal aid and the risks legal providers take in trying to improve the sector or plan for future work.

Recommendations

- Consideration should be given to an enhanced support payment when a case settles favourably for the legal aided party at pre-action stage
- Review certificate of investigative representation grants and the policy behind it

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[7] https://static1.squarespace.com/static/5f2160ae3e84ef21653b8190/t/627250a7c95f3e62241f1e2c/1651658921088/Adult+social+

[8] https://www.helenbamber.org/sites/default/files/2023-04/Children%20treated%20as%20adults_HBF_HFRN_AA_April23.pdf

d. Immigration and Asylum

'An ocean of unmet need'

As noted in more detail below (see responses to questions 4 and 9), a primary concern in the immigration and asylum sector is the huge extent to which current suppliers are unable to meet demand. Working in an environment of frightened, frustrated and desperate clients facing both a torrent of new and hostile Home Office policy and the risk of navigating a life-changing, litigious and legally byzantine system unrepresented makes for profoundly stressful and damaging work environment for representatives. The impact of this working environment on already traumatised clients is profoundly damaging, and we support responses by the Refugee and Migrant Children's Consortium, ILPA and others who make this clear.

Complex legal and policy environment

The complexity of immigration and asylum law has profoundly increased in the years since current legal aid rates were set. In the previous two years alone, two incredibly complex statutes which have wide-reaching implications for immigration and asylum law have passed[9] and been only partially enacted (and in the case of some policy proposals, enacted and then withdrawn[10]), on top of twelve Statements of Changes to the Immigration Rules,[11] vast amounts of secondary legislation, and the Safety of Rwanda (Asylum and Immigration) Bill currently before Parliament.

Complex billing

Immigration billing is the most convoluted and complex area of controlled work billing we undertake, and it becomes more complex with every new piece of legislation, wherein new categories of work with different fee rates are bolted onto an increasingly byzantine framework. We support the work of the Public Law Project in this area, and the findings of the report 'Adrift: An Explainer for Navigating the Immigration Legal Aid Framework.'[12] That such a report should have to be published by an independent legal charity is illustrative of the state of the system. There are now five different possible stages for CLR billing under an immigration contract, each with various potential add-ons for advocacy work. The system is sufficiently complex and fast changing that the remuneration regulations are often not up to date. Because the billing framework has been edited so many times, CLR billing now varies not only depending on whether the case is fixed fee or hourly rate, but also depending on when it was opened. The result is that this area is notoriously difficult for providers to navigate, with every hour of billable work requiring nearly the same input of time and resource to bill.

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[9] The Nationality and Borders Act 2022 and the Illegal Migration Act 2023

[10] See 'asylum differentiation policy' at https://questions-statements.parliament.uk/written-statements/detail/2023-07-17/hcws954#:~:text=Our%20ability%20to%20remove%20failed,to%20%E2%80%9CGroup%201%E2%80%9D%20refugees.

[11] https://www.gov.uk/government/collections/immigration-rules-statement-of-changes#statement-of-changes-to-the-immigration-rules:-2022

[12] https://publiclawproject.org.uk/content/uploads/2023/09/Adrift-explainer.pdf

A 'hollowing' of the asylum legal aid sector

In part due to the vagaries of billing for immigration and asylum work, some firms are refusing to do controlled work under an immigration and asylum contract. This constitutes an extremely worrying 'hollowing out' of capacity with serious implications for those seeking to access justice in the UK.

As noted in Annex C to the consultation document, provider income for immigration providers was higher in 2022-23 (£54m) than in 2018-19 (£51m), even though the number of providers fell from 204 to 153 (a fall of 25%) and the number of certificates completed fell from 1409 to 990 (a fall of 30%) in the same period.

This increase in income in the 2022-23 financial year is thus disproportionate but can be explained by the fact that in that year, some large providers continued to undertake initial work under legal help, certificated work to run High Court challenges, but ceased to undertake the day-to-day work of representing clients at appeal. Home Office decision-making is often appealed (there were 3815 asylum appeals lodged in the calendar year 2022) and those appeals are often successful: of 3251 asylum appeals decided in 2022, 1674 (51%) were allowed.[13]

Dropping clients prior to appeal as a matter of course and not due to the specific merits of their case risks thousands of people who would otherwise have been granted protection in the UK suffering a miscarriage of justice due to lack of available representation. There is a further risk that the funding structures which have incentivised firms to completely cease to deliver work under CLR will lead to providers ceasing to provide representation at appeal to those with complex cases, as outlined by Dr Jo Wilding in the report 'No Access to Justice' (2022).[14] There is quite simply an overlap between those with complex cases and clients with multiple vulnerabilities; children's cases are often complex.

Widespread use of ECF

The blanket removal of immigration matters from scope by LASPO has had a lasting impact on immigration and asylum providers, but it has not meant that those matters have ceased to be dealt with under legal aid.

Rising numbers of ECF applications submitted over the past decade have been driven, as the MoJ acknowledges, by those seeking legal aid for out-of-scope immigration matters.[15] Grant rates for immigration ECF are high and rising, with 91% of ECF applications for immigration legal aid granted in the first half of the 2023-24 financial year, an 87% success rate across both 2021-22 and 2022-23.[16] Notably, however, very few of these applications are being submitted by individuals. Instead, applications are being submitted by providers who do not see clients as clearly delineated as being in or out of scope as the arbitrarily drawn lines introduced by LASPO. Where grant rates are this high, we suggest that it would be rational to bring back into scope areas of law where ECF is routinely used

[13] See data tables at https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/how-many-people-do-we-grant-protection-to#outcomes-of-asylum-applications
[14] https://assets.website-files.com/5eb86d8dfb1f1e1609be988b/62a1e16cba8478993c7d512c_No%20access%20to%20justice-%20how%20legal%20advice%20deserts%20fail%20refugees%2C%20migrants%20and%20our%20communities.pdf
[15] https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2023/legal-aid-statistics-england-and-wales-bulletin-jul-to-sep-2023#civil-legal-aid
[16] https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2023/legal-aid-statistics-england-and-wales-bulletin-jul-to-sep-2023#civil-legal-aid

to prevent providers from having to apply for funding for such complex cases engaging so many human rights arguments at risk and via a considerable administrative burden.

Recommendations

- Bring immigration matters engaging human rights arguments or involving children back into scope of legal aid
- Fees should be immediately increased by 50% to allow for fair wages and mitigate against market failure

g. Education

Legal aid desert, increasing demand

The Law Society estimates that 52m people (88%) do not have access to a local education provider, and that nine in ten people in England and Wales do not have an education legal aid provider in their local authority.[17] These statistics are based on what face-to-face advice has been made available in education law since it was reintroduced in 2018 in a rowing back from the LASPO-introduced mandatory telephone gateway.

CCLC are the longest serving provider of CLA legal aid services (remote to all parts of England and Wales). In 2014, education legal aid drastically changed following LASPO so only remote assistance was available, accessed through a mandatory telephone gateway. In addition, the scope of work was restricted to SEN, discrimination law and judicial reviews across education disputes. Since 2014, although three to four providers signed up to deliver work through the CLA, there have generally only been two providers of education legal aid in England and Wales. For a short time in 2018, we were the sole education legal aid provider in England and Wales.

There is a huge legal aid desert across England and Wales, but no lack of demand. The number of children and young people with education, health and care (EHC) plans increased to 517,000, in January 2023, up by 9% from 2022. This has increased each year since 2010.[18] This demand, and the chronic lack of supply, has placed CLA under tremendous pressure as contractually providers are required to take cases within their agreed allocation percentages, despite capacity concerns.

No legal aid for tribunal representation

Legal aid for education law, whether advice is in person or remote, does not include representation at SEND tribunal hearings. This is a serious omission. Coram Children's Legal Centre has had to use charitable donations from trusts and foundations to represent some of our most vulnerable clients at tribunal, and we are lucky to work with organisations such as IPSEA that provide assistance and barristers provide pro bono services. However, a functioning legal aid system would not rely on charitable top-ups to ensure access to justice.

Education exclusion must be brought back into scope

When LASPO first removed school exclusions from the scope of legal aid the Ministry of Justice noted that '*a disproportionate number of children affected by a school exclusion have SEN (and whose issues are therefore likely to remain within scope*)'.[19]

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[17] https://www.lawsociety.org.uk/topics/legal-aid/civil-legal-aid-review
[18] https://explore-education-statistics.service.gov.uk/find-statistics/education-health-and-care-plans
[19] https://researchbriefings.files.parliament.uk/documents/CBP-8910/CBP-8910.pdf

However, CCLC runs a legal clinic for children who have been excluded from school or are at risk of school exclusion, and it is clear from the work of this clinic that SEND has not facilitated legal aid entitlement for many children excluded from school even where a child does have a SEND need. Most of the children who contact us for representation in a school exclusion have SEND or their parents/carers have concerns that they might have such a need. Relying on these needs to facilitate legal aid entitlement in a school exclusion matter, however, means relying on a school taking action to address a SEND issue for a child prior to exclusion taking place. This very often does not happen, and it disproportionately does not happen in the case of children who are a) male and b) from black Caribbean and black African backgrounds. It is common for a SEND diagnosis to be made only after a permanent exclusion, at which point inalienable and long-lasting damage has been done to the life of a child.

Legal aid should be available to challenge a permanent exclusion, particularly at an Independent Review Panel (IRP) hearing. IRPs play an important role in the school exclusions process because they act as an impartial external mechanism to review schools' decisions on permanent exclusions. However, because legal aid is not available for appeals before the IRP, many parents and students choose not to apply for their case to be reviewed by the IRP, and those who do are frequently left to represent themselves. This is a highly complex stage of the process that tests the decision's legality, reasonableness, and procedural fairness, and the outcome, if unsuccessful, leads to far-reaching, adverse consequences.

The research and data shows that there is systemic discrimination in school exclusions; children from minority ethnic groups, such as Black Caribbean, Gypsy, Roma, and Traveller children, as well as children with special educational needs and disabilities (SEND), are far more likely to be excluded than their peers. It is critical that these vulnerable groups can effectively challenge discriminatory decisions.

CCLC received a call from a traumatised parent about her five-year old child with special educational needs who had been permanently excluded from his primary school. Before the child was excluded the parent did have some concerns that her child had special needs and requested an EHC assessment, but this was denied by the local authority and not supported by the school. At this point the child was permanent excluded and sent instead to a Pupil Referral Unit (PRU), and this exclusion was upheld by the school's governors. The parent contacted our charity for representation at the independent review panel. It was evident this child had suffered from disability discrimination. Fortunately, we were able to find a pro bono barrister to advocate for this child at the IRP hearing. The IRP quashed the governors' decision and directed the governors to reconsider. However, the process was traumatic for the child's parents and although the parent requested her child be officially reinstated due to the discrimination he had endured, by this point the relationship had broken down with the school. Shortly after this the child was granted an EHCP with a recommendation for a special school. However, due to new failures, now from the local authority, no special school was found for this child. To this date the five-year old remains in a PRU which is unable to meet his special education needs.

Increase in need for judicial review

We are seeing an increase in the failure of local authorities to implement EHCPs even after successful appeals, but there are insufficient numbers of solicitors to represent families in judicial review proceedings.

Recommendations

- Representation at SEN hearings should be legally aided
- The cost of experts attending SEN hearings should be covered by legal aid
- School exclusion matters should be brought back into scope of legal aid
- In school exclusion matters, funded representation before the governing body and/or Independent Reviewing Panel should be available
- Do not aggregate the means of a child legal aid claimant and their parent or carer where the child is claiming legal aid in their own right

h. Public Law

Refusal culture stands in the way of systemic change

There is a funding refusal culture within the LAA, including for policy-related cases, which seriously undermines the ability of the legal aid sector to resolve issues in a systemic way. That the LAA will fund individual cases but not more systemic challenges, on the grounds that a case is 'academic', may end up costing the taxpayer more money in the long run. This is a particularly visible issue in areas of law such as community care and immigration which have a higher reliance on judicial reviews.

Recommendation

- Change the LAA culture of refusal for cases which might facilitate systemic change

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.

CCLC is a national charity, supporting children across the UK. We have offices in London, Colchester and Leeds, and work through the CLA for the delivery of our education law contract. Although there has rightly been a focus on 'advice deserts' in England and Wales in recent years, we should note that even in London, where there is the highest concentration of legal aid providers, there are profound problems with legal aid delivery linked to issues with supply and demand.

For example, through our advice work and the national advocacy work of our sister charity Coram Voice, we know that children and young people are finding it impossible to access housing advice or representation. Housing provider income dropped by 24% between 2018 and 2023, from £43m to £33m, and the number of providers and controlled work claims both fell by 30% across the same period. Yet when CCLC embarked on discussions regarding the novation of a housing legal aid contract from a sister charity, this was barred on an exceptional basis on the grounds that there were other providers in the London Borough of Camden. Tying contracts to individual boroughs is, as noted by the Law Society and LAPG,[20] increasingly at odds with the way providers offer services, and constitutes a significant overhead or barrier to the provision of services. Procurement areas should not be used as a way to limit supply where supply is badly needed.

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.

[20] See The Law Society quoted by LAPG at https://lapg.co.uk/wp-content/uploads/24.02.20-LAPG-Response-to-Call-for-Evidence-v18.pdf?mc_cid=622c634935&mc_eid=ac0fe81b0d

A streamlined approach to billing

The LAA approach to billing is incredibly labour-intensive for legal aid providers. A more streamlined approach would make a considerable difference to the resource required to administer a legal aid contract. Some of this is about changing systems, and some about changing LAA culture. For example, in our experience LAA refusals for escape fees are highly inconsistent across different times of the year, with more refusals in the months in the run up to the new financial year. We always appeal a refusal of the escape fee, and more than 99% of appeals are successful. A successful appeal, however, means the escape fee form and all paperwork must be resubmitted – a task which takes some time – because the LAA do not retain the paperwork on the online system. This is completely unnecessary duplication of effort and ultimately comes at a cost to the taxpayer.

Having slightly different billing regimes across and within different areas of law also represents wasteful bureaucracy. Tweaks in rates over the past decade have left providers with a technical system which it is difficult to navigate. As an example, public law and community care matters have identical hourly rates, where these apply. Yet the fixed fee for a community care matter is £266 and the fixed fee for a public law matter is £259. Immigration billing is yet more complex. There are now five different possible stages for CLR billing with various add-ons for advocacy services. The recently added 'stage D' may be the relevant stage if billing for work at appeal, but should the matter conclude before the hearing, the payment is a fixed fee of £669 with no additional add ons for counsel's time, regardless of the preliminary work that counsel may have put in. Providers are then left to negotiate with counsel how to split the £669. This is not an efficient or an effective system.

Faster funding appeals

Where we appeal a funding decision from the LAA there is often no service standard or fixed time frame for the appeal. Funding appeals can take months. This extended wait has multiple negative effects: on the client, who is forced to wait for work to begin on their matter for reasons completely outside their control; on the representative, who may be forced to take action at risk in order to protect their client's position (for example by complying with tight court deadlines) and on the provider, which cannot plan workflow or take on new clients while they wait to see whether or not the appeal will be allowed and funding granted.

Prompt, clearly delineated payment

Although the payment of fees and disbursements appears promptly in the online portal, the variable monthly payment structure is the cause of a lag in cashflow which is problematic for providers. The variable monthly payment is also never clearly itemized, though the LAA can provide a list of payments included in the single payout upon request. If the variable monthly payment is to be retained, there should not be a six-to-eight-week lag on payments and payouts should be sent with a clear breakdown as a matter of course so that providers know what they are being paid for.

The retrospective billing of fixed fee and civil exceptional claim cases raises the risk of payment delays. For this reason, we mostly welcomed representation in the upper tribunal becoming certificated work and not CLR as it allowed for payments and disbursements on account, clear limits and a clear means of applying to extend the funding. That said, we do not support the lower threshold for client contributions under certificated work being extended. Nor is applying for a certificate administratively straightforward.

Staged billing

In some areas of law such as education and community care, disbursements are a significant challenge to cashflow as they are a large cost but can only be billed at the close of a case. Following similar changes in immigration, disbursements should be able to be stage-claimed across all areas of law.

The risks borne by providers in final billing cases is large, and poor LAA decision-making in this area coupled with a final billing structure leads of consistently unrecoverable costs. In a staged billing structure, time spent appealing LAA decision-making can be recouped at a later stage, but in final billing the time spent appealing changes made to the final bill is a cost to providers that is never recoverable. When margins are so tight and hourly rates so poor, there is no scope for this kind of systemic loss.

Where cases are subject to decision-making delay, payment in arrears presents a serious threat to provider financial viability. This is particularly acute in immigration and asylum due to severe delays in Home Office decision-making. The most recent Home Office statistics show that by 30 September 2023, there were 124,461 asylum applications that had been pending for more than six months.[21] Although the Home Office claims to have cleared the backlog of cases, this is not true; decisions are outstanding on many tens of thousands of 'legacy' cases (submitted after 28 June 2022) and, by focusing so exclusively on pre-June 2022 cases, a new backlog of almost 100,000 cases has formed.[22] This is an issue that will be seriously exacerbated by outstanding policy decisions relating to the implementation of the Illegal Migration Act; to protect clients, applications for asylum are having to be submitted by providers with no indication of when or how the Home Office will seek to resolve cases. We support the full discussion of this issue in ILPA's submission.

Simplification of means testing

Changes to the means testing regime for under 18s implemented in August 2023 had broad aims, which were outlined in the Ministerial Forword to the Government's response to the means testing review as: *'We are removing the means test entirely for some civil cases – including legal representation for children.'*[23] In practice, this has not happened.

The 2023 Lord Chancellor's guidance[24] introduced the possibility of a simpler test: *'If the child does not have any regular income and capital is less than £2,500, a financial determination should be made that the child is eligible for legal aid. If the child has either regular income or capital of £2,500 or more, the provider must undertake a full assessment of the child's means.'* In our experience, this threshold is sufficiently low that a great many children have been blocked from benefiting from the simplification. This includes:

- Children in care whose carers have assisted them in saving small amounts over the course of their childhood to plan for transition at 18

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[21] https://www.gov.uk/government/statistical-data-sets/immigration-system-statistics-data-tables#asylum-applications-decisions-and-resettlemen

[22] https://fullfact.org/immigration/asylum-backlog-cleared

[23] https://www.gov.uk/government/consultations/legal-aid-means-test-review/outcome/government-response-to-legal-aid-means-test-review-

[24] https://assets.publishing.service.gov.uk/media/64f1d047fdc5d100102849bf/Lord_Chancellor_s_guide_to_determining_financial_eligibility_for_controlled_work_and_family_mediation__September_2023_.pdf

- Children in care, care leavers, and children support supported under section 17 and section 20 of the Children Act 1989 in receipt of local authority financial support
- Many teenagers with even very small part-time jobs

These exceptions mean that the Government's aims have not, in reality, been met. However, many clients including children would benefit enormously from a lighter-touch means regime.

Assessing the means of children within families

There is also commonly confusion over children's ability to access legal aid in their own right. This is particularly an issue in representation of children aged 16 and 17 where the LAA may determine that an 'alternative person' i.e. a parent or carer may be an appellant in their own right at tribunal hearings, which means that an adult's means must be assessed in aggregate with the child appellant's. Aggregating the means of a parent and older child in this way presents a serious risk of miscarriages of justice in cases where a child's needs conflict with that of their parent.

The issue of when a child's means should be considered independently of their parents is also a common issue for children with profound disabilities, whose care may be provided in the family home or may need to be provided through the local authority outside of it. A child may benefit from staying at home, but be prejudiced in their ability to fight for adequate care by the decision of parents to keep a child at home, as follows:

> Paul is a 12-year-old disabled child living at home with his parents. Paul has very complex medical needs. Because of his complex needs, Paul's care is mainly funded by the Integrated Care Board (ICB). Paul's parents are in dispute with the ICB as they feel the level of assessed support is not safe to care for him, and this could lead to a medical emergency. Several other professionals in the network raise the same concerns. Paul's social worker does not feel able to challenge the ICB assessment as this not a social care decision, and the family's concerns are rejected. Paul's advocate decides to refer him for a solicitor who can hopefully establish whether the level of care is safe, and potentially challenge the care package. A solicitor agrees to take Paul's case but then explains that his father's income means that Paul is just above the threshold to qualify for legal aid. Because Paul is not a child in care, his family's income has to be taken into account, but they are unable to privately fund a solicitor. Although Paul receives significant social work support he is not a looked after child; if he were, he would be eligible for legal aid.

Legal aid for a child in these circumstances would cost significantly less than the cost of a full-time residential care placement.

Lighter touch testing (and retesting) of means and merits

Complex cases may require several applications for costs extensions, each requiring a new merits assessment on CCMS. For vulnerable clients, this repetition can be extremely demanding and can also take up disproportionate time and resource for providers.

> CCLC represented an unaccompanied child in Libya, who was seeking to be reunited with his older sibling in the UK. This unaccompanied child did not speak English. In this case, each new merits assessment required that the solicitor helped the young person to secure reliable internet access, which was challenging, and then arrange for a translator to read and ensure the young person had understood the declaration, which is long, complex and stressful for the client to hear or read. This

case has not yet resolved, and the unaccompanied child has had the merits of his case assessed three times so far.

More consistent decision-making from the LAA

On appeal timeframes, no service standard / fixed time frame. Shouldn't take months, but it does. The court has deadlines you need to comply with, you protect the clients' position you have to work at risk – e.g. lodge and then wait for funding, request a stay, then a further stay. Nothing can ever be left to lapse. You then cannot plan workflow – stops people from taking on new work because they cannot plan workflow, causes massive stress to vulnerable clients and to staff as well.

Reconsidering hostile LAA culture

The system currently sees the LAA operating within a culture of suspicion, working against rather than with providers. The focus of monitoring should be on improving the quality of advice, rather than subjecting financial claims to unreasonably intense scrutiny, to promote meaningful access to justice.

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.

Market collapse due to low and stagnant fees

The civil legal aid system is at breaking point and those providers still standing feel exhausted and defeated by the impact of delivering a legal aid system for vulnerable people in a failing market without fair remuneration, opportunities for professional development or hope for change.
Low and stagnant legal aid rates, not increased since they were introduced in 1996, are the primary risk in civil legal aid as a whole. The rates are extremely low and have not increased despite inflation, making it difficult for organisations to cover costs.

As was recently noted by the National Audit Office, 25% of civil legal aid providers have exited the market in the last 10 years.[25] There is nowhere near enough capacity in the sector to deliver in-scope work, and it must also be considered that for ECF to function as a safety net, there must be excess capacity in order for it to be delivered.

The education law sector lays bare the issues at hand and is an advanced case study of the impact of changes under LASPO to the remaining legal aid provision. In 2012 there were 49 provider offices completing work in the field of legally-aided education law. In March 2015, the date on which the Justice Committee reviewed the government's legal aid reforms, there were 24. In 2018 there were no providers of face-to-face advice, though CCLC remained to deliver advice and representation in education law topped-up by charitable funding. Despite the new tender for face-to-face education law advice, there has been very low take up among potential providers.

Financial viability itself over the next few years is a huge challenge for all legal aid providers, and linked to this is the significant cash flow strain put on providers by lengthy cases, absence of upfront payments and limited opportunity to stage claim or request payments on account outside of

[25] https://www.nao.org.uk/reports/governments-management-of-legal-aid/

certificated work. This makes any kind of growth or development extremely risky. Delays in cases, particularly in recent years in asylum claims, means that it can take years for payment.

Demand far outstripping supply

Demand already far outstrips supply in many areas of law, including immigration and asylum and education. It is critical that the Ministry of Justice takes up the task of monitoring the levels of unmet need in England and Wales – monitoring which currently does not take place. Remedying this was a recommendation of both the Westminster Commission[26] and Justice Select Committee.[27] Using the RoCLA process as a means of gathering evidence from providers and wider civil society is not sufficient. Neither is it reasonable to use excess matter starts as evidence of sector capacity: failure to make use of a matter start allocation is not an indication of lack of demand. Matter starts are simply a cap on the amount of work that could be done – a historical anachronism from a time when there were more suppliers in the legal aid market, and there was an assumption that supply would have to be limited. Instead, in our experience, means- and merits-eligible demand so far outstrips supply in most areas of civil legal aid that matter starts are completely redundant.

Lack of staff retention

Staff retention is a huge issue due, and this is primarily due to low remuneration. Low salaries and highly complex, demanding and stressful work mean recruitment and retention of staff is extremely challenging with an impact on staff wellbeing. Faced with a concurrent costs of living crisis people are still leaving the sector in significant numbers. Turnover of junior staff is very high. This is not surprising when on average paralegals are not paid much more than the London Living Wage for a high skill, high stress role which demands a high degree of education and subsequent training.

Recruiting staff who are more experienced, for example three- to eight-years PQE, is much more of a challenge, and is again linked to low rates of pay. In our experience staff qualify as solicitors, do a few years of legal aid work, and then when faced with little prospect of financial recognition of their increasing experience and expertise, move out of legal aid. This 'bleeding out' of experienced staff from organisations and the legal sector as a whole is causing a wound which it will take many years and much proactive work to heal. Once experience is lost to both an organisation and the sector, it will not return. The MoJ must realise that it is in a race against time to resolve this sector-wide loss of expertise; once specialists leave the sector their expertise is lost with them, to the detriment of those for whom the MoJ has a responsibility to ensure access to justice.

Poor staff retention is an existential threat to legal aid providers. Due to the lag in staff becoming financially self-sustaining through billed work, which can take more than a year, organisations are recruiting staff in the hope that they will stay long enough to cover the costs of their recruitment and training. Many choose not to.

Experts refusing to work within the legal aid system

In both education and family legal aid, we are seeing fewer and fewer experts are agreeing to do legal aid work due to the low rates of remuneration available. This makes it difficult to prepare cases adequately and discourages representatives from tendering. The Ministry of Justice should, as part of

[26] https://www.apg-legalaid.org/sites/default/files/The%20Westminster%20Commission%20on%20Legal%20Aid_WEB_0.pdf
[27] https://houseofcommons.shorthandstories.com/justice-future-of-legal-aid/index.html

this review, consider whether low rates or other factors are causing experts to disengage from legally aided justice.

Disbursements for expert reports are an equality of arms issue. In family law local authorities are funding the instruction of experts who undertake work at rates and hours which go over and beyond the amounts which are funded by the LAA. This causes substantial delay because identifying suitable experts who are available and willing to undertake assessments at legal aid rates in care cases is challenging. Many experts are likely unpaid for a significant amount of time and there is a lot of administrative work to undertake by the expert in order to get paid. CCLC suspect that many experts do not work in the field of care proceedings because the pay is low compared to other work which they may undertake.

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.

School exclusions

There are significant downstream costs to school exclusions, and so significant potential benefits to bringing school exclusions work back into scope of legal aid. A 2017 report by IPPR found that '*the cost of exclusion is around £370,000 per young person in lifetime education, benefits, healthcare and criminal justice costs*' and that '*every cohort of permanently excluded pupils will go on to cost the state an extra £2.1 billion in education, health, benefits and criminal justice costs. Yet more pupils are being excluded, year on year*.'[28] School exclusion has been found to cause mental health issues for many young people. Excluded young people are far more likely than others to experience long-term unemployment and IPPR also found that 42% of prisoners had been permanently excluded from school.

School exclusion also has a massive financial impact on families, for example by preventing parents from working.

In 2020 CCLC were tasked with helping a child with a very disruptive education history. His school placement broke down in 2017 and efforts to engage him in education failed, even 1:1 tuition did not prove to be successful. In order to get him back on track, through the SEND tribunal process we secured an enhanced package of home education and specialist support. His mother reports that he has come on leaps and bounds. He has started to engage in therapy and with specialists working with him. He is no longer suffering with anxiety. He is really benefitting from his education and specialist provisions, something not happening before. We are pleased to report that his mother can now return to work as his programme is being put into place at home. This has improved life for the entire family. However, many years of financial stability were lost in the time prior to a legal resolution being found for this child.

Litigants in person

In cases where legal aid is granted for legal help but not CLR, such as education law, the preparation of litigants in person can still incur a resource cost. This is because litigants in person are likely to have issues understanding the tribunal system and understanding directions, and may fail to comply

[28] https://ippr-org.files.svdcdn.com/production/Downloads/making-the-difference-report-october-2017.pdf

with directions or prepare the cases properly. This places more pressure on judges who are having to manage expectation of lay parties as they are constantly asked for advice.

CCLC's experience in assisting litigants in person is mostly through CLAS, which only gives advice to litigants in person and does not offer advice to those with existing legal representation. While we do speak with some clients who can effectively present their cases and understand the processes and requirements, the majority face a variety of issues that will go on to have a big impact on the Family Court and the SEND Tribunal. These problems include: difficulty filling out forms, understanding evidential requirements, understanding procedural demands, feeling overwhelmed by the prospect of attending court, unfamiliarity with the specialist language used in legal proceedings, accessibility concerns, and concerns of imbalance caused by the other side being represented. Many of our clients come from vulnerable groups whose case is out of scope of legal aid and are unable to afford legal representation, so our service is a lifeline.

The wide-ranging cost of immigration law

It is difficult to calculate the cost to other public services or wider society, but the removal of large sections of immigration advice out of scope of legal aid has had significant consequences for local authorities and the wider public sector. For example, changes made to leave to remain on the basis of Article 8 (with a longer route to settlement, more applications, higher fees) coincided with the introduction of LASPO. With a presumption of no recourse to public funds, and many individuals unable to access legal advice to make such applications, local authorities found themselves having to support families under section 17 of the Children Act 1989 because of the NRPF condition attached to their leave. Without legal representation, it is difficult to remove the NRPF condition without knowing the rule and the local authorities cannot give advice due to it being immigration advice. Our advice line, training and outreach work continue to receive regular queries around the NRPF condition for individuals. These extra costs to local authorities are a direct result of making legal aid out of scope – with legal representatives being able to provide this straightforward advice if it was in scope. With more individuals unable to easily access immigration advice, even through ECF, it is very common for mistakes to be made in immigration applications, which are complex. Such a mistake can be devastating and lead to someone on a route to settlement becoming undocumented and seeking to rely on local authority support, having previously not needed to.

Fees

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

We consider that the current fee structure is at the root of many of the current failings of the legal aid system, including looming market failure in some areas of law and the staff recruitment and retention crisis across all areas. This systemic underfunding of the legal aid system can only be remedied by quick and decisive action on the part of the Ministry of Justice, which should agree to an immediate increase of fees in line with inflation and an additional uplift of at least 50% for all legal aid work.

Depreciation

Current fee rates are very far from financially viable for providers. Even most hourly rates for controlled work do not cover overheads at a time when organisations' overheads are rising steeply. The Law Society now calculates that the real-terms depreciation of civil legal aid fees is close to 50%.[29] Most legal aid fees have not increased since 1996. Fees have not been adjusted for inflation,

[29] https://www.lawsociety.org.uk/topics/legal-aid/civil-legal-aid-review

even during a cost-of-living crisis. To prevent the haemorrhaging of professionals and organisations from the sector civil legal aid rates should increase with the amount they have lost in the decades of inflation since they were set in 1996 and must be index-linked to future-proof their stability.

Furthermore, the inadequacy of the rates when they were set, particularly against the scope of work now required, necessitates the review and, where appropriate, uplifting of rates across civil legal aid. The government should increase fees immediately to allow for fair wages and to allow for investment and development of the sector, especially taking into account the complexity of the governmental systems with which legal aid interacts. Interim measures are needed now, primarily in the form of an immediate increase in fees, to ensure that there is at least a stable base of suppliers in place when the MoJ seeks to implement any future reforms.

A shrinking market

It is clear from the data provided that firms are ceasing to deliver legal aid work at an increasing pace, with the Law Society estimating that civil legal aid providers starting work could have dropped by 33% by 2025 from a 2012 baseline.[30] The published figures, however, do not demonstrate the full extent of this problem. In immigration and asylum, some of the largest firms in particular regions and nationally are retaining their contracts but choosing not to deliver some kinds of legally aided work such as appeals work. Compounding this problem, many new contract holders are very small and/or have very narrow scopes of work such as family reunion. This means that new contracts may be doing very little to combat the systemic withdrawal of delivery capacity in the most mainstream areas of immigration and asylum law. It is for the Ministry of Justice to conduct analyses of whether or not their provision of supply can meet demand for legal aid, and whether contracts are disproportionately being taken up by charities and not-for-profit organisations, and rejected by private firms.

Recommendations

- Civil legal aid rates should increase with the amount they have lost in the decades of inflation since they were set in 1996 and must be index-linked to future-proof their stability
- Fees should be immediately increased by 50% to allow for fair wages and to allow for investment and development of the sector
- Introduce a system of automatic uplift across all areas of civil legal aid for experienced staff and those holding additional accreditations
- Abolish fixed fees altogether, or set fixed fees based on a reasonable hourly rate and review regularly
- Reconsider why hourly rates vary so widely across (and even within) different areas of law
- Pay providers fairly for work at pre-proceedings to incentivise early resolution
- Review rates of pay for experts and interpreters, and reimburse interpreters' costs for travelling to and from court hearings to interpret

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

Public family law and the PLO

Early resolution in public family law cases is in some ways actively disincentivised by the current fee structure. This is because matters at Public Law Outline (PLO) pre-proceedings stage are paid at lower rates and some kinds of work, including letters and emails received, cannot be billed. The

[30] https://www.lawsociety.org.uk/topics/legal-aid/civil-legal-aid-review

renewed focus on the PLO across the family justice system since November 2022[31] has not been reflected by the LAA. Care proceedings often exceed the 26-week timetable introduced in the Children and Families Act 2014. Relatedly, care proceedings often require the drafting of a high-cost case plan due to exceeding the £25,000 costs limit, which places an additional administrative burden on providers. The intention behind strengthening work at pre-proceedings is to keep proceedings within the 26-week limit, but without proper funding it is difficult for pre-proceedings assessments to be undertaken properly.

Frontloading in case preparation

Although the question of whether an asylum or SEND case goes to tribunal is first and foremost a matter of decision-making for a public body (the Home Office or local authority respectively), appropriate legal aid provision could greatly aid early resolution of cases. The thorough preparation of cases at the early stages leads to the early resolution of cases, but neither the standard fee scheme nor the LAA's approach supports this.

> CCLC represented a young mother who was a domestic violence victim in an asylum claim. The client and her children were all exceptionally vulnerable, and tasks such as taking statements took considerably longer than normal. The CCLC representative could plainly see that this vulnerable client would suffer should she be forced to appeal a refusal of her case, and so front-loaded the evidence gathering more than was standard to act in the client's best interests. The asylum claim was successful, but when it came time to bill for the work delivered, and despite the representative providing evidence of the client's significant vulnerabilities, the LAA would not accept the additional work delivered and severely cut down the final bill. Although the CCLC representative acted in the best interests of her client, she was hugely disincentivised to do so again by the LAA.

The avoidance of going to court to fight a case, where possible, saves the taxpayer considerable money. When the principle of full cost recovery was floated in 2016, it was estimated that the cost of an oral hearing in the immigration and asylum chamber first-tier tribunal was £800, not including legal aid expenditure or government resource for case preparation on either side. It should be noted that clients with complex cases are more likely to need to appeal, but those clients are also more likely to have complex needs and additional vulnerabilities which may in turn slow down their passage through the tribunal system (through adjournments, for example). It is in the best interests of both clients and the MoJ and other government departments to allow clients with additional vulnerabilities the chance to avoid going to court through the adoption of a front-loaded approach. While more research is needed on the part of the MoJ, we suggest that the current approach, while it may lower the legal aid bill, may actually be costing taxpayers money.

Broad-scope early advice

Coram Children's Legal Centre runs the Child Law Advice Service (CLAS), a Department for Education-funded service that provides free initial legal advice on family and education law issues to parents, carers, and young people in England. This service is not limited in scope to matters covered by legal aid, and this makes it significantly more useful for people trying to navigate the legal system in a post-LASPO world.

The implementation of LASPO in 2013 resulted in a significant increase in demand for the service, as most family and education law issues were removed from the scope of legal aid. The service

[31] https://www.judiciary.uk/guidance-and-resources/a-view-from-the-presidents-chambers-november-2022/

experienced a 74% increase in unique callers, from 23,017 in 2013 to 40,047 in 2024. The demand has steadily increased, and we now have approximately 100,000 clients per year seeking advice from the service via telephone, email, and webchat. We are unable to meet this high demand due to limited funding and resources; however, we provide direct advice to approximately 20,000 clients each year, and our website receives approximately 1,000,000 unique visitors.

The importance of early legal advice cannot be overstated. In 2018, Ipsos-MORI conducted research in collaboration with the Law Society Research Unit, revealing a clear statistical link between receiving early legal advice and resolving problems sooner.[32] The not-for-profit advice sector plays a key role in providing advice to clients who would otherwise struggle to receive it, but funding is insecure and the existence of this sector in the future should not be assumed. The burden of public legal education or early advice should not be primarily on charitable organisations; it is critical that the government reinstate early legal advice via legal aid, particularly for private family law issues and immigration matters. 65%-75% of the CLAS queries we receive concern private family law matters, primarily when parents have separated and are unable to agree on living and contact arrangements for their children, but also about disputes over parental responsibility and wider family members seeking advice on establishing contact or obtaining a 'live with' order or special guardianship order.

The family courts, like most of the tribunal system, are currently under tremendous pressure and face both backlogs and delays. The reinstatement of early legal advice via legal aid should help to alleviate this problem, but it should be combined with funding to allow parties to explore alternative dispute resolution options. We believe that the family court is the most appropriate and effective resolution option for certain individuals, such as in cases of domestic abuse. However, it is increasingly seen as the first port of call rather than the last resort. This is perhaps because there is a dearth of affordable, viable alternatives.

The early use of reports

Across all of the areas of law in which we work, children's legal cases generally benefit from an expert report in the early stages to ensure that proper consideration of any complexities of the child's case are considered before a challenge becomes necessary.

> In one education case, a 7 year old with a diagnosis of ADHD, hearing impairment and Global Learning Delay had a very complex educational history and was being home educated by her mother for an extensive period. Through advocacy and a detailed expert support, both funded by legal aid, we secured a specialist school for deaf children for her. The expert report made a critical difference in securing a robust EHC plan for the child and meant no further challenge or tribunal hearing was necessary. The child now has access to specialist teachers for hearing impairment and access to a tailored curriculum which she can follow more easily. Her engagement in education has become far more meaningful for her. Previously, she felt school was like "being in a cage", but now is participating very well and enjoying school life.

Where prior authority is not given, reports are often refused in the first instance and the LAA must be challenged before they will agree to fund the input of experts. This causes an extra administrative burden for professionals working at specialist organisations where expert evidence is very often needed, and anecdotally we know that it puts some professionals off seeking to front-load their client's case with evidence, thus limiting the chance for an early resolution under legal help. In our experience the LAA is more likely to authorise an expert report disbursement at CLR stage, meaning

[32] https://www.lawsociety.org.uk/topics/research/research-on-the-benefits-of-early-professional-legal-advice

that evidence is often viewed for the first time at tribunal, and not by the Government decision-making department in question.

We represented an unaccompanied child with a mental health condition and clear indicators of trafficking who had received a negative reasonable grounds decision after a referral to the National Referral Mechanism (NRM). The LAA initially refused funding for a trafficking report and psychiatric The Lord Chancellor's discretion to pay costs even if permission is not granted report in the first instance, though agreed to fund these after a lengthy challenge. The child was then well represented and received a positive conclusive grounds decision, after which she was granted leave to remain as a victim of trafficking. Without the expert report, we probably would have had to fight this case in the tribunal where the LAA is more likely to authorise the disbursement, which would have caused considerable distress to a vulnerable child.

6.2. How could the system be structured better?

Hourly rates

Legal aid very often means working with vulnerable people, and this means that a 'standardised' approach to a case is very often unsuitable. Within the current scheme of fixed fees across all our areas of practice, advisers nearly always 'escape' the fixed fee and are faced with the administrative burden of extending the funding available to cover complex work. Hourly rates are the fairest means of remunerating providers for the work that they conduct.

The removal of 'at risk' work

Providers in some areas of law are often expected to undertake significant work at risk for which they may never be paid. This is particularly prevalent in the pre-permission stage of a judicial review and is a fault-line in the legal aid system brought in by LASPO which badly undermines access to justice.

The ballooning of at risk work in recent years, particularly for judicial review work, is deeply problematic. Wider changes to judicial review introduced from 2016 onwards have succeeded in lowering the overall numbers of judicial reviews, but there is little evidence that the previously higher numbers were driven by the availability of legal aid rather than clients who were paying privately.[33]

The result of this policy change is a system wherein financial protection is built into the structure of the LAA's High Court work, and providers are left to absorb all the risk and, in many cases, all the financial loss. This issue is particularly acute when the other party to proceedings settles before permission has been determined by the court and the circumstances of the settlement mean that it is not possible for costs to be recovered from the other side. Judicial review is a front-loaded process where the investigations and preparation of court documents prior to a decision being made on permission make up the bulk of the work. It is unjustifiable that the LAA only has a discretion to pay within limited circumstances for work delivered where permission is refused or a case concludes prior to the court making a decision on permission. Providers assess the merits of a case before it begins, and so does the LAA. A case settling in favour of the legal aid provider's client is proof that there was indeed merit, and that the pre-proceedings work has been sufficient to persuade the

[33] https://consult.justice.gov.uk/digital-communications/judicial-review-reform/results/reform-judicial-review-consultation-response.pdf

other party of that merit. In these circumstances, however, the LAA refuses to pay providers. This is a frankly unsustainable way to run a public service.

CCLC represented a vulnerable mother with physical and mental health issues whose two teenage sons, who both had refugee status after arriving in the UK as unaccompanied children, were trying to bring her to the UK to live with them. Their application had been refused by the first-tier tribunal and we were seeking judicial review. The LAA granted legal aid following a refusal and subsequent funding appeal including counsel's advice on merits. In the meantime, the High Court granted permission to challenge, and in order not to miss the limitation period for JR we acted pro bono as an interim measure and the young sons paid the permission fee. Although legal aid was subsequently granted, it only applied to work delivered from the date of the grant. The Home Office settled the case and allowed the mother to come to the UK, and although we were granted inter partes costs, court timeframes and the front-loaded nature of judicial review work meant we undertook large amounts of work for which we were not paid. Had the LAA trusted both CCLC's arguments and counsel's advice on merits, we would have been paid for all the work we delivered to reunite this family.

Challenging refusals of funding

As noted above, the LAA has a culture of refusing funding that is particularly acute in judicial review work. We see a 'mission creep' in the LAA's increasing reliance on its own merits assessments as opposed to that of providers and, in many instances, counsel as well. We have started relying more heavily on pro bono assessments of merits made by KCs in order to curtail LAA funding objections, but this is manifestly unsustainable.

Where there is an option to challenge a refusal of funding, tight timeframes (for example from the Court) can lead to providers having to choose between their professional obligations towards vulnerable clients and making financially 'safe' choices for their organisation. Although balances must be struck in complex cases, no functioning system for access to justice should hold these as oppositional forces.

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.

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.

The high costs of studying followed by low salary prospects have had a significant negative impact on the ability of people from diverse backgrounds to enter civil legal aid. In this we support the collective work and calls for change of the Young Legal Aid Lawyers.[34] The primary mechanism by which new practitioners can be persuaded to undertake careers in legal aid law is by remunerating the work in such a way that is commensurate with the skills, dedication and knowledge required.

Ongoing accreditation costs also contribute to this general strain, as is reflected by the MoJ's decision in January 2024 to cover initial and re-accreditation costs (including application and

[34] https://younglegalaidlawyers.org/news-page

examination fees) for senior caseworkers working at an organisation holding a legal aid contract.[35] However, this change generally benefits organisations, rather than individuals, and aids only retention of staff and not recruitment of new professionals into the sector.

Amend flat rates of billing

Structurally, legal aid does not reward expertise or experience. Billing for civil legal aid work is generally set at a blanket rate regardless of who is delivering the work, with few opportunities and high administration costs for uplift. In immigration and asylum, an additional accreditation (IAAS level two) is required to supervise others or to represent children, people who lack mental capacity or those detained in immigration removal centres.[36] Organisations with an immigration/asylum contract must maintain a maximum ratio of two full-time equivalent (FTE) casework assistants or trainee casework assistants to every FTE senior caseworker or supervising senior caseworker. None of this expertise can be reflected in billing.

One exception to this flat rate is 'panel solicitors' in public family law, where accredited experts can add an uplift of at least 15% onto their billing for certain work. Another exception is the 'uplift' than can be requested for judicial review work completed under a certificate. The fundamental difference between these two examples is that the panel solicitor uplift in family law is an entitlement, and the uplift for certificated work in community care, public law, immigration and education is at the LAA's discretion. Requests for uplifts are determined at the final bill stage at the conclusion of a case and are not always agreed. They are often reduced, if not refused – meaning that accessing the uplift requires an expenditure of resource in appealing the LAA decision which is not recoverable.

A system of automatic uplift should be available across all areas of civil legal aid and would be a way of rewarding expertise and experience, which in turn would serve both to retain experienced professionals within the sector and to quality mark complex cases or work with especially vulnerable people.

Absorb the cost of reasonable adjustments

The legal aid regime imposes a blanket expectation for how long it takes different individuals to complete tasks; regardless of access requirements, the LAA will only pay what they consider to be reasonable costs for an average caseworker. CCLC queried what reasonable adjustments might be made by the LAA to accommodate different staff needs. The response from the contract manager is illustrative of the LAA approach, which is that:

"The guidance on equality, diversity and inclusion, outlines that providers do have a legal obligation to provide reasonable adjustment to disabled clients as well as employees. However this responsibility doesn't then transfer to the LAA, in this context the LAA is not the employee and has no contractual relationship. It may be that providers will seek extra payment in an individual case. Where those costs have been incurred, the provider will need to persuade the assessing authority as to the general reasonableness of the costs in all the circumstances. Fundamentally would a fee

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

paying client of moderate means, or a LAA client with a financial interest agree to the additional cost not intrinsic to the proceedings."

The contract manager then went on to note that it would not normally be reasonable to pass on such a cost to the client were they instructing privately and noted that this risk could arise were a client to have a financial interest in proceedings (for example through the payment of contributions).

However, it does not necessarily follow that the LAA has no financial stake in the needs of legal aid professionals who require reasonable adjustments. It is in the best interests of the sector and wider society that a career in fighting for access for justice is open to all. Client access needs are recognised, for example through various versions of Costs Assessment guidance which state that additional costs arising from the client's need to access legal aid can be covered by legal aid (for example a BSL interpreter so a client who is deaf can understand the fee earner).[37] But clients are not the only people operating in the legal aid system. If there is to be greater diversity among legal aid professionals, including those with reasonable adjustments to be made, then the LAA as the 'owner' of the system must be open to bearing the costs.

If the Ministry of Justice seeks to build a legal aid workforce that is more representative, and this is something it should seek to do, then it must recognise that some reasonable adjustments have a financial cost. Such meaningful changes are costs to the system as a whole, and as such should be borne by that system.

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.

Lack of available provision

We support the findings of Dr Jo Wilding and Refugee Action,[38] PLP[39] and others who have worked to demonstrate the 'ocean of unmet need' in immigration and asylum legal aid.

Although the re-introduction of legal aid for immigration issues for separated children in October 2019 was welcome, it did very little to help children in care to resolve their nationality or immigration issues because no action was taken to review whether or not there was sufficient capacity in the immigration legal aid sector to meet the increased demand.

We endorse the response to this review from the Refugee and Migrant Children's Consortium, which we co-chair, on the impact this lack of legal aid has had on children and young people and the downstream costs of the MoJ decision to not provide sufficient legal aid provision on local authority children's services departments and social workers. We also support responses from South London Refugee Association, Haringey Migrant Support Centre and any other organisations who have tried to demonstrate the demand their services face. We do not think, however, that passing the responsibility of proving the level of demand for public services should fall to not-for-profit and community organisations is sufficient or future-proof. Those organisations are ultimately only driven to dedicate finite, precious and charitably funded capacity to telling the Ministry of Justice what it

[37] See for 3.34 at example https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/956837/Costs_Assessment_Guidance_2018_-_Version_4-_February_2021___clean_.pdf

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

[39] https://lag.org.uk/article/214729/immigration-and-asylum-legal-aid-why-plp-is-suing-the-lord-chancellor-and-needs-your-help-

should already know due to the extreme circumstances they see their beneficiaries driven into by government policy.

Clients with special educational needs

The vast majority of the children and young people we advice or represent in education law matters have disabilities or special educational needs, which directly hinder their educational potential. Many have complex and profound needs or suffer from mental health difficulties.

In our experience, inadequate SEN assessments often result in our clients not receiving appropriate support, being enrolled in unsuitable educational settings or staying at home because they find school too difficult to access. They are further disadvantaged by inadequate EHC plans, which rarely address their needs adequately.

Children in care and care leavers who fall across two local authorities

Where a child or young person is supported by more than one local authority, for example being in care in local authority A and in receipt of an EHC plan from local authority B, a situation can arise where there is quite simply no one to instruct a solicitor to challenge an EHC plan on a child's behalf. Although in theory this falls within the remit of a local authority's virtual school, in more than a decade of specialist education legal aid provision and advocacy support for looked after children we have never seen one local authority take action against another local authority.

Young people who just exceed the means threshold

We often work with young people on the edges of the care system who fall in and out means eligibility. For homeless young people with even a small income, the non-payment of rent (because they are homeless) can be enough to bring them out of eligibility for legal aid. At present we must advise young people to quit work in order to be eligible for legally aided housing advice so that they can cease to be homeless. This is a complex and difficult to comprehend situation to explain to young people, and a frustrating thing for vulnerable clients.

Young people are more likely to have fluctuating income, due to variations in part-time or casual work, local authority financial support and student loans. Student loan maintenance grants present a potential 'easy win' for the LAA: there should be consideration of whether it ought to be treated as the equivalent of a passported benefit for the purpose of income. The current system of means testing, however, is much more complex than it needs to be. Currently a representative must calculate a client's monthly income based on the annual maintenance grant and then deduct their rent to determine whether they meet the disposable income threshold. This is despite the Student Loans Company maintenance grant being less than or the equivalent to a Universal Credit benefit award for a lone person.

A young person in care who was supported by a Coram Voice advocate was raped by her foster carer, and there were serious questions over the due diligence of the local authority in recruitment, supervision and safeguarding. She was supported by Coram Voice to find a legal aid solicitor while still at sixth form college and began to be represented by a legal aid solicitor in her challenge against the local authority. However, she was also desperate to leave the local authority area due to her experiences and took up a place at university. The fluctuating student loan payment took her out of eligibility for legal aid and she lost her representative.

Difficulty in providing means evidence

Some people are simply unable to face the bureaucracy involved in proving means eligibility to the LAA, due to the personal pressures they face.

> Coram Voice support Sarah, a 12-year old child in need. She has a learning disability and is a wheelchair user. Sarah's mother receives a very limited care package and is becoming increasingly exhausted by the demands of caring for Sarah. This is made worse by living in unsuitable accommodation. Sarah's mother decides to instruct a solicitor to challenge Sarah's limited care package, but then finds the amount of paperwork that needs to be completed overwhelming. The solicitor feels there is merit in the case but Sarah's mother does not proceed because she feels unable to cope with the level of admin involved in the legal case, in addition to the demands of caring for Sarah.

Although it is possible for providers to proceed without means evidence in exceptional circumstances, the decision to do so puts providers at considerable financial risk. Lord Chancellor's guidance at 12.2 (10) states that: *Exceptionally, the personal circumstances of the client (such as age, mental disability or homelessness) may make it impracticable for any evidence to be supplied. In such cases, eligibility can be assessed without evidence. However, the attendance note must give the reason why evidence could not be obtained and providers must be prepared to justify this on audit if necessary.*[40]

The inevitable knock-on effect of this is that children, young people and families with evidential complexity, or gaps in their evidence, find it harder to secure legal representation. Unfortunately, those who would struggle to evidence their means are often those who are most vulnerable and in need of legal advice and representation.

There are also systemic issues with specific kinds of evidence, including NASS evidence and evidence of local authority support. For clients housed in Home Office NASS accommodation, evidence of means can be particularly challenging. This evidence needs to be dated within six months of the legal help form being signed. However, by the time clients are referred and given the challenges in securing representation outlined above, they may have been in NASS accommodation for a year or more. The client usually only gets one letter confirming NASS support at the beginning of their accommodation period. Fresh evidence must be requested from the Home Office, which has proved to be a serious obstacle in the past and can take many months, which delays a providers' ability to bill for the work undertaken and can cause problems with cashflow. If a case is urgent, it is often not possible (or fair on the client) to delay work on a file once opened because of outstanding means evidence awaited from another Government department. Better working between Government departments is needed to ensure access to justice.

> Katherine (17) contacted the local authority as she was homeless. After the local authority failed to provide accommodation, Coram Voice became involved and referred Katherine to a community care solicitor to challenge the failure to accommodate under s20 of the Children Act 1989. After four weeks of sofa surfing, the local authority provided accommodation. The delay to providing accommodation had altered her entitlement to leaving care support, and Katherine instructed her solicitor to challenge it. In order to qualify for legal aid, Katherine was asked by her solicitor to

40 https://assets.publishing.service.gov.uk/media/64f1d047fdc5d100102849bf/Lord_Chancellor_s_guide_to_determining_financial_eligibility_for_controlled_work_and_family_mediation__September_2023_.pdf

provide evidence of financial entitlements from the local authority. She was also asked to provide a copy of her s.20 entry to care letter, as well as to sign several forms. Katherine found all these forms very overwhelming. Katherine did not want to inform her social worker or the local authority she was seeking legal advice but had no choice. Katherine's advocate asked the local authority to provide this information four times over the course of four weeks. During this time, thankfully Katherine was safe and in suitable accommodation but this is not always the case. In Katherine's situation, the legal aid means testing application delayed the solicitor's ability to challenge the local authority promptly. As a child in care, it was extremely likely Katherine would be means eligible for legal aid.

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

In immigration law among other areas at present there is so little supply in the civil legal aid market and so much demand that clients are fortunate if they are able to find a representative with capacity. In education law, there is similarly large-scale demand but also so few suppliers that there is little to no chance to switch suppliers, unless clients choose between remote or in-person representation. In both instances, 'client choice' is a mirage – it simply does not exist.

Make it easier to switch solicitors

At present it is extremely challenging for clients to switch solicitors if they are unhappy with the service they are receiving. In practice, there is a very high threshold to meet in order to switch: negligence, with formal complaints pursued to the legal ombudsman. Providers who take on clients who have had an alternate solicitor within the past six months absorb significant risk in doing so, regardless of the client's reason for wishing to switch provider. In essence, this locks vulnerable clients into representation which may not be meeting their needs.

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

Changes to legal aid scope in 2012 made it much harder for people to know what they might be entitled to. This is particularly acute in cases where some elements of the legal work are in scope for legal aid, and others are not (see response to question 12 below). We believe that simplification of what is in scope would have a profoundly positive impact on public understanding of the legal aid system.

However, there are other steps Government should take to make legal aid truly inclusive and accessible through increasing public understanding of legal aid entitlement. We suggest:

1. Reinstatement of early legal advice with an inclusive rather than an exclusive scope
2. Increased funding for the free legal advice sector, including for services such as Child Law Advice, to better deliver personalised, directly applicable public legal education and inform individuals of their legal aid entitlements
3. Large-scale publicity and campaigning to raise public awareness of legal aid
4. A 'champion for legal aid' across government to increase awareness and availability of services.

In the action plan published by the Ministry of Justice in 2019[41] the Government promised to launch a campaign to improve awareness of how people can access support to help them resolve their issues and including, where necessary, how to access legal aid. However, we continue to come across public confusion about legal aid eligibility and limitations. The lack of public understanding is significant: through our Child Law Advice service we regularly receive calls or emails from people who no longer believe any legal aid is available to them, even in cases where non-means tested legal aid is in fact available.

Where people are experiencing a cluster of overlapping legal issues, it can be difficult for individuals or even any professionals supporting them to correctly identify where there might be an element of their legal case which would attract legal aid. This can be seen, for example, in education exclusion cases where there is an element of discrimination, and in immigration cases where there are indicators of trafficking.

We note however that even given this lack of public understanding of legal aid eligibility, demand far outstrips supply.

Below are some case studies of families or children to whom we have provided free advice in the past year who did not know they were eligible for legal aid.

A social worker contacted our free immigration advice line to seek assistance for a young person who had recently turned 18 who arrived in the UK from Vietnam as an unaccompanied child. The young man had not claimed asylum, but he had had contact with the Home Office who had his passport and some documents including a social work report stating that he had cognitive and learning difficulties which leave him with a functioning age of three to four years old. The young man repeatedly claimed he had been brought to the UK to work. Despite clear indicators of trafficking, and contact with multiple professionals in both a London local authority and the Home Office, despite the young person spending more than a year in the UK as an unaccompanied child, and despite evidence that the young person could not reasonably give instructions given his disability, no steps were taken by any of those professionals to secure legal representation for this young person to resolve his trafficking/asylum/immigration issues.

The father to three children contacted Child Law Advice. Children's services had been working with the family at various levels for several years due to safeguarding concerns, and it was recently announced that the Public Law Outline (PLO) would be initiated due to insufficient progress. The father was concerned because children's services had informed him that he and the children's mother would be entitled to legal representation, but he was worried that he would be unable to afford it. The adviser assured the father that he and the children's mother would be eligible for non-means, non-merits legal aid once he received either a 'letter before proceedings' or a 'letter of issue', both stages of the PLO process, and that he would not be required to fund legal representation himself.

The mother of two children contacted Child Law Advice. The mother had recently received notice that the children's father had lodged an application with the family court for a child arrangements order. The mother had experienced domestic abuse throughout their relationship, but she had not reported it to the police. The mother was very concerned because she had restricted the father's contact due to safety concerns, and she did not feel capable of representing herself in court.

[41] https://assets.publishing.service.gov.uk/media/5c5b3a0840f0b676e6ddc6dc/legal-support-the-way-ahead.pdf

Furthermore, the father had hired a solicitor, so she feared there would be an imbalance. The mother assumed she would not be eligible for legal aid because she had never reported the domestic abuse to the police. However, the adviser guided the caller through the evidential requirements for legal aid in private family law proceedings and informed her of a couple of viable options that she was unaware would qualify her on merits, including a letter or report from a health professional and a letter from a domestic abuse support organisation. The mother stated that she would be able to obtain at least one of these because she had been assessed by her GP and was in touch with domestic abuse support organisations during their relationship.

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.

The siloed approach brought in by the introduction of LASPO, in which everything is outside of scope unless specifically listed as within it, has seriously undermined solicitors taking a holistic approach to the needs of their clients and so damaged their ability to help clients with multiple needs.

The response to this should be to allow providers to undertake work on matters outside of their scope as long as they are linked or related to their in-scope issue. This could stand to benefit vulnerable people such as homeless children with schools admissions issues, refugee children who seek family reunion in the UK or who need travel documents, and those who very often have multiple needs such as children care or child abuse victims.

It is not uncommon for people to have multiple legal aid solicitors, but one staff member at Coram reported a young person with more than seven separate representatives for various areas of law. Where people do have multiple solicitors it ought to be possible for representatives to make use of recently accepted means assessments, and this should be facilitated by the LAA.

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

The ECF system is woefully inadequate and does not, in practice, provide the promised safety net for vulnerable or disadvantaged people. In the first few years of its operational it was barely functional – for example in the first year, 1,315 ECF applications were made, with just over 1% granted. Following litigation, there was a change in the ECF guidance and an increase in ECF applications. However, the number of applications and grants for ECF remains low. ECF applications made by or on behalf of children have historically been particularly low,[42] though figures are not generally made publicly available. The Ministry of Justice should consider whether this is still the case and take steps to remedy the scheme if it is still not fit for purpose in facilitating access to justice for children.

Recommendations

- Reform the exceptional case funding system. In the immediate term, a question should be added to the CIV ECF1 form to ask about the rights and interests of any affected children.
- Where the applicant is a child, a presumption would operate so that a child or young person could expect to have their case for civil legal aid funding granted, in line with children's rights standards.

[42] See written question 37656 at https://members.parliament.uk/member/1516/writtenquestions?page=27#expand-519755

- The LAA should accordingly publish guidance for its casework staff deciding ECF applications on how to handle applications affecting children.
- Further work should be done to promote the use of the ECF to those working with children and young people, in an effort to counter the low proportion of applications from them
- The Legal Aid Agency should ensure that sufficient resources are allocated to allow for urgent cases to be decided within an appropriately quick time-frame

Family law

One of family law solicitors noted that they have never applied for ECF as it is too time consuming and convoluted, a view common in the sector. As the time spent is not chargeable, it can be incredibly difficult to find a legal firm to carry out that work just in order to start legal aided work, with the added issues around stagnant legal aid rates and capacity issues. Our education team have found that although ECF is available to apply for in certain cases for representation at hearings, but we have found this very difficult to secure, particularly with issues around means. The education team found difficulties with rules around the tests making it harder for young people to access legal aid. For example, recently the Legal Aid Agency deemed that the "Alternative Person" meaning parent or carer is an appellant in their own right for the tribunal hearing, and it would be their means that would need to be assessed as the appellant. This is despite the young person receiving support under the Legal Help scheme.

Education law

We have made applications for ECF for school exclusions where the clients have complex special needs and are vulnerable. However, so far these applications have been rejected, despite the long-lasting impact of a lack of legal advice and representation would have on a child's life. There is no clear guidance for families and the few education lawyers working within this field of law to know whether an ECF application will be granted. Due to the elongated process of the ECF and the tight timelines of a school exclusion hearing, which must take place 15 days after the decision, it is extremely unlikely that ECF would be granted in time for the IRP hearing. While ECF is in our view clearly needed for cases of school exclusion, it is a poor substitute for bringing school exclusion matters back into mainstream legal aid scope, and as a safety net is not currently functioning at all.

Immigration law

In immigration, use of ECF has continued to rise despite the initial policy intention that people making immigration applications were generally to be excluded from the ECF safety net.[43] Rising numbers of ECF applications submitted over the past decade have largely been driven, as the MoJ acknowledges, by those seeking legal aid for out-of-scope immigration matters.[44]

Grant rates for immigration ECF are high and rising, with 91% of ECF applications for immigration legal aid granted in the first half of the 2023-24 financial year, an 87% success rate across both 2021-22 and 2022-23.[45] However, the overall take-up of ECF is still low more than a decade after the scheme's introduction.[46] Notably, very few applications are being submitted by individuals. Instead, applications are being submitted by providers who do not see clients as clearly delineated as being in

[43] https://publiclawproject.org.uk/content/uploads/2018/05/Exceptional-Case-Funding-Briefing.pdf
[44] https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2023/legal-aid-statistics-england-and-wales-bulletin-jul-to-sep-2023#civil-legal-aid
[45] https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-july-to-september-2023/legal-aid-statistics-england-and-wales-bulletin-jul-to-sep-2023#civil-legal-aid
[46] https://www.lag.org.uk/article/209582/thinking-outside-the-box-with-exceptional-case-funding

or out of scope as the arbitrarily drawn lines introduced by LASPO. Where grant rates are this high, we suggest that it would be rational to bring back into scope areas of law where ECF is routinely used to prevent providers from having to apply for funding at risk and via a considerable administrative burden.

Applying for ECF also adds to delay in securing representation and/or beginning work on urgent matters within a client's case. ECF decision timescales for urgent cases are often not met, and actually take significantly longer. When ECF is sought to cover a client's representation at appeal, tight court timeframes may well mean that providers are forced to work at risk before ECF is granted.

ECF also intersects with issues of demand and supply. Where ECF is routinely granted, it places an additional source of demand on providers who are already at capacity. As noted above, the MoJ must fully understand the demand for legal aid in order to ensure that the market it oversees can meet it. This must include the demand represented by those who apply for ECF.

An immigration advisor at CCLC met a young person at an outreach clinic in London. He arrived in the UK as an unaccompanied asylum-seeking child at the age of 15. He was granted refugee status, and he attended the clinic seeking legal advice on his eligibility to apply for refugee family reunion. He wanted to sponsor his siblings, who were outside of their home country in in deeply precarious and risky circumstances. As the young person was not in scope for legal aid (due to family reunion rules for children/siblings), he was assisted by the immigration advisor to make an ECF application, which was granted after three weeks. His youth caseworker was proactive in contacting legal aid providers to check their capacity to take on his case, even prior to the successful grant of ECF. She contacted around 55 firms in a period of three months, with no positive responses and very limited replies. The young person has also been taking an active role in contacting firms, but to date he has been unable to find a solicitor with capacity to assist him.

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.

Remote advice delivery

All legal aid services should be built around client need. Client need is partly about how and where to access services, and there is no doubt that, in this respect, technology can help to enhance future services. As long as technology facilitates more effective contact between client and lawyer, rather than seeking to replace or replicate that contact, it should improve efficiency and outcomes.

Remote representation has had some benefits, and we have extensive experience delivering this through CLA. The requirement to sign up 50% of cases face-to-face, reintroduced in 2019 after more than five years of mandatory remote delivery, is an obstacle, difficult to monitor and can mean having to delay prompt work on a case where there is urgent work needed. The LAA's acceptance of electronic signatures (not requiring to see a wet signature) on legal aid forms has assisted.

Many of our clients are digitally excluded, and this is an issue not just for accessing remote advice but also for evidencing means, which generally requires accessing bank accounts, benefits statements and other online proof of means.

CCMS

Operating multiple online portals for different stages of legal aid work is deeply flawed, and a streamlined system built on new technology has the potential to save providers significant amounts of billable time. CCMS in particular is a clunky system which is slow to operate. As well as the technology operating slowly, the system has not been built with usability in mind; we expect instead that it was built to maximise potential scrutiny. Inputting bills line by line into an operating system, rather than presenting bills in the aggregate or even being able to upload an itemised list, takes up a lot of time and resource. Although it is possible to bill for the hours spent navigating CCMS, staff report that if they were honest about the extent of that time when billing, their bill would be rejected by the LAA. Any analysis of the potential efficiency savings of better IT infrastructure needs to start with an honest conversation about the failings of the current system. In order to genuinely save administrative time, any new system would need to be built with usability in mind.

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.

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

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

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

Remote legal advice increases accessibility for people in remote areas where there are no legal aid providers, lowering travel costs and other barriers for those who are vulnerable. We have seen this through our long-standing delivery of remote advice in education law. However, we have seen that remote advice cannot be the only answer, as evidenced by the Ministry of Justice row-back on the mandatory telephone gateway for education, debt and discrimination legal aid. In particular, we consider that remote advice is often not appropriate for the purposes of taking instructions from vulnerable clients about traumatic experiences.

CLAS has extensive experience providing remote legal advice via phone, email, webchat, and video call (for clients with specific disabilities), helping over 1,000 unique clients per month all over England. We should note, however, that this service provides one-off advice and not ongoing casework or representation. The service also operates alongside a large body of free to access public legal information at www.childlawadvice.org.uk. The funding for this service, provided by the Department for Education, is re-contracted annually and is therefore considered insecure.

To make the best use of remote services, the government should invest in technological infrastructure to ensure that the system is robust, efficient, and secure. To effectively provide remote legal advice, providers would need to invest in the necessary equipment and infrastructure; it is not a given that they would be able to deliver remote work without investment from the LAA to develop the necessary infrastructure. Second, they should invest in bridging the digital divide, such as providing training on accessing the systems. We note that the Home Office has learning on this from the contracting of We Are Digital in partnership with local authorities to deliver a similar exercise in the delivery of the EU Settlement Scheme, which saw digital help points being set up in

public libraries, local authority buildings and other local, free to access public spaces. While no public analysis is available, we understand that there was Governmental scrutiny of that service and that some of the primary issues were linked to language and other access requirements.

Vulnerable clients in all areas of law where English is not their first language have an additional barrier to accessing technology. Increasingly, however, digital translation services may assist.

Some legal aid clients are outside the UK, especially in the case of people applying for family reunion under immigration/asylum contracts. Remote and digital services are then the only option, but access to the appropriate technology is a habitual problem in such cases.

Remote services should be built with the most vulnerable in mind. It is key that cases that are not appropriate for remote legal advice are identified and escalated accordingly.

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.

We note that in some instances early case resolution is dependent on better quality decision making from public bodies such as the Home Office, local authorities and schools, and while legal aid funding can encourage better quality decision-making it is also a broader problem than legal aid can resolve.

School exclusions

In the last calendar year our charity represented about 10 children through our School Exclusion Clinic, which is pro bono service supported by volunteer lawyers. 8 of the exclusions were successfully concluded, including the headteacher withdrawing the permanent exclusion before the governing body hearing, which shows that legal support at early stages of an exclusion can have a significant impact on identifying poor/unlawful decision and the outcomes for young people.

Initial advice in family law proceedings

As noted above, changing the legal aid funding structure to allow for broad scope initial advice in family law would probably serve to increase referrals to mediation services, and would potentially also lessen the costs to the courts and tribunals of litigation run by litigants in person.

Evidence in favour of such early advice can be seen in the feedback to CLAS, our free advice service. This feedback demonstrates that a lack of clear information and guidance means opportunities are being missed to resolve arrangements for children earlier. According to a CLAS survey conducted in 2023, 90% of users have a better understanding of their legal position after receiving advice from our service, and 94% have a better understanding of their options.

Encouraging expert evidence from the start

In immigration and asylum law, where prior authority is not generally given for disbursements, requests for funding to cover a report in the early stages of a case are often refused, even where the evidence might nevertheless be decisive. In other areas of law including community care and education law where providers have prior authority this is not an issue, though providers instead hold both the financial risk and upfront cost of the disbursement which may be queried in the final billing of the case. In either scenario, however, it remains the case that where more evidence is presented early, a case is more likely to reach early resolution.

CCLC represented a young asylum seeker for a fresh asylum claim after he had had a previous refusal while unrepresented except for pro bono assistance at the tribunal. The young person had clear mental health needs, but although this was visible to decision makers and the court no formal evidence had been provided. The CCLC solicitor requested a disbursement for a psychiatric report, but the LAA refused. The CCLC solicitor then appealed, and after several months the LAA agreed to the disbursement. Following the submission of the psychiatric report alongside a witness statement in the new asylum claim, the young person was granted refugee status.

Coram Children's Legal Centre, 21 February 2024