The Bar Council

Access denied:
The state of the justice system in England and Wales in 2022

November 2022

Foreword

A fair and just society requires fair access to justice – yet many people in England and Wales today struggle to exercise that right.

This report blends key statistics and powerful testimony to show the scale of the challenges faced and describes the trends and issues that are most acute in our justice system today.

Since 2010, we have seen a total of 239 courts shut permanently, criminal and civil legal aid budgets slashed, cases piling up in courts, and burnt-out barristers leaving the profession.

Yet, while no one is under any illusion about the scale of the economic challenge we face this winter, there are signs of progress in some areas.

It was most welcome that the Ministry of Justice recently agreed to raise criminal legal aid fees by 15 per cent and announced that the new rate will apply to the vast majority of cases currently in the Crown Court. This change may go some way in stemming the number of practitioners leaving legal aid work.

We also remain hopeful that the Government will announce work that builds on the Legal Aid Means Test Review – which ran from March to June this year – and that this could result in an extension of civil legal aid in some areas, perhaps focusing on early advice schemes.

Without doubt, what is needed is long-term planning from the Government and a commitment to fund the whole system to a level that allows for timely justice in all jurisdictions.

Civil, criminal and family courts are saddled with troubling backlogs, all of which need urgent attention. The absence of adequate long-term planning and sufficient investment damages public respect for the justice system and the rule of law.

Some court buildings are so poorly maintained that they pose health and safety concerns. Everyone will have their own experiences, but we were particularly struck by a Welsh court that suffered from an infestation of fleas and one in the south-east of England that had sewage pouring down the walls for months.

Many court users do not have cars. Yet, in lots of areas, particularly rural ones, public transport is absent or unreliable. One barrister told of a litigant who walked for two days to reach a family proceeding, while others described people who had taken three or four buses to get to court, sometimes with their children and often involving long waits in the dark.

Cases are taking longer. In civil and family, evidence shows a direct link between these delays and the damage done a decade ago when the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 became law. By vastly reducing the scope of civil legal aid, LASPO dramatically impeded the public's access to justice and, in fact, did the opposite of what it set out to achieve.

It seems likely that the flight from publicly funded work and, at least some of, the challenges of judicial recruitment are linked to poor working conditions and lack of support. The rise in numbers of unrepresented litigants makes the working day more stressful. Combine all of this with the unwelcome tendency among politicians to launch uninformed and inaccurate verbal attacks on lawyers and it is hardly surprising that some choose to work in more lucrative and less stressful areas of law.

The Bar Council will continue to push for progress – highlighting evidence and solutions wherever possible – and we will carry on listening to the profession as we collectively strive for better access to justice.

I am very grateful to those barristers who contributed to our Justice Week workshop on 22 June and provided some of the material that underpins this report. I am also hugely proud of the profession that has worked so tirelessly through the pandemic and since, as we all try to help the justice system recover from the effects of Covid-19 on top of a decade of neglect.

Thank you for taking the time to read our report.

Mark Fenhalls KC
Chair of the Bar

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Key findings

- The closure of 43 per cent of courts in England and Wales since 2010 has had a dramatic impact on the principle of local justice and damaged the ability of some people to participate in their own court proceedings.
- While remote hearings are welcomed in many circumstances, there are valuable practices and interactions in physical proceedings which cannot feature online.
- Those involved in our Justice Week workshop discussion groups expressed serious concern about the present pace of change, as well as the rhetoric around the rule of law and the role of lawyers. "It is a time to be scared," said one participant.
- An effective way of improving access to justice would be to adequately fund the legal aid system so that those who have need of legal remedy are better placed to obtain it.
- Recent cuts to legal aid have been catastrophic in their impact on the ability of people to access justice for their legal needs.
- We have observed in recent years that, under intense pressure of workload and poor remuneration, legal aid barristers have increasingly sought to diversify their practices away from legal aid work.
- The challenges facing the profession identified in our discussion groups were all cultural issues around wellbeing, retention and working culture that directly result from underfunding in the system.
- The solution is clear: long-term planning and resourcing of a system that is equipped to provide the legal redress to which people are entitled.

Introduction

This is the third in a series of substantial reviews of the landscape around access to justice that the Bar Council has undertaken in the decade since the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012.[1]

Access to justice is defined by the Equality and Human Rights Commission as "the right to have access to an effective remedy, equality before the law and the right to a fair trial."[2]

Here, we approach the question of access to justice from a dual perspective – both to consider how the public can negotiate the legal system to achieve just outcomes, and to look at how the professional lives of barristers and others involved in access to justice are impacted by challenges within legal systems.

This project is designed to sit alongside the findings from the Bar Council's interactive Access to Justice dashboard (see Annex I), a map of England and Wales showing court and legal provision by local authority and constituency. The dashboard supports a focus on local justice, and a granular look at certain aspects of justice provision. The qualitative research presented in this paper gives a deeper understanding of key issues around access to justice in England and Wales. It was undertaken through the Bar Council's Justice Week workshop – a roundtable conversation with four breakout discussion groups, held online on 22 June 2022.

The opportunity to participate in the workshop was by personal email invitation. Individuals were identified as those who had demonstrated a commitment to access to justice issues over and above their regular professional obligations. We invited around 35 participants including barristers, Bar leaders, policymakers, representatives from non-governmental organisations (NGOs), academics and government representatives. Efforts were made to ensure representativeness in terms of region, sex, ethnicity, seniority and area of practice.

We split participants into four online discussion groups – two featured people whose expertise lay mostly in civil matters, with one for crime and another for family. Each was overseen by a senior Bar leader who had been given a list of potential questions to guide discussion (see Annex II). Participants were also sent these questions in advance of their attendance to help them prepare. However, the conversations did not need to strictly follow the suggested line of questioning. All workshops were conducted under the Chatham House Rule and conversations were scribed by a notetaker from the Bar Council. Some direct quotations and identifying details in this report have been slightly changed to ensure the anonymity of participants.

Based on the conversations in these discussion groups and additional written contributions, and supplemented by some contextual reporting, this report outlines what it feels like to be involved in, observe and care about access to justice in 2022. It is an attempt to capture the judgement of some of those individuals most concerned

about access to justice at a precise moment in time when it appears to many as though it is being profoundly threatened.

In the last decade, we have moved steadily from a justice system which felt like it was being eroded by deliberate underfunding to a system whose very premise feels like it is being intentionally challenged by the Government. The issues of overwork, burnout and poor retention among legal aid lawyers were already being identified a year after LASPO was implemented. These have only become more acute in the intervening decade. Meanwhile, another problem that has worsened is people being unable to access appropriate legal support. We now look retrospectively and see that, for 10 years, we have been documenting a steady decline in the way lawyers and clients experience their participation in the justice system. What is new – and disturbing – is the rhetoric and legislation we have seen, through which it seems the rule of law and democracy in England and Wales are being attacked.

References

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2. EHRC (January 2019) 'Following Grenfell: Access to Justice' **www.equalityhumanrights.com/sites/default/files/following-grenfell-briefing-access-to-justice.pdf**.

Access to Justice dashboard: key statistics

65%
of parliamentary constituencies are **without an active local court**

239
court closures in England and Wales over the last 12 years

4,116
legal aid barristers* in England and Wales

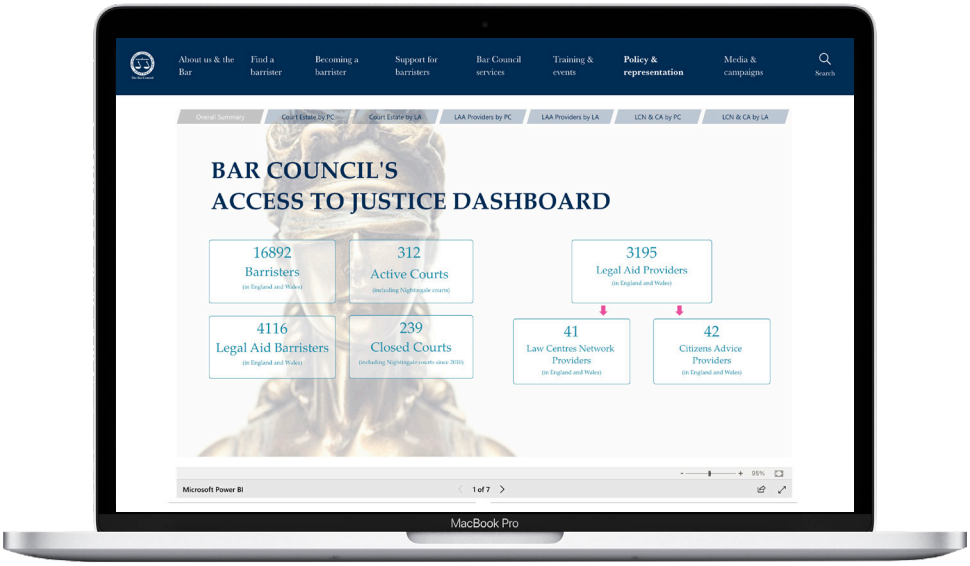
***over 50% of fee income is legal aid work**

47%
of local authority areas are **without an active local court**

Justice funding cut
between 2010 and 2019 by

24%

View the dashboard at www.barcouncil.org.uk/justicedashboard



1. The courts

The court estate (both physical and digital) is the shared space in which users of the justice system interact, and in which justice is delivered. There have been dramatic changes to the geography of this estate in the last decade – 43 per cent of court buildings in England and Wales have been closed since 2010.[3] Of course, digital and remote justice fills some of the gaps. But our discussions with users of the system indicate there are valuable practices and interactions in physical court proceedings that cannot take place online.

All courts and tribunals in England and Wales operate under His Majesty's Courts & Tribunals Service (HMCTS), which is an executive agency of the Ministry of Justice. HMCTS is responsible for supporting the independent judiciary in the administration of criminal, civil and family courts and tribunals in England and Wales, and for non-devolved tribunals in Scotland and Northern Ireland. In 2020/21, HMCTS employed around 20,000 staff, operated from 340 court and tribunal buildings that heard over 3 million cases, and spent around £1.5 billion.[4]

The closure of courts under the Coalition Government began in 2010, with the launch of the multi-stage 'Court Estates Reform Programme'. The stated aim of the programme was "to deliver a step change in financial efficiency in the provision of court-based services, by disposing of surplus buildings and making more efficient use of retained buildings."[5] The aim to centralise and consolidate court administration had been a target of successive governments, and the previous Labour Government had already begun closing courts.[6]

In 2016, HMCTS launched an ambitious portfolio of reforms under the 'Reform Programme' that aimed to modernise the justice system, reduce complexity and provide new ways for people to engage. The reforms applied to the following jurisdictions:

- civil, through the introduction of Online Civil Money Claims and the Damages Claims projects,
- criminal, via the Common Platform and the Single Justice Procedure,
- family, through online services for probate, divorce and financial remedy, and family public law, and
- tribunals, through projects in the Immigration and Asylum Tribunal and the Social Security and Child Support Tribunal.

The programme also introduced the Video Hearings Service (VHS) and the Court and Tribunal Hearings Service.

HMCTS intends to achieve its aims by introducing new technology and working practices to modernise the administration of justice, moving activity out of the courtroom, streamlining processes, and introducing digital channels for people to access services. It has been comprehensively established that HMCTS should be monitoring and evaluating the impact of these unprecedented reforms to the court system on measurable access to justice indicators and publishing these evaluations.[7] The aim in this paper is not

to conduct such an evaluation, but rather to present an experiential view of how the last decade in the courts has been perceived.

The use of Cloud Video Platform (CVP) for administrative hearings and prison visits has been a "revelation" and a "triumph" according to many practitioners. The relief of avoiding the need to travel long distances to short hearings has been liberating for practitioners and, often, for litigants and witnesses. Some also note the positive environmental impact of reducing unnecessary travel. CVP has allowed for more "linking up" of courts, especially for those in rural areas. As one participant said: "Those represented from local courts can be linked up to High Court judges with specialist cases, who would not otherwise attend these smaller courts." For employment and social security tribunals, barristers say the needs of their clients tend to have been better met by the proceedings taking place remotely. Online court platforms when functioning and used appropriately can certainly support greater access to justice.

For jury trials it is a very different matter – practitioners strongly feel these should remain fully in-person. They believe they would not work remotely and say it is crucial that justice is seen publicly. The Bar Council and the Law Society both oppose the use of remote juries.

The data we have on how those in the legal sector experience remote hearings is mixed. Our most recent survey of the profession from April 2021 shows that 60 per cent of barristers wanted more remote working, but that there were widespread problems with the administration of those hearings. More than three quarters (78 per cent) had experienced technical problems with video platforms, and other challenges included the backlog of cases, issues with scheduling and listing, lack of time to prepare clients, and video platforms failing to meet the needs of vulnerable clients.[8] We plan to repeat this survey and conduct a detailed evaluation of remote hearings from the perspective of barristers in 2023. We note that one of the main challenges around properly evaluating remote hearings is that HMCTS does not currently publish data on the type of hearings with outcomes differentiated.

A downside of remote hearings is that barristers are not always fully able to provide the specific legal advice and emotional support a client may need. Participants discussed the fact that answering questions online is a different process to answering them in person, and that communication between participants in remote hearings does not follow the same patterns as communication in-person. Some vulnerable clients, particularly those with intersecting needs such as learning difficulties, lack of access to technology, a lack of privacy when discussing sensitive issues, and those at risk of domestic abuse, can find that remote hearings do not meet their needs. The court can be unaware of these problems, partly as it is harder for legal professionals to identify vulnerabilities remotely. Family practitioners were particularly concerned about vulnerable participants in court proceedings.

Another key component of the Reform Programme strategy for the courts is supporting the sharing of case information in paperless/digital format.[9] While the Crown Court Digital Case System (CCDCS) was broadly appreciated, the Common Platform – the digital case

management system being rolled out by HMCTS across criminal courts in England and Wales – is widely perceived as being a failure. Court users have struggled to log on to the system, there are doubts about the design of the platform, and our participants were unsure whether the roll-out was still happening as they felt there was little information or take-up. At the time of writing, strike action over the Common Platform is affecting the magistrates' courts. Legal advisers and court associates who are members of the Public and Commercial Services Union (PCS) are eligible to walk out between 22 and 30 October.

In our response to the Government's response to the Independent Review of Criminal Legal Aid in June, we said:

"The Crown Court Digital Case System (CCDCS) has undoubtedly made the service of case papers and other documents far more straightforward. However, the direction of travel is not one way. Early signs were that the Common Platform was slow, cumbersome and represented a step backwards from the CCDCS for all users, from court staff to both barristers and clerks. If rolled out without significant improvements, there is every chance any efficiency savings made thus far will be lost."[10]

As for accessing the nearest court building for in-person hearings, participants in our workshops were doubtful as to whether journey times by public transport had been properly accounted for in the modelling underlying the court and tribunal closures programme. The modelling said most users would have to travel for under 120 minutes to their nearest local court centre after closures were enacted.[11] However, in practice – and as was warned by the Bar Council and other organisations in all the government consultations on the issue – many now observe that the cost and time involved in travel is a serious obstacle to people accessing justice. One Justice Week workshop participant said:

"We have to remember that the people we represent do not have money by and large. The cost of travelling to court added an extra burden and the court does not keep any data on why people don't turn up to the hearing. Anecdotally, people don't show up as they can't afford it."

Many court users do not have cars and in lots of areas, particularly rural ones, there is little and/or unreliable public transport. One barrister told of a litigant who walked for two days to get to court for a family proceeding. Others described how people had to take three or four buses, sometimes with their children, often involving long waits in the dark, and taking three or more hours. Litigants preparing for their hearings were often very worried about the practicalities of using unreliable public transport to make it to their hearings on time.

When they have arrived at court, many litigants are now faced with the additional burden of representing themselves, due to legal aid cuts rather than choice. This alters the court experience in a way that presents problems for all parties. The system in England and Wales was designed for litigants to appear with legal representation and, while workarounds have been implemented, they are far from satisfactory. The Bar Council plans to publish a report on litigants in person (LiPs) next year, with the intention being to further discuss the relationship between

them and the courts and judiciary.

Now, in 2022, it appears as though HMCTS's policy of closing court buildings has halted or at least slowed down. The Covid-19 pandemic both accelerated the move to remote hearings and highlighted the need for physical court capacity. To this end, 38 temporary Nightingale courts were opened, of which 30 are scheduled to remain at least into 2023.[12] As the National Audit Office has established, HMCTS had planned to close a further 77 court buildings before 2025, but in a recognition of the need for physical space, these plans have been put on indefinite hold.[13]

In addition to the fundamental changes around court infrastructure, there are wider considerations around resourcing of courts in terms of staff and facilities, and in listing practices. Barristers talk frequently of courts being understaffed, with poor procedures, and the staff that remain can at times be massively overburdened. This is borne out by the data, as we noted in our 2021 Spending Review submission:

"HMCTS staff recruitment and retention is a perennial problem in the justice system. Staff are poorly paid (in the bottom quartile of civil service pay) and have a turnover rate of over 10 per cent. The courts are heavily reliant on agency staff. A recruitment drive is seeking to create an additional 1,600 jobs, but this will not be sufficient to adequately support a rapidly evolving court system unless pay and conditions for court staff are improved."[14]

Tales of 'sick courts' – where the facilities are poorly maintained – abound among legal professionals. In one of the main London courts, a lawyer had to hold a hearing under an umbrella as the court roof was leaking. In a court in the south east of England, sewage poured down the walls for months. At one Welsh court, they had only just managed to cure the infestation of fleas when the roof fell in. One of our workshop participants said:

"We're inviting the public in and it's an advert for the system – there's a good case for inviting the public in to see the state of it. Some of these older buildings are not fit for purpose."

Another said: "It's awful not having even basic facilities." When there is clearly no money in the system for the most basic maintenance of court buildings, or provision for hot drinks or hygienic facilities for court users, confidence in the administration of justice within those buildings understandably declines.

The principle of local justice in England and Wales has been fundamentally destabilised since 2010. In relation to the adoption of remote platforms, aspects of this change represent a progressive evolution, with benefits for all court users. However, vital parts of the system are lost in the move to digital justice and, when resourcing of courts is poor in general, court closure feels to users very much like a programme of cost-cutting rather than modernisation. As one participant described:

"Even though things are more convenient [remotely] and there are benefits, we are entrenching this two-tier rule of law."

Access to justice is a public-facing concept. The court spaces in which the public encounter justice, whether online or in person, are important, and need to be seen to be clean, safe, considered, well-administered and well-resourced if

there is to be confidence in the system. If, as seems likely, the widespread use of video technology continues, serious consideration needs to be paid as to how the system will retain – and demonstrate – aspects of transparency, accessibility and open communication.[15]

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15. At the time of writing (24 October 2022), HMCTS has paused the roll-out of its Video Hearings Service (VHS), intended to replace Cloud Video Platform (CVP), but hopes to complete the programme in 2023. See www.gov.uk/government/publications/hmcts-reform-infrastructure-and-enabling-services-fact-sheets/fact-sheet-video-hearings-service

2. Law reform

Those involved in our roundtables expressed serious and urgent concern about the present pace of change and rhetoric around the rule of law, with one participant saying:

"We are in a serious moment for the rule of law in this country. It is breaking down, to the extent that it could lead to all sorts of things… people just challenging the most basic democratic system… All those things, we know we have the tools to try to tackle and push back, but it's the language and discourse that has been building up about activist lawyers which is the most dangerous of all… It is a time to be scared."

In March and April 2022, three new Acts of Parliament were of particular concern to many working within the legal professions. The consultations on these new pieces of legislation at the Bill stage were, we noted at the time, rushed, with little time allowed for consideration, evidence-gathering and review.

The Judicial Review and Courts Act 2022 was an unnecessary piece of legislation, in the opinion of the Bar Council. The Independent Review of Administrative Law chaired by Lord Faulks KC, reporting in March 2021, had found a system in good working order. In the Bar Council's submission to that review, we said:

"Any properly developed system of public law has to afford citizens a remedy against executive action which is based on an error of law; or is unreasonable; or procedurally flawed; or based on an irrelevant consideration. It is accordingly a given that the ability to challenge on this type of basis remains in play. It is a constitutional necessity."[16]

The full implications of the new Act in case law have yet to be seen, but lawyers are concerned that an individual's right of appeal and access to obtain remedy against unjust treatment are being undermined.

The Nationality and Borders Act 2022 introduced key changes to the way asylum claims are treated, including removing rights of family reunification from some categories of refugee; power to declare an asylum claim inadmissible where a person has a claim with a third 'safe state'; removal of an applicant while their claim is processed; and penalisation of refugees who reach the UK through irregular routes. We are concerned that the Act will profoundly damage access to justice for refugees and asylum seekers and that it will make working conditions for immigration lawyers extremely challenging. The authors of our guest blog on the Bill in January 2022 stated: "We agree with the United Nations High Commissioner for Refugees (UNHCR): the Nationality and Borders Bill is 'fundamentally at odds' with the UK's international obligations under the Refugee Convention." [17]

The Police, Crime, Sentencing and Courts Act 2022 gives the police tremendous power over public expression in a way that we find alarming. In a briefing to peers, we said: "We are not fundamentally

opposed to the Bill but believe that some proposals are contrary to the interests of access to justice, the rule of law, and, in some cases, fundamental common sense… [It] runs contrary to freedom of protest, and expression, leaves too much to the discretion of the police, and is potentially repressive and draconian in spirit." [18]

Changes to domestic human rights legislation were also being proposed at the time of our discussion groups in June but were shelved when Liz Truss was Prime Minister. The Bar Council is strongly supportive of the objective of bringing rights home. However, in line with the findings of the Gross Review, we question the premise that there is evidence that the Human Rights Act (HRA) 1998 is failing to work, so we doubt the need for fundamental reform or abolition of the HRA. We were concerned that some of the proposed amendments were incoherent and unwieldy and would create uncertainty. We felt the proposals would be likely to create the following impacts:[19]

- A destabilisation of the currently well-established and well-understood framework for the protection of rights in the UK and a high degree of uncertainty for public authorities, individuals and organisations (including commercial organisations).
- An increase in human rights litigation involving public authorities, something that is likely to continue for the foreseeable future.
- Increased complexity in human rights litigation, resulting in increased legal costs for all parties, including public authorities, and increased demands on the courts.
- An increase in the volume of applications made by individuals to the European Court of Human Rights (ECtHR), to which the Government will bear the responsibility for responding, regardless of the identity of the relevant public authority in domestic law, and an increase in the volume of applications that are successful.
- A diminution in the ability of the UK courts to influence the development of the case law of the ECtHR by way of judicial dialogue.

In addition to the changes around the laws themselves, we feel we are seeing a worrying trend of the Government aligning lawyers with the people they are representing, and criticising them for upholding the legal rights of their clients, mostly around issues of immigration and international law.

In August 2020, a Home Office video referred to lawyers providing legal advice to migrants as "activist lawyers". Condemning that language, the Bar Council called the video "irresponsible" and "misleading".[20] In September 2020, the Home Secretary criticised "lefty lawyers" and the Prime Minister then endorsed that comment by referring to "lefty human rights lawyers" at the Conservative Party conference. The then chair of the Bar Council, Amanda Pinto KC, said:

"Lawyers carry out their duty and apply the law, irrespective of political persuasion, in accordance with our professional standards. Given our duty to the court and our commitment to justice more generally, barristers, as well as solicitors, must do just that. It is not the job of lawyers to limit Parliament's own laws in a way that

the government of the day finds most favourable to its political agenda. The law, not politics, is what matters to a profession that upholds the rule of law."[21]

In an LBC radio interview in July 2021, the Prime Minister implied that "left-wing criminal justice lawyers", supported by the Labour Party, were seeking to undermine tougher sentencing for serious sexual offenders. Derek Sweeting KC, then Chair of the Bar Council, tweeted in response: "Sad to see unfounded 'left-wing criminal justice lawyer' comments from the Prime Minister. Criminal lawyers, designated key workers by the Government, act independently, prosecuting on behalf of the public or defending members of the public – in the public interest."

In March 2022, there were concerns about the tone of some of the comments expressed by Bob Seely MP, Prime Minister Boris Johnson and others in the Government about "amoral" lawyers working for Russian clients, particularly oligarchs, on 'strategic lawsuits against public participation' (SLAPPs), and as state sanctions were imposed on Russia following the invasion of Ukraine. Barristers generally felt the cab-rank rule was widely misunderstood in the critique of legal services, that lawyers have strict ethical and regulatory protocols, and that the courts are set up to avoid unmeritorious lawsuits.

The immigration question arose again in reference to the Government's plans in early summer 2022 to deport asylum seekers to Rwanda for offshore processing. In May 2022, on the local election campaign trail, Prime Minister Boris Johnson told journalists: "Of course there are going to be legal eagles, liberal-left lawyers who will try to make this difficult." In June 2022, in response to the Prime Minister's claim that lawyers representing migrants were "abetting the work of criminal gangs", the Bar Council and the Law Society issued a joint statement which read: "The Bar Council and Law Society of England and Wales together call on the Prime Minister to stop attacks on legal professionals who are simply doing their jobs."[22]

This series of attacks on lawyers, combined with the flurry of problematic legislation, has felt to many in the sector like part of a deliberate strategy to undermine the rule of law in England and Wales. It now seems like the main way to combat disinformation is to attempt to communicate coherent and truthful information about access to justice and how the rule of law functions.

One suggestion that was put forward in our workshop discussion groups is that, in addition to increased funding, public legal education can be pivotal in resolving negative public perceptions around the law and lawyers. Often people only need lawyers when they are at a point of stress or crisis in their lives – divorce, criminal proceedings, immigration requirements, conveyancing – and can engage just at a very transactional level without necessarily fully understanding the process and implications.

Another suggestion in response to the wider question around ability to access justice was community diversion. Diverting people away from the criminal justice system where appropriate could be an answer to problems of resourcing as well as being more equitable.

Youth justice is a significant precedent. Efforts to reduce numbers of children in court have been extremely successful in recent years, and those involved in this

work tend to agree that we should avoid youth in the justice system.[23] An argument could be made that this successful diversion work could be replicated more widely with other groups, such as women and those with addiction problems. And, despite progress in the youth justice sector, there is still more work to be done, as one participant said:

"[There should be] greater powers to divert youths from the criminal justice system from the get-go. We've never prosecuted so many youths in counter-terrorism for what they do online. They should not join the criminal justice system."

The fundamental problem with justice in England in Wales is not with the rule of law itself. Lawyers tend to agree that – as one participant in our workshop stated – "justice exists, but access to it doesn't". Or, as another participant put it: "The access to justice issue is unlikely to be resolved by substantive changes within the law." Or as a third person said: "Justice doesn't exist for most anymore." By which the participants meant that the rule of law is (some recent changes aside) by and large adequate in this country – the problem is that there is not equal access to it. The first and foremost remedy here is not in reforming the rule of law itself, and certainly not in criticising lawyers, but in adequately funding the legal aid system so that those who have need of legal remedy are able to obtain it.

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3. Legal aid

Commenting on the profound changes to the ability of people to access justice brought about through the implementation of LASPO 2012 has been the mainstay of the policy work of the Bar Council and of many others in the justice sector for the last decade. The discussion in our workshop groups reflected the broad consensus we see across the justice ecosystem – recent cuts to legal aid have been catastrophic in their impact on the ability of people to access justice for their legal needs. As one participant in our workshops described, the funding cuts have been "horrendous for everyone, for every participant in the court process". They added:

"All parties in this unusual, complex, bizarre situation are scared, anxious, angry. The judges are having to manage this. There is increased pressure on the Bar. We are doing more pro bono work, keeping the system afloat by assisting."

Another said: "We all agree. The situation is so dire, how many words can you use? [LASPO 2012] steamrolled through the system."

The main challenges related to the lack of access to legal aid tend to be identified as a snowball effect. As fee rates become unsustainable for the legal services market and fewer people can access legal aid to pay for legal advice, there are challenges around the retention of experienced practitioners as solicitors' firms close and barristers move to other areas of work. Advice deserts are created where people in certain geographic areas do not have local access to legal aid providers. Individuals are then forced to seek free advice, or represent themselves as litigants in person, or let their legal needs go unmet – which is not always possible and can result in those needs becoming more complex.

This is first and foremost an issue about funding being made available for early legal advice, which may then mean that solicitors and/or barristers become included at a later point in the legal process. Or not at all. As we stated in our Spending Review submission in 2021:

"Many of the legal problems that people experience could be addressed well before the point at which they enter the court system, and before the problems compound and become more serious. This could be done through proper resourcing of early legal advice, which would be of great benefit to justice, the public purse, and the courts."[24]

All the evidence on the subject, including from the World Bank, suggests that to properly fund early legal advice is cost-effective in the long run.[25] As one of our workshop participants articulated, the solution is to properly fund early, local, legal advice centres and networks:

"Any form of legal aid to pay barristers to argue the case is at the end of the case. What we really need public spending for is at the beginning, at the law centres and Citizens Advice. If you had better provision at an early stage, there would be less call for greater provision later."

As our Access to Justice dashboard shows, as at 29 December 2021, a total of 37 local authority areas and 40 Parliamentary constituencies in England and Wales have access to a local law centre. This means that 296 local authority areas and 533 parliamentary constituencies lack access to a local law centre.[26] (Of course, law centres do provide advice to clients outside their local authority or constituency area. Just because there is no law centre in a particular area does not mean that residents cannot access advice, but that they will need to travel elsewhere to access it.)

Law centres and Citizens Advice are not the only places that people can currently access early legal advice – solicitors may also give such advice pro bono and there are online and telephone services. But in recent years fewer high street solicitors have been specialising in legal aid work. The Law Society has documented how, for example, the number of law firms offering criminal legal aid has halved since 2007.[27] These figures do give a stark indication of how difficult it can be for people to find support to address their legal problems within their communities.

There does seem to be some movement around the Government's policy changing on early legal advice. A current two-year pilot in Manchester and Middlesbrough, launched in April 2022, is examining the financial impact of early legal advice on housing, debt and welfare benefits matters.[28] We hope the empirical evidence provided by this pilot will support the evidence that the Law Society, the Bar Council, Citizens Advice, Shelter, the Equality and Human Rights Commission and others have been submitting to the Government for years regarding the impact of early intervention on social welfare issues that were taken out of scope for civil legal aid in either 2007 or 2013.

Another source of possible hope is the Means Test Review, launched in March 2022, which aims to make an additional 5.5 million people eligible for legal aid by raising capital and income thresholds.[29] Participants, especially those who worked for law centres or advice networks, were concerned that the current Means Test Review will not necessarily increase the eligibility threshold for legal aid sufficiently to improve the situation. One said:

> **"Prices rise, the cost of living is up, legal advice costs a lot. The threshold [for eligibility for legal aid] is quite high. Universal Credit is so low, people are expected to make it work on very little. There is a huge national crisis about the working poor."**

There is also concern that, at present, there do not seem to be proposals to index-link the Means Test, which means that even if there is an improved settlement, we will inevitably be in the same situation again within a relatively short space of time.

The Bar Council's response to the Review also raised the above concerns, as well as numerous others.[30]

A significant positive impact of early legal advice – aside from cost-effectiveness and ensuring people have access to justice – is the addressing of legal problems before they reach the courts. There is currently a very considerable backlog of cases across almost all court jurisdictions, but it is most acute in criminal cases in the Crown Court. While the pandemic contributed to the problem, it existed beforehand.

The key challenge when addressing the backlog in the Crown Court has been court capacity in terms of space and personnel, particularly judges. The number of judges in England and Wales went down by 12 per cent between 2012/13 and 2019/20, such that judicial capacity has "fallen more steeply than the number of cases in the respective courts in which they operate".[31]

Many Crown Court cases are unsuitable for remote hearings. The lack of physical space was further highlighted during the pandemic – which featured a two-metre distancing rule – when the Government was forced to open 38 Nightingale courts at great expense. This brings into question the assumptions that were underlying the Government's previous decision to close 239 court buildings since 2010. The remaining court estate was demonstrably insufficient to deal with a sudden need for increased capacity. As outlined in chapter 1, we are concerned about local justice provision in some areas, as not everyone is able to travel to court premises that may be some hours away.

At the end of December 2019 there were 37,434 cases outstanding at the Crown Court, an increase of 13 per cent on the previous year and the highest level seen since Q4 2017.[32] Even before the pandemic, the backlog was increasing – the Crown Court backlog increased by 23 per cent in the year leading up to the pandemic.[33] And in April 2022 the Crown Court was still experiencing a backlog of 58,271 cases.[34] This only decreased by 3 per cent in the year since April 2021.

Following months of direct action this year by much of the criminal Bar on matters of remuneration and proper investment in the system, the backlog rose to 61,212 in August 2022.[35]

The Government has pledged to reduce the Crown Court backlog to 53,000 cases by the end of November 2024 to support its priority outcome of "swift access to justice". If this outcome were to be achieved, it would still represent a standing backlog 36 per cent higher than before the pandemic. Investing to divert cases away from the courts where possible would be a sensible approach to reducing waiting times and clearing the backlog of cases.

A question that has not been fully scoped by the Government is whether there will be enough legal professionals to work on the backlog of cases.[36] There are 4,116 legal aid barristers in England and Wales, according to figures from 1 December 2021 (all of these barristers derive at least half of their fee income from legal aid work). Of these, 1,919 practise only in crime, 863 only in family, 165 only in civil, and 1,164 have a mixed practice.[37]

We have observed in recent years that, under intense pressure of workload and poor remuneration, legal aid barristers have increasingly sought to diversify their practices away from legal aid work. This is particularly acute at present in criminal legal aid, where we have seen a drop of around 15 per cent in the number of barristers working full-time on criminal legal aid cases since 2018/19.[38] As a participant in our workshop described:

"Because there are fewer practitioners, they are overstretched or maybe because of LASPO, the level of expertise is diminishing in the field. There are also advice deserts and there is the whole issue of sustainability. Legal aid firms are working on very tight margins."

Another referred specifically to the burnout experienced by practitioners:

"For legal aid, margins are very tight and practitioners in immigration just burn out. It is unsustainable and practitioners leave – some go to GLD [the Government Legal Department] and some go to other careers."

We expect the diversification of self-employed practice away from legal aid work to continue. We have identified three areas of practice at sustainability risk – crime, immigration and family-children. In our most recent survey of barristers, we asked about intentions for future practice development. A total of 13.8 per cent of those asked said they would like to do less legal aid work. Of this minority, 7 in 10 were criminal barristers who depended on legal aid work for most of their income. We also saw a sizeable group of those who specialised in family-children legal aid work stating a desire to move away from legal aid practice.[39] We cannot depend on a sustainable pool of self-employed barristers who will respond to changing legal need and be able to service publicly funded work.

Those who work in these parts of the Bar recognise the problems around retention. One participant who works in family law said:

"The legal aid position does lend itself to having good people leave. This also has a detrimental impact on social mobility, equality, and diversity at the Bar as it disproportionately affects barristers from these backgrounds. This also has the potential to undo all the good work that is currently being undertaken to increase social mobility in the profession (which has been a long time coming)."

First and foremost, a lack of locally available, legally aided legal support impacts those who have legal needs that are not being met adequately. We hear particularly from family practitioners that the situation for litigants in person (LiPs) who have not been able to afford private legal representation can be extremely difficult:

"We hear from LiPs that the process looks like it should be straightforward and simple. When they get towards court, they find it is complex. It's the horror of your life and your family's life and you only have some leaflets to advise you."

Everyone in the legal process – victims, witnesses, defendants, legal professionals, court staff, the judiciary – is negatively impacted when the system is not being adequately funded to operate according to design. There are discussions to be had about ways in which the system may become more efficient, and about where additional legal aid funding should be targeted. Ultimately, though, it comes down to a simple choice around whether to foot the legal aid bill to ensure that justice is served.

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4. Challenges facing the profession

The fundamental problem of a lack of funding in the system has led to a retention problem, and to significant changes in professional culture and working conditions. Many of these issues come down to the way in which parts of the system work together. While technology offers real benefits in communication, it also contributes to professional pressures around the presumption of constant availability. The challenges facing the profession identified in our discussion groups were all cultural issues around wellbeing, retention and working culture that directly resulted from underfunding in the system. Therefore, they could be in some significant measure addressed by the system being funded to operate in the way in which it was designed.

Our participants from across the legal system, including lawyers and those working for advice centres and NGOs, emphasised that a lack of funding impacts the wellbeing of those working in the sector. As one expressed:

"We do all we can pro bono, we go for walks, we donate to Advocate. We prop the system up – which is not properly funded – as we can't watch the system collapse. If we didn't serve this funding, didn't offer pro

bono, the system would fall apart and funding from Government would be needed. But then lawyers would be blamed."

Another participant who worked for a law centre said:

"Law centres and Citizens Advice work as well as they can do, and we are working better together than ever but the issue remains around resources. Funding is the main issue."

The main specific challenge of working in a system in which there is not enough funding is in trying to make it work by increasing work volume to (a) cope with the demand for services, and (b) make this increased volume compensate for lack of fees. This results in a culture of long working hours, work having to be done in a rushed manner at times, difficulties in communicating with others who are working in the same way, pressures around stress and wellbeing and sometimes issues around poor working culture. As one participant described, this can result in burnout for staff:

"In the advice sector, there is concern on the burnout and wellbeing issues of staff. Clients often have got the benefits they are entitled to and there is no other advice available to them. With regards to early legal advice, Advocate and pro bono providers cannot do this alone – they do not have the resources."

Within this, there is the additional pressure of lack of time for planning and reflection, resulting in a culture of last-minute work and constant firefighting:

"The biggest issue for me and for many of my colleagues, though they won't admit it, is the pressure of last-minute work – in a service profession we have to say how high will we jump."

And sometimes it contributes towards a culture of bullying and toxic working conditions. We see this in our surveys of barristers – in the most recent survey of the profession, almost a third (30 per cent) of barristers had personally experienced bullying, harassment or discrimination at work, with the proportion experiencing this behaviour being notably higher among women and among those working in criminal and family law. The numbers had increased considerably since 2017, when 21 per cent of barristers had experienced bullying, harassment or discrimination at work.[40] As some of our participants discussed in the workshops:

"Some behaviour is appalling. It's a result of the pressure on practitioners by the system. Some people don't want to be doing this anymore."

As a result of these pressures, many practitioners, faced with the prospect of poor remuneration and stressful working conditions, do not think it sustainable to commit to a long-term career in legal aid work and seek to diversify their practices away from it. As one participant in our groups said:

"[People] move away from legal aid, go to private work, become narrower. Some are leaving the profession altogether."

Another said:

> **"People love the job. However, it's unsustainable – they can't afford it. We're losing a lot of talent."**

A corollary point to this is the impact of changing technologies extending working hours. Although there can be many benefits to the use of technology in legal proceedings (as discussed earlier in this report), a downside of email and mobile technology is the presumption of constant availability, especially when work volumes are necessarily high. As one practitioner said:

> **"[O]nce, when you finished in court, no-one could get hold of you. Now you get an avalanche of [communication] seven days a week."**

Practitioners are worried about the demands of technology on their lives, and on how this will impact burnout in the profession. As one said, voluntary protocols around this simply do not work:

> **"Do not reply to emails 6-9 is a farce. It just means if you comply to that, you will not represent your client to best of your ability."**

We do not want to see a profession where committed professionals feel that they have no choice other than to stop doing the work they love, especially when that work serves a significant social function. Burnout and financial precarity are not acceptable working conditions.

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Conclusion

In the very first report that the Bar Council produced on the impact of LASPO, back in 2014, we noted that there had been "a preference for cutting costs over the provision of appropriate access to the courts for individuals to enforce their legal rights".[41] Those involved in the access to justice sector in our Justice Week workshop discussion groups – whether lawyers, policymakers, NGO representatives or academics – would state that the decade since LASPO has provided copious evidence as to that point.

The ramifications have been profound. Overwork and under-resourcing across the legal aid sector has resulted in a workforce that is tired, cynical and increasingly looking for other sources of employment. For users of the justice system, the consequences when legal redress is unavailable can be life changing.

It has felt in recent months as though the passive starving by the Government of the justice system through lack of finance has changed in tone to active hostility, which is a source of grievance to those currently working overtime to prop up the crumbling system. The solution is clear: long-term planning and resourcing of a system that is equipped to provide the legal redress to which people are entitled.

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Annex I: The Bar Council's Access to Justice dashboard

The Access to Justice dashboard is an interactive map showing regional comparisons of key access to justice indicators in England and Wales, including active and closed courts, legal aid providers, and legal aid barristers.

Bar Council Access to Justice dashboard

This dashboard uses three data sources:

1. Aggregated data on barrister numbers and main practising locations derived from the data collected by Bar Council and Bar Standards Board membership database which contains basic monitoring information on all practising barristers in England and Wales. This data is as of 1 December 2021.
2. The data underlying the location of active and closed courts has been provided by HM Courts & Tribunals Service (HMCTS) which is an executive agency of the Ministry of Justice. This data is as of 16 February 2022.
3. The data underlying the number, names and location of legal aid providers is from the directory of providers as updated on the government website. This data is as of 29 December 2021.

Key statistics presented by the dashboard include:

- In England and Wales over the last 12 years there have been 239 court closures. A total of 43% of all courts have now been closed.
- There are 41 community law centres in England and Wales.
- A total of 296 local authority areas and 533 parliamentary constituencies lack access to a local law centre.
- A total of 37 local authority areas and 40 parliamentary constituencies have access to a local law centre.
- In England and Wales there are 16,891 barristers in total.
- There are 373 parliamentary constituencies without an active local court. There are 200 parliamentary constituencies with an active local court. That means 65% of England and Wales is not covered. When excluding Nightingale courts there are 195 parliamentary constituencies with an active local court.
- There are 155 local authority areas without an active local court. There are 178 local authorities that have an active local court. That means 47% of England and Wales is not covered. When excluding Nightingale courts, there are 175 local authority areas with an active local court.
- There are 58 local authority areas without practising barristers.
- There are 143 parliamentary constituencies without practising barristers.
- There are 4,116 legal aid barristers in England and Wales.
- There are 195 local authorities without a legal aid barrister.
- There are 393 parliamentary constituencies without a legal aid barrister.

The Bar Council will maintain and update the dashboard annually and seek to add additional functionality on a regular basis.

Annex II: Workshop invitation and questions

All conversation will be conducted under the Chatham House Rule. Discussion will not be recorded, but there will be a note-taker from Bar Council in attendance (who will not speak, and who will keep their camera off).

Each workshop is scheduled to last for 90 minutes including a 10-minute break.

Themes of the conversation will be written up into a report for publication, but no individuals or their employers/chambers will be identifiable in this report, either by name or by identifying details or characteristics/comments. Please ask members of your group to contact Rose Holmes, Head of Research at Bar Council if they have any questions about anonymity or the proposed report.

The questions to be discussed in the workshops will be based around the following four themes and additional discussion points. If members of your group would like to supplement the conversation in your workshop by providing written responses to any of these questions, please invite them to email Rose Holmes.

1. The courts

- What has been your experience in the last two years of Cloud Video Platform (CVP) and remote hearings more broadly?
- What do you think about the Crown Court Digital Case System (CCDCS) [if relevant] and the Common Platform?
- How do you feel court closures since 2010 have affected access to justice and your working life?
- How have you seen the physical court estate change during your career?
- What has been your experience of litigants in person in court?

2. Legal aid

- What do you think has been the impact of LASPO 2012 on the barristers' profession?
- What do you think has been the impact of LASPO 2012 on the public and their ability to access legal aid?
- What do you think is necessary to improve the current system of legal aid?
- What do you consider would be a positive outcome from the Means Test Review?
- What do you think would be the impact of the proposed changes to Special Preparation Payments on requirement to record hours (impact on time, appropriate software)?

3. Law reform

- What do you feel are the most pressing issues for law reform at present?
- What, if any, do you feel are the most significant obstacles to access to justice at present?
- Do you feel meaningful law reform is possible in the current political climate?
- Does the law need to be reformed in order to protect, strengthen or uphold the rule of law itself?
- Do you think there is affinity bias when it comes to reforming the law through legislative change having regard to the

disparity in the numbers of men and women MPs in the House of Commons and the composition of the House of Lords – if so, what should be done?

4. Challenges facing the profession

- Have you observed a pattern in colleagues diversifying their practices away from legal aid work? If so, what is that pattern/are those patterns?
- What do you think are the main challenges facing new legal aid practitioners?
- Have you noticed much change in professional culture during your career? If so, what is that change/are those changes?
- Do you think the current legal services market (solicitors, barristers, pro bono, law centres/CAB) is fit for purpose?

Annex III: The Bar Council's Policy Reviews of Legal Aid since LASPO 2012[42]

The Bar Council has, before this report, undertaken two substantial reviews of the impact of LASPO on the Bar – 'LASPO: One Year On' (September 2014)[43] and 'LASPO: Five Years On' (October 2018).[44]

The One Year On research used a survey of 716 barristers and 19 interview follow-ups to canvass the profession on the immediate impact LASPO was having. Even at that point, publicly funded civil and family barristers emphasised that "LASPO has adversely impacted the ability of individuals to access legal advice and representation and to enforce their legal rights." The barristers who responded to the survey also felt that LASPO had negatively impacted their case volume, fee income and fee security, with a significant minority indicating that the impact of LASPO has made them seriously consider the viability of a long-term career at the Bar.[45] Overall, the report found there had been:

- A preference for cutting costs over the provision of appropriate access to the courts for individuals to enforce their legal rights,
- Excessive demands placed on under-resourced courts and judiciary,
- A failure to provide appropriate funding mechanisms for low to medium-value complex cases,
- A failure to provide appropriate funding mechanisms for cases without recoverable damages,
- An increase in LiPs which is unsustainable without wider reforms to make processes and procedures more transparent and accessible,
- A failure to value legal services, especially early legal advice,
- A failure to value a diverse legal profession and judiciary, and
- A diminishing optimism in viability of long-term careers at the self-employed Bar, especially for family practitioners.

The Ministry of Justice formally reviewed LASPO in its Post-Implementation Review in 2018. In October 2018 the Bar Council submitted further evidence to the MoJ review in the form of the 'LASPO: Five Years On' report.[46] The additional evidence was from a survey of 511 barristers and follow-up interviews with 13 barristers who specialised in civil and family legal aid work. The Bar Council's findings were summarised in its press release:[47]

- More than 91 per cent of respondents reported the number of individuals struggling to get access to legal advice and representation had increased or risen significantly,
- 91 per cent of respondents reported a significant increase in the number of litigants in person (members of the public attempting to represent themselves in court) in family cases; and 77 per cent of respondents reported a significant increase in the number of litigants in person in civil cases,
- 77 per cent saw a significant delay in

family court cases because of the increase in litigants in person,

- Almost 25 per cent of respondents have stopped doing legal aid work, and
- 48 per cent of barristers surveyed do less legal aid work than before.

The press release quotes the then Chair of the Bar, Andrew Walker QC: "LASPO has failed. Whilst savings have been made to the Ministry of Justice's budget spreadsheets, the Government is still unable to show that those savings have not been diminished or extinguished, or even outweighed, by knock-on costs to other government departments, local authorities, the NHS and other publicly funded organisations. Nor do we accept that the reforms have discouraged unnecessary or adversarial litigation, or ensured that legal aid is targeted at those who need it, both of which the Act was billed as seeking to achieve. If anything, LASPO has had the opposite effect, and has denied access to the justice system for individuals and families with genuine claims, just when they need it the most. We need a significant change of direction to rectify five years of failure."

The Bar Council's submission to the Post-Implementation Review consultation called for urgent immediate action in the following specific areas, which were to be considered minimum needs:

- Crime: reverse the "innocence tax" upon those acquitted of criminal offences who are unable fully to recover the reasonable costs of a privately funded defence,
- Family: reintroduce legal aid in a range of family law proceedings, including for respondents facing allegations of domestic abuse and for private law children proceedings,
- Civil: reintroduce a legal help scheme for welfare benefit cases,
- Coroner inquests: relax the criteria for exceptional case funding where the death occurred in the care of the state and the state has agreed to provide separate representation for one or more interested persons, and
- Means testing: introduce a simplified and more generous calculation of disposable income and capital so that the eligibility threshold, and contribution requirements, are no longer an unaffordable barrier to justice.

In February 2019, the government published the outcome of its Post-Implementation Review.[48] It made some very minor changes but left the main cuts to civil and family legal aid in place. The then Chair of the Bar, Richard Atkins QC, stated: "The 500-page report offers little of substance to ease the impact of LASPO on vulnerable individuals seeking justice. Although up to £5m investment has been promised to improve technology for accessing legal advice and £3m over two years to help litigants in person navigate the court system, such monies are but a drop in the ocean given the impact LASPO has had on restricting individuals' access to justice."[49]

The 'Action Plan' outcome of the Post-Implementation Review was to establish another review, this time into means testing for legal aid, whereby members of the public who need legal advice and representation but cannot afford to pay for it, nevertheless fail the means test eligibility for legal aid.[50]

The government stated: "725. [...] evidence submitted throughout the engagement phase has suggested that vulnerable defendants are no longer accessing or being delayed in accessing legal aid, due to having to pass another aspect of the eligibility test."[51] The government quoted the multiple sources of evidence that had

been supplied to it on the problems with the current means testing calculation and the changes that were needed to correct it, including from the Law Society; the Housing Law Practitioners Association (HLPA); Young Legal Aid Lawyers; Professor Donald Hirsch; the National Centre for Domestic Violence; and Women's Aid.

The Bar Council is one of the participants in the MoJ's Stakeholder Advisory Group on Means Testing and has recently submitted a response to the government's Legal Aid Means Test Review Consultation, which was launched two years behind schedule in March 2022.[52] The government's proposed changes aim to make an additional 5.5 million people eligible for legal aid by raising capital and income thresholds. While the Bar Council considers this is a step in the right direction, we have some further recommendations:[53]

- The Bar Council recommends that victims and survivors of domestic abuse are not subject to a test for legal aid.
- The Bar Council recommends the full amount of pension contributions a person makes should be deducted.
- We propose that survivors of modern slavery receiving MSVCC within their recovery and reflection period should be entitled to non-means tested legal aid.
- We do not consider that housing benefit should be included in gross income. we are concerned that the proposal to include housing benefit in gross income will disproportionately affect certain populations such as people living in more expensive parts of the country, disabled people, single parents (especially women) and survivors of domestic abuse.
- The allowances for all dependents should be increased and uprated annually with no differentiation in the age of children.
- We do not support the introduction of an earnings threshold for those in receipt of Universal Credit who are currently passported through the system.
- We do not agree that the upper disposable income threshold for legal aid at the Crown Court should be removed.

While we wait for the outcome of the Means Test Review, we have most recently expressed our current policy position on legal aid in our Budget Submission in January 2021 and our Spending Review Submission in September 2021. In the (short) Budget Submission, we asked for non-means tested legal aid to be made available for all domestic abuse cases and for early access to legal advice for social welfare issues to be (re)introduced. In the Spending Review Submission, we asked for six main points relating to legal aid:[54]

- "[L]ong-term settlement for justice that examines what is required to ensure the entire system (from beginning to end in every jurisdiction) can operate efficiently and effectively in the interests of justice, and of maintaining public confidence in law and order."
- Invest in the justice system by an additional £2.48bn each year – an extra 22p per person per day.
- Provide access to early legal advice to support the most vulnerable and prevent the need for costly hearings.
- Make non-means-tested legal aid available for all domestic abuse cases.
- Regenerate towns and cities by providing local access to justice through a larger court estate.
- The Government should implement recommendations made by the Criminal

Legal Aid Review that will ensure there are enough criminal practitioners and support the sustainability of criminal practices for barristers and solicitors.

Relating specifically to criminal legal aid, over the last two years we have made many submissions and representations to the Independent Review of Criminal Legal Aid (CLAIR). In our first formal representation we outlined five main points that were concern to us based on analysis of a dataset on criminal barrister fee income:

- Retention of experienced barristers is a significant problem.
- The full practice criminal Bar has an aging population that is not being replaced.
- Remuneration for junior barristers is insufficient and unsustainable, and fees and profit flatline the more experienced a junior barrister becomes.
- Barristers' fees and profits have failed to keep pace with inflation – in real terms barristers' profits are lower now than in 2015/16.
- Profit and fees between groups of barristers is not equitable, and women from ethnic minority backgrounds earn the least of all.

In our May 2021 response to the Call for Evidence we reiterated our position, emphasised the deleterious effect of the pandemic and associated court closures on the profession and stated:

"Morale continues to erode. The future of the professions is at stake. Those who can diversify their practice away from criminal work, take an employed position or retire do so, and are not being replaced, so that the professions are ageing rapidly. We consider that the only practicable alternative for the urgent remedial work that is required is to increase fees within current structures whenever possible. The different schemes at different stages require different solutions."[55]

In April 2022, we followed up with a detailed analysis of the impact of the pandemic on the criminal Bar, in which we established that the numbers of self-employed barristers specialising in criminal work continued to erode, and that "in 2020-21, the income after expenses from publicly funded criminal work for those barristers who self-declared they worked full-time on crime were down 23 per cent from 2019-20."[56]

We are now waiting for the two key CLAIR recommendation of 15 per cent uplift in AGFS fees and an independent Advisory Board to be implemented, which we expect to happen before the end of 2022.

We continue to review our own policy position on legal aid, seek to understand and represent the interests of the Bar, and provide evidence to government reviews at regular intervals.

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About the Bar Council

The Bar Council represents ~17,000 practising barristers in England and Wales and promotes the values they share. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights, often acting on behalf of the most vulnerable members of society.

The Bar makes a vital contribution to the efficient and effective operation of criminal and civil courts. It provides a pool of talent, from increasingly diverse backgrounds, from which a significant proportion of the judiciary is drawn and on whose independence the rule of law and our democratic way of life depends.

The Bar Council is the Approved Regulator for the Bar of England and Wales: it discharges its regulatory functions through the operationally independent Bar Standards Board (BSB).

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