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Bar Council Data Analysis: Review of Civil Legal Aid

The Family and Civil Legal Aid Bar 2015-2023

The Bar Council represents approximately 18,000 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).

As part of our contribution to the Ministry of Justice’s (MoJ’s) Review of Civil Legal Aid (RoCLA), the Bar Council (BC) has, over the last two years, been working with the MoJ under a data sharing agreement (DSA) to compile a comprehensive dataset on those barristers who undertake publicly funded civil and family work. The resulting dataset was created by matching MoJ payments data with Bar Council records on individual barristers. It contains 8 years’ worth of data, from 2015-16 to 2022-23.

The analysis presented here should be considered alongside the Ministry of Justice’s “Review of Civil Legal Aid Data Publication Series: Provider Overview” which uses the same shared dataset. The aim of both analyses is to present key findings about the civil and family legal aid Bar, and to provide evidence about the sustainability of the current legal aid market. This analysis is mostly different from the MoJ’s publication in that we look at the ‘whole picture’ – that is, the total fees of those barristers who undertake legal aid work. Of that total a variable proportion comes from legal aid. The bigger the proportion the more reliant on legal aid that barrister is. Sustainability is in part about ensuring that those barristers who do commit to legal aid are not so disadvantaged by this that they must in time reduce the volume of legal aid work they do.

There are 6,941 individual barristers considered in the dataset, across the eight years. The highest single year is 2022/23 at just over 4,500 barristers. As a percentage of the self-employed Bar, this equates to an average of 30 per cent of self-employed barristers or 24 per cent of all

barristers in each of the eight years in question. Many civil practitioners at the self-employed Bar work exclusively in areas where there is no legal aid provision and, therefore, they do no legally aided work.

As we analysed the data, we considered three key questions:

- Is doing civil and family legal aid work as part of their practice a rational economic decision for a self-employed barrister?
- Has the nature of working as a civil and family legal aid barrister changed over the last eight years?
- Are the current fee schemes and fee rates adequate to support both the legal need and reasonable working conditions for self-employed barristers?

The context around this data is the landscape around remuneration for legal aid work in the wake of drastic cuts a decade ago. The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force in 2013, enacting widespread cuts to legal aid. Civil legal aid was the most significantly cut, by 38 per cent overnight.¹ To achieve this cut, the scope of eligibility for individuals to access legal aid was reduced considerably, with many no longer eligible to receive legal aid for housing, debt, employment, and family practice areas.

While LASPO was introduced by the government with the aim to save on costs, pressure has increased in different areas of the justice system (and more widely over public services). The number of those who choose to represent themselves in court (litigants in person) has gone up, with the number of parties in court without a legal representative rising from 13 per cent to 36 per cent.²

The Bar Council has regularly researched the post-LASPO civil legal aid landscape and has repeatedly asserted that the effect of the cuts has been to decrease access to legal aid and to justice, and to worsen the working conditions of barristers (see Annex III).

The MoJ launched its Legal Aid Means Test Review in February 2019, and ran a consultation from March 2022 to June 2022.³ The result of the review led to the proposal to increase the gross income threshold in civil legal aid from £31,884 to £34,950⁴ and adjust the threshold based on the size of a household. The review also proposed removing the means test requirement for victims of domestic violence who receive Universal Credit.⁵ As an outcome of the Means Test Review, the government estimates that eligibility for legal aid has widened

¹ Ministry of Justice (2019) "Legal aid statistics England and Wales tables October to December 2018" Table

² The Law Society (2021), "Civil legal aid a review of its sustainability and the challenges to its viability"

³ Ministry of Justice (2023), 'Government Response to Legal Aid Means Test Review' <https://assets.publishing.service.gov.uk/media/64c258bc331a65000d934cb8/government-response-to-legal-aid-means-test-review.pdf>, 6.

⁴ Ministry of Justice (2023), 'Consultation Outcome: Legal Aid Means Test Review,' < <https://www.gov.uk/government/consultations/legal-aid-means-test-review/legal-aid-means-test-review#chapter-3-civil-income-thresholds-passporting-and-contributions>>, Ch 3.

⁵ n 5

to include a further six million people.⁶ The Bar Council welcomed the changes proposed in the review, while it was acknowledged by the then Chair of the Bar, Nick Vineall KC, "...these are slow steps to progress. It has already been a year since the proposals were made and we are concerned that the changes announced will now take up to two years to be implemented."⁷

The Ministry of Justice is currently appraising the civil legal aid system under the Review of Civil Legal Aid (RoCLA), which is expected to be completed during 2024. The Review has been split between four research streams: economic analysis, international comparative analysis, data publications, user research. The aim of RoCLA is to examine the sustainability of the current legal aid system as a whole and its impact on wider access to justice issues in the current system.⁸

This analysis paper is part of the Bar Council's attempt to find the most detailed and precise ways in which we can assess and seek to improve the sustainability (see definition at Annex II) of the barrister supply base for civil and family legal aid, including ensuring reasonable working conditions for those barristers.

Key findings

- 1. The more legal aid work a barrister does, the lower their overall income.**
- 2. The civil and family fee schemes have been eroded by inflation over the last eight years.**
- 3. Immigration and Housing are particular areas of concern in relation to the supply of experienced counsel.**
- 4. Groups of advocates (based on protected characteristics) have different levels of reliance on civil legal aid and are not remunerated equally.**
- 5. KCs do very few, but very high value legal aid cases.**
- 6. The nature of family work has changed over time leading to an increase in unpaid work.**

The data

The fees datafile that was received by the Bar Council from the MoJ purports to contain data on all payments to advocates for civil legal aid (split into family and other civil) from financial year (FY) 2013-2014 to FY 2022-2023. The Bar Council Records data set does not cover the first two years and so these were removed from consideration; all payments for FY 2013-2014 and FY 2014-2015 are dropped from the data. The fees data file from MoJ contained payments for 8,663 advocates and the Bar Council matched 8,397 of them with our barrister records. Of

⁶ Government press release (May 2023), 'Access to vital legal support extended to millions of vulnerable people' <https://www.gov.uk/government/news/access-to-vital-legal-support-extended-to-millions-of-vulnerable-people>

⁷ The Bar Council (2023), "Slow steps of progress on widening access to legal aid" <https://www.barcouncil.org.uk/resource/slow-steps-of-progress-on-widening-access-to-legal-aid.html>

⁸ Ministry of Justice (2023), Guidance: Review of Civil Legal Aid, <https://www.gov.uk/guidance/civil-legal-aid-review#about-the-review>

those, 708 (8 per cent) do not appear in the overall dataset, the majority of these because they received fee payments in 2015-16 or later for work carried out before 2015-16.

Barristers' fee payments, excluding VAT, as recorded by the MoJ have been matched by the Bar Council to their characteristics as reported in Bar Council records (the Customer Relationship Management (CRM) database). The source data for the matching is a data set produced by the Bar Council which gives summary details of the CRM record for every barrister who has practised (had a practising certificate) between 2015-16 and 2022-23. The CRM database has information on 20,982 barristers with 50 variables for each, covering fields including their personal (protected) characteristics, the composition of their practice (as either reported or deduced from registration) and, more recently, (from FY 2021-22) their exact (self-reported) gross fee incomes.

Matching was based on aligning names recorded against Legal Aid Agency (LAA) account codes, with barristers' names as recorded in the Bar Council's CRM database. It was not possible to get 100 per cent one-to-one matches. Some names are ambiguous in one or other of the source data. Some individuals recorded as advocates in the fees data are demonstrably not advocates and sometimes names are not unique identifiers. Matching proceeded by establishing equivalence (where possible) between an LAA account code and the Bar Council's CRM number. A random identifier was created for each matching pair and the identifiable LAA account numbers and CRM numbers were then deleted to leave an anonymized individual level data set.

We have matched just over 90 per cent of barristers in the MoJ's raw fees data to Bar Council CRM database records, but the unmatched barristers account for only a small proportion of fees, so that the matched data capture 97 per cent of total fee payments.

The number of matched barristers over the eight financial years of payments is given in Table 1. In the table barristers are separated according to whether they received payments exclusively for family cases (Family), exclusively for cases other than family (OtherCivil) or for a mixture of these (Mixed). For example, in the financial year 2020-2021, 2786 barristers received payment for family cases, 813 received payment for other civil legally aided cases and 224 had a mixture of payments.

Table 1: The number of matched barristers receiving legal aid payments for family, other civil or a combination of cases from 2015-2016 to 2022-2023 (financial years).

	Family	Mixed	OtherCivil
	Number of Barristers	Number of Barristers	Number of Barristers
2015–2016	2541	335	1054
2016–2017	2573	298	967
2017–2018	2700	318	906
2018–2019	2814	319	945
2019–2020	2964	300	970
2020–2021	2786	224	813
2021–2022	3137	230	926
2022–2023	3321	260	980

The total fees received, and the median received per barrister are reported in Table 2. For example, in 2020-2021 the 2786 barristers identified in Table 1 as having exclusively received fees for family cases received in total £112.1m with a median of £26.1k.

Table 2: Total and median fees received by barristers from 2015-2016 to 2022-2023, according to the type of cases undertaken.

	Family		Mixed		OtherCivil	
	Total Fees	Median Fees	Total Fees	Median Fees	Total Fees	Median Fees
2015–2016	86 079 270.	24 478.0	8 799 811.	13 192.5	10 301 503.	3 047.93
2016–2017	85 863 922.	21 405.5	8 207 819.	15 916.0	10 353 660.	3 170.13
2017–2018	94 032 034.	22 064.2	10 382 594.	19 781.3	8 884 308.	3 009.31
2018–2019	95 438 972.	22 402.5	10 095 737.	18 772.2	9 886 042.	3 254.78
2019–2020	111 982 218.	23 115.4	11 106 756.	20 971.9	10 328 807.	3 150.0
2020–2021	112 106 295.	26 117.0	7 924 512.	20 983.6	8 663 523.	3 512.5
2021–2022	123 946 237.	23 561.5	8 470 980.	22 177.3	10 079 342.	3 457.29
2022–2023	159 973 584.	26 873.2	12 104 267.	22 856.6	11 837 135.	3 735.6

The volume of work these fees relate to is set out in Table 3. For example, in 2020-2021 the £112.1m received by barristers doing only family work was payment for 65,980 cases. These barristers (by definition) did no other civil cases. In that same year the 224 barristers who had a mixture of family and other civil work received payment for 3560 family cases and 1467 other civil cases.

Table 3: Number of family and other civil cases undertaken by barristers from 2015-2016 to 2022-2023.

	Family		Mixed		OtherCivil	
	Family Cases	Other Civil Cases	Family Cases	Other Civil Cases	Family Cases	Other Civil Cases
2015–2016	57 559	0	4500	1654	0	6084
2016–2017	57 663	0	4839	1155	0	6215
2017–2018	65 511	0	6183	1479	0	6037
2018–2019	68 549	0	6181	1390	0	6651
2019–2020	74 624	0	5720	1544	0	7011
2020–2021	65 980	0	3560	1467	0	5985
2021–2022	70 017	0	3841	1128	0	5820
2022–2023	84 635	0	5231	1454	0	6205

Family fee schemes

The way in which cases have been paid has changed over time. Before May 2001 the fees paid for family legal aid work were based on fixed fees for more simple work, or else on hourly rates and work done for more complex work. Counsel could claim payments on account of up to 70 per cent of the fees, but the balance would not be paid until submission of the final bill by the solicitor.

The Family Graduated Fee scheme (FGF) was introduced for all funding certificates granted on or after 1 May 2001. FGF provided a means for counsel to be paid as work was completed by submitting claim forms directly to the LAA, the normal payment time for these claims was 6-8 weeks. FGF included in its scope all family work completed by junior counsel or KC barring appeals to the Court of Appeal or Supreme Court, and it also excluded TLATA (Trusts for Land and Appointment of Trustees Act) and Inheritance Act work. Where the main hearing of a case ran to 10 days it fell within the High Cost regulations. Fees for interim hearings were calculated based on two and a half hour units (or part thereof) of time spent at court, final hearings were calculated based on a fee per day. These basic fees could be enhanced by the addition of Special Issues Payments, which were a percentage increase of the basic fee for various different measures of complexity. There were also fixed bolt on fees for size of the court bundle. For the most complex of cases, it was possible to claim special preparation which was an additional fee based on an hourly rate. The FGF scheme was amended in November 2003 to allow for the Public Law Outline which impacted Care proceedings. There were further amendments in February 2005 and August 2009 which were mainly amendments to the Special Issues Payments. The rates were cut by 10% when LASPO came into force in 2012.

The Family Advocacy Scheme (FAS) was the replacement for FGF and was introduced for all funding certificates dated on or after 9 May 2011. FAS was different to FGF in that it included all advocacy completed by junior counsel and solicitors, but not KCs. There were still the exceptions of appeals to higher courts and TLATA and Inheritance Act, and added to this were a whole host of other types of family cases. The core Care, Children, DV (domestic violence) and Financial Remedies remained in scope. FAS was very similar to FGF with interim hearings

continuing to be calculated in two and a half hour units, and final hearings paid per day. The Special Issue Payments from FGF had been greatly simplified for FAS as bolt-on payments. There were still additional fees for court bundles, but the hourly rate for Special Preparation had gone. When the Client and Cost Management System (CCMS) was introduced in April 2016 submission of claims to the LAA moved online and speed of payment improved. Currently FAS payments are normally made within seven days of submission of a claim. The FAS rates were cut by 10% when LASPO came into force in 2012.

Other fee data matters

The gross fee income stated in this publication excludes VAT.

The MoJ's fees records system changed for new cases from Corporate Information Store (CIS) to Client and Cost Management System (CCMS) on 1 April 2016 and each system records fees data slightly differently.⁹ CIS includes expenses paid to barristers in the record of the fees, and CCMS separates the two fields (fees and expenses). Both systems ran concurrently for much of the period 2015-16 to 2022-23 although CIS is almost now phased out in favour of CCMS (some long-running cases that were started on CIS remain there). As it was therefore not possible to consistently separate expenses in the dataset, we have included travel and subsistence expenses paid to barristers in the fee information presented here. Consequently, gross fee income is slightly overstated, although travel and subsistence expenses account for just under 1 per cent of total fees. We have no reason to think that travel and subsistence expense payments are disproportionately made to certain groups of barristers or types of cases, so do not consider the inclusion of expenses unduly distorts the dataset.

The income of self-employed barristers discussed in this publication is gross fee income, which means the income stated is not equivalent to the salary of an employed individual. Gross fee income is total fee income (excluding VAT) before barristers pay the costs of their chambers, which includes clerking and typically takes a (mean) average of 29 per cent of gross fee income (slightly higher for more junior barristers, and for those in London), and also before the deduction of other costs more typically associated with self-employment such as tax, professional insurances, provision for periods of leave, and pension provision.¹⁰ See Annex 1 for a full definition. When the Bar Council's records include a barrister's total fee income, this is self-reported total gross fee income.¹¹

⁹ CCMS was piloted in 2013 and rolled out on an optional basis to selected providers before being available to all in September 2014. It then became mandatory on 1st April 2016 for all new cases to be on CCMS (apart from a two-week grace period for posted applications), although in the run up to this over 80% of applications were being made on CCMS already. However, cases started on CIS remain there and so the more detailed data on CCMS is not available on the longest running cases.

¹⁰ This 29 per cent figure was established with the MoJ as part of the Criminal Legal Aid Review process in 2019. Accounting data were collected by the Bar Council for a sample of 950 self-employed barristers and average business-related expenses (predominantly Chambers rent but also training, technology and other expenses) were calculated.

¹¹ Gross fee income as defined in the guidance for declaration for barristers outlined in Annex 1.

Data analysis

1. The more legal aid work a barrister does, the lower their overall income.

Barristers with different patterns of practice derive different proportions of their total fee income from legal aid. This is reported in Table 4.

Table 4: Average (median and mean) percentages of total fee income derived from legal aid work by area of practice within civil legal aid (family/other civil/mixed)

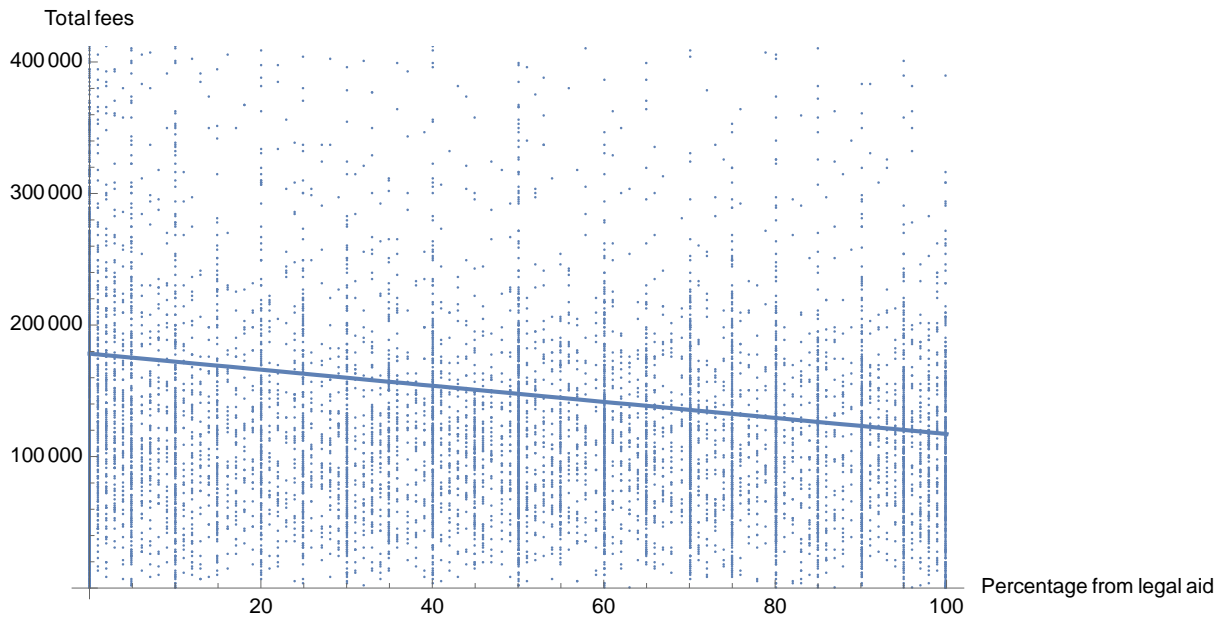
	All	Family	Other Civil	Mixed
Median per cent legal aid	45.0	50.0	13.0	40.0
Mean per cent legal aid	44.3	49.3	28.8	41.5

Legal Aid barristers doing exclusively family cases rely on legal aid for 50 per cent of their total fees on average (either in terms of median or mean). For those exclusively doing other civil legal aid cases the average is less than 30 per cent. For these the mean is 28 per cent, but the median is lower at 13 per cent indicating there is a considerable variety in averages between individuals. For those with mixed practice the average is 40 per cent on either measure. Hence, especially in respect of family work, legal aid is a large and important part of barristers' total fee income.

Those barristers who report the highest proportion of their fees coming from legal aid also have the lowest overall fees. We can only examine this data for the years 2022/23 and 2021/22 as barristers have only recently been asked to declare to the Bar Council/Bar Standards Board the proportion of their fee income that comes from legal aid.

The data that those barristers who report the highest proportion of their fees coming from legal aid have the lowest overall fees is illustrated in Chart 1 which presents both a scatter plot of total fees and the percentage of fees that come from legal aid (the blue dots) and best fit (the blue line) between these two variables.

Chart 1: The relationship between total fees and the percentage of fees that come from legal aid. All matched barristers from 2021-22 to 2022-2023



The analysis in Chart 1 above (best fit line) shows that each 1 per cent increase in legal aid (as a proportion of fees) reduces total fee income by £611. So that says that moving from say 40 per cent to 50 per cent legally aided work reduces total fees by £6,110 on average.

If we look at average total fees against legal aid percentage for all barristers doing civil legal aid, we can observe this reduction in fee income both in cash terms and a percentage of fees in the absence of legal aid.

Table 5: Legal aid Percentage by Average Fees 2021-22 to 2022-2023

Percentage from Legal Aid	Average Total Fees	Percentage reduction associated with legal aid
0	£178,270	0
20	£166,056	7
40	£153,843	14
60	£141,629	21
80	£129,415	27
100	£117,202	34

As in all figures reported in respect of fees it should be noted that a barrister’s expenses have to be taken out of these totals. As established as a part of the work of the Criminal Legal Aid Review, expenses reduce these gross fees by around 30 per cent.

If we look deeper at this by practice band (see Table 6 below) we can see how much a barrister would lose in fee income in a year by increasing the amount of legal aid work they did by only 10 per cent.

Table 6: Practice Band by Legal Aid Income 2021-22 to 2022-2023

Practice (years)	Band	Loss of Income (£) for a 10% increase in Legal Aid work
0-2		0
3-7		5, 490
8-12		0
13-17		6, 780
18-22		8, 670
23-27		10, 330
28 and over		12, 710

There appears to be a progression – a bigger loss for the more experienced. The exceptions are the 0-2- and 8-12-year group who do not appear to suffer a loss. This is all in ‘cash’ terms. Since more experienced practitioners have higher fees, they may be better able to bear that cash loss.

Legal aid fee schemes should be set at a level which will not deter barristers from doing this work as part of their practice, and barristers should not be financially penalised for taking on any/additional legal aid work.

2. The civil and family fee schemes have been eroded by inflation over the last eight years.

The fees paid to civil and family legal aid barristers have had no uplift in the last decade.¹² The effect of inflation has therefore been to significantly erode fees in real terms.

Using the measure of all prices in the UK economy (GDP deflator), this erosion has been approximately 23 per cent in the last 10 years. In terms of what those fees can buy (using the CPI) the decline has been around 30 per cent.

In the last eight years (the time covered by this dataset) using the GDP deflator the erosion of the value of the fees has been 21 per cent, and using CPI the decline has been 29 per cent.

So, by any measure, in the last eight to ten years the value of civil and family legal aid, which equates to the fee income of legal aid barristers, has been eroded by 20-30 per cent.

Private rates have continued to rise during this time.

¹² The legal aid rates can be found in [Schedules 1-3 of the Civil Legal Aid \(Remuneration\) Regulations 2013](#). The family rates have not changed but regarding civil legal aid the government is set to uplift immigration legal aid fees by 15% for some work, under the Illegal Migration Act.

The change in the relative financial attractiveness of legally aided work is likely to impact upon the interest of barristers to develop a legally aided practice or the availability of barristers that already do some of this work.

3. Immigration and Housing are areas of concern over the supply of experienced counsel.

Immigration and Housing are the only areas of civil legal aid outside Family where you can make a regular practice as a self-employed barrister from doing legal aid work. The spend on these areas in recent years has declined significantly.

We see in Table 7 in Housing a decreased spend of 70 per cent in Normal fees paid to counsel between 2008-2009 and 2022-2023. In Immigration we see a different pattern where the spend has been pushed from Normal into High Cost spending. We still see a reduction in the total spend of 31 per cent between 2008-2009 and 2021-2022. The spend in 2022-2023 was higher, but it is unclear whether this is a temporary blip in the trend.

The variable payment figures make it challenging for barristers to make a consistent practice reliant on this work.

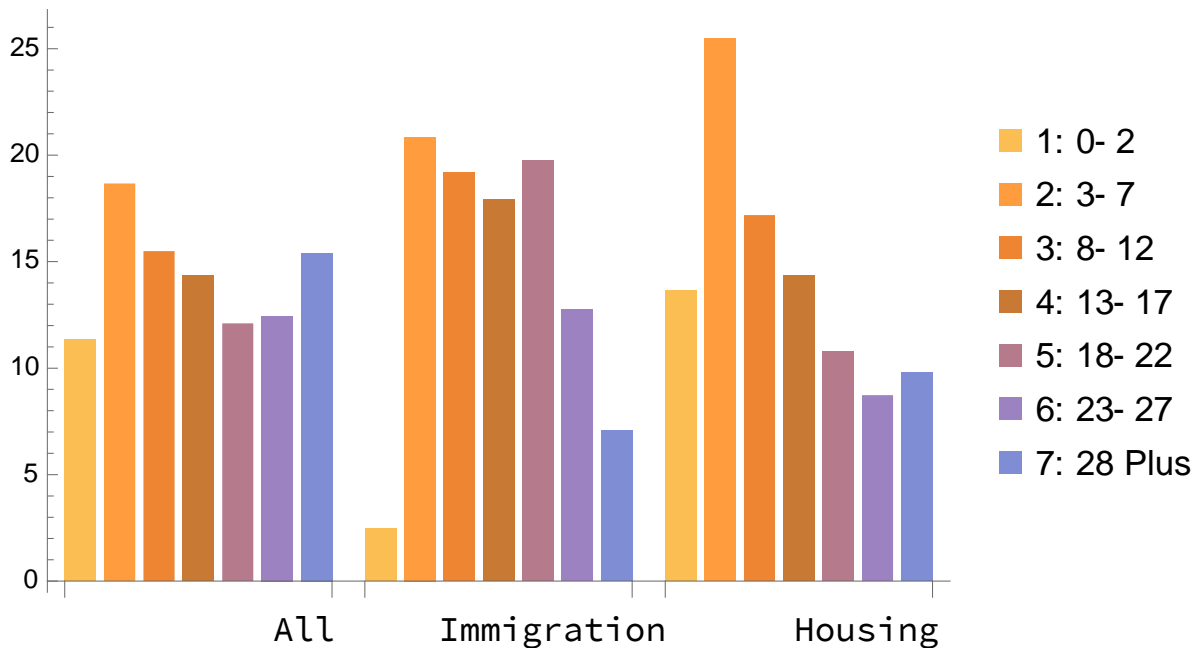
Table 7: Housing and Immigration legal aid spend 2008-2023 (financial years)

Year	Housing		Immigration	
	Normal Counsel Fees (£)	High Cost Counsel Fees (£)	Normal Counsel Fees (£)	High Cost Counsel Fees (£)
2008-2009	8, 872, 415	918, 966	1, 581, 192	310, 156
2009-2010	8, 171, 979	1, 191, 496	1, 620, 954	203, 849
2010-2011	7, 913, 907	911, 973	1, 828, 395	319, 006
2011-2012	7, 603, 295	769, 356	1, 608, 646	405, 329
2012-2013	7, 764, 058	649, 295	2, 138, 101	247, 824
2013-2014	6, 798, 080	746, 733	1, 075, 804	268, 918
2014-2015	6, 129, 932	634, 295	1, 436, 924	646, 523
2015-2016	4, 706, 144	629, 907	955, 451	951, 164
2016-2017	4, 225, 129	421, 377	1, 027, 743	522, 015
2017-2018	3, 905, 925	455, 535	1, 003, 959	620, 950
2018-2019	4, 028, 073	415, 533	894, 859	657, 571
2019-2020	4, 118, 875	341, 004	612, 168	843, 722
2020-2021	3, 061, 726	238, 870	548, 772	890, 175
2021-2022	2, 346, 346	474, 230	851, 569	460, 831
2022-2023	2, 672, 492	338, 401	642, 142	1, 535, 085

If we look at the experience levels of barristers who do this work, we see low percentages in the highest experience bands (see Chart 2). So, whereas across all civil legal aid barristers with more than 23 years of practice experience make up 28 per cent of the total, in both immigration and housing they constitute less than 20 per cent. This suggests that newly qualified barristers spend some time doing this work, either from benevolent intentions or to secure experience

(or a combination) then leave in search of better-paid work once they have some experience. Those barristers in the more senior practice bands who do this work could be those who return but, more likely, are those who have been doing the work for some time before the value of the fees has declined and who do not necessarily wish to diversify their practices at a later point in their career.

Chart 2: Distribution of barristers across practice bands for all barristers and those doing immigration or housing cases



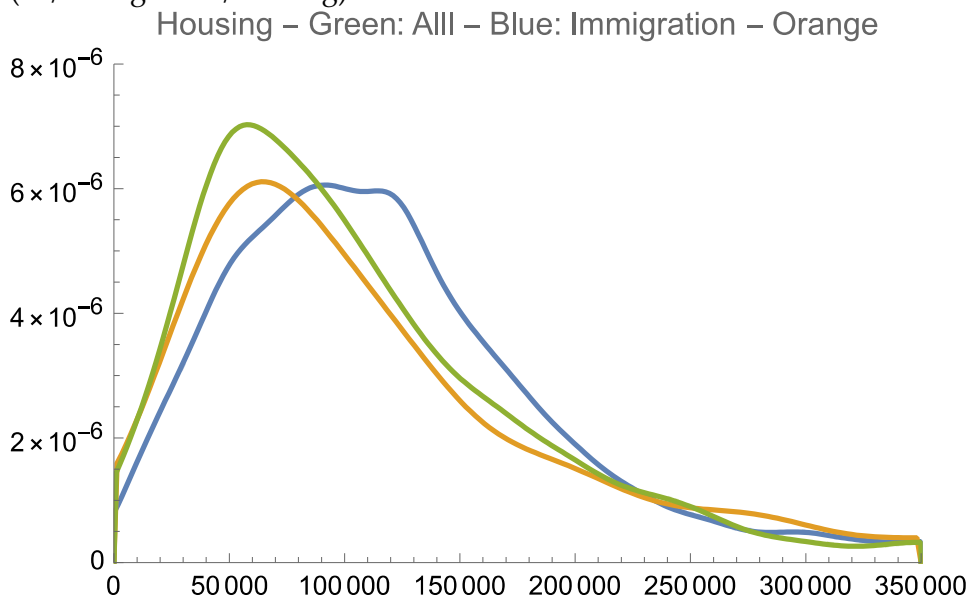
This trend raises concerns the availability of any - and particularly experienced - counsel to work on these cases in the future, particularly as the more experienced barristers currently engaged in this work move towards retirement.

If we examine total fees (from all sources) for barristers who do housing and immigration work compared to those who do all civil and family legal aid, we see they are generally lower for these latter groups.

Chart 3: Median and mean annual total fee income of civil legal aid barristers, 2020-2021 to 2022-2023 by area of civil legal aid work (all/immigration/housing)

{	Median	112 000.	,	Median	96 956.0	,	Median	90 561.0	}
	Mean	151 246.		Mean	165 166.		Mean	136 119.	
	All			Immigration			Housing		

Chart 4: median fee income distribution of civil legal aid barristers by area of work (all/immigration/housing)



Barristers who do this specialist work have generally lower total fee incomes than their colleagues who do not. This suggests an additional vulnerability in the potential supply of barristers to undertake this work.

4. Groups of advocates have different levels of reliance on civil legal aid, and are not remunerated equally

It is well-known and documented elsewhere that advocates have differing fee incomes according to gender and ethnicity.¹³ The causes and possible remedies for this remain subject to investigation.

Civil legal aid is an important element of overall disparities because there is varying reliance (by ethnicity and gender) on legal aid fees, as evidenced in the following tables. These give the average (mean) percentage of total fees that arise from civil legal aid broken down by gender and ethnicity.

Table 8: The percentage of total fee income arising from civil legal aid of those barristers who carry out some civil legal aid work for different genders.

Gender	Percentage of total fee income from legal aid
Male	40.2%
Female	47.5%
No information	42.2%
Prefer not to say	39.9%
I use a different term	39.1%

¹³ See publications including most recently [Gross earnings by sex and practice area at the self-employed Bar 2023 \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/gross-earnings-by-sex-and-practice-area-at-the-self-employed-bar-2023); [Race at the Bar Report 2021 \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/race-at-the-bar-report-2021); [Income at the Bar by Gender and Ethnicity-Final.pdf \(barstandardsboard.org.uk\)](https://www.barstandardsboard.org.uk/income-at-the-bar-by-gender-and-ethnicity-final.pdf)

Non-binary	65.4%
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Table 9: The percentage of total fee income arising from civil legal aid for different ONS summary ethnicities.

Ethnicity	Percentage of total fee income from legal aid
White	44%
Asian	45.4%
Black	50.5%
Mixed or Multiple Ethnicity	42.8%
Other	40.3%
Not known	43.7%

For example, of male barristers who carry out some civil legal aid work they derive 40 per cent of their fee income from legal aid and female barristers who carry out this work derive 48 per cent of their fee income from legal aid. For white British barristers carrying out some legal aid work, legal aid is 44 per cent of total income. In terms of sustainability, the civil and family legal aid system is heavily reliant on women, black and Asian barristers to continue functioning.

To examine how gender and ethnicity are related to total fee income *amongst those barristers who undertake civil legal aid* we have undertaken regression analysis relating the total fee income to these characteristics. The following table summarises the results, expressing the impact of each characteristic on overall income in percentage terms as compared to a white, male barrister. A negative figure indicates a percentage reduction in overall fee income associated with a characteristic and vice versa.

Table 10: Impact of gender and ethnicity on percentage income reduction compared to a white, male barrister.

Sex/ethnicity characteristic	Percentage reduction in income compared to a white, male barrister
Female	-15.4%
Asian	-22.7%
Black	-29.8%
Mixed/Multiple Ethnicity	-6.0%

All these figures are statistically significant in the conventional sense, apart from that for Mixed or Multiple ethnicities, for whom there are few observations.

These barristers are paid under fixed fee schemes, so the disparity cannot be explained by client briefing practices. We have found in previous analysis that women working fewer/part-time hours only accounts for a small percentage of the difference in fee income and believe that is likely to be the case in this instance.¹⁴

¹⁴ In a similar analysis undertaken as part of the Independent Review of Criminal Legal Aid (CLAIR) we found that 10.5 per cent of the difference could be accounted for by a difference in case volume. [CLAR-Bar-Council-submission-final.pdf \(barcouncil.org.uk\)](https://www.barcouncil.org.uk/CLAR-Bar-Council-submission-final.pdf)

Based on the Bar Council’s other policy work in this area¹⁵, we suggest that the explanation is likely a combination of structural inequality within the fee scheme (i.e. the value placed on certain types of work), some elements of women and men undertaking different types of work, issues around allocation of the best-paying work within chambers and cultural practices around under-billing. But a key point to note is that civil legal aid work does not appear to mitigate these fee differences across gender and ethnicity.

5. KCs do very few, but very high value cases.

Silks generate nearly twice the legal aid fees but do less than a third of the number of cases of juniors. A KC working in a specialist area of law will undertake cases that junior counsel cannot. It is therefore critical for long-term sustainability that both a pipeline of counsel gain the specialist experience necessary to take silk, and that existing silks continue to choose to take legal aid cases.

Table 11: Legal aid fees income and cases of silks/juniors (financial years)

Year	Junior – median legal aid fees (£)	KC – median legal aid fees (£)
2015-2016	12, 849.1	19, 790.9
2016-2017	12, 567.5	15, 371.9
2017-2018	12, 888.7	16, 266.3
2018-2019	13, 185.7	19, 945.9
2019-2020	13, 998.7	21, 203.5
2020-2021	17, 074.8	30, 113.3
2021-2022	14, 808.0	21, 889.9
2022-2023	15, 546.3	31, 395.8

Table 11 shows the consistent difference in legal aid fees between silks and juniors over time.

Table 12: Supply of civil legal aid KCs 2015-2023 (financial years)

Year	Overall		Family		Other Civil	
	Median cases per KC	Number of KCs	Median cases per KC	Number of KCs	Median Cases per KC	Number of KCs
2015-2016	3	203	5	69	2	124
2016-2017	2	195	6	68	1	118
2017-2018	3	190	5	75	2	100
2018-2019	3	197	4	75	2	113
2019-2020	3	215	6	83	1	122
2020-2021	4	180	5	85	2	86

¹⁵ See, for example, [Earnings Monitoring Toolkit – Bar Council - Practice & Ethics \(barcouncilethics.co.uk\)](http://barcouncilethics.co.uk) ; [Gross earnings by sex and practice area at the self-employed Bar 2023 \(barcouncil.org.uk\)](http://barcouncil.org.uk) ; [Barrister earnings by sex and practice area - 2022 update \(barcouncil.org.uk\)](http://barcouncil.org.uk); [Barrister earnings data by sex and practice area report 2021 \(barcouncil.org.uk\)](http://barcouncil.org.uk)

2021-2022	3	235	4	104	2	121
2022-2023	3	262	7	109	2	142

Table 12 shows the median number of legal aid cases taken by family/other civil silks for each year over the past eight years. It shows that the system is reliant on the continued work of a relatively small number of silks to take on significant cases.

6. The nature of family work has changed over time.

The Family Law Bar Association (FLBA) has identified the following 15 ways in which the nature of Family legal aid work has fundamentally changed since the introduction of the Family Advocacy Scheme (FAS) in 2013.

Rates under the FAS have remained static since introduced by the Civil Legal Aid (Remuneration) Regulations 2013. No uprating for inflation or any other reason was built into the scheme. The scheme was cut by 10 per cent shortly after its introduction as an “austerity cut” and has never been reinstated. The scheme provides (largely) a flat rate of payment with little differentiation between more and less complex cases. There is a standard hearing unit / daily fee with limited bolt ons for certain issues and for court bundles over 350 pages. The highest court bundle payment is for over 1,500 pages.

The changes the Family Law Bar Association (FLBA) have identified to the nature of the work undertaken since the introduction of FAS are as follows:

General

1. The drive towards fewer court hearings (making every hearing count) creates an expectation on advocates to undertake more work outside of hearings. For example, if an adjustment to the court timetable is required or an agreed application is made to instruct an expert it might be expected that an order will be drawn up and agreed without a court hearing. This work is all unpaid under FAS.
2. Increasingly clients and solicitors require additional conferences beyond the two that can be claimed. A change of advocates (often needed as below because courts do not list for the advocate’s convenience) means that new advocates find that the conferences have already been claimed. This is all unpaid work.
3. Increasing pressure on court time means that cases are underlisted e.g. allowing 4 days when the hearing should take 5 days. As a result, the court will often sit early and late to achieve the necessary court hours. However, the advocate is only paid a flat rate for the day however long the day actually lasts.
4. The introduction of the public law portal places a burden on advocates to respond to judicial questions raised on the portal in between hearings. This is all unpaid work.

Written work

5. Position statements are now mandatory for every hearing. These documents are designed to save court hearing time, requiring work to be front loaded by the advocate who is only paid for court hearing time (in the form of units). The greater the level of preparation / the more detailed the document produced (unpaid), so the shorter the hearing resulting in fewer hearing units.
6. Skeleton arguments are now often requested for specific issues (e.g. Re W hearings, specific disclosure, jurisdiction) for which no additional payment is due under the scheme. Skeleton arguments can take many hours to prepare and, again, reduce the court time for which fees are payable. This also highlights the point that there is no differentiation in the scheme for complex and more straightforward cases.
7. The requirement for written questions to be prepared in advance for vulnerable witnesses is time consuming and not paid under the current scheme. The number of witnesses treated as vulnerable (and the expectations when they are) have increased significantly since FAS was introduced (Part 3A of the Family Procedure Rules (FPR) was inserted in 2017). Often it is those advocates whose client does not justify the 'client with difficulties giving instructions or receiving advice' bolt on that are most disadvantaged, as they are required to cross examine the vulnerable witness and do not receive the uplift. There is currently only an uplift for representation of a vulnerable party, not cross examination of one.
8. Similarly, increasingly, there is a requirement to put written questions to experts rather than them be called for cross examination at a final hearing (or before permission is granted for them to be called). Part 25 FPR provides for questions to be put by way of clarification, but increasingly the courts require quasi cross examination by way of written questions. There is no payment for this under the FAS scheme, and if written questions are put in lieu of the witness being called the FAS bolt on for cross examination is no longer payable.
9. Courts often now require the filing of detailed and agreed chronologies so as to shorten the hearing time. This is all unpaid work.
10. At the conclusion of a case, again to save court time, written submissions are now routinely required. These are to be produced by the advocate at evenings / weekends and are unpaid under the scheme. This is particularly where the evidence finishes on one day and the court directs the document to be produced in advance of judgment or other hearing the next day.
11. The advent of the transparency scheme post-dates the FAS scheme being introduced. New orders under the pilot scheme and also anonymisation of judgments for publication are all unpaid.

Bundle payments

12. The use of technology has meant that there is greater disclosure of voluminous material such as phone records, text, WhatsApp, Facebook etc messages not provided for under the current scheme. There are often many thousands of pages to be read and considered. This applies equally in private law and public law work. A court bundle payment for over 1,500 pages does not fairly remunerate the work required for reading e.g. 5,000 pages.
13. The current scheme does not provide for viewing of body worn footage, ABE interviews, video recordings the use of which has grown significantly in the last eight years. Lack of court time requires pre-viewing of this material. Again, this all unpaid work.
14. Court bundle payments are payable only for one case management conference, one interim removal hearing (IRH), and hearings otherwise listed on contested evidence. Removal hearings are now almost exclusively dealt with on submissions and not on contested evidence (as was previously the case). Contested interim removal hearings require the advocate to be absolutely on top of the material, and no court bundle payment is attracted for this type of hearing, which does not fairly reflect the work involved.
15. Bundle payments are limited to one case management hearing, one issues resolution hearing and one final hearing. Cases are increasingly listed for more than one case management hearing, particularly when complex disclosure is awaited before a decision can be made about assessments or the general direction of travel of a case. Equally it is not unusual for an IRH to be adjourned because, for example, there has been a delay in the assessments, or a family member has sought an assessment at a late stage of the proceedings. Pressure on court time often means that it is not possible for there to be continuity of advocate, which means the advocate representing a client at the adjourned hearing is not paid for reading a large bundle. Since the introduction of FAS, increasingly courts are unwilling to relist for an advocate's convenience due to the pressure on court time, making continuity of counsel harder to secure.

The fee scheme should be regularly reviewed to keep pace with the changing nature of the work and ensure that payments are appropriate for the type of work being done.

Conclusion

Through a detailed analysis of the dataset, we observe some trends over the last eight years that give cause for concern regarding the sustainability of the civil and family legal aid self-employed barrister legal services market. Barristers in this area are, although quasi-public servants, self-employed and, as such, can choose the extent of their engagement in the market depending on factors including pay and working conditions.

Our primary metric of analysis in this paper has been through looking at barristers' total fee income, and at the proportion of that income that is derived from legal aid payments. This is something the Bar Council's data has only allowed us to do in the last three years. The

relationship between total and legal aid income leads us to global statistics related to sustainability and gives us a sense of the dependence of the profession on public funding.

We observe a barrister workforce that has seen the value of their fee income eroded by inflation by 20-30 per cent in the last eight to ten years. The fee schemes have not been reviewed or amended to take account of either inflation or the changing nature of the work. This has resulted in a situation where barristers are directly financially penalised for choosing to take on more legal aid as opposed to private work. It would be a natural consequence if barristers were to, over time, choose to take on a lower proportion of legal aid work as a result.

We have especial concerns about the supply of barristers in immigration and housing, about the continued availability of experienced silks, and about the structural inequalities that lead to barristers with certain protected characteristics earning less under the fee schemes.

Immediate and considered action must be taken to redress the situation and ensure the continued availability of barristers to meet the public legal need in these areas that are crucial for public access to justice.

Annex I: The General Council of the Bar's definition of "gross earnings"

If you are a self-employed barrister, your income for the purpose of calculating your Practising Certificate Fee (PCF) should be based on the calendar year ending December that you have or will declare to the Bar Mutual Indemnity Fund (BMIF), less any proportion attributed to acting as an Umpire, Mediator or Arbitrator (entered against Code O from the BMIF form). For clarity this will be the total fees you received (your Gross Fee Income) from practice at the Bar (without VAT) during the last calendar year, (e.g. 1 January 2022 to 31 December 2022). If you have been asked by BMIF to provide projected income for their (e.g. 2023) renewal, do not include any projected income for the purposes of our income declaration. You are only required to provide your actual gross fee income as set out above. If you are an employed barrister, please declare your gross earnings for the tax year ending 5 April 2022. Gross earnings would be taken before any salary sacrifice or deduction of pension contributions. You will need to aggregate your earnings from:

- Employment
- Partnership
- Director fees
- Dividends (where arising from your services as a barrister)

You should exclude: fees earned as a judge, Commissioner, pensions paid to you, bank interest or private investment income, rental income, reimbursed expenses, travel allowances paid to you by your employer and earnings from employment other than as a barrister.

If you operate with dual capacity i.e. as both an employed and a self-employed barrister, then you should aggregate your gross income under each separate status according to the rules for that status.

Annex II: Sustainability

We have a six-part measurable definition of sustainability at the Bar.

a). A cohort of barristers that is **numerically enough to meet legal need and ensure good working lives for members of the profession**. The entry level and ability to secure pupillage should be appropriate to attract the best candidates while replacing those who retire or leave the profession. This includes those who leave practice to a full-time judicial appointment, where there must be a sufficient supply of practitioners to maintain wide judicial experience and expertise in the law.

b). **Entry to the Bar, and ability to progress one's career while at the Bar, should be available to all suitable candidates**, regardless of background. We would like to see a Bar that is reflective of society and treats all practitioners and aspiring practitioners equitably. We therefore closely monitor experiences within the profession according to ethnicity, sex, and other measurable self-identified protected characteristics, in addition to social mobility.

c). Barristers specialise in one or more areas of practice, and it takes some time to become expert in a legal field. **The types and volumes of work** that are available in an area of practice can change over time, attracting practitioners accordingly. Pay and conditions can differ greatly between areas of practice meaning that certain areas can struggle to attract enough barristers to fulfil the legal need and in others there is not enough work for all who are specialists.

d). **Fee schemes and availability of publicly funded work** being of adequate quality to attract the right number of barristers to address the legal need and allowing publicly funded barristers who, although self-employed, function as quasi-public servants, to work in tolerable conditions.

e). The **geographical supply** of suitably qualified practitioners matching the distribution of legal need with the understanding that a disparity between geographical supply and demand can result in regional "cold-spots" or "legal aid deserts", particularly in publicly funded work.

f). Many self-employed barristers work within **chambers**, which source and manage their work. The chambers structure needs to be sound for barristers to work effectively and for there to be a supply of high-quality pupillages to ensure the recruitment and training of the next generation of practitioners.

Annex III: The Bar Council’s policy response to LASPO 2012 – Civil Legal Aid

The Bar Council has, before this report, undertaken four substantial reviews of the impact of LASPO on the civil and family legal aid Bar – “LASPO: One Year On” (September 2014)¹⁶; “LASPO: Five Years On” (October 2018)¹⁷; “Running on Empty: Civil Legal Aid Research Report” (January 2021)¹⁸; and “Access Denied: The state of the justice system in England and Wales in 2022” (November 2022).¹⁹

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 feel that LASPO has 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.”²⁰

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.

¹⁶ Bar Council (September 2014) “The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): One Year On. Final Report”

https://www.familylaw.co.uk/docs/pdffiles/LASPO_One_Year_On_-_Final_Report_September_2

¹⁷ Bar Council (October 2018) “LASPO Five Years On: Bar Council submission to the Ministry of Justice LASPO Post-Implementation Review”

<https://www.barcouncil.org.uk/uploads/assets/e89215f4-6588-491d820390e1809f5905/laspopirsubmissionbarcouncilfinal.pdf>

¹⁸ Bar Council (January 2021) “Running on Empty: Civil Legal Aid Research Report” [Running-on-Empty-Civil-Legal-AidFull-Report.pdf \(barcouncil.org.uk\)](#)

¹⁹ Bar Council (November 2022) “Access Denied: The state of the justice system in England and Wales in 2022” [Access Denied: The state of the justice system in England and Wales in 2022 \(barcouncil.org.uk\)](#)

²⁰ Bar Council (September 2014) “The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO): One Year On. Final Report”

https://www.familylaw.co.uk/docs/pdffiles/LASPO_One_Year_On_-_Final_Report_September_2014

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.²¹

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:²²

- 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 KC:

"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.²³

²¹ Bar Council (October 2018) “LASPO Five Years On: Bar Council submission to the Ministry of Justice LASPO Post-Implementation Review”

<https://www.barcouncil.org.uk/uploads/assets/e89215f4-6588-491d820390e1809f5905/laspopersubmissionbarcouncilfinal.pdf>

²² Bar Council Press Release 25 October 2018 [Bar Council: LASPO has failed](#)

²³ 9 Bar Council (2018) “Bar Council submission to the Ministry of Justice LASPO Post-Implementation Review” <https://www.barcouncil.org.uk/uploads/assets/e89215f4-6588-491d820390e1809f5905/laspopersubmissionbarcouncilfinal.pdf>

- 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 outcome²⁴ of its Post-Implementation Review. 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 KC stated:²⁵

"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."

The "Action Plan" outcome of the Post-Implementation Review was to establish another review²⁶ 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. The Government stated:²⁷

"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."

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

²⁴ Ministry of Justice, "Post-Implementation Review of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)", February 2019

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

²⁵ Bar Council Press Release, 7 February 2019 [LASPO Review: Bar Council reaction](#)

²⁶ Ministry of Justice, "Legal Support: The Way Ahead. An action plan to deliver better support to people experiencing legal problems" February 2019

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

²⁷ Ibid. Page 168.

(HLLPA); Young Legal Aid Lawyers; Professor Donald Hirsch; the National Centre for Domestic Violence; and Women's Aid.

In January 2021, the Bar Council published a research report, "Running on Empty: Civil Legal Aid Research Report". The report was based on a number of interviews with barristers and senior clerks, and uncovered a series of problems with the way civil legal aid was organised and administered which went beyond the perennial problem of limited funds. We found a civil legal aid Bar that was tired, disillusioned, and weary of keeping a crumbling and underfunded system propped up. The five main issues we identified were:

- The widespread closures of advice centres and high street solicitors, and increased pressure on those that remain, have seriously impacted the Bar;
- There is a serious problem with inequality of arms when it comes to bereaved families being represented at inquests;
- Increased case volume is made to compensate for the reduction in fees, leading to a stressful and last-minute working culture;
- Unsustainability for those coming in at the junior end, and problems with retention and career development, particularly from those without independent financial means;
- Processes at the Legal Aid Agency feel obtuse and complicated. There is a perception of a "culture of refusal".

The then Chair of the Bar, Derek Sweeting KC, wrote in the foreword to the report:

"The consequences of underfunding of the civil legal aid system will continue to snowball if action is not taken. We now find ourselves pleading for the bare minimum. We urge the Government to heed the findings of this report and seek to meet the Bar's commitment to social duty and access to justice with some proper investment in, and respect for, the justice system."

The government's Means Test Review consultation was carried out between 15 March and 7 June 2022. The Bar Council is one of the participants in the MoJ's Stakeholder Advisory Group on Means Testing.

The government's proposals were as follows:

"We are proposing to increase significantly both the income and capital thresholds for legal aid eligibility, and remove the means test entirely for some civil cases. These include legal representation for children, and legal representation for parents whose children are facing proceedings in relation to the withholding or withdrawal of life-sustaining treatment. We also want to remove the upper disposable income threshold for legal aid in the Crown Court, so that anyone can get support if they need it.

"We want to do even more to support victims of domestic abuse – for whom legal proceedings can be both traumatic and costly. Under our plans, domestic abuse victims applying for a protective order or other proceedings would benefit from the more generous means test for civil legal aid. And any disputed assets – including

property – will not be included in a means assessment. This is much fairer for domestic abuse victims who are contesting a property and who cannot use their equity in that property to fund the legal proceedings.”

The Bar Council’s consultation response welcomed the intention to make legal aid more accessible for those in need and increase the scope of legal aid eligibility by raising capital and income thresholds.²⁸ It included the following key points on which we disagreed with the proposals:

- The impact of the proposals on single parent households calls for further scrutiny
- The full amount of pension contributions a person makes should be deducted.
- We agree with the proposal to deduct agreed repayments of student loan repayments and with deducting debt repayments from the income assessment. However, when it comes to domestic abuse survivors, the MoJ’s proposals should go further and consider debt such as payday loans and credit cards which is what many survivors of domestic abuse rely on to financially support themselves when they leave abusive relationships.
- 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
- The Bar Council does not accept that there is a valid justification between not means-testing applicants under 18 for civil representation but not civil legal help, family help (lower and higher) and Help at court.
- In 2009 the Government introduced the “Costs in Criminal Cases (General) (Amendment) Regulations 2009” which meant that if someone paid privately for their defence and was found not guilty they could only be reimbursed at legal aid rates. The Bar Council considers the situation should return to the pre-2009 level.
- There should be uprating of the means test thresholds on an annual basis to identify any problematic areas and deal with them early.

The government responded to the review in May 2023 summarising the terms of, “£25 million investment, our changes mean that over 2.5 million more people in England and Wales will be eligible for civil legal aid, and 3.5m more will be eligible for legal aid to fund their defence at the magistrates’ court.” The headline changes were the partial abolition of the “innocence tax”, measures to increase access to legal aid for victims of domestic abuse, free legal representation to anyone under 18, and increasing the income thresholds for eligibility for civil and criminal cases in the magistrates’ courts.²⁹

²⁸ The Bar Council (7 June 2022) “Bar Council response to the Ministry of Justice Consultation on Legal Aid Means Test Review” <https://www.barcouncil.org.uk/static/9c90abb8-9e36-43f8-ab862c1749db512c/Bar-Council-response-to-Means-Test-Review-Consultation-7-June-2022.pdf>

²⁹ Ministry of Justice (May 2023) “Government Response to Legal Aid Means Test Review” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1174426/government-response-to-legal-aid-means-test-review.pdf

Then chair of the Bar, Nick Vineall KC, commented:

“The changes announced today should help some of those who are most in need, but there will still be many unable effectively to vindicate or defend their rights. We urge the Government to bring the changes in swiftly and follow up with further steps to improve the availability of legal aid.”³⁰

While we were waiting for the results of the Means Test Review, the Bar Council carried out our fourth substantial review into criminal, civil and family Legal Aid post-LASPO, this time a decade on. Key findings of our report, “Access Denied: The state of the Justice System in England and Wales in 2022” were.³¹

- 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.

We continue to continually 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.

Bar Council
21 February 2024

³⁰ <https://www.barcouncil.org.uk/resource/slow-steps-of-progress-on-widening-access-to-legal-aid.html>

³¹ The Bar Council (November 2022) “Access Denied: The state of the Justice System in England and Wales in 2022” [Bar-Council-Access-denied-November-2022.pdf \(barcouncil.org.uk\)](#)