



**Society  
of Labour  
Lawyers**

Ministry of Justice  
Review of Civil Legal Aid

## **Response to Call for Evidence**

Submitted: 21 February 2024 via email

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## Introduction

The Society of Labour Lawyers is the principal professional association for members of the legal profession who are supportive of the Labour Party. The Society was founded in 1948 by Gerald Gardiner KC who later became Harold Wilson's Lord Chancellor. It has several hundred members including barristers, solicitors and others.

The issue of access to justice, and in particular the unmet need for legal services, has been a concern for members of the Society since its foundation.

Last summer the Society produced a substantial pamphlet entitled "*Towards a national legal service: visions for access to justice*" (herein, the "Pamphlet").

This Pamphlet anticipates many of the issues raised in the call for evidence and provides many of the answers. Accordingly, a PDF version is attached to this response and can be found in Annex A and where possible the questions are answered by means of cross referencing to the Pamphlet where appropriate.

## Question 1

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

It is our view, from the experience of our members and the statistics cited below, that the future of civil legal aid services is in real and immediate jeopardy.

Fee rates have not increased since 1996. On top of this, the government imposed a further 10% cut to fees in 2011. This represents a real-terms cut of 49.4% in fees as of 2022.<sup>1</sup>

It is not sustainable to operate the civil legal aid service if providers can only do so on a loss-making or breaking-even basis. Sustainability requires adequate, long-term funding so that providers can continue to function and to attract and retain committed young legal aid lawyers.

The strength of opinion among our legal aid practitioner members is that existing providers are leaving in droves. This is not sustainable, nor is it a characteristic of an ethical system which exists to protect the most disadvantaged and vulnerable members of society.

#### **Therefore, the immediate ask from the government is that:**

- The position before the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) should be restored, such that all civil and family cases are within the scope of civil legal aid unless excluded (as libel and personal injury cases were).
- Legal aid rates should be pegged to an inflation index to ensure practitioners continue to service civil and family legal aid clients.
- A London uplift for representation at court should be introduced to reflect the extremely high cost of living in the capital.
- Payment of legal aid fees must be prompt. It is not commercially or personally sustainable for payment of fees to be delayed until a matter has concluded. Some practices are left waiting for up to four years for their fees to be paid.

In the medium and longer term, the management and infrastructure of the system of civil legal aid is in desperate need of fundamental overhaul. Low levels of service and remuneration have revealed deep structural fissures in the delivery of service. Historically, there has been little coordination between the work of the advice sector and private practice legal aid. Legal aid needs to be given a tighter, user-focused, public-facing remit.

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<sup>1</sup> The Law Society, *Civil Legal Aid Review* (2024), <https://www.lawsociety.org.uk/topics/legal-aid/civil-legal-aid-review>

**Therefore, we recommend:**

- **Coordination between advice sector and private practice:** An overarching government body should coordinate assistance provided by the Citizens Advice Service and other advice agencies to private practice legal aid providers. The Pamphlet in Annex A refers to this administrative structure as a 'National Legal Service'. The inclusion of the Citizens Advice Service and other advice agencies will be crucial in delivering the early legal advice, which is now almost universally accepted as necessary to avoid the unnecessary escalation of disputes. It should be emphasised that a National Legal Service would be a coordinating body and that the actual delivery of legal services would remain with a range of providers.
- **A single funding body:** All centrally funded legal and advice services should be integrated financially and funded through one department: the Ministry of Justice. Policy should be directed to two linked common objectives: ensuring people know their legal rights and obligations; and encouraging them to resolve problems and settle disputes by the most appropriate means.
- **Eligibility thresholds:** The threshold for means test for civil legal aid should be increased. The proportion of UK taxpayers that had an income below the gross income for civil legal aid decreased by 11% between 2013 and 2021, from 73% to 62%.<sup>2</sup>
- **Growing the profession:** Invest in training new legal aid lawyers and financial support for organisations to train them and review the legal aid tender process so that new entrants are not prevented or delayed from joining the scheme.
- **Regionalised legal aid:** Reform the Legal Aid Agency so that it becomes regionalised, so that legal aid provision, the training of new lawyers, and the needs of its community are supported. Policy is also developed to grow as well as sustain legal aid provision.
- **Accessible legislation:** draft legislation should be written in plain language so that it is accessible and understandable.
- **Legal aid deserts:** the government must tackle the epidemic of legal aid deserts (areas with little to no legal aid providers able to provide local, face-to-face advice). In March 2023, for instance, the Law Society reported that 39m people (66%) do not have a local provider in immigration and asylum services, as well as 25.3m people (42%) not having access to a local provider in housing.<sup>3</sup> There must be targeted funding in these areas in order to rectify this unmet need for legal services and rebalance access to justice across England & Wales.

Please refer to the chapters of the Pamphlet entitled "*Preface*" and "*A National Legal Service*" for additional overview commentary on the National Legal Service.

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<sup>2</sup> National Audit Office, *Government's Management of Legal Aid*, (2024) <https://www.nao.org.uk/reports/governments-management-of-legal-aid/>

<sup>3</sup> The Law Society, *Legal Aid Deserts*, (2024) <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

## Question 1.1

**Do you have any suggestions of changes – both short-term and longer-term changes – that could improve each of the following categories of law?**

### A. Family

When families separate, couples are often unrepresented, children exposed to trauma, and the emotional dynamics of separation often means that mediation breaks down. This is compounded by the legal system being designed to be navigated by lawyers rather than lay persons.

**We suggest the following proposals to mitigate these problems:**

#### Beyond Court: The Wider Family Justice System

- **Extending scope of legal aid:** Non-means-tested legal aid should be available for all domestic abuse cases. Means-tested private family law legal aid for both sides in a dispute should be reintroduced.
- **Early legal advice and information:** Introduce publicly funded early legal advice for child arrangements problems. This will help manage expectations and refer to out of court resolution (such as mediation) where appropriate. There should also be a single, authoritative online information platform providing legal and non-legal information about separation.
- **Coordination of legal and non-legal services:** Use family hubs and/or local alliances and networks to coordinate legal and non-legal services for separating families in the community. This should include early legal advice, domestic abuse support, counselling and health support, local authority early help, mediators, and legal aid lawyers.
- **Consistent risk screening:** Introduce universal risk screening by all professionals throughout the family justice system, including mediators, lawyers and Cafcass, to ensure a consistent and proportionate response to risk, wherever a family goes for help (a “no wrong door” approach).
- **Consideration of child participation:** Explore the merit of introducing a requirement for the court to consider how children’s participation can be increased, in an age-appropriate way, during proceedings in which decisions are made about them.
- **Non-court dispute resolution:** Support other non-court dispute resolution processes, not just mediation, including solicitor negotiation, collaborative law, and “packages” of support, e.g. legal advice, mediation, and counselling. Support these non-court processes to be child inclusive.

Going to Court: A Problem-Solving Approach

- **The “case progression officer”:** Give every case a neutral, legally-trained court employee, who will provide information to litigants; manage preparation for hearings if one or both sides are unrepresented; and help unrepresented litigants understand outcomes and next steps.
- **Funding where necessary in the interests of justice:**
  - (i) Representation for both parties when the court deems a fact-finding into alleged harm necessary but the parties cannot afford representation; and further analysis into the current Qualified Legal Representative (QLR) system in domestic abuse cases to ascertain whether it is meeting its objectives;
  - (ii) Exceptional case funding when a judge deems representation necessary for a vulnerable party.
- **Child participation in court:** As above, further analysis is needed to explore how the court may be required to give consideration to increasing children’s participation in proceedings in an age-appropriate way.

This means giving the child information; letting them know what has been written about them more often; letting them meet the decision-maker more often (and training judges and magistrates to do this); and giving the child feedback about the outcome and how their voice was taken into account.

- **Cafcass should follow up with the family** (including the child) after a period of time to ask if the final order is working in the best interests of the child. If it is, there is nothing further. If it is not, the judge can hold a review hearing to consider changes. This ensures children are not stuck in arrangements making them seriously unhappy or unsafe, with no court oversight. Up to one in three cases return to the court because family arrangements do not work.<sup>4</sup> This results in an overburdened system and increases costs to the legal aid budget.
- **Extend funding to cover the full cost of preparation:** The scope of civil legal aid prevents lawyers from undertaking effective preparation and receiving thorough instructions from clients before trial. For example, in private children matters, civil legal aid is not provided for a conference with a barrister in advance of a hearing.

Counsel funding should be extended to:

- (i) an advocates’ meeting and client ahead of every hearing in proceedings,
- (ii) initial conferences with a client upon or before issue of an application, and
- (iii) a mechanism for lawyer assisted mediation in private children cases.

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<sup>4</sup> Analysis by JUSTICE, in *Improving Access to Justice for Separating Families*, [Annex A](#): Society of Labour Lawyers, *Towards a National Legal Service: New Visions for Access to Justice* (2023), p21

Please refer to the chapter of the Pamphlet entitled *“Improving access to justice for separating families (JUSTICE)”* contained in Annex A for further analysis and evidence.

## B. Community Care

We make no submission in respect of this question.

## C. Housing & Debt

There is an unmet need for housing legal services in England and Wales.

41% of England and Wales do not have a housing legal aid provider in their local authority area.<sup>5</sup> Moreover, the restrictive scope of civil legal aid means that a legal aid provider advising on rent arrears, for example, cannot advise on interrelated issues such as debt and welfare benefits. This is an irrational outcome for a system which aims to dispose of cases efficiently.

### **The immediate ask from the government is to:**

- **Reinstate early legal advice** in all potential civil areas of law, but particularly debt, housing and welfare benefits. Early legal advice is cheap, economical and often resolves problems (and need not be delivered by a lawyer);
- **Invest in community legal services**, such as law centres, where legal problems can be analysed and assisted holistically, and where other public services can easily refer or signpost to legal advice;
- **Design the service so that the client is put at the centre** and the current silo provision of legal aid is removed;
- **Commit to not implementing fixed recoverable costs** in areas of housing law, or make the fixed costs high enough that successful cases see bad landlords properly remunerate the tenant’s lawyers.
- **The full scope of housing disrepair should be brought back under civil legal aid.** Not only would this improve housing conditions and be largely cost neutral as the cost would be borne by landlords, but it would make legal aid housing contracts more sustainable. This would also advance the agenda set out in the Homes (Fitness for Human Habitation) Act.
- **Para 35, Sched 1, LASPO should be amended** so that claims by tenants against landlords for breach of repairing covenant are no longer restricted to there being a serious risk of harm to the health and safety of the tenant or their family members. This provision has restricted civil legal aid services to claims for breach of covenant where an injunction is sought (to remedy an existing problem). Claims for damages are

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<sup>5</sup> The Law Society, Legal Aid Deserts, (2024) <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>



excluded from scope. Conditional Fee Agreements are not a sufficient replacement for legal aid for tenants facing disrepair.

Such an amendment would involve minimal costs, since the merits test requires that cases are only brought where there is a 50% or more prospect of success and, where successful, claims for damages for breach of repairing covenant will recover legal costs from the landlord.

Please refer to the chapter of the Pamphlet entitled “*Access to Justice: Housing Legal Aid*” for further analysis and evidence.

## D. Immigration and Asylum

Any proposed overhaul of the system of immigration and asylum is not possible unless there are civil legal aid providers available to deliver advice and representation, as well as there being safe routes for entering the UK.

A substantial amount of administrative and legal resources are used to defend cases which the Home Office should have conceded to much earlier. There is therefore a pressing need for change to the system of administrative decision making and tribunal procedure, so that cases can be disposed of with greater efficiency.

### Simplifying the System of Administrative Decision Making

- **The Home Office should introduce meaningful public service standards** to enable a person to put their case properly, and to ensure high-quality decisions are made within a reasonable period. This will promote legal certainty and contribute to reducing the need for legal challenges. The service standards ought to make the application process smooth, transparent, and simple.
- **A simple process for deciding claims from people seeking protection** (Refugees, Stateless Persons, etc). At present declaring asylum claims inadmissible based on how a person reached the UK, leaves people in limbo in the UK for years, unable to be returned to their own country or a third country and dependent on asylum support or unlawful work.

The efficient administration of asylum claims will result in cost efficiencies for the legal aid budget. Lawyers will spend less resources on applications which have stagnated in the Home Office decision making process. It is better simply to decide all asylum claims on the merits, either granting status or producing a refusal. This would provide legal certainty, comply with international obligations, and promote an orderly process of immigration control.

## Enhancing Legal Dispute Resolution Procedures

- For those seeking to enter or remain in the UK for work in economic or student migration categories: **there should be a right of appeal to the First-tier Tribunal (FTT) to challenge a poor decision.** The UK wants these people; there is no gain in them having no right of appeal. Such people are highly mobile and may choose the EU, USA or Canada. Their lack of agency in the UK process is a disincentive. It also frustrates business.
- For those seeking to join or remain with British family members: **the restoration of means-tested legal aid for legal advice on applications and thereafter representation before the FTT.** The lives of British citizens and their family members are protected by the right to respect for family life (Article 8 ECHR) and the Human Rights Act 1998. It is perverse not to enable the people affected to have access to good quality initial advice and representation. The harm done at present to British citizens and their family members includes splitting up families and damaging children's lives, something which has long-term consequences for those innocent victims.
- **For those seeking protection (Refugees, Stateless Persons, etc): a simple right of appeal to the FTT.** The provisions in the Nationality and Borders Act 2022 and the Illegal Migration Act 2023 embed an appeal and other legal challenges in a structure of mindless complexity, leaving people in limbo unable to be regularised or returned. Such complexity should be stripped away, to enable cheap, cost-effective dispute resolution in the FTT.
- **Remove the priority removal notice procedure, accelerated detained appeals procedure, and the statutory approach to credibility introduced by the Nationality and Borders Act 2022.** As and when they are applied, these measures will promote collateral challenges, consume scarce tribunal resources, and end up leading to delaying final dispute resolution (be it the grant of status or departure/removal).
- **Repeal the provisions of the Illegal Migration Act 2023 which remove the function of the High Court to determine whether detention is reasonable and limit the common law Hardial Singh test.** The Act's measures displace unlawful detention claims and damages cases to the European Court of Human Rights and the protection of Article 5 ECHR. Further, they will lead to prolonged periods of detention and could lead to expensive compensation claims. It is better to have these matters decided in national courts in good time.
- **Deportation: the restoration of means-tested legal aid for legal advice and thereafter for representation before the FTT.** These appeals usually take time because the person concerned has British citizen family members protected by the right to respect for family life (Article 8 ECHR) and the Human Rights Act 1998. There may be children who stand to lose a parent and there may overlap with proceedings in the family courts. It is better to resolve things early through high quality legal advice

and representation, than to prolong matters and end up with last-minute but well-founded challenges to removal.

Please refer to the chapter of the Pamphlet entitled “*Legal Services in the area of Immigration and Asylum*” for further analysis and evidence.

## E. Mental Health

We have no submissions in respect of this question.

## F. Discrimination

- **Qualified One-Way Costs Shifting (QOCS) should extend to claims for discrimination in the County Court under the Equality Act 2010** due to the clear public interest in such cases being brought. This would bridge access to justice without any additional spending commitments.

Please refer to the chapter of the Pamphlet entitled “*Civil costs and Qualified One-Way Costs Shifting (QOCS)*”

## G. Education

- **Restore civil legal aid for education issues such as exclusion.** This will support children who have the highest risk of criminal offending and support marginalised communities who are disproportionately impacted by exclusion from school.

## H. Public Law

*Please refer to our submissions in Section D of this question (Immigration and Asylum law), as this is discussed in the context of public law.*

- **The current provision that legal aid will not be paid if a judicial review claim is refused permission should be abolished.** This will otherwise deter government decisions from being scrutinised.<sup>6</sup>

Also refer to the chapter of the Pamphlet entitled “*Legal Services in the public law area of Immigration and Asylum*” for further analysis and evidence.

## I. Claims Against Public Authorities

*Please refer to our submissions in Section D (Immigration and Asylum law), as this is discussed in the context of public law claims against public authorities.*

## J. Clinical Negligence

We have no submissions in respect of this question.

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<sup>6</sup> Annex A: Society of Labour Lawyers, *Towards a National Legal Service: New Visions for Access to Justice* (2023)

## K. Welfare Benefits

The removal of legal advice in the area of welfare benefits since 2013 by LASPO was a false economy. Housing legal aid providers are funded to represent a client faced with possession on the grounds of rent arrears, but they are not able to resolve welfare benefits which are often a fundamental cause of rent arrears.

- **Providing early advice on welfare benefits** matters can prevent further problems of debt, rent arrears and possession claims. This saves public money in the form of legal aid for litigation representation, costs of court resources, legal costs of public authorities, and the prevention of homelessness.

## L. Miscellaneous

- **Extend Qualified One-Way Costs Shifting** to cover professional negligence, claims against the police, discrimination claims in the County Court brought under the Equality Act 2010 and all forms of asymmetric litigation (*litigation where there is a substantial imbalance in the information available to the parties*) where an individual would otherwise benefit from civil legal aid funding.

The substantial advantage of developing the QOCS regime is that it extends access to justice, providing on any view costs protection for a claimant over and above the amount which the claimant has recovered. Moreover, this costs protection is achieved without any additional spending commitments from the government over and above the cost which would be payable in any event by an unsuccessful defendant. In the abstract, this would increase economic efficiency as valuable claims are less likely to be defeated by financial obstacles.

Please refer to the chapter of the Pamphlet entitled “*Access to Justice: Civil costs and Qualified One-Way Costs Shifting (QOCS)*”.

## Question 2

**What are the civil legal aid issues that are specific to your local area?**

We have no submissions in respect of this question.

## Question 3

**What do you think are the changes in the administration of civil legal aid that would be most beneficial to providers?**

We have no submissions in respect of this question.

## Question 4

**What potential risks and opportunities do you foresee in the future for civil legal aid: i) in general; and ii) if no changes are made to the current system?**

The future of civil legal aid services is in real and immediate jeopardy.

Fee rates have not increased since 1996. It is not sustainable to operate a civil legal aid service if providers can only do so on a loss-making or breaking-even basis. Sustainability requires adequate, long-term funding so that providers can continue to function and to attract and retain committed young legal aid lawyers.

Frontline access to justice has already started to shut down, with the Bar Council observing that many law centres and high street solicitors have closed.<sup>7</sup>

Unrepresented litigants in person have become the norm following the enactment of LASPO in 2013. In 2012-13, 58% of parties had legal representation in private law cases with at least one hearing, dropping to 36% in 2017-18. In family cases, both parties were represented in 41% of cases between January to March 2013. This dropped to just 21% between April to June 2020.<sup>8</sup> This has a tangible impact on the functioning of court proceedings. A greater burden is placed on the Judge, court staff and the lawyers of the side that is represented to take a greater role in case management, and to ensure that unrepresented litigants are informed on the process.

## Question 5

**What do you think are the possible downstream benefits of civil legal aid?**

There is a compelling economic basis for improving civil legal aid. Even small increases in civil legal aid can have significant and long-lasting downstream benefits for individuals, the economy, and to society.

The lack of access to justice is economically inefficient. Vast numbers of individuals are having to rely on the state to provide treatment for its consequences, including emergency housing, healthcare, or welfare benefits, which could have easily been avoided if they had access to legal aid to claim what is rightfully theirs.

### Spend to Save

Providing civil legal aid will result in direct benefits to the treasury:

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<sup>7</sup> Bar Council of England & Wales, *Running on Empty: Civil Legal Aid Research Report*, (2021) p10

<sup>8</sup> Ibid, pp-12-13

- reduced demand on the NHS and social housing,
- fewer welfare payments and increased tax revenues.
- Increased employment and consumer spending: proper family, employment, housing, and immigration advice will result in more people in work, generating both revenue and consumer spending.<sup>9</sup>
- Across 39 studies where a multiplier is provided, an additional £1 spent on legal aid generates on average around £6.62 in commercial activity and government savings.
- A benefit of over £10 for every £1 spent on funding legal aid services.<sup>10</sup>

64 studies globally analysing the economic benefits of civil legal aid show a clear positive impact on both government revenues and commercial activity.<sup>11</sup>

The graph below takes data from 39 of these studies which have calculated the multiplier impact of civil legal aid spending<sup>12</sup> or, in the UK context, the impact an additional £1 spending on civil legal aid would have on the UK economy.

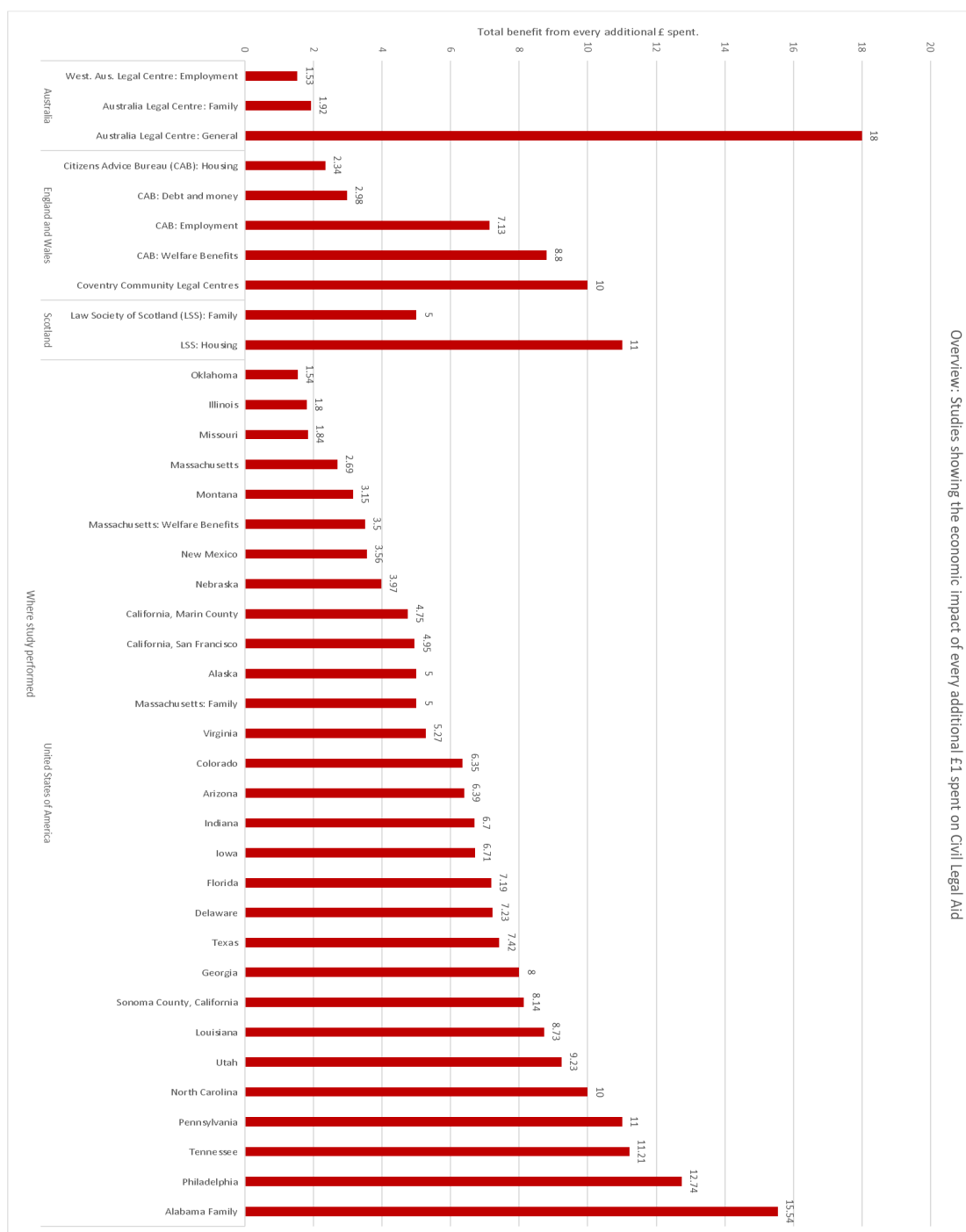
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<sup>9</sup> Citizens Advice Bureau (2010), *Towards a Business Case for Legal Aid*, para. 79.

<sup>10</sup> For a full list of sources which have contributed to this analysis, please see the footnotes of *How to Fund it: The Economic Case for Civil Legal Aid* in Annex A: Society of Labour Lawyers, *Towards a National Legal Service: New Visions for Access to Justice* (2023), p27.

<sup>11</sup> The following provides a summary of all such papers until 2019: Moore, L., & Phyper, M. (2019). "Return on Investment in Civil Justice Services and Programs—Selected Annotated Bibliography of Existing Research", online: <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1016&context=cfcj>

<sup>12</sup> *ibid*



Graph 1: Studies showing the economic impact of every additional £1 spent on civil legal aid<sup>13</sup>

<sup>13</sup> How to Fund it: The Economic Case for Civil Legal Aid in [Annex A](#): Society of Labour Lawyers, Towards a National Legal Service: New Visions for Access to Justice (2023), p31

We have spotlighted family, housing and immigration law below. An excellent analysis of other areas contemplated by this review can be found in the Pamphlet in Annex A.

### Downstream Benefits: Family Law

The cost of domestic violence has been estimated by the UK Home Office to be £61 billion a year, with 2.4 million individuals suffering each year.<sup>14</sup> In addition, the average economic cost of a single instance of rape has been estimated at £138,000 and of domestic violence £17,000.<sup>15</sup>

Whilst civil legal aid for domestic violence cannot solve this issue alone, it is proven to help.

There is a statistically proven link between the provision of legal services and a reduction in domestic violence, with one study alone indicating that it contributed to a 19.3% reduction in Southwest Virginia.<sup>16</sup>

Other studies have shown the impact legal aid centres can have in obtaining child support. One centre alone in Nebraska was able to obtain \$2 million in 2007 in child support arrears.<sup>17</sup> When only those studies focusing on family law centres are taken into account, the average return for every £1 spent is over £7.49.

### Downstream Benefits: Housing

The average cost to the government of emergency shelter for a family without housing is £10,580.<sup>18</sup> Studies have repeatedly shown that legal aid programs can prevent over a quarter of individuals facing such homelessness.<sup>19</sup>

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<sup>14</sup> Home Office "The economic and social costs of domestic abuse" (2019), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918897/horr107.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918897/horr107.pdf)

<sup>15</sup> Liz Elwart et al., Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program, 12–13 (2006), [http://www.wisbar.org/am/template.cfm?template=/cm/content\\_display.cfm&contentid=63633](http://www.wisbar.org/am/template.cfm?template=/cm/content_display.cfm&contentid=63633); Kenneth A. Smith and Kelly Thayer. (2015). "Economic Impact of Civil Legal Aid Organizations Tennessee", online [http://www.tba.org/sites/default/files/2015-TNFinal%20Report%20Package\\_Consolidated%20Statewide\\_3-18-2015.pdf](http://www.tba.org/sites/default/files/2015-TNFinal%20Report%20Package_Consolidated%20Statewide_3-18-2015.pdf)

<sup>16</sup> Farmer, Amy, and Jill Tiefenthaler. (2003) "Explaining the recent decline in domestic violence." *Contemporary economic policy* 21.2: 158-172; Abel, Laura K., and Susan Vignola. "Economic and other benefits associated with the provision of civil legal aid." *Seattle J. Soc. Just.* 9 (2010): <https://tinyurl.com/3txhvcjsj> 139, 147,

<sup>17</sup> Feelhaber, Rod, and Jerome A. Deichert. (2008) "The Economic Impact of Legal Aid of Nebraska, 2007". Center for Applied Urban Research, University of Nebraska at Omaha.

<sup>18</sup> Friedman, Donna H., et al.(2007) "Preventing homelessness and promoting housing stability: a comparative analysis.", online: [https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1002&context=csp\\_pubs](https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1002&context=csp_pubs) average stay of 3 months, amount adjusted for inflation and currency

<sup>19</sup> Massachusetts legal Assistance Corporation (2015) "Civil Legal Aid Yields Economic Benefits to Clients and to the Commonwealth", online: [https://mlac.org/wp-content/uploads/2015/08/Economic\\_Benefits\\_FY12.pdf](https://mlac.org/wp-content/uploads/2015/08/Economic_Benefits_FY12.pdf); New York State Department of Social Services (1990) "The Homelessness Prevention Program: Outcomes and Effectiveness", <http://www.nlada.org/DMS/Documents/1195250846.92/NYSDeptofSS%20%20Homelessness%20Prevention%20Pram%20Outcomes%20%26%20Effect.pdf>



Similarly, proper funding of landlord-tenant actions can prevent a 9% reduction in house prices for neighbours up to 150m away through the proper treatment of contaminants, such as asbestos or foul odours.<sup>20</sup>

Nor can the indirect consequences of housing support be ignored. This results in increased stability in employment, and therefore better-paying jobs. Together, this can result in significant savings, with one study in Philadelphia finding that a \$3,546,180 expenditure on legal representation to low-income tenants in evictions could save \$45,189,458 annually, or £12.74.

### Immigration

Whilst legal aid for irregular migration is available, it is not working effectively. 40% of those applying for asylum in the UK have been denied access to legal aid.<sup>21</sup> If those 40% of migrants who lack legal aid were provided with it, based on the Home Office's own statistics there would be a £168 million saving per year in the cost of asylum housing.<sup>22</sup>

Civil legal aid funding for irregular migrants has a proven effect on asylum seekers' success rate in legalising their status, allowing them to obtain lawful employment, and contribute to the taxation system.<sup>23</sup> A UK Home Office study in 2013 showed that a basic form of migrant legal aid, the "Early Legal Advice Project", led to a 7% increase in the success rate of asylum applicants being given discretionary leave to remain, as well as reduced the volume of appeals, and created broader savings across government.<sup>24</sup>

When factoring in the contribution of the regularisation of irregular migrants to the UK economy, our analysis finds that providing better civil legal aid for migrants would therefore generate £256.15 million for the government, and £532 million to the UK economy overall.<sup>25</sup>

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<sup>20</sup> Lin, Zhenguo, Eric Rosenblatt, and Vincent W. Yao (2009) "Spillover effects of foreclosures on neighbourhood property values." *The Journal of Real Estate Finance and Economics* 38.4: 387-407, online at: <https://tinyurl.com/4tr6zu9c>

<sup>21</sup> Mediocott, L. (2022) "Exclusive: Crisis in legal aid system as asylum seekers unable to find lawyers", <https://www.opendemocracy.net/en/asylum-seekers-legal-aid-system-crisis-justice/>; Siddique H. (2022) "Refugees Being Sent To Areas Of UK With Little Or No Legal Aid, Study Finds" *The Guardian*. <https://www.theguardian.com/law/2022/may/26/refugees-being-sent-to-areas-of-uk-with-little-or-no-legal-aid-study-finds>

<sup>22</sup> Lane, M., Murray, D., Lakshman, R., Device, C., & Zurawan, A. (2013). Evaluation of the Early Legal Advice Project - Final Report. London: Home Office [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/199962/horr70.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/199962/horr70.pdf)

<sup>23</sup> Smith, Ken, Kelly Thayer, and Kathy Garwold. (2013) "An Assessment of the Economic and Societal Impacts of Canal Alliance's Immigration Legal Services.", [https://greatprograms.org/pdf/G\\_MCF%20Report%20by%20The%20Resource%202013.pdf](https://greatprograms.org/pdf/G_MCF%20Report%20by%20The%20Resource%202013.pdf)

<sup>24</sup> Lane, M., Murray, D., Lakshman, R., Device, C., & Zurawan, A. (2013). Evaluation of the Early Legal Advice Project - Final Report. London: Home Office [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/199962/horr70.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/199962/horr70.pdf)

<sup>25</sup> *How to fund it: the economic case for legal aid*, Annex A: Society of Labour Lawyers, *Towards a National Legal Service: New Visions for Access to Justice* (2023), p27

## Downstream Benefits from Early Legal Advice

Provision of early legal advice can help:

- prevent the costs of future litigation, by informing individuals about their rights at an early stage,
- maximise benefits to which people are entitled,
- help resolve debt problems, and
- negotiate disputes at an early stage, avoiding legal costs accrued by legal aid representation, by public authorities, and court costs and time.

## Funding

Such services need not be provided through additional burdens on the treasury. Even a 10% increase in funding for civil legal aid to provide such services could be covered by the three measures outlined in the chapter of the Pamphlet entitled *“How to fund it: the economic case for legal aid”*, especially when viewed in the context of rising interest rates.

## Question 6

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

We have no submissions in respect of this question.

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

We have no submissions in respect of this question.

**6.2. How could the system be structured better?**

We have no submissions in respect of this question.

## Question 7

**Is there anything in particular in civil legal aid that prevents practitioners with protected characteristics from starting and continuing their careers? If yes, how could this be addressed?**

The Bar Council has warned that “there is a real danger that efforts to make the Bar as a career more accessible to those from less privileged backgrounds, women and barristers from ethnic minority backgrounds will go into reverse.”<sup>26</sup>

The low fees and uncertainty as to whether a barrister will even be able to recover their fees from the Legal Aid Agency creates an environment which pushes legal aid practitioners to leave in droves (a trend which has been observed by our legal aid practitioner members).

These problems have a disproportionate impact on people with protected characteristics and those from lower socioeconomic backgrounds. This is simply not acceptable, for lawyers *and* their clients. We have provided empirical and anecdotal evidence below.

### **Caring Responsibilities**

Counsel are routinely expected to work unsociable hours (including weekends). This has a disproportionate impact on persons with disabilities and caring responsibilities (especially women).

### **Gender**

Male barristers’ median gross earnings are higher than women’s across every practice area. This disparity becomes more severe in the period 11-15 years after qualification.<sup>27</sup>

64% of barristers whose main practice area is family law are women - an area which is mostly civil legal aid funded.<sup>28</sup>

### **Ethnicity**

We are concerned that the judiciary and both branches of the legal profession have a significant amount of work to do to make the profession a more accessible place for people from ethnic minorities.

#### Ethnicity in the Legal Profession

Progression to senior roles remains a problem in England and Wales. Only 8% of partners in large firms come from ethnic minority backgrounds, compared to 20% in single partner firms. The experiences of ethnic minority lawyers suggest that lack of sponsorship and guidance,

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<sup>26</sup> Bar Council of England & Wales, *Running on Empty: Civil Legal Aid Research Report*, (2021) p12

<sup>27</sup> Bar Council of England & Wales, *Gross earnings by sex and practice area at the self-employed Bar*, (2023), p8

<sup>28</sup> *ibid* p14

unequal allocation of 'good' work opportunities, and not fitting into a predominantly white culture are only some of the problems.<sup>29</sup> The industry must continue to improve its workplace cultures.

Any assessment must also be placed in an intersectional context that understands the relationship between ethnicity and socioeconomic background. In roundtable discussions with the Law Society, a significant proportion of ethnic minority solicitors expressed being the first in their family to attend university and lacked connections and industry knowledge in their earlier career. The lack of social, cultural and human capital among certain ethnic minority lawyers is a useful entry point for analysing how socioeconomic background can influence the experience of ethnic minority lawyers in England and Wales.<sup>30</sup>

### Ethnicity in the Judiciary

Ethnic minorities remain underrepresented in the judiciary. 90.1% of judges in England and Wales are white, compared to 81.7% of the population of England and Wales.<sup>31</sup> There is progress to be made in the judicial appointments process.

Lawyers from ethnic minorities have lower rates of recommendation for judicial appointments than white lawyers. Between April 2019 to March 2022, ethnic minority barristers and solicitors accounted for 9% and 15% of the applications for judicial appointments respectively, yet only accounted for 7% and 5% of recommendations. In contrast, white solicitors and barristers accounted for 40% and 36% of applications but received 32% and 56% of recommendations.<sup>32</sup>

- **The causes of unequal outcomes in judicial appointments must be explored.** Consideration must be given to dynamics within the appointments process, as well as a holistic assessment of the obstacles which ethnic minority lawyers may experience in their earlier careers.

### **Socioeconomic Background**

Socioeconomic status and background is not a protected characteristic under the Equality Act 2010, but its significance within conversations around diversity and inclusion, and the day-to-day lived experience of people with protected characteristics warrants its mention.

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<sup>29</sup> Law Society, *Race for inclusion: the experiences of Black, Asian and minority ethnic solicitors*, (2020) <https://www.lawsociety.org.uk/topics/research/race-for-inclusion-the-experiences-of-black-asian-and-minority-ethnic-solicitors>

<sup>30</sup> *ibid*

<sup>31</sup> Clarke, D., *Ethnicity of court judges in England and Wales 2023*, (2023) <https://www.statista.com/statistics/1105816/ethnicity-of-judges-in-the-uk/#:~:text=As%20of%202023%2C%20around%2090.1,mixed%2C%20or%20other%20ethnic%20backgrounds>.

<sup>32</sup> Ministry of Justice, *Diversity of the judiciary: Legal professions, new appointments and current post-holders – 2022 Statistics*, (2023) <https://www.gov.uk/government/statistics/diversity-of-the-judiciary-2022-statistics/diversity-of-the-judiciary-legal-professions-new-appointments-and-current-post-holders-2022-statistics>

We are concerned that retention problems among junior barristers would have a disproportionate impact on those from lower socioeconomic backgrounds. Such persons do not have financial support from their family or partner to build and advance their practice. This is echoed by the Bar Council.<sup>33</sup>

### **The Data Problem**

There is a distinct lack of data on retention and earnings by protected characteristic and socioeconomic background among legal aid practitioners.

This is reflective of a wider industry problem. For instance, the Law Society does not report on the prevalence of disabilities or the socioeconomic composition of the legal profession in its annual statistics report. This must be improved so that stronger empirical evidence is available to identify problems and solutions.

These trends may be indicative of a structural problem of the Bar as a profession. Barristers being largely self-employed means that individual circumstances have a greater impact on career progression, performance and earnings.

### **Suggestions**

Despite these challenges, there are many positive initiatives which support increased diversity in the legal profession which, in turn, contributes to better client outcomes.

This is particularly true of charities and support networks for aspiring lawyers. There are countless success stories from social mobility organisations such as The 93% Club Foundation, Upreach, GROW Mentoring, and Bridging the Bar, which demonstrate the impact that information sharing and one-to-one mentoring can have on navigating systemic disadvantage.

- The government should explore how such organisations can be integrated into its policy framework so that the legal profession better reflects the lived experiences of its clients. Proper funding of the legal aid system would assist this.

## **Question 8**

**How can the diversity of the profession be increased in legal aid practice, including ethnicity, disability, sex, age and socio-economic background?**

*Please refer to our submissions for [Question 7](#).*

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<sup>33</sup> Bar Council of England & Wales, *Running on Empty: Civil Legal Aid Research Report*, (2021), p20 [link](#)

## Question 9

### **What barriers/obstacles do you think individuals encounter when attempting to access civil legal aid?**

The difficulties in accessing civil legal aid are clearly shown by the reduction of applications for civil legal aid. Applications for civil legal aid dropped from 203,323 in 2009-2010 to 114,687 in 2021-2022.<sup>34</sup>

### **Advice Deserts**

Since 2013, firms across the country have been forced to close their legal aid departments, leaving millions of people with no provider in their local area.<sup>35</sup>

Between 2012 and 2021, the number of advice agencies and law centres doing legal aid work dropped 59%. This has created large advice deserts – areas where people entitled to legal aid can no longer get it. Law Society data suggests that this already attenuated legal aid base will drop by a further third by 2025.<sup>36</sup>

Across England and Wales:<sup>37</sup>

- 53m people (90%) do not have access to a local education legal aid provider.
- 49.8m people (84%) do not have access to a local welfare legal aid provider.
- 42m people (71%) do not have access to a local community care legal aid provider.
- 39m people (66%) do not have access to a local immigration and asylum legal aid provider.
- 25.3m people (42%) do not have access to a local legal aid provider for housing advice, a figure that has grown 5% since 2019.

Almost 41% of the population of England and Wales do not have a housing legal aid provider in their local authority area, a figure that has grown by around 3% since 2019 and only 36% of the population have access to more than one provider in their local authority area.<sup>38</sup>

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<sup>34</sup> Ministry of Justice, *Legal aid data: Civil Representation*, GOV.UK Justice Data, (2024), <https://data.justice.gov.uk/legalaid/Legal-aid-civil-representation>

<sup>35</sup> The Law Society, *Legal Aid Deserts*, (2024) <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

<sup>36</sup> Law Society data, quoted in the chapter *Access to Justice*, [Annex A](#): Society of Labour Lawyers, *Towards a National Legal Service: New Visions for Access to Justice* (2023), p12

<sup>37</sup> *ibid*

<sup>38</sup> The Law Society, *Legal Aid Deserts*, <https://www.lawsociety.org.uk/campaigns/civil-justice/legal-aid-deserts/>

We particularly highlight:

- **Eligibility and scope are too narrowly defined**, helping too few people with too little. Civil legal aid is contracted prescriptively and is unresponsive to emerging challenges (e.g. Grenfell, pandemic).
- **Lack of expertise**: The cuts to legal aid have decimated the legal and advice sector, leading to expertise loss and chronic workforce shortages.
- **Difficulties finding the correct place for appropriate and trusted legal assistance** Only one in six people who have a legal problem understands it as such, so many initially look for help in the wrong places.<sup>39</sup> There needs to be better sign-posting from government agencies to assist people in recognising legal difficulties and accessing early advice.
- **A lack of funding for Law Centres** Access to legal advice is severely hampered by the lack of adequate funding for existing law centres.

Further analysis of the barriers and obstacles individuals encounter when accessing legal aid can be found in the chapter *Access to Justice*, p12 of the Pamphlet in Annex A.

## Question 10

**What could be done to improve client choice such that it is easier for clients to find civil legal aid providers and make informed decisions about which one best meets their needs?**

We recommend:

- **Better coordination with private practice and the Citizens Advice Service**: Historically, there has been little coordination between the work of the advice sector and private practice legal aid. Legal aid needs to be given a tighter, user-focused, public-facing remit. Assistance provided by the Citizens Advice Service and other advice agencies needs to be better coordinated within it.
- All centrally funded legal and advice services should be integrated financially and funded through one department - the Ministry of Justice.
- **Establishing a National Legal Service** would assist clients in finding legal aid providers and making informed decisions. A National Legal Service would incorporate a range of new and old providers of legal aid to form one integrated service that would provide legal help for all those who cannot afford it.

The chapter *A National Legal Service*, pp4-6 of our Pamphlet in Annex A goes into further detail on the establishment and benefits of a National Legal Service.

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<sup>39</sup> Analysis by the Law Centres Network in *Access to Justice in Civil Law: Proposals for Recovery*, [Annex A](#): Society of Labour Lawyers, *Towards a National Legal Service: New Visions for Access to Justice* (2023), p6

## Question 11

**Do you think that some people who are eligible for civil legal aid may not know that it is available and/or how to access it? If so, how do you suggest that this is addressed?**

Yes. This is in part due to the lack of funding for legal advice centres and the existence of legal advice deserts across the UK.

**Better funding for existing legal advice centres** is essential to improving access to civil legal aid and informing individuals if they are able to access existing legal aid.

See our response to [Question 17](#) for further information about the benefits of well-funded legal advice centres.

## Question 12

**How do you think that people receiving civil legal aid can be supported in cases where they have multiple or 'clustered' legal issues and some of these are outside of the scope of civil legal aid?**

**Access to early legal advice through properly funded legal advice centres can support people with multiple or 'clustered' legal issues.** Advisers are able to see the 'bigger picture' of how issues interact and can offer appropriate advice at the start of a persons' legal journey. This can lead to an individual taking the most appropriate and efficient path to resolve their problem, helping alleviate pressure on the courts.

For example, a tenant in rent arrears should receive advice on debt, welfare benefits, retaining their home if faced with a possession case, and means of finding a new home if necessary. The advice need not be delivered directly by a lawyer, but there should be robust mechanisms for ensuring high quality advice, supervised by expert lawyers.

## Question 13

**How do you think that the Exceptional Case Funding scheme is currently working, and are there any ways in which it could be improved?**

We have no submissions in respect of this question.



## Question 14

### **What are the ways in which technology could be used to improve the delivery of civil legal aid and the sustainability of civil legal aid providers?**

We are interested in hearing about potential improvements from the perspective of legal aid providers and people that access civil legal aid.

**Cost savings should be a benefit, not the aim:** Technology has the potential to improve the provision of legal aid, but the focus of any technological innovation must be on improving the user-experience for legal aid clients. Cost savings should be considered as a benefit, but not the overriding aim of technological innovation.

Filing documents digitally, filling out online forms, or using video conference software offer increased convenience for many people. But they should not be the only option. The legal aid system must retain the option of paper forms. Video conferencing should only ever be an option, not a compulsion.

**Digital subscriptions to enable/facilitate liaison with clients, experts and others are expensive for small and non-profit providers.** A business subscription to Zoom, one of the most popular video conferencing services, starts at £1749 per year.<sup>40</sup> The cost to non-profit legal aid providers of a video conferencing platform subscription (such as Zoom) should be covered by legal aid funding.

It is imperative that when considering technological innovations, the following must be considered:

### **Digital Divides**

Note everyone has access to a good quality laptop with a camera or a stable and fast internet connection.

- 7% of the UK population do not have household internet access.<sup>41</sup>
- 34% of people in the UK aged over 55 have **not** used the internet within the last three months.<sup>42</sup>
- Across all age groups, a large proportion of people that do not use the internet are disabled.<sup>43</sup>

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<sup>40</sup> Zoom Pricing, <https://zoom.us/pricing>

<sup>41</sup> Office for National Statistics, *Internet access – households and individuals, Great Britain: 2019*, [Link](#)

<sup>42</sup> *ibid*

<sup>43</sup> Office for National Statistics, *Exploring the UK's digital divide*, 'Internet Users, Labour Force Survey (LFS)', [Link](#)

- Low-income households are significantly more likely not to have an internet connection.<sup>44</sup>
- 20% of households with two adults and four or more children do not have a home computer.<sup>45</sup>

These divides are particularly relevant for informal migrants new to the country, people on low incomes, and people experiencing homelessness.

### Digital Literacy

Digital literacy is the skills and confidence of people to use technology. Not everyone has the same level of technical skills. Using video conferencing or reading digital documents is not a universal skill, and should not be seen as such.

- 11.3 million people (21%) lack **any** basic digital skills.<sup>46</sup>
- 5.4 million working adults (10%) are without basic digital skills.<sup>47</sup>
- Significant regional variations exist in digital literacy. For example, 19% of the Welsh population are estimated to have no basic digital skills.<sup>48</sup>

## Question 15

**Remote legal advice, for example advice given over the telephone or video call, can be beneficial for delivering civil legal aid advice.** Please provide any specific evidence and thoughts on how the system could make the most effective use of remote advice services and the implications for services of this.

*Noting the response to Question 14 on digital divides and inequalities in digital literacy.*

The benefits of remote legal advice are not a certainty. For legal aid clients to achieve the greatest benefits from remote legal advice, they require a quiet space where they can have a confidential conversation. This is not available for many people living in shared accommodation or with a family: across England and Wales, 10.9% of all households have only one or two rooms.<sup>49</sup>

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<sup>44</sup> Carnegie Trust data, *ibid*

<sup>45</sup> Statista, *Percentage of households with a home computer in the United Kingdom (UK) in 2021, by household composition*, <https://www.statista.com/statistics/289339/distribution-of-home-computers-in-the-uk-by-household-composition/>

<sup>46</sup> Department for Education, *Essential Digital Skills Framework*, <https://www.gov.uk/government/publications/essential-digital-skills-framework/essential-digital-skills-framework>

<sup>47</sup> *ibid*

<sup>48</sup> Lloyds Bank UK Consumer Digital Index, 2018; in Office for National Statistics, *Exploring the UK's digital divide*, 'Internet Users, Labour Force Survey (LFS)', [Link](#)

<sup>49</sup> Office for National Statistics, *Housing, England and Wales: Census 2021*, (2023) <https://www.ons.gov.uk/peoplepopulationandcommunity/housing/bulletins/housingenglandandwales/census2021>

Not everyone has access to a modern phone or computer that is capable of running the correct video conferencing software. Equally, a fast and reliable internet connection is also not universal.

- Public services, such as libraries, could provide the space, equipment, or internet connection. Spaces where people can access a quiet and confidential area to receive remote legal advice should be signposted prior to a call. It is vital that these public services are also adequately funded.

## Question 16

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

*Noting the response to Question 14 on digital divides and inequalities in digital literacy.*

### Barriers to Users

As mentioned in Question 14, the further use of technology can compound existing digital divides and further increase the asymmetric power between a well-resourced claimant and a civil aid defendant.

Our member barristers report that in many legal aid cases where they work with vulnerable individuals, it is common for their lay clients not to have access to a laptop and a space where they can have a confidential conversation. This seriously impacts on the provision of confidential and frank legal advice, or on a positive experience for legal aid clients.

Moreover, participating in a remote hearing is particularly difficult for users who may only have a mobile phone or a small device such as a tablet. As a video conferencing app takes up the whole device's screen, users are unable to simultaneously view the associated electronic documents, such as bundles, which will be referred to during the hearing.

- **Digital services must work across all types of platforms and devices.** Many websites continue to be optimised only for a desktop computer. A significant proportion of the population do not have access to a desktop computer or laptop, For example, a website for submitting a form must work equally well on a small smartphone screen as it does on a tablet or desktop computer.

As noted in Question 14, a further barrier is the lack of access by many people to a fast and reliable internet connection. This hampers a user's ability to easily engage in remote hearings or conferences.

### Barriers to Providers

Subscriptions to software, digital services, and IT support are expensive. This is particularly salient to small and non-profit providers, such as legal advice centres. These costs should be reflected in legal aid funding.

Moreover, the Microsoft Office suite is an essential tool that requires a yearly subscription. A standard business subscription to Microsoft 365 to use applications such Word, Excel, or Teams is £1236 per year for 10 users.<sup>50</sup>

## Question 16.1

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

We have no submissions in respect of this question.

## Question 16.2

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

Family legal aid clients are more likely to be from vulnerable backgrounds. The existing issues of access to technology, internet, or a confidential environment are further compounded for family legal aid clients.

## Question 17

**What do you think could be done to encourage early resolution of and/or prevention of disputes through the civil legal aid system?**

**Early advice is key to the efficient resolution of problems, benefitting the individual and society.** Early advice can frequently prevent litigation and thus save public money and prevent the well-known stresses and social costs of litigation.

**Legal advice centres** are an important factor in providing advice and assistance, and where appropriate support early resolution. Legal problems can be analysed and assisted holistically, and where other public services can easily refer or signpost to legal advice.<sup>51</sup> These benefits can only be realised if legal advice centres are better funded.

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<sup>50</sup> Microsoft 365 Business Subscription Plans <https://www.microsoft.com/en-gb/microsoft-365/business/compare-all-microsoft-365-business-products>

<sup>51</sup> See Sue James, *Legal Advice Services should allow for the complexity of people's social welfare problems*, *Legal Action magazine*, (2021), <https://www.lag.org.uk/article/210707/legal-advice-services-should-allow-for-the-complexity-of-people-s-social-welfare-problems>

**Funding for legal advice centres leads to savings in other areas of government expenditure.** The Law Centre Network estimated direct savings of £212 - £247 million as a consequence of annual costs, associated with debt, temporary accommodation, homelessness, stress, anxiety and ill health.<sup>52</sup>

**Restoring the scope, coverage, and funding of civil legal aid to pre-1999 levels** would ensure the correct representation and advice is given to legal aid clients, and they are supported to achieve early resolution, where appropriate.

For example, in housing law, where early advice prevents a possession claim and keeps a tenant in their home, this benefits the tenant, landlord and the public purse. In 2010, Citizens Advice calculated that **£1 of housing advice saved the government £2.34.**<sup>53</sup>

We recommend:

- **Civil legal aid that provides early legal advice should be the norm** for most people. Early legal advice should be provided for all potential civil areas of law but particularly debt, housing and welfare benefits. Early legal advice is cheap, economical and often resolves problems.
- The civil legal aid system should **acknowledge that early resolution may not always be appropriate.** Putting pressure on individuals to end their dispute early might result in unjust outcomes and greater downstream costs.
- **Provide greater options for non-court dispute resolution:** Support other non-court dispute resolution processes, not just mediation, including solicitor negotiation, collaborative law, and “packages” of support, e.g. legal advice, mediation and counselling. This is of particular importance to family civil legal aid cases.
- **Introduce a straightforward judicial dispute resolution procedure for immigration and asylum cases.** A straightforward judicial dispute resolution procedure in the expert tribunals and courts, including Home Office concessions in appropriate cases where such resolution is possible. A lot of administrative and lawyer time and more importantly public money is spent on the Home Office defending cases which could and should have been conceded earlier.
- **Enhance legal dispute resolution procedures in immigration and asylum law.** Stripping away complexity in the system and preventing costly future appeals will have numerous downstream savings.
- For immigration and asylum law, we further recommend:
  - A right of appeal to the First-tier Tribunal (FTT) to challenge a poor decision of the Home Office for those seeking to enter or remain in the UK.

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<sup>52</sup>The Case for Law Centres, [Annex A](#), p21.

<sup>53</sup>Right Time, Right Place, Improving access to civil justice; ibid, p21

- The restoration of legal aid for legal advice on applications and thereafter representation before the FTT.
- For those seeking protection (Refugees, Stateless Persons, etc): a simple right of appeal to the FTT. The system is unnecessarily complicated and therefore expensive. Such complexity should be stripped away, to enable cheap, cost-effective dispute resolution in the FTT.
- **Establish a National Legal Service** that integrates all centrally funded legal and advice services through the Ministry of Justice. This would encourage, where appropriate, early resolution and the escalation of disputes.
- **Ministry of Justice policy** should be directed to two linked common objectives: ensuring people know their legal rights and obligations; and encouraging them to resolve problems and settle disputes by the most appropriate means.

## Question 18

### **Is there anything else you wish to submit to the Review for consideration?**

The importance of an adequately funded civil legal aid system cannot be understated.

For the system to survive, funding must be urgently restored to pre-LASPO standards as a minimum - in terms of scope, means testing, and rates of pay for providers. Ideally funding and coverage should be restored to pre-1999 levels.

Urgent action is needed to prevent further providers from exiting. The level of remuneration for providers has fallen so low that existing providers are leaving in droves, leading to a loss of knowledge and experience for areas of law covered by civil legal aid.

Under-investment in the courts and their related staff have resulted in a lack of capacity and knock on delays. Delays add further expense to civil legal aid and frustrate the effective administration of justice.

## Annex A

Society of Labour Lawyers, *Towards a National Legal Service: New Visions for Access to Justice*





Society  
of Labour  
Lawyers

# TOWARDS A NATIONAL LEGAL SERVICE

new visions for access to justice

# 2023



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# PREFACE

The legal aid scheme was one of the great post-war reforms of the Attlee government. The National Health Service sought to ensure that no one was without good medical care. The legal aid scheme sought to ensure that no one was without good legal advice or representation, initially in matrimonial cases but subsequently in a range that ultimately included advice on any matter of English or Welsh law if the financial eligibility criteria were met. (Criminal cases were always dealt with separately.)

At its best, it was transformational, helping to shift the balance of power within society and providing justice for the many, not the few. It enabled women who had been abused to gain injunctions against violent men; tenants to prevent eviction and harassment by rogue landlords; workers to gain compensation from their employers for injuries suffered at work; and consumers to gain redress for faulty goods and dodgy services.

Now, though, it is broken beyond repair. Over the past thirteen years, it has been destroyed. It has been eviscerated by legislative changes, starved of resources, and ruined by poor management.

It is time to start again with a new vision.

Towards a National Legal Service: New Visions for Access to Justice sets out how the next Labour government could implement that vision by creating a National Legal Service (NLS) that would put the interests of people with legal problems first – in the same way that the National Health Service puts the interests of people with health problems first.

At the same time, civil legal aid must be restored to pre-LASPO standards as a minimum – in terms of scope, means test, and rates of pay. A Labour government also needs to support and fund our law centres, which are likely to provide the backbone for a NLS. Otherwise a NLS will come into being with very few experienced civil legal aid practitioners available to work for it, and collective knowledge of housing law, immigration law, and welfare benefits law will simply have been dissipated and will have to be re-created from scratch.

Providing civil legal aid will also result in direct benefits to the treasury: from reduced demand

on the NHS and social housing, to fewer welfare payments and increased tax revenues. It will also have indirect effects on the economy, with proper family, employment, housing, and immigration advice resulting in more people in work, generating both revenue and consumer spending. These amounts are far from small, with at least nine empirical studies of civil legal aid systems showing a benefit of over £10 for every £1 spent on funding legal aid services.

This paper is based upon a number of contributions, both written and oral, made at a Society of Labour Lawyers round-table discussion held on 20th March 2023 at Middle Temple. Contributors to that meeting (not all of whose organisations are connected to the Labour Party) included; Steve Reed MP (Shadow Lord Chancellor and Minister of Justice); Catherine Atkinson (Chair of the Society of Labour Lawyers); David Drew (Vice Chair of the Society); Stephen Hockman KC (former Chair of the Society); Sally Hughes; Lord Willy Bach (last Labour legal aid minister); Carol Storer (solicitor, freelance consultant, former Director of the Legal Aid Practitioners Group); Chris Minnoch (Legal Aid Practitioners' Group); Rohini Teather (LAPG); His Honour Nic Madge (former circuit judge); Adrian Berry (barrister, Garden Court Chambers); Roger Smith OBE (former director of LAG and JUSTICE); Ellen Lefley (JUSTICE); Nimrod Ben Cnaan (Law Centres Network); Andrew Hogan (barrister); Julie Bishop (LCN); Liz Davies KC (barrister, Garden Court Chambers); Sonali Naik KC (barrister, Garden Court Chambers), Sam Townend KC and Nikita Feifel (Bar Council), Richard Owen (Law Society, Swansea University); Sue James (Legal Action Group); and Simon Mullings (Housing Law Practitioners Group). There is a subsequent contribution on funding from Joseph Kelen, chair of the Junior Labour Lawyers.

The aim of this paper is to reflect the considerable degree of consensus which emerged at that meeting, but its contents do not necessarily always reflect the views of all of the contributors. Thanks are due to Nic Madge who compiled and edited the composite draft of this paper.

# A NATIONAL LEGAL SERVICE

## Roger Smith OBE and His Honour Nic Madge

The rule of law is fundamental to any civilised society. However, the rule of law cannot function without access to justice. Now, due to the lack of legal advice and representation, many people are excluded from their democratic right to justice. The legal aid system is broken beyond repair. It is time to start again with a new vision.

There is an urgent need for a national debate about the way in which legal aid is provided. The forthcoming general election provides the context. That debate must incorporate the voice of all interested parties and extend discussion beyond the representative bodies of the legal profession. This paper sets out, in outline form, proposals that could be incorporated into the manifesto of any political party seeking to form the next government.

Any new provision must focus on the needs of the people who will use it, remembering that they will include the most disadvantaged and vulnerable members of society.

Our pamphlet, published by the Legal Action Group explores what might be done with only limited increases in government expenditure. Clearly, this must involve radical change. The most significant will be a change of mindset. To carry this through will require strategic leadership from the Ministry of Justice.

Any reformulation of legal aid in the next Parliament will only succeed if it has the active support of the lord chancellor; an energetic and committed legal aid minister; engaged senior officials at the Ministry of Justice; the senior judiciary; and practitioners. They need to provide the necessary collective leadership. Access to Justice for all must be a political priority.

The new mission of legal aid should be to improve the ability of people to enforce rights, resolve legal problems, and settle disputes.

For there to be effective access to justice for all, there must be a comprehensive network of integrated levels of assistance, each potentially separate but commonly branded as part of a new National Legal

Service, that progressively assist people to enforce rights, resolve problems, and settle disputes. That will range from the basic provision of information through access to self-help tools where appropriate to individualised legal advice and representation.

**The new mission and vision require four preconditions:**

- 1. strategic leadership;**
- 2. a new National Legal Service to provide comprehensive advice and representation;**
- 3. investment in innovation and technology; and**
- 4. a sustainable financial basis.**

The immediate challenge for legal aid and access to justice is, therefore, to provide a new sense of overall direction and purpose.

In England and Wales, the government should establish, by Act of Parliament, a new National Legal Service. That National Legal Service should incorporate through common branding a fresh mix of new and old providers of legal aid to form one integrated service that would provide legal help for all those who cannot afford it.

The interests of the consumers – the people with legal problems – must come first. The new National Legal Service must be designed to meet their needs. It must focus on the needs of the people who will use the service, remembering that they will include the most disadvantaged and vulnerable members of society.

The work of the National Legal Service would require collaboration with the Ministry of Justice, other government departments, HM Courts and Tribunal Service, the judiciary, and academic institutions.

The nature of the services provided by the National Legal Service should be determined by function, not by the type of provider.

All early or initial advice services should be branded as part of the National Legal Service.

**The National Legal Service's functions should be divided into three tiers:**

**Initial early information and advice.**

**Digital Plus.**

**Legal representation, both in negotiations and in litigation.**

Flexibility of provision is vital and it is for this reason that a mixed model is likely to be most effective. Existing private practitioners can be contracted to provide services in areas where they have specialised knowledge. However, the best service requires a range of providers.

Existing Law Centres perform a crucially important role, but they are severely hampered by lack of adequate funding. The National Legal Service would provide the opportunity to put Law Centre finances onto a proper, sustainable, long-term footing. National charities that provide legal advice and representation should be brought within the National Legal Service brand.

In time, lawyers would be attracted to a new dynamic National Legal Service, but in the short term, a shortage of lawyers would require innovative solutions, e.g. publicly sponsored retraining of existing lawyers and increased provision of social welfare law course options in academic institutions.

The approach of the National Legal Service would be very different from the old legal aid system. In addition to a different structure, there would be two new elements that would both enhance the service provided and save money: self-help and digitalisation.

The development of artificial intelligence is still in its early days. Services such as ChatGPT and Google Bard are at present insufficiently reliable to provide significant assistance without additional checks to ensure their reliability. However, their future potential

could play a significant role in providing legal services in appropriate situations, although some vulnerable people will always require face-to-face assistance.

The National Legal Service and those who contract with it should explore the digital frontier in legal information, advice, and representation.

The National Legal Service would require a sustainable basis for funding which we explore in more detail in the full version of the pamphlet which is available at

<https://www.lag.org.uk/document-downloads/213950/the-national-legal-service-a-new-vision-for-access-to-civil-justice-roger-smith-and-nic-madge>

# ACCESS TO JUSTICE IN CIVIL LAW: PROPOSALS FOR RECOVERY



## Legal capability: help to take action by yourself

**PROBLEM:** A third of us have had a civil legal problem in the past two years. Only one in six people who have a legal problem understands it as such, so many of us initially look for help in the wrong places. We tend to start by asking not people who should know but rather those we know. This way, if we take action and get help at all, we get frustrated and lose valuable time and faith in justice.

**SOLUTION:** as people do not consider legal problems until they arise, improve people's legal capability through 'just in time' Public Legal Education and Information to shorten and simplify their path to help

Follow where problems arise: target life events where changes occur that drive legal need, such as births, deaths, divorce or falling ill

Follow where people already seek help and upskill 'trusted intermediaries' in the community, such as food bank volunteers, vicars, health visitors, to signpost people more efficiently

Follow the channels that people use: vulnerable people in particular tend to be excluded by digital-by-default communications, so a variety of channels for legal information is necessary

Refocus MoJ's existing 'legal support' programme on demonstrably improving people's legal capability: legal confidence, self-efficacy and the accessibility of the systems they need to use

Invest in innovation to keep legal capability building current: as government does not do innovation well, this should be by backing collaborations with community organisations





## Legal aid: rebuilding the fifth pillar of the welfare state

**PROBLEM:** We currently have a legal aid system that no-one would have designed. Both eligibility and civil scope are too narrowly defined, helping too few people with too little. Civil legal aid is contracted prescriptively and is unresponsive to emerging challenges (e.g. Grenfell, pandemic). The cuts have decimated the legal and advice sector, leading to expertise loss and chronic workforce shortages. The 'safety net' scheme ECF is not delivering for those at risk of human rights breaches. Legal aid bureaucracy is a drain on frontline providers, hampering service to the public. Complementary resources, such as pro bono or charitable funding, cannot and should not fill the shortfall in what is rightfully a public provision.

**SOLUTION:** reform legal aid along these overarching principles:

Help the person, not a case – and fund accordingly: legal problems cluster so should be resolved in the round, improving outcomes and providing best value for money

Matters are in scope unless specifically excluded: this reverses LASPO's presumption (excluded unless listed), to return to that of Labour's Access to Justice Act 1999

One system, accessible by design: publicised, understood and available through multiple channels. Currently, legal aid is a funding system, not a service, and it shows

**Key elements of this reform include:**

**Refocussing civil legal aid around earlier**

**intervention:** Civil legal aid needs to offer more to its target beneficiaries to become fit for purpose once again. The Bach Commission has already outlined several key changes:

Simplify eligibility to make the system more accessible and reduce red tape

Widen civil scope to include problems that practice and scholarship know to cluster

Intervene early, and the 'stitch in time' will lower demand for costlier escalated work

Reform operation of the legal aid system to enable providers to focus on services

To reach people in need earlier, legal aid must enable some providers to work with other community organisations and assist via **non-legal settings**, where people already seek help: healthcare services (already have a duty to reduce inequalities), food banks, migrant support.

While civil legal aid needs to be provided evenly across the country, it must also **respond to local legal need** as it arises and by providing appropriate assistance, not set-menu help.

**Additional legal capacity through mixed provision:**

Departing from the current contracting one-size-fits-all contracting approach, one way to reduce spending on civil legal aid is to follow a mixed delivery model, as in Scotland. This makes the most of differences between commercial and not-for-profit legal aid practitioners, and covers sparsely populated regions, where commercial contracts are not financially viable:

Funding commercial **firms** through contracts for piecemeal work as now (about 85%)

Funding **not-for-profit** legal aid providers through bundled grants that roll up legal assistance with public legal education work and social policy work. Not-for-profits can still take on contracts in addition but can respond to emerging needs flexibly. Not-for-profit contracts were already in use in England previously (about 12%)

Directly employing **salaried solicitors** operating out of regional offices (about 3%)

**Capturing impact and producing evidence:** must be integral to the service, to ensure that its success is well-documented and widely publicised, both in quantitative terms (more people helped) and in qualitative terms (case studies, social policy analyses, media work, data aggregation with other sets across government etc.). It must stop being a 'secret service', and prove its worth so it cannot be played down again.

**BUT FIRST: the single most important vulnerability of civil legal aid right now is its dwindling workforce. An incoming Labour administration must first steady the ship by a) appreciably increasing fees, and b) investing in training new cohorts of social welfare lawyers. This will not significantly increase spending in the medium term as the current workforce is near capacity.**

# ACCESS TO JUSTICE – CIVIL AND FAMILY CASES

Carol Storer OBE

## Background. Reframe the discussion about “legal aid”

The Labour Party should champion access to justice and not be frightened by the Conservative reference to spend and their attacks on e.g. immigration lawyers.

People want fairness in their lives. They know that they should be able to challenge unfair decisions – for the well-off: parking tickets and planning issues, for those with no money: state decisions regarding their benefits, or lack of action on disrepair or their children being taken into care. They know that they want a level playing field when challenging those decisions.

People have seen that a lack of fair process has lost the country huge amounts of money – whether in improperly awarded PPE contracts or the Truss budget – and that unchecked power leads to the outrages that have culminated in Boris Johnson’s recent nomination of his father.

**Fairness matters  
in public life.  
Champion it.**

## Look forensically at areas of scope which were taken out by LASPO

**Look forensically at areas of scope which were taken out by LASPO and bring back the most important that will ensure safety (e.g. domestic violence and disrepair) and improve life chances (as before plus e.g. education).** The Legal Aid Agency quarterly statistics provide very useful data both on early legal advice and cases that go to court. The next set of statistics is out on 30 March 2023. The most recent is [here](#).

Early legal advice: if you look at table 5.1, the number of new matters started (initial advice) opened in the heyday of civil legal aid (2009-2010) was 933,815. Here is a quick summary:-

2009-2010 933,815

This number fell to 173,660 in 2013-14, post LASPO.

For 2021-22 the figure is 127,674.

For the nine years post-LASPO the average per year is 146,800.

Since LASPO hundreds of thousands of people every year have not received even initial advice on their legal problem. They are not all being picked up by agencies and they are not all accessing online information and following through. Early legal advice matters – perhaps people will be advised that they should not pursue a case, perhaps they will be told that only part of their claim is strong, or perhaps they will be advised that they have a strong case. And then there need to be resources to follow through.

**Representation:** Applications for civil legal aid dropped from 203,323 in 2009-2010 to 117,565 in 2013-2014 and in 2021-2022 114,687. So the figure of those represented in civil and family cases has fallen considerably. The Labour Party should be on top of what this means – not just for example parents who do not see their children and families in damp and dangerous properties, but also in litigants

in persons in court acting while under extreme stress and taking up a lot of time in court.

## Can we design a system that also helps group actions?

**Legal aid has become synonymous with championing individual rights – can we design a system that also helps group actions?** The Labour Party should explore how those with legal problems arising from national issues and groups with common interests can access justice. Law Centres used to be able to work with e.g. their local tenants' group to tackle local issues. Or they would have the local knowledge to realise that there was a problem with how the local housing department was tackling an issue such as homelessness gatekeeping. How can these broader issues be tackled more effectively than what we have now. While e.g. strategic litigation is providing a limited amount of work on this area it is only dealing with a tiny part of this issue.

## Ideas for the future must be firmly based in the real world

I am taking it as a given that the Labour Party is looking at ideas being put forward by the Master of the Rolls and the Ministry of Justice. All of these are important going forward but...

ADR and mediation: we learnt from the LASPO cuts that in family cases many people went to mediation because they were referred there by lawyers.

Thought must be given to how to funnel people towards ADR and mediation and when not to. ADR is problematic for those with less money or less bargaining power. There is an issue for people who are powerless. Prof Dame Hazel Genn is one of the leading experts on this. She makes the salient point that there needs to be the ability to litigate if ADR is unsuccessful.

**Online support:** Citizens Advice, Shelter and Law for Life are all great websites for seeking initial advice on certain areas of law. GOV.UK is very good in some areas for headline advice on subjects like divorce if not great on detail. However, it is hard for people to

Know where to get reliable advice – how can people know what is reliable?

I find that websites are never detailed enough to answer any specific legal question I look up – they can only cover subjects quite broadly at present.

If you do discover you have an actionable claim which you cannot deal with yourself, what is the point unless you can either pursue it in person or find assistance? If the provider base is not there, your only choices are to give up or act in person.

The MoJ has a poor record on commissioning IT solutions (CCMS and the common platform).

Artificial Intelligence: AI presents brilliant opportunities but there are many hurdles to accessing and using AI, whatever shape it takes in future.

Current provider base: do not lose it. Whatever the proposals, remember that the number of experienced providers is very limited. If proposals are taken forward which mean that the expertise of this group is lost, it will be difficult to frame a future access to justice system that is meaningful and effective. For many years I have been concerned that the Coalition and the Conservative governments are happy to have very limited access to justice - what I would call a facsimile of justice. It may not matter that hundreds of thousands of people are not receiving meaningful advice, or that tens of thousands do not bring cases that are meritorious, or that hopeless cases are taking up court time as long as there is a system they can point to, however battered and bruised it is. We need to do better.



# PROPOSALS FOR ACCESS TO JUSTICE IN CIVIL AND FAMILY LAW



## Introduction

LAPG is the representative body for those on the frontline of legal aid – solicitors, barristers, caseworkers, costs lawyers, legal executives, managers, and practice managers.

A decade or more of domestic and international crises have exacted an incredible toll on individuals, families, and small businesses up and down the country. A future Labour government will seek to respond to this by unlocking the potential of every individual, breaking down barriers and building a stronger economy throughout the country. Our proposals demonstrate that civil and family legal aid will be an important lever in each area of focus for reshaping society.

We don't see legal aid as an end in itself, rather as a mechanism working across government to improve outcomes and reduce inequality – led by the Ministry of Justice, but acting cohesively with education, housing, local government, health, the Home Office and the DWP to name but a few. We recognise that for those departments to fulfil their obligations to each individual, and for those individuals themselves to fully develop their potential in their communities, they require the tools to do so. The law plays an integral role in unlocking that potential. We provide a number of examples below of how legal aid works in conjunction with other government agendas to break down the social, economic, health and opportunity inequality in our communities.

We also believe that the legal aid sector is an essential part of our high streets. Many legal aid firms and organisations are small businesses, employing talented local people up and down the country and servicing their local communities. By

investing in these local businesses, we spread power and opportunity more equally to develop potential in every part of our country.

Our proposal has three interlinked elements: the scope of the current service, the sustainability of the sector and the future of the workforce. We look first at the current system and how changes could be made to better meet the public's need. We must ensure that when a client presents with a problem that they can access legal advice at the right time which addresses all their legal issues and enables them to resolve the problem in a timely manner. LASPO sought to limit state funding to a narrow range of practice areas. The legislative approach was contrary to the accepted understanding of what clients need. It is time to reframe the argument for legal aid by expanding scope in ways which help to unlock the potential of public policy to reduce poverty and inequality and enhance the health and prosperity of communities across the country.

## Expanding scope to underpin progressive policy-making across government

Across all areas of legal aid, and areas of law which should be brought back into scope, a cogent case can be made to demonstrate the positive impact of publicly-funded legal advice on other priority areas of public policy. Here are four examples, but we propose the development of civil and family legal aid strategy linking publicly-funded advice to complementary areas of public policy:

### Supporting families and survivors of domestic abuse

Making non-means-tested legal aid available for all domestic abuse cases supports the work around the Domestic Abuse Register and Labour's pledge to stand up for survivors of domestic abuse.

Divorce is widely recognised to be the most stressful period experience for a family. Yet many families go through this with no external advice or assistance. We would re-introduce means-tested private family law, for both sides in a dispute, to put the well-being of children at the forefront of the decision making. This will minimise the trauma associated with divorce and ensure the best possible outcome for all concerned by, for example, increasing the take-up of mediation.

### **Improving Housing Standards and supporting tenants and homeowners**

Bring disrepair back into scope in full to give tenants the tools they need to take action against errant landlords. Not only would this move to improve housing conditions and be largely cost-neutral as the cost would be borne by landlords, but it would make legal aid housing contracts more sustainable. This would also advance the agenda set out in the Homes (Fitness for Human Habitation) Act.

Restoring advice on debt and welfare benefits reflects the reality of problem clusters and enables the provision of legal advice at an earlier stage. This in turn promotes tenancy sustainment, reduces the incidence of rent and mortgage possession claims, which also positively impacts on the workload of the county court.

### **Minimising the adverse impact of school exclusions**

58% of young adults in prison were permanently excluded at school with Roma, Traveller, Black and SEN children being disproportionately represented. Restoring education advice in full will minimise exclusions and reduce the school-to-prison pipeline by supporting children most at risk of offending.

### **A functioning immigration & asylum system**

Most would agree that the existing asylum system requires a complete overhaul, with the need to establish safe routes and ensure that claims are heard fairly, and decisions are lawful in reached in a timely manner. The ability of overhaul the system will be undermined by a lack of immigration and asylum providers to deliver advice and representation.

## **Sustainability and structural changes – fees, contracts and internal LAA processes**

As the Shadow Justice Team is aware, much work has been done over the past ten years to demonstrate that the civil legal aid system needs reform and investment<sup>1</sup>. Fees were last set in 1996 and cut by 10% in 2011. Furthermore, LASPO removed from scope the less complex cases that provided an element of balance within fixed fee schemes. The services producer price inflation index indicates that inflation alone has resulted in a 48% depreciation in the value of legal aid fees. As a result the number of legal aid providers has almost halved and great swathes of the country have very limited supply. Those who remain report a crisis in recruitment and retention. Any proposal to improve the legal aid system will have marginal impact at best in the absence of an across the board increase in fees. There is also the need for significant structural reform to legal aid contracts and internal LAA processes, which is likely to require amendments to primary and secondary legislation and guidance or, potentially, a new legislative framework.

## **Addressing the recruitment and retention crisis**

There is also need for further investment to be made in the sector to allow firms, NfPs and chambers to recruit, train and retain practitioners. One of the most damaging effects of fee cuts is on the ability to recruit new staff and provide the level of support required to retain staff. This includes helping the next generation of legal aid lawyers to qualify and ensure there is clear progression and an attractive career path. We propose a funding scheme similar to that run by the Legal Services Commission, which assisted more than 750 trainees to qualify but ceased in 2010.

<sup>1</sup> See Westminster Commission on Legal Aid, Inquiry into the Sustainability of Legal Aid, 2021 and Justice Select Committee 'The Future of Legal Aid' 2021 for specific recommendations around civil legal aid fees.

# ACCESS TO JUSTICE

## Richard Owen, The Law Society

Access to justice is a “win-win” for clients and the economy. If the public can access high quality legal advice, there are benefits both to the economy and savings for other government departments such as the Department of Health and Department of Work and Pensions, as well as creating internal savings for the Ministry of Justice, for example, through reduced costs for HMCTS.

Despite this there is real concern on the part of the Law Society of England and Wales about the sustainability of the civil legal aid sector of the solicitors’ profession. Since 2013, firms across the country have been forced to close their legal aid departments, leaving millions of people with no provider in their local area. In the year The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force, the number of advice agencies and law centres doing legal aid work dropped 59%, compared to 2012. This created large advice deserts – areas where people entitled to legal aid can no longer get it. Law Society data suggests that this already attenuated legal aid base will drop by a further third by 2025.

The last time fees were increased for civil legal aid was in 1996, over 25 years ago. On top of this, the government imposed a further 10% fee-cut in 2011. This represents a real-terms cut of 49.4% in fees to 2022, so there are serious questions over the commercial viability of the civil legal aid system. An example of the lack of financial viability is shown by The Legal Aid Agency’s difficulties in getting coverage for the Housing Loss Prevention Advice Scheme. There were no compliant bids in twelve areas of the country, which represents over a tenth of the entire provision, including Liverpool, a dense urban area with a population of almost half a million people.

In criminal legal aid, the Law Society has already had to warn its members that the lack of commercial viability of legal aid rates means such work could potentially be incompatible with their professional obligations as the Solicitors Regulation Authority

requires solicitors’ practices to monitor their financial viability.

### Across England and Wales:

53m people (90%) do not have access to a local education legal aid provider

49.8m people (84%) do not have access to a local welfare legal aid provider

42m people (71%) do not have access to a local community care legal aid provider

39m people (66%) do not have access to a local immigration and asylum legal aid provider

25.3m people (42%) do not have access to a local legal aid provider for housing advice, a figure that has grown 5% since 2019

These cuts add to public expenditure. For example, legal aid can be the difference between a family staying in a safe home or being made homeless at greater expense to the public.

Whilst the Law Society welcomes the Civil Legal Aid Review there are no proposals for interim measures to inject money into the system, which, given the precarity of the situation, is at risk of collapse before any new policy can be formulated. Relief needs to be given to the legal aid solicitors’ profession immediately. This can be done in a cost neutral way by reducing the complexity of legal aid contracts; addressing the Legal Aid Agency’s (LAA) culture of refusal, reducing the burden of the LAA’s auditing process and improving the LAA’s decision making.

There is a need to reduce existing data gaps. Between 2009/10 and 2020/21 the number of people having to go to court without representation trebled in the family courts. Since 2013, the number of family cases where neither party has a legal representative has tripled – from 13% to 39%. Yet no effective data is gathered on how much this costs the justice system. It forces judges to act in a more inquisitorial way and this is known to be much more expensive, so cuts to legal aid have made the justice system more expensive overall. Whilst the Netherlands spends 0.07 % of GDP on legal aid

compared to England & Wales's 0.1 % the cost of the justice system in The Netherlands is 0.35% of GDP compared to England and Wales's 0.3%. The overall cost of an inquisitorial system is higher than an adversarial common law system even if it spends less on legal aid.

The Civil Legal Aid Review is looking at international comparisons and the Dutch model, subject to caveats, offers some prospect of improvement. It is in three stages. Firstly, a Roadmap to Justice website enables members of the public to assess their own legal problems using legal tech. This would solve a lot of problems quickly but would not be suitable for many people living with vulnerabilities.

The second stage involves Legal Counters which are no more than one hour by public transport from any Dutch citizen. This is financed by the Dutch government, but it would be important to staff these counters with people who have sufficient expertise to triage complex legal problems effectively.

For those who require ongoing support, private lawyers and mediators are available in the third stage. Before being referred to private lawyers, clients are means tested and there is a type of merits test which assesses the importance of the outcome of the case to the client. Lawyers are paid a fixed fee with an escape route to a surcharge in more complex cases. However, the fixed fee hourly rate is 111 euros per hour, which exceeds current legal aid rates in the UK. The escape route to the surcharge must properly reflect the work lawyers do in order to be effective.

The Dutch are currently looking at reform and paying people (including lawyers) for 'solving a situation' (an 'integrated solution'). This reflects the situation where Labour is currently in power in the UK. The Mayor of London is taking this holistic approach and sees access to high quality social welfare legal advice as one of the essential building blocks to achieving the aim of every Londoner having access to social

prescription – the linking of non-medical and medical help to improve health and well-being – by 2028.<sup>2</sup> The Labour-led Welsh Government has funded high quality free to the client social welfare information and advice services through its Single Advice Fund and takes a holistic, wellbeing approach in The Wellbeing of Future Generations (Wales) Act 2015. All research done so far suggests that holistic, social prescription approaches save public money through social benefits, and, it is submitted, more work needs to be done in this area to prove how high-quality legal advice actually reduces the cost overall to the Exchequer.



<sup>1</sup> How Social Welfare Legal Advice and Social Prescribing can work collaboratively in healthcare settings (Mayor of London, Bromley by Bow and Legal Education Foundation, 2021) < [https://www.london.gov.uk/sites/default/files/social\\_welfare\\_advice\\_and\\_social\\_prescribing\\_in\\_health\\_settings\\_report\\_jan21.pdf](https://www.london.gov.uk/sites/default/files/social_welfare_advice_and_social_prescribing_in_health_settings_report_jan21.pdf) > accessed 11 March 2023

# ACCESS TO JUSTICE: CIVIL COSTS AND QUALIFIED ONE-WAY COSTS SHIFTING (QOCS)

Andrew Hogan and Matthew Turner, Barristers

## Introduction

1. Parliament and the common law afford rights and remedies to individuals who have suffered a wrong, but unless individuals are able to engage lawyers to act on their behalf, and are able to make provision against the potential costs of losing their case, such substantive rights are illusory.
2. In a mature post-industrial society, the law and legal system is complex and a legal profession must exist in order to facilitate access to justice for individuals. The legal profession has to be paid for. It can be paid for by the state, by individuals or by awards of costs against tortfeasors or other “wrongdoers”. But there are limits on state expenditure and individuals rarely have the resources to pay for their own legal advice.
3. The law and procedural rules on costs in civil litigation have a key role to play in facilitating access to justice through the rules limiting costs recovery in lost cases and by funding the legal profession through awards of costs. By repealing, amending and making further provision in the rules as they currently stand, access to justice can be increased for individuals, without increasing expenditure from the public purse.

## Abandonment of Fixed Recoverable Costs (FRC) reforms for October 2023

4. From October 2023 the current government is proposing to introduce a scheme of fixed recoverable costs for cases worth up to £100,000 which will have dire consequences. This reform should be abandoned for the following reasons.
5. The court system and its rules are largely an analogue paper-based system, which does not lend itself to efficiency in pricing, or permit processes to be accurately costed, commensurate with a scheme of FRC.
6. The removal of assessed costs, will have an adverse effect on the costs system, as it removes the moral hazard that the potential for a large and stinging costs award will have, to encourage cases to settle.
7. Fixed costs only apply between the parties. A client can be charged more. But that in turn is likely to lead to more solicitor-own client disputes, as clients challenge the retainer arrangements they have made, or the bills of costs they receive.
8. Most significantly, proposed levels of costs are likely to prove too low, to make certain key areas of litigation economic, bearing in mind that solicitors and counsel in private practice, are already taking a risk by funding their caseloads with the benefit of conditional fee agreements.
9. Similarly claims for wrongful death at the hands of public authorities other than the police, such as the NHS or the Prison Service will now be included in the scope of fixed costs. This is both irrational and will also effectively preclude



representation of the deceased at antecedent inquest hearings by lawyers, as it will no longer be possible to recover the costs of representation at an inquest within the costs recovered in the later civil claim under conditional fee agreements.

10. Tacit recognition of the problems in housing disrepair claims has already prompted the shelving of the proposals in relation to that type of claim. In order to ensure that all areas of legal practice remain viable for lawyers to continue to provide advice and assistance, by recovering reasonable costs the reforms should be abandoned.

### **Modification of QOCS rules implemented on 6th April 2023**

11. The QOCS rules in personal injury claims have recently been amended. From 6th April 2023 a defendant in a personal injury claim will be able to go after any entitlement that a claimant has to damages and costs, to enforce and set off their own entitlements to costs accordingly, capped only at the total of damages and costs notionally due to the claimant. This goes too far.
12. By permitting enforcement against costs as well as damages, until the claimants entitlements are exhausted, it is likely in some cases, that a claimant will end up in debt to his own lawyers. Thus, it is quite conceivable that by bringing a personal injury claim, a claimant may well end up losing his house, in order to pay his own lawyers.
13. This in turn means that the rule change will increase the need for ATE insurance for all claimants across the board. The pricing for these policies, as they are likely to be called on more often, may increase markedly, and the increased premiums will have to be paid from all personal injury claimant's damages, across the board, reducing the overall level of damages paid to injured people.
14. There is a middle way, which requires reamending the rules. By limiting the defendant's enforcement rights to the claimant's damages but not costs entitlements, the claimant's position vis a vis her own lawyers can be protected,

balancing all the interests involved. In these circumstances, there will be no prospect of an unsuccessful claimant suffering catastrophic financial consequences, or all claimants requiring an expensive layer of insurance cover, which they should not need.

### **Extension of QOCS rules**

15. Access to justice can be increased by extending QOCS to cover two particular types of private law claim where there is asymmetric litigation and a clear public interest in empowering the public to hold tortfeasors to account.
16. These are County Court claims under the Equality Act 2010, because they are pursued in support of substantive rights that derive from fundamental rights to human dignity and equality, and secondly claims against the police, where there is a fundamental imbalance in the playing field, which requires correction.
17. Extending QOCS in this way, will further the public interest: it will enable the rights contained in the Equality Act 2010 to be real and meaningful as opposed to illusory, due to the current lack of funding/costs protection for such claims. It will also enable victims of police misconduct to more readily find redress when torts are committed against them.

### **Conclusion**

18. The direct cost of these proposals in public spending terms is zero. The direct benefit to the public through increasing access to justice would be substantial. The indirect benefit to the public purse should also be substantial. Maintaining levels of recoverable costs at current levels, means the legal profession keeps paying tax, and so does the insurance industry, not least through the imposition of VAT on legal costs.

# ACCESS TO JUSTICE: HOUSING LEGAL AID

Liz Davies KC with assistance from Sue James and Simon Mullings, all writing in their personal capacities.

## The current situation

LASPO restructured civil legal aid. In the context of housing, legal aid is available for advice and representation in cases of:

- Loss of home (para 33, Sched 1 LASPO);
- Homelessness (which includes allocation of social homes if the applicant is homeless or threatened with homelessness) (para 34);
- Claims brought by tenants against landlords for damages and injunctions “in relation to the removal or reduction of a serious risk of harm to the health or safety of the individual or a relevant member of the individual’s family where the risk arises from a deficiency in the individual’s home” (para 35).

NOTE: that there must be “serious risk of harm to health or safety” which is a higher threshold than the threshold for breach of the repairing covenant in the tenancy agreement AND the risk of harm must be continuing. This means that damages claims, where the disrepair has been remedied but the tenant is still entitled to damages, are not funded by legal aid. Those claims are funded predominantly through Conditional Fee Agreements. However, CFAs are not a sufficient replacement for legal aid and legally aided cases for tenants facing disrepair and poor housing conditions have dropped off a cliff since 2013<sup>3</sup>.

Judicial review claims where accommodation is an issue (para 19)<sup>4</sup>.

Significantly, advice on welfare benefits and debt were removed from the scope of legal aid. This has led to the absurdity of housing lawyers and advisers being able to advise and represent on possession claims where there are rent arrears, but not able to assist on recovering any welfare benefits (particularly for housing costs) that the tenant might be entitled to.

Legal aid rates of pay have been frozen since 1996. This matters because solicitors’ firms, law centres and barristers have overheads which are necessary in order to provide legal services. At some point, the rate of pay received through legal aid becomes unsustainable. Different areas of law have different mechanisms of subsidising legal aid. In housing, legal aid providers rely on winning cases and recovering costs from the other side as a subsidy. In possession cases, it is quite rare for a tenant to win. Usually, legal aid helps achieve a negotiated solution (so there is no winner or loser and no legal costs paid by a loser). More generally, law centres rely on grant funding to subsidise the low legal aid rates and private firms do this with private client work.

<sup>3</sup> See chart in Simon Mullings - Homes and (dis)contents: getting full value out of the Homes (Fitness for Human Habitation) Act, Legal Action magazine, Feb 2020: <https://www.lag.org.uk/article/207304/homes-and--dis-contents--getting-full-value-out-of-the-homes--fitness-for-human-habitation--act>, showing 1,768 applications for legal aid to pursue disrepair claims in 2012 – 2013 (before LASPO) and 168 applications in 2018 – 2019. Conducting housing disrepair litigation through CFAs is in part a direct consequence of taking funding damages claims away from legal aid because it is harder to bring a claim requesting works (but where the damages element is not funded) and few organisations offer CFA. Some that do offer CFAs (but not legal aid) can be poor quality compared to legal aid organisations and achieve poor outcomes for their clients.

<sup>4</sup> Subject to Reg 5A Civil Legal Aid (Remuneration) Regulations 2013, inserted in 2015 following the Criminal Justice and Courts Act 2015, which provides that legal aid will not be paid if a judicial review claim is refused permission: the provision is said to have a “chilling effect” on legal aid providers’ willingness to undertake judicial review claims.

## Housing legal aid deserts:

The Law Society interactive map showing housing legal aid providers across England and Wales.<sup>5</sup> Almost 41% of the population of England and Wales do not have a housing legal aid provider in their local authority area, a figure that has grown by around 3% since 2019 and only 36% of the population have access to more than one provider in their local authority area.

Lexis Nexis “12.45m people live in legal aid deserts for housing”.<sup>6</sup>

Recruitment of a housing legal aid solicitors is at crisis point with vacancies across the country as post remain unfilled.

The legal aid tender process (once every 3 to 4 years) means that new legal aid providers have to wait for a new tender round. A good example is the newly forming law centre in the north of Wales, the first for this area, will not be able to provide legal aid support until a new tender round (Scotland has removed this provision).

## **The combination of the pandemic, the housing crisis, the cost of living crisis and the moratorium on evictions during 2020 – 2021 has led to a very significant rise in rent arrears, claims for possession and a need to tackle poor housing conditions and that rise shows no sign of abating:**

Generation Rent reported in December 2022 that half of private tenants face a rent increase, and 41% of tenants surveyed said that paying rent was their biggest concern.<sup>7</sup>

There was an increase of 42% in possession claims in the quarter October – December 2022.<sup>8</sup>

Vivid account of possession claims and poverty in Court here: ‘It makes me want to cry’: inside crumbling courts as judges wrestle with rise in rent eviction cases.<sup>9</sup>

The tragic death of Ishaq Awaab highlighted the very poor housing conditions experienced by too many tenants (both social housing and private rented tenants).<sup>10</sup>

Access to early advice and to legal aid is a crucial part of any “levelling up” agenda, it is the residents in some of the poorest areas who do not have access to legal aid lawyers and are also likely to be subject to poor housing conditions.

## **There have been numerous critiques of LASPO;**

ECHR Response to Post-Implementation Review of LASPO<sup>11</sup> called for review of means test, and restoring early legal advice for housing;

Justice Committee The Future of Legal Aid<sup>12</sup> called for “a complete overhaul of the [civil legal aid] system”;

Westminster Commission on Legal Aid “Inquiry into the Sustainability and Recoverability of the legal aid sector”<sup>13</sup> which called for broadening the scope of legal aid, restoring legal aid for early legal advice to the pre-LASPO position which would principally be for welfare benefits, debt, employment, immigration, and housing, restoring funding for housing legal aid cases, reviewing the means test and rates of pay.

<sup>5</sup> Housing – legal aid deserts | The Law Society

<sup>6</sup> Lexis Nexis Legal Aid Deserts, November 2022

<sup>7</sup> Generation Rent “Paying rent is biggest concern for tenants as half face hike” 19 December 2022 Paying rent is biggest concern for private tenants as half face hike - Generation Rent

<sup>8</sup> Mortgage & landlord possession statistics: October – December 2022, MoJ, Mortgage and landlord possession statistics: October to December 2022 - GOV.UK (www.gov.uk)

<sup>9</sup> UK cost of living crisis, The Guardian 13 March 2023

<sup>10</sup> Whilst his death is rightly described as a “defining moment” for the housing sector (Coroner at the Inquest), it is important to understand that the legislative framework creating rights for tenants to be protected from damp and disrepair is now a coherent and robust framework (Homes (Fitness for Human Habitation Act 2018, private members’ bill by Karen Buck MP). However, for the reasons outlined in this paper, tenants face huge difficulties in finding advice and representation in order to enforce those obligations (although it appears in the case of Ishaq Awaab, the family was in the process of litigation against its landlord) and the underlying problem is that of resources for social housing and enforcement of standards in the private rented sector.

<sup>11</sup> September 2018

<sup>12</sup> 2021 at The Future of Legal Aid - Justice Committee - House of Commons (parliament.uk)

<sup>13</sup> 2021, at Westminster Commission on Legal Aid report launch: recommendations to improve the sustainability of legal aid - LAPG



## The government has partially responded to the crisis:

Housing Loss Prevention Advice Scheme to start August 2023, will fund early legal advice on housing and debt before a Court hearing, as well as funding housing duty adviser scheme at Court but it should be noted that there have been difficulty in finding firms to bid for the contracts;<sup>14</sup>

Civil Legal Aid Review, due to report in 2024, and with no apparent remit to increase funding;

Postponing fixed recoverable costs for housing cases until October 2025.<sup>15</sup>

Early advice is key to efficient resolution of problems, benefitting the individual and society. Such advice should be holistic, for example a tenant in rent arrears should receive advice on debt, welfare benefits, retaining his or her home if faced with a possession case, and means of finding a new home if necessary. The advice need not be delivered directly by a lawyer, but there should be robust mechanisms for ensuring high quality advice, supervised by expert lawyers. Early advice can frequently prevent litigation and thus save public money (costs of legal aid in litigation, costs of Court resources, legal costs of public authorities) and prevent the well-known stresses and social costs of litigation<sup>16</sup>. Where early advice prevents a possession claim and keeps a tenant in his or her home, usually on an agreed schedule of payment of rent arrears, this benefits the tenant, landlord and the public purse. Similarly, if early advice results in a landlord undertaking works to remedy disrepair, without the need for litigation, there are both individual and public benefits.

In 2010, Citizens Advice calculated that £1 of housing advice saved the state £2.34<sup>17</sup>. The Law Centre Network policy document Funding for Law Centres 2014 estimated the new impact of direct savings of £212 - £247 million as a consequence of annual costs, associated with debt, temporary accommodation, homelessness, stress, anxiety and ill health.<sup>18</sup>

## Why does legal aid for litigation matter?

There are additional means of dealing with grievances and providing redress, such as complaints mechanisms, Ombudsman complaints, investigations, recommendations on actions, and compensation, however these are complementary to a tenant's ability to litigate (if necessary and as a last resort) in order to enforce his or her rights e.g. in the area of disrepair;

If early advice does not resolve problems, litigation can be necessary and unavoidable;

Litigation is never undertaken lightly. It is always preceded by notice of intention to litigate (a letter before claim) and an invitation to the landlord to remedy works and offer compensation in order to resolve the dispute and respect the tenant's rights without litigation;

Possession claims are initiated by landlords, and defended by tenants or other occupiers, and so the tenants/occupiers need legal aid in order to defend themselves in court;

All civil legal aid is subject to a "merits test", the parameters of the test are complex and vary according to the type of case but, broadly, legal aid will not be granted if the merits are less than 50%, legal aid will be withdrawn if the recipient of legal aid behaves unreasonably in the litigation or does not accept a reasonable offer of settlement, legal aid is not a blank cheque to litigate without consequence;

The combination of the merits test, and the recoverability of legal costs from the losing side, means that civil legal aid is funded principally on a "polluter pays" principle because legal aid is not available for cases that are likely to lose and so, if the legally aided party is successful (as expected), the losing party pays the legally-aided party's legal costs (so no claim is made on legal aid).

<sup>14</sup> Housing Loss Prevention Advice Services (HLPAS) and Housing and Debt services from August 2023 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>15</sup> Representations were made that reducing the amounts recovered in costs from a losing party, principally in housing disrepair cases, would have a catastrophic effect on the housing legal aid sector as those costs subsidise housing legal aid cases.

<sup>16</sup> Unrepresented litigants experience stress, financial loss and ill health, see Right Time, Right Place, Improving access to civil justice, Social Market Foundation, May 2022 at <https://www.smf.co.uk/publications/right-time-right-place/>.

## Housing law is not solely about litigation

Mediation can be most effective when parties are represented, so that they receive advice on likely outcomes and the costs of litigation;

Housing advisers can assist with making complaints to a landlord or the Ombudsman, so as to achieve early resolution where that is appropriate;

Most housing litigation is responsive e.g. defending possession proceedings, so that if lawyers were not funded, a tenant would be faced with representing himself or herself (which often prolongs litigation);

Litigation is rightly a last resort, but it is a necessary last resort where an individual's home, the condition of their home, or their right to homelessness help from a council is at stake.



### Pro bono advice is not a substitute:

Housing law, like other aspects of social welfare law, is a complex and specialist area, requiring knowledge of the common law of landlord and tenant, the numerous Housing Acts (1980, 1985, 1988, 1996 and 2004) and other relevant Acts;

Pro bono services tend to be provided by lawyers with other specialisms (for example commercial law);

Pro bono advice and representation is given voluntarily and can be withdrawn, both in the individual case and in terms of the overall service (making it impossible to plan);

Pro bono cannot provide a sufficiently funded, nationally available local service.

### Principles of funding legal services

What principles should a Labour government apply to funding of legal services?

legal services to be provided for the person, and structured around the consumer's needs, not the needs of the legal profession or of government;

Invest in early advice and appropriate early dispute resolution<sup>19</sup>, so as to prevent litigation where possible;

Advice should be accessible in non-legal settings, such as doctors' surgeries, libraries, nurseries and child-care facilities;

Invest in local and accessible legal aid services;

Recognise that only the very rich can afford litigation without the benefit of legal aid, and so the means test and scope of legal aid should be reformed so as to apply to most people and most problems;

Place legal services within a network of public problem-solving services, such as health, education, social services etc: a holistic approach to people's problems;

The legal system should be accessible, using plain language and concepts, so that people can navigate the legal system without lawyers if they wish;

Recognise that legal aid is a public service and ideally should be delivered through the public sector, rather than through private providers.

<sup>17</sup> Quoted in Right Time, Right Place, Improving access to civil justice.

<sup>18</sup> <https://www.lawcentres.org.uk/policy-and-media/the-case-for-law-centres>

<sup>19</sup> Effective dispute resolution requires the parties to engage in it as equals, and therefore requires funding for representation if required.

When a Labour government is elected, it will inherit a civil justice system in crisis. Long-term solutions are exciting and very welcome and we welcome the idea of a National Legal Service. But, in order to ensure that individuals facing the loss of their home, or trying to make their landlord fix disrepair in their home, Labour will need to act immediately, whilst considering and consulting on more radical long-term solutions. The immediate “ask” from a Labour government:

Reinstate early legal advice in all potential civil areas of law but particularly debt, housing and welfare benefits: early legal advice is cheap, economical and often resolves problems;

Invest in community legal services, such as law centres, where legal problems can be analysed and assisted holistically, and where other public services can easily refer or signpost to legal advice;<sup>20</sup>

Design the service so that the client is put at the centre and the current silo provision of legal aid is removed.

Commit to not implementing fixed recoverable costs in areas of housing law, or make the fixed costs high enough that successful cases see bad landlords properly remunerate the tenant’s lawyers, and include an amount that represents a levy on bad landlords to fund reinvestment in legally aided advice and representation – a form of ‘polluter pays’.

Review the means test so that legal aid is the norm for most people;

Increase rates of pay for civil legal advice and representation under legal aid, so as to re-attract lawyers into the sector.

Amend LASPO so that all civil disputes potentially fall within the scope of the legal aid, and then provide guidance or secondary legislation excluding some areas (such as libel). This would have the effect of restoring legal aid for damages in disrepair/housing conditions cases<sup>21</sup>;

Remove the provision that legal aid will not be paid if a judicial review claim is refused permission<sup>22</sup>;

Bring about a culture shift in the way that legal aid is administered away from a ‘culture of refusal’ to a culture that is permissive of legal aid because it recognises the wider social and economic benefits;

Invest in training new legal aid lawyers and financial support for organisations to train them and review the legal aid tender process so that new entrants are not prevented or delayed from joining the scheme;

Reform the Legal Aid Agency so that it becomes regionalised and legal aid provision, training of new lawyers and the needs of its community are supported and policy developed to grow as well as sustain legal aid provision;

Commit to reviewing draft legislation to make it understandable and accessible, written in plain language.

These actions will then allow for an easy transition into a National Legal Service, once legislated for and implemented. For example, the training of new social welfare lawyers can be undertaken with a view to them staffing the NLS once it is established.

<sup>20</sup> See Sue James Legal Advice Services should allow for the complexity of people’s social welfare problems, Legal Action magazine, 2021: <https://www.lag.org.uk/article/210707/legal-advice-services-should-allow-for-the-complexity-of-people-s-social-welfare-problems>.

<sup>21</sup> Alternatively, Schedule 1 of LASPO could be amended in order to allow for legal aid for damages in disrepair/housing conditions cases.

<sup>22</sup> Reg 5A Civil Legal Aid (Remuneration) Regulations 2013, inserted in 2015 following the Criminal Justice and Courts Act 2015: the provision is said to have a “chilling effect” on legal aid providers’ willingness to undertake judicial review claims. The availability of legal aid for judicial review claims is subject to the merits test, and so judicial review claims should not be brought with the benefit of legal aid unless (broadly) there is a 50% or more chance of success, so there is already a filter preventing unmeritorious claims being granted legal aid.

# IMPROVING ACCESS TO JUSTICE FOR SEPARATING FAMILIES



## Background

Separation is often a distressing and traumatic event, particularly when children are involved. When families disagree about children (where they should live, how often they will see the other parent etc) most resolve their problems on their own. However, a minority cannot and need additional help. These families need accessible and safe ways to resolve their disputes in the child's best interests.

## Issues

**Families face a confusing and uncoordinated landscape** of advice, information and support, both legal and non-legal (other issues co-exist with child arrangements, e.g. housing, children's mental health support, domestic abuse support, health/GP).

**Many cannot access legal advice to understand their options.** Families in court are disproportionately economically deprived and low cost or free legal advice is scarce.

**Mediation is not a panacea.** There may be complex issues, safeguarding concerns, imbalanced power dynamics, e.g. domestic abuse, which make mediation unfair or unsafe. Or parties may not be emotionally or practically ready to mediate with the other parent, making mediation unlikely to be successful. Faced with the choice of "mediate or

litigate" since the legal aid cuts in 2013, the numbers in court have increased, whilst the numbers in legally-aided mediation have decreased.

**Many in court are unrepresented** - only one in five cases has a lawyer on both sides. Litigants in person experience a court system still designed for lawyers, which is marginalising, confusing and adds to the stress they are already experiencing at a traumatic time of life.

**Those in court are more likely than the population at large to have additional vulnerabilities**, such as domestic abuse, mental ill-health and substance abuse. These are complicated cases but face a poorly resourced, back-logged system in which the judiciary and Cafcass<sup>23</sup> are fire-fighting.

**Children at the centre of the dispute too often feel unheard and unsupported.** Less than half have the opportunity to be consulted, which feels like they are treated as the object of a dispute rather than an individual with the right to be heard and their own perspective about their future.

**One third of cases return.** This is often because conflict is entrenched; safety concerns have not been (sustainably) addressed first time round; or the child does not want what the order says.

## Policy Solutions

**Beyond court: the wider family justice system**

**Early legal advice and information:** Introduce publicly funded early legal advice for child arrangements problems – this will help manage expectations and refer to out of court resolution (mediation etc) where appropriate. There should also be a single, authoritative online information platform providing legal and non-legal information about separation.

<sup>23</sup> The "Child And Family Court Advisory and Support Service", which provides social work analysis to the Family Court.



**Coordination of legal and non-legal services:** Use family hubs and/or local alliances and networks to coordinate legal and non-legal services for separating families in the community. This should include early legal advice, domestic abuse support, counselling and health support, local authority early help, mediators, legal aid lawyers.

**Consistent risk screening:** Introduce universal risk screening by all professionals throughout the family justice system including mediators, lawyers and Cafcass, to ensure a consistent and proportionate response to risk, wherever a family go for help (a “no wrong door” approach).

**A child participation presumption:** Introduce a presumption that all children can participate in processes making decisions about them, in an age-appropriate way. There are several ways to implement this presumption legally, one being the incorporation of the UN Convention on the Rights of the Child into domestic law.

**Non-court dispute resolution:** Support other non-court dispute resolution processes, not just mediation, including solicitor negotiation, collaborative law, and “packages” of support, e.g. legal advice, mediation and counselling. Support these non-court processes to be child inclusive.

#### **Going to court: a problem-solving approach**

**The “case progression officer”:** Give every case a neutral, legally-trained court employee, who will provide information to litigants; manage preparation for hearings if one or both sides are unrepresented; and help unrepresented litigants understand outcomes and next steps.

**An initial investigation by a “Court Team”:** Identify issues more efficiently, with a less adversarial and more child-focussed “Court Team”. The Team is a case progression officer and a Cafcass officer, to which specialists (e.g. domestic abuse) could be added. It would investigate what is going on with the family before the case goes before a judge, including risk screening, speaking to the parents and the child, as well as third parties, e.g. the school.

**Funding where necessary in the interests of justice:** Secure (i) funding for expert evidence or

testing when the judge deems it necessary but the parties cannot afford it; (ii) representation for both parties when the court deems a fact-finding into alleged harm necessary but the parties cannot afford representation; (iii) exceptional case funding when a judge deems representation necessary for a vulnerable party; (iv) sufficient funding for Guardians when the court deems joining the child as a party necessary.

**Child participation in court:** Introduce an explicit duty on the court to facilitate children’s participation. This is a process, not a one-off event. This means giving the child information; letting them know what has been written about them more often; letting them meet the decision-maker more often (and training judges and magistrates to do this); and giving the child feedback about the outcome and how their voice was taken into account.

**Review:** Cafcass should follow up with the family (including the child) after a period of time to ask if the final order is working in the best interests of the child. If it is, there is nothing further. If it isn’t, the judge can hold a review hearing to consider changes. This ensures children are not stuck in arrangements making them seriously unhappy or unsafe, with no court oversight.



## Costing

**JUSTICE considers the above will lead to downstream savings because:**

More cases will be settled earlier after early legal advice and options for out of court resolution;

Fewer litigants in person will arrive at court unassessed, unadvised, their expectations unmanaged and their legal case unarticulated, requiring less judicial and court resource;

The cases which do arrive at court will be proactively case managed by the Court Team, reducing wasted court time and again requiring less judicial and court resource;

Fewer cases will return unnecessarily because i) the child's perspective is being heard (so an order isn't made ignorant of their views only to return because the child refuses); and ii) the review mechanism only uses judicial resources if the order needs to be reconsidered.

**There are also important wider economic benefits:**

The proposals prioritise safety, ensuring vulnerable people can access the court and are not pressured to agree, whilst at court ensuring the process is safer. This will better protect children and adults from ongoing harm. In these cases this is largely, but not exclusively, harm arising from domestic abuse which has extensive costs to society.

The proposals make safe out of court settlements more accessible to economically deprived families who cannot afford to pay privately for legal advice and negotiation. This addresses the evidence that parents in poverty or under economic pressure are more likely to experience relationship conflict and that children's exposure to frequent, intense and poorly resolved parental conflict can impact their mental health and long-term life chances.

# LEGAL SERVICES IN THE AREA OF IMMIGRATION AND ASYLUM

Sonali Naik KC and Adrian Berry

## Context and Issues

The system of immigration control caters for people coming to the UK for work and for family purposes (e.g., to join British citizen family members), and also for those seeking international protection. That includes those in-country seeking permission to remain or seeking settlement, as well as those the Home Office seeks to expel. It must deal both with the lawfully present and the unlawfully present, and in so doing ensure access to justice and an effective and early remedy.

What is needed is a system of good first instance Home Office administrative decision-making, followed by a straightforward judicial dispute resolution procedure in the expert tribunals and courts, including Home Office concessions in appropriate cases where such resolution is possible. A lot of administrative and lawyer time and more importantly public money is spent on the Home Office defending cases which could and should have been conceded earlier.

This can and should be achieved by clear leadership objectives in the Home Office and Ministry of Justice in liaison with each other, as regards budget implications, paying particular regard to the positive costs saving impact of (i) having fewer cases liable to costly judicial review where rights of appeal have been removed by primary legislation, and (ii) the benefit of fewer cases in the tribunal appeals system where many such cases are likely to be successful there.

Such a system must be operated in accordance with law (we note and welcome the commitment to the Human Right Act 1998), allowing the person to put their case, providing a decision in a reasonable time, complying with the UK's international legal obligations (which again we note commitment to),

and avoiding unlawful acts such as detention, which give rise to claims for damages (NB in the year ending March 2022, there were 572 proven cases of unlawful detention, of which a total of £12.7 million was paid in compensation; an increase of £11.9 million from 2015<sup>24</sup>).

## Legal Aid provision nationwide: MOJ priorities:

the scope of legal aid needs to extend to include immigration and citizenship<sup>25</sup> including Article 8 family life rights<sup>26</sup> and not limited to protection claims;

there is a need to raise rates to enable those working in the field to afford to do the work (rates were last considered in 2011 and cut on that occasion);

no legal aid work should be done 'at risk' of not being paid (the work is either done in accordance with professional standards or not; if so done, it should be paid);

whether through on-line technology or face-to-face delivery, regions of England and Wales with advice deserts or limited capacity should be brought provided for so advice is available to those who need it; and

the administration of legal aid contacts ought to be simplified, there is no reason not to trust solicitors and for the Legal Aid Agency to scale back its level of control.

Access to early and good advice can and will enhance early dispute resolution alone or taken together with the proposals concerning enhanced Home Office policy and leadership decisions. If the initiatives set out below were implemented, there

<sup>24</sup> <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

<sup>25</sup> Subject to a means assessment.

<sup>26</sup> which was removed by LASPO save for Exceptional Case Funding (ECF),

would not necessarily be any overall increase in spend but rather better and greater remuneration for the fewer cases that require more detailed advice and which proceed through the courts.

## The problem and the cost of the problem

In the field of immigration, it is impossible to disentangle Justice issues from Home Office issues: Home Office immigration legislation deals with both and administrative applications and decisions are the initial points where legal advice is required.

The trend in Conservative Home Office legislation and administrative policy is to build a needlessly complex system for processing applications; thereafter, specifying narrow and restricted routes of legal challenge, while failing to make adequate provision for advice and representation to enable people to know where they stand. Moreover, there is a trend of fighting cases at all costs where there is a possible defence, departing from previous Home Office/Government Legal Department conventions of seeking to settle cases where there was a less than 50% chance of success.

The Nationality and Borders Act 2022 and the current Illegal Migration Bill provide legislative examples of this trend, while the Immigration Rules for economic migration and the provision for the EU Settlement Scheme (EUSS) provide administrative examples.

**This trend adds massively to the cost of administering immigration control.** Simply put, it is very expensive. Further, it manufactures delays and backlogs, all the while undermining public confidence in immigration control. It also deprives the people concerned of legal certainty to enable them to make informed decisions about their lives. It is neither meaningful access to justice, nor a system that enjoys public support.

In the result, within the UK, there are numbers of people whose lives are put on hold for months or years while they remain in the UK trying to resolve their status. Such people may lack permission to work and thereafter be compelled to seek support

from the state or to survive in the informal economy: the result is needless state dependency; or exploited, unlawful, work without contributing to the tax-paying economy; or both.

The money spent on prolonged asylum support and hotel accommodation and immigration bail support, prolonged immigration detention, and attempts at removal/enforcement action at scale, is money better spent elsewhere.<sup>27</sup> Further, to secure the labour market and ensure social protection, it is better to design policies that do not manufacture a situation where people are forced into the informal economy to survive. The long-standing ban on asylum-seekers having the right to work comes from a time where there was unemployment in the 1990s and it was seen as a 'pull factor' for persons without genuine claims for asylum. Now we are in times of labour shortages, where there is recognition of work as a valuable tool in aiding integration and recovery for Refugees, and in circumstances where the majority of protection claims are from persons cast-iron Refugee claims.

## Solutions

The following solutions would enable more meaningful access to justice:

### (i) Simplify the system of administrative decision-making (which requires Home Office liaison)

**Public Service Standards:** The Home Office should introduce meaningful public service standards to enable a person to put their case properly, and to ensure high-quality decisions are made within a reasonable period. This will promote legal certainty and contribute to reducing the need for legal challenges. The service standards ought to make the application process smooth, transparent, and simple.

**For those seeking protection (Refugees, Stateless Persons, etc):** a simple process for deciding claims. At present declaring asylum claims inadmissible based on how a person reached the UK, leaves people in limbo in the UK for years, unable to be returned to their own country or a third country and dependent

<sup>24</sup> The current average cost of accommodating asylum seekers in hotels is, on average, £132/day or £6m/day for the 45,500 currently in these facilities, see <https://www.theguardian.com/uk-news/2023/mar/12/london-councils-urge-home-office-to-rethink-hotel-s-policy-for-asylum-seekers> Further, current estimates place the UK's detention estate's capacity at 2,245. The average cost to hold one person in immigration detention currently sits at £116.42/day, Detention Action Briefing.



on asylum support or unlawful work. It is better simply to decide all asylum claims on the merits, either granting status or producing a refusal, to provide legal certainty, comply with international obligations, and promote an orderly process of immigration control. A policy of allowing persons from certain Refugee-producing countries to be quickly granted leave to remain the basis of their country of origin would speed up this process, e.g. Syria and Afghanistan, subject to later more detailed processes to allow for the grant of Refugee status or exclusion from Refugee convention.

**Right to work for those seeking protection (Refugees, Stateless Persons, etc):** Asylum Seekers and others seeking protection with claims outstanding after six months ought to be given general permission to work: this would reduce the cost of means-tested asylum support dramatically and may even encourage the Home Office to meet proper service standards.

**(ii) Enhance legal dispute resolution procedures (which requires Home Office liaison and primary legislation in due course to restore rights of appeal):**

**For those seeking to enter or remain in the UK for work in economic or student migration categories:** there should be a right of appeal to the First-tier Tribunal (FTT) to challenge a poor decision. The UK wants these people; there is no gain in them having no right of appeal. Such people are highly mobile and may choose the EU, USA or Canada. Their lack of agency in the UK process is a disincentive. It also frustrates business.

**For those seeking to join or remain with British family members:** the restoration of means-tested legal aid for legal advice on applications and thereafter representation before the FTT. The lives of British citizens and their family members are protected by the right to respect for family life (Article 8 ECHR) and the Human Rights Act 1998. It is perverse not to enable the people affected to have access to good quality initial advice and representation. The harm done at present to British citizens and their family members includes splitting up families and damaging children's lives, something which

has long-term consequences for those innocent victims.

**For those seeking protection (Refugees, Stateless Persons, etc):** a simple right of appeal to the FTT. The provisions in the Nationality and Borders Act 2022 and the Illegal Migration Bill manufacture an appeal and other legal challenges in a structure of mindless complexity, leaving people in limbo unable to be regularised or returned. Such complexity should be stripped away, to enable cheap, cost-effective dispute resolution in the FTT.

**Tribunal Procedure:** Remove the priority removal notice procedure, accelerated detained appeals procedure, and the statutory approach to credibility introduced by the Nationality and Borders Act 2022. These measures promote collateral challenges, consume scarce tribunal resources, and end up leading to delaying final dispute resolution (be it the grant of status or departure/removal).

**Detention:** The Illegal Migration Bill provisions to remove the function of the High Court to determine whether detention is reasonable and to limit the common law *Hardial Singh* test, should be repealed. The Bill's measures will displace unlawful detention claims and damages cases to the European Court of Human Rights and the protection of Article 5 ECHR. Further, it will lead to prolonged periods of detention and could lead to very expensive compensation claims. Better to have these matters decided in national courts in good time.

**Deportation:** the restoration of means-tested legal aid for legal advice and thereafter for representation before the FTT. These appeals usually take time because the person concerned has British citizen family members protected by the right to respect for family life (Article 8 ECHR) and the Human Rights Act 1998. There may be children who stand to lose a parent and there may overlap with proceedings in the family courts. Better to resolve things early through high quality legal advice and representation than to prolong matters and end up with last-minute but well-founded challenges to removal.

# HOW TO FUND IT: THE ECONOMIC CASE FOR CIVIL LEGAL AID

Joseph Kelen

## 1. Introduction

As this report has highlighted, there is a clear justification for having an improved system of civil legal aid on policy and moral grounds. Whilst these reasons alone should be enough, this chapter will set out the economic argument for why improving civil legal aid would make sense, and how to fund it.

Providing civil legal aid will also result in direct benefits to the treasury: from reduced demand on the NHS and social housing, to fewer welfare payments and increased tax revenues. It will also have indirect effects on the economy, with proper family, employment, housing, and immigration advice resulting in more people in work, generating both revenue and consumer spending.<sup>28</sup> These amounts are far from small, with at least nine empirical studies of civil legal aid systems showing a benefit of over £10 for every £1 spent on funding legal aid services.<sup>29</sup>

This chapter will also propose three ways in which the system can be funded separately from additional government spending, (1) marginally increasing the cost of court filings for high value claims, (2) requiring solicitors to pay interest earned from pooled clients' trust accounts to a civil legal aid fund, rather than themselves, (3) requiring either those who use legal aid funding to gain financial compensation to pay an additional charge to help support the system, or require opponents of legal-aid funded actions to pay a small additional cost. Most of these are already established practices in common law countries globally, with the United Kingdom notably behind. Together, they could potentially generate an £98.9 million to help fund a National Legal Service, and £654.8 million towards the UK economy.

<sup>28</sup> Citizens Advice Bureau (2010) "Towards a Business Case for Legal Aid."

<https://namati.org/wpcontent/uploads/2015/12/Citizens-Advice-Bureau-Towards-a-business-case-for-legal-aid.Pdf>, para. 79.

<sup>29</sup> (1) Australia John Storer, Dr. Judith Stubbs, & Colleen Lux, Economic Cost Benefit Analysis of Community Legal Centers (National Association of Community Legal Centres, 2012), available at: [https://static1.squarespace.com/static/56aae0e04d088e4dfa68396f/t/56b80e603c44d84c96a7eaeef/1454903005802/Cost\\_Benefit\\_Analysis\\_Report.pdf](https://static1.squarespace.com/static/56aae0e04d088e4dfa68396f/t/56b80e603c44d84c96a7eaeef/1454903005802/Cost_Benefit_Analysis_Report.pdf);

(2) England & Wales Towards a Business Case for Legal Aid (Citizens Advice Bureau, 2010), available at: <https://namati.org/wp-content/uploads/2015/12/Citizens-Advice-Bureau-Towards-a-business-case-for-legal-aid.pdf>;

(3) England & Wales NEF & AdviceUK, Outcomes in Advice (Advice Services Coventry, 2010), online: [http://www.infohub.moneyadvicetrust.org/content\\_files/files/bold\\_outcomes\\_advice\\_final.pdf](http://www.infohub.moneyadvicetrust.org/content_files/files/bold_outcomes_advice_final.pdf);

(4) Scotland Claire Hammond & Dr. Inga Vermeulen, Social Return on Investment in Legal Aid (Law Society of Scotland, 2017), , online: Law Society of Scotland <https://www.lawsocot.org.uk/media/359230/social-return-on-investment-in-legal-aid-technical-report.pdf>

(5) North Carolina, USA Mary L Irvine The Economic Impact to the State of North Carolina of Civil Legal Services in 2012 (UNC Center on Poverty, Work and Opportunity; NC Equal Access to Justice Commission, 2014), online: UNC School of Law <http://www.law.unc.edu/documents/poverty/justice/economicbenefits2012fullreport.pdf>

(6) Pennsylvania, USA The Economic Impact of Outcomes Obtained for Legal Aid Clients Benefits Everyone in Pennsylvania (Pennsylvania Interest on Lawyers Trust Account Board, Supreme Court of Pennsylvania, 2012), online: Supreme Court of Pennsylvania <https://www.paiolta.org/wpcontent/uploads/2014/05/Economic-Impact-of-Legal-Aid.pdf>

(7) Tennessee, USA Kenneth A Smith & Kelly Thayer, Economic Impact of Civil Legal Aid Organizations in Tennessee: Civil Justice for Low Income People Produces Ripple Effects That Benefit Every Segment of the Community (The Tennessee Bar Association's Access to Justice Committee and the Corporate Counsel Pro Bono Initiative, 2015), online: Tennessee Bar Association [https://www.tba.org/sites/default/files/2015-TN-Final+Report+Package\\_Consolidated+Statewide\\_3-18-2015.pdf](https://www.tba.org/sites/default/files/2015-TN-Final+Report+Package_Consolidated+Statewide_3-18-2015.pdf)

(8) Philadelphia, USA Stout Risius Ross, Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants (Philadelphia Bar Association's Civil Gideon and Access to Justice Task Force, 2018), online: Philadelphia Bar Association <https://www.philadelphiaabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>

(9) Alabama, USA John Byrnes, Alabama Legal Aid Organizations: Social Return on Investment Summary (Community Services Analysis LLC, 2014), online: Alabama Civil Justice Foundation [http://www.acjf.org/uploadedFiles/SROI\\_Report\\_Alabama\\_Civil\\_Legal\\_Aid\\_2014.pdf](http://www.acjf.org/uploadedFiles/SROI_Report_Alabama_Civil_Legal_Aid_2014.pdf)

## 2. Economic benefits and savings

Providing a fully funded civil legal aid service will provide substantial benefits to the economy and savings to the government, with each sector funded (such as family law, employment, housing, and immigration) providing its own contribution. The below table provides a snapshot of the benefits that civil legal aid generates, all based on empirical studies already performed:

### General Benefits: Civil Legal Aid funding

<b>Economic Benefits</b>	<b>Out of courts: into work</b> (1) Productivity: reduced number of workdays missed due to legal problems. <sup>30</sup> (2) Greater income, employment, and residential stability. <sup>31</sup>
<b>Government Savings</b>	<b>Making courts efficient</b> (1) Reduced number of court hearings. <sup>32</sup> (2) Reduced length of court proceedings. <sup>33</sup> (3) Reduced additional administrative work for court staff. <sup>34</sup>

### Civil Legal Aid in the Family Court

<b>Economic Benefits</b>	<b>Child support payments</b> (1) Increased consumer spending from full payment of child support. <sup>35</sup> (2) Increased employment from parents being able to afford childcare. <sup>36</sup> <b>Preventing partner violence</b> (1) Greater productivity and reduced absenteeism. <sup>37</sup>
<b>Government Savings</b>	<b>Child support</b> (1) Less reliance on government welfare payments. <sup>38</sup> (2) Reduced need for government services relating to childcare. <sup>39</sup> <b>Preventing partner violence</b> (1) Reduced demand for medical care, inc. mental health support. <sup>40</sup> (2) Reduced demand for police and prison resources. <sup>41</sup> (3) Reduced demand for emergency shelters and housing <sup>42</sup>

<sup>30</sup> World Bank (2019) "A Tool for Justice: the Cost Benefit Analysis of Legal Aid", online: <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>

<sup>31</sup> Pascoe Pleasance P et. Al (2007) "Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems", Transforming Lives: Law and social process, 2007, online: <https://tinyurl.com/mrmzj7hm>

<sup>32</sup> Eagly, I. V. and S. Shafer (2015), 'A national study of access to counsel in immigration court', University of Pennsylvania Law Review, 164(1)

<sup>33</sup> Law Society of Scotland (2017) "Social Return on investment in Legal Aid", online: <https://www.lawscot.org.uk/media/359230/social-return-on-investment-in-legal-aid-technical-report.pdf>

<sup>34</sup> Legal and Constitutional Affairs Committee of Australia "Self-represented litigants", online: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2002-04/legalaidjustice/report/ch10](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2002-04/legalaidjustice/report/ch10), 10.35

<sup>35</sup> Graham, John W., and Andrea H. Beller (1989) "The effect of child support payments on the labor supply of female family heads: An econometric analysis." Journal of Human Resources: 664-688.

<sup>36</sup> Liz Elwart et al., (2006) "Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program", 12-13, <http://www.wisbar.org/am/template.cfm?template=/cm/content%20display.cfm&contentid=63633>.

<sup>37</sup> Bowlus, A. J., & Seitz, S. (2006). Domestic violence, employment, and divorce. International economic review, 47(4), 1113-1149. [https://www.econstor.eu/bitstream/10419/189355/1/qed\\_wp\\_1075.pdf](https://www.econstor.eu/bitstream/10419/189355/1/qed_wp_1075.pdf)

<sup>38</sup> Liz Elwart et al., (2006) "Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program", 12-13, <http://www.wisbar.org/am/template.cfm?template=/cm/content%20display.cfm&contentid=63633>.

<sup>39</sup> Walby S. (2004). "The Costs of Domestic Violence, Women and Equality Unit". University of Leeds, Leeds, online: [https://eprints.lancs.ac.uk/55255/1/cost\\_of\\_dv\\_report\\_sept04.pdf](https://eprints.lancs.ac.uk/55255/1/cost_of_dv_report_sept04.pdf)

<sup>40</sup> Claire Hammond & Dr. Inga Vermeulen (2017), Social Return on Investment in Legal Aid (Law Society of Scotland, 2017), , online: Law Society of Scotland <https://www.lawscot.org.uk/media/359230/social-return-on-investment-in-legal-aid-technical-report.pdf>, p33

## Civil Legal Aid in Employment

<b>Economic Benefits</b>	<b>Unemployment benefits unfairly denied</b> (1) Increased consumer spending from higher earnings. <sup>43</sup> (2) Increased chance of finding well-paid employment (resulting in higher tax revenue). <sup>44</sup>
<b>Government Savings</b>	(1) Reduced spending on universal credit and jobseekers allowance. <sup>45</sup> (2) Reduced medical care for stress-related illness and violent behaviour. <sup>46</sup>

## Civil Legal Aid in Housing

<b>Economic Benefits</b>	<b>Maintaining Property prices</b> (1) Reduced impact on house prices from potentially foreclosed property not falling into disrepair. <sup>47</sup> (2) Reducing oversupply of housing in local area. <sup>48</sup> (3) Maintaining amenities of neighbouring houses (landlords removing contaminants or nuances otherwise through tenant action). <sup>49</sup>
<b>Government Savings</b>	<b>Threat of homelessness</b> (1) Reduced demand for emergency housing. (2) Reduced demand for public services relating to homelessness. <sup>50</sup> (3) Reduced demand for medical care. <sup>51</sup>

<sup>41</sup> Walby S. (2004). "The Costs of Domestic Violence, Women and Equality Unit". University of Leeds, Leeds, online: [https://eprints.lancs.ac.uk/55255/1/cost\\_of\\_dv\\_report\\_sept04.pdf](https://eprints.lancs.ac.uk/55255/1/cost_of_dv_report_sept04.pdf)

<sup>42</sup> Jennifer S Rosenberg & Denise A Grab, (2015) "Supporting Survivors - The Economic Benefits of Providing Civil Legal Assistance to Survivors of Domestic Violence" (New York: Institute for Policy Integrity) at 11, online: Institute for Policy Integrity <https://policyintegrity.org/files/publications/SupportingSurvivors.pdf>

<sup>43</sup> Ganong, P., & Noel, P. (2016). How does unemployment affect consumer spending?. online: [https://scholar.harvard.edu/files/ganong/files/ganong\\_jmp\\_unemployment\\_spending.pdf](https://scholar.harvard.edu/files/ganong/files/ganong_jmp_unemployment_spending.pdf)

<sup>44</sup> Boone, C, A Dube, L Goodman and E Kaplan (2017,) "The impact of unemployment insurance expansion on aggregate employment during the Great Recession", online: <https://voxeu.org/article/unemployment-insurance-and-employment-during-great-recession>

<sup>45</sup> Pascoe Pleasance P et. Al (2007) "Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems", Transforming Lives: Law and social process, 2007, online: <https://tinyurl.com/mrmzj7hm>

<sup>46</sup> DCA (2006) "Getting earlier, better advice to vulnerable people", online: <http://www.dca.gov.uk/laid/betteradvice.pdf>

<sup>47</sup> Lin, Zhenguang, Eric Rosenblatt, and Vincent W. Yao. (2009) "Spillover effects of foreclosures on neighborhood property values." The Journal of Real Estate Finance and Economics 38.4: 387-407, online at: <https://tinyurl.com/4tr6zu9c>

<sup>48</sup> Daniel Hartley, (2010) "The Impact of Foreclosures on the Housing Market" <http://www.clevelandfed.org/research/commentary/2010/2010-15.cfm>

<sup>49</sup> Ariel Modrykamien et al., (2006) "A Retrospective Analysis of the Effect of Environmental Improvement Brought About by Legal Interventions in Poorly Controlled Inner-City Asthmatics", CHEST, <http://meeting.chestjournal.org/cgi/content/abstract/130/4/835-b>

<sup>50</sup> Rough sleeping currently costs the government £1.34bn a year: Department for Communities and Local Government (2012) "Evidence review of the costs of homelessness", online: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/7596/2200485.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7596/2200485.pdf) (historic figure adjusted for inflation).

<sup>51</sup> St Mungo's Community Housing Association. (2013). "Health and homelessness: Understanding the costs and roles of primary care services for homeless people". London: Department of Health, online: [https://www.housinglin.org.uk/\\_assets/Resources/Housing/OtherOrganisation/Health\\_and\\_Homelessness.pdf](https://www.housinglin.org.uk/_assets/Resources/Housing/OtherOrganisation/Health_and_Homelessness.pdf)

## Civil Legal Aid in Immigration

<p><b>Economic Benefits</b></p>	<p><b>Increased legalisation of status</b>                  (1) Increased wages (resulting in higher tax revenue).<sup>52</sup>                  (2) Increased productivity of workforce (i.e. trained teachers able to teach).<sup>53</sup></p>
<p><b>Government Savings</b></p>	<p><b>Reducing detention</b>                  (1) Reduced numbers of those held in detention and asylum housing.                  (2) Reduced numbers of those paid asylum support                  (3) Reduced demand for medical care.<sup>54</sup></p>

These benefits and savings are not just theoretical but have repeatedly shown to play out in practice. There have been at least 64 studies globally analysing the economic benefits of civil legal aid, all of which show a clear positive impact on both government revenues and commercial activity.<sup>55</sup> The graph below takes data from 39 of these studies which have calculated the multiplier impact of civil legal aid spending.<sup>56</sup> or, in the UK context, the impact an additional £1 spending on civil legal aid would have on the UK economy.

<sup>52</sup> Clemens, Michael, Cindy Huang, and Jimmy Graham. (2018) "The economic and fiscal effects of granting refugees formal labor market access." Center for Global Development Working Paper 496 <https://www.cgdev.org/sites/default/files/economic-and-fiscal-effects-granting-refugees-formal-labor-market-access.pdf>

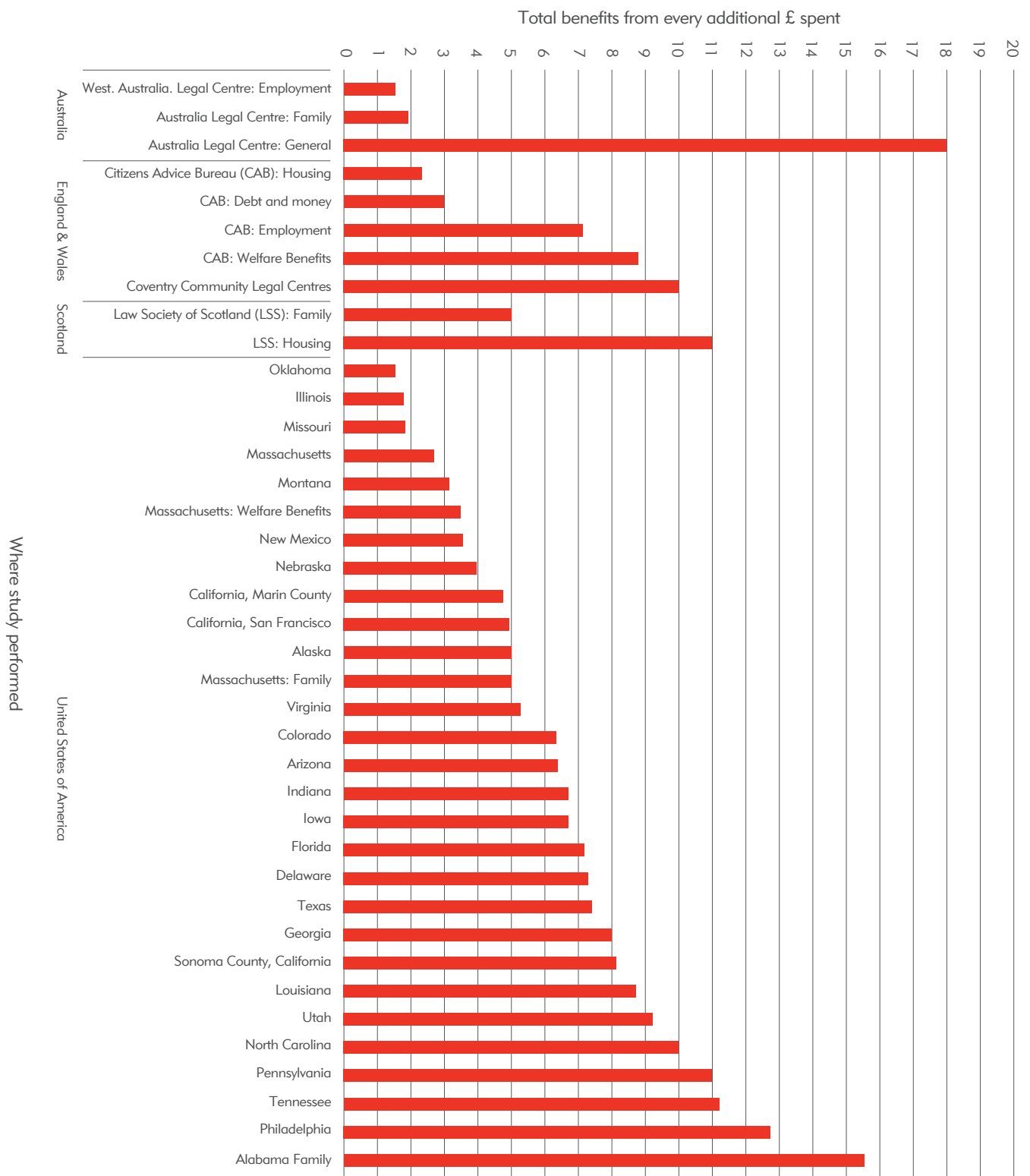
<sup>53</sup> Gordon, Ian, et al. (2009) "Economic impact on London and the UK of an earned regularisation of irregular migrants in the UK." Interim Report from LSE London, [https://www.london.gov.uk/sites/default/files/gla\\_migrate\\_files\\_destination/irregular-migrants-report.pdf](https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/irregular-migrants-report.pdf)

<sup>54</sup> von Werthern, Martha, et al. (2018) "The impact of immigration detention on mental health: a systematic review." BMC psychiatry 18.1: 1-19. <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-018-1945-y>

<sup>55</sup> The following provides a summary of all such papers until 2019: Moore, L., & Phyper, M. (2019). "Return on Investment in Civil Justice Services and Programs—Selected Annotated Bibliography of Existing Research", online: <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1016&context=cfcj>

<sup>56</sup> Id.

## Overview: Studies showing the economic impact of every additional £1 spent on Civil Legal Aid



As is clear, there are substantial economic benefits. Across 39 studies where a multiplier is provided, an additional £1 spent on legal aid generates on average around £6.62 in commercial activity and government savings. The reasons for this become clear when consideration is made on the cost of social harms civil legal aid can prevent:

## (1) Housing

The average cost to the State of emergency shelter for a family without housing is £10,580.<sup>57</sup> However, studies have repeatedly shown that legal aid programs can prevent over a quarter of individuals facing such homelessness.<sup>58</sup> Similarly, proper funding of landlord-tenant actions can prevent a 9% reduction in house prices for neighbours up to 150m away through the proper treatment of contaminants, such as asbestos or foul odours.<sup>59</sup>

Nor can the indirect consequences of housing support be ignored, with increased stability in employment, and therefore better-paying jobs, also being a significant benefit. Together, this can result in significant savings, with one study in Philadelphia finding that a \$3,546,180 expenditure on legal representation to low-income tenants in evictions could save \$45,189,458 annually, or £12.74 for every £1 spent.<sup>60</sup>

## (2) Family Law

As to family law, the cost of domestic violence has been estimated by the UK Home Office to be £61 billion a year, with 2.4 million individuals suffering each year.<sup>61</sup> In addition, the average economic cost of a single instance of rape has been estimated at £138,000 and of domestic violence £17,000.<sup>62</sup>

Whilst civil legal aid for domestic violence cannot solve this issue, it has proven to help. There is a statistically proven link between the provision of legal services and a reduction in domestic violence, with one study alone indicating contributed to a 19.3% reduction in Southwest Virginia.<sup>63</sup> Other studies have shown the impact legal aid centres can have in obtaining child support. One centre alone in Nebraska was able to obtain \$2 million in 2007 in child support arrears.<sup>64</sup> When only those studies focusing on family law centres are taken into account, the average return for every £1 spent is over £7.49.

<sup>57</sup> Friedman, Donna H., et al. (2007) "Preventing homelessness and promoting housing stability: a comparative analysis.", online: [https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1002&context=csp\\_pubs](https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1002&context=csp_pubs) average stay of 3 months, amount adjusted for inflation and currency

<sup>58</sup> Massachusetts legal Assistance Corporation (2015) "Civil Legal Aid Yields Economic Benefits to Clients and to the Commonwealth", online: [https://mlac.org/wp-content/uploads/2015/08/Economic\\_Benefits\\_FY12.pdf](https://mlac.org/wp-content/uploads/2015/08/Economic_Benefits_FY12.pdf); New York State Department of Social Services (1990) "The Homelessness Prevention Program: Outcomes and Effectiveness", <http://www.nlada.org/DMS/Documents/1195250846.92/NYSDeptofSS%20%20Homelessness%20Prevention%20Pram%20Outcomes%20%26%20Effect.pdf>

<sup>59</sup> Lin, Zhenguo, Eric Rosenblatt, and Vincent W. Yao (2009) "Spillover effects of foreclosures on neighborhood property values." *The Journal of Real Estate Finance and Economics* 38.4: 387-407, online at: <https://tinyurl.com/4tr6zu9c>

<sup>60</sup> Stout Risius Ross, (2018) "Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants", online: <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>

<sup>61</sup> Home Office "The economic and social costs of domestic abuse" (2019), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/918897/horr107.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918897/horr107.pdf)

<sup>62</sup> Liz Elwart et al., Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program, 12-13 (2006), [http://www.wisbar.org/am/template.cfm?template=/cm/content\\_display.cfm&contentid=63633](http://www.wisbar.org/am/template.cfm?template=/cm/content_display.cfm&contentid=63633); Kenneth A. Smith and Kelly Thayer. (2015). "Economic Impact of Civil Legal Aid Organizations Tennessee", online [http://www.tba.org/sites/default/files/2015-TNFinal%20Report%20Package\\_Consolidated%20Statewide\\_3-18-2015.pdf](http://www.tba.org/sites/default/files/2015-TNFinal%20Report%20Package_Consolidated%20Statewide_3-18-2015.pdf)

<sup>63</sup> Farmer, Amy, and Jill Tiefenthaler. (2003) "Explaining the recent decline in domestic violence." *Contemporary economic policy* 21.2: 158-172; Abel, Laura K., and Susan Vignola. "Economic and other benefits associated with the provision of civil legal aid." *Seattle J. Soc. Just.* 9 (2010): <https://tinyurl.com/3txhvcjs> 139, 147,

<sup>64</sup> Feelhaver, Rod, and Jerome A. Deichert. (2008) "The Economic Impact of Legal Aid of Nebraska, 2007". Center for Applied Urban Research, University of Nebraska at Omaha.



### (3) Employment

The same equally applies to employment law. The cost of work-related stress to the UK economy is £28 billion a year, with a total of 13.4 million working days lost each year.<sup>65</sup> Known justiciable employment problems alone, that would cost approximately £2,600,682 in civil legal aid, result in an estimated £39,148,133 in costs without it, a ratio of 15 to 1.<sup>66</sup>

Timely legal advice can not only reduce stress, but also mitigate the negative impacts such stress can cause: allowing individuals to retain their position, terms of contract, or even gain financial compensation for unfair dismissal.<sup>67</sup> 47% of those receiving Legal Aid have improved relationships with employers as a result of Legal Aid.<sup>68</sup> In total, research by the Citizens Advice Bureau indicates that for every £1 spent on employment advice, the state potentially saves £7.13 from avoidable outcomes.<sup>69</sup>

### (4) Immigration

The cost of irregular migration is well-known. There are currently 89,398 asylum seekers in the UK, and over 618,000 irregular residents.<sup>70</sup> Current government estimates place the cost of asylum housing at £2.4bn, with an overall £3.7bn spent per year in supporting asylum seekers.<sup>71</sup> The average cost to hold one person in immigration detention is £107 per day.<sup>72</sup> When combined with the fact that there are 24,500 individuals held in immigration detention each year, and the average length of detention is 4 months, the cost of detention alone is £314,580,000.<sup>73</sup>

Whilst legal aid for irregular migration is available, as the previous chapters have indicated, it is not working effectively. Indeed, one estimate suggests that 40% of those applying for asylum in the UK have been denied access to legal aid.<sup>74</sup>



<sup>65</sup> AXA (2023) "Work-Related Stress Costing UK Economy £28bn A Year | AXA UK". AXA UK Home Page. <https://www.axa.co.uk/newsroom/media-releases/2023/the-true-cost-of-running-on-empty-work-related-stress-costing-uk-economy-28bn-a-year/#:~:text=28bn%20a%20year-,The%20tr>; Health and Safety Executive "Tackling Stress: the management standards approach" (2007). Available at: <http://www.hse.gov.uk/pubns/indg406.pdf>

<sup>66</sup> Moore, Lisa, and Trevor CW Farrow (2019). "Investing in justice: A literature review in support of the case for improved access." Online at <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1017&context=cfcj>

<sup>67</sup> Citizens Advice Bureau (2010) "Towards a Business Case for Legal Aid.". <https://namati.org/wpcontent/uploads/2015/12/Citizens-Advice-Bureau-Towards-a-business-case-for-legal-aid.Pdf>, para. 83.

<sup>68</sup> Vaughan, K. (2015). "Standing alone. Going to the family court without a lawyer.": Citizens Advice, online at <https://tinyurl.com/43hay7jn>

<sup>69</sup> Citizens Advice Bureau (2010) "Towards a Business Case for Legal Aid.". <https://namati.org/wpcontent/uploads/2015/12/Citizens-Advice-Bureau-Towards-a-business-case-for-legal-aid.Pdf>, para. 2.

<sup>70</sup> Home office (2023) "How Many People Do We Grant Protection To?" GOV.UK. <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022/how-many-people-do-we-grant-protection-to>; Gordon, Ian, et al. (2009) "Economic impact on London and the UK of an earned regularisation of irregular migrants in the UK." Interim Report from LSE London, [https://www.london.gov.uk/sites/default/files/gla\\_migrate\\_files\\_destination/irregular-migrants-report.pdf](https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/irregular-migrants-report.pdf)

<sup>71</sup> Home Affairs Committee Oral evidence: Channel crossings, HC 822, Q85 <https://committees.parliament.uk/oralevidence/11390/pdf/#page=20>; Loft, P., Brien, P., Mckinney, C.J. (2022) "The UK aid budget and support for refugees in the UK in 2022/23". Online at <https://commonslibrary.parliament.uk/research-briefings/cbp-9663/#:~:text=A%20growing%20amount%20of%20UK,this%20aid%20spending%20in%202022>.

<sup>72</sup> The Migration Observatory (2023) "Briefing: Immigration Detention in the UK", <https://migrationobservatory.ox.ac.uk/wp-content/uploads/2021/09/MigObs-Briefing-Immigration-Detention-in-the-UK.pdf>

<sup>73</sup> Grierson, J. (2018) "Immigration detention: how the UK compares with other countries" The Guardian. Online at <https://www.theguardian.com/uk-news/2018/oct/10/immigration-detention-how-the-uk-compares-with-other-countries>

<sup>74</sup> Mediicott, L. (2022) "Exclusive: Crisis in legal aid system as asylum seekers unable to find lawyers", <https://www.opendemocracy.net/en/asylum-seekers-legal-aid-system-crisis-justice/>; Siddique H. (2022) "Refugees Being Sent To Areas Of UK With Little Or No Legal Aid, Study Finds" The Guardian. <https://www.theguardian.com/law/2022/may/26/refugees-being-sent-to-areas-of-uk-with-little-or-no-legal-aid-study-finds>



## (4) Immigration continued

Civil legal aid funding for irregular migrants has a proven effect on asylum seekers success rate in legalising their status, allowing them to obtain lawful employment, and contribute to the taxation system.<sup>75</sup>

An American study shows that migrants who receive representation are 3-4 times more likely to win an appeal of a previously rejected asylum application (from 7 to 22%), and are therefore able to contribute to society, rather than remain supported until they are deported which can take years.<sup>76</sup> A UK Home Office study in 2013 showed that a basic form of migrant legal aid, the “Early Legal Advice Project”, led to a 7% increase in the success rate of asylum applicants being given discretionary leave to remain, as well as reduced the volume of appeals, and created broader savings across government.<sup>77</sup>

Extrapolating these figures, alone, there are huge potential government savings from providing better civil legal aid to irregular migrants, meaning that those who legitimately request asylum are granted it and in a more efficient manner (than, for example, having to appeal a decision). If those 40% of migrants who lack legal aid were provided with it, based on the Home Office’s own statistics there would be a £168 million saving per year in the cost of asylum housing.

This ignores any contribution the regularisation of any of the 618,000 irregular residents would

make to the UK economy, which one study estimates individually would contribute £2,158 to the government through tax.<sup>78</sup> Extrapolating this based on the conservative estimates of a 7% success rate of regularisation, this would result in an additional £88.15 million to the government. This ignores the additional consumer spending going into the economy, which studies estimate at 47% of household income for low earners, or £276 million.<sup>79</sup>

Combining this information together, better civil legal aid for migrants would therefore generate £256.15 million for the government, and £532 million to the UK economy overall.

## (5) Conclusion

Together, what this data shows is that the funding of civil legal aid is not only morally right, but economically principled. The benefits of civil legal aid are potentially wide-ranging to our economy, allowing individuals to rely on their already enshrined legal right to payments from wrongdoers, rather than forcing the state to carry the burden. The savings that can be generated through the provision of civil legal aid apply not just to the efficiency of court services, but also mean that the state is not faced with an even greater economic burden down the line, through greater provision of welfare, housing, and healthcare.

<sup>75</sup> Smith, Ken, Kelly Thayer, and Kathy Garwold. (2013) “An Assessment of the Economic and Societal Impacts of Canal Alliance’s Immigration Legal Services.”, [https://greatprograms.org/pdf/G\\_MCF%20Report%20by%20The%20Resource%202013.pdf](https://greatprograms.org/pdf/G_MCF%20Report%20by%20The%20Resource%202013.pdf)

<sup>76</sup> Avid (2023) “What Is Immigration Detention? | AVID” Aviddetention.Org.Uk. <https://aviddetention.org.uk/immigration-detention/what-immigration-detention>

<sup>77</sup> Lane, M., Murray, D., Lakshman, R., Devise, C., & Zurawan, A. (2013). Evaluation of the Early Legal Advice Project - Final Report. London: Home Office [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/199962/horr70.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/199962/horr70.pdf)

<sup>78</sup> (adjusted for inflation) Gordon, Ian, et al. (2009) “Economic impact on London and the UK of an earned regularisation of irregular migrants in the UK.” Interim Report from LSE London, [https://www.london.gov.uk/sites/default/files/gla\\_migrate\\_files\\_destination/irregular-migrants-report.pdf](https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/irregular-migrants-report.pdf)

<sup>79</sup> Joseph Rowntree Foundation (2023) “Household Spending” [https://www.jrf.org.uk/data/household-spending#:~:text=In%202019%2F20%2C%20the%20average,income%20quintile%20\(%C2%A3937\)](https://www.jrf.org.uk/data/household-spending#:~:text=In%202019%2F20%2C%20the%20average,income%20quintile%20(%C2%A3937))

### 3. Funding Legal Aid

Despite the significant economic benefits raised, it is understood there is still concern as to how civil legal aid can be directly funded, without resorting to additional government spending or general taxation. This issue is already well dealt with by individual states in the United States, Australia, and Canada.<sup>80</sup> Based on these examples, we provide three potential avenues of funding:

#### (1) An additional cost to court filings

In 33 US States, Civil Legal Aid funding is at least partly provided through an additional fee placed on any civil filing before the court.<sup>81</sup> The most explicit example of this is in Pennsylvania, which passed the Access to Justice Act in 2002, establishing a \$2 additional fee, on top of the previous \$400, for any filings in state courts.<sup>82</sup> This amount has since increased to \$4, only 1% of the total court filing fee, yet has generated \$10.4mn per year on average.<sup>83</sup> Across the United States, such fees generated \$124 million in the United States alone.<sup>84</sup>

Extrapolated by population, such fees in the UK could generate £20.3 million towards legal aid funding. The amount could be even greater if, given that UK court filings claim a percentage of the total claim, rather than a set fixed amount for all court filings, an additional 1% was charged on top of the 5-10% range for all claims above £5,000.<sup>85</sup> Such a charge could either be made mandatory, or even offered on an opt-out basis (whereby a party must actively choose not to donate an additional fee towards a civil legal aid scheme).<sup>86</sup> Given the United Kingdom's courts reputation as an international hub for commercial disputes, such a fee would not only be lucrative but also fair, requiring those who use our commercial courts as a legal outlet for international

disputes to also contribute to the maintaining of the system for those who cannot afford it.<sup>87</sup>

#### (2) Interest on Clients funds held in trust

Our final proposal for funding civil legal aid is also the one most commonly practised in common law states, including Canada, Australia, and across all 50 states of the USA: the taking of interest derived from the holding of client funds under trust. Lawyers routinely receive client funds to be held in trust for future use, such as to pay court fees, advances for services not yet performed, or in preparation for the settlement of disputes.

Often however, the amount that a lawyer handles for a single client is quite small or held for only a short period of time, and cannot earn interest for the client in excess of the costs incurred to collect that interest.<sup>88</sup> Lawyers place these deposits into combined, or pooled, trust accounts that contain other nominal or short-term client funds. These are almost always current accounts, to allow easy access to the funds. However, current accounts offer little to no interest, and solicitors are able to retain what they consider to be a 'fair' portion of any interest earned under section 33 of the Solicitors Act 1974.<sup>89</sup>

<sup>80</sup> Stevenson, Dru. (2011) "Rethinking IOLTA." Mo. L. REv. 76: 455, <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3923&context=mlr> ;

<sup>81</sup> ABA Resource Centre for Access to Justice Initiatives "State Legislative Funding for Civil Legal Aid", online [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/ls\\_sclaid\\_atj\\_legislative\\_funding.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_sclaid_atj_legislative_funding.pdf)

<sup>82</sup> Pennsylvania IOLTA Board, (2012) "Report on Pennsylvania's Access to Justice Act FY 2004-2011" (2012), online: <https://legalaidresearchnlada.files.wordpress.com/2020/01/report-on-pennsylvanias-access-to-justice-act.pdf>

<sup>83</sup> Legislative Budget and Finance Committee, (2019) "A performance Audit of Pennsylvania's Access to Justice Act", online <http://lbf.c.law.state.pa.us/Resources/Documents/Reports/394.pdf>

<sup>84</sup> American Bar Association "Legal Aid Funding Report: US Funding for Legal Aid" (2023), online <https://public.tableau.com/app/profile/abarray/viz/ABArrayNationalData/NationalLegalAidFunding>

<sup>85</sup> HM Courts and Tribunals Services (2022) "Civil and Family Court Fees", online [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1093005/EX50\\_web\\_0722.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1093005/EX50_web_0722.pdf)

<sup>86</sup> Whilst an opt-out system is not favoured by this report, as it would inevitably lead to less revenue generated, its potential should also not be underestimated, with studies on charitable donations showing around 80% of individuals would be willing to donate a 20% additional fee towards a charitable cause if set by default (compared to 15% where it is not). Fiala, L., & Noussair, C. N. (2017). "Charitable giving, emotions, and the default effect". *Economic Inquiry*, 55(4), 1792-1812, [https://research.tilburguniversity.edu/files/8658553/2015\\_043.pdf](https://research.tilburguniversity.edu/files/8658553/2015_043.pdf)

<sup>87</sup> White & Case (2018) "The Role Of The English Courts Post Brexit: Emerging Challengers? | White & Case LLP". <https://www.whitecase.com/insight-alert/role-english-courts-post-brexite-emerging-challengers>

<sup>88</sup> Hubbard Pegman Whitney. (2023) "Interest Policy On Client Account Funds - Hubbard Pegman Whitney" (online) <https://www.hpwsolicitors.co.uk/about/resources/interest-policy-regarding-client-money/>

<sup>89</sup> Solicitors Act 1974, section 33 (online) <https://www.legislation.gov.uk/ukpga/1974/47/section/33>; Solicitors Regulation Authority, SRA Accounts Rules, Rule 7.1, <https://www.sra.org.uk/solicitors/standards-regulations/accounts-rules/>

In practice, this has meant that, whilst some 'easy access' savings accounts are offering interest of up to 9%, a number of solicitors are currently offering clients 0.1% returns.<sup>90</sup> Furthermore, generally any interest earned from solicitors holding the client's money which is less than £50 is withheld from the client.<sup>91</sup>

In the United States, Canada and Australia, however, lawyers who handle nominal or short-term client funds that can little to no net income for the client place these funds in a single, pooled, interest-bearing trust account, specifically designed to earn as much interest as savings accounts, whilst also allowing easy access.<sup>92</sup> Banks in turn forward the interest earned on these accounts to a charity working on behalf of the civil legal aid system. This allows lawyers to satisfy their ethical and fiduciary duty to place client funds in a secure account; there is on-demand access to the client's money; and, as in the past, the client realises no interest income because the nominal or short-term client funds that are pooled in these accounts are funds that cannot earn net interest for the client.<sup>93</sup>

Furthermore, this could also be extended to other groups which hold clients' money for a short-term, and are therefore unable to generate much interest, such as real estate agents, auctioneers, and conveyancers.<sup>94</sup>

Whilst technical, the amounts that can be generated from this method should not be underestimated. In the US alone, between \$150-250 million (£120-£200mn) is generated every year. In Australia, despite having only 7% of the population, around 45

million Australian Dollars (£24mn) are generated.<sup>95</sup> Extrapolating by population, this could generate between £24-£62 million each year towards civil legal aid.

### (3) An additional charge on successful legal aid funded cases

Finally, another option to raise additional income towards a National Legal Service, would be to add an additional payment required when civil legal aid funded claims are successful. Each year, around a sixth of the total cost of actions brought through civil legal aid are paid for by the other party who has lost in court.<sup>96</sup> Whilst there is a lack of public information as to the total value of the financial compensation individuals who bring civil legal aid claims receive from their opponents, in 2020 £150,048,765 of civil legal aid costs were paid for by the other party.<sup>97</sup>

We propose that an additional 10% charge is placed, either on any financial compensation received by a civil legal aid-funded recipient, or on the fees to which a losing opposing party to a civil legal aid-funded claim is required to pay. Indeed, the former could even be done either on a mandatory or opt-out basis .

Whilst we cannot estimate the amount that would be generated through a 10% charge on any financial compensation received, an additional 10% charged on top of the costs paid by a losing opposing party could generate around £16,615,164 per year towards a National Legal Service.<sup>98</sup>

<sup>90</sup> The Guardian (2023) "New Account Pays 9% Interest As UK Savers Offered Highest Rates For More Than A Decade". <https://www.theguardian.com/money/2023/jun/01/new-account-pays-9-interest-as-uk-savers-offered-highest-rates-for-more-than-a-decade>. A sample of solicitors offers can be found here: Lisa's Law Solicitors "Client Account Interest Policy" <https://lisa.law.co.uk/wp-content/uploads/2020/10/Client-Account-Interest-Policy-.pdf>; Hubbard Pegman Whitney. (2023) "Interest Policy On Client Account Funds - Hubbard Pegman Whitney" (online) <https://www.hpwsolicitors.co.uk/about/resources/interest-policy-regarding-client-money/>

<sup>91</sup> Grindeys (2023) "Client Account Interest Policy – Grindeys Conveyancing". <https://grindeys.co.uk/help/client-account-interest-policy/>; Bray, Jonathon. 2022. "What Is A 'Fair' Amount Of Interest To Pay On Client Money? - Jonathon Bray". <https://www.jonathonbray.com/what-is-a-fair-sum-of-interest-to-pay-on-client-money-payment-of-interest-policy/>

<sup>92</sup> National Association of IOLTA Programs "IOLTA Basics", <https://iolta.org/what-is-iolta/iolta-basics/>; CommBank "Statutory Trust Account", <https://www.commbank.com.au/business/bank-accounts/statutory-trust-accounts.html>

<sup>93</sup> American Bar Association, (2023) "Commission on Interest Lawyers' Trust Accounts: Overview", online [https://www.americanbar.org/groups/interest\\_lawyers\\_trust\\_accounts/overview/](https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/)

<sup>94</sup> Law Society of the Australian Capital Territory (2023) "Statutory Interest Account", online <https://www.actlawsociety.asn.au/about/law-society-services/statutory-interest-account>

<sup>95</sup> Stevenson, Dru. (2011) "Rethinking IOLTA." Mo. L. Rev. 76: 455, <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3923&context=mlr>; Mortensen, Reid (2005) "Interest on lawyers' trust accounts." Sydney L. Rev. 27: 289, <https://core.ac.uk/download/pdf/11038229.pdf>

<sup>96</sup> National Statistics, Legal aid statistics England and Wales, table 6-7, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1146954/legal-aid-statistics-tables-oct-dec-2022.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146954/legal-aid-statistics-tables-oct-dec-2022.ods); The Civil Legal Aid (Costs) Regulations 2013, s21, <https://www.legislation.gov.uk/ukdsi/2013/9780111533291>.

<sup>97</sup> Legal Aid Statistics- Civil Representation, Cost met by Opponents, (online) <https://tinyurl.com/4676pb9x>

<sup>98</sup> Average of total value of civil legal aid costs paid for by opponent between 2017-2022, adjusted for inflation, National Statistics, Legal aid statistics England and Wales, table 6-7, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1146954/legal-aid-statistics-tables-oct-dec-2022.ods](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1146954/legal-aid-statistics-tables-oct-dec-2022.ods)

## (4) Overall

Combining all three methods of generating income (all of which are complementary, in that they affect different users within the legal system), a total of £98,915,164 could be generated each year to fund civil legal aid. This is before the cost savings arising from such funding kick in, which using the average multiplier derived from 39 global studies, would result in a total economic benefit of over £655 million per year.

## 4. Conclusion

As has been described previously, a lack of access to justice in civil law is both widespread and morally problematic. This chapter shows it is also economically inefficient. Vast numbers of individuals are having to rely on the State to provide treatment for consequences, including emergency housing, healthcare, or welfare benefits, which could have easily been avoided if they had access to legal aid to claim what is rightfully theirs. Even small increases in civil legal aid can therefore have a significant and long-lasting effect on individuals' economic contributions to society and generate significant savings for the government later on.

Such services need not be provided through additional burdens on the treasury. Even a 10% increase in funding for civil legal aid to provide such services could be covered by the three measures outlined, especially when considering rapidly rising interest rates.<sup>99</sup> A National Legal Service would be one of Labour's greatest achievements. This chapter shows it could also be properly funded.

<sup>98</sup> Cable, Jonathan, (2023) "Bank of England to take Bank Rate to 5.00% next quarter as inflation proves sticky," Reuters, online <https://www.reuters.com/world/uk/bank-england-take-bank-rate-500-next-quarter-inflation-proves-sticky-2023-05-31/>

# CONTRIBUTORS OF WRITTEN PAPERS

Many, but not all, of the contributors to this paper have individual membership of, or support, the Labour Party. However, some must necessarily conduct themselves in public on a non-party basis.

**Adrian Berry** is a practising barrister working across the field of public. He works directly for clients under the Bar Public Access Scheme and is a consultant to NGOs assisting with strategic litigation and analysis.

**Nimrod Ben Cnaan** was formerly a researcher and teacher. He is Head of Policy and Profile for the Law Centres Network.

**Liz Davies KC** is a barrister specialising in housing law, joint head of chambers at Garden Court Chambers, and a former member of the Labour Party Executive.

**Andrew Hogan** is a barrister at Kings Chambers in Manchester. He is an expert in costs and litigation funding.

**Sue James** is a solicitor, former Law centre worker and Chief Executive Legal Action Group

**Joseph Kelen** is a New-York qualified lawyer working in international law. He holds an MSc in Behavioural Economics from Warwick University and an LLM from Harvard Law School, specialising in the economic analysis of law.

**Ellen Lefley** is a barrister and member of the staff of JUSTICE. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system in the UK. It is the UK arm of the International Commission of Jurists.

**His Honour Nic Madge** worked in a London law centre and later as a partner at Bindmans, before becoming a full-time district and then circuit judge.

**Chris Minnoch** is CEO of the Legal Aid Practitioners Group. LAPG is a membership body representing legal aid practitioners in England and Wales and the clients they serve. As such it campaigns for a fair, comprehensive and accessible legal aid scheme. He was assisted by Rohini Teather.

**Simon Mullings** works at Hammersmith and Fulham Law Centre and is Co-Chair Housing Law Practitioners' Association.

**Sonali Naik KC** is a practising barrister specialising in public law and in all aspects of immigration asylum and nationality law.

**Professor Richard Owen** is a solicitor and academic teacher of law and practice at Swansea University. He is Chair of the Law Society's Access to Justice Committee.

**Roger Smith OBE** worked in a London law centre in the 1970s and became solicitor at the Child Poverty Action Group. He was later director of Legal Action Group, director of education and training at the Law Society and director of JUSTICE.

**Carole Storer OBE** qualified as a solicitor in 1983 and worked as a solicitor in a law centre, local government, private practice and Shelter before working as the Director of Legal Aid Practitioners Group and as the interim Director of Legal Action Group. She is a freelance consultant. She is a long-standing member of the Labour Party.







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