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In this Issue

Executive Summary
 Statistical Bulletin
 A note on
 interpreting Legal Aid
 Statistics
 LAA's Statistician's
 Comment

Crime

- Overview
- Police Station Advice
- Magistrates' court
- Crown Court
- Prison Law

Civil

- Overview
- Legal Help
- Family Legal Help
- Family Civil Representation
- Family Mediation
- Non-Family Legal Help
- Non-Family Civil representation applications
- Judicial Reviews
- Exceptional Case Funding (ECF)
- A note on nominal and real terms expenditure

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- Website**
- Email**
- LinkedIn**

Q2 2023 Legal Aid Statistics April - June 2023

[Click here for the full set of tables and user guide](#)



Executive Summary

Welcome to the second statistics bulletin from the APPG on Access to Justice, and the second of 2023. By way of explanation to our new readers, every quarter we take a look at the most recent Legal Aid Agency (LAA) statistics and what might lie behind them.

For a more general update keep your eyes peeled for our November update, where in addition to our news briefing we will be reporting changes in the ministerial teams (and congratulating our Co-Chair and Vice-Chairs on their appointments) focusing on both parties' work around violence against women and girls (VAWG) (and our forthcoming event), the recruitment and retention crisis in the legal aid sector, Pro Bono Week, analysing the Supreme Court's decision in the Rwanda appeal, and much more. We'll also be covering our recent Conservative Party Access to Justice event with the Lord Chancellor, Attorney General, Sir Bob Neill MP and our Co-Chair Laura Farris MP. If there's anything that you'd like us to include, as ever **do get in touch**.

Turning now to the quarterly statistics, as usual we have quoted the LAA's language itself and we have indicated our own analysis of the figures and some background to the different practice areas where appropriate **in blue**. We also attempt to set out the meaning behind terms and to explain how parts of the legal aid system work in practice. Our regular readers or those more familiar with the justice system may prefer to skip over these explanatory paragraphs but we hope that newer readers find them helpful.

The latest statistics cover the quarter from April to June of this year, and were released on 29 September 2023. Our apologies that this bulletin is a little late, we've been tied up running events over the past month and keeping up with the developments in and around Westminster.

Statistical Bulletin

The LAA bulletin can be accessed **in full here**. Gov.uk now releases statistical bulletins in HTML format for ease of reading on mobile devices. It's not the most user-friendly of reads so please find below our overview in both civil and crime of, *inter alia*:

- numbers of new cases
- numbers of closed cases
- expenditure

As ever, **do get in touch** if you would like any further information or any of these points clarified.

A note on interpreting Legal Aid statistics

For those looking for trends across legal aid as a whole, we recommend beginning by looking at annual expenditure figures and then look at trends in both workload and expenditure for each category of legal aid. Summarising workload activity across the whole legal aid system meaningfully within a single number is difficult because of the diversity of services included and different stages of delivery. For example, the amount of legal aid work could be measured at the point when legal aid is granted, or after all the legal aid work is completed and the provider has been paid. There is also a large amount of work that goes into applications for legal aid which, if not granted, is difficult to quantify. Expenditure on legal aid is measured differently for different purposes. The three most often-used measures, are:

- **Closed-case expenditure** – this is the measure used in the LAA statistics. It represents the total value of payments made to legal aid providers in relation to pieces of work that are completed in the period.
- **RDEL (Resource Departmental Expenditure Limits) nominal** is the main budgeting measure used by government to control current spending, both to set budgets for future years and report on how much has been spent. This measure does incorporate income and expenditure in relation to debt. Nominal here means not adjusted for inflation.
- **RDEL real** is the RDEL measure adjusted for inflation to make the value of spending in previous years directly comparable with the specified year.

As you would imagine, these measures show a large reduction in legal aid expenditure from around 2010-11, mostly due to the removal of large areas of civil legal aid from scope by the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act from 2013-14, reductions in criminal legal aid workloads and reductions in the fees payable to legal aid providers. We then saw reductions in legal aid expenditure over the course of the pandemic with a subsequent increase to certain areas in the years following it.

LAA's Statistician's Comment

"This publication shows that expenditure across civil legal aid has increased year on year and has also increased more over the recent quarters. Criminal legal aid expenditure has recovered in the most recent quarter following the impact of strike action last year in the Crown Court, which in turn impacted workload completed and the associated expenditure.

In the last few quarters, we have seen a small increase in police station claims and an increase in representation orders at the magistrates' court. Expenditure in the police station increased in the quarter again, as expected, due to higher fees for police station advice that were introduced at the end of September 2022. Extended sentencing powers at the magistrates' court, since temporary implementation in May 2022, has been feeding through to overall volumes with less committals for sentence arriving at the Crown Court and subsequently more trial work held at the lower court.

Overall civil expenditure is returning to pre-pandemic levels driven by large increases in family law expenditure with the number of claims being paid outside of the fixed fee scheme increasing due to more time being taken during the court process. Other non-family workload has not recovered to the same extent, and this is driven by a slow recovery of housing work although in the last quarter this has increased. Overall civil legal aid workload still remains below pre-pandemic levels although trends are increasing in domestic violence and mental health.

Figures are updated, on an experimental basis, covering the criminal legal aid data share between the Legal Aid Agency, The Law Society, The Bar Council and the Crown Prosecution Service. This ongoing series will provide access to detailed information about the legal aid market with even more granular data available in the accompanying analysis tool."

Ed: Expenditure on civil legal aid has increased, we hear the LAA statistician say. And it has, but in specific types of cases or categories of legal aid. We discuss these in further detail below.

Family Law

In its **consultation on proposals for the reform of legal aid in 2010**, the government explained its proposals to remove areas of law from scope on the basis that the issues concerned related the 'personal choices' of the individual and therefore were not suitable for public funding. Where a matter was the result of an individual's personal decision-making, there should be no call on the state to support any resulting dispute resolution. In family law, private law matters were essentially removed from scope other than those instances where domestic abuse had been evidenced, which remained eligible for legally aided help (para 4.19 of the above consultation).

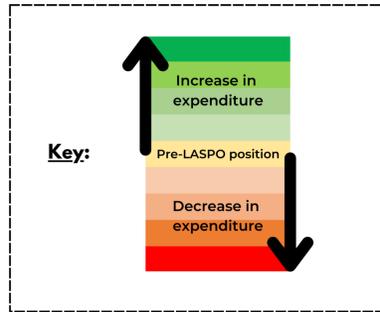
What remained in scope was child protection under public law (i.e. where local authorities seek care, supervision or emergency protection orders regarding children, or place children for adoption) or the matter concerns contact with children who have been subject to such proceedings. Private law child cases were excluded, even though some of the high-conflict contact cases border on child protection. It was hoped that people would be more likely to use alternative dispute resolution services, particularly mediation. So turning to the table below, we have incorporated a sliding scale of colour with numbers highlighted from green to red showing the original pre LASPO figures (yellow) and those areas where expenditure has increased (green) and decreased (red).

So we can see the decrease in expenditure in relation to private family law which we would expect given the matters removed from scope. Cases concerning financial provision have largely been removed from scope

and we can see the decrease in that number accordingly. The figures for mediation have dropped considerably (so as to now be almost negligible) since individuals are less likely to have it signposted to them by family lawyers. We can however, see huge growth in the areas of Special Children Act proceedings and other public law cases. Expenditure on domestic violence cases, having fallen significantly from 2015-2016 to 2021-2022 are now at slightly higher than pre-LASPO levels.

Costs of representing people in family law disputes - expenditure by the Legal Aid Agency (value £'000)

Source: Legal aid statistics: April to June 2023, Legal Aid Agency, Gov.uk



Financial Year	Combined family proceedings	Domestic violence	Financial provision	Help with mediation	Other family proceedings	Other public law Children Act proceedings	Private law Children Act proceedings	Special Children Act proceedings	TOTAL EXPENDITURE
2010-11	202	46,679	37,472	101	3,796	35,557	172,298	269,414	565,520
2011-12	163	49,543	34,539	55	4,772	34,699	188,718	328,448	640,938
2012-13	30	47,119	29,970	28	4,335	35,949	174,793	407,153	699,376
2013-14	30	42,194	24,988	9	6,019	30,507	157,625	477,271	738,644
2014-15	107	40,791	18,172	2	4,018	27,858	123,868	414,330	629,146
2015-16	21	36,181	11,934	1	2,423	26,397	78,860	360,506	516,324
2016-17	0	33,608	7,552	0	1,690	25,968	54,029	385,814	508,661
2017-18	8	33,007	5,485	0	969	30,965	47,612	425,467	543,513
2018-19	1	30,683	4,734	0	946	31,311	48,162	430,901	546,739
2019-20	15	32,164	4,445	0	498	38,195	54,160	466,741	596,219
2020-21	0	36,180	2,336	0	308	39,590	58,591	438,293	575,298
2021-22	1	46,926	3,393	0	468	44,352	72,875	480,479	648,494
2022-23	0	56,256	4,621	0	377	52,142	96,251	561,507	771,154

Non-Family Law

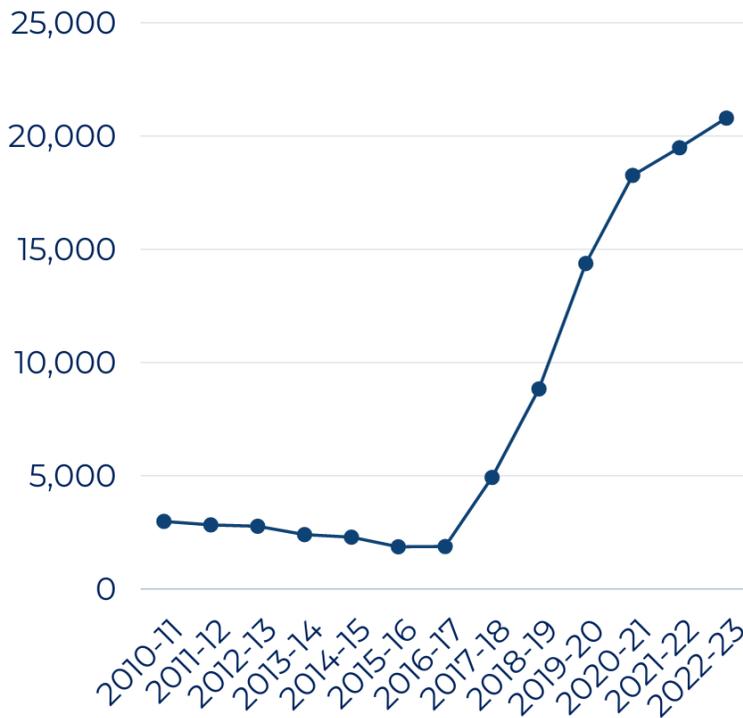
In other areas of civil legal aid the picture is a little more complicated, as you can see from the tables below. By way of a reminder, the table below provides a non-exhaustive list of what remains in the scope post-LASPO;

Area of law	Restrictions
Community care	For the provision of community care services and of facilities for disabled persons.
Actions against public authorities	Only for: (1) allegations of deliberate abuse of a person in the care of the authority and (2) where the public authority has the power to detain, imprison or prosecute: abuse of a child or vulnerable adult, deliberate or dishonest abuses of power by a public authority, breaches of human rights or advice to victims of sexual offences.
Clinical negligence	Only where an infant suffers a neurological injury resulting in them being severely disabled during pregnancy, childbirth or the postnatal period.
Debt	Only where the person's home is at risk.
Discrimination	Only in relation to contravention of the Equality Act 2010 or other specified discrimination statute.
Education	Only for cases of discrimination or special educational needs.
Public family law	Only regarding child protection
Private family law	Only for cases with evidence of domestic violence or child abuse, child abduction, forced marriage, FGM, or where the child is a party to the case.
Mediation	In relation to family disputes.
Housing	Only for cases of homelessness/risk of homelessness, where the person's home is at risk, they are at serious risk of harm due to disrepair or appeals on a point of law relating to council tax reduction schemes.
Immigration	Only where there are issues of domestic violence, human trafficking, slavery, servitude, forced labour, terrorism prevention and investigation or the proceedings are in the Special Immigration Appeals Commission. Also available for migrant children separated from their parents in non-asylum immigration and citizenship cases (following judicial review brought by the Children's Society).
Asylum and detention	Advice on detention cannot cover the substantive issue unless independently in scope.
Welfare benefits	Only for appeals to the upper tribunal, Court of Appeal or Supreme Court and judicial review cases.
Public Law	Only for human rights and public law challenges, i.e. judicial review.
Mental health & Mental Capacity	Only in relation to the Mental Health Act 1983, the Mental Capacity Act 2005 and the para 5(2) of the Schedule to the Repatriation of Prisoners Act 184.
Miscellaneous	Only for specific areas covered in Schedule 1, such as: proceeds of crime, environmental pollution, gang and anti-social behaviour injunctions and non-family/housing relationship-based harassment cases.

Let's take a look at some of these areas in further detail. The largest areas of increased expenditure are in Mental Health and Community Care. We set out a graph plotting the expenditure in Community Care below.

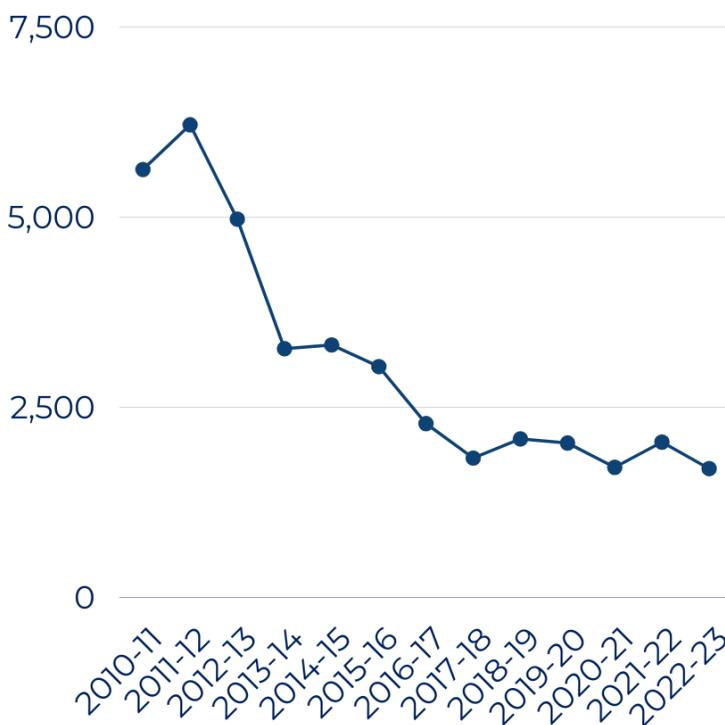
Yet conversely, a graph plotting numbers of legal help matter starts shows a dramatic decrease in the number of matter starts, and the most recent versions of the Law Society heat maps published in March of this year show huge swathes of England and Wales where there are no Community Care providers.

Community care civil representation costs met by Legal Aid Agency (£'000)



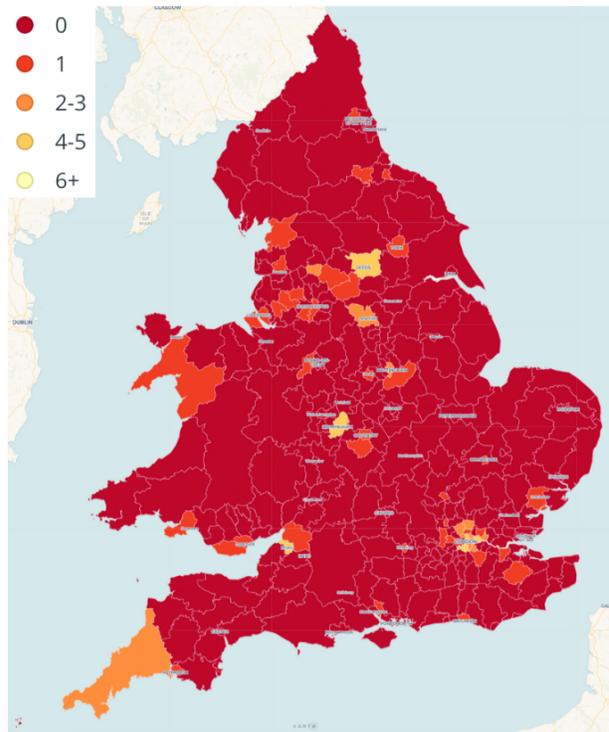
Source: Legal Aid Statistics April-June 2023, Gov.uk, 2023

Community care matter starts: legal help and controlled legal representation



Source: Legal Aid Statistics April-June 2023, Gov.uk, 2023

Community care legal aid providers, March 2023



Source: The Law Society (Visualisation);
Legal Aid Statistics January-March 2023, Gov.uk, 2023 (Data)

So what's going on behind these figures? Community Care is the area of legal aid practice which provides specialist legal advice for adults and children with disabilities on their rights to care and support.

LASPO did not change the scope of Community Care. This reflected the government's objective to target legal aid to those who needed it most, and its recognition of the "typical vulnerability of clients involved in these cases". Yet despite this, there has been a 77% reduction in the number of Community Care cases taken on under Legal Help in the last 10 years.

We refer to the Access Social Care report '**Community Care Legal Career Pathways**' of 2022 which looked at challenges affecting Community Care as an area of legal aid practice. The report concludes that an overwhelming number of practitioners describe finding it difficult to run a financially sustainable practice in Community Care on legal aid funding. The clear evidence from project participants was that the reduction in Legal Help matter starts is directly related to the strategies that providers have adopted in response.

Limiting the type and amount of legal aid work that providers do, which practitioners inform us is necessary to 'achieve a balanced caseload', is a means of maintaining at least some level of service rather than withdrawing from legal aid altogether.

This balance is achieved by taking on a greater proportion of Community Care case types with better rates of legal aid pay, such as Court of Protection* work (which often bypasses the Legal Help stage), a proportion of privately paying work and grant-funded project work in the not-for-profit sector.

So while we can see that Community Care expenditure has increased, the increase is attributable to a growth in Court of Protection work rather than other types of Community Care work such as:

- adult social care decisions under the Care Act;
- section 17 support for 'Children in Need' by reason of disability;
- section 17 support for 'Children in Need' by reason other than disability (e.g. families who are found intentionally homeless);
- migrant support;
- support for children in the care system and on leaving care;
- service closure and reconfigurations;
- health / social care divide issues,

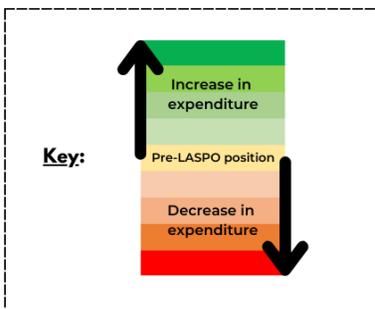
or cases that are less likely to move on to legal aid certificates. This leaves the practice area rather skewed in the nature of the people that are being assisted under legal aid with a large volumes of vulnerable people unable to access advice.

(*Court of Protection work ensures that people who lack mental capacity are legally represented in cases about decisions being made in their best interests, including decisions about whether they should be deprived of their liberty, about their medical treatment, where they should live and what type of contact they should have with their family and others.)

Costs of representing people in other civil disputes - expenditure by the Legal Aid Agency (value £'000)

Source: Legal aid statistics: April to June 2023, Legal Aid Agency, Gov.uk

Financial Year	Immigration	Mental Health	Actions against the police etc.	Clinical negligence	Community care	Consumer
2010-11	5,129	2,592	2,383	13,586	3,000	3,188
2011-12	4,930	5,014	1,784	16,149	2,845	2,106
2012-13	4,549	5,743	1,960	13,741	2,785	1,164
2013-14	2,845	6,368	2,073	10,798	2,417	1,083
2014-15	4,228	7,831	1,824	11,024	2,303	418
2015-16	4,429	8,377	1,508	11,720	1,878	279
2016-17	3,669	9,587	2,366	6,132	1,895	268
2017-18	4,005	11,524	2,340	5,900	4,942	110
2018-19	3,890	11,498	2,421	4,536	8,848	8
2019-20	3,024	13,033	3,604	3,294	14,383	97
2020-21	2,549	12,481	2,149	1,604	18,271	44
2021-22	2,417	14,888	3,565	3,003	19,496	105
2022-23	4,386	17,355	4,079	2,599	20,805	98



Financial Year	Debt	Discrimination	Education	Employment	Housing	Miscellaneous	Personal injury	Public law	Welfare Benefits	TOTAL EXPENDITURE
2010-11	946	0	871	488	24,949	5,370	20,545	4,321	97	79,745
2011-12	1,030	0	716	221	25,050	3,405	2,492	5,945	46	61,789
2012-13	1,019	0	545	144	24,980	3,002	1,370	5,407	207	56,322
2013-14	584	0	461	87	23,965	2,078	579	5,112	85	49,322
2014-15	581	35	340	112	23,615	1,434	871	5,084	41	47,683
2015-16	361	1	144	72	20,494	1,859	472	3,997	42	42,827
2016-17	229	10	144	7	19,130	5,572	344	3,389	14	39,499
2017-18	200	2	113	5	18,319	2,040	1,504	3,297	69	38,841
2018-19	317	13	82	36	18,240	2,182	133	3,675	57	40,550
2019-20	210	43	69	34	18,869	1,951	196	3,047	58	45,855
2020-21	101	48	65	10	14,949	1,730	3	2,786	43	41,804
2021-22	110	56	130	10	11,622	2,577	76	3,814	26	44,590
2022-23	75	128	165	7	12,870	2,603	50	5,049	55	48,581

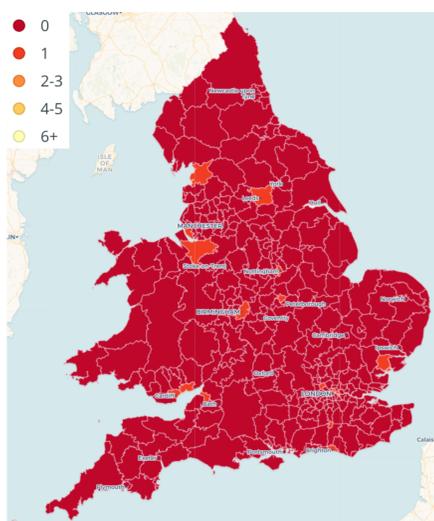
We took a further look at the figures in Education law. As detailed above, much of this, including school exclusions, was removed from scope when LASPO came into force in 2013. So we see the expenditure in this area drop from £8.7m to £1.65m this year.

Education civil representation costs met by Legal Aid Agency (£'000)



Source: Legal Aid Statistics April-June 2023, Gov.uk, 2023

Education legal aid providers, March 2023



Source: The Law Society (Visualisation); Legal Aid Statistics January-March 2023, Gov.uk, 2023 (Data)

Advice and representation for special education needs remains in scope under the terms of LASPO but currently there are 389,171 Education and Healthcare plans (EHCPs) for pupils in schools in England (i.e. 4.3% of pupils) and a total of 1,183,384 pupils in schools with SEN without EHCP's (or 13% of pupils) and only 16 providers throughout England and Wales with a legal aid contract in education law – a reduction of 20% in the last 12 months.

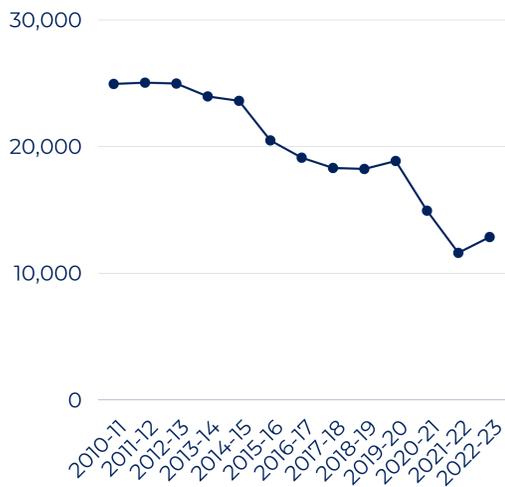
The Administrative Justice Council (AJC) has set out recommendations to improve the quality of local authority decision-making for children and young people with special educational needs and disabilities

(SEND).

The **report**, commissioned by the AJC, highlights that the Special Educational Needs and Disability Tribunal upholds 96% of the appeals it hears (i.e appeals brought by parents or guardians against local authority decisions about education provisions for children with SEN), amid a 200% increase in appeals over the last decade. This is a highly complex area of law in place to protect some of the most vulnerable children in society. Parents who are unable to access legal aid or able to find a provider able to take on their case will be forced to represent themselves which will place additional pressure on the courts and compound an inequality of arms as local authorities will be represented.

And finally, Housing law:

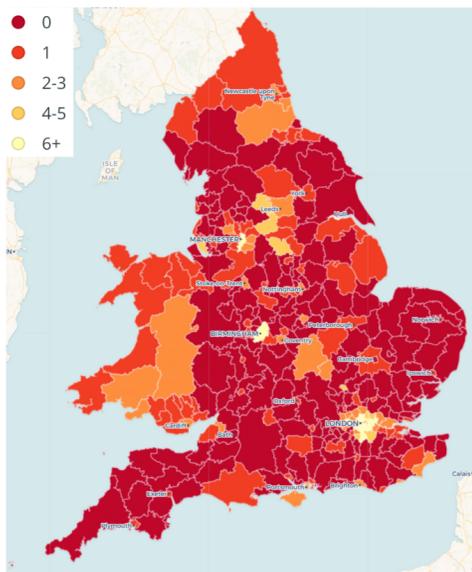
Housing civil representation costs met by Legal Aid Agency (£'000)



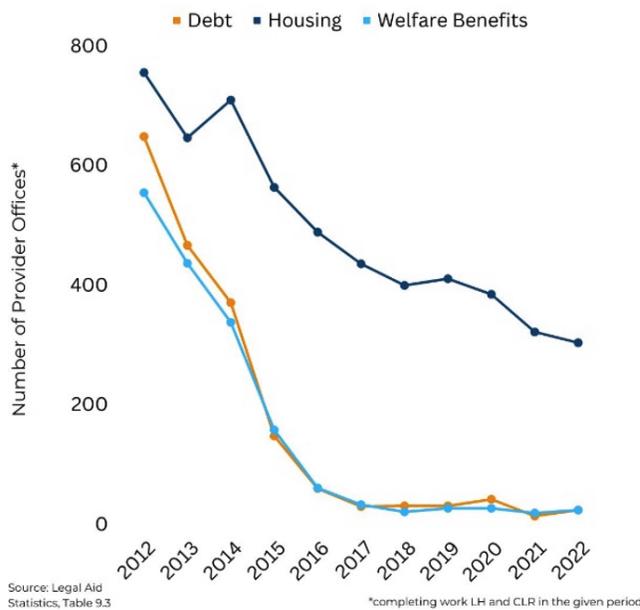
Source: Legal Aid Statistics April-June 2023, Gov.uk, 2023

The decrease in expenditure in housing law is expected as LASPO removed everything from scope but homelessness/risk of homelessness, where the person’s home is at risk, where they are at serious risk of harm due to disrepair or appeals on a point of law relating to council tax reduction schemes. The reduction in scope corresponds to a similar decrease in the numbers of legal aid providers in housing over the past decade as shown below.

Housing legal aid providers, March 2023



Source: The Law Society (Visualisation); Legal Aid Statistics January-March 2023, Gov.uk, 2023 (Data)



However, there are currently 4.4 million social-homes in England and Wales, 11 million private renters and 2.3 million private landlords in England. We now also have new legislation in the form of the Renters Reform Bill and the Social Housing Regulation Bill which set out additional guidance and establish new rights for tenants.

With the cost of living crisis and high interest rates, renters may be unable to afford legal advice if they face eviction. For renters at risk of losing their home, access to housing legal aid becomes vital. Many renters on low incomes cannot receive the advice they are legally entitled to, with 42% of the population unable to access a legal aid provider in their local area. Without legal aid, the measures envisaged under the Renters Reform Bill will be far less effective than they should be. The Bill may also lead to a short-term increase in evictions and contested hearings. Renters who are unable to access legal aid will be forced to represent themselves which will place additional pressure on the courts, exacerbate court delays and increase the demand on local authorities for support under homelessness legislation.

The general point to make is that levels of expenditure do not necessarily indicate either the health of the civil legal aid sector as a whole or individual practice areas. More worryingly, those most in need of advice or representation may not be able to access it with providers continuing to turn away from practice areas and publicly funded work.

On that not-so-brief note, let’s go back to this quarter’s LAA statistics.

Crime

Overview

“In the magistrates’ court the volume of completed work increased by 3% and associated expenditure increased by 11% when compared to the same period last year.”

Police Station Advice

“This category made up 68% of the Crime Lower workload between April and June 2023 but only 50% of the expenditure. The workload in this period increased by 4% compared to the previous year, with expenditure increasing by 17% (£5.3m). This is due to a 15% uplift in fees for police station advice introduced at the end of September 2022 as part of the criminal legal aid reforms. This reverses the general downward trend seen over the last few years with a decrease in police station advice workload since 2013-14.

The majority of the police station advice workload (89% in April and June 2023) consists of suspects receiving legal help with a solicitor in attendance at the police station, with the rest mainly consisting of legal advice over the telephone.”

Magistrates' court

“Legally-aided representation in the magistrates’ court comprised around a third, (30%) of the workload and around two fifths (42%) of expenditure in Crime Lower between April and June 2023. The volume of completed work increased by 3% this quarter when compared to the same period of the previous year. Expenditure also increased by 11% (£2.9m).

These changes incorporate the accelerated Criminal legal aid reforms since October 2020 which cover payment for work on sending cases to the Crown Court. This new category had 10,786 completed claims costing around £2.8m this quarter.”

Crown Court

“Completed work volumes within the litigator (solicitor) fee scheme increased by 3% in April to June 2023 compared to the same period of the previous year, driven mainly by a 17% increase in trial claims.

In the advocate fee scheme, completed claims decreased by 1% compared to the same period last year.

In the litigator fee scheme, expenditure increased by 14% in April to June 2023 compared to the same period of the previous year. In the advocate fee scheme, the value of payments increased by 14% also compared to the same period of the previous year. Figures for expenditure on work completed in the Crown Court should be interpreted with caution as they may be revised in subsequent quarters as claims are assessed further on appeal and further payments added to the value of some completed claims.

The Very High-Cost Case (VHCC) scheme covers those Crown Court cases which would likely last more than 60 days if they were to proceed to trial. Such cases can span several years and, while they may involve small numbers of defendants, the associated expenditure is high in comparison.

There were 5 defendants represented in the VHCC contracts that concluded in the April to June 2023 quarter. Expenditure on this work over the duration of the contracts (i.e. on the closed-case basis) was £1.6m. This compares with £10.7m of expenditure during the same period across all ongoing claims within the VHCC scheme, suggesting that there is a large backlog of claims in the court system waiting to be finalised.

While workload comprises a tiny proportion of legal aid in the Crown Court overall, the VHCC scheme represents around 1% of the cost, although down from 12% in April to May 2013.”

Ed: The fixed fee which was introduced in February 2023 to recognise the extra work carried out by advocates for pre-recorded cross-examination videos in cases with s.28 hearings is likely to rise from £670 to £1000 with the Statutory Instrument being laid before Parliament. The process of pre-recorded cross-examination is enabled under section 28 of the Youth Justice and Criminal Evidence Act 1999 and aims to support vulnerable or intimidated witnesses.

The Justice Committee has recently launched a short inquiry into the use of pre-recorded cross-examination and is accepting submissions from practitioners and interested parties.

Joanna Hardy-Susskind (a barrister specialising in s.28 cases) has voiced some concerns as to the well-meaning scheme. Ms Hardy-Susskind remarked 'it is without doubt that pre-recording evidence can provide considerable assistance to very young witnesses and those witnesses with communicative or other barriers to giving live evidence. However, the roll-out to huge groups of witnesses may have unintended consequences. One anecdotal view - held by many experienced practitioners - is that pre-recorded evidence is second best. The jury are often provided with a poor quality recording, played across a courtroom with little human impact - often in cases that are the most human of all. An assessment of the balancing act between assisting witnesses yet closely assessing acquittal rates needs to be conducted to ensure fairness to all parties involved in these often complex cases.'

Prison Law

“Workload this quarter increased by 1% compared with the same period in the previous year. This is driven mainly by free standing advice and assistance which decreased by 12% when compared to April to June 2022.

Conversely, advocacy assistance at parole board hearings increased by 15% compared to last year, although they have decreased by 2% since last quarter. Advocacy at parole board hearings currently makes up around two fifths (42%) of prison law workload, but a much larger proportion of costs (78%), so expenditure on prison law overall increased by 15% over this period, with a 5% decrease in free standing advice and assistance reducing the overall increase.

Since April to June 2020, the workload and expenditure for advocacy assistance at prison discipline hearings has remained low with a change in process for internal prisons hearings continuing since the COVID-19 pandemic. Year-to-year comparisons show that workload increased by 74% and expenditure increased by 117% this quarter compared to last year.

Prison law work still comprises a small portion of the volume (1%) and expenditure (2%) of total criminal legal aid work in April to June 2023.”

Ed: A UK Association of Prison Lawyers (APL) **survey** published in August of this year reveals that prison lawyers are at risk of quitting if legal fees are not raised. The report asserts that prison law legal aid work is ‘no longer sustainable’ due to the ‘exhausting and poorly paid work’ undertaken by lawyers. It states that despite complex **changes** in the **Victims and Prisoners Bill**, there is no mention of increasing fees for legal aid to make up for the greater amount of work the Bill will create for lawyers.

According to the survey, the number of prison law legal aid providers decreased 85 per cent between 2008 and 2022 and 88 per cent of survey respondents said they are thinking about leaving prison legal aid due to insufficient compensation.

Regular readers will recall that in 2021, Lord Christopher Bellamy released his Criminal Legal Aid Independent Review (CLAR) outlining the importance of funding for legal aid along with recommendations including, among others, increasing funding for prison legal aid, reforming how providers are paid and promoting efficiency in prison legal aid. While the government subsequently introduced fee increases for most areas of criminal legal aid work, fees for prison law work were excluded from these increases.

Civil

Overview

Ed: Civil legal aid can be categorised by area of law into family and non-family. The category of family legal aid covers all work on both private and public family law and includes work associated with the Children Act, domestic abuse, financial provision and family mediation. Non-family legal aid encompasses all work related to immigration, mental health, housing and other non-family areas of law.

“Although the workload for family and non-family cases is similar, comprising 30,308 and 33,182 cases in April to June 2023 respectively, non-family cases make up only around a fifth of total civil legal aid expenditure (17%). Public family legal aid makes up just under two thirds (58%) of family legal aid work and around two thirds (69%) of expenditure.”

Legal Help

“In the last quarter, there was a 6% increase in legal help new matter starts compared to the same period of 2022. The volume of completed claims increased by 11% and expenditure increased by 1% in April to June 2023 compared to the same period in 2022.

The implementation of the LASPO Act in April 2013 resulted in large reductions in legal help workload, with the decline in the overall trend being further exacerbated by the effects of COVID-19, workload now sits at less than one-quarter of pre-LASPO levels.”

Family Legal Help

“There was a steep decline in family legal help immediately following the implementation of LASPO Act in April 2013, with a more gradual decline over the last 6 years.

From 1 September 2021, callers to the Civil Legal Advice (CLA) helpline with family issues are no longer referred to specialist telephone advice. In April to June 2023 family legal help starts were unchanged compared to the same quarter last year. Completed claims increased by 2% and expenditure also increased by 2%.”

Family Civil Representation

“Certificates granted for family work decreased by 4% in April to June 2023 compared to the previous year. Certificates completed increased by 9% and associated expenditure has increased by 14% compared to the same quarter the previous year.

While civil representation for public family law remains available, the LASPO Act removed legal aid for most private family law including issues such as contact or divorce. However, legal aid remains available for such cases where there is a risk of domestic violence or child abuse. The volume and expenditure for closed case domestic violence civil representation increased following COVID-19. More recently, in April to June 2023, certificates completed for domestic violence increased by 5% compared to the same period of the previous year.

In April to June 2023, applications for civil representation supported by evidence of domestic violence or

child abuse decreased by 5% compared to the same period of the previous year. The number of certificates granted via the domestic violence and child abuse gateway decreased by 4% over the same period. The proportion of applications granted remained steady at around 70% from the inception of this type of application until the end of 2015, before increasing to around 80%. The provisional figure for the latest quarter is 86%."

Family Mediation

"Family mediation involves an independent and impartial professionally-accredited mediator discussing problems with a divorcing or separating couple. A Mediation Information and Assessment Meeting (MIAMs) is an initial meeting between one or both parties and a mediator to see if family mediation could be used to reach agreement without using the courts. MIAMs, family mediation starts, and outcomes decreased significantly following the COVID-19 restrictions in March 2020. Since then, volumes and expenditure rapidly increased to levels temporarily exceeding pre-COVID figures. The volume of MIAMs was unchanged in the last quarter compared to the previous year and currently stand at just over a third of pre-LASPO levels.. Family mediation starts decreased by 2% and total outcomes decreased by 3%, of which 58% were successful agreements, and are now sitting at around half of pre-LASPO levels."

Non-Family Legal Help

"Controlled legal representation relates to representation at tribunal, but unlike civil representation, the decision on whether to grant legal aid is delegated to providers. Legal help and controlled legal representation make up 97% of immigration and 94% of mental health legal aid cases."

Immigration

"The LASPO Act 2012 made changes to the scope of legal aid for immigration law, but some areas remained in scope. Workload that remains in the immigration category consists largely of asylum-related work. Having fallen by over 45% in April to June 2020, new matter starts in immigration increased by 5% in April to June 2023 compared to the same quarter of the previous year. Completed claims in immigration increased by 18% in the last quarter compared to the previous year and expenditure increased by 10%."

Ed: We note that according to **figures cited by the Joint Committee on Human Rights**, half of individuals seeking asylum and other vulnerable migrants (including minors and victims of trafficking and modern slavery) are now unable to access legal aid to ensure protection of their legal and human rights. With this figure likely to rise as a result of the Illegal Migration Act the government recently published a consultation asking whether a rise in fee rate which was specific to work arising out of the Illegal Migration Act would address the shortfall in providers. The general consensus from the providers that we spoke to appeared to be that it would not, but this issue is discussed in further detail over in our news bulletin.

The Law Society estimates 39m people (66%) do not have access to a local immigration provider.

Breaking: Yesterday morning, the Supreme Court handed down its judgement, **which you can read here**, on the 'Rwanda Appeals', unanimously dismissing the Home Secretary's Appeal and upholding the Court of Appeal's conclusion that the government's Rwanda policy is unlawful. Although the judgment does not make any mention of legal aid, the judgment will have implications for the asylum process, which Prime Minister Rishi Sunak will likely seek to reshape legislatively.

Mental Health

"Within mental health, most funding is spent on providing assistance to sectioned clients appealing the terms of their detention before a mental health tribunal. Mental health new matter starts decreased by 2% when comparing the latest quarter to the previous year. Completed claims also decreased by 4% and expenditure decreased by 7% over the same period."

Housing

"More than three quarters (83%) of legal aid housing work volume is made up of legal help. The volume of legally-aided housing work halved between July to September 2012 and July to September 2013 following LASPO. Starts and completed claims nearly halved again during the first COVID-19 lockdown between January to March 2020 and April to June 2020. In more recent months, April to June 2023, there was a 15% increase in housing work starts compared to the same quarter the previous year. There were also a 23% increase in completed claims with a 3% decrease in expenditure."

Non-Family Civil representation applications

“The number of civil representation certificates granted in the last quarter decreased by 2% compared to the same period of the previous year. The number of certificates completed increased by 9%, and the associated expenditure increased by 15% over the same period.

This is due to the number of claims being paid outside of the fixed fee scheme increasing due to more time being taken during the court process. At a cost of around £226.2m in April to June 2023, total civil representation expenditure where met by the LAA is the highest it has been since 2011-12.”

Judicial Reviews

“Of all civil representation applications granted, 728 in the last quarter related to a judicial review. The number granted in April to June 2023 increased by 12% compared with the same quarter in 2022. Around a half of judicial reviews were for public law.”

Exceptional Case Funding (ECF)

“The Exceptional Case Funding (ECF) scheme was introduced as part of LASPO. An ECF application for civil legal services is made where a case falls outside the scope of civil legal aid but the client or conducting solicitor believes failure to provide funding would be a breach of the Human Rights Act 1998.

There were 815 applications for ECF received from April to June 2023. This is a 7% decrease from the same quarter last year. 770 (94%) of these were new applications. Of these, 75% were granted, 14% were refused and 9% rejected.”

Ed: A note or two on the ECF scheme. **Section 10 of LASPO** introduced Exceptional Case Funding (ECF) for non-inquest cases that are not in scope for legal aid. It provided that funding should be available if an individual’s human rights or European Union law rights would be breached if they did not receive funding for a lawyer. The key question is whether the individual could present their case effectively and without unfairness if they did not have legal aid. That may be because the case is complicated; because the individual is less able to deal with it alone; and/or because the case is so important to them that it is not fair for them to manage the case themselves. The individual must also show that **their case is strong enough** and that **they are financially eligible for legal aid**. The scheme was intended to act as a safety net and during the passage of the LASPO Bill through parliament, the Legal Services Commission estimated that there would be 5,000–7,000 section 10 applications per year. However, it soon became apparent that the complexity of the application process and the eligibility criteria meant that access to the scheme was severely restricted. In the first year post-LASPO only received **1,520 applications were received of which 69 were granted**. This figure has risen in the intervening years but still remains far lower than was originally expected.

There may be a number of reasons why. ECF is unusual in that both funding can be applied for by both individuals (acting on their own behalf) and by practitioners. However, it seems to be accepted that the process is too complicated for individuals to undertake without the support of a legal professional yet applications for ECF are made at risk, with funding only being granted if the application is successful. Solicitors are unable to grant exceptional funding themselves, and all applications for ECF must be sent to the LAA. The LAA’s target time for responding to an initial application is 25 working days but the target time for responding to an urgent application is ten working days. Practitioners have told us via the Westminster Inquiry that the ECF application process is time-consuming, onerous and leads to delay (even when it is indicated that a matter is urgent). The system works on the premise that when something is urgent, a solicitor would prepare and submit the funding application, and then proceed to work on the matter pending a decision, but we were told that this is unrealistic. A sensible business owner will not take on work when they do not know how or if it will be funded. The result is that providers are unlikely to take on urgent or complex matters, or will decline to make ECF applications altogether. More than one witness made the point that practitioners are disincentivised from undertaking this work because of the financial risks involved. Those who attempted to engage in the ECF scheme in the first years after its introduction were also likely to have had a very negative experience, which would dissuade them from taking the time and risk of continuing to make applications, even after improvements were introduced to the scheme.

We note that there has been some growth in the volume of matters being dealt with under ECF since LASPO but are also aware of a trend around particular types of cases which are routinely funded under ECF which may skew these figures somewhat. As an aside, we would argue that if a particular case is regularly funded under the scheme it ceases to be ‘exceptional’. There is a compelling case for scope to be widened to incorporate such cases so that the legal aid scheme is fit for purpose and reflects public legal need.

And a final note on civil legal aid expenditure

The table below underlines the role of inflation in eroding the value of investments into the legal aid system.

A comparison of nominal and real terms civil legal aid expenditure

Financial Year	Civil legal aid expenditure - nominal terms (£m)	Civil legal aid expenditure - real terms (£m)
2010-11	1,026	1,346
2011-12	966	1,245
2012-13	946	1,198
2013-14	825	1,024
2014-15	685	841
2015-16	600	732
2016-17	646	771
2017-18	678	796
2018-19	731	843
2019-20	762	856
2020-21	835	883
2021-22	880	938
2022-23	926	926

Indeed, the numbers highlighted in green in the table above show that nominal spend on civil legal aid has dropped from £1.026 billion to £926 million. Adjusted for inflation however, the expenditure pre-LASPO was actually £1.346 billion in today's money (red highlights), which means the cut is actually £420 million – representing a 32% reduction in the value of civil legal aid since then.

Rohini Jana
Head of Parliamentary Affairs
16 November 2023

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