



The All-Party Parliamentary
Group on Legal Aid

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Special Bulletin from the APPG on Legal Aid

Legal Aid Statistics – Summary Analysis of Statistics July-September 2022



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Welcome to this Christmas edition of the LAA statistics bulletin, designed to give you a whistle-stop tour through the LAA's quarterly statistics and some of the figures in both the criminal and civil legal aid scheme. These provide us with an idea of how the system is operating and how many new matters are being commenced under legal aid. By way of a spoiler, these are neither merry nor bright and the situation in relation to criminal legal aid has been described elsewhere as "a death knell" for the profession. For the most part, 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.

Statistics about the legal aid scheme are produced quarterly by the Justice Statistics Analytical Services division of the Ministry of Justice. The latest statistics cover the quarter from July to September of this year, and were released on 15 December 2022.

Statistics 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

There are comparisons with the same quarter from the previous year and also comparisons with the pre-LASPO figures. These give us a clearer idea of the impact of the criminal legal aid strike than we've had in previous months. The main points are summarised below. As ever, do **get in touch** if you would like any further information or any of these points clarified.

LAA Statistician's Comment

"Expenditure across civil legal aid has increased year on year and has also increased more over the recent quarters. Following recovery from the impact of the pandemic, criminal legal aid expenditure has fallen in the most recent quarter due to strike action in the Crown Court in which impacted workload completed within the period.

Criminal legal aid workload for representation at the courts had returned to levels seen before covid but in the last few quarters we've seen falls in both courts suggesting a sustained fall in cases reaching court. In the most recent quarter, we have seen an increase in both police station claims and a corresponding representation orders at the magistrates' court halting this trend. The increase to extended sentencing powers at the magistrates' court, since implementation in May 2022, has been feeding through to overall volumes with less committals for sentence arriving at the Crown Court and subsequently more work held at the lower court.

Civil legal aid volumes and expenditure show a varied picture compared to last year. Overall civil expenditure is returning to pre-pandemic levels driven by family law expenditure. 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, mental health and, within exceptional case funding, immigration."

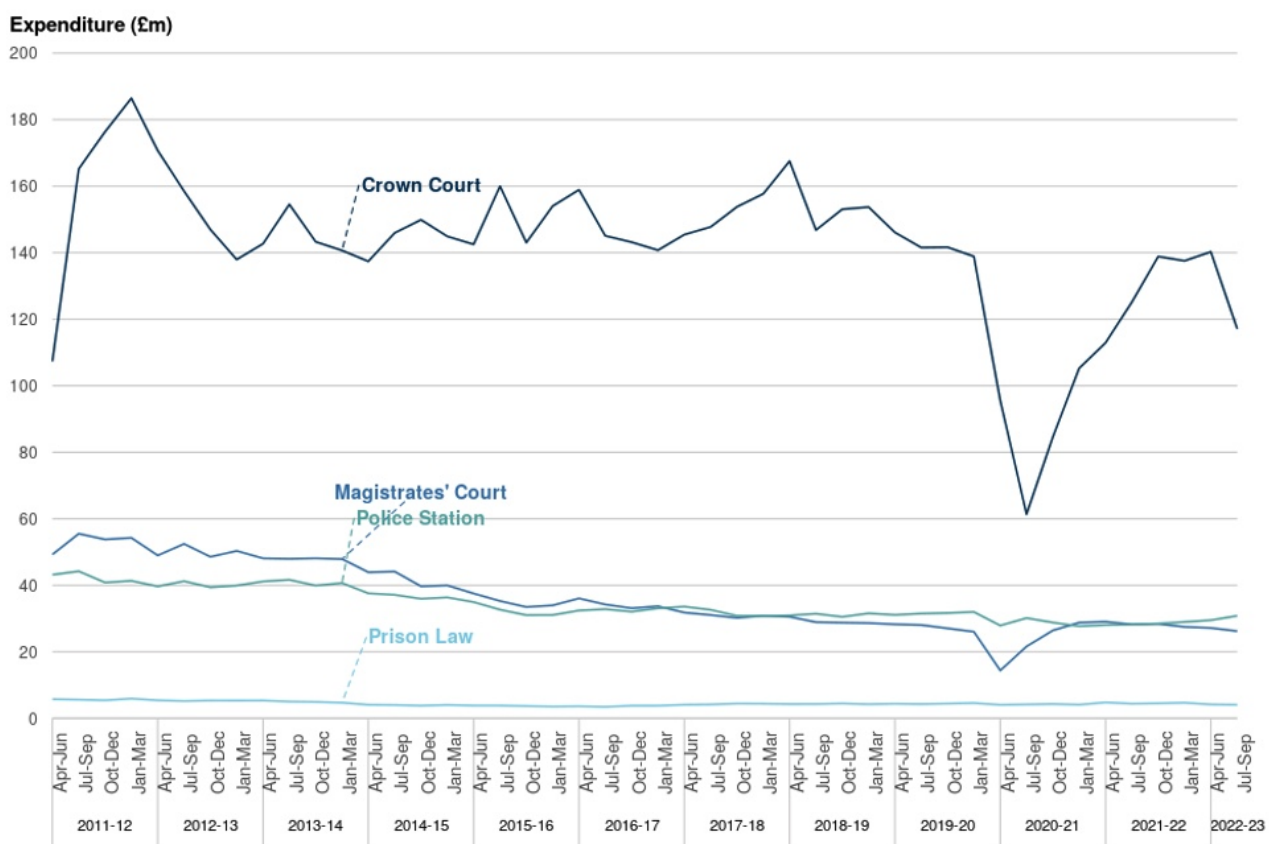
Ed: The statistician's comment pertaining to civil legal aid workload is near-identical to last quarter's: "a mixed picture". With reference to the slow recovery of housing work, it is worth noting that since September 2018, 73 providers and 116 offices have ceased delivering services in housing legal aid. There are also a number of providers with dormant legal aid contracts, or running a small number of cases each year. Shadow Justice Minister Afzal Khan asked Secretary of State for Justice Mike Freer "how many civil legal aid offices are starting less than or equal to 30 cases each year in each legal aid authority?". The response (**which can be found here**) was that 206 offices throughout England and Wales run less than 30 housing cases a year under

Crime

Criminal legal aid is reported as "Crime Lower" and "Crime Higher". Crime Lower includes police station advice, magistrates' court and prison law. Crime Higher covers work in the Crown and Higher Courts. There were very few changes to crime in the LASPO Act – however other factors come into play including reduced fixed fee payments and how payments are made.

Criminal legal aid expenditure decreased by 4% compared to the same quarter last year, with a severe drop in Crown Court expenditure and a slight drop in magistrates' expenditure nowhere near being offset by a slight increase in police station expenditure.

Ed: we note that these figures, including the ones in the graph below, represent actual spend rather than the figures in real terms (as adjusted for inflation). For example, Lord Christopher Bellamy said in his Criminal Legal Aid review [para 1.19] that criminal legal aid expenditure between 2004/5 and 2019/20 had decreased in cash terms by 30%, which represented a real terms drop of 43%.



Title: Expenditure in criminal legal aid, April-June 2011 to July-September 2022.

A word or two on Release Under Investigation (RUI), criminal legal aid and how the system works:

Ed: Individuals who are going to be interviewed by the police under caution or have been arrested are always entitled to FREE legal advice and representation. In certain circumstances, for example where you are interviewed about a minor offence, this right will be limited to advice over the telephone.

Recent years have seen a shift towards the police releasing individuals from the police station to make further inquiries before a decision is made on whether to proceed with a case against them. You may have seen us refer to this as "Release Under Investigation" (RUI), and it's so

frequently used that in most police forces there are as many – if not more – individuals released under investigation than individuals on bail [see below]. RUI is used by the police instead of bail – but unlike pre-charge bail it has no time limits or conditions. This can leave the accused and alleged victims in limbo with no updates on their case for an unlimited time.

There is also evidence that there are people being released under investigation who are potentially a risk to alleged victims of crime and the public in general, rather than being put on pre-charge bail as would be more appropriate.

Outcome	Released under investigation
Charged	27,219
Out of Court disposal	5,516
Transfer to Released under Investigation	2,926
Transfer to Pre-charge Bail	3,183
Transfer to other Law Enforcement Agency (e.g. Border Force, National Crime Agency)	36
Transfer to other police force	1,010
No Further Action	97,258
Other	3,359
Unknown ³	6,827
Total	147,334

Title: Outcomes of the cases of individuals Released Under Investigation.

A Freedom of Information request by **Hickman & Rose Solicitors** found that 193,073 individuals were RUI'd by 31 police forces in 2017/18. This compensated for a drop in individuals on bail from 208,786 in 2016/17 to 43,923 for 2017/18. This is because the **Policing and Crime Act 2017**'s coming into force changed the way the police conduct investigations. The Law Society and other representative bodies have **campaigned on this issue**.

Our Vice-Chair, James Daly MP, has frequently flagged his concerns around this issue, most recently at the November 2022 Justice Select Committee evidence session dedicated to **"The work of the Director of Public Prosecutions"**. Calling RUI a "national scandal which is yet to be sorted adequately", James asked Max Hill KC: "[to] tell us the number of alleged accused who have been released under investigation on rape charges? This is the number of people who are currently subject to release under investigation for a rape allegation."

Max Hill was not able to give numbers but stated that the "new model" ensured that fewer and fewer rape suspects were being released under investigation, partly thanks to the scrutiny panels which are a feature of Operation Soteria.

Another exchange on the topic of Release under Investigation pointed to more recent developments:

"James Daly: In terms of release under investigation, what do you feel is the best model to help the CPS be more efficient and work closer with the police? Is it release under investigation or something else?

Max Hill: If you are talking here about aspiration, what should be happening is that those suspected of having committed criminal offences but not charged should be released on police bail; they should not be released under investigation. There is a very encouraging sign, although it is not for me to answer this, because on 28 October, last Friday, section 50 of the Police and Criminal Evidence Act was amended by the Police, Crime, Sentencing and Courts Act 2022, which has now applied new timescales to release under investigation. There is a bail period of three months, not 28 days, which the police are now entitled to use. That is encouraging the police nationwide to use PACE bail rather than release under investigation. Another condition imposed by Parliament in

effect last week is that where it is proposed that there should be pre-charge bail the police should take into account the views of the victim as to the conditions that should be attached to bail. I see that as a positive sign. My hope is that we will see release under investigation decline and police bail increase, and that is one of the many ways in which we will all grip the system together."

Magistrates Court

Ed: You will see during the course of this bulletin, references to "representation orders". This used to be called "Legal Aid", and in order to obtain it, an application has to be made to the court. This application is subject to two tests.

1. The first is called the "interests of justice" test. A representation order will only be granted if the court considers the case "serious enough" for the individual to need full legal representation. Generally, if an individual is charged with a non-imprisonable offence their case will not pass this first test. Such offences include driving document offences, minor Public Order Act offences and being Drunk and Disorderly. If the individual is charged with an "indictable only" offence (an offence that can only be heard in the Crown Court) their case will always satisfy this first test.
2. The second is a means test. Legal Aid will not be granted if the individual's income exceeds a certain amount. If the individual is in receipt of income-based JSA, Income Support or a guaranteed pension then they will automatically be entitled financially to legal aid. If the individual is in receipt of other benefits then they will not automatically be entitled to legal aid and will have to provide the court with documentary evidence of this benefit.

Crown Court

Ed: If the individual's case goes to the Crown Court for trial they will automatically qualify for legal aid representation once they have completed an application form. However, after the individual has been means tested, they may have to pay towards the cost of their defence. This contribution could be from their income whilst the case is ongoing and/or from their capital, if they are convicted.

An individual will not have to pay towards the costs of their case if they are under 18 when they make their application or if they receive any of the following benefits: income support, income-based jobseekers allowance, guaranteed state pension credit or income related employment and support allowance.

Police Station Advice

"This category made up two thirds of the Crime Lower workload between July and September 2022 but less than half of the expenditure. The workload in this period has increased by 8% compared to the previous year, with expenditure increasing by 9% (£2.7m). This reverses the general downward trend seen over the last few years, which our last statistics bulletin had remarked upon, finding it was explained by a reduction in prosecutions **by 45% between 2010 and 2018**. The majority of the police station advice workload (90% in July and September 2022) consists of suspects receiving legal help, with the rest mainly consisting of legal advice over the telephone."

Crown Court

"Although Crown Court work comprises a relatively small portion of criminal legal aid in terms of volume, it accounts for around two-thirds of all criminal legal aid expenditure. Conversely, advice

relating to the police station makes up the largest portion of workload, but a much smaller proportion of expenditure.

Orders granted for legally-aided representation in the **Crown court** decreased by 3% this quarter compared to last year. Within the legal aid figure, orders relating to either-way were level and indictable offences increased by 6% compared to large falls of 20% in committals for sentence and appeals. These are driven by new extended sentencing powers for the magistrates' courts with offences now remaining to be heard in the lower court. The proportion of Crown Court applications granted remains at almost 100%.

When compared to the same period last year Overall Crown Court expenditure decreased by 6%, and workload decreased by 10%. This fall is made up by a decrease of 3% on advocate fee scheme expenditure compared to this time last year, 7% decrease for the solicitor fee scheme, and a staggering 71% drop in High Cost crime cases (there was 1 defendant represented in the VHCC contracts that concluded in the July to September 2022 quarter. VHCC scheme costs now represent less than 1% of Crown court legal aid expenditure, down from over 15% ten years ago). Completed work volumes within the Litigator Fee Scheme or LGFS (which broadly refers to work undertaken by solicitors) decreased by 11% in in July to September 2022 compared to the same period of the previous year, driven mainly by a 14% decrease in trial claims. In the Advocate Fee Scheme (or AGFS) (primarily the work undertaken by barristers), completed claims decreased by 9% compared to the same period last year. Falls seen in both schemes this quarter are due to impacts on workload completed in September 2022 due to industrial action and the barrister strike."

Prison Law

"Workload this quarter decreased by 2% compared with the same period in the previous year, driven by advocacy assistance at parole board hearings which decreased by 5% compared to last year and has increased by 6% since last quarter. Advocacy at parole board hearings currently makes up just over two-fifths of prison law workload, but a much larger proportion of costs (79%), so expenditure on prison law overall decreased by 7% over this period.

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 covid. Year-to-year comparisons show that workload increased by 19% and expenditure increased by 1% this quarter compared to last year. This quarter is compared against an all-time low number of claims and this category is around one-tenth the overall workload volume from before covid."

Ed: It is worth noting when interpreting these figures that the number of prison lawyers has reduced dramatically in the past decade with a large number of firms ceasing to offer prison legal aid. In 2010 the Association of Prison Lawyers tells us that there were around 500 provider offices doing prison law, a figure which has now fallen to 110 across England and Wales. This was an area of law that the **Independent Criminal Legal Aid Review** recognised as crucial and recommended for inclusion within the proposed investment at paragraph 14.4.2. It was not, however, an area of law included within the Government's criminal legal aid recommendations and there remains no offer from the Government on the table in respect of them.

Civil

Ed: What do we mean by civil legal aid?

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 workload for family and non-family law cases are similar, non-family comprises a relatively small proportion of civil legal aid expenditure. Public family legal aid makes up two thirds of family legal aid work and over 81% of expenditure.

Civil legal aid closed case expenditure increased this quarter; up by 21% compared to July to September 2021. This increase is driven by family civil representation expenditure increasing by 24% over the same period. Family civil representation expenditure had already been the driving force behind a 12% civil legal aid closed case expenditure increased in the previous quarter, which had taken total civil expenditure to its highest level since 2014-15.”

Ed: On 3 October the LAA announced that civil contracts, which had been due to expire in Aug 2023, will be extended to Aug 2024. This was good news for many civil legal aid providers as the tender process can be a time-consuming and costly one. However, as the LAA only carries out large-scale tenders across all civil contracts periodically, the last time that new providers could get a contract and existing providers could expand was in September 2018. Since then **264 civil legal aid** providers have dropped out of the market. The LAA’s announcement means that new providers will be unable to tender for a contract for two more years and those providers wanting to expand cannot.

Legal Help

Ed: Legal Help pays for advice from a solicitor or legal adviser. They can negotiate on their client's behalf, gather evidence, and write letters. To qualify for the scheme a client must EITHER:

- a) be on Income Support or Income-based Jobseekers Allowance, Income based Employment and Support Allowance, Guarantee Credit or Universal Credit.
- b) have a gross income of not more than £2,657 per month, (this figure increases if the client has more than 4 children) with a "disposable income" not exceeding £733 per month.
- c) have a case that is 'in scope', i.e. permitted within Schedule 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

“In the latest quarter, there was a 3% fall in **legal help** new matter starts compared to the same period of 2021. The volume of completed claims increased by 6% while expenditure decreased by 3% in July to September 2022 compared to the same period in 2021.

Although our last statistics bulletin pointed to the potential for a recovery in Legal Help cases, it is important to note that the workload sits at less than one-quarter of pre-LASPO levels. Indeed, 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.”

Ed: Percentages are all well and good, but how does this translate to actual numbers of people seen?

LAA statistics show that in 2011-2012 there were 679,768 Legal Help starts. This had dropped to 573,770 the following year and for the year 2021-2022 is just 124,687. The numbers are stagnant this year, with a workload of just under 32,000 cases last quarter and 33,000 for the quarter ending September 2022. Numbers of providers are falling and there remain a number of providers who have legal aid contracts which either lie dormant or have fewer cases.

Family Legal Help

“In July to September 2022 Family Legal Help starts decreased by 20% compared to the same quarter last year. Completed claims decreased by 6% and expenditure decreased by 7%. 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.”

Family Civil Representation

“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. Certificates granted for family work decreased by 1% in July to September 2022 compared to the previous year. Whereas, certificates completed increased by 5% and associated expenditure has increased by 24% compared to the same quarter the previous year.

Closed case expenditure for family civil representation exceeds pre-pandemic levels, having increased by 24% since July-September last year.

Although the volume and expenditure for closed case domestic violence civil representation increased substantially following the initial impacts of covid-19. In July to September 2022, certificates completed for domestic violence remained unchanged compared to the same period of the previous year.

In July to September 2022, applications for civil representation supported by evidence of domestic violence or child abuse decreased by 7% compared to the same period of the previous year. The number of these granted decreased by 14% 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 83%.”

Family Mediation

One of the aims of LASPO was to encourage people to use alternative methods of dispute resolution, such as mediation. It is well known that post-LASPO there was a considerable drop in mediation cases because family lawyers had been making many of the referrals – without legal aid for private family law, the referrals to mediation declined drastically.

“Mediation Information and Assessment Meeting (MIAMs), family mediation starts, and outcomes decreased significantly following the covid-19 restrictions in March 2020. Since then, volumes and expenditure have rapidly increased to levels temporarily exceeding pre-covid figures. However, in the last quarter, MIAMs decreased by 7% compared to the previous year and currently stand at around a third of pre-LASPO levels. Family mediation starts increased by 5% while total outcomes decreased by 10%, of which 59% 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 over 95% of both immigration and mental health legal aid cases.”

Ed: The LASPO Act 2012 - the bulletin itself still errs in referring to the "2013" act -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.

Immigration

"Having fallen by over 45% in April to June 2020, new matter starts in immigration increased by 10% in July to September 2022 compared to the same quarter of the previous year. Completed claims in immigration were up by 24% in the last quarter compared to the previous year and expenditure also increased by 8%. While Legal Help starts for immigration reflect the comparative 2020 figures, the volume of claims completed and expenditure is yet to return to pre-pandemic levels (down 7% and 22% respectively)."

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 remained unchanged while expenditure decreased by 1% over the same period.

Housing

"Over 80% 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. Housing Legal Help had been particularly affected by covid-19 with starts and completed claims nearly halving again between January to March 2020 and April to June 2020. Recent quarters have displayed a gradual recovery following the impact of covid-19. In July to September 2022 there was a 3% increase in housing work starts compared to the same quarter the previous year. However, there was a decrease in completed claims (3%) and a larger decrease in expenditure (28%)."

Civil (non-family) representation applications

"Non-family certificates completed make up 11% of the total civil representation workload and 8% of the expenditure. There are only a small number of immigration and mental health cases in civil representation as most work in these areas consists of controlled legal representation. A large proportion of certificates completed in this category are for housing work. There has been a gradual decline in housing certificates completed and expenditure since 2014. However, in the latest period, completed certificates increased by 8% compared to the same period of the previous year."

Judicial reviews

"Of all civil representation applications granted, around 3,000 a year relate to judicial review; 722 in the last quarter. The number granted in July to September 2022 increased by 25% compared with the same quarter in 2021. Over half of judicial reviews were for public law." The statistics do not mention what the remaining matters were in relation to but the based on the previous few quarters, these are likely to be largely immigration matters."

Ed: The Civil Legal Aid Review (which is also likely to be called CLAR)

We are still awaiting any formal announcement about the Civil Legal Aid Review but will continue to update you with any news as soon as we receive it. Do see our previous bulletin for more information and thank you to all the practitioners who contacted us after the last bulletin to discuss their experiences running legal aid firms.

And what of the Means Test Review (MTR)?

As reported in our last bulletin (November 2022) we were expecting to hear more about progress on this strand of work. The Ministry of Justice called a meeting for stakeholders recently but then cancelled it at short notice. We currently have no further information as to next steps, but we remain aware that whatever figures were previously suggested were calculated before inflation started to rise at a much faster rate this year. Government officials might be worried about the potential increase to the legal aid budget if thresholds are reconsidered in the face of spiralling living costs. However, LAPG and other representative bodies have once again made the point to officials that MTR proposals are likely to have a negligible impact on the take-up of legal aid as there simply aren't enough lawyers undertaking this work to assist all of the clients that are now expected to be eligible.

And with that, a Merry Christmas and Happy Holidays to you all from the staff at the APPG on Legal Aid. Thank you once again for making time to read us in this most unexpected and turbulent of years. Your support and feedback means a great deal to us and we hope to see you again in the New Year. Take care of yourselves, wherever you are.

APPG on Legal Aid December 2022



Rohini Teather
Head of Parliamentary Affairs
December 2022

Visit the APPG on Legal Aid Website

The APPG on Legal Aid is co-sponsored by the Legal Aid Practitioners Group



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About the APPG on Legal Aid

The All-Party Parliamentary Group on Legal Aid aims to promote parliamentary and public understanding of the importance of the role of publicly funded legal services. It is chaired by Karen Buck MP. Secretariat support is provided jointly by the Legal Aid Practitioners Group (LAPG) together with Young Legal Aid Lawyers (YLAL) with funding from The Legal Education Foundation.

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About the APPG Plus Project

LAPG and the APPG on Legal Aid have been funded by The Legal Education Foundation to engage with MPs and councillors and their caseworkers to ensure that there is a good understanding of what is left in legal aid in the wake of LASPO, and to offer constructive advice, resources and training on how busy MPs and their caseworkers can engage better with lawyers and advice charities in the legal aid sector. In doing so, we aim to assess current access to justice issues facing the public and to help inform future decision making at a policy level.

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