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The All-Party Parliamentary
Group on Legal Aid

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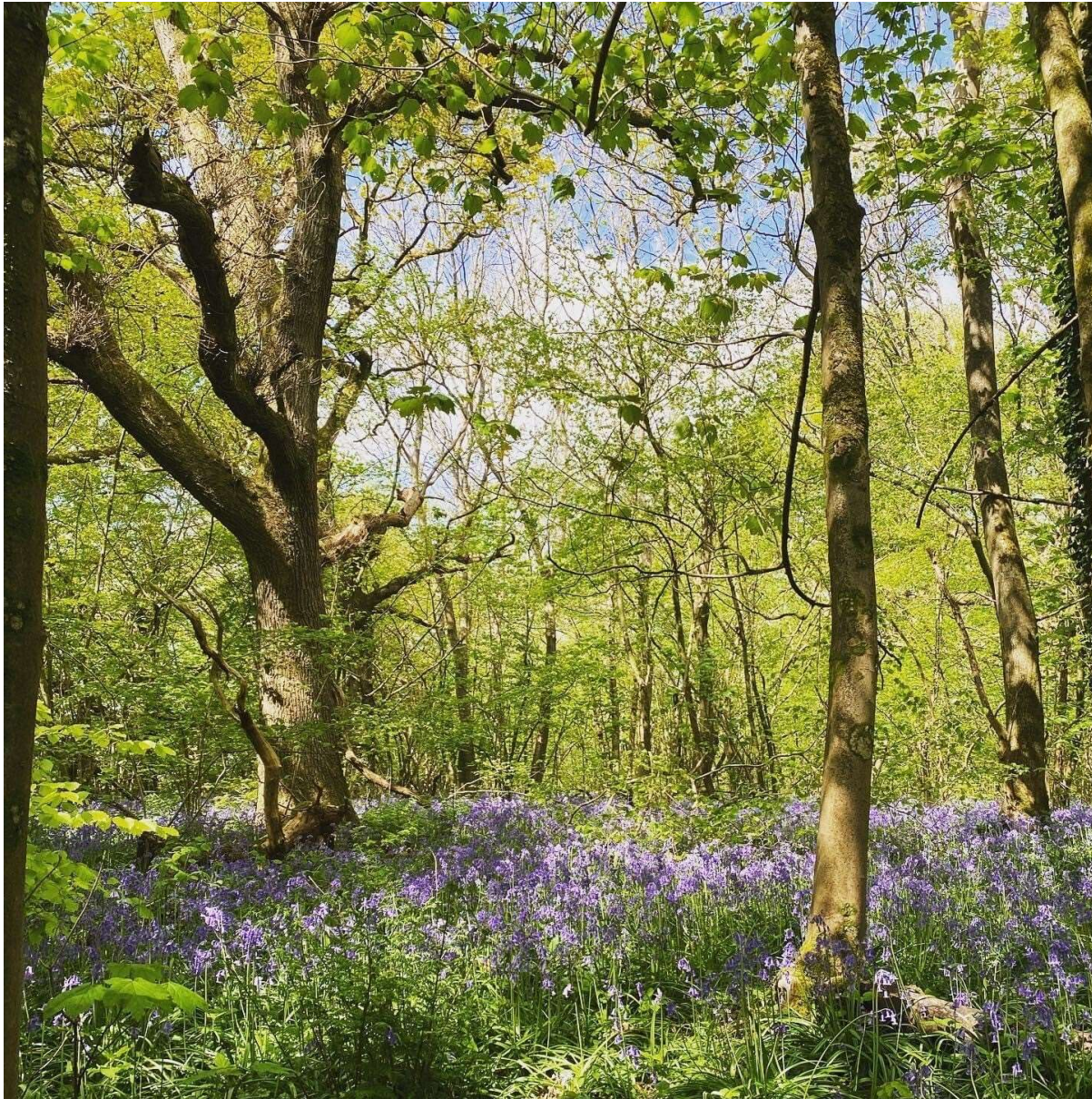


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Bulletin from the APPG on Legal Aid



Dear **Parliamentarian**,

It's been another difficult month as the headlines continue to speak of war, potential strikes in the civil service and Sue Gray's long-anticipated report. For most people, however this is a world away from the everyday reality of soaring energy prices, food bills and rising inflation. In the courtroom, we've watched the excruciating drama of the Rebekah Vardy and Coleen Rooney case play out with even more sensational goings-on across the pond. For ordinary people trying to access our courts however, the reality is very different. By the end of 2021, 25% of cases in England and Wales had been **waiting a year or more** to come to court, with the number of individuals waiting over a year more than trebling since the first lockdown in March 2020. These figures represent many thousands of people stuck in a situation from which they cannot move on, whether they are bringing an action, witnesses or defendants themselves.

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evidence to the Justice Select Committee about what they describe as the “parlous” state of the criminal justice system. Echoing evidence that we heard during the Westminster Inquiry, the inspectors reported that some prisoners are still spending upwards of 22 hours a day locked up in their cells. This leaves negligible time for prisoners to receive meaningful rehabilitation, thereby raising the likely risk of reoffending. In more than half of probation cases examined, assessment and management of the risk of harm offenders posed to the public was deemed unsatisfactory. The courts meanwhile are struggling not only with a backlog of cases built up well before the pandemic, but with growing unrest from the criminal defence sector in response to years of cuts to the system.

Against all of this, and prior to the long bank holiday weekend, we report this month on the action within the legal aid sector, the Criminal Legal Aid Review consultation and the Means Test Review consultation. All three issues go to the heart of what we want from our legal aid system, what justice means in practice and how it should be delivered to those who need it most.

This bulletin has two sections which cover news and developments in the legal aid sector over the past month:

1. **Legal Aid News**
2. **Parliamentary Debates & Justice Questions**

Legal Aid News

Means Test Review Consultation

On 15 March 2022, the Government launched a consultation on changes that aim to make an estimated 5.5 million more people eligible for legal aid. As a Group, we welcome long overdue increases to overall income and capital thresholds that would make more people eligible for legal aid, as well as new ‘disregards’ that make the tests fairer by excluding certain types of income and capital. However, we believe that more is needed to ensure access to justice for the most vulnerable people and improve the sustainability of the civil legal aid system.

The Ministry of Justice has said that proposals should ensure that eligibility for legal aid is expanded to:

- an extra 2 million people in civil cases;
- 3.5 million more people at the magistrates’ court; and
- all Crown Court defendants

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Implementation Review of LASPO. LASPO introduced capital testing in respect of legal aid, which has created further barriers to justice, with large numbers of people who would have previously been eligible now unable to obtain help. The proportion of the population eligible for legal aid fell from 80% in 1980 to 52% in 1998 and then to 29% in 2007 and with financial thresholds remaining the same from 2009, the Means Test Review was intended to address this. [As the Westminster Commission](#), we recommended that the means test be overhauled to bring it back to its original purpose, namely enabling those without the means to pay privately for advice to access publicly-funded legal assistance.

The [Means Test Review consultation](#) closes on 7 June 2022, with the Government's response expected to be published this autumn. It is likely, therefore, that the revised means test will not come into effect until 2023 at the earliest and the Government has recommended a phased implementation approach over a longer period. Proposed changes to the test involve an increase to civil and Crown Court income and capital thresholds, changes to the passporting of some benefits including Universal Credit and various amendments made to immigration law. The million pound question however, is whether these changes will achieve their purported aim of allowing "those most in need" to receive the legal advice and representation required. While many of the proposed changes are to be welcomed, there remain concerns in a number of areas which we will touch upon briefly below.

Open consultation
Legal Aid Means Test Review

Under the proposals, survivors of domestic abuse and those receiving care under the Mental Health Act will still be means tested despite the fact that evidence may be incredibly difficult to gather in these cases. We also note the proposal to remove the means test for legal representation for children but that this is not being extended to legal help cases.

Home Ministry of Justice
Published: 25 March 2022
In: Legal Aid Bulletin 2022 - See full article
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Applies to England and Wales

Summary

A review of the means test for civil and criminal legal aid.

This consultation is being held on another website.

This consultation closes at
10:00pm on 7 June 2022

It is also of concern that the thresholds and disregards proposed are based on 2020 figures for average earnings and expenses, before recent inflationary pressures. The work on this report was carried out over a number of years when inflation was low. By mid-May 2022 rates have reached 9% and it is predicted that they will remain high for some time to come. Practitioner groups are thus flagging that the figures used are already out of date. Allied to this concern therefore is the need to properly index-link thresholds. The head of the review, Phoebe Clapham, has said that government prefers "keep[ing] the situation under review rather than having automatic annual uprating". The Ministry of Justice has also said that regular uprating will not be on offer and the first review of the income and capital thresholds will be three years away at the earliest.

Although the MOJ estimates 3.5 million more people will have access to criminal legal aid in the magistrate's court as a result of these proposals, critics such as Law Society President I. Stephanie Boyce have pointed out that eligibility without access is meaningless. Indeed, there has been a continuous decline in the number of law firms holding criminal legal aid contracts (from 1,652 in 2012 to 1,080 a decade later, a 34% decrease) and a similar decline in those holding civil legal aid contracts (a 36% reduction since 2012). [The number of new civil legal aid cases has also fallen by 69% since LASPO to a record low in 2020/21 of 234,512](#) pointing to a decline in the number of organisations prepared to take on matters even where they hold a legal aid contract. Thus, a more generous means test might not automatically translate into improved

Criminal Legal Aid Review

The pay dispute which has been raging at the Criminal Bar, and which resulted in thousands of criminal barristers going on strike in April 2022, has taken a new turn with **solicitors voting for protest action to be taken**. The London Criminal Courts Solicitors Association announced on 18 May that 95% of its 140 Respondents supported the refusal of low-paid work - such as burglary and assault on emergency workers - in magistrates' courts. The Association's President, Hesham Puri, warned that the action, which started 25 May, could lead to a collapse in the magistrates' courts due to defendants not having legal counsel.

The proposed action by the solicitors will join that of barristers, which has seen nearly 2,500 criminal barristers "working to rule" and imposing a "no-returns" policy. This has meant that participating barristers no longer take on cases passed to them by other barristers when a trial overruns. It occurs after multiple votes and four years of waiting for CLAR to conclude. The main driver behind the action has been rates of pay: **new criminal barristers earn a median pre-tax profit of just over £12,000 compared to £30,000 as a national median household income**, and the Criminal Bar Association has argued that real incomes have dropped 28% since the turn of the millennium. Both solicitors and barristers are asking for a 25% fee uplift.

But how much disruption has this action caused to the courts? **Shadow Minister for Legal Aid, Afzal Khan asked Minister James Cartlidge** how many and what proportion of cases in the Crown Court since 11 April 2022 had no recorded attendance of a defence advocate. Stating that HM Courts and Tribunals Service is monitoring the 'on the day' impact of the operation of the Criminal Bar Association's 'No Returns Protocol' on the Crown Court, Minister Cartlidge referred Mr Khan to the below table. This has been drawn from manual returns for each Crown Court for cases affected on the day of hearing.⁵

Hearing Date ¹ (week commencing)	Weekly total listed hearings ²	Total number of hearings disrupted on the day due to having a 'No Return' ³	'No returns' as % of weekly average hearings ^{2,3}	Number of trial hearings disrupted on the day due to having a 'No Return' ^{3,4}
11/04/2022	6,936	95	1.4%	9
18/04/2022	8,285	263	3.2%	53
25/04/2022	10,668	227	2.1%	43
02/05/2022	8,822	188	2.1%	35

Notes:

1. Three of the four weeks included a bank holiday. The number of hearings listed in those weeks is therefore lower.

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3. Hearings disrupted are those that could not go ahead due to barrister not being present; it excludes hearings that went ahead without the assigned barrister. This data is derived from manual returns from the Crown Courts on the hearings impacted by the No Returns Protocol.
4. Each trial disrupted by the operation of the No Returns protocol is counted on the day it is disrupted.
5. The figures supplied have been extracted from live case management systems/manual returns and have not been verified to the same standards as National Statistics.

In other legal aid news

[Improving the uptake of Legal Advice in Police Custody](#)

Last week, Minister Cartlidge [announced the government's response to the low uptake of legal advice by suspects in police custody](#) highlighted by Sir Christopher Bellamy's Criminal Legal Aid Review. The challenge panel for the review included Dr Vicky Kemp, Principal Research Fellow at the Nottingham School of Law who has done a huge amount of work in this area over the years. In particular, the review cited lower levels of trust in the criminal justice system amongst young ethnic minority communities as set out by the [Taylor Review \(2016\)](#) and the [Lammy Review \(2017\)](#).

The current situation is that an individual in police custody has to 'opt in' and ask for legal advice. In practice, often those who most need help and assistance do not. To increase the number of children that receive the legal advice that they need when in police custody, the MoJ is trialling the effect of a 'presumption of legal advice' which will mean that children will automatically be 'opted-in' to receive legal advice. The results from this pilot will be used to inform future policy making but the Government's response represents a positive step forward in addressing inequality within the system.

[Women and other minorities at the bar](#)

On the subject of inequality within the system, the justice sector is currently looking at the treatment of women and minorities at the Bar. Since 1990, the proportion of women at the Bar has almost doubled – from 21.6 per cent in 1990 to 38.1 per cent in 2020. Male/Female representation at the pupillage stage has been roughly [50:50 since 2000](#). However, these figures become less positive in respect of women's retention and progression further up the career path. As the Westminster Commission, we heard evidence around the difficulties faced by women and those from less traditional backgrounds at the Bar and recent reports from The Bar Council, The Bar Standards Board, and [Sir Christopher Bellamy](#) have identified obstacles (often interrelated) to women developing sustainable and rewarding careers which can be linked to:

- **[work allocation](#)**
- **[client briefing practices](#)**
- **[difficulties returning to practice after maternity leave](#)**

- **barriers in progressing to silk**
- **male dominated power structures**
- **sexist, prejudicial, or outdated marketing practices and non-inclusive networking.**

One of The Bar Council's principal arguments contained in the Criminal Legal Aid Review was the need for urgent reform of fee schemes for criminal barristers. Indeed, many barristers found fees paid under the current system, the Advocates' Graduated Fee Scheme (AGFS), to be insufficient and unsustainable. Women and ethnic groups in particular were likely to be less well remunerated, resulting in many leaving the Criminal Bar altogether. Reasons put forward for this exodus of female practitioners were not only related to remuneration but also to the fact that working hours are getting longer with an expectation to do more unpaid work, demands incompatible with their increased likelihood of having caring duties. This last example was furthered by the Young Bar Committee (YBC) of the Criminal Bar Association (CBA) which told the stories of 8 recent leavers from the Criminal Bar, 7 of whom were women, who found the criminal Bar "[unworkable from the point of view of family life](#)". In the same Review, the CBA gave examples of reforms that it believes would encourage retention, including:

- increased funding for the criminal Bar,
- increased hourly rates, and
- a wider coverage of what work counts for the purposes of remuneration, among others.

The Bellamy report findings on diversity at the Bar echo those of a [Bar Standards Board report published this year](#) which explored "trends in retention and demographics at the bar between 1990 and 2020". This report found that the main stated reason for women leaving the Bar was the difficulty in combining a career at the Bar with caring responsibilities. Reasons given included the unpredictability of listing arrangements and the difficulty of receiving late instructions. Still, Sir Christopher himself underlined that the criminal legal aid rates were a factor in this complex mix of motives.

Dr Jo Wilding, speaking to the Westminster Commission, had this to say of her experiences at the Criminal Bar:

"I did the GDL part-time, did the bar course full-time, spend a lot of time pregnant, had my first child just after the bar course. I deferred my pupillage by a year and started my pupillage with my son aged 16 months, living in Brighton with my mother and commuting to London so that my mother could provide free childcare for my son. I started my tenancy as soon as I finished my pupillage and the first thing I said to my clerks was that I could no longer do criminal work because I simply could not afford to . nor was I able to move around the country in the way that I was required or cope with the immense uncertainty of the warned list."

Importantly, the Bellamy Review found that women earn less than their male counterparts in the same year of practice. The only suggested reason for this is that male barristers receive better paid criminal work than equally senior female barristers. When one looks at the Bar more widely, the already worrying statistic that median earnings for female barristers are 25% less than those for their male counterparts. This is put into even harsher light when considering averages: the average income for women was 48% less than that of male barristers, which indicates that very high earners who bring the average up must be almost exclusively men.

[Sustainability crisis in legal aid pay](#)

In an excerpt from a Question Time [episode of November 2019](#), (which later went viral) an audience member told the then shadow justice secretary Richard Burgon that “every solicitor in the country earns more than £80,000”, to which Burgon retorted he earned just over £40,000 a year when he was a trade-union solicitor. The Law Society Gazette [quipped](#) that the statement would be news to most legal aid lawyers, who do not fit the general ‘fat cat’ lawyer myth. Indeed, the last Young Legal Aid Lawyers’ (YLAL) [social mobility report](#) showed that 53% of their members (10 years PQE or less) earned less than £25,000, which members described as “laughable” when compared to their corporate counterparts. LAPG’s recent Legal Aid Census, which aimed to create a snapshot of the sector at all levels of qualification indicated that the majority of legal aid practitioners earn salaries between £30,000 - £39,999. More than half, (57.6%) earn less than £49,999. It is notable that 8.2 per cent of practitioners who responded to the Census earned less than £19,999.

So, [Clifford Chance’s recent announcement](#) that it would become the second magic circle law firm to raise its Newly Qualified (NQ) solicitor salaries to £125,000 means their pay will outstrip that of the median legal aid newbie by a factor of 5. Not only is the NQ salary discrepancy growing, with the US law firms at the forefront of the pay-war regularly offering salaries over £150,000, it also results in a situation where City-law trainees often earn double what their qualified legal-aid counterparts earn.

The [Westminster Commission](#) found it was “immediately apparent” how the pay and conditions of work had degraded over a generation, with senior witnesses speaking of how the profession had previously been able to provide “a comfortable lifestyle at a relatively early stage of their careers”. This contrasted with the current situation for junior practitioners, who incur debt averaging between £50,000 and £70,000 dependent on qualifications, and who will most likely earn minimum wage as trainees before earning between £24,000 and £26,000 as qualified criminal defence solicitors.

Indeed, for many, the viability of a career in legal aid is discounted before even entering the profession: most internships remain unpaid or minimum wage whereas corporate firms can pay interns attractive wages (Clifford Chance’s scheme for [First Year law students](#) advertises £450 a week). This disparity continues throughout training and to qualification, and the consequences are far-reaching: budding law students are diverted from careers in legal aid, thus drawing talent away from the profession, and only those privileged enough not to rely on their salary for sustenance can pursue these careers.

[Social Market Foundation’s Report on Improving Access to Civil Justice](#)

This month marked the [publication of a report](#) entitled “Right time, right place: Improving access to civil justice” by the cross-party, pro-market think-tank Social Market Foundation. The report sets out how policymakers could create a “better functioning and more equitable” civil justice system in England and Wales, with its key recommendations including:

- the reversal of cuts to civil legal aid;

Right time, right place: Improving access to civil justice

BRIEFING PAPER
May 2022

SMF Social Market Foundation

- bettering the collection of data through biannual national Civil Justice Surveys.

In reaching these conclusions, the Foundation pointed to the ubiquity of civil justice issues, which were encountered by **64% of adults** in the last four years according to the Legal Services Board. The top 5 legal needs included issues such as defective goods and services, anti-social neighbours, buying and selling real estate, as well as issues with wills and employment. A 2015 Ministry of Justice survey on **Legal Problem Resolution** found that these legal issues also tend to cluster: as "50% of people with a civil justice problem in the last 18 months had more than one, and that 22% had at least four".

As other reports have before it, the report then indicated that most of these issues are addressed without formal or legal support. The Legal Services Board's statistics indicate that a majority of individuals faced with contentious legal issues described them as economic, private or bureaucratic, rather than legal, which results in 52% of individuals trying to resolve them through self-help, and only 22% seeking help from a solicitor. The Foundation's report argued that this failure to conceive of civil justice issues as legal ones has severe personal and societal consequences, listing job-loss and addiction among the former, and poor health and employee productivity among the latter.

Finally, in observing the causes of these trends, the Foundation pointed to fewer people qualifying for legal aid since the passing of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), as well as a constriction of legal aid budgets (cut by 34% over the course of the 2010s) and decreased funding for other legal help initiatives such as Citizens Advice, which estimates it has lost £19 million in the same period. It quoted the **Bach Commission** in describing cuts to legal aid as "one of the least cost effective cuts" and advocated for increased funding for legal advice.

The silver-lining to the otherwise gloomy picture was the observation that in some limited respects digital access to justice has improved: with government statistics showing that "the average time to settle small financial claims is five weeks under the online system, compared to 14 weeks previously" with satisfied users as "85-95% [...] offer positive assessments of their experiences". Still, the report remarks that the digitally excluded are "more likely to be drawn from vulnerable groups: older, lower income, disabled or non-native English speakers", which could lead to an exacerbation of this vulnerability.

Parliamentary Debates & Justice Questions

Debates in Parliament

[Access to Legal Aid](#)

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access to legal aid. **Parliamentary Under-Secretary of State for Justice James Cartlidge** responded:

"Last year, to ensure accessibility to vital support, we spent £1.7 billion on legal aid. We are consulting on changes that will result in an additional 2 million people in England and Wales having access to civil legal aid, with 3.5 million more people having access to legal aid at the magistrates court. By any measure, that is a very significant expansion of access. Alongside that, we propose to invest up to £135 million a year in criminal legal aid, more than £7 million in improving access to housing legal aid, and £8 million in expanding access to immigration legal aid."

Andrew Gwynne MP noted that "the reality is that there are legal aid deserts in many parts of the country where practitioners have packed up and stopped providing vital access to the justice system" before asking how the Ministry of Justice was addressing the issue of legal aid deserts.

James Cartlidge MP denied the existence of areas of the country where people are denied access to justice because there are no legal aid providers. He stated "[t]he Legal Aid Agency keeps market capacity under constant review and takes immediate action where gaps appear by tendering for new providers and amending contractual requirements to encourage new providers into the market. In England and Wales, legal advice on housing matters is available, wherever people are, through the Civil Legal Advice telephone service. On access to legal aid, as I said, we are consulting on proposals that will increase the number of people who can access civil legal aid by 2 million, which is a significant measure."

Afzal Khan MP stated "The Government have failed to deliver even the bare minimum of what Sir Christopher Bellamy advised in his review". He added that legal aid deserts are a direct result of chronic underfunding and asked the Justice Secretary to provide details as to when he will level up justice.

James Cartlidge MP referred to the [Lord Chancellor and Secretary of State for Justice's response to a question posed on the 15 March 2022](#) in which the Government committed to increasing legal aid rates by the 15% that Sir Christopher Bellamy recommended. He added that the government was consulting on the £135 million of additional funding for criminal legal aid that Sir Christopher had argued for.

Justice Questions April-May 2022

Karl Turner (Kingston upon Hull East) asked the Secretary of State for Justice:

- how many criminal legal aid firms have been added to the Legal Aid Agency's list of providers willing to accept instructions for advocacy services at different locations since 11 April 2022; and
- what data his Department holds on number of trials in the Crown Court that have been adjourned or postponed due to the unavailability of a defence advocate.

Afzal Khan (Manchester, Gorton) asked the Secretary of State for Justice, how many criminal legal aid firms have offered the Legal Aid Agency back-up advocacy from 11 April 2022.

Stuart C McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) asked the Secretary of State for the Home Department:

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and (b) assessment of whether those firms have the (i) capacity and (ii) necessary expertise to take on clients from that site.

- what assessment she has made of the adequacy of legal support for residents at the proposed new asylum accommodation centre at RAF Linton-on-Ouse.
- at what stage in a person's asylum claim will they be accommodated at the proposed new asylum accommodation centre at RAF Linton-on-Ouse.
- whether her Department plans to use a person's asylum claim type, including the admissibility or inadmissibility of that claim, to determine whether that person will be accommodated at the proposed new asylum accommodation centre at RAF Linton-on-Ouse.
- what assessment she has made of the likely healthcare needs that residents at the proposed asylum accommodation centre at RAF Linton-on-Ouse will have; what healthcare provision will be available on-site; whether residents will be registered with local GPs off-site; what estimate she has made of the number of GP practices in the local area; and what assessment she has made of the (a) capacity of those practices to take on new patients and (b) levels of experience in working with asylum seekers and refugees.
- whether facilities will be in place for (a) asylum screening interviews and (b) asylum substantive interviews to be conducted at the proposed new asylum accommodation centre at RAF Linton-on-Ouse.

James Sunderland (Bracknell) asked the Secretary of State for Justice, what steps his Department is taking to support victims of crime

Edward Timpson (Eddisbury) asked the Parliamentary Under-Secretary of State for Justice:

- what steps his department is taking to reform the family justice system.
- if his Department is looking at additional funding for pre-proceedings work.

You can read all of the questions and answers [here](#).

That's all from us this month. We hope that you and yours enjoy a well-deserved break over the long weekend and we look forward to seeing you again after recess.

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Rohini Teather
Head of Parliamentary Affairs
31 May 2022

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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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